

S014772 Supreme Court Copy

S014772
Mr. Randy Steven Kraft
C/O Kay Plunkett
5172 Princeton
Westminster, CA 92683

.....IN THE SUPREME COURT.....
.....OF THE STATE OF CALIFORNIA.....
(Court)

**SUPREME COURT
FILED**

MAR 28 1990

Robert Wandruff Clerk

DEPUTY

RANDY STEVEN KRAFT.....
(Petitioner)

JAMES ROWLAND, ^{vs.} Dir. of Cor-
rections,
DANIEL VASQUEZ, Warden of San
Quentin State Prison.....
(Respondent)

No.
(To be supplied by Clerk of the Court)

Petition for Writ of habeas corpus.....
(Title of writ)

Name of person in custody:

.....
(If other than petitioner)

Relationship of petitioner to person in custody:

INSTRUCTIONS—READ CAREFULLY

Set forth in concise form the answers to each applicable question. If you do not know the answer to any question, you should so state. If necessary, you may finish the answer to a particular question on an additional blank page, but make it clear to which question any such answer refers.

You should exercise care to assure that all answers are true and correct. Since the petition contains a verification, the making of a statement which you know is false may result in a conviction for perjury.

When the petition is filed with the Superior Court or judges thereof, only the original must be filed unless additional copies are required by local court rules.

When the petition is filed with the District Court of Appeal or justice thereof, an original and three copies must be filed.

When the petition is filed with the Supreme Court or justice thereof, an original and ten copies must be filed.

In addition, the law requires the service of a copy of the petition on the district attorney, city attorney or city prosecutor in certain cases (Pen. Code § 1475, Gov. Code § 72193).

Petitioner should attach all relevant records or documents supporting his claims.

Approved by the Judicial Council of California for use under Rules 56.5 and 201 (f) of the California Rules of Court (as adopted effective January 1, 1966)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached.
 - (b)
 - (c)
12. Have any other applications, petitions or motions been filed or made in regard to the same detention or restraint? yes
13. If you answered "yes" to (12), list with respect to each petition, motion or application:
- (a) The specific nature thereof:
 - i Motion to appoint provisional appellate counsel for the purpose of
 - ii preparing the opening brief on appeal - submitted December 1989.
 - iii
 - iv
 - (b) The name and location of the court in which each was filed:
 - i California Supreme Court
 - ii
 - iii
 - iv
 - (c) The disposition thereof:
 - i pending
 - ii Denied without comment February 21, 1990
 - iii
 - iv
 - (d) The date of each such disposition:
 - i
 - ii
 - iii
 - iv
 - (e) If known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i
 - ii
 - iii
 - iv
14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application? yes
15. If you answered "yes" to (14), identify:
- (a) Which grounds have been previously presented:
 - i all except equal protection grounds; trial court prejudice;
 - ii prejudicial prosecution; appellate insufficiency
 - iii
 - (b) The proceedings in which each ground was raised:
 - i pretrial motions
 - ii
 - iii

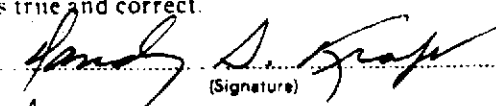
16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Petitioner had not been convicted.
- (b) _____
- (c) _____
17. In the proceeding resulting in the confinement complained of, was there representation by an attorney at any time during the course of:
- (a) The proceedings prior to trial? yes
- (b) The trial or hearing? yes
- (c) The sentencing or commitment? yes
- (d) An appeal? not to date
- (e) The preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction? no
18. If you answered "yes" to one or more parts of (17), list the name and address of each such attorney and the proceeding in which he appeared:
- (a) Douglas Otto - Preliminary Hearing - address unknown
- (b) C. Thomas McDonald/James G. Merwin/William J. Kopeny - pretrial and trial - 1146 Civic Center Dr. West, Santa Ana, CA 92703
- (c) _____
19. Is the person in custody presently represented by an attorney in any matter relating to this confinement? trial counsel
- If so, state the attorney's name and address: _____
20. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
- N/A

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Executed on MARCH 12, 1990 at TAMAL, California.

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


(Signature)

GROUNDS FOR RELIEF

1.
Petitioner's conviction for the murder of MARK HOWARD HALL is not supported by evidence that, when viewed reasonably on its face and in a light most favorable to the People, is sufficient and substantial as a matter of law to support the conviction, violating state and federal guarantees of due process, trial, protection against cruel and unusual punishment, equal protection, and also violating California Penal Code section 1096.
2.
The inclusion of the insufficient and unsubstantial evidence of the HALL death in a joint trial with allegations of the murder of TERRY LEE GAMBREL denied Petitioner a fair trial on the GAMBREL charge resulting in a death sentence, violating state and federal guarantees of due process, trial, protection against cruel and unusual punishment, equal protection, and also violating California Penal Code section 1096.
3.
The inclusion of evidence regarding the death of MARK HOWARD HALL so infected PETitioner's trial, so inflamed the jury, that he was denied a fair trial on all sixteen counts of murder alleged against him, violating state and federal guarantees of due process, trial, protection against cruel and unusual punishment, equal protection, and also violating California Penal Code section 1096.

//

- 1 4. The inclusion of the HALL murder charge, not supported by
2 any substantial evidence implicating Petitioner, in a
3 joint trial with fifteen (15) other murder allegations
4 that were not connected to the HALL murder in their com-
5 mission, remote from the HALL murder in time, and not con-
6 nected to the HALL murder by common scheme, plan or
7 design, effectively shifted the burden of proof to Peti-
8 tioner wherein he had to conclusively prove his innocence
9 on the HALL count in order to avoid conviction, continued
10 incarceration, and a death sentence, violating state and
11 federal guarantees of due process, trial, protection
12 against cruel and unusual punishment, equal protection,
13 self incrimination, and also violating California Penal
14 Code section 1096.
15
- 16 5. Petitioner was effectively prevented from testifying in
17 his own behalf about his whereabouts and activities at or
18 about the time of death of MARK HOWARD HALL, because in
19 order to so testify he would have been required to testify
20 about other unrelated murder charges. This violated state
21 and federal guarantees of protection against self-incrim-
22 ination, due process, trial, protection against cruel and
23 unusual punishment, equal protection.
24
- 25 6. Allegations regarding the death of MARK HOWARD HALL should
26 have been severed from other murder charges against
27 Petitioner by the trial court, said court refusing to
28 exercise its discretion, thus violating state and federal

1 guarantees of due process, trial, equal protection, protec-
2 tion against self incrimination, and also violating Cali-
3 fornia Penal Code sections 1096 and 954, and Evidence Code
4 sections 352 and 1101.
5

6 7. The trial court abused its discretion by not considering
7 the facts surrounding the death of MARK HOWARD HALL in
8 denying Petitioner's pretrial severance motion, thus vio-
9 lating state and federal due process, trial, equal pro-
10 tection guarantees, and also violating Penal Code sections
11 1096 and 954, and Evidence Code sections 352 and 1101.
12

13 8. The trial court abused its discretion by denying Petition-
14 er's pretrial severance motion based on its "feelings"
15 rather than on the facts of the various charges that were
16 before it, violating state and federal guarantees of due
17 process, trial, trial by jury of peers, equal protection,
18 protection against self-incrimination, and also violating
19 California Penal Code sections 1096 and 954, and Evidence
20 Code sections 352 and 1101.
21

22 9. The words "new years eve," written on a piece of paper by
23 Petitioner more than seven years after the death of MARK
24 HOWARD HALL, were illegally seized from the trunk of
25 Petitioner's car on May 14, 1983. The words were later
26 analyzed, supplemented by investigation, manipulated, re-
27 formulated, and finally admitted by the trial court as
28 evidence against Petitioner in the death of MARK HOWARD

1 HALL, thus violating state and federal guarantees against
2 unreasonable search and seizure, due process, trial, pro-
3 tection against self-incrimination, and also violating
4 California Penal Code section 1096.
5

6 10. The inclusion of the insufficiently and unsubstantially
7 supported HALL murder allegations in a joint trial with,
8 other murder allegations, so as to win a conviction that
9 could otherwise not be obtained were the HALL count al-
10 leged separately, is a discriminatory prosecution, vio-
11 lating state and federal guarantees of equal protection of
12 the laws, due process, trial, speedy trial, protection
13 against cruel and unusual punishment, protection against
14 self-incrimination, Article I, Section 1 of the California
15 constitution, and California Penal Code section 1096.
16

17 11. For Petitioner's conviction for the murder of MARK HOWARD
18 HALL, evidenced by a total want of any evidence implicat-
19 Petitioner in the death of HALL, the usual appellate pro-
20 cedure in the State of California is an insufficient
21 remedy, violating state and federal guarantees of due
22 process, protection against cruel and unusual punishment,
23 equal protection, and Article I, Section 1 of the Cali-
24 fornia constitution, and California Penal Code section
25 1096; also state and federal guarantees of a trial, and
26 protection against self-incrimination.

27 //

28 //

1 12. The trial court was prejudiced against Petitioner, thus
2 denying him state and federal guarantees of equal protec-
3 tion, due process, trial, trial by jury of peers, protec-
4 tion against cruel and unusual punishment, protection
5 against self incrimination, and further violating
6 California Penal Code section 1096.

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1 NO EVIDENCE has ever been produced, including at trial,
2 regarding the following:

3

4 1. Any connection between Petitioner and MARK HOWARD HALL.

5

6 2. Any connection between MARK HOWARD HALL and the broken
7 glass fragments.

8

9 3. Any connection between MARK HOWARD HALL and a vodka bottle
10 (the broken glass fragments reconstructed).

11

12 4. When Petitioner's thumbprint was placed on the glass.

13

14 5. How Petitioner's thumbprint was placed on the glass.

15

16 6. When the glass was transported to the vicinity of the body.

17

18 7. Who transported the glass to the vicinity of the body.

19

20 8. Any independent link between Petitioner and the area where
21 the body was found.

22

23 9. How MARK HOWARD HALL left the party in San Juan Capistrano
24 when in fact he was falling-down drunk.

25

26 10. Any connection between Petitioner and San Juan Capistrano.

27

28 11. Any connection between Petitioner and (a) the party in

1 San Juan Capistrano, (b) the host of the party, or (c) any
2 person at the party.
3

4 12. Whether or not Petitioner smoked "Half and Half" cigar-
5 ettes on or about January 1, 1976.
6
7

8 Facts Supporting Ground 2.
9

10 Petitioner was arrested for drunk driving, a charge that
11 was never proven and quickly dropped, never being brought to court.
12 But later he was charged with the murder of TERRY LEE GAMBREL a
13 passenger in his car who died at Mission Community Hospital more
14 than an hour after the car stop. A coroner's investigator refused to
15 respond to the hospital until there was a dead body.

16 But before Petitioner could receive a fair trial on any
17 complicity he might have had in the GAMBREL death, he was accused of
18 being a mass murderer/serial killer. The Sheriff proclaimed this
19 publicly as fact as did the People, and it was widely and repeatedly
20 reported by the news media. Each of the fifteen murder allegations
21 bootstrapped to the GAMBREL charge, including the HALL charge, is
22 supported by insufficient and unsubstantial evidence to identify
23 Petitioner as the perpetrator. Together the lump of murder alle-
24 gations constitute an allegation never formally made but neverthe-
25 less pressed on the jury, to wit: that defendant was a deranged
26 serial killer predisposed to commit crime.

27 The HALL charge brings with it a host of prejudicial and
28 inflammatory evidence that is linked neither to the GAMBREL death

1 nor to the Petitioner: excessive alcohol consumption, burned eye-
2 balls, burned flesh, a satanic symbol, severed genitals, burned
3 hair, surgically enlarged anus, swizzle stick in bladder, death by
4 dirt packed into the trachea, a slashed leg.

5 The HALL death and the GAMBREL death do not share distinct
6 signature-like characteristics such that it might reasonably be said
7 that whomever killed one must have killed the other. That both HALL
8 and GAMBREL were single, male caucasians is the only similarity
9 between them or their deaths. The differences are legion and strik-
10 ing in their dissimilarity. To wit:

- 11
12 1. GAMBREL arguably died of strangulation while HALL died of
13 acute alcohol poisoning and dirt packed into the trachea.
14
- 15 2. HALL was slashed, burned, emasculated, had the anus en-
16 larged and the severed genitals inserted there, had a
17 swizzle stick inserted into the bladder. GAMBREL evidenced
18 no such injuries.
19
- 20 3. GAMBREL arguably needed transportation and could have
21 hitchhiked, while HALL did not need a ride.
22
- 23 4. GAMBREL was an experienced United States Marine, while
24 HALL had never been in the military and did not have a
25 military appearance.
26
- 27 5. GAMBREL stood 6'2" and weighed 208 pounds, while HALL
28 stood 5'8" to 5'9" weighing 165 pounds.

1 6. HALL disappeared from a private residence, while GAMBREL
2 didn't disappear from anywhere.

3
4 7. HALL was found a great distance from where he disappeared,
5 but when Petitioner's car was stopped it was heading
6 toward GAMBREL's home at El Toro Marine base and was only
7 a few miles away.

8
9 8. When last seen HALL had been drinking all afternoon and
10 all night and was falling-down drunk, while GAMBREL had
11 played in a baseball game at the military base and had not
12 been drinking.

13
14
15 Facts Supporting Ground 3.

16
17 Evidence of the facts and circumstances surrounding the
18 death of MARK HOWARD HALL and the discovery of his body is inflam-
19 matory to say the least. Crime scene and autopsy photographs are
20 bloody, gruesome and shocking to the sensibilities of an average
21 person. Gut wrenching photographs were projected larger than life by
22 the prosecutor through an overhead projector onto a large screen
23 that loomed right next to the jury box in the darkened courtroom.

24 //

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1 Facts Supporting Ground 4.

2
3 Although there was no evidence presented by the People
4 from which rational jurors could conclude that Petitioner murdered
5 MARK HOWARD HALL, Petitioner was still convicted of the crime. The
6 Jury ignored substantial alibi evidence in reaching their decision.
7 Numerous relatives of Petitioner all testified that on the night in
8 question Petitioner was present at a family New Year's Eve party at
9 the home of Mrs. Doris Lane, his sister, and that he remained there
10 until approximately 12:30 am. They further testified that they saw
11 Petitioner early the next morning at his parents home, either asleep
12 or waking up, as family members gathered to watch the Rose Parade
13 and football games on television. They further testified that
14 Petitioner's clothing that morning was not bloody or dirty.

15 It is obvious that this was not enough for the jury, that
16 they would accept no less than Petitioner's explanation as to how
17 his thumbprint came to be on the broken glass (which is the People's
18 burden to show), and his explanation as to how the glass came to
19 rest where it did (also the People's burden to show), as well as his
20 explanation for his whereabouts while he slept on the night in
21 question (also the People's burden to show).

22

23

24 Facts Supporting Ground 5.

25

26 The trial court ruled that if Petitioner elected to test-
27 ify as to any count, the People could cross-examine him as to all
28 counts. The court opined that all Petitioner need do was testify

1 that he didn't know anything about counts which he knew nothing
2 about.

3
4

5 Facts Supporting Grounds 6 - 8.

6

7 Petitioner's pretrial severance motion was denied in toto.
8 This Court declined to review the denial prior to trial through
9 mandamus.

10 Petitioner attaches in Exhibit "A" the remarks of the
11 trial court in denying the pretrial severance motion. The court
12 stated that it "started" to analyze the facts of the various counts
13 with respect to severance, but apparently abandoned the effort
14 because "it all analyzes differently." The court opined, "I think I
15 would like to be a computer expert," apparently referring to the
16 host of dissimilar facts it had "started" to analyze. The court
17 further said, "I would think that if I tried to analyze all these
18 other factors" indicating that it had not even tried to
19 analyze them at the time the motion was denied. And finally, after
20 no analysis of the facts of the various charges whatsoever, the
21 court denied the motion in its entirety, stating for the record,
22 "Gentlemen, it's the feelings of this court that the severance
23 motion should be denied in its entirety and that is the ruling of
24 the court."

25 If the trial court had analyzed the evidence of the HALL
26 count and compared it to the other counts it would have found that
27 the insufficient and unsubstantial evidence offered by the People to
28 //

1 identify Petitioner as the murderer of HALL was not pertinent to any
2 other murder even if it were deemed cross-admissible. To wit:

3

4 1. Petitioner's fingerprints were offered in no other charge.

5 2. No other charge involved a broken bottle or broken glass.

6 3. No other charge involved "Half and Half" cigarettes.

7 4. No other victim disappeared on New Year's day.

8 5. No other victim was found in the same (or similar) area.

9

10 Other significant facts regarding the HALL death, but
11 unrelated to Petitioner, are also not pertinent to any other charge
12 alleged. To wit:

13

14 1. No other victim disappeared from a private residence.

15 2. No other victim died from dirt packed in the trachea.

16 3. No other victim had the anus surgically enlarged.

17 4. No other victim had a swizzle stick pushed in the bladder.

18 5. No other victim was last seen "falling down drunk."

19 6. No other victim had his leg slashed open.

20 7. No other victim had a satanic symbol carved on his body.

21 8. No other victim had been dragged to the place where found.

22 9. No other victim had severed genitals pushed in the rectum.

23 10. No other victim had a lethal level of blood alcohol.

24 11. No other victim was in a propped up position when found.

25 12. No other victim had hair burned from body and face.

26

27 The HALL murder is not so similar to any other charge that
28 it can be said to share a common distinctive modus operandi. And had

1 the HALL count been tried separately, its evidence would not have
2 been admissible in the trial of any other count, and no evidence
3 from any other count would have been admissible in a separate HALL
4 trial.

5 The inclusion of the HALL count created actual prejudice
6 in the joint trial. To wit:

- 7
8 1. Petitioner was convicted of HALL's murder in the absence
9 of any substantial evidence implicating him.
- 10
11 2. Petitioner was convicted of fifteen (15) counts of murder
12 and sentenced to death in the absence of sufficient sub-
13 stantial evidence implicating him.
- 14
15 3. Petitioner was coerced into not testifying regarding his
16 activities around the time of HALL's disappearance and
17 death, for in order to so testify, the trial court ruled
18 that Petitioner could be cross-examined on all the counts.
- 19
20 4. The HALL count was used to prove other charges via common
21 scheme, plan or design when there was no proof that
22 Petitioner murdered HALL.
- 23
24 5. The burden of proof was effectively shifted from the
25 People to Petitioner .
- 26
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1 On or about July 28, 1988, Petitioner's trial counsel
2 filed a Petition for Review with this Court, challenging the trial
3 court's denial of the pretrial severance motion. This court declined
4 to effect a pretrial remedy. Petitioner by this reference incorpor-
5 ates that entire document in support of this writ with respect to
6 severance issues as they pertain to the HALL case.

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1 Facts Supporting Ground 9.

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3 Although written by Petitioner in 1983, more than seven
4 years after the death of MARK HOWARD HALL, the People were allowed
5 to assert and argue to the jury that the words "new years eve" are
6 Petitioner's confession to the murder of HALL. No foundation or any
7 evidence of any kind was presented by the People to prove their
8 assertion. The People merely asert that when Petitioner wrote these
9 words it is obvious that he meant to refer to the murder of HALL,
10 since HALL died the day following New Year's Eve, 1975.

11 When the words were seized they were not thought to be
12 related to any crime. The business binder and the papers in it were
13 seized as a unit when the entire contents of Petitioner's car was
14 seized without a warrant and without probable cause. At some later
15 date a law enforcement officer sat down with these words and tried
16 to impute meaning to them with the intention of linking the words to
17 a known homicide.

18 At trial the prosecutor photocopied the words "new years
19 eve" and other words/letters in Petitioner's handwriting from the
20 same piece of paper and arranged them in his own context and so that
21 it appeared that Petitioner had written just these words to fill a
22 single page in one column. At the penalty phase of the trial more
23 words were photocopied and added to the ones already presented, this
24 time creating a new context and filling an entire page sideways in
25 two columns. The original writing was in two columns and filled
26 about one-half a standard page. The People's enhanced version, in
27 addition to being out of context to the original, moved words from
28 one column to the other and presented a finished, final and

1 intentional appearance that was not present in the original.

2 What the People called a 'death list at trial was words,
3 letters and numbers in Petitioner's handwriting that had been cut
4 and pasted and assembled into a document that Petitioner had not
5 written. One item on this document could not be related to any fact
6 in evidence regarding any homicide, yet the prosecutor was allowed
7 to assure the jury that it obviously referred to an alleged victim
8 just because he said so.

9 On or about July 8, 1988, Petitioner's trial counsel filed
10 with this Court a petition for pretrial review of the trial court's
11 blanket denial of Petitioner's 1538.5 motion (illegal search and
12 seizure). This Court declined to effect a pretrial remedy, but
13 Petitioner hereby incorporates the arguments and authorities con-
14 tained in the pretrial writ, in particular pages 28-35 which focus
15 on the seizure of the business notebook from the trunk of the car.

16

17

18 Facts Supporting Ground 10.

19

20 Petitioner suffered discrimination in the following ways:

21

22 1. He was forced to choose between a speedy trial on the HALL
23 count or preparation of a defense on sixteen counts of
24 murder involving the death penalty.

25

26 2. He was not given a fair trial on the HALL count. Instead
27 he was tried as a serial killer.

28

- 1 3. He was not afforded the presumption of innocence.
- 2
- 3 4. He was required to prove his innocence.
- 4
- 5 5. He was required to defend against the HALL count when
- 6 there was no evidence of his guilt.
- 7
- 8 6. He was coerced into not testifying about the HALL count by
- 9 an accumulation of prejudicial trial court rulings.
- 10
- 11 7. He was denied a jury representative of the community on
- 12 the HALL count by dint of the prohibitive length of the
- 13 joint trials.
- 14
- 15 8. He was wrongfully confined for more than five years at the
- 16 Orange County Jail, suffering extremely harsh and damaging
- 17 treatment, all before trial and lacking any substantial
- 18 evidence to justify such lengthy and cruel incarceration.
- 19
- 20 9. He was convicted of the HALL murder in the absence of any
- 21 evidence implicating him.
- 22
- 23 10. He was not given the protection of state or federal law by
- 24 the trial court.

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1 Facts Supporting Ground 11.

2
3 Petitioner is innocent of the murder of MARK HOWARD HALL
4 and has been wrongly convicted. The evidence, when examined on its
5 face and viewed reasonably in the light most favorable to the
6 People, is unsubstantial and insufficient as a matter of law to sup-
7 port the conviction. Not even one further day of confinement of
8 Petitioner for the murder of MARK HOWARD HALL can be justified by
9 the State of California.

10 One of Petitioner's trial counsel, William J. Kopeny whom
11 this Court knows to be an able appellate attorney, represented to
12 the trial court, after trial but before formal sentencing, that it
13 would take him, who is familiar with the record in this case, three
14 years to read the record in detail. Newly appointed appellate
15 counsel, when finally appointed, will require at least three years
16 to fully embrace the record and prepare an opening brief on appeal.

17 Petitioner has attempted to shorten the time required for
18 the appellate process by moving this Court for an order appointing
19 trial counsel, Mr. Kopeny, as provisional appellate counsel solely
20 for the purpose of preparing an opening brief. Petitioner estimated
21 that this would shorten the appellate process by three to six years.
22 This motion was denied without comment or citation February 21,
23 1990.

24 It is not necessary to pore over the 30,000 pages of the
25 record, or wait three years or more for an opening brief to learn
26 that the HALL conviction is deficient as a matter of law. An order
27 to show cause to the People of California will readily verify
28 Petitioner's contentions.

1 In addition to the unnecessary delay and the further
2 wrongful confinement of Petitioner, the usual appellate process,
3 where all the challenges to all the convictions are heard together,
4 perpetuates and lends force to the prejudicial argument of the
5 People. The prejudicial stew, which is a creation of the prosecutor
6 as a result of his tactics in making the charges, is brought before
7 this Court and predisposes this Court to meld all the evidence and
8 view the separate murders as a unit when in fact they are not.

9 Finally, it is wasteful of state resources, and judicial
10 resources in particular to require a lengthy, full-blown appeal
11 when the same result, overturning the wrongful conviction, can be
12 reached by this writ in a much more timely and just manner.

13 And a final, final word. This Court denied Petitioner
14 any pretrial relief regarding search-seizure and severance issues
15 despite blatant abuse of discretion and prejudicial rulings by the
16 trial court. Without the requested pretrial relief Petitioner was
17 convicted on all charges, even in the absence of any evidence. Now
18 we have a large appeal and a massive record, and this Court must now
19 admit some complicity for that. Consequently it would be most unfair
20 at this juncture for this Court to lay the entire onus for a lengthy
21 appeal onto Petitioner and tell him that he must waste away for
22 years and years in a state prison with a death sentence over his
23 head even in the absence of evidence to justify it.

24 The interests of justice and fair play require this writ
25 to be heard, and to issue ... now.

26

27

28

1 Facts Supporting Ground 12.

2
3 The trial court actively worked to construct a case that
4 when submitted to a jury would result in Petitioner's conviction. To
5 that end the trial court

6
7 1. Refused to consider the facts of the various charges in
8 denying Petitioner's pretrial severance motion.

9
10 2. Refused to consider the various grounds for Petitioner's
11 pretrial severance motion.

12
13 3. Abandoned severance analysis when it appeared that such
14 analysis would favor Petitioner and thus require severance. By the
15 court's own words it "started" to analyze the facts of the various
16 counts, and the court found that "it all analyzes differently."

17
18 4. Refused to exercise its discretion when it denied com-
19 pletely and without any reasonable analysis Petitioner's severance,
20 1118.1, and new trial motions.

21
22 5. Refused to sever or acquit inflammatory and prejudicial
23 counts even though unsupported by substantial evidence, and used
24 those counts unreasonably and prejudicially to bolster the retention
25 of other weak or unsupported murder charges. For example, in denying
26 Petitioner's motion pursuant to Penal Code section 1118.1 the trial
27 court alluded to "burning of the flesh" as an element of modus
28 operandi common to the charges in general and a factor in its ruling

1 to let all the charges go to the jury. But only four counts involved
2 any burning of the flesh, and three of those counts (INDERBIETEN,
3 CRISEL, and KLINGBIEL) brought no evidence whatsoever identifying
4 Petitioner as the perpetrator. Only the HALL count brought any
5 evidence, and as shown above that evidence is insufficient and
6 unsubstantial as a matter of law to prove identity or support a
7 conviction.

8
9 6. Refused to allow the jury to visit the HALL crime scene.

10
11 7. Adopted a double-standard as to level of proof by allowing
12 the People to "prove" charges unsupported by any substantial
13 evidence, but requiring Petitioner to show a higher level of proof
14 regarding alternate suspects. For example, regarding the CRISEL
15 count (one of the burned victims) there was no evidence whatsoever
16 linking Petitioner to any facet of the death. When Petitioner tried
17 to establish one John McMellen as a credible alternate suspect who
18 knew CRISEL, knew of CRISEL's death before it was reported, who
19 owned a truck/camper and engaged in suspicious activities therein,
20 and who committed suicide just days after Petitioner's arrest, the
21 trial court barred much of Petitioner's evidence, ruling that it
22 didn't rise to a sufficiently probative level, saying, "It isn't
23 even close," and labelling Petitioner's evidence "garbage." Notwith-
24 standing the trial court's comments, Petitioner's evidence impli-
25 cating McMellen rises to a significantly higher level than the
26 absence of any evidence implicating Petitioner.

27 //

28 //

1 8. Failed to afford Petitioner the substance of a trial by
2 permitting a lump of inflammatory and unsubstantiated charges to go
3 before a jury, thus shifting the burden of proof to Petitioner and
4 insuring that he would face the impossible task of conclusively
5 proving his innocence on all the charges, including some dating back
6 as far as eleven years prior to their being alleged.

7
8 9. Created a trial so lengthy that more than 90% of potential
9 jurors declared the length to be a hardship, resulting in a jury of
10 people who, after five years of sensational news reporting, wanted
11 to be the persons to judge petitioner.

12
13 The comments of the trial court at the formal sentencing
14 hearing held on November 29, 1989, indicate its prejudicial inclin-
15 ations in this case. As a device around which to form its comments
16 the court incredibly chose the HALL count. The court stressed the
17 heinous nature of the crime and condemned Petitioner for having done
18 such a horrible thing, and concluded that since Petitioner had
19 indeed done it he surely deserved the death penalty. Conspicuously
20 absent from the court's comments was any mention of any evidence
21 proving that Petitioner murdered HALL.

EXHIBIT "A"

DECLARATION OF SERVICE

I, the undersigned, declare: that I am a citizen of the United States and a resident of Orange County, California; that I am over the age of 18 years and not a party to the within entitled action; that my residence address is 5172 Princeton Ave, Westminster, CA 92683; that on March 26, 1990, I served the within PETITION FOR 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

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

Executed on March 26, 1990, at Westminster, California.

Marlene Kay Plunkett
Marlene Kay Plunkett