

5014799

S/B 5014772

S/B 5014772

Supreme Court Copy

SUPREME COURT
FILED

APR 2 1990

Robert Wandruff Clerk
DEPUTY

5014799

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RANDY STEVEN KRAFT,

Petitioner,

v.

JAMES ROWLAND,
DANIEL VASQUEZ,

Respondents,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

Case No. _____

BRIEF

BRIEF IN SUPPORT
FOR
WRIT OF HABEAS CORPUS

RANDY STEVEN KRAFT
P.O. Box E-38700
Tamal, CA 94974

in pro se

TABLE OF CASES

1		
2		
3	<u>Birt v. Superior Court</u> (1973) 34 Cal.App.3d 934	8
4	<u>In re Roderick P.</u> (1972) 7 Cal.3d 801	6,7
5	<u>Jackson v. Virginia</u> , 443 U.S. 307, 61 L.Ed.2d 560	6
6	<u>Juchert v. California Water Service Co.</u> (1940) 16 Cal.2d 500	10
7	<u>Neal v. State of California</u> (1960). 55 Cal.2d 11	3
8	<u>Puckhaber v. Southern Pacific Co.</u> 132 Cal. 363	10
9	<u>People v. Albertson</u> (1944) 23 Cal.2d 550	11
10	<u>People v. Allen</u> (1976) 65 Cal.App.3d 426	10
11	<u>People v. Balderas</u> (1985) 41 Cal.3d 144	16
12	<u>People v. Bamber</u> (1968) 264 Cal.App.2d 625	13
13	<u>People v. Bassett</u> (1968) 69 Cal.2d 122	6
14	<u>People v. Bird</u> (1899) 124 Cal. 32	15
15	<u>People v. Draper</u> (1945) 69 Cal.App.2d 781	13
16	<u>People v. Flores</u> (1943) 58 Cal.App.2d 764	7
17	<u>People v. Jackson</u> (1965) 238 Cal.App.2d 477	6
18	<u>People v. Jenkins</u> , 91 Cal.App.3d 579	8
19	<u>People v. Johnson</u> (1984) 158 Cal.App.3d 850	6,8
20	<u>People v. Kunkin</u> (1973) 9 Cal.3d 245	6
21	<u>People v. Redmond</u> (1969) 71 Cal.2d 745	6,7
22	<u>People v. Reyes</u> (1974) 12 Cal.3d 486	6,7
23	<u>People v. Smallwood</u> (1986) 42 Cal.3d 415	16
24	<u>People v. Superior Court (Duval)</u> (1988) 198 Cal.App.3d 1121	17
25	<u>People v. Swope</u> (1969) 269 Cal.App.2d 140	13
26	<u>People v. Towler</u> (1982) 31 Cal.3d 105	6
27	<u>Reese v. Smith</u> , 9 Cal.2d 324	10
28	<u>Showalter v. Western Pacific R.R.Co.</u> (1940) 16 Cal.2d 460	6

TABLE OF CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Wheelock v. Freiwald, 66 F.2d 694

The Works of Alexander Hamilton

6

12

TABLE OF CONTENTS

	<u>page #</u>
Table of Cases	i
BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS	1
THE USE OF HABEAS CORPUS	3
EQUAL PROTECTION CLAIMS	5
SUFFICIENT, SUBSTANTIAL EVIDENCE	6
BURDEN OF PROOF	12
SELF INCRIMINATION	14
COMMON SCHEME, PLAN OR DESIGN	15
SEVERANCE	15

1 RANDY STEVEN KRAFT
P.O. Box E-38700
2 Tamal, CA 94974

3
4 in pro se
5
6

7 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
8
9

10 RANDY STEVEN KRAFT,

11 Petitioner,

12 v.

13 JAMES ROWLAND,
DANIEL VASQUEZ,

14 Respondents,
15

16 PEOPLE OF THE STATE OF CALIFORNIA,

17 Real Party in Interest.
18

Case No. _____

BRIEF IN SUPPORT OF WRIT OF
HABEAS CORPUS

19
20 INTRODUCTION
21

22 Petitioner submits this petition for writ of habeas corpus
23 because of the unique nature of his conviction on sixteen (16
24 counts of murder. He was convicted on NO substantial evidence that
25 he killed fifteen of the sixteen alleged victims and was thus denied
26 a fair trial on the sixteenth count by dint of the prejudicial stew
27 it was set amidst.

28 Petitioner, a citizen of California since birth, an em-

1 ployed man, homeowner, taxpayer, active registered voter, and loved
2 member of a large California family, was not afforded the protection
3 of the laws that is every citizen's due. Instead, he was afforded
4 only the ritual of a trial by the Orange County courts after the
5 substance was stripped away by a procession of unreasonable, pre-
6 judicial, discriminatory, unlawful, and in some ways fanatical
7 rulings by the local court.

8 Petitioner has already been confined of his liberty for
9 nearly seven years on the basis of no substantial evidence of his
10 guilt. There is no conflicting evidence. The evidence presented by
11 the People is insufficient and unsubstantial as a matter of law on
12 its face.

13 Justice Frankfurter once wrote that where one ends up on
14 a particular matter depends in large part on where one enters. Here,
15 if it is assumed from the outset that Petitioner is a deranged serial
16 killer, and if it is not a requirement that there be evidence to
17 prove this assumption, then there is perhaps no need for a trial and
18 the hollow ritual offered by Orange County may probably suffice.
19 On the other hand, however, if the laws and constitutions of Cali-
20 fornia and the United States of America still live to protect the
21 citizenry, including Petitioner, then Petitioner ought to be seen
22 as clothed in a presumption of innocence which the People must over-
23 come by presenting reasonable and solid (substantial) evidence. If
24 this court agrees with the latter proposition, then this writ must
25 issue.

26 //

27 //

28 //

THE USE OF HABEAS CORPUS

Because Petitioner's convictions are such an egregious wrong, because the wrong is obvious from the FACE of the evidence, because Petitioner has already been wrongfully confined for nearly seven years, because Petitioner asked this court for pretrial relief from obvious trial court error and was denied, and because Petitioner recently asked this court for an order which would have significantly shortened the time required for him to pursue his appeal but was denied, because of all of these factors habeas corpus is appropriate at this juncture of this case.

It is true that habeas corpus cannot serve as a substitute for appeal to review a determination of fact made on conflicting evidence. Neal v. State of California, (1960) 55 Cal.2d 11, 16. But that is not what Petitioner is asking this court to do. There is no conflicting evidence raised herein. For the purposes of this writ only, Petitioner concedes every fact established by the People at trial with respect to the death of MARK HOWARD HALL. Petitioner asks this court to examine the face of the evidence and draw every reasonable inference that can be drawn from it. The evidence fails to support the conviction as a matter of law.

Consequently, the HALL conviction and the GAMBREL conviction cannot stand. Petitioner's confinement to date and continued confinement cannot be sustained, not for even one more day, and habeas corpus will lie to remove the unjust convictions and to remove the unjust punishment.

11

11

1 Habeas corpus is also appropriate because the charges al-
2 leged against Petitioner are unconnected by common commission, com-
3 mon evidence, common time frame, or a common scheme, plan or design.
4 The information itself is prejudicial, and this prejudice is perpet-
5 uated in the usual appellate process inasmuch as the appellate
6 is based on the information. Severance should have been granted
7 before a trial was held. But that did not happen, and now Peti-
8 tioner's only means of presenting these convictions for review with-
9 out the prosecutor's contrived prejudice is through habeas corpus.

10 Habeas corpus is also appropriate because the usual appel-
11 late process is an insufficient remedy for this Petitioner and this
12 unique case. Petitioner has already been confined for seven long
13 years based on evidence that is insufficient as a matter of law to
14 prove his guilt. Now Petitioner probably faces an equal amount of
15 time, seven more years, before his appeal can be briefed and argued
16 before this court. All of this is an artificial punishment contrived
17 by the amassing of sixteen unrelated murder charges in one infor-
18 mation, the result of how a wily prosecutor structured the charges.
19 Nothing in the evidence can justify this punishment. The sufficiency
20 of the evidence isn't going to improve one iota from requiring this
21 Petitioner to waste away in prison. Justice demands that this
22 incredibly prejudicial assault on Petitioner be terminated at the
23 first possible juncture. This is that juncture.

24 //

25 //

26 //

27 //

28 //

EQUAL PROTECTION CLAIMS

Petitioner claims that as an average citizen he is entitled to the protection of the laws of the society to which he has contributed. If that is so, then it follows that Petitioner is entitled to a fair trial on the charge for which he was arrested. He is entitled to have the onus of proof placed on the People, and he is entitled to not having to prove his own innocence. He is entitled to be free from suspicion and innuendo being masqueraded before a jury as proof of guilt. He is entitled to fair and impartial rulings from jurists he has helped to elect. If other citizens are entitled to these things, then so is Petitioner.

In another time and another place Petitioner's "trial" in Orange County might well be viewed as a lynching party. There are several striking parallels: the inflammatory use of suspicion as a substitute for proof when proof was unavailable; the presumption of guilt; the manipulation and outright avoidance of established law; the silencing of the accused; disregard of uncontested, exonerating facts; the alteration of settled fact.

By making the equal protection claims Petitioner says that he has an established right not to be treated in this manner, not to be tarred and feathered and given the bum's rush simply because a prosecutor contrived a prejudicial stew of heretofore unrelated crimes.

1 SUFFICIENT, SUBSTANTIAL EVIDENCE

2
3 It is not a new rule that a verdict which rests on conjec-
4 ture, surmise, or speculation cannot be allowed to stand. Showalter
5 v. Western Pacific R.R. Co. (1940) 16 Cal.2d 460, 476, quoting
6 Wheelock v. Freiwald, 66 F.2d 694-698. This rule is one that ought
7 to apply to Petitioner if it applies to any person.

8 The standard for review of the sufficiency of the evidence
9 to support a criminal conviction is whether any *rational* trier of
10 fact could have found the essential elements ;of the crime beyond a
11 reasonable doubt. People v. Towler (1982) 31 Cal.3d 105, 117;
12 Jackson v. Virginia, 443 U.S. 307, 319, 61 L.Ed.2d 560, 573-574. The
13 evidence must be viewed in the light most favorable to the People
14 and every fact the trier could *reasonably* deduce from the evidence
15 must be presumed. People v. Redmond (1969) 71 Cal.2d 745, 755. But
16 the evidence sustaining a conviction cannot be "any" evidence; it
17 must be "substantial" evidence, i.e. reasonable, credible, of solid
18 value, and inspiring confidence. People v. Bassett (1968) 69 Cal.2d
19 122, 138-139; People v. Kunkin (1973) 9 Cal.3d 245, 250; People v.
20 Johnson (1984) 158 Cal.App.3d 850, 853. Suspicion is not evidence,
21 as it only raises a possibility of guilt, and suspicion is not a
22 sufficient basis for an inference of fact. In re Roderick P. (1972)
23 7 Cal.3d 801, 809; People v. Kunkin, supra, 9 Cal.3d 245, 250.
24 Suspicion alone is not enough to support a conviction. People v.
25 Reyes (1974) 12 Cal.3d 486, 499 (and cases cited); People v. Jackson
26 (1965) 238 Cal.App.2d 477, 480; People v. Redmond, supra, 71 Cal.2d
27 745, 755. It follows logically that accumulated suspicion cannot
28 support accumulated charges.

1 The People's entire case is predicated on suspicion. There
2 is no probative evidence. Lacking any real evidence, the People
3 approached the trial court in Orange County as though this were an
4 exercise in trading baseball cards. The People said in effect, "We
5 have eight suspicious circumstances, some weaker than others, and we
6 want to trade them to you, we want to cashier them for your reason-
7 able doubt about whether or not the defendant is guilty in general."
8 The trial court agreed to trade with the People, as is reflected in
9 its rulings which appear to presume Petitioner guilty. The trial
10 court allowed the People to offer the same trade to the jury, and
11 obviously the jury traded its reasonable doubt too, finding Peti-
12 tioner guilty of fifteen murders supported by weak, weaker, and non-
13 existent evidence. It follows logically that when reasonable doubt
14 is suspended in general, it is not necessary to prove guilt in
15 particular. This is character assassination, and Evidence Code sec-
16 tion 1101's proscription against bad character evidence seeks to
17 prevent this from happening. Penal Code section 1096 is *supposed* to
18 insure that no person will suffer conviction unless *proven* guilty by
19 evidence. Yet in Orange County Petitioner was convicted on sus-
20 picion.

21
22 Fingerprint Evidence.

23 It is a well-established principle of law in California,
24 and a principle that ought to apply to Petitioner if it applies to
25 any criminal defendant, that unsupported fingerprint evidence is not
26 sufficient to sustain a conviction. People v. Flores (1943) 58 Cal.
27 App.2d 764; People v. Redmond, supra, 71 Cal.2d 745; In re
28 Roderick P., supra, 7 Cal.3d 801; People v. Reyes, supra, 12 Cal.3d

1 486; Birt v. Superior Court (1973) 34 Cal.App.3d 934. The reason
2 for this is well stated by the court of appeal in People v. Johnson
3 (1984) 158 Cal.App.3d 850, 855-856, quoting People v. Jenkins 91
4 Cal.App.3d 579, 583-584:

5
6 " ... evidence that a defendant's fingerprint had been
7 found on three containers ... was insufficient to support
8 [the conviction]. The court explained '[t]he only fact
9 directly inferable from the presence of the fingerprint
10 is that sometime, somewhere defendant touched the con-
11 tainer.' ... Here, as in Jenkins, '(1) there was no
12 evidence of the age of the fingerprint which was
13 lifted from the container ...; (2) there was no direct
14 evidence where [the container was] when defendant
15 touched [it]; and (3) there was no direct evidence
16 of what was in the container when defendant touched
17 [it]."

18
19
20
21
22
23
24
25
26
27
28 The HALL Fingerprint.

For the sake of argument and for the purposes of this writ
only, Petitioner concedes that the fingerprint on the glass in the
HALL case is his. If that were true it still proves no more than
the fingerprints in the cases cited above, e.g. that at some time
and place unknown, Petitioner touched the glass. Nothing more can be
inferred *reasonably* from this fingerprint evidence. It is an un-
reasonable quantum leap of multiple conjecture to conclude from this
evidence that Petitioner (1) left his family in Westminster and
found the party in San Juan Capistrano that he knew nothing about,
(2) abducted MARK HOWARD HALL from the party at or about midnight
when he was 30 miles or so away in Westminster, (3) spirited HALL
(who was so intoxicated he could not walk or stand up without
falling) away from the party without anyone seeing him, (4) drove

1 his passenger car up a precarious 4-wheel drive road that he knew
2 nothing about in the dark of night, (5) murdered HALL, (6) did all
3 the things to HALL that autopsy evidence shows, (7) got safely back
4 kdown the precarious road, (8) appeared at his parents home early in
5 the morning without his clothing or car showing any signs of blood
6 or dirt. It is also unreasonable to conclude from this unsupported
7 fingerprint evidence that Petitioner murdered any other person.

8

9

10 Other HALL Evidence.

11 No other evidence presented by the People lends support to
12 the fingerprint such that it may be infered that Petitioner murdered
13 MARK HOWARD HALL. The cigarette package adds nothing to the thumb-
14 print, and it proves nothing on its own. It suffers from a similar
15 lack of specificity as the thumbprint. The only thing that can be
16 infered reasonably is that at one time unknown, it *might* have been
17 in Petitioner's possession. That is not even an inference; its con-
18 jecture. Certainly a major tobacco company did not manufacture that
19 brand of cigarettes solely for Petitioner, and no evidence was
20 produced to show how many of those packs were distributed in Cali-
21 fornia at or around the time in question. There was no evidence that
22 Petitioner smoked that brand of cigarettes exclusively at or about
23 the time of HALL's death. The pack and the glass were not found
24 together. Oddly, no fingerprints were reported to have been on the
25 pack itself as would be expected from a smoker handling the pack,
26 and the pack was not retained in evidence by the People so that
27 Petitioner could have examined it. It was destroyed.

28

The words "new years eve" written in 1983 by Petitioner

1 prove nothing about the death of MARK HOWARD HALL more than seven
2 years earlier. No *reasonable* inference regarding HALL's death can be
3 made from those words. Without presenting any evidence to justify it
4 the People convinced the trial court that the jury should be allowed
5 to speculate as to the meaning of these words and argued to the jury
6 that these words were Petitioner's confession to murdering HALL. If
7 you start out assuming Petitioner to be a serial murderer who killed
8 HALL, that is if you suspend reasonable doubt and deny Petitioner
9 the presumption of innocence , or if you shift the burden of proof
10 to Petitioner, then it might be reasonable to just assume these
11 words are what the People assert they are. Otherwise it is unreason-
12 able, prejudicial, discriminatory, and totally unfounded. There is
13 nothing in the record to indicate that when Petitioner wrote those
14 words he meant to refer to New Year's Eve, 1975.

15

16 "Where there is no evidence or not even slight evidence
17 of an essential fact to be proved by the plaintiff, a
18 conclusion of a trial court or jury based thereon becomes
19 a mere conjecture and does not rise to the dignity of an
20 inference. (Puckhaber v. Southern Pac.Co., 132 Cal. 363
21 [64 Pac. 480]; Reese v. Smith, 9 Cal. (2d) 324, 328
22 [70 Pac. (2d) 933].) An inference is a deduction which
23 the reason of the jury makes from the facts proved. (Sec.
24 1958, Code Civ. Proc.)" Juchert v. California Water
25 Service Co., (1940) 16 Cal.2d 500, 506.

26

27 The writing of these words was not contemporaneous with
28 the death of HALL, but was very remote in time. Even if one accepts
the conjecture that Petitioner meant to refer to that particular New
Year's Eve, it requires further conjecture to suppose that he meant
to refer to the death of HALL on the following morning. The court of
appeal in People v. Allen (1976) 65 Cal.App.3d 426 echoed the reason
of this court in Juchert, supra, when it held that inferences rest-

1 ing on an interpretation of the defendant's words were not reason-
2 able and that the People's theory as to the implied statement was:

3
4 "...clearly speculative and lack[ed] trustworthiness or
5 reliability based upon either logic or reason. Specu-
6 lative inferences that are derived from a declarant's
7 words cannot be deemed to be relevant under the defin-
8 ition of relevant evidence set forth in Evidence Code
9 section 210, ..." (at page 434)

10
11
12 Evidence of Other Crimes.

13 No evidence from any other murder alleged against Peti-
14 tioner helps to prove, in even the remotest way, that *Petitioner*
15 murdered MARK HOWARD HALL. See "FACTS" section of the writ. Never-
16 theless, in this joint prosecution evidence of 15 other murders was
17 before the jury and available for their consideration as they
18 determined guilt or innocence on the HALL count. Petitioner refers
19 to this as the "prejudicial stew" that made a fair trial impossible
20 on any count. That such a setting is improper for a criminal trial
21 had been recognized in California for at least 40 years before
22 Petitioner's trial. In 1944 this court declared in People v.
23 Albertson (1944) 23 Cal.2d 550, 581

24 "Circumstantial proof of a crime charged cannot be
25 intermingled with circumstantial proof of suspicious
26 prior occurrences in such a manner that it reacts as a
27 psychological factor with the result that the proof of
28 the crime charged is used to bolster ... the prior act,
and ... the prior act is then used in turn [to show] ...
he must have committed the crime charged, This is a
vicious cycle."

29 Yet this is exactly what happened in Petitioner's trial,
30 and as a result Petitioner was convicted of the HALL count in the

1 absence of any substantial evidence implicating him.
2
3

4 Inflammatory Evidence.

5 The HALL death brought a host of inflammatory evidence
6 with it that proved nothing with respect to the identity of his
7 murderer or any other fact relevant to the proper adjudication of
8 this charge. The evidence was all photographic, shown larger than
9 life through an overhead projector onto a large screen that loomed
10 at the edge of the jury box. The photographs were horrific, gut-
11 wrenching and unforgettable. Jurors were shown burned eyeballs,
12 burned flesh, burned hair, burned genitals, severed genitals that
13 had been inserted into HALL's surgically enlarged anus, a swizzle
14 stick stuck up into the bladder, a slashed leg. None of this was in
15 any way linked to Petitioner. None of this had anything to do with
16 the cause of death of HALL (dirt packed into the trachea). Three
17 other victims exhibited at least some burning, but together they
18 brought not one whit of evidence implicating Petitioner.

19 In all probability this inflammatory evidence became inex-
20 tricably linked with the fingerprint in the minds of the jury even
21 though there is no rational connection between the two.
22
23

24 BURDEN OF PROOF

25
26 "[E]very man shall be presumed innocent until he is
27 proven guilty." 4 The Works of Alexander Hamilton
(Fed. ed. 1904) 269.

28 //

1 This is a bedrock principle of American jurisprudence, and
2 in California it is codified by Penal Code section 1096. Even though
3 it should not be necessary to press this obvious point, Petitioner
4 claims that this principle of law applies to himself if it applies
5 to any citizen. It has been recognized in California since statehood
6 and more than *one hundred years* before the start of Petitioner's
7 trial in Orange County. In 1881 this court declared it a "cardinal
8 rule" of criminal cases that the burden of proof rests on the prose-
9 cution, and that if a defendant were required to prove his innocence
10 it would deny him reasonable doubt to which he is "justly and every-
11 where held entitled." People v. Marshall (1881) 59 Cal. 386.

12 But despite this "cardinal rule" the Orange County Super-
13 ior Court allowed the People to place before a jury the death of
14 MARK HOWARD HALL set amidst a prejudicial stew of fifteen other
15 unrelated murder charges. The HALL case is not supported by suf-
16 ficient substantial evidence from which a jury could have determined
17 guilt. Obviously the jury required more from Petitioner than it did
18 from the People. Even though it was not his burden, Petitioner
19 proved by a preponderance of uncontested evidence that he was not
20 involved in HALL's death. But because he could not prove conclus-
21 ively where he was while he slept (having proved his whereabouts
22 both immediately before and after sleeping), he was judged to be
23 guilty. When the allegations are viewed in the aggregate, the burden
24 of proof shifted to Petitioner was impossibly overwhelming.

25 A defendant is not required to prove his innocence but the
26 People must prove him guilty. People v. Draper (1945) 69 Cal.App.2d
27 781; People v. Bamber (1968) 264 Cal.App.2d 625; People v. Swope
28 (1969) 269 Cal.App.2d 140.

SELF INCRIMINATION

1
2
3 In order to testify in his own behalf about his activities
4 and whereabouts at or about the time of the HALL death, the trial court
5 ruled that Petitioner would have to answer questions on cross-
6 examination about every charge in the information, even though eight
7 of those other allegations brought no evidence at all implicating
8 Petitioner. In other words, Petitioner was required to answer the
9 unspecified allegation - that he was a serial killer - and to con-
10 clusively prove that he was not a serial killer.

11 If the HALL charge had been brought in a separate trial,
12 Petitioner could not have been compelled to answer questions about
13 the death of RONNIE GENE WIEBE, for example, a charge where there is
14 virtually no evidence implicating Petitioner. And Petitioner could
15 not have been compelled to answer questions about the death of SCOTT
16 MICHAEL HUGHES, for example, a charge where there is only insuf-
17 ficient and unsubstantial evidence (2 very common and unsupported
18 fibers). Neither of these charges is even remotely similar to the
19 HALL death and evidence about them is in no way relevant to the death
20 of HALL. Yet Petitioner's right to testify in his own behalf, and
21 his right to not testify where the People can't prove guilt, both
22 rights firmly guaranteed to most citizens by the Constitution, were
23 curtailed by the trial court.

24 On or about July 28, 1988, Petitioner's trial counsel
25 filed a Petition for Review with this court challenging the trial
26 court's denial of the pretrial severance motion. At pages 183-186 of
27 that document the subject of self incrimination is discussed, and
28 Petitioner hereby incorporates that discussion by this reference.

1 COMMON SCHEME, PLAN OR DESIGN

2

3 Before evidence of act "A" can be used to prove the

4 accused guilty of committing act "B" the prosecution must prove by

5 *some standard* that the accused committed act "A". This is not a new

6 concept in California jurisprudence. People v. Bird (1899) 124

7 Cal. 32. The evidence presented by the People to prove Petitioner

8 guilty of the HALL murder is insufficient by any standard recognized

9 as reasonable. Hence, the HALL evidence should not have been used to

10 prove that Petitioner committed any other crime. And conversely, if

11 other murders were seen as similar to the HALL death but they too

12 were supported by insufficient or non-existent evidence, then they

13 (the other similar murders, if any) should not have been used to

14 prove that PETitioner murdered HALL.

15 Yet, in this prejudicial stew that was given to the jury,

16 every charge was available to prove every other charge regardless

17 of whom, if anyone, they implicated and regardless of the suf-

18 ficiency of substantial evidence supporting each one.

19 On or about July 28, 1988, Petitioner's trial counsel

20 filed a Petition for Review with this court challenging the trial

21 court's denial of the pretrial severance motion. At pages 92 ff. of

22 that document the subject of the level of proof required for other

23 act evidence is discussed, and Petitioner hereby incorporates that

24 discussion by this reference.

25

26 SEVERANCE

27

28 On or about July 28, 1988, Petitioner's trial counsel

1 filed a Petition for Review with this court challenging the trial
2 court's denial of Petitioner's pretrial severance motion. This court
3 declined to effect a pretrial remedy. Petitioner hereby incorporates
4 by this reference that entire document in support of this writ with
5 respect to severance issues. After conviction a petitioner's sever-
6 ance claims must be determined on the basis of the showing made at
7 the time of the pretrial motion. People v. Balderas (1985) 41 Cal.3d
8 144, 171. The pretrial writ of review amply sets forth the pretrial
9 showing that Petitioner made.

10 Although the pretrial Petition for Review is lengthy
11 (187 pages), the record of the trial court in denying the motion is
12 exceptionally brief (less than two pages of reporter's transcript).
13 It is obvious from the face of the record that the trial court (1)
14 abused its discretion regarding severance, (2) refused to consider
15 the facts of the allegations in its denial of the severance motion,
16 (3) abandoned consideration of all severance issues after initial
17 beginning analysis showed that the facts supported Petitioner's
18 severance claims ("It all analyzes differently."), and (4) denied
19 the severance motion based on its subjective feelings instead of any
20 critical analysis of the issues.

21 The trial court exhibited appalling prejudice against
22 Petitioner by refusing to consider the many severance issues pre-
23 sented, and the trial court demonstrated actual hostility toward
24 Petitioner by abandoning severance consideration after it appeared
25 that the facts supported Petitioner's severance request. In a
26 capital prosecution fifteen murder charges supported by weak, weaker
27 and non-existent evidence generated insurmountable prejudice and
28 ought to have been severed. People v. Smallwood (1986) 42 Cal.3d

1 415, 427, 433; People v. Superior Court (Duval) (1988) 198 Cal.
2 App. 3d 1121, 1129, 1131.

3
4
5 CONCLUSION

6
7 Based on all the grounds put forward by Petitioner, and in
8 the interests of justice, this writ must issue.

9
10
11 Dated: March 21, 1990

12 
13

14 Randy Steven Kraft

15 in pro se
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am over the age of 18 years, residing or employed in the County of Orange, and not a party to the within action; my residence address is 5172 Princeton Ave, Westminster, CA 92683.

On MARCH 30, 1990 I served the within BRIEF IN SUPPORT OF WRIT OF HABEAS CORPUS on the parties listed below by placing a true copy thereof enclosed in a sealed envelope, with first class postage thereon fully pre-paid, in the United States Mail at WESTMINSTER, California, addressed as follows:

Attorney General, State of California
3580 Wilshire, Suite 800
Los Angeles, CA 90010

California Appellate Project
345 Franklin Street
San Francisco, CA 94102

William J. Kopeny
1502 N. Broadway
Santa Ana, CA 92706

Executed this 30 th day of MARCH, 1990,
at WESTMINSTER, California

I declare under penalty of perjury that the foregoing is true and correct.

Marlene Kay Plunkett

Marlene Kay Plunkett