MC-275

Name: JOSEPH HUNT

Address: Pleasant Valley State Prison

P.O. Box 8500 B-5-224

Coalinga, Ca. 93210

CDC or ID Number: D-61863

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

(Court)

Joseph Hunt,

Petitioner

vs.

Scott Frauenheim, Warden, PVSP,

Respondent

**PETITION FOR WRIT OF HABEAS CORPUS**

No. _____

*(To be supplied by the Clerk of the Court)*

## INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

**This petition concerns:**

- [x] A conviction
- [ ] Parole
- [ ] A sentence
- [ ] Credits
- [ ] Jail or prison conditions
- [ ] Prison discipline
- [ ] Other *(specify):*

1. Your name: JOSEPH HUNT
2. Where are you incarcerated? PLEASANT VALLEY STATE PRISON, B-5-224
3. Why are you in custody? [xx] Criminal conviction [ ] Civil commitment

*Answer items a through i to the best of your ability.*

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Murder & Robbery, with special circumstance of robbery.

b. Penal or other code sections: Penal Code §§ 187, 211, 190.2

c. Name and location of sentencing or committing court: Superior Court of Los Angeles, West District, 1725 Main St., Santa Monica, CA. 90401-3299

d. Case number: LASC# A090435

e. Date convicted or committed: April 22, 1987

f. Date sentenced: July 6, 1987

g. Length of sentence: Life Without the Possibility of Parole due to the special circumstance finding, otherwise it would be 25-to-life + 2 yrs.

h. When do you expect to be released? ~~(See above)~~

i. Were you represented by counsel in the trial court? [x] Yes [ ] No *If yes, state the attorney's name and address:*

Arthur H. Barens, 10209 Santa Monica. Blvd. L.A. 90067

4. What was the LAST plea you entered? *(Check one):*

[xx] Not guilty [ ] Guilty [ ] Nolo contendere [ ] Other:

5. If you pleaded not guilty, what kind of trial did you have?

[x] Jury [ ] Judge without a jury [ ] Submitted on transcript [ ] Awaiting trial

6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

PETITIONER IS ENTITLED TO AN ORDER VACATING HIS SENTENCE UNDER COLOR OF SENATE BILL 1134 (ENACTED 9/28/16) WHICH DIRECTS THAT RELIEF BE GRANTED A PRISONER WHO PRESENTS "NEW EVIDENCE ... OF SUCH DECISIVE FORCE AND VALUE THAT IT WOULD HAVE MORE LIKELY THAN NOT CHANGED THE OUTCOME AT TRIAL."

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

(1) Petitioner presented a "new evidence of innocence" claim and it was denied by the L.A. Superior Court on 7/12/96. (Exh. A, p. 2(16-22).) The standard of review then applicable to that claim required the presentation of "conclusive" evidence which "undermined the entire prosecution case" and "point[ed] unerringly to innocence." (Id., p.17.; see also, In re Hall (1981) 30 Cal.3d 408, 423.)

(2) The L.A.S.C. found eyewitness testimony from Connie and George Gerrard that tended to show that Ronald Levin (alleged victim) was alive on Christmas Day, 1987, "credible" and not "materially impeach-[ed]." (Id., p.17(1-6).) However, it held that their testimony was insufficient to meet the "conclusive" standard. (Id., at p.17(7-13).)

(3) In addition to the Gerrard's, Petitioner offers the following exculpatory witnesses that could not have been discovered by reason-able diligence before (continued on the next page)

b. Supporting cases, rules, or other authority (optional):

*(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)*

California Penal Code section 1473(b)(3)(A); see also, Memorandum of Points and Authorities, post, pp.8-50.

Continuation Page
(Answer to Question #6(a) cont'd)

conviction: Nadia Ghaleb (Exh I), Ivan Werner (Exh. D), Louise Waller (Exh. pp.894-906; RT 14942-81); Karen Sue Marmor (Exh. E), Oliver Holmes (Exh. N-2, O; Exh. pp.964-967), John Duran (Exh. Q, W, X), Robert Robinson (Exh. pp.896-989, Exh. G); Scott Plafker (Exh U), Jonathan Milberg (Exh. T), Jerry Verplancke (Exh. F), and John Reeves.

(4) As additional proof as to the credibility and probative force of the trial-unavailable witnesses testimony, Petitioner submits the declarations of jurors who heard them testify in a trial subsequent to Petitioner's 1987 trial in Los Angeles County, and also the admission of the Chief Detective on the case (Les Zoeller), who told his Superiors that the exculpatory evidence Petitioner developed after trial made it unlikely that the State would win a retrial. (Exh. N & S; see, post, pp.40-48 [analysis].)

(5) All procedural quesstions are addressed in the accompanying Memorandum of Points and Authorities.

(6) The question of res judicata is addressed, post, at pages 9 to 10.

(7) Petitioner demonstrates that the new evidence presented herein is a sufficient showing to require this Court under governing law to make other exculpatory evidence which could have been discovered had trial counsel been diligent relevant to the ultimate determination of whether reversal is justified under Penal Code section 1473(b(3)(A). (See, post, pp.29-30.)

(8) Petitioner also demonstrates that the final assessment of whether Petitioner's conviction should be vacated must be made in light not only of the evidence referenced in paragraphs (3) and (7), above, but after due reconsideration of the cross-corroborating and mutually reinforcing effect of the aforementioned evidence on the defense alibi and sighting evidence presented at trial. (See, post, p.48(2-23).)

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7. **Ground 2 or Ground** 2 *(if applicable)*:

MATERIAL FALSE EVIDENCE WAS USED AT TRIAL

a. Supporting facts:

See accompanying Memorandum of Points and Authorities.

b. Supporting cases, rules, or other authority:

Penal Code section 1473

8. Did you appeal from the conviction, sentence, or commitment? [x] Yes [ ] No If yes, give the following information:
   a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
   California Court of Appeal, Second District, Division 5
   b. Result: Conviction Affirmed c. Date of decision: 11/23/93
   d. Case number or citation of opinion, if known: B029402
   e. Issues raised: (1) Inter alia: Ineffective counsel, judicial bias, jury instructional issues, etc. (See, Appendix A [opinion of CCOA].)
   (*Note: of course, no claim of 'new evidence' of innocenc was raised)
   f. Were you represented by counsel on appeal? [x] Yes [ ] No If yes, state the attorney's name and address, if known:
   Dan Dobrin, 107373 Lauerel St., #140, POB 3329, Rancho Cucamonga, 91730
9. Did you seek review in the California Supreme Court? [x] Yes [ ] No If yes, give the following information:
   a. Result: Conviction Affirmed b. Date of decision: 3/17/94
   c. Case number or citation of opinion, if known: S037111
   d. Issues raised: (1) See Appendix A (Same issues raised to CCOA)
   (2)
   (3)
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
   Petitioner seeks herewith relief that was unavailable to him prior to the Signing by Governor Brown on 9/28/16 of Senate Bill 1134. SB 1134 creates a far more favorable standard of review for 'new evidence' claims.
11. Administrative review:
   a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
   Not Applicable.
   b. Did you seek the highest level of administrative review available? [ ] Yes [ ] No
   *Attach documents that show you have exhausted your administrative remedies.*

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? [xx] Yes If yes, continue with number 13. [ ] No If no, skip to number 15.

13. a. (1) Name of court: Second Dist. Court of Appeals, Div. #5

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas petition B059613

(3) Issues raised: (a) New Evidence of Innocence

(b) Material False Evidence; (c) Ineffective Counsel. (See, Appendix B)

(4) Result *(attach order or explain why unavailable)*: OSC Issued (App.B)

(5) Date of decision: 11/23/93

b. (1) Name of court: Los Angeles Superior Court

(2) Nature of proceeding: Post OSC proceedings, return/traverse, hearing

(3) Issues raised: (a) Same as listed in 13(c), above.

(b)

(4) Result *(attach order or explain why unavailable)*: Petition denied (See Exh. A .)

(5) Date of decision: 7/12/96

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.* (See, page 8)

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

~~See 13(b)(2), above.~~ See Also Exhibit A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) Senate Bill 1134 creates a new remedy. It became law on 9/28/16. Petitioner learned of its passage in late October. He then made requests on those keeping his files for pertinent records in November. This petition is therefore filed without substantial delay. (See, post, pp.12-14 [discussing the timeliness issue at greater length].

16. Are you presently represented by counsel? [ ] Yes [xx] No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? [ ] Yes [xx] No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is the lowest Court with original habeas jurisdiction. (See, Cal. Constitution, Article 6, section 10.)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: January 5, 2017 Joseph Hunt
(SIGNATURE OF PETITIONER)

Continuation Page - See Judicial Council Form at point 13(2):

13(c) Name of Court: Second Dist. Court of Appeals, Div. #5

Nature of Proceeding: Habeas Petition Challenging the Denial of the LASC of July 12, 1999 (see, 13(2)). B110428

Issues Raised: New Evidence of Innocence, IAC Claims, Judicial Bias Claims, Conflict of Interest Claims, etc. Note: No claim was presented related to the 'claim of right' defense to robbery.

Result: Petition Denied (See, Appen. D.) Date: 1-15-98

13(d) Name of Court: California Supreme Court

Nature of Proceeding: Petition for Review Challenging the denial of the C.O.A. in Case # B110428

Issues Raised: New Evidence of Innocence, IAC Claims, Failure to Issue an OSC on certain claims, use of the wrong standard of review for conflict of interest claims, denial of right to be pro per at the hab. hearing in 1996, erroneous denial of jud. bias claims on procedural bar, etc. The claims in this petition were not raised.

Case Number : S067504

Result: Review Denied Date 4-15-98

13(e) Name of Court: Los Angeles Superior Court

Nature of Proceeding: Habeas Petition

Issues Raised: Innocence predicated on claim of right defense to robbery.

Case Number: BH 001438

Result: Petition Denied, April 14, 2000,

13(f) Name of Court: California Supreme Court

Nature of Proceeding: Habeas Petition

Issues Raised: Judicial Bias, Ineffective Assistance of Counsel, Prosecutorial Misconduct, Conflict of Interest, etc. Note: There is no overlap between the issues in this petition and those in filed with the Supreme Court.

Case Number: S086122

Joseph Hunt, D-61863
Pleasant Valley State Prison
B-5-224
P.O. Box 8500
Coalinga, Ca. 93210

Petitioner in Propria Personam

THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

(WEST DISTRICT)

| | |
|---|---|
| In re | Case No.: _____ |
| Joseph Hunt, | 2 Crim 5: B029402<br>LASC#: A090435 |
| On Habeas Corpus. | |

MEMORANDUM OF POINTS AND AUTHORTIES

IN SUPPORT OF PETITION FOR

WRIT OF HABEAS CORPUS

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## TABLE OF AUTHORITIES

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# I.
# INTRODUCTION

Prior to the enactment of Senate Bill 1134, new evidence that was not "irrefutable" and did not point "conclusive[ly] and "unerringly" to innocence was insufficient to justify relief. (People v. Ebaniz (2009) 174 Cal.App.4th 743, 761.) The fact that the evidence "would more likely than not changed the outcome at trial" was immaterial. (Penal Code § 1473(b)(3)(A) [as adopted on 9/28/16].) Prisoners who offered evidence which was sufficient to prove the latter, but not the former, were just out of luck. Petitioner was one such prisoner. (Exh. A, pp.10-18.)

Having been accused of killing Ronald Levin on June 6, 1984, Petitioner sought relief under California's preexisting remedy for claims of actual innocence. He presented evidence at a habeas hearing held in 1996 to show that Levin was seen by various witnesses -- alive and well -- in late 1986 and early 1987 in Los Angeles. (Ibid.)

The plausability of the new evidence was supported by the circumstances of the case. Levin was a conman who was known to operate through several false identities, including those of doctor and lawyer (Exh. pp. 1032-3, 1037-43, 1224 [RT 6597-8, 6598, 6649-55, 6775, 6811-3, 7118-9, 6790-99].) One June 6, 1984, Levin was free on bail and facing 12 counts of grand theft with enhancements (Exh. pp.1053, 1060-2.) He had just learned that a close associate had agreed to cooperate with the State against him, and that additional charges were about to be filed. (Exh. p.1065-6.) He spent $10,000 in fees taking a bail lien off his mother's house. (Exh p.1054-59.) At his residence, there was no direct evidence of a homicide having been committed;

no blood, no bullets, no eyewitnesses, and, most notably, no corpse. (Exh. pp.1212-13.)

The evidentiary hearing held in 1996 on the claim of new evidence of innocence led to a ruling on July 12, 1996. The Superior Court found two of Petitioner's eyewitnesses (Connie and George Gerrard) "credible" and ruled that they had not been "materially impeach[ed]." (Exh. A, p.17(6).) However, it found their testimony insufficient to prove Petitioner's innocence "unerringly" and conclusively -- as required by then-existing law.

While this petition uses evidence previously presented to the L.A. Superior Court, it does so in support of a newly minted remedy -- and one that operates under an entirely new standard of review. The recasting of the standard of reversal for claims of new evidence requires that the contentions of this petition be reviewed de novo.

The doctrine of 'res judicata' applies only when "[t]he issues decided in the prior adjudication are identical with those presented in the later action." (Cal. Civil Code, § 1908; Mycogen Corp. v. Monsanto Co. (2002) 28 Cal.4th 888, 896; State Farm & Casualty Co v. Poomaihealani (1987) 667 F.Supp. 705-6 [res judicata does not apply when subsequent action will take place under a lessened burden of proof]; Federated Department Store, Inc. v. Moitie (1981) 452 U.S. 394, 398-9 [res judicata "precludes the parties .... from relitigating issues that were or could have been raised in that [prior] action." -- emphasis added].) Claim preclusion is a doctrine that acts only to restrict subsequent litigation on the same claim. (Foster v. Hall Co. (1989) 1989 U.S. Dist. Lexis 16984.)

The mixed question of law and fact posed by the new statute must occasion a new evidentiary hearing. Any attempt to view findings made in the context of the 1996 hearing through the lens of the new standard of review is prohibited by the governing law. As the United States Supreme Court noted in Rogers v. Richmond (1961) 365 U.S. 534, 547"

> "Historical facts found in the perspective framed by an [inapplicable] legal standard cannot plausibly be expected to furnish the basis for correct conclusions if and merely because a correct standard is later applied to them." (See also, Lisenba v. California (1941) 314 U.S. 219, 236 [same]; Gray v. Mississippi (1987) 95 L.Ed.2d 622, 635 n.10 [deference to State fact-findings inappropriate due to misapplication of law]; Townsend v. Sain (1964) 372 U.S. at 315 n.10 [same principle in different context]; Cf., U.S. Postal Services Board of Governors v. Aikens (1983) 460 U.S. 711, 717 [remanding because "we cannot be certain that [the lower court's] findings of fact ... were not influenced by its mistaken view of the law"]; People v. Tapia (1991) 25 Cal.App.4th 984, 1014, 1031-2 [remanding to trial court after it applied wrong standard as to whether the D.A.'s use of peremptory challenges was supported by 'good cause]; and see, Liebman & Hertz, Federal Habeas Corpus Practice and Procedure (7th Ed., 2015) §20.3 n.82 [collecting cases on this general point of law].)

Thus, the whole question posed by the revised section 1473 must be considered completely free of any reliance on the ruling of July 12, 1996. (Exhibit A.)

The wisdom of this approach is underscored by the terms in which the LASC clothed its findings. This has already been shown with respect to witnesses Connie and George Gerrard. (See, ante, p.9(3-9).) Consider too the LASC's findings as to Nadia Ghaleb:

> "Ghaleb's passing glance of a man getting into a car is not sufficient. She may think she saw Levin. However, the circumstances of the identification do not inspire great faith." (Exh. A, p.16(13-27).)

"Great faith" is required in the context of the old "conclusive evidence of innocence" standard, but not -- as we have seen -- under the new standard that was established by the

State Legislature through SB1134. The new law, as has been noted, requires an order vacating any conviction where it is found that the new evidence "more likely than not would change the outcome at trial." (Cal. Penal Code § 1473(b(3).) And, of course, trials are conducted under the reasonable doubt standard. (In re Winship (1970) 397 U.S. 358.) Therefore, presentation of evidence which more likely than not would be seen by at least "one juror" as raising a reasonable doubt fully justifies relief. (Cf., Cannedy v. Adams (9th Cir. 2011) 706 F.3d 1148, 1166; Wiggins v. Smith (2003) 539 U.S. 510, 537; Harrington v. Richter (2011) 131 S.Ct. 770, 786.)

In the context of the new law, Nadia Ghaleb's sighting "two to four second" view of Levin in March, 1987, may very well qualify Petitioner for relief -- either standing alone or in combination with the similar and reinforcing evidence from Connie and George Gerrard -- not to mention the other evidence supporting this petition. Whether it does or not is for this Court to decide after it has an opportunity to assess the credibility of the evidence offered by Petitioner.[1]

1. California Rules of Court, Rule 4.551(c)(1) states: "The court must issue an order to show cause if the Petitioner has made a facie showing that he or she is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved. If so, the court must issue an order to show cause." (See also, People v. Duvall (1995) 9 Cal.4th 464, 474; In re Hochberg (1970) 2 Cal.3d 870, 873-4.) Converted to the terms of this particular case, if the petition is supported by evidence which, if taken as true, would 'more likely than not' lead at least one juor to harbor a reasonable doubt, this Court would have a procedural duty to issue an OSC.

## II.
## STATEMENT OF FACTS

Petitioner accedes to the description of the facts at trial given by the California Court of Appeal in the course of its opinion denying the direct appeal. (See, Exh. J.)

## III.
## THIS PETITION IS TIMELY AS IT HAS BEEN FILED WITHOUT "SUBSTANTIAL DELAY" AFTER THE PASSAGE OF SB 1134

California law states that "delay is measured from the time the petitioner or his or her counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis of the claim." (In re Reno (2012) 55 Cal.4th 428, 461 [emphasis added]; see also, In re Robbins (1998) 18 Cal.4th 771, 780-1 [same].) Further, it is incumbent on the petitioner to either demonstrate the "absence of substantial delay" or "good cause" for any delay that exists. (Ibid.)

Inasmuch as Senate Bill 1134 was Signed by Governor Brown on September 28, 2016, the "legal basis" of the within claims came into being on that date. Thus, Petitioner must only account for the time that has elapsed since September 28, 2016.

On this verified petition, Petitioner avers that he heard of Senate Bill 1134 in late October, 2016, and that he immediately sought to obtain a copy of the bill. After reading the new law, Petitioner weighed the propriety of filing for relief thereunder until about November 16, 2014. Under consideration were both the procedural and substantive issues that would have to be addressed in any petition filed under color of the new law. Also weighed were the costs and logistics associated with retrieving the

the documents filed herewith from off-prison-site storage. Petitioner is allowed by prison rule only 6 cubic feet of personal property, and one extra cubic foot of legal material. His case related files are vast, occupying nearly 250 banker's boxes. Some of them are in possession of attorneys who bill out, respectively, at $600 and $350/hour.

On or about November 16, 2016, Petitioner contacted the people in control of his files requesting pertinent records. Incoming mail at this prison requires 1 to 3 weeks for processing. Some of the necessary documents (those sent by Gary Dubcoff, attorney at law) arrived on or about December 7, 2016. The rest of the exhibits came during the week ended December 20, 2016. (See, Exh. C.)

This petition was drafted and typed during December, 2016. The mailing date is shown on the proof of service, post.

On these facts, Petitioner submits that there was an absence of substantial delay, or 'good cause' for the negligible delay that did occur. (Cf., In re Barefoot (1998) 61 Cal.App.4th 923, 927 [petition adjudicated without comment regarding timeliness 11 months after Romero was published]; In re Watson (2010) 181 Cal.App.4th 956, 961-2 [condoning a successive petition filed 10 years after conviction and 5½ months after Cunningham v. California (2007), i.e., the 'new law' occasioning the petition, was handed down]; In re Crockett (2008) 159 Cal.App.4th 751, 757-8 [addressing the merits of a successive habeas pettiion which was based upon a case published 9 months before the petition was filed]; In re Wilson (2015) 233 Cal.App.4th 544, 554 [overruling the Attorney General's objection on timeliness grounds to reach

the merits of a habeas claim filed 17 years after conviction and 10 months after Miller v. Alabama (2012) 183 L.Ed.2d 407 was handed down].)

IV.
THE RULE DISFAVORING SUCCESSIVE PETITIONS IS OF NO CONSEQUENCE IN THE CONTEXT OF A PETITION BASED UPON A NEWLY AVAILABLE REMEDY

"A change in the law will also excuse a successive or repetitive habeas petition." (In re Reno (2012) 55 Cal.4th 428, 466; see also, ante, p.13(19-26) [citing two cases condoning successive petitions after new law became available].) Thus, the number and nature of Petitioner's prior petitions are irrelevant.

V.
THE DOCTRINE OF RES JUDICATA DOES NOT APPLY BECAUSE NO COURT HAS EVER REVIEWED THE PETITION-RELEVANT EVIDENCE UNDER THE STANDARD OF REVERSAL CREATED BY SENATE BILL 1134; THUS, PRIOR JUDICIAL DETERMINATIONS ARE IRRELEVANT AND THIS PETITION MUST BE CONSIDERED DE NOVO

See, the discussion, ante, at pages 9(10) to 11.

VI.
THE SPECIFIC EVIDENCE OFFERED IN SUPPORT OF THIS PETITION "COULD NOT HAVE BEEN DISCOVERED PRIOR TO TRIAL BY THE EXERCISE OF DUE DILIGENCE"

Newly enacted Penal Code section 1473(b)(3)(B) states:

"For the purposes of this section, 'new evidence' means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence...."

A.
CONNIE AND GEORGE GERRARD SEE RONALD LEVIN -- WHO THEY KNEW SOCIALLY PRIOR TO HIS DISAPPEARANCE -- ON THE ISLAND OF MYKONOS ON CHRISTMAS DAY, 1987

Connie Gerrard founded one of the first blood-banks in the

the country. Her husband, George, was a successful building contactor. Neither of them had ties to Petitioner. Both of them had been in the presence of Ronald Levin before his disappearance on several occasions; most notably they had been over to his house for dinner with their son-in-law Robert Tur, and their daughter Marika Tur. The Tur's were acquainted with Levin because the latter had a business ("Network News") which for a time had supplied video footage to the networks, and the Tur's were in the same business.

On Christmas Day, 1987, the Gerrard's were vacationing in Greece, specifically on the island of Mykonos. They had combed the island looking for a restaurant that was open despite the holiday. Finally, they found a small, narrow restaurant that was open. They took a table and ordered. Shortly there after Ronald Levin came in with another man. Levin and his companion spoke animatedly, expressing their delight at finding a venue that was open. They carried a bottle of wine.

The Gerrards were stunned to see him, as they knew that Levin had been reported missing and that someone had been tried and convicted of killing him.

Levin saw the Gerrards and abruptly left the restaurant with his companion in tow.

Transcripts of their testimony accompany this petition as Exhibts H.

Obviously, this evidence "could not have been discovered prior to trial" by any degree of diligence as the incident on Mykonos occurred after the April 22, 1987 verdict.

// //

B.

NADIA GHALEB'S SIGHTING OF RONALD LEVIN IN LOS ANGELES IN MARCH OF 1987

Nadia Ghaleb was the maitre d' of Mr. Chow's, a celebrated restaurant in Los Angeles in the early 1980's. She also had held positions in public relations, and in hotel and restaurant management.

The last time that Ghaleb saw Levin was shortly before the March 21, 1987, death of her clsoe friend, Dean Paul Martin (Dean Martin's son). She had extensive contact with Levin over a period of 11 years. She described Levin as "prematruely gray ... a striking feature. He was always well dressed ... on the tall side ... thin.... He had a very distinct face."

She was in her car heading east on San Vincente Boulevard in the Westwood area of Los Angeles. The traffic was congested and her car was moving solowly. It was about 8:30 a.m.:

> "I was kind of traveling in stop and start traffic, and I looked over and I saw Ron Levin getting into a car and remarked to myself that, 'There is Ron Levin. I haven't seen him for awhile.' And it was one of those moments that evoked an era in my life. I just kind of thought about him in that period throughout the rest of my drive to work."

Nadia testified that she had her eyes on Levin for 2-4 seconds.

Later, she was watching the news of Dean Paul Martin's death on television when "they flashed this picture of Ron Levin. I was so surprised.... I looked at my assistant, I said: 'I can't believe this. This guy is not dead. I just saw him.'"

Ghaleb had 20/20 vision and was certain that she had an adequate opportunity to make a positive identification of Levin: "I clearly saw Ron Levin." She recalled seeing his whole face.

She described Levin as "a very distinctive looking person," and never saw anyone else who looked like him.

Ms. Ghaleb's testimony is Exhibit I to this petition.

Her first interview was performed by an investigator working for Jim Pittman, Petitioner's codefendant, on May 11, 1987. (Exh. 740, 870.) The report of that interview was supplied to someone working on Petitioner's defense team within a "week or two." (Exh. p.738-740.) Thus, the information supplied by Nadia Ghaleb did not become known to either of his lawyers until after Petitioner's conviction on April 22, 1987.

C.
IVAN WERNER'S POST-DISAPPEARANCE
ENCOUNTER WITH RONALD LEVIN IN LOS ANGELES

The trial prosecutor informed Arthur Barens, trial counsel for Petitioner, in a letter dated May 4, 1987. that a man named Ivan Werner had contacted the Beverly Hills Police Department saying that he had seen Levin in 1985 or 1986, at a funeral service. (Exh. p.921.)

Werner, a funeral home director, recalled that Levin and two or three other people arrived early at a service over which he was presiding. The man Werner would later identify as Levin looked like "a diplomat." Werner desccribed him as being 6'1" or 6'2"; with silver gray hair, "almost white"' and effeminate in his manner of speaking. While they were talking, Werner noticed gold fillings in the man's back teeth. An FBI agent testified at trial that Levin had gold 20 gold fillings. (Exh. p. 912-920, 1075.) In 1987, Werner saw an article on Petitioner's trial; it was either ongoing or recently concluded. The article include Levin's photo. Werner immediately called the police. Seven to

ten days later, an officer called back and Werner related his information. The officer said the police would look into it, but Werner heard nothing further until 1994, when he saw something in the newspaper about the case and called Petitioner's habeas attorney. (Exh. D.)

Inasmuch as Werner's sighting of Levin was not disclosed to the defense until after Petitioner was convicted, this evidence could not have been presented at trial regardless of any considerations as to the diligence of the defense team. (Exh. 912-922.)

D.
JONATHAN MILBERG'S
PREDISAPPEARANCE CONVERSATION
WITH RONALD LEVIN

Jonathan Milberg is a prominent, highly respected, attorney who practices law in Los Angeles. (Exh. T.)

After Petitioner was convicted, he supplied the following information to an attorney working for Petitioner:

> "In 1977 in my capacity as an attorney I was working on behlf of Ronald Levin. While at Mr. Levin's residence I overheard part of a telephone conversation that Mr. Levin was having. During the course of that conversation I heard Mr. Levin state, in essence, that if things got "too hot" for him he would disappear, that everyone would think he is dead, and that he would be "sitting somewhere" laughing at everyone.
>
> "On July 12, 1996, I read in the Los Angeles Times that there had been an evidentiary hearing involving Joseph Hunt and Ronald Levin. Although I was generally aware that Mr. Hunt had been convicted of murdering Ron Levin, I was unaware that such a hearing had been held. That morning I contacted ... counsel for Mr. Hunt, and provided him with the information contained in this declaration." (Exh. T.)

E.
THE INFORMATION PROVIDED BY
KAREN SUE MARMOR, RON LEVIN'S NEIGHBOR

Karen Marmor, the wife of prosecution witness, Leonard Marmor, lived next door to Levin. She was a former bank operations

officer.

She described Levin in the same manner as did all the sighting witnesses: tall, lean, meticulous, the best clothes, beautiful silver hair and beard, very intelligent, and very sophisticated.

On an occasion, which she estimated as being about two to seven days before Levin's disappearnace, Levin hailed Ms. Marmor as she was leaving her apartment, urgently asking her to come inside his place. This was the last time she saw him. He was very upset. He said someone had just threatened him and told her that he was going to New York and might not return. She did not know how to take this because, with Levin, one never knew if he were serious or not. However, Levin seemed serious when he emphatically stated that he would not go back to jail, telling her that "you have no idea what they do to you in there."

Their conversation was interrupted by Levin's talking on the telephone to someone about transferring money, possibly overseas. Waiting, Ms. Marmor picked up some yellow legal paper that was on Levin's desk. It was titled, "To Do" and said something about "kill dog" and "handcuffs." Levin pulled it away from her. She then briefly examined what Levin told her was a script. Levin said that the list and the script were both parts of the same movie project that he was working on. The script had something to do with a trip to New York and a disappearance amidst a fake murder. Ms. Marmor did not have a clear recollection of the elements of the plot. (Exh. E.)

There can be little doubt that the "to do" list that Karen Marmor saw, with its references to "kill dog" and "handcuffs," was

the selfsame "to do" list that was found by Levin's stepfather in August 1984 at Levin's home (Exh p.1088-1090) and which became the centerpiece of the prosecution's case against petitioner. Not only was this list singled out by the trial judge, who, sua sponte, ordered distribution of individualized copies to each juror (Exh p.1118, 1402), but the prosecution made billboard-sized posters out of it and the chief prosecution witness Dean Karny expounded from the stand for hours about its putative meaning. The prosecutor made much use of it in his closing arguments. (Exh. pp.1371-2, 1412-15.)

Ms. Marmor's testimony about having seen the list in Levin's control contradicted the truthfulness of what Karney alleged petitioner had told him about its purpose and use, namely, that Petitioner wrote and used it in furtherance of a plan to rob and murder Levin. (Exh. p.1242-3.) Karny also testified that Petitioner still had the list at about 6:00 p.m. on June 6, 1984. (Exh p.1247-49.) If Petitioner's jury had heard Ms. Marmor's testimony and given it any credence whatsoever, it alone would have been a sufficient basis for a reasonable doubt about Petitioner's guilt.

As for the issue of whether a reasonably diligent investigation would have extended to an interview of Ms. Marmor, the L.A. Superior Court felt otherwise. (Exh. A, p.29(2-8).) Also, Respondent has consistently taken the position that the failure to discover that Mrs Marmor had important exculpatory knowledge did not reflect negligence on the part of trial counsel, asserting that he did not have any reasonable basis to suspect that she should be interviewed. (Exh. pp.609-612.)

Specifically, Respondent in their Appellee's Brief, as filed with the Ninth Circuit Court of Appeals in 2016, took this position:

> "There were insufficient facts to put defense counsel [at trial] on notice to interview [Karen] Marmor. See, e.g., Hensley v. Crist, 67 F.3d 181, 186 (9th Cir. 1995). Her husband's name in Petitioner's 2000 pages of attorney suggestions along with a comment that she disliked Levin is not adequate notice or a basis for predicting that several years later she would remember something arguably useful. There was no duty to investigate, and the state court reasonably applied Strickland to deny relief." (Exh p.612.)

Under the doctrine of judicial estoppel, Respondent cannot be allowed to reverse their position. (See, People v.Palmer (2013) 58 Cal.4th 110, 116; People v. Williams (2008) 43 Cal.45h 584, 622 n.21; Whaley v. Belleque (9th Cir. 2008) 520 F.3d 997, 1002.)

F.
LOUISE WALLER'S SIGHTING OF
RON LEVIN IN CENTURY CITY IN 1987

Louise Waller was a legal secretary for Sidley, Austin, and personally acquainted with Levin. She was first interviewed on April 22, 1987, the date that the jury returned its verdicts, but the interview was conducted by an investigator working for Pittman, Petitioner's codefendant. Petitioner's trial attorney, Arthur Barens, did not have Waller interviewed until April 29, 1987. (Exh. p.899-911.)

Levin had an office in the suite where Waller previously worked for over a year and a half. She described him as about 6'2" tall, slim, with prematurely gray hair. She was absolutely positive she had seen Levin; she recognized him instantly when she encountered him in the lobby of the Deauville Building in Century City in March of 1987. (RT 14942-81.)

Ms. Waller was called as a witness in the penalty phase of Petitioner's trial. Barens had not told his cocounsel Chier about Waller until the night before the guilt-phase verdict. Based on his subsequent contact with Waller, Chier was "certain" that he "would have called her .... in the guilt phase" "had [he] been aware of [her] ... prior to the verdict." (Exh. p.848.

Here too, according to Respondent, Waller "came forward too late to testify in the guilt phase." (Exh. p.600.) ["Nothing in this record suggests any untoward delay on the part of the defense in investigating or interviewing Waller."].) Thus, in light of the prudential policy of judicial estoppel, any argument that her failure to appear as a guilt phase witness was owing to the negligence of trial counsel is foreclosed. (See, ante, p.9.)

G.
OLIVER HOLMES REGARDING
LEVIN'S SUDDEN INTEREST IN BRAZILIAN
EXTRADITION TREATIES AND HIS SUSPICIOUS
PRE-DISAPPEARANCE BEHAVIOR

Holmes, a former attorney, was Levin's friend and legal aide. In early 1984, after Levin's arrest on 12 grand-theft charges, he sought Holmes' advice. Holmes told him he was "in serious trouble." Levin specifically wanted to know whether an American could avoid extradition through bribery, remarking too that his own research had indicated there was a moratorioum that preempted extradition from Brazil.

On the day before his disappearance, Levin demanded that Holmes return the key to Levin's house that had enabled Holmes to work on Levin's criminal case file. Holmes had that key for

months. Levin made up a lie about his maid's loss of her set of his house keys to explain the demand. Levin was agitated. He had just learned that a close friend had betrayed him by providing information to the authorities. Taking the key, Levin said he might change his plans and leave for New York that very evening, i.e., June 6, 1984. The last fact was significant because the prosecutor called two witnesses to testify that Levin had made plans to go with them to New York on the following day, but had stood them up. (Exh. pp.964-967; Exh. N-2, O.)

The Los Angeles Superior Court made a finding in 1996 that trial counsel's failure to investigate Holmes "was not unreasonable" "given the little information made known to counsel." (Exh. A, p.28(19-20).) Thus, the issue of negligence is res judicata.

## H.
## LEVIN'S HAIRDRESSER, JOHN DURAN AND LEVIN'S SUDDEN AND ANOMALOUS INTEREST IN DYEING HIS HAIR

John Duran was Levin's longtime hairdresser. Levin visited him every two weeks throughout their relationship that had spanned some 12 years. Duran was startled when, on the occasion of Levin's last visit to his hair salon, Levin inquired about dyeing his hair and beard brown. Duran was shocked because he understood that Levin considered his gray hair to be his most striking feature. Duran tried to talk Levin out of it. When Levin remained adamant, Duran reluctantly offered to do it for him. Levin refused the offer, but called back just before his disappearance, at which time he sought and obtained detailed instruction on how to dye his hair and beard. Testimony at trial established that brown stains were found in Levin's bathtub, which the police

determined was not blood.

Absent Duran's testimony, the jury had no basis to draw the reasonable inference that Levin had dyed his hair just before fleeing, staining his tub in the process.

The Los Angeles Superior Court absolved trial counsel of any negligence with respect to Duran, holding that "counsel was not under any obligation to track down Levin's barber on the chance that Levin might have discussed" something probative with him. The Court also noted that the barber did not come "forward with the information until years" after the trial. (Exh. A, p.31(2-7).) Thus, with respect to Duran, the issue of negligence is res judicata. Moreover, Respondent has taken the position that trial "counsel had no information sufficient to trigger a duty to investigate Levin's hairdresser." (Exh. p.607.) Judicial estoppel should therefore preclude them from taking a contrary position at any future hearing on this petition. (See, ante, p. 9 [citing the applicable law].)

## I
## LEVIN'S JUNE 6, 1984 AMERICAN EXPRESS CARD TRANSACTION

John Reeves worked for the security divison of American Express and testified in 1987, at trial, for the prosecution. He reported, inter alia, that Levin had a balance owed on his credit card of nearly $50,000 when he disappeared. (Exh. p.1085-7.) Levin had charged nearly $24,000 in the previous month. (Ibid.) There were scores of charges, but one deserved and received special attention -- the June 7, 1984, charge at a Los Angeles Brooks Brothers clothing store for $83.07 (id., 1081) on an American

Express Card with the last five digits of 82028. (Exh. p.1082.) That charge post-dated by one day the date on which the prosecution alleged Petitioner murdered Levin.

The prosecution's theory was that this transaction actually occurred on May 7, 1984, when Levin made three other charges at Brooks Brothers. (Exh. p.1081-3.) Responding to the prosecutor's leading questions, Reeves testified that the June 7th transaction that appeared on the credit-card statement more likely occurred on May 7th because, "[i]n order to produce this date on this document it has to go through a minimum of 2 hands" (Exh. p.1083-4). Thus, he testified, the June 7th date "may easily" have been a mistake. (Ibid.)

However, Reeves testified differently in Petitioner's 1992 trial on unrelated charges in San Mateo County. There he admitted that he had testified incorrectly in Los Angeles concerning this particular entry in their billing. He admitted that the information transmitted to American Express electronically is not retyped by two people, and that consequently there was no possibility of key-punch error at their headquarters. In fact, he explained that Brooks Brothers' computer network interaced directly into the American Express computer system. (Exh. 841, 758.)

Further, Reeves told the San Mateo jury that reference numbers are generated by the merchant. The three May 7 transactions had reference numbers which were sequential, but the reference number for the June 7th charge at Brooks Brothers was 2,965 transactions after the three charges that were made on May 7th. The reference numbers are not imputted manually; the date was not imputted manually either, but derived from the system's

internal clock/calendar. (Exh. pp.759-62, 1080.)

Reeves testified at Petitioner's 1992 trial that, under normal conditions, all electronic submissions are recorded during the cycle of the day they occur. The June 7th transaction's position 10 pages apart from the May 7th transactions confirmed what the date and reference numbers indicated: the fourth transaction happened on June 7th, not May 7th. (Exh. p.763-4.)

It was the State's theory, built on the testimony of Dean Karny, that Levin died on the night of June 6, 1984. (Exh. p.1249-51.) American Express issues only one card per card number. (Id., 1082.) The card in question was found at Levin's residence. (Id., 1214-16, 1361; Trial Exh. 106.) The cross-corroborating evidence of the date and reference number on these American Express records, therefore, strongly suggests that Levin did not leave, or die in, Los Angeles on the night of June 6, 1984. The truth about the Brooks Brothers charge could have provided confirmation of the sighting witnesses and supplied an independent basis for finding reasonable doubt by the jury.

Petitioner further alleges that the above information concerning the June 7th transaction establishes that material false evidence was used to convict. Such an allegation is separately cognizable and Petitioner submits it here as an independent claim under Penal Code section 1473 -- though it also should be considered, and is offered, under the banner of "new evidence" demonstrating innocence.

With respect to the issue of diligence, Respondent has taken the position that "defense counsel was well-prepared to cross-

examine Reeves." And, Respondent has in both State and Federal forums maintained that counsel can not be termed "constitutionally negligent for failing to anticipate that a witness would testify differently five years in the future in a trial for a different crime." (Exh. p.620.)

Again, Petitioner invokes the doctrine of judicial estoppel. Respondent cannot plausibly now take the position that trial counsel was responsible for allowing the jury to be misinformed as to the June 7th entry in the American Express billing.

J.
EVIDENCE THAT LEVIN HAD A HALF-MILLION DOLLARS TO FUND HIS FLIGHT

In his summation at trial, the prosecution made much of the fact that some funds -- up to $40,000 -- were located in Levin's accounts after his disappearance, asking why a person who absconded voluntarily would do so without taking with him all the money he could. (Exh. p.1364-1369.) Had the jury been presented with evidence that Levin had available to him much larger sums of money that could not be accounted for in the wake of his disappearance, the prosecution's rhetorical sockdologer would have had an obvious rejoinder. A con man who absconds with very substantial ill-gotten gains would leave a much smaller amount behind precisely to convince law enforcement authorities he had not voluntarily fled.

In 1996, Respondent filed an expert reevaluation of the conservator's post-disappearance accounting of Levin's assets. Their expert concluded that the evidence disclosed $500,373.92 in "unexplained transfers" out of Levin's accounts. This sum was

described as having been withdrawn (apparently in cash) and in fashion that was untraceable to any payment to a third party. (Exh. p.888 [Exh. U].)

Respondent has taken the position that trial counsel was not ineffective in failing to present evidence establishing what their expert admitted in 1996, arguing that the evidence in question was merely cumulative and that counsel vigorously pressed available opportunities with respect to Levin's financial activities. (See, Exh. p.616.)

Respondent, having already taken the position that trial counsel was not negligent in failing to present this evidence, can hardly be tolerated should they wish later to claim otherwise. (See, ante, p. 9 [citing the law of judicial estoppel].)

## K.
## ROBERT ROBINSON SEES AND SPEAKS TO RONALD LEVIN WHILE WAITING IN LATE 1986 IN A MOVIE LINE IN WESTWOOD

Robert Robinson first testified in 1992, during Petitioner's trial in San mateo. He later testified in the 1996 hearing in support of Petitioner's State-law claim of factual innocence.

Robinson was a police beat reporter for City News Service. He had face-to-face dealings with Levin on at least six occasions. In October 1986, Robinson spoke with Levin while waiting in a movie line in Westwood, a subdivision of Los Angeles. He testified that he was 100% certain that it was Levin. Robinson was aware at the time that Levin was supposed to be missing, but had not heard that he was supposed to be dead.

Robinson did not come forward until he heard the case was going to the jury, the reasons for which he explained. He first

appeared on the defense radar screen on Monday, April 20, 1987, at 4:23 p.m., two days before the verdicts, when the prosecutor disclosed his coming forward. The jury was deliberating and the parties were in chambers. (Exh. pp.681, 683-4, 706-9, 1419-1420.)

Under such circumstances, California law requires that due diligence be shown by a party if he wishes to move to reopen a case during deliberations upon the discovery of new evidence. (People v. Frohner (1976) 65 Cal.App.3d 94, 110.)

Petitioner concedes that Barens (i.e., trial counsel) could have moved to reopen. He did not do so. Moreover, Petitioner is of the opinion that Barens' failure to interview Robinson and to properly and promptly investigate the sighting was negligent. However, it is not Petitioner's opinion that matters. Respondent has taken the position that trial counsel (Barens) intentionally bypassed Robinson thinking that he lacked credibility. (Exh pp.600.4 to 600.5.) The L.A. Superior Court felt that "Robinson's testimony was so lacking in credibility that any reasonable defense counsel would avoid calling such a witness...." (Exh p. 290 n.13.) Thus, negligence is not a question (see, ante, p.9) and the statutory disqualification of evidence that could have been discovered "prior to trial by the exercise of due diligence" does not come into play.

Moreover, Petitioner very likely need not establish that Robinson constitutes "new evidence" within the meaning of Penal Code section 1473 in order to recruit his testimony in support of his overall quest for relief. As the California Supreme Court held in In re Hall (1981) 30 Cal.3d 408, 420:

"A habeas petitioner must first present newly discovered

evidence that raises doubt about his guilt; once this done he may introduce any evidence not presented to the trial court and which is not merely cumulative in relation to evidence which was presented at trial" insofar as it assists in establishing his innocence.

Connie and George Gerrard, Karen Marmor, Nadia Ghaleb, John Duran, Oliver Holmes, and Ivan Werner, etc., establish the necessary evidentiary predicate to allow Petitioner to avail himself of the additional latitude available under In re Hall, supra.

## VII.
## THE EVIDENCE SUPPORTING THIS PETITION IS "NOT MERELY CUMULATIVE, CORROBORATIVE, COLLATERAL, OR IMPEACHING" WITHIN THE MEANING OF PENAL CODE SECTION 1473(a)(3)(B)

At trial the defense case consisted of two alibi witnesses and two "sightings" witnesses, Carmen Canchola and Jesus Lopez. Carmen and Jesus expressed strong confidence that a man they saw in Arizona in September of 1986 was the Ron Levin that they were shown several photographs of. The obvious defect in their testimony was that Levin was a stranger to them.

Of the six additional sightings witnesses mustered in support of this petition, five of them actually knew Levin before he disappeared: Connie and George Gerrard, Nadia Ghaleb, Louise Waller, and Robert Robinson. The sixth, Ivan Werner, did not. However, Werner's identification is a compelling one given that he described Levin so accurately -- right down to noticing the gold fillings in his back teeth!

Karen Marmor is a witness suis generis. The only evidence the jury received with respect to the "to do" lists came from Dean Karny, the chief prosecution witness. There was no basis in the evidence to infer that Levin had taken possesion of the

lists before his disappearance. Further, given the evidentiary dynamics of the case, if a jury at a retrial found Ms. Marmor sufficiently credible as to instill in them a reasonable doubt as to whether Levin came into possession of the lists prior to his disappearance, they would have to acquit. Such an inference would wholly undermine the State's theory that the lists were brought to Levin's house as a reference to facilitate murder and robbery.

As for Duran and Holmes, there was nothing in the evidence at trial that established that Levin was taking affirmative steps prepartory to, or consistent with, flight. There was considerable evidence presented to the the trial jury that supported the idea that Levin had a motive to flee.

The crucial inference supported by the proffered testimony from John Reeves (of American Express) is that Levin did not die on the night of June 6th, but survived at least long enough to conduct a transaction at Brooks Brothers on June 7th. Such an inference is wholly inconsistent with the timeline attested to by Dean Karny and Tom May. Both May and Karny asserted that Petitioner was in possession of the $1.5 million dollar check and the Microgenesis/Levin contract early on the morning of June 7th.

Finally, there is the declaration of Jonathan Milberg. Again, there was nothing comparable at trial. Probably something less than 10% of the population live in constant fear of arrest. Of those, perhaps only one in a ten contemplate flight to avoid arrest. Of that small subset, how many have articulated the idea that they would fake their own murder to make good their

escape? The fact that Levin articulated such a plan, especially when read in light of the evidence coming from Oliver Holmes, John Duran, and Karen Marmor, to the effect that Levin realized that he was facing new charges and likely conviction on the then extant charges, would likely be deemed by a jury to support a reasonable doubt.

Think about it for a moment please from the perspective of a jury. You have heard from eight sightings witnesses -- the two that testified at trial and the six additional ones offered in support of this petition -- and two alibi witnesses. In addition you have learned that Levin operated through false identities and was a skilled impostor. He was out on 12 felony counts, and had reason to believe, right before he disappeared, that he was about to be arrested on other crimes. He had just learned that a close associate had turned "State's evidence" against him and he was expressing his panic to his neighbor Karen Marmor. He had been researching Brazilian extradition treaties and had floated the idea of bribing foreign officials so as to resist any American attempt at extradition. The day before he disappears he asks his hairdresser for instructions on how to dye his hair brown, and consistent color stains are found after he disappears in his bathtub. On top of all this you learn that he had said that he would never go back to prison and had articulated a plan to mislead the authorities investigating his disappearance in to believing he was the victim of foul play.

While the prosecution would have proved that Petitioner made several compelling admissions of responsibility, the jury

would have to recognize that those statements, especially in light of their source and the complex motives he then had, were hardly ironclad evidence of guilt.

Even without the evidence supporting this petition, a serious hurdle for the prosecution was convincing the jury that Petitioner was telling the truth when he spoke of killing Levin. At least fifteen of the State's witnesses, including Karny, testified that petitioner manipulated them, often through elaborately persuasive, albeit false, stories of accomplishments and derring-do. (E.g., RT 8081-3, 8199-24, 8131-33, 8372-73, 8628-30, 8646, 8816-7, 8876, 8979-80, 9282-85, 9365-67, 9437-38, 9449-52, 9689-91, 9988-89, 10052-53, 10791-93, 11060.) Moreover, all the evidence about Petitioner's statements was coming from parties that for one reason another had a potential motive to lie, i.e., based upon the nature of their personal relationship to Petitioner or their need to curry favor with the prosecution. In contrast, all the witnesses supporting a theory of innocence, save for the two alibi witnesses, are citizens with no conceivable personal stake in the outcome of the case, nor an apparent reason to wish to intervene on Petitioner's behalf.

Further, two witnesses, Brooke Roberts (called by the defense) and Steve Lopez (called by the prosecution), testified that the meeting in which Petitioner boasted he had "knocked off" Levin was just theater, staged to intimidate a rival faction which was trying to wrest control of Microgenesis from Petitioner. (RT 9923-28, 9932-34, 11574-84, 12968.) Petitioner told Roberts and Lopez that the "knocked off" assertion was an opportunistic lie, meant to balk the shotgun-wielding rivals (Exh. pp.1181-2)

long enough to allow a pending multi-million dollar deal to go through (Exh. pp.1169-80, 1289-99).

Nor, a jury would likely recognize, were Petitioner's fears unfounded. The rival group had their own "to do" list for the planned hostile takeover (Exh. pp.1291-96, 1300), a fact which they later admitted. (Exh. pp.589, 593-4.) They burglarized the Mircogenesis warehouse, using an acetylene torch to burn its locks (Exh. p.1142) and stealing several hundred thousand dollars worth of equipment (Exh. pp.1135-41, 1183-85).

Thus, the new evidence, seen in context of the evidence at trial, would have presented the jury with a question which would very likely have been resolved in Petitioner's favor. They would have to weigh whether Petitioner's assertions as reported by the former BBC members should be taken as proof of death, when all the evidence coming from the nonpartisan witnesses was to the contrary. Given that eyewitness testimony is usually sufficient to convict, how could a jury disregard 8 eyewitnesses who testified that Levin was alive? Truly the dichotomy that arises in any comparison of the new evidence with the trial evidence supports a quintessential inference of reasonable doubt: two distinct bodies of evidence, one pointing to innocence and the other to guilt -- the defense evidence from neutral sources, and much of the State's evidence from sources heavily compromised by personal biases and motives. Is this a case of a conman who made a clever escape or a situation where he was killed? Certainly, no juror would be on firm ground believing the latter merely because Petitioner -- of all people -- <u>said so</u>. As noted above, the State's own evidence was that Petitioner said all

sorts of fantastic things to manipulate his listeners, almost all of which were false. Why should they credit the one statement that implicated him, when they were told that virtually everything else Petitioner said was a lie?

Finally, decisional law only reinforces the conclusion that the evidence supporting this petition is not cumulative. Cf., Dennis v. Wetzel (2013) 966 F.Supp.2d 489, 511-2 [defendant's only alibi witness at trial was his father; additional "unrelated" alibi witness held not to be cumulative]; Stewart v. Wolfenbarger (6th Cir. 2006) 468 F.3d 338, 357-60 [additional alibi witnesses not merely cumulative given the vulnerabilities of the alibi witness that had testified at trial]; United States v. Negrete-Gonzalez (9th Cir. 1992) [witness testimony not merely cumulative, as witness would be a key witness and "no other witness could duplicate her testimony]; People v. Matlock (1959) 51 Cal.2d 682, 691 [additional evidence not "merely cumulative" because it was more impressive and contained additional details]; People v. Townsend (2016) 63 Cal.4th 25, 67-68 [threat against victim's boyfriend not merely cumlative of evidence of threat against victim]; People v. Cage (2015) 62 Cal.4th 256, 274-5 ["evidence to explain defendant's motive to commit charged crime was significant and not merely cumulative."].

It would be intellectually dishonest to call any of the probative and material evidence supporting this petition "merely cumulative" given the fact that Petitioner was convicted. Evidence that was -- standing alone -- insufficiently persuasive to raise a reasonable doubt, cannot be basis for finding other evidence that nominally falls within the same category

superfluous. For example, standing alone, the testimony of Carmen Canchola and Jesus Lopez was insufficient to persuade the trial jury that the State had not met its burden of proof. Put more plainly, it did not instill in the jury a reasonable doubt as to whether Levin survived June 6, 1984. Thus, testimony from other sighting witnesses cannot be deemed "merely cumulative" to the testimony of Carmen and Jesus. Cf. People v. Foster (2010) 50 Cal.4th 1301 [The evidence is not merely cumulative of other evidence concerning defendant's intent and the actions he took [], because the balance of the evidence does not render his actions beyond dispute.].

Plainly, the testimony of the defense witnesses at trial did not resolve the central question posed in the indictment in Petitioner's favor. The jury was not moved to find a reasonable doubt. Since Petitioner's evidence, taken as true (which is how the evidence at this pleading stage must be viewed), establishes that Levin decided to flee, took steps in preparation for flight, and that he did in fact survive beyond June 6, 1984, this Court is compelled by the applicable statute and decisional law to issue an OSC. (Cal. Rules of Court, Rule 4.551(c)(1); People v. Duvall (1995) 9 Cal.4th 464, 474; In re Hochberg (1970) 2 Cal.3d 870, 873-4 [at the pleading stage, sworn evidence supporting a habeas petition must be taken as true].)

## VIII.
## PETITIONER'S EVIDENCE WOULD HAVE "MORE LIKELY THAN NOT" RESULTED IN A DIFFERENT OUTCOME AS A RESULT OF THE JURY'S APPLICATION OF THE CORPUS DELICTI RULE

The jury was instructed:

"No person may be convicted of a criminal offense unless

there is some proof of each element of the crime independent of any confession or admission made by him outside of trial." (Exh. pp.1416-7.)

The jury was also told that the elements of murder were death and malice. (Exh. p.1418.) The jury would bear in mind that Levin disappeared on bail and just ahead of the filing of other charges, after otherwise wasting $10,000 by taking a bail lien off his mother's home. (Exh. pp.1054-7, 1059.) There was also evidence before the jury that Levin was skilled at impersonating other people, having previously established false identities as a doctor, lawyer, and a Rothschild. (Exh. p.1022-33, 1037.)

Excluding the statements attributed to petitioner as "admissions made ... outside of trial," the jury would have weighed an alleged crime scene, that is, Levin's flat, devoid as it was of any direct evidence of foul play. The chief detective on the case disclaimed an opinion as to Levin's fate until after he had heard about the statements attributed to Hunt. (Exh. pp.1203-08, 1220.) Furthermore, the judge who presided over Petitioner's preliminary hearing found the evidence supporting the robbery allegation insufficient to make out the corpus delicti thereof. Even the "to do" list, arguably, would be beyond the ambit of the evidence that a jury would deem relevant when passing on the preliminary question of corpus delicti, as it consists of nothing more that statements made by petitioner "other than at trial." (Exh. pp.1416-17.)

Pains must be taken on this head to recognize that the jury would have to evaluate the evidence relevant to the corpus delicti question both in terms of the robbery allegations and the murder allegation. Even if they were to find sufficient

evidence to support corpus delicti as to the murder charge (i.e., of death and death by criminal means), they would still have to consider whether the State had met its burden of proof with respect to the robbery corpus delicti.

Fairly considered, the evidence not presented at trial which supports this petition would likely lead a jury to acquit on both charges owing to the insufficiency of the State's evidence of corpus delicti. Absent the statement evidence from Petitioner -- which truly is the Alpha and Omega of the State's case -- the remaining evidence supports only one conclusion: that Levin fled. Absent the statement evidence, you have 8 neutral witnesses professing to have seen Levin in 1986 and 1987. Absent the statement evidence, there is no reason whatsoever to gainsay their testimony, particularly when it is bolstered by facially impressive evidence that Levin decided to flee and took affirmative steps consistent with flight, such as the dyeing of his hair and research into Brazilian extradition treaties. Cf. Summit v. Blackburn (5th Cir. 1987) 795 F.2d 1237 [reversing under the Strickland Standard after finding prejudice in light of the corpus delicti rule].

Bear in mind that the basis of the robbery allegation was the taking of the $1.5 Million dollar check. The testimony of Jerry Verplancke (See Exh. F) would demonstrate that Levin was involved in raising money for Microgenesis Corporation, the payee on that check. Given that there was no evidence that Levin even signed the check, outside of admissions attributed to Petitioner, and given that Levin self-identified as a "venture capitalist" rasising money for that company, on what basis, in

the jury's consideration of the corpus delicti of robbery, would they find "some proof" thereof? Nabil Abifadel, of the bank that processed the $1.5 million dollar check, testified that it was returned as both "NSF" and "signature missing." The only signature that appears on the check, if it can even be called such, is a round loop that resembles a capital "R." There was no testimony at trial that the ink on that check was Levin's signature, and thus no basis for the jury to conclude that the check was taken by force or threat of force -- a necessary precondition for finding robbery. Beyond even that, without the statement evidence, where is there evidence that the check was obtained through "force or fear"?

## IX.
## PETITIONER WAIVES APPOINTMENT OF COUNSEL AND ELECTS TO PROCEED IN PROPRIA PERSONAM

While the habeas statute (Cal. Rules of Court, Rule 4.551) calls for the appointment of counsel on the issuance of an OSC, Petitioner submits that it would be in the interest of judicial economy to allow Petitioner to proceed in propria personam. The record is voluminous. Petitioner successfully represented himself in San Mateo County in a capital case. He called over 107 witnesses. The trial went smoothly and Petitioner was never rebuked for any violation of protocol or decorem by the trial judge, the Hon. Dale Hahn. It would be a waste of public funds to pay an attorney to master the trial and post-conviction record. It would literally take at least 400 hours.

Moreover, the right to self-represent in the context of a petition for writ of habeas corpus is implicit in the Califor-

nia Constitution's habeas clause, for quite the same reason that it was deemed by the U.S. Supreme Court to be implicit in the U.S. Constitution. (See, Faretta v. California (1975) 422 U.S. 806 [right of self-representation implicit in the U.S. Constitution; it was the baseline form of representation at the time of the adoption of the Constitution]; California Constitution, Article I, § 11.)

The California Constitution was adopted in 1879 -- long before the State-funded counsel became available. (See, Gideon v. Wainwright (1963) 372 U.S. 335 [establishing that right].) Thus, when the California Constitution was adopted, self-representation was the default or baseline form of representation for any litigation. This requires, under reasoning parallel to that of the U.S. Supreme Court in Faretta, one to conclude that the right to prosecute a habeas petition is a personal right, one that attaches to the individual, and therefore subject to his will on the question of court-appointed versus self-representation.

Petitioner therefore submits that the right to self-representation is implicit in the 'suspension clauses' of both the U.S. and State constitutions, and he unequivocally asserts that right hereby.

## X.
## THE JUROR DECLARATIONS FROM THE SAN MATEO TRIAL ARE RELEVANT AND HIGHLY PROBATIVE EVIDENCE BEARING ON THE ULTIMATE QUESTION POSED BY § 1473(b)(3)(A)

After Petitioner was convicted in the case here under challenge, he was tried in San Mateo County Superior Court on a charge of having killed a different individual, Hedayat

Eslaminia. In that proceeding, the jury heard from many of the witnesses whose testimony supports this petition. This unusual situation was the result of the San Mateo Prosecutor's decision to use the circumstances of Levin's disappearance as a basis for invoking California Evidence Code section 1101(b), i.e., to use Levin's disappearance to prove intent and motive with respect to Mr. Eslaminia. (See, Exh N at pp.837-47 [declaration of William Gilg, attorney].)

The declarations in question (id at pp.768-836) contain opinions and observations of the San Mateo jurors with respect to the credibility and probative impact of witnesses such as Werner, Ghaleb, Robinson, Holmes, Duran, and Karen Marmor.

The question then presents itself: is the content of those declarations barred by California Evidence Code section 1150:

> "Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence must be received as to statements made, or conduct, condition, or events occurring, either within or without the jury room, of such a character as to likely have influenced the verdict improperly. No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined."

Section 1150 does not operate to exclude the San Mateo declarations or any aspect of their content.

First, the San Mateo juror declarations are not evidence of some "statements made, or conduct, condition, or events occurring, either within or without" the Los Angeles trial jury room. Even if one accepts for the sake of argument that a petition under Penal Code section 1473(b)(3)(A) is an "inquiry as to the validity of a verdict" rather than an inquiry which assumes the verdict was valid, but is convened to assess

whether a retrial is justified based upon evidence the trial jury neither heard nor considered, it should be plain that no effort is being made to present evidence "to show the effect" of any "statement, conduct, condition, or event" upon any of the Los Angeles trial jurors. Petitioner's point is that the second sentence of Section 1150 incorporates, and flows from, the context established in the first sentence of that section. Both sentences address an effort to "impeach a verdict" based upon evidence of the mental processes of those that rendered it, and specifically bar the use of evidence in "an inquiry as to the validity of a verdict" as to "the mental processes by which it was determined." Thus, Petitioner could not use declarations such as these to challenge a verdict rendered by the San Mateo jurors, nor could he use evidence of the mental processes of the L.A. jurors to challenge the verdict they rendered. But, nothing in the statute prevents Petitioner from using the opinions and conclusions of the San Mateo jurors on a matter they did not render a verdict upon; nor does the statute bar the use of their opinions and conclusions as to circumstances and events that they witnessed years after the Los Angeles trial.

California Evidence Code section 351 instructs, "except as otherwise provided by statute all relevant evidence is admissible." California Constitution, Article I, § 28(f)(2) is to the same effect: "Except as provided by a statute ... relevant evidence shall not be excluded in any criminal proceeding, including pretrial and postrial ... hearings."

Thus, unless Section 1150 directly bars the use of the

San mateo juror declarations, California's overarching evidentiary policy requires that they be considered.

Further, California Evidence Code section 210 states that "Relevant evidence means evidence, ... hearsay, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action."

Whether actual jurors would find Petitioner's habeas witnesses credible is the most basic question posed by this action. The fact that actual jurors found witnesses such as Robinson, Ghaleb, Karen Marmor, Connie Gerrard, John Duran, and Oliver Holmes, etc., credible in the context of an actual trial in which they were subject to full cross-examination by Respondent, and in context where it had the same interest in exposing flaws in their recollection or credibility as it would at any retrial, is thus as admissible as it is dispositive.

The relevant case law supports the above analysis. For example, writing for the panel, then Chief Judge Kozinski held in Miller v. City of Los Angeles (9th Cir. 2011) 661 F.3d 1024, 1030, that the comparable provisions of Federal Rules of Evidence, Rule 606(b), did not bar evidence of the opinions and impressions of jurors when the jurors in question "returned no verdict," i.e., deadlocked. The San Mateo jury deadlocked 8-4 in Petitioner's favor. (Exh. page 765, 818.)

As the Ninth Circuit noted in Sassounian v. Roe (9th Cir. 2000) 230 F.3d 1097, 1109, the thoughts and opinions of actual jurors can be "the most direct evidence of prejudice" theoretically available. The exclusion of evidence such as the San

Mateo declarations, can "lend[] an Alice in Wonderland quality" to a court's efforts to assess prejudice. (Ibid.) There can be no good reason to exclude such evidence unless it is necessary to protect the jury system. Where as here, the admission of the evidence in no way discredits any juror or the jury system, only some agenda other than justice or the search for the truth underlying this action could justify a ruling excluding it.

Put another way, to ignore the real-world evidence that proves that actual jurors found Petitioner's habeas witnesses credible, in favor of ivory-tower conjecture as to how a jury would likely perceive them, would indeed "lend[] an Alice in Wonderland quality" to the ultimate decision with respect to petitioner's fate, especially since Section 1150 compels no such methodology. To hold that witnesses such as Robinson, Ghaleb, Karen Marmor, and Werner would be rejected by real jurors as trivial or incredible, or both -- is simply in defiance of incontrovertible fact.

The juror declarations are objective, reliable, admissible, relevant, unrefuted, and unmarginalized. Though they did appear in the context of a different proceeding, one that would not have the more limited scope of an actual retrial, the fact remains that the declarations prove that 8 jurors did not find Robinson, Ghaleb, Werer, and Karen Marmor inherently incredible, but rather found them persuasive. Moreover, regardless of any observations as to aspects of the San Mateo proceeding that would vary from that of a retrial, the observations the jurors made as to the probative significance of witnesses such as

as Duran, Holmes, Karen Marmor, and Jerry Verplancke, are not logically diminished. Those declarations remain the best available evidence of how actual jurors would assess and define the significance of what those witnesses recall.

People v. Steele (2002) 27 Cal.4th 1230, 1261 perfectly illuminates why the declarations do not offend the literal terms and underlying intent behind California Evidence Code § 1150: "This limitation prevents one juror from upsetting a verdict of the whole jury by impugning his own or his fellow jurors' mental processes or reasons for assent or disent."

There is no "impugning" going on here -- not attempt to use a San Mateo juror's mental processes to undermine any resulting verdict. (See also, In re Stankewitz (1985) 40 Cal.3d 931; People v. Hutchinson (1969) 71 Cal.2d 342; People v. Gray (1894) 61 Cal. 164, 183; People v. Stokes (1894) 103 Cal. 193, 196-197 [cases that go into depth with respect to the prudential considerations underlying Section 1150 and its ban on the use of a juror's mental processes to impeach the verdict that juror rendered].)

## WHAT THE SAN MATEO JURORS HAVE TO SAY ABOUT PARTICULAR WITNESSES

Robinson was received by the San Mateo jury as highly credible. (Exh. pp.773 [Juror Carsanaro: "Mr Robinson was a critical defense witness becaus he was very credible."]; pp.783 [Juror Sorelle: "I felt Ron Levin was outrageous and brazen enough to approach Mr. Robinson...."]; p.792 [Juror Morrow avers that Robinson added to the reasonable doubt he formed as to Levin's fate]; pp.797-8 [Juror Saperstein avers that the Robinson

sighting had an exceptional impact on him because Robinson both saw and spoke to Levin]; p.815 [Juror Creekmore: "Mr. Robinson was ... credible."].)

Nadia Ghaleb. (Exh. p.815 [Juror Creekmore: "[S]he was sincere. On balance, she helped the Defense."]; p.797 [Juror Saperstein: "I was convinced that she could see and recognize Ron Levin under the conditions she described. I found Ms. Ghaleb to be credible and I took her sighting seriously."]; p.783 [Juror Sorelle believed Levin was alive, citing Ghaleb as one of the "credible witnesses" leading her to so conclude]; p.773 [Juror Carsanaro: "I believe it is very possible to identify someone that you know in the matter of seconds as Ms. Ghaleb indicated."].)

Oliver Holmes. (Exh. p.826 [Juror Achiro: "Mr. Oliver Holmes testified that Levin had described to him how he had been researching the extradition treaty between Brazil and the United States. This had a big impact on me. Mr. Holmes even said that Levin had called the State Department to find out when the treaty went into effect, apparently being told that it did not do so for about a year. This was proof to me that Mr. Levin had been considering fleeing for sometime. I believe that he ultimately did so."]; p.806 [Juror Saperstein described Holmes as "a witness that helped change his mind [about Levin's fate]."]; p.772 [Juror Carsanaro described Holmes as a "key witness."]; p.816 [Juror Creekmore found Holmes' testimony about Levin's research to be "glaring evidence of Levin's intentions [to flee]."]; p.780 [Juror Sorelle described at length the powerfully exculpatory inferences she drew from Holmes' testimony].)

John Duran. (Exh. pp.829-31 [Juror Achiro described Duran's testimony as "powerful evidence" that helped convince her that "Levin had altered his appearance to make good his escape."]; p.803 [Juror Saperstein: Duran was "very important."]; pp.782-3 [Juror Sorelle: Duran "really swayed me. He was a very believable witness and very informative.... He was a very important witness."]; pp.771-2 [Juror Creekmore: "I could not understand why Levin would want to [dye his hair] at home, it just wasn't his style.... [Duran's testimony] made me think, 'What is this guy planning?'" "Detective Zoeller had seen a brown stain in the bath tub [Exh. p.1213].... Given that Levin called Mr. Duran right before he disappeared it stands to reason that this was hair dye." Exh. pp.813-4.)

Karen Marmor. (Exh. pp.812-3 [Juror Creekmore: "[Karen Marmor was] very important. I accepted her testimony..... I saw her as being fair and neutral.... I believed Karen Marmor [over Dean Karny]. It was an easy choice: a former bank officer vs. an immunized and self-admitted perjurer...."]; p.826 [Juror Achiro: "Possibly the most important witness on the issue of what happened to Ron Levin was Karen Sue Marmor. She was great! ... [S]he was very straightforward...."]; pp.795-6 [Juror Saperstein: "I believed Karen Marmor.... Her testimony added to the reasonable doubt that I came to believe [regarding Levin's fate]."]; pp.790-1 [Juror Morrow described Ms. Marmor as one of the "most significant witnesses on the Levin case," finding her credible]; pp.792-3 [Juror Morrow: "I felt [Ms. Marmor] was a very credible witness on the stand..... [She] was a big factor in the deliberations and in my thinking."]; p.770 [Juror

Carsanaro: "Ms. Marmor was a very credible witness."].)

Finally, the declarations of the San Mateo jurors underscore the importance of the mutually reinforcing impact of having multiple sighting witnesses available at any retrial. Thus, this Court must reassess the value of the two sighting witnesses that testified at retrial, and the alibi witnesses that did likewise, in light of the context that all of Petitioner's habeas witnesses would create at a retrial. The San Mateo jurors commented at length on the cross-corroborating effect that hearing from several sightings witnesses had. They also found Lynne Roberts, one of Petitioner's alibi witnesses that testified in both trials, credible. (See, Exh. pp.772-3, 784, 786, 792, 796-97, 816-7, 834-5.) Thus, any assessment this Court ultimately makes as to the likelihood of a different outcome at a retrial, should take into account that the 1987 verdict does not prove that the four defense witnesses that were called were inherently incredible, but merely that they were deemed insufficiently persuasive in the evidentiary context of the meagre defense that was offered. Conversely, the San Mateo declarations establish that in the context of Petitioner's habeas evidence, trial witnesses Canchola, Lopez, and Lynne Roberts are likely to be well received by at least a majority of the jury.

## XI.
## CONCLUSION TO THE PETITION

This petition does not pose any complex legal questions. Senate Bill 1134 establishes a new post-conviction remedy. Petitioner has timely invoked that remedy. He has presented a formidable array of evidence which was either flatly

unavailable at the time of trial, or which -- at least according to California's judiciary and Respondent -- was absent from the trial for reasons other than the lack of diligence of trial counsel.

The central dispute at trial was over whether Levin was dead or had survived June 6, 1984, deserting the places that the authorities associated with him. Taken as true, this petition is supported by testimony that proves he did survive 1984. The habeas statute (Cal. Rules of Court, Rule 4.551(c)(1)) thus requires the issuance of an OSC.

Respectfully Submitted,

Joe Hunt .

Joseph Hunt
Petitioner in Pro. Per.

Dated: Jan 5, 2017

VERIFICATION

Petitioner hereby declares under penalty of perjury that the foregoing is true and correct to the best of his knowledge, information and belief. Further, he confirms that all the exhibits are, to the best of his knowledge and belief, true copies of the documents that they are purported to be. This declaration is made under the laws of California on ~~December~~ January 5, 2017 ~~30, 2016~~.

Joe Hunt
Joseph Hunt

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