

Case No. S171393

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

The People of the State of California,

Plaintiff and Respondent,

v.

Don'te Lamont McDaniel,

Defendant and Appellant.

On automatic appeal from the decision of the Los Angeles Superior
Court, Case # TA074274

**PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA DISTRICT
ATTORNEYS ASSOCIATION IN SUPPORT OF PLAINTIFF AND
RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA**

MARK ZAHNER, SBN 137732
Chief Executive Officer
California District Attorneys Association
ROBERT P. BROWN, SBN 200844
Chief Deputy District Attorney
San Bernardino County District Attorney's Office
PHILIP P. STEMLER, SBN 284510
Deputy District Attorney
San Bernardino County District Attorney's Office

Attorneys for Amicus Curiae
California District Attorneys Association
2495 Natomas Park Drive, Suite 575
Sacramento, CA 95833
Telephone: (916) 443-2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

I. INTRODUCTION 6

II. A JURY VERDICT OF PENALTY SATISFIES THE CALIFORNIA
CONSTITUTION 6

III. GOVERNOR GAVIN NEWSOM'S UNJUST ACCUSATIONS OF
RACISM 12

 A. CONDUCT MAKES THE DEFENDANT DEATH ELIGIBLE,
 NOT RACE 15

 B. CALIFORNIANS VOTED FOR THE DEATH PENALTY TO
 PUNISH BRUTAL MURDERERS..... 18

 C. REQUIRING UNANIMITY MAY TRIVIALIZE THE
 PROCESS 20

CONCLUSION 22

CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

Cases

United States Supreme Court

<i>Apprendi v. New Jersey</i> (2000) 530 U.S. 466	9
<i>Berger v. United States</i> (1935) 295 U.S. 78	14
<i>Furman v. Georgia</i> (1972) 408 U.S. 238	8
<i>Lockett v. Ohio</i> (1978) 438 U.S. 586	12
<i>Lowenfeld v. Phelps</i> (1988) 484 U.S. 231	9
<i>Oyler v. Boles</i> (1962) 368 U.S. 448	18
<i>Pulley v. Harris</i> (1984) 465 U.S. 37	10

California Supreme Court

<i>Balyut v. Superior Court</i> (1996) 12 Cal.4th 826	13, 18
<i>Katzberg v. Regents of University of California</i> (2002) 29 Cal.4th 300	7 – 8
<i>Murgia v. Municipal Court</i> (1975) 15 Cal.3d 286	18
<i>People v. Anderson</i> (1972) 6 Cal.3d 628	8
<i>People v. Oates</i> (2004) 32 Cal.4th 1048	10
<i>People v. Robinson</i> (2005) 37 Cal.4th 592	11
<i>People v. Rodriguez</i> (1986) 42 Cal.3d 777	10 – 11
<i>People v. Superior Court (Pearson)</i> (2010) 48 Cal.4th 564	9
<i>Ramos v. Louisiana</i> (2020) __ U.S. __, 140 S.Ct. 1390	14, 20, 22
<i>Raven v. Deukmejian</i> (1990) 52 Cal.3d 336	7 – 8

Other Federal Cases

Ellis v. Harrison (9th Cir 2018) 891 F.3d 1160 14
Ellis v. Harrison (9th Cir. 2020) 947 F.3d 555 14

Constitution of the United States

Amendment VIII 10

Constitution of the State of California

Article I, section 16*passim*
Article I, section 31 15
Article II, section 10, subdivision (c) 9
Article V, section 8, subdivision (a)..... 14

Propositions

Proposition 7 (November 5, 1974)..... 7 – 8
Proposition 7 (November 7, 1978)..... 8 – 10, 19
Proposition 66 (November 8, 2016)..... 19
Proposition 115 (June 5, 1990) 7 – 8

Statutes

Business & Professions Code section 6068, subdivision (d)..... 18
Government Code section 6250 13
Penal Code section 148, subdivision (a) 21
Penal Code section 190.2 9, 15
Penal Code section 190.3 9 – 12, 15
Penal Code section 190.3, subdivision (a) 21

Penal Code section 190.4	9, 15
Penal Code section 745, subd. (a)	15
Penal Code section 1042	6, 11 – 12
Penal Code section 4800	14

Rules

Rules of Professional Conduct, rule 3.3	18
---	----

Jury Instructions

CALCRIM 415 (2020)	21
CALCRIM 763 (2020)	21
CALCRIM 766 (2020)	21
CALCRIM 2656 (2020)	21

I. INTRODUCTION

By its order on June 17, 2020, this Court asked for additional briefing focusing on two specific questions, “Do Penal Code section 1042 and article I, section 16 of the California Constitution require that the jury unanimously determine beyond a reasonable doubt factually disputed aggravating evidence and the ultimate penalty verdict? If so, was appellant prejudiced by the trial court’s failure to so instruct the jury?”

The first question has drawn a host of amicus briefs in this case. Yet despite the precise nature of the Court’s order, amici devoted hundreds of pages to policy arguments more appropriately addressed to the Legislature and ignored the dispositive legislative history. A focused examination of the origin of article I, section 16 and its interplay with the statutory construction of California’s death penalty statutes provides the answer: the Penal Code and article I, section 16 do not compel the that which the question contemplates.

The California District Attorneys Association (CDAA) confines this brief to the path to that answer and to a limited response to the accusations levied at member District Attorneys by the Governor in his amicus brief. The Governor’s clear design to end the death penalty in California, and his ill-informed and personal attack upon the District Attorneys who seek to use that penalty when the most horrible of crimes compels no other appropriate penalty, requires CDAA to respond to such politically-charged invective.

II. A JURY VERDICT OF PENALTY SATISFIES THE CALIFORNIA CONSTITUTION

For a proper understanding of article I, section 16 of the California Constitution, it is necessary to look at the point of origin of

California's current basis for the right to a trial by jury. Along with other portions of California's Declaration of Rights, article I, section 16 was enacted by the electorate as part of Proposition 7 in 1974 (Prop. 7-74). (Ballot Pamp., Gen. Election (Nov. 5, 1974), text of Prop. 7, pp. 27, 70 – 72 (attached as *Exhibit 1*.) The Declaration of Rights did not create new or unique rights. Rather it was presented as incorporating rights that "either already exist in the United States Constitution or in present law." (Ballot Pamp. Gen. Election (Nov. 5, 1974), Analysis by Legislative Analyst, p. 26.) "The ballot pamphlet provided to all voters prior to the general election in 1974 explained that the measure was designed to revise article I, the California Constitution's declaration of rights, in a number of respects, one of which was to set out some basic rights that were then 'presently . . . contained in the federal Constitution' but not listed in the state charter. [Citation.]" (*Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300, 350 – 351 (*Katzberg*).

This Court has made it clear that the rights afforded to the citizens of California are not necessarily restricted to the parallel rights that flow from the United States Constitution, or defined only as the United States Supreme Court defines those same rights. An effort by the electorate to do just that as part of Proposition 115 (June 5, 1990) (Prop. 115) was rebuffed by this Court in *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 351 – 355 (*Raven*.) Although Prop. 115 included an amendment to article I, section 24 of the California Constitution that would have restricted the enjoyment of certain rights in criminal cases to that which was interpreted under the federal Constitution, this Court determined that the paragraph in question would have undermined this Court as one of last resort in determining state constitutional

guarantees¹. (*Id.*, at p. 354.) But while rights under the California Constitution may indeed be left to this Court to decide, this Court nevertheless gives deference to the nation's high court unless there is "good cause for departure or deviation" from the United States Supreme Court's policies. (*Id.*, at p. 353.)

When read together, the changes made via Prop. 7-74, *Katzberg*, and *Raven* mean that although this Court most certainly has the ultimate word in interpreting the rights of Californians from the Declaration of Rights within the state constitution, those rights derive from the U.S. Constitution. Therefore, the starting point for interpreting article 1, section 16 of the California Constitution should be the traditional scope and influence of the jury trial right as understood by this Court leading up to this point.

As described in the reams of other paper currently before this Court, our state's death penalty structure was also crafted by the electorate. In 1978 another Proposition 7 (Prop. 7-78) set forth requisite changes following this Court's ruling in *People v. Anderson* (1972) 6 Cal.3d 628, and the United States Supreme Court's decision in *Furman v. Georgia* (1972) 408 U.S. 238. Prop. 7-78 constructed an entirely new system of addressing capital punishment in the state,

¹ In its amicus filing, the California Public Defenders Association includes a portion of the disallowed paragraph as part of its argument that the changes sought by the electorate in Prop. 115 conspicuously omitted the "'inviolable right' of a criminal defendant to a jury trial" (Brief of Amicus Curiae, California Public Defenders Association and Santa Clara County Public Defender, at pp. 44 – 45.) Curiously, they chose to omit the final sentence of that same paragraph, "This Constitution shall not be construed by the court to afford greater rights to criminal defendants than those afforded by the Constitution of the United States" (*Raven, supra*, 52 Cal.3d at p. 350.) The last sentence of course, changes the apparent intent of the electorate completely.

key features of which were a new Penal Code section 190.2, which described what we currently know as the special circumstances that narrow the class of murderers to whom the death penalty may apply, Penal Code section 190.4, which designated the requirement that those special circumstances be proved to a jury beyond a reasonable doubt, and Penal Code section 190.3, which listed eleven categories of the types of evidence that could be considered by a jury in weighing aggravating and mitigating factors before making a determination as whether the defendant should be put to death or imprisoned for life without the possibility of parole. (Ballot Pamp., Gen. Election (Nov. 7, 1978) text of Prop. 7, pp. 33, 41 – 46 (attached as *Exhibit 2*.)

Prop. 7-78 contained no provision that would permit the state's Legislature to amend or repeal it. Article II, section 10, subdivision (c) of the California Constitution prohibits the Legislature from altering an initiative statute unless the terms of the initiative itself so permits. "The Legislature may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment." (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568.) As Prop. 7-78 was just such an initiative, the Legislature is therefore barred from making voter-unsanctioned changes.

As mentioned above, Penal Code section 190.4 was included in the statutes enacted by Prop. 7-78. Section 190.4 contemplates the proving of qualifying special circumstances beyond a reasonable doubt. While there is no question that this must be the case in order for the statute to pass constitutional muster under the teachings of *Lowenfield v. Phelps* (1988) 484 U.S. 231 and its forerunners (the requirement of narrowing the class of death-eligible defendants), and *Apprendi v. New Jersey* (2000) 530 U.S. 466 and its progeny (facts that increase penalties for crimes must be proved beyond a

reasonable doubt), it also demonstrates the electorate was quite aware of the nature of requiring such proof to a trier-of-fact.

That same electorate decided *not* to include such a requirement for the penalty phase of a capital case. Instead,

[a]fter having heard and received all of the evidence , and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances . . . and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances.

(Pen. Code, § 190.3.) Since such a procedure does not offend protections under the Eight Amendment to the United States Constitution, (see, e.g., *Pulley v. Harris* (1984) 465 U.S. 37, 53 – 54 and *People v. Rodriguez* (1986) 42 Cal.3d 730, 777 – 789 (*Rodriguez*)), and since nothing within article I, section 16 of the California Constitution speaks to a requirement of finding facts beyond a reasonable doubt in death penalty-phase proceedings, reading such a requirement into the process via Penal Code section 1042 would place the Legislature at square loggerheads with the electorate who chose not to include the requirement. “*Expressio unius est exclusio alterus.*” (*People v. Oates* (2004) 32 Cal.4th 1048, 1057.) Neither the Legislature nor this Court may impose a requirement that the voters deliberately left out of Prop. 7-78 if that exclusion otherwise passes constitutional scrutiny. (*Ibid.*)

Throughout the policy arguments of the various amici curiae, a theme is found.² Jurors must be filled with a gravity of purpose and complete understanding of the task that they undertake in the trial of a capital case, with no room for them to be in disagreement with the

² Assuming, arguendo, that the theme is not simply to make the death penalty a practical impossibility by rendering the system unworkable.

path that leads them to condemning another human being. As prosecutors who see the value in every life that is wrongfully taken, we understand that gravity all too well. And the decision on whether or not to pursue a death sentence against a defendant is the most difficult and heart-wrenching one that a prosecutor can ever face. It is cavalier to think it does not equally weigh on the twelve souls tasked with making the decision.

Although Appellant dislikes this Court's language, "the sentencing function is moral and normative, not factual . . . [A] jury must be fully advised of the nature and scope of its sentencing discretion. [¶] We are confident that no jury so instructed will mistake the solemnity of the task." (*Rodriguez, supra*, 42 Cal.3d at p. 779.)

One struggles to envision the process as Appellant and amici appear to advocate. Would a jury be tasked with creating a group essay of facts agreed upon beyond a reasonable doubt, authoring a narrative of how it collectively arrived upon a verdict? Or instead, would the prosecutor face the prospect of presenting a full description for the panel, and ask them to affix twelve signatures if they agree upon the prose?

How would one return a verdict specific to victim impact evidence, as is permissible under Penal Code section 190.3, subdivision (a)? (*People v. Robinson* (2005) 37 Cal.4th 592, 650.) Would the finding have to be, for example, that they agree that a loving child was torn away from her mother in the most cruel fashion, and that they further agree that the mother is destroyed to the core of her being from the grief of her loss?

No, the answer to the question that was asked by this Court is that Penal Code section 1042 and article I, section 16 of the California Constitution do not require such findings. As the Attorney General

ably points out, the protections are already in place to ensure beyond-a-reasonable-doubt confidence in Penal Code section 190.3, subds. (a) – (c).³ Not only is nothing additional required for that which is already in place, altering the rubric would impermissibly tamper with the electorate’s will.

III. GOVERNOR GAVIN NEWSOM’S UNJUST ACCUSATIONS OF RACISM

Death penalty cases require individualized consideration, for each defendant is a distinct human being. (*Lockett v. Ohio* (1978) 438 U.S. 586.) So, too, does each murder victim possess a face and a family, and deserve to be given full consideration as a person. Prosecutors do not decide cases based upon statistics, but rather upon the people whose lives have been torn apart.

Moreover, the prosecution of a criminal case is reactive in nature. Prosecutors handle cases as they are presented. Once the facts reach the prosecutor’s doorstep, the damage has already been done. Forgotten by the Governor is that the victims of crime, too, are often from disadvantaged communities. As prosecutors, however, we do not forget them, and we strive to make the rule of law just for each individual case. Although not the call of this Court’s question, we therefore write to respond to Governor Gavin Newsom’s claims that capital punishment is “infected by racism” and discriminatory in its administration. (Brief of Amicus Curiae The Honorable Gavin Newsom, at pp. 22-23.)

The Governor bases his accusations on comparisons of death penalty outcomes to generalized census data. But this data alone is

³ Third Supplemental Respondent’s Brief, at pp. 23 – 25.

insufficient to establish discriminatory prosecution. (See *Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 832 (*Balyut*) [naming necessary elements of discriminatory prosecution, including “discriminatory design” of prosecutors involved].)

First, the Governor cites nothing establishing that McDaniel’s, or any other death row inmate’s, case was brought because of the “discriminatory design” of the prosecutors involved. (*Balyut, supra.*) Although the Governor never addresses this possibility, there are legitimate reasons for outcomes diverging from census data in death penalty cases.

Second, comparison between census data and the death row population is misleading and inaccurate: the proper comparison should be between individuals charged with special circumstances and those sentenced to death, since conduct determines who is eligible for the death penalty. The Office of the State Public Defender would no doubt agree based on their requests to San Bernardino County under the California Public Records Act, Government Code section 6250 et seq. (attached as *Exhibit 3*). Yet, in accusing San Bernardino County of having the strongest “racial bias,” the Governor cites a tiny sample size of death judgments from an anti-death penalty secondary source, not for accuracy’s sake, but because it fits his flawed narrative.

Further, it is far from clear that unanimity will help defendants facing death. Unanimity would require the court to instruct on each alleged aggravating factor, but these factors are often uncontested and instructing on the list would influence jurors to reach their verdicts based on counting the factors. As an aside, if curing alleged racial bias against some groups is the reason for this rule change, we fail to

see how the change would help members of racial groups not identified in the Governor's brief.

Given his commutation powers, the Governor's accusation of racism is as pernicious as it is unnecessary. It has all the negative consequences of *ad hominem* rhetoric the dissent identified in *Ramos v. Louisiana* (August 24, 2020, No. 18-5924) __ U.S. __ [140 S.Ct. 1390], 1426, (dissenting opinion of Alito, J.), without the same justification, because California's death penalty does not have racially-biased origins like the laws at issue in that case. Further, as the head of the State's executive branch vested with the exclusive power to commute death sentences, the Governor has the power to skip the attacks and simply grant relief. (Cal. Const., art. V, § 8, subd. (a) [subject to this Court's approval for twice convicted felons]; Pen. Code, § 4800.) Because of this, we perceive the Governor's brief as a purely political act undertaken to use this Court as a stage for his agenda.

California prosecutors are under numerous Constitutional, statutory, and ethical obligations to prevent bias from entering the system. (*Berger v. United States* (1935) 295 U.S. 78, 88 [prosecutor's "interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done."].) Despite our best efforts, *true* racial animus can sabotage the system from sources outside our control. (see, e.g., *Ellis v. Harrison* (9th Cir. 2018) 891 F.3d 1160, 1166, revd. on reh'g. *Ellis v. Harrison* (9th Cir. 2020) 947 F.3d 555, 556.) As prosecutors, we share any concern to eliminate all forms of bias from the justice system, whatever their source, through the rule of law.

///

///

A. CONDUCT MAKES THE DEFENDANT DEATH ELIGIBLE, NOT RACE

To be eligible for death, a defendant must have committed first-degree murder with one of the conduct-based special circumstances in Penal Code section 190.2 found to be true. (Pen. Code, §§ 190.3, 190.4.) Prosecutors have no control over which murderers will qualify, but rather evaluate the evidence after the crime. There is no quota system based on census data to determine who to charge with special circumstances murder. We are prohibited from considering race at all.⁴

Accordingly, the Governor's comparison to census data is misleading because the general population is not eligible to be charged with special circumstances. Instead, the proper comparison should be between homicide defendants with special circumstances filed and homicide defendants sentenced to death.

To make the proper comparison, the Office of the State Public Defender recently sought this data from the San Bernardino County District Attorney (SBCDA) for 2007 – 2019. (*Exhibit 3.*) In that time period, SBCDA charged 149 individuals with special circumstances

⁴ The newly enacted AB 2542 appears to require prosecutors to take race into consideration when taking prosecutorial action, which may violate California Constitution, article I, section 31. (Pen. Code, § 745(a) (added by Stats. 2020, ch. 317, § 1 [available at https://leginfo.legislature.ca.gov/faces/billN av Client.xhtml?bill_id=201920200AB2542] <accessed 11/20/20>.) The electorate just rejected Proposition 16, which would have repealed this section's prohibition on government discrimination or favorable treatment based on race. (CA Secretary of State Nov. 3, 2020 Election results [available at <https://electionresults.sos.ca.gov/returns/ballot-measures> <accessed 11/20/20>].)

homicide. 63 were identified as Hispanic⁵ (42.28%), 47 as Black (31.54%), 32 as Caucasian (21.48%), 4 as Unknown (2.68%), 2 as Asian (1.34%), and 1 as Pacific Islander (0.67%). Nine individuals were sentenced to death: 3 Hispanics (33.33%); 3 Blacks (33.33%); and 3 Caucasians (33.33%). Caucasian defendants were therefore sentenced to death at a higher rate than they occurred on the special circumstances list, Hispanics at a lower rate, and African-Americans at about the same rate. Comparison between the proper datasets therefore shows no racial bias.

The flipside of the Governor's racial bias argument is that death sentences are unwarranted for the identified individuals. Or, in discriminatory prosecution terms, that but for the defendant's race, he or she would not have received a death sentence. But the Governor omits all mention of the facts of McDaniel's case and makes no attempt to claim his offense is unworthy of the ultimate punishment. Despite his claim that the system is infected with racism, he identifies no inmates at all whose death sentences were the result of racial bias.

The facts of the crimes for the nine 2007 – 2019 San Bernardino County death sentences do not reveal racial bias:

- Gregory Whiteside (S188067): in a domestic violence double murder, Whiteside brutally stabbed his ex-girlfriend to death and nearly decapitated her toddler daughter. He committed the murder because she would not get back together with him, and he believed she was pregnant with his child (she was not).

⁵ The defendant race information in the SBCDA case file is derived from suspect descriptions investigating law enforcement agencies provided to SBCDA. We use the race descriptors from these suspect descriptions here to remain consistent with the SBCDA data.

- Lorenzo Arias & Luis Mendoza (S167010): Arias and Mendoza were two gang members attempting to take control of their gang. At a gang reorganization meeting, they shot and killed four men, including two presidents of cliques of the West Side Verdugo gang.
- John Thomson (S217774): accused of murdering two people in Washington State, Thomson attacked a 70-year old man and two women to steal their cars. In the crime spree, Thomson stabbed to death a businessman that gave him a ride.
- Gilbert Sanchez (S239380): Sanchez raped and strangled a bakery worker during a night robbery. DNA from his semen found on her lower back solved this cold case murder.
- Sherhaun Brown (S203206): Brown broke into the victims' home, raping a woman and slashing her throat. He stabbed her mother in law to death; all this while the rape victim's four-year old son was present.
- Rickie Fowler (S208429): Fowler intentionally set the Old Fire which burned 93,000 acres in the San Bernardino Mountains, destroyed 1,000 structures, and caused five men to die of heart attacks.
- James Ellis (S242792): along with four other gang members, Ellis attempted to rob a drug dealer by setting up a meeting in a parking lot. When the drug dealer arrived, Ellis fired into the dealer's car, killing him and a female passenger.
- Charles Merritt (S260376): A jury convicted Merritt of the murder of his former business partner, his wife, and their two children. All four victims died of blunt force trauma wounds

to the head; their bodies were discovered in a shallow grave in the desert years later. Cellphone evidence put Merritt at the victims' home and the gravesite.

Here, the Governor branded the death penalty as "infected with racism" and discriminatory in its administration, particularly in San Bernardino County, without sufficient evidence.⁶ He used misleading and incomplete statistics and failed to consider any possible explanations for his complained-of disparities besides racism. We note that discriminatory prosecution has long been illegal (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, p. 290 [citing *Oyler v. Boles* (1962) 368 U.S. 448]) and that such an accusation must be based on specific facts. (*Baluyut, supra*, 12 Cal.4th at p. 832.) The Governor's counsel's duty of candor to this Court requires no less. (Bus. & Prof. Code, § 6068(d); Rules Prof. Conduct, rule 3.3.)

We urge this court to reject the Governor's politically motivated, unfounded *ad hominem* attacks that do not speak to the question asked by this Court.

B. CALIFORNIANS VOTED FOR THE DEATH PENALTY TO PUNISH BRUTAL MURDERERS

In 1972, Californians swiftly and overwhelmingly voted to reinstate the death penalty to ensure punishment for heinous murderers, with Charles Manson, Richard Speck, and political

⁶ Creating no small degree of irony, based upon the Governor's ultimate conclusions about how to fix the capital punishment system he has worked to dismantle completely.

assassin Sirhan Sirhan specifically named in the voter guide.⁷ None of these individuals touted as human reasons the death penalty should resume belong to Newsom's complained of racial groups. Opponents of the death penalty mostly argued that the death penalty was expensive, immoral, and not a deterrent, with alleged racial disparities as an afterthought. (*Id.*) Californians' decision to reinstate the death penalty was motivated by the violent crimes they were experiencing, not racial animus.

Subsequent initiative votes similarly demonstrate the electorate's race-neutral motivation of ensuring the guilty are punished. In 1978, Proposition 7 expanded the list of special circumstances and increased the punishment for murder.⁸ The proponents cited the "deadly plague of violent crime which terrorizes law-abiding citizens" and the weak response of the legislature as its rationale, and again named Charles Manson, Sirhan Sirhan, and other notorious killers. (*Id.* at p. 34) The opponents did not cite racial disparities at all. (*Id.* at pp. 34-35.)

In 2016, voters approved Proposition 66. This proposition introduced reforms designed to speed the execution of death judgments and reduce costs.⁹ The proposition was billed as a way to

⁷ UC Hastings Scholarship Repository, DEATH PENALTY California Proposition 17 (1972), at pp. 42-44, <http://repository.uchastings.edu/ca_ballot_props/768 > [accessed 11/17/20].

⁸ *Exhibit 2.*

⁹ UC Hastings Scholarship Repository, Death Penalty. Procedures, Initiative Statute. California Proposition 66 (2016), <http://repository.uchastings.edu/ca_ballot_props/1359 > [accessed 11/17/20].

“mend, not end” the costly and time-consuming death penalty appeals system. (*Id.* at p. 108.) Opponents argued that the reforms would increase costs and lead to the execution of the innocent. (*Id.* at pp. 108-109.) They did not mention racial disparities. (*Id.*) On competing Proposition 62, proponents argued for the end of the death penalty to save money and avoid executing innocent individuals.¹⁰ Even here, there was no argument of racial disparities in the death penalty. (*Id.*)

The relevant history of California’s death penalty shows that it owes its origin to the terrifying and brutal crime waves of the 1960s-1970s and not racial bias. None of the specifically named killers were of the racial groups that the Governor identified. Racial disparities, let alone racial bias, were not discussed in any of the ballot propositions except as an afterthought in 1972.

As a result, the Governor’s comparison of California’s death penalty to the state laws at issue in *Ramos v. Louisiana* fails. He does not even cite any of these Propositions in his brief despite legislative history’s outcome determinative effect in *Ramos v. Louisiana*. (*Id.*, *supra*, 140 S.Ct. at p. 1394.) The governor’s *ad hominem* accusation has no comparable smoking gun and is totally unsupported by the evidence.

C. REQUIRING UNANIMITY MAY TRIVIALIZE THE PROCESS

It is far from certain that unanimity and the reasonable doubt instruction as to aggravating circumstances will have the Governor’s

¹⁰ UC Hastings Scholarship Repository, Death Penalty. Initiative Statute. California Proposition 62 (2016), <http://repository.uchastings.edu/ca_ballot_props/1355 [accessed 11/17/20].

claimed effects. The determination of whether aggravating circumstances exist, and to what extent they are aggravating, is an inherently subjective process. (CALCRIM 766.) Requiring unanimity and reasonable doubt would inject an element of quantification to the process that would most likely prejudice defendants. (*Ibid.*)

Take, for example, Penal Code section 190.3, subdivision (a): circumstances of the crime and special circumstances. (CALCRIM 763.) The aggravating factors a prosecutor could allege are limited only by the imagination. If unanimity were required, the trial court would be required to instruct on the entire list of the alleged aggravating circumstances. (See, e.g., CALCRIM 415 [requiring listing of alleged overt acts in conspiracy prosecution]; CALCRIM 2656 [requiring instruction on the alleged acts of resistance in a prosecution under Pen. Code, § 148(a)].) The list of alleged aggravating factors on any given case could be substantial and would likely lead jurors to decide for death based simply on aggravating factors outnumbering mitigating factors.

Further, the reasonable doubt standard would offer little protection in conjunction with a new unanimity instruction. Many or perhaps most circumstances of the crime likely to be alleged as aggravating factors are not contested. For instance, in the Merritt case, described above, the prosecution could have alleged as aggravating factors that children were killed, or that the victims died by blunt force trauma to the head, or were buried in a shallow grave in the desert. These are just three examples, and none of these facts were contested—nor should they have been given the evidence—at the trial (the defense centered on identity). Given the uncontested nature of many potential aggravating circumstances, a jury would be free to pick the most obvious, uncontested facts to agree on.

Accordingly, in practice, unanimity and reasonable doubt may actually backfire on defendants and make death verdicts more likely. We do not see how these concepts will improve the process and urge the Court to reject adopting them.

CONCLUSION

Although the Governor's argument attempts the *Ramos v. Louisiana, supra*, playbook, it falls short because none of the rules at issue here trace their origin to racism. Instead, we are left with what amounts to an unsubstantiated accusation of racism levelled with generalized, incomplete data. We are aware that the Governor, who does not meet with the families of murder victims on a regular basis, opposes the death penalty, and it is within his power to seek to dismantle it without tarring us with this label.

As prosecutors, we do share the Governor's and the Court's desire to prevent bias from infiltrating our justice system.

Further, a thorough review of the legislative history reveals that the California Constitution does not require unanimity on aggravating factors. Nor does this seem to be a particularly advisable or even workable concept.

///

///

///

///

///

///

///

///

Accordingly, we urge the Court to reject McDaniel's challenges to this particular aspect of the death penalty. They lack basis in the law. Further, as illustrated by the Governor's unfounded, political attack on prosecutors, they have little basis in policy, either.

Done this 20th day of November, 2020, at San Bernardino, California.

Respectfully submitted,

MARK ZAHNER
Chief Executive Officer
California District Attorneys Association



ROBERT P. BROWN
Chief Deputy District Attorney
San Bernardino County District Attorney's Office



PHILIP P. STEMLER
Deputy District Attorney
San Bernardino County District Attorney's Office

CERTIFICATE OF COMPLIANCE

I certify that the attached **PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF PLAINTIFF AND RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA** uses a 13-point Arial font, and contains **4,624** words.

Done this 20th day of November, 2020, at San Bernardino, California.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. P. Brown', written over a horizontal line.

ROBERT P. BROWN
Chief Deputy District Attorney

EXHIBIT

1

1974

DECLARATION OF RIGHTS

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

DECLARATION OF RIGHTS California Proposition 7 (1974).
http://repository.uchastings.edu/ca_ballot_props/790

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Ballot Title

DECLARATION OF RIGHTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Reorganizes and substantively amends various provisions of Article I and relocates portions of Articles IV and XX of California Constitution. Amendments include, among others, right to interpreter at state expense for criminal defendant who cannot understand English, provision that court may grant release on own recognizance, provision that property rights of noncitizens to be the same as for citizens, and revision of eminent domain provisions. Deletes, among others, provisions respecting criminal libel actions, provisions regarding right to sell or rent real property, provisions concerning acquisition of lands for public improvements. Financial impact: No increase in government costs.

FINAL VOTE CAST BY LEGISLATURE ON ACA 60 (PROPOSITION 7):

ASSEMBLY—Ayes, 57
Noes, 18

SENATE—Ayes, 27
Noes, 4

Analysis by Legislative Analyst

PROPOSAL:

This proposition revises Article I of the State Constitution, which declares the fundamental rights of the people of the state. The proposition (1) deletes obsolete provisions, (2) clarifies existing law, (3) puts into the Constitution some rights which now exist in the federal Constitution, (4) defines the rights of those charged with crime, (5) authorizes the Legislature to revise eminent domain and grand jury proceedings, and (6) deletes material suitable for statutory enactment.

Obsolete Provisions Deleted. The proposition deletes two provisions from the California Constitution because the United States Supreme Court has found they conflict with the federal Constitution. One provision relates to trial court procedure when a person accused of a crime chooses not to testify on his own behalf. The other provision relates to discrimination in real estate transactions.

Clarification of Existing Law. First, the proposition says the noncitizens have the same property rights in California as citizens. Second, the proposition says that rights guaranteed by the State Constitution are not dependent on those guaranteed by the federal Constitution.

Federal Rights in State Constitution. The proposition puts the following three rights into the State Constitution. These rights presently are contained in the federal Constitution.

(a) The Legislature shall make no law respecting the establishment of religion.

(b) A person may not be deprived of life, liberty, or property without due process of law.

(c) A person may not be denied equal protection of the laws.

Rights of Persons Accused of Crime. Presently the State Constitution gives specific rights to persons accused of crime. This proposition adds the following:

(1) The accused person has the right to be confronted with the witnesses against him.

(2) The accused person has a right to have the assistance of a lawyer.

(3) The accused person has a right to be personally present with a lawyer at the trial.

(4) If the accused person does not understand English, he has the right to an interpreter.

(5) Instead of being released on bail prior to trial, the accused person may be released on his or her own recognizance at the discretion of the court.

These rights already exist either in the United States Constitution or in present law. The amendment makes them part of the California Constitution.

Revision of Eminent Domain Procedure. If a state or local government takes real property for public use, the owner of the property has a right to be compensated. If the owner of the property and the government disagree over the proper amount of compensation, the dispute is settled by a trial.

Presently, the government may take possession of the property before the trial takes place by depositing money with the court as security for payment. The court decides how much the security deposit must be. This procedure is called "immediate possession."

The present Constitution limits the power to take immediate possession to specified governments, in specified circumstances, and for specified uses. This proposition will allow the Legislature to determine when immediate possession may take place, and who may act as a condemnor.

Grand Juries. Presently the Constitution requires each county to summon a grand jury once each year. Without changing that requirement, this proposition allows the Legislature to provide for summoning more than one grand jury each year.

Deletion of Material Suited for Statutory Enactment. The proposition deletes from the Constitution (a) detailed rules of criminal indictment procedure and (b) detailed rules of procedure in criminal prosecutions for libel.

FISCAL EFFECT:

This proposition does not increase government costs.

This amendment proposed by Assembly Constitutional Amendment 6th (Statutes of 1974, Resolution Chapter 90) expressly amends existing articles of the Constitution by amending and repealing various sections thereof and adding sections thereto. Therefore, the provisions proposed to be deleted are printed in dashed type and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES I, IV, AND XX

First—That Section 1 of Article I be repealed.

Section 1. All people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and peace.

Second—That Section 1 of Article I be added, to read:

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and obtaining safety, happiness, and peace.

Third—That Section 2 of Article I be repealed.

Section 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Fourth—That Section 2 of Article I be added, to read:

SEC. 2. Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Fifth—That Section 3 of Article I be added, to read:

SEC. 3. The people have the right to instruct their representatives, petition government for redress of grievances, and to assemble freely to consult for the common good.

Sixth—That Section 4 of Article I be repealed.

Art. 3. The free exercise and enjoyment of religious profession and worship, without discrimination on or preference, shall forever be allowed in this State, and no person shall be rendered liable to be a witness or juror on account of his opinions on matters of religious belief, but this liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Seventh—That Section 4 of Article I be added, to read:

SEC. 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion.

A person is not incompetent to be a witness or juror because of his or her opinions on religious beliefs.

Eighth—That Section 5 of Article I be repealed.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Ninth—That Section 5 of Article I be added, to read:

SEC. 5. The military is subordinate to civil power. A standing army may not be maintained in peacetime. Soldiers may not be quartered in any house in wartime except as prescribed by law, or in quarters without the owner's consent.

Tenth—That Section 6 of Article I be repealed.

Sec. 6. All persons shall be liable by sufficient evidence, unless for capital offenses where the proof is evident or the presumption great. Executive bail shall not be required, nor executive fines imposed, nor shall cruel or unusual punishments be inflicted. Punishment shall not be unreasonably detained, nor confined in any room where criminals are sexually imprisoned.

Eleventh—That Section 6 of Article I be added, to read:

SEC. 6. Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.

Twelfth—That Section 7 of Article I be repealed.

Sec. 7. The right of trial by jury shall be secured to all, and remain inviolable, but in civil actions throughout of the jury may render a verdict. A trial by jury may be waived in all criminal cases by the consent of both parties expressed in open court by the defendant and his counsel, and in civil actions by the consent of the parties signified in such manner as may be prescribed by law. In civil actions and cases of malfeasance, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

Thirteenth—That Section 7 of Article I be added, to read:

SEC. 7. (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the law.

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same basis to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

Fourteenth—That Section 8 of Article I be repealed.

Sec. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information; other examinations and examinations and commitments, so may be great ended by law, when a defendant is charged with the commission of a felony by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable; he shall, without unnecessary delay, be taken before a magistrate of such court. The magistrate shall immediately deliver to him a copy of the complaint, inform him of his right to the aid of counsel, ask him if he desires the aid of counsel, and allow him a reasonable time to send for counsel, and the magistrate must, upon the request of the defendant, require a proffer to take a message to any counsel whom the defendant may name, in the city or township in which the court is situated. If the felony charged is not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him whether he pleads guilty or not guilty to the offense charged thereon, or at any time hereafter, while the charge remains pending, before the magistrate and when he consents to plead, the defendant must, with the consent of the magistrate and the district attorney, or other counsel for the people, plead guilty to the offense charged or to any other offense the commission of which is necessarily included in that with which he is charged, or to an attempt to commit the offense charged, and upon each plea of guilty, the magistrate shall immediately commit the defendant to the sheriff and certify the case, including a copy of all proceedings thereon and such testimony as in his discretion he may require, to the clerk of the superior court; and thereupon, with proceedings shall be had as if such defendant had pleaded guilty in such court.

The foregoing provisions of this section shall be self-executing. The Legislature may prescribe such procedure in cases herein provided for as is not inconsistent here-with, in cases not heretofore provided

Continued on page 70

Argument in Favor of Proposition 7

YOUR BILL OF RIGHTS

Proposition 7 contains most of the recommendations of the California Constitution Revision Commission for Article I. This proposal was adopted by the Legislature after 4 years of study and consideration in Committee and after answering the questions of all the individuals and organizations concerned with California's "Declaration of Rights" Article.

There is no known opposition to Proposition 7.

STRENGTHENS YOUR INDIVIDUAL RIGHTS

Proposition 7 revises Article I of the California Constitution by removing material that has been declared unconstitutional, or is not of constitutional importance. Proposition 7 contains all rights presently enjoyed by Californians and places in our State Constitution some of the rights enjoyed by Californians as citizens of the United States, but which are not presently in our State Constitution. For example, Proposition 7 adds to our Constitution the right of all Californians to due process of law, the right in a criminal proceeding to be confronted with witnesses, and a prohibition against the State's "establishment of religion". These rights and safe-

guards are not presently in the California Constitution, but should be.

VOTE "YES"

A "yes" vote will help modernize and shorten California's Constitution. It will help finish Constitution Revision which has been in process for nearly 10 years. Make sure that your rights are clearly and strongly stated. Join the many groups who support this revision of an important article of the Constitution. The organizations presently endorsing Proposition 7 include the League of Women Voters, both Houses of the State Legislature and other organizations and individuals interested in the protection of our society and the civil rights of all Californians.

Join us in a YES vote for better government.

JUDGE BRUCE SUMNER
Chairman, Constitution Revision Commission

KEN MEADE
Assemblyman, 16th District

ALAN ROBBINS
Senator, 22nd District

Rebuttal to Argument in Favor of Proposition 7

Though Proposition 7 streamlines some portions of our State Constitution, all rights enjoyed in the Federal Constitution are enjoyed by California citizens already since the Federal Constitution takes precedence over our State Constitution in all areas where they may conflict.

Because a court in California rules that a portion of the Constitution voted by the People is unconstitutional seems peculiar. The People have a right through their power of the vote to amend the Constitution.

Because a judge at a particular time says a part is unconstitutional does not preclude another judge or court from reversing the previous decision.

The controversial parts of this proposition should be separated from the noncontroversial, technical parts and presented separately for the voters.

A No vote is urged on this proposition.

ROBERT C. CLINE
Assemblyman, 64th District

Argument Against Proposition 7

Though the California Constitution appears to be long, it has been a thorough, workable document. Extensive revisions proposed in the past have been rejected by the People of California.

This proposal will remove the part of the Constitution voted for by the People to protect their right to sell private property to whomever they choose. Though the State Supreme Court invalidated this section, a new Court could reverse that position.

Let's not tamper with this section voted for by a 2-1 margin by the People. Many of the 49 changes proposed are technical and renumbering of existing sections. However, these should be voted separately.

Vote No on this proposition.

ROBERT C. CLINE
Assemblyman, 64th District

Rebuttal to Argument Against Proposition 7

The only argument that the opponents of this measure can present is that the people should keep in the constitution material declared unconstitutional years ago, not just by the California Supreme Court, but also by the United States Supreme Court.

Sounds ridiculous? It is.

California's history shows that its citizens have the capacity to grow. It also points out that we have made mistakes in the past like the internment of our Japanese American citizens and attempts to "keep the Okies out". Yes, we have even placed in our constitution provisions that "no corporation now existing or hereafter formed under the laws of this State shall . . . employ directly or indirectly in any capacity any Chinese or Mongolian" and a denial of the right to vote to all who were not "white male(s)". These provisions are relics of the past and

have no place in the document that school children look to as a truthful statement of our fundamental rights as citizens.

Shame on those that appeal to past bigotries to prevent our constitution from being an accurate statement of the fundamental law of California as it is today.

The "no" argument is really a strong argument "for" Proposition 7. If you don't agree, think about it. All the opponent can say is that the proposition is bad because it is the truth and the law.

JUDGE BRUCE W. SUMNER
Chairman, California Constitution Revision Commission

KEN MEADE
Assemblyman, 16th District

ALAN ROBBINS
Senator, 22nd District

TEXT OF PROPOSITION 2

This amendment proposed by Assembly Constitutional Amendment 81 (Statutes of 1974, Resolution Chapter 81) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XI

SEC. 3. (a) For its own government, a county or city may adopt

a charter by majority vote of its electors voting on the question. The charter is effective if approved without change by resolution of the Legislature, by rollcall vote entered in the journal, a majority of membership of each house concurring when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. A charter may be amended, revised, or repealed in the same manner. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

21

TEXT OF PROPOSITION 6

This amendment proposed by Senate Constitutional Amendment 26 (Statutes of 1974, Resolution Chapter 77) expressly amends an existing article of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE XIII

SEC. 1d. The homeowners' property tax exemption shall apply to each dwelling, as defined by the Legislature, occupied by an owner thereof on the lien date as his principal place of residence. This exemption shall not apply to any dwelling if an owner thereof has been granted an exemption for the assessment year pursuant to Section 14, 14a or 14b of this article, nor shall it apply to any property which the Legislature, by general laws, excludes from the exemption by reason of the fact that the tax on such property is paid either in whole or in part, either directly or indirectly, by the state or any political subdivision thereof. Only one homeowners' property tax exemption shall apply to each dwelling.

There is exempt from taxation the amount of ~~750~~ *\$1,750* of the assessed value of the dwelling and this shall be known as the homeowners' property tax exemption. The amount of the exemption may be increased or decreased by the Legislature, a majority of all of the members elected to each of the two houses voting in favor thereof, but such exemption shall not be reduced below ~~750~~ *\$1,750* of such assessed value.

The Legislature shall provide by general laws for subventions to counties, cities and counties, cities, and districts in this state in an amount equal to the amount of revenue lost by each such county, city and county, city, and district by reason of the homeowners' property tax exemption. No increase by the Legislature in the homeowners' property tax exemption above the amount of ~~750~~ *\$1,750* shall be effective for any fiscal year, unless the Legislature increases the rate of state taxes in an amount sufficient to provide subventions, and shall provide subventions, during such fiscal year to each county, city and county, city and district in this state a sum equal to the amount of revenue lost by each by reason of such increase.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners as calculated by the Legislature.

Any revenues subvented by the state to replace revenues lost by reason of the homeowners' property tax exemption may be used by a county, city and county, city, or district for state purposes or for county, city and county, city, or district purposes, as the case may be.

Nothing in this Constitution shall constitute a limitation on the taxation of property, or on the bonding capacity of the state or of any city, city and county, county, or district, when based on a percentage of assessed or market value of property; provided, however, that the Legislature may establish maximum property tax rates and bonding limitations for units of local government.

For the ~~1983-1984~~ fiscal year only, the Legislature may effect the exemption by payment of 670 to taxpayers in the manner specified in Senate Bill No. 8 of the 1969 First Extraordinary Session of the Legislature, the provisions of which are hereby ratified.

[Second Resolved Clause]

And be it further resolved, That if Assembly Constitutional Amendment No. 32 of the 1973-74 Regular Session of the Legislature is approved by the voters in the general election to be held on November 5, 1974, that Section 1d of Article XIII, as amended in the first resolved clause of this senate constitutional amendment shall not become operative;

[Third Resolved Clause]

And be it further resolved, That if Assembly Constitutional Amendment No. 32 of the 1973-74 Regular Session of the Legislature is approved by the voters in the general election to be held on November 5, 1974, that the Constitution of the state be further amended by adding subdivision (k) to Section 3 of Article XIII, to read as follows:

(k) *\$7,000 of the full value of a dwelling, as defined by the Legislature, when occupied by an owner as his principal residence, unless the dwelling is receiving another real property exemption. The Legislature may increase this exemption and may deny it if the owner received State or local aid to pay taxes either in whole or in part, and either directly or indirectly, on the dwelling.*

No increase in this exemption above the amount of *\$7,000* shall be effective for any fiscal year unless the Legislature increases the rate of State taxes in an amount sufficient to provide the subventions required by Section 25.

If the Legislature increases the homeowners' property tax exemption, it shall provide increases in benefits to qualified renters, as defined by law, comparable to the average increase in benefits to homeowners, as calculated by the Legislature.

TEXT OF PROPOSITION 7—continued from page 27

for, such proceedings shall be had as are now or may be hereafter prescribed by law; not inconsistent herewith:

A grand jury shall be drawn and summoned at least once a year in each county.

Fifteenth—That Section 9 of Article I be repealed.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact, indictments found, or information laid, for publications in

newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication; unless the place of trial shall be changed for good cause.

Sixteenth—That Section 9 of Article I be added, to read:

SEC. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.

Seventeenth—That Section 10 of Article I be repealed.

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

Eighteenth—That Section 10 of Article I be added, to read:

SEC. 10. Witnesses may not be unreasonably detained. A person

may not be imprisoned in a civil action for debt or tort, or in process for a militia fine.

Nonetheless—That Section 11 of Article I be repealed.

Sec. 34. All laws of a general nature shall have a uniform operation.

Twenty-third—That Section 11 of Article I be added, to read:

Sec. 11. *Halfes corpus may not be suspended unless required by public safety in cases of rebellion or invasion.*

Twenty-first—That Section 13 of Article I be repealed.

Sec. 13. The military shall be subordinate to the civil power. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Twenty-second—That Section 12 of Article I be added, to read:

Sec. 12. A person shall be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required.

A person may be released on his or her own recognizance in the court's discretion.

Twenty-third—That Section 13 of Article I be repealed.

Sec. 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial and to have the assistance of counsel for his defense; to have the process of the court to compel the attendance of witnesses in his behalf and to be personally present with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; but in any criminal case, whenever the defendant testifies on oath his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the jury. The Legislature shall have power to require the defendant in a felony case to have the assistance of counsel. The Legislature also shall have power to provide for the taking in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

Twenty-fourth—That Section 14 of Article I be added, to read:

Sec. 14. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Twenty-fifth—That Section 14 of Article I be repealed.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having first been made for or paid into court for, the owner; and no right of way or lands to be used for revenue purposes shall be appropriated to the use of any corporation, except a municipal corporation or a county or the State or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district or similar water district, drainage, irrigation, levee, reclamation or water conservation district or similar public corporation, the deferred State or municipally or county or public corporation or district abovementioned may take reasonable possession and use of any right of way or lands to be used for revenue purposes, required for a public use whether the fee thereof or an easement therefor be sought upon first commencing eminent domain proceedings according to law in a court of competent jurisdiction and the owner giving such security in the way of money deposited in the court in which such proceedings are pending may direct and in such amount as the court may determine to be reasonably adequate to secure to the owner of the property sought to be taken immediate payment of just compensation for such taking and any damage incidental thereto, including damages sustained by reason of an adjudication that there is no necessity for taking the property, as soon as the same can be ascertained according to law. The court may upon motion of any party to said eminent domain proceedings, after such notice to the other parties as the court may prescribe, after the amount of such security so required in such proceedings, the taking of private property for a railroad, run by steam or electric power for logging or lumbering purposes shall be deemed a taking for a public use, and any person, firm, company or corporation taking private property under the law of eminent domain for such purposes shall thereupon and thereby become a common carrier.

Twenty-sixth—That Section 14 of Article I be added, to read:

Sec. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate or that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant. A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

Twenty-seventh—That Section 14½ of Article I be repealed.

Sec. 14½. The State, or any of its cities or counties, may acquire by gift, purchase or condemnation; lands for establishing, laying out, widening, enlarging, extending, and maintaining normal, graded, levees, aqueducts, canals, and reservoirs in and about and along and leading to any or all of the same; providing land so acquired shall be limited to parcels lying wholly or in part within a distance not to exceed one hundred fifty feet from the closest boundary of such public works or improvements, provided that when parcels which lie only partially within said limit of one hundred fifty feet only such parcels may be acquired which do not exceed two hundred feet from said closest boundary; and other the establishment, trying out, and completion of such improvements may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate so as to protect such public works and improvements and their easements and to preserve the view, appearance, light, air and usefulness of such public works.

The Legislature may, by statute, prescribe procedure.

Twenty-eighth—That Section 15 of Article I be repealed.

Sec. 15. No person shall be imprisoned for debt in any civil action, on motion or final process, unless in cases of fraud; nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

Twenty-ninth—That Section 15 of Article I be added, to read:

Sec. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, or compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

Thirtieth—That Section 16 of Article I be repealed.

Sec. 16. No bill of attainder, or post facto law, or law impairing the obligation of contracts shall ever be passed.

Thirty-first—That Section 16 of Article I be added, to read:

Sec. 16. Trial by jury is an inviolate right and shall be secured to all but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes and cases of misdemeanor the jury may consist of 12 or a lesser number agreed on by the parties in open court.

Thirty-second—That Section 17 of Article II be repealed.

Sec. 17. Foreigners, eligible to become citizens of the United States under the naturalization laws thereof, who have filed their oaths of this State, shall have the same rights in respect to the acquisition of property, employment, transmission, and inheritance of all property other than real estate, as native born citizens; provided that such aliens owning real estate at the time of the adoption of this amendment may remain such aliens, and provided further that the Legislature may, by statute, provide for the disposition of real estate which shall hereafter be acquired by such aliens by descent or devise.

Thirty-third—That Section 17 of Article I be added, to read:

Sec. 17. Cruel or unusual punishment may not be inflicted or excessive fines imposed.

Thirty-fourth—That Section 18 of Article I be repealed.

Sec. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Thirty-fifth—That Section 18 of Article I be added, to read:

Sec. 18. Treason against the State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort. A person may not be convicted of treason except on the evidence of two witnesses to the same overt act or by confession in open court.

Thirty-sixth—That Section 19 of Article I be repealed.

SEC. 10. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Thirty-seventh—That Section 19 of Article I be added, to read:
SEC. 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

Thirty-eighth—That Section 20 of Article I be repealed.
SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Thirty-ninth—That Section 20 of Article I be added, to read:
SEC. 20. Nonscitizens have the same property rights as citizens.
Fortieth—That Section 21 of Article I be repealed.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, amended, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

Forty-first—That Section 22 of Article I be repealed.
SEC. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Forty-second—That Section 22 of Article I be added, to read:
SEC. 22. The right to vote or hold office may not be conditioned by a property qualification.

Forty-third—That Section 23 of Article I be repealed.
SEC. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Forty-fourth—That Section 23 of Article I be added, to read:
SEC. 23. One or more grand juries shall be drawn and summoned at least once a year in each county.

Forty-fifth—That Section 24 of Article I be repealed.
SEC. 24. No property qualification shall ever be required for any person to vote or hold office.

Forty-sixth—That Section 24 of Article I be added, to read:
SEC. 24. Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. This declaration of rights may not be construed to impair or deny others retained by the people.

Forty-seventh—That Section 26 of Article I be repealed.

SEC. 26. Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.
Person includes individuals, partnerships, corporations and all legal entities and their agents or representatives but does not include the State or any subdivision thereof with respect to the sale, lease or rental of property owned by it.

Real property consists of any interest in real property of any kind or quality, present or future, irrespective of how obtained or financed, which is used, designed, contracted, owned or otherwise devoted to or limited for residential purposes whether as a single family dwelling or as a dwelling for two or more persons or families living together or independently of each other.

This Article shall not apply to the obtaining of property by eminent domain pursuant to Article I, Sections 14 and 14 1/2, of this Constitution; nor to the renting or providing of any accommodations for lodging purposes by a hotel, motel or other similar public place engaged in furnishing lodging to transient guests.

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Article are severable.

Forty-eighth—That Section 26 of Article I be added, to read:
SEC. 26. All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

Forty-ninth—That Section 28 of Article I be added, to read:
SEC. 28. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Fiftieth—That Section 16 of Article IV be amended to read:
SEC. 16. (a) All laws of a general nature have uniform operation.
(b) A local or special statute is invalid in any case if a general statute can be made applicable.

Fifty-first—That Section 8 of Article XX be amended and renumbered to be Section 21 of Article I:

SEC. 21. Property owned before marriage or acquired during marriage by gift, will, or inheritance is separate property.

Fifty-second—That Section 18 of Article XX be amended and renumbered to be Section 8 of Article I:

SEC. 8. A person may not be disqualified because of sex, from entering or pursuing a lawful business, profession, vocation, or profession employable because of sex, race, creed, color, or national or ethnic origin.

TEXT OF PROPOSITION 8

This amendment proposed by Assembly Constitutional Amendment 32 (Statutes of 1974, Resolution Chapter 70) expressly amends the Constitution by amending, adding, and repealing various articles and sections. Therefore, the provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES IV, IX, XI, XIII, XVI, XX, AND XXVIII

First—That subdivision (e) be added to Section 12 of Article IV, to read:

(e) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all State agencies.

Second—That Section 6 of Article IX be amended, to read:

SEC. 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars (\$2,400) for a person serving full time, as defined by law.

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than

one included within the Public School System.

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred and eighty dollars (\$180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars (\$120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars (\$2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.

The Legislature shall provide for the levy annually by the

EXHIBIT

2

University of California, Hastings College of the Law
UC Hastings Scholarship Repository

Propositions

California Ballot Propositions and Initiatives

1978

Murder. Penalty

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

Murder. Penalty California Proposition 7 (1978).
http://repository.uchastings.edu/ca_ballot_props/840

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Official Title and Summary Prepared by the Attorney General

MURDER. PENALTY. INITIATIVE STATUTE. Changes and expands categories of first degree murder for which penalties of death or confinement without possibility of parole may be imposed. Changes minimum sentence for first degree murder from life to 25 years to life. Increases penalty for second degree murder. Prohibits parole of convicted murderers before service of 25 or 15 year terms, subject to good-time credit. During punishment stage of cases in which death penalty is authorized: permits consideration of all felony convictions of defendant; requires court to impanel new jury if first jury is unable to reach a unanimous verdict on punishment. Financial impact: Indeterminable future increase in state costs.

Analysis by Legislative Analyst

Background:

Under existing law, a person convicted of *first degree murder* can be punished in one of three ways: (1) by death, (2) by a sentence of life in prison without the possibility of parole, or (3) by a life sentence with the possibility of parole, in which case the individual would become eligible for parole after serving seven years. A person convicted of *second degree murder* can be sentenced to 5, 6, or 7 years in prison. Up to one-third of a prison sentence may be reduced through good behavior. Thus, a person sentenced to 6 years in prison may be eligible for parole after serving 4 years.

Generally speaking, the law requires a sentence of death or life without the possibility of parole when an individual is convicted of first degree murder under one or more of the following special circumstances: (1) the murderer was hired to commit the murder; (2) the murder was committed with explosive devices; (3) the murder involved the killing of a specified peace officer or witness; (4) the murder was committed during the commission or attempted commission of a robbery, kidnapping, forceable rape, a lewd or lascivious act with a child, or first degree burglary; (5) the murder involved the torture of the victim; or (6) the murderer has been convicted of more than one offense of murder in the first or second degree. If any of these special circumstances is found to exist, the judge or jury must "take into account and be guided by" aggravating or mitigating factors in sentencing the convicted person to either death or life in prison without the possibility of parole. "Aggravating" factors which might warrant a death sentence include brutal treatment of the murder victim. "Mitigating" factors, which might warrant life imprisonment, include extreme mental or emotional disturbance when the murder occurred.

Proposal:

This proposition would: (1) increase the penalties for first and second degree murder, (2) expand the list of special circumstances requiring a sentence of either death or life imprisonment without the possibility of parole, and (3) revise existing law relating to mitigating or aggravating circumstances.

The measure provides that individuals convicted of first degree murder and sentenced to life imprison-

ment shall serve a minimum of 25 years, less whatever credit for good behavior they have earned, before they can be eligible for parole. Accordingly, anyone sentenced to life imprisonment would have to serve at least 16 years and eight months. The penalty for second degree murder would be increased to 15 years to life imprisonment. A person sentenced to 15 years would have to serve at least 10 years before becoming eligible for parole.

The proposition would also expand and modify the list of special circumstances which require either the death penalty or life without the possibility of parole. As revised by the measure, the list of special circumstances would, generally speaking, include the following: (1) murder for any financial gain; (2) murder involving concealed explosives or explosives that are mailed or delivered; (3) murder committed for purposes of preventing arrest or aiding escape from custody; (4) murder of any peace officer, federal law enforcement officer, fireman, witness, prosecutor, judge, or elected or appointed official with respect to the performance of such person's duties; (5) murder involving particularly heinous, atrocious, or cruel actions; (6) killing a victim while lying in wait; (7) murder committed during or while fleeing from the commission or attempted commission of robbery, kidnapping, specified sex crimes (including those sex crimes that now represent "special circumstances"), burglary, arson, and trainwrecking; (8) murder in which the victim is tortured or poisoned; (9) murder based on the victim's race, religion, nationality, or country of origin; or (10) the murderer has been convicted of more than one offense of murder in the first or second degree.

Also, this proposition would specifically make persons involved in the crime other than the actual murderer subject to the death penalty or life imprisonment without possibility of parole under specified circumstances.

Finally, the proposition would make the death sentence *mandatory* if the judge or jury determines that the aggravating circumstances surrounding the crime *outweigh* the mitigating circumstances. If aggravating circumstances are found *not* to outweigh mitigating circumstances, the proposition would require a life sentence without the possibility of parole. Prior to weighing the aggravating and mitigating factors, the jury

would have to be informed that life without the possibility of parole might at a later date be subject to commutation or modification, thereby allowing parole.

Fiscal Effect:

We estimate that, over time, this measure would increase the number of persons in California prisons, and thereby increase the cost to the state of operating the prison system.

The increase in the prison population would result from:

- the longer prison sentences required for first degree murder (a minimum period of imprisonment equal to 16 years, eight months, rather than seven years);
- the longer prison sentences required for second degree murder (a minimum of ten years, rather than four years); and

- an increase in the number of persons sentenced to life without the possibility of parole.

There could also be an increase in the number of executions as a result of this proposition, offsetting part of the increase in the prison population. However, the number of persons executed as a result of this measure would be significantly less than the number required to serve longer terms.

The Department of Corrections states that a small number of inmates can be added to the prison system at a cost of \$2,575 per inmate per year. The additional costs resulting from this measure would not begin until 1983. This is because the longer terms would only apply to crimes committed after the proposition became effective, and it would be four years before any person served the minimum period of imprisonment required of second degree murderers under existing law.

Text of Proposed Law

This initiative measure proposes to repeal and add sections of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. Section 190 of the Penal Code is repealed.

~~190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in state prison for life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5. Every person guilty of murder in the second degree is punishable by imprisonment in the state prison for five, six, or seven years.~~

Sec. 2. Section 190 is added to the Penal Code, to read:

190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

Sec. 3. Section 190.1 of the Penal Code is repealed.

~~190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:~~

~~(a) The defendant's guilt shall first be determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2, except or a special circumstance charged pursuant to paragraph (5) of subdivision (c) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree.~~

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (5) of subdivision (c) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 190.6 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Sections 190.3 and 190.4.~~

Sec. 4. Section 190.1 is added to the Penal Code, to read:

190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:

(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.

(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 190.6 shall be determined as provided in Section 190.4. If he is

Continued on page 41

Argument in Favor of Proposition 7

CHARLES MANSON, SIRHAN SIRHAN, THE ZODIAC KILLER, THE SKID-ROW SLASHER, THE HILLSIDE STRANGLER.

These infamous names have become far too familiar to every Californian. They represent only a small portion of the deadly plague of violent crime which terrorizes law-abiding citizens.

Since 1972, the people have been demanding a tough, effective death penalty law to protect our families from ruthless killers. But, every effort to enact such a law has been thwarted by powerful anti-death penalty politicians in the State Legislature.

In August of 1977, when the public outcry for a capital punishment law became too loud to ignore, the anti-death penalty politicians used their influence to make sure that the death penalty law passed by the State Legislature was as weak and ineffective as possible.

That is why 470,000 concerned citizens signed petitions to give you the opportunity to vote on this new, tough death penalty law.

Even if the President of the United States were assassinated in California, his killer would not receive the death penalty in some circumstances. Why? Because the Legislature's weak death penalty law does not apply. Proposition 7 would.

If Charles Manson were to order his family of drug-crazed killers to slaughter your family, Manson would not receive the death penalty. Why? Because the Legislature's death penalty law does not apply to the master mind of a murder such as Manson. Proposition 7 would.

And, if you were to be killed on your way home tonight simply because the murderer was high on dope and wanted the thrill, that criminal would not receive the death penalty. Why? Because the Legislature's weak death penalty law does not apply to every murderer. Proposition 7 would.

Proposition 7 would also apply to the killer of a judge, a prosecutor, or a fireman. It would apply to a killer who murders a citizen in cold blood because of his race or religion or nationality. And, it would apply to all situations which are covered by our current death penalty law.

In short, your YES vote on Proposition 7 will give every Californian the protection of the nation's toughest, most effective death penalty law.

A long and distinguished list of judges and law enforcement officials have agreed that Proposition 7 will provide them with a powerful weapon of deterrence in their war on violent crime.

Your YES vote on Proposition 7 will help law enforcement officials to stop violent crime—NOW.

JOHN V. BRIGGS
Senator, State of California
35th District

DONALD H. HELLER
Attorney at Law
Former Federal Prosecutor

DUANE LOWE
President, California Sheriffs' Association
Sheriff of Sacramento County

Rebuttal to Argument in Favor of Proposition 7

The argument for Proposition 7 is strictly false advertising.

- It would not affect the Charles Manson and Sirhan Sirhan cases. They were sentenced under an old law, thrown out by the courts because it was improperly written.
- As for the "zodiac killer", "hillside strangler" and "skid-row slasher", *they were never caught*. Even the nation's "toughest" death penalty law cannot substitute for the law enforcement work necessary to apprehend suspects still on the loose.

But you already know that.

Regardless of the proponents' claim, no death penalty law—neither Proposition 7 nor the current California law—can guarantee the *automatic* execution of all convicted murderers, let alone suspects not yet apprehended.

California has a strong death penalty law. Two-thirds of the Legislature approved it in August, 1977, after months of careful drafting and persuasive lobbying by law enforcement officials and other death penalty advocates.

The present law is *not* "weak and ineffective" as claimed by Proposition 7 proponents. It applies to murder cases like the ones cited.

Whether or not you believe that a death penalty law is necessary to our system of justice, you should vote NO on Proposition 7. It is so confusing that the courts may well throw it out. Your vote on the murder penalty initiative will not be a vote on the death penalty; it will be a vote on a carelessly drafted, dangerously vague and possibly invalid statute.

Don't be fooled by false advertising. READ Proposition 7. VOTE NO.

MAXINE SINGER
President, California Probation, Parole
and Correctional Association

NATHANIEL S. COLLEY
Board Member, National Association for the
Advancement of Colored People

JOHN FAIRMAN BROWN
Board Member, California Church Council

Murder. Penalty—Initiative Statute

7

Argument Against Proposition 7

DON'T BE FOOLED BY FALSE ADVERTISING. The question you are voting on is NOT whether California should have the death penalty. California **ALREADY** has the death penalty.

The question is NOT whether California should have a tough, effective death penalty. California **ALREADY** has the death penalty for more different kinds of crimes than any other State in the country.

The question you are voting on is whether to repeal California's present death-penalty law and replace it with a new one. Don't be fooled by false advertising. If somebody tried to sell you a new car, you'd compare it with your present automobile before paying a higher price for a worse machine.

Whether or not you agree with California's present law, it was written carefully by people who believed in the death penalty and wanted to see it used effectively. It was supported by law enforcement officials familiar with criminal law.

The new law proposed by Proposition 7 is written carelessly and creates problems instead of solving them. For example, it does not even say what happens to people charged with murder under the present law if the new one goes into effect.

As another example, it first says that "aggravating circumstances" must outweigh "mitigating circumstances" to support a death sentence. Then it says that "mitigating circumstances" must outweigh "aggravating circumstances" to support a life sentence. This leaves the burden of proof unclear. As a result, court processes would become even more complicated.

Proposition 7 does allow the death penalty in more cases than present law. But what cases?

Under Proposition 7, a man or woman could be sentenced to die for lending another person a screwdriver to use in a burglary, if the other person accidentally killed someone during the burglary. Even if the man or woman was not present during the burglary, had no intention that anyone be killed or hurt, in fact urged the burglar not to take a weapon along, they could still be sentenced to die.

This is the kind of law that wastes taxpayers' money by putting counties to the expense of capital trials in many cases where the death penalty is completely inappropriate. To add to the waste, Proposition 7 requires two or more jury trials in some cases where present law requires only one.

Don't let yourself be fooled by claims that Proposition 7 will give California a more effective penalty for murder. It won't. **DON'T BE FOOLED BY FALSE ADVERTISING.** Vote NO on Proposition 7.

MAXINE SINGER

*President, California Probation, Parole
and Correctional Association*

NATHANIEL S. COLLEY

*Board Member, National Association for the
Advancement of Colored People*

JOHN FAIRMAN BROWN

Board Member, California Church Council

Rebuttal to Argument Against Proposition 7

ALRIGHT, LET'S TALK ABOUT FALSE ADVERTISING.

The opposition maintains if someone were to lend a screwdriver to his neighbor and the neighbor used it to commit a murder, the poor lender could get the death penalty, even though "he had **NO INTENTION** that anyone be killed."

Please turn back and read Section 6b of the Proposition 7. It says that the person must have **INTENTIONALLY** aided in the commission of a murder to be subject to the death penalty under this initiative.

They say that Proposition 7 doesn't specify what happens to those who have been charged with murder under the old law. Any first-year law student could have told them Proposition 7 will not be applied retroactively. Anyone arrested under an *old* law will be tried and sentenced under the *old* law.

The opposition can't understand why we included the aggravating vs. mitigating circumstances provision in Proposition 7. Well, that same first-year law student

could have told them this provision is required by the U.S. Supreme Court. The old law does not meet this requirement and might be declared unconstitutional, leaving us with no death penalty at all!

If we are to turn back the rising tide of violent crime that threatens each and every one of us, we must act **NOW**.

This citizen's initiative will give your family the protection of the strongest, most effective death penalty law in the nation.

JOHN V. BRIGGS

*Senator, State of California
35th District*

DONALD H. HELLER

*Attorney at Law
Former Federal Prosecutor*

DUANE LOWE

*President, California Sheriffs' Association
Sheriff of Sacramento County*

(g) "Fully Enclosed" means closed in by a ceiling or roof and by walls on all sides.

(h) "Health Facility" has the meaning set forth in Section 1250 of the Health and Safety Code, whether operated by a public or private entity.

(i) "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment but to which members of the public are not normally invited, including, but not limited to, work areas, employee lounges, restrooms, meeting rooms, and employee cafeterias. A private residence is not a "place of employment."

(j) "Polling Place" means the entire room, hall, garage, or other facility in which persons cast ballots in an election, but only during such time as election business is being conducted.

(k) "Private Hospital Room" means a room in a health facility containing one bed for patients of such facility.

(l) "Public Place" means any area to which the public is invited or in which the public is permitted or which serves as a place of volunteer service. A private residence is not a "public place." Without limiting the generality of the foregoing, "public place" includes:

(i) arenas, auditoriums, galleries, museums, and theaters;

(ii) business establishments dealing in goods or services to which the public is invited or in which the public is permitted;

(iii) instrumentalities of public transportation while operating within the boundaries of the State of California;

(iv) facilities or offices of physicians, dentists, and other persons licensed to practice any of the healing arts regulated under Division 2 of the Business and Professions Code;

(v) elevators in commercial, governmental, office, and residential buildings;

(vi) public restrooms;

(vii) jury rooms and juror waiting rooms;

(viii) polling places;

(ix) courtesy vehicles.

(m) "Restaurant" has the meaning set forth in Section 28522 of the Health and Safety Code except that the term "restaurant" does not include an employee cafeteria or a tavern or cocktail lounge if such tavern or cocktail lounge is a "bar" pursuant to Section 25939(a).

(n) "Retail Tobacco Store" means a retail store used primarily for the sale of smoking products and smoking accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco department of a retail store commonly known as a department store.

(o) "Rock Concert" means a live musical performance commonly known as a rock concert and at which the musicians use sound amplifiers.

(p) "Semi-Private Hospital Room" means a room in a health facility containing two beds for patients of such facility.

(q) "Smoking" means and includes the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment used for the practice commonly known as smoking, or the intentional inhalation or exhalation of smoke from any such lighted smoking equipment."

SECTION 2: Severability

If any provision of Chapter 10.7 of the Health and Safety Code or the application thereof to any person or circumstance is held invalid, any such invalidity shall not affect other provisions or applications of said Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of said Chapter are severable.

SECTION 3: Effective Date

Chapter 10.7 of the Health and Safety Code becomes effective 90 days after approval by the electorate.

TEXT OF PROPOSITION 6—Continued from page 29

truth of the charges upon which a finding of probable cause was based and whether such charges, if found to be true, render the employee unfit for service. This hearing shall be held in private session in accordance with Govt. Code § 54957, unless the employee requests a public hearing. The governing board's decision as to whether the employee is unfit for service shall be made within thirty (30) working days after the conclusion of this hearing. A decision that the employee is unfit for service shall be determined by not less than a simple majority vote of the entire board. The written decision shall include findings of fact and conclusions of law.

(f) Factors to be considered by the board in evaluating the charges of public homosexual activity or public homosexual conduct in question and in determining unfitness for service shall include, but not be limited to: (1) the likelihood that the activity or conduct may adversely affect students or other employees; (2) the proximity or remoteness in time or location of the conduct to the employee's responsibilities; (3) the extenuating or aggravating circumstances which, in the judgment

of the board, must be examined in weighing the evidence; and (4) whether the conduct included acts, words or deeds, of a continuing or comprehensive nature which would tend to encourage, promote, or dispose schoolchildren toward private or public homosexual activity or private or public homosexual conduct.

(g) If, by a preponderance of the evidence, the employee is found to have engaged in public homosexual activity or public homosexual conduct which renders the employee unfit for service, the employee shall be dismissed from employment. The decision of the governing board shall be subject to judicial review.

SECTION 4: Severability Clause

If any provision of this enactment or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this enactment which can be given effect without the invalid provision of application, and to this end the provisions of this enactment are severable.

TEXT OF PROPOSITION 7—Continued from page 33

found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.

Sec. 5. Section 190.2 of the Penal Code is repealed.

190.2. The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in the state prison for life without possibility of parole in any case in which

one or more of the following special circumstances has been charged and specially found, in a proceeding under Section 190.1, to be true:

(a) The murder was intentional and was carried out pursuant to agreement by the person who committed the murder to accept a valuable consideration for the act of murder from any person other than the victim;

(b) The defendant, with the intent to cause death, physio-

cally aided or committed such act or acts causing death; and the murder was willful, deliberate, and premeditated; and was perpetrated by means of a destructive device or explosive;

(e) The defendant was personally present during the commission of the act or acts causing death; and with intent to cause death physically aided or committed such act or acts causing death and any of the following additional circumstances exist:

(i) The victim is a peace officer as defined in Section 830.1, subdivision (a) or (b) of Section 830.2, subdivision (a) or (b) of Section 830.3, or subdivision (b) of Section 830.5, who, while engaged in the performance of his duty was intentionally killed; and the defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties.

(ii) The murder was willful, deliberate, and premeditated; the victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding; and the killing was not committed during the commission or attempted commission of the crime to which he was a witness.

(3) The murder was willful, deliberate, and premeditated and was committed during the commission or attempted commission of any of the following crimes:

(i) Robbery in violation of Section 211;

(ii) Kidnapping in violation of Section 207 or 209. Brief movements of a victim which are merely incidental to the commission of another offense and which do not substantially increase the victim's risk of harm over that necessarily inherent in the other offense do not constitute a violation of Section 209 within the meaning of this paragraph.

(iii) Rape by force or violence in violation of subdivision (2) of Section 261; or by threat of great and immediate bodily harm in violation of subdivision (3) of Section 261;

(iv) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288;

(v) Burglary in violation of subdivision (1) of Section 460 of an inhabited dwelling house with an intent to commit grand or petit larceny or rape.

(4) The murder was willful, deliberate, and premeditated, and involved the infliction of torture. For purposes of this section, torture requires proof of an intent to inflict extreme and prolonged pain.

(5) The defendant has in this proceeding been convicted of more than one offense of murder of the first or second degree; or has been convicted in a prior proceeding of the offense of murder of the first or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed to be murder in the first or second degree.

(d) For the purposes of subdivision (e), the defendant shall be deemed to have physically aided in the act or acts causing death only if it is proved beyond a reasonable doubt that his conduct constitutes an assault or a battery upon the victim or if by word or conduct he orders, initiates, or coerces the actual killing of the victim.

Sec. 6. Section 190.2 is added to the Penal Code, to read:
190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in

the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his official duties.

(9) The victim was a fireman as defined in Section 245.1, who while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding, and the killing was not committed during the commission, or attempted commission or the crime to which he was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his testimony in any criminal proceeding.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the Federal Government, a local or state government of California, or of any local or state government of any other state in the United States and the killing was

intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity, as utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211.

(ii) Kidnapping in violation of Sections 207 and 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 285a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case, in which one or more of the special circumstances enumerated in paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Sec. 7. Section 190.3 of the Penal Code is repealed.

190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code, or Section 37, 128, 219 or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or life imprisonment without possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence, including, but not limited to, the nature and circumstances of the present offense, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the expressed or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the expressed or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

However, in no event shall evidence of prior criminal activity

be admitted for an offense for which the defendant was prosecuted and was acquitted. The restriction on the use of this evidence is intended to apply only to proceedings conducted pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in other proceedings.

Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time, as determined by the court, prior to the trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

In determining the penalty the trier of fact shall take into account any of the following factors if relevant:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.

(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence.

(c) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(d) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(e) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

(f) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.

(g) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or the effects of intoxication.

(h) The age of the defendant at the time of the crime.

(i) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(j) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall determine whether the penalty shall be death or life imprisonment without the possibility of parole.

Sec. 8. Section 190.3 is added to the Penal Code, to read:

190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved

the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.

Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.

In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.

(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.

(c) The presence or absence of any prior felony conviction.

(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.

(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.

(i) The age of the defendant at the time of the crime.

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact deter-

mines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.

Sec. 9. Section 190.4 of the Penal Code is repealed.

190.1. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to subdivision (b) of Section 190.1.

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that it is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Wherever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of the separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach a unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by a unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and impose a punishment of confinement in state prison for life.

(b) If defendant was convicted by the court sitting without a jury, the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and impose a punishment of confinement in state prison for life without possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subjected to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subjected to the death penalty, evidence presented at any prior phase of the trial, including any proceeding upon a plea of not guilty by reason of insanity pursuant to Section 1026, shall be considered at any subsequent phase of the trial, if the trier of fact in the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to subdivision (7) of Section 1181. In ruling on the application the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make an independent determination as to whether the weight of the evidence supports the jury's findings and verdicts. He shall state on the record the reason for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes.

The denial of the modification of a death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the people's appeal pursuant to paragraph (6) of subdivision (a) of Section 1238.

—The proceedings provided for in this subdivision are in addition to any other proceedings on a defendant's application for a new trial.

Sec. 10. Section 190.4 is added to the Penal Code, to read:

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to Subdivision (b) of Section 190.1.

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the

special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered in any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).

Sec. 11. Section 190.5 of the Penal Code is repealed.

190.5. (a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 years at the time of commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) Except when the trier of fact finds that a murder was committed pursuant to an agreement as defined in subdivision (a) of Section 190.2, or when a person is convicted of a violation of subdivision (a) of Section 1672 of the Military and

~~Veterans Code, or Section 27, 128, 4500, or subdivision (b) of Section 190.9 of this code, the death penalty shall not be imposed upon any person who was a principal in the commission of a capital offense unless he was personally present during the commission of the act or acts causing death, and intentionally physically aided or committed such act or acts causing death.~~

~~(c) For the purposes of subdivision (b), the defendant shall be deemed to have physically aided in the act or acts causing death only if it is proved beyond a reasonable doubt that his conduct constitutes an assault or a battery upon the victim or if by word or conduct he orders, initiates, or coerces the actual killing of the victim.~~

Sec. 12. Section 190.5 is added to the Penal Code, to read:

190.5. Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

Sec. 13. If any word, phrase, clause, or sentence in any section amended or added by this initiative, or any section or provision of this initiative, or application thereof to any person or circumstance, is held invalid, such invalidity shall not

affect any other word, phrase, clause, or sentence in any section amended or added by this initiative, or any other section, provisions or application of this initiative, which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this initiative are declared to be severable.

Sec. 14. If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and a result thereof, a defendant who has been sentenced to death under the provisions of this initiative will instead be sentenced to life imprisonment, such life imprisonment shall be without the possibility of parole.

If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and a result thereof, a defendant who has been sentenced to confinement in the state prison for life without the possibility of parole under the provisions of this initiative shall instead be sentenced to a term of 25 years to life in a state prison.

EXHIBIT

3

Office of the State Public Defender

770 L St., Suite 1000
Sacramento, California 95814-3362
Telephone: (916) 322-2676
Fax: (916) 327-0459



July 10, 2019

Jason Anderson, District Attorney
Office of the District Attorney
County of San Bernardino
303 W. Third Street
San Bernardino, CA 92415

Re: Public Records Act. Request

Dear Mr. Anderson:

I'm writing to request records pursuant to the California Public Records Act¹ and article 1, section 3(b) of the California Constitution. I seek all records in the possession of your agency regarding to the following:

1. A list of every case in which a violation of Penal Code § 187 was charged by Information, Indictment or Complaint in San Bernardino County from January 1, 2007 to July 8, 2019 and where no special circumstance was filed.
2. A list of every case in which a violation of Penal Code § 187 was charged by Information, Indictment or Complaint in San Bernardino County from January 1, 2007 to July 8, 2019 and where a special circumstance was filed pursuant to Penal Code § 190.2 et seq. from January 1, 2007 to July 8, 2019.
3. A list of every case in which the San Bernardino County District Attorney's Office filed a notice of intent to seek the death penalty or otherwise notified the court and/or defense counsel that the office was seeking the death penalty, from January 1, 2007 to July 8, 2019.
4. A list of every case in which the jury or judge returned a verdict of death in San Bernardino County from January 1, 2007 to July 8, 2019.

If available for any of the above requests, please include the race of the defendant and the race of the victim for each case provided.

As you may know, the California Public Records Act applies to all documents in the agency's possession, regardless of who authored them, and obliges you to respond to

¹ Government Code, sections 6250 et seq.

this request within 10 days (or earlier) if you can make a determination without having to review the records in question. Please send your response to:

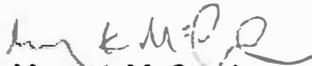
Mary K. McComb
State Public Defender
Office of the State Public Defender
770 L Street, Suite 1000
Sacramento, CA 94814

If you determine that any of the information requested is exempt and will not be disclosed, please provide a signed notification citing the legal authorities upon which you rely.² Please disclose all reasonably segregable non-exempt information from any portions of record you claim are exempt from disclosure.³

We will reimburse for actual costs incurred in duplicating the requested records up to \$25.00. If it appears that your costs will exceed that amount, or if you need to discuss the timing and/or scope of this request, please call Denise Armendariz, *Special Assistant to the State Public Defender*, at (916) 327-7987. You can also reach her by email at Denise.Armendariz@ospd.ca.gov.

Thank you for your time and attention to this matter.

Sincerely,


Mary K. McComb
State Public Defender

² Government Code, section 6255.

³ Government Code, section 6253

November 19, 2020

Mary K. McComb
State Public Defender
Office of the State Public Defender
770 L Street, Suite 1000
Sacramento, CA 94814

Re: Your California Public Records Act ("CPRA") request, dated July 10, 2019 attached and incorporated by reference.

Dear Ms. McComb:

Although we responded to your CPRA with a request for payment via email on July 19, 2019, we did not receive a response or the payment until recently. We began our work on this request when we originally received it and completed it after we obtained the payment on October 31, 2019. In the course of several emails over the month of November, you agreed to extensions to allow us to conduct necessary research.

You request disclosure of:

- 1. A list of every case in which a violation of Penal Code § 187 was charged by Information, Indictment or Complaint in San Bernardino County from January 1, 2007 to July 8, 2019 and where no special circumstance was filed.**

We provide Table 1 in response to this request.

- 2. A list of every case in which a violation of Penal Code § 187 was charged by Information, Indictment or Complaint in San Bernardino County from January 1, 2007 to July 8, 2019 and where a special circumstance was filed pursuant to Penal Code § 190.2 et seq. from January 1, 2007 to July 8, 2019.**

We provide Table 2 in response to this request.

- 3. A list of every case in which the San Bernardino County District Attorney's Office filed a notice of intent to seek the death penalty or otherwise notified the court and/or defense counsel that the office was seeking the death penalty, from January 1, 2007 to July 8, 2019.**

Our office does not have a record of the cases in which we have filed a notice of intent to seek the death penalty or otherwise notified the court and/or defense counsel that the office was seeking the

death penalty. We therefore raise the objection that your request would require us to create a new record. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; *Fredricks v. Superior Court* (2015) 233 Cal.App.4th 209, 227.) You may be able to create this list yourself using the information in Table 2 and our San Bernardino County Superior Court web portal: <https://portal.sb-court.org/Portal/>.

4. A list of every case in which the jury or judge returned a verdict of death in San Bernardino County from January 1, 2007 to July 8, 2019.

We provide Table 3 in response to this request.

Finally, you requested:

If available for any of the above requests, please include the race of the defendant and the race of the victim for each case provided.

5. Race of the victim.

Any and all victim race information we possess is contained in our case file. Accordingly, victim race information is exempt from disclosure under the "investigatory files" exemption in Government Code section 6254, subd. (f), which makes nondiscloseable "any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes ..." Reports from investigating agencies containing victim race information are "materials that relate to the investigation," "properly belong in the file," and therefore "remain exempt subject to the terms of the statute." (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 362; *Haynie v. Superior Court, supra*, 26 Cal.4th at p. 1071.) Records from District Attorney case files are covered by this exemption. (See, e.g., *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Rackauckus v. Superior Court* (2002) 104 Cal.App.4th 169.) Moreover, courts have interpreted the "investigatory file" exemption to extend indefinitely, even after an investigation is closed. (*Williams v. Superior Court, supra*, 5 Cal.4th at pp. 357 and 362.)

Thus, any victim race information that we have not publicly filed or otherwise published is shielded by the investigatory file exemption. (See *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746, 750-751 (*Weaver*).)

Additionally, we must also raise the Right to Privacy and Marsy's Law regarding this information. (Cal. Con., Art. I, Sec. 1; see also Cal. Con., Art. I, Sec. 28 [victim Bill of Rights, a.k.a. Marsy's Law].)

Over the last few weeks, I have conducted research into whether we file victim race information with the court. I searched a representative sample of three death penalty court files and did not find any victim race information in that sample. According to our death penalty coordinator, we do not have a policy or practice regarding filing victim race information with the court on our cases. We do not otherwise publish victim race information.

Based on this research, I have no reason to believe that the *Weaver* exception applies to victim race information in our investigatory file. Moreover, we have an obligation to shield this

information from disclosure under Marsy's Law and the Right to Privacy. Because your request would require us to search hundreds of individual case files to determine whether the *Weaver* exception applies to a given case, we also object to disclosing victim race information on the basis that your request is unduly burdensome. (Gov. Code, § 6255; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 166.)

6. Race of the defendant.

We note that the same investigatory file exemption and Right to Privacy concerns apply to defendant race information. My research into this matter has revealed that we file defendant race information with the court. Therefore, unlike the victim race information, defendant race information is filed publicly. Under *Weaver*, we disclose this information in Tables 1-3.

Finally, we cannot ensure the accuracy of the race information we provide. The defendant race information in our case file is derived from suspect descriptions provided by investigating law enforcement agencies. Our office does not independently verify or track this information. As a result, we cannot attest to the accuracy of the defendant race information we provide.

Sincerely,

Philip P. Stemler
Deputy District Attorney
Specialized Prosecutions Division

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB1405660	Ruben	Adrian	Arriola	H
FVI024908-2	Kevin	Lanzell	Roach	B
FVI024908-2	Kevin	Lanzell	Roach	B
FVA701267	Gilbert	Bernard	Sanchez	H
FSB060091	Javier	Joaquin	Luque	H
FSB060091	Javier	Joaquin	Luque	H
FSB060072	David	Arthur	Weed	B
FSB060072	James	Cleo	Dean	B
FSB060072	Quincy		Porter	B
FVI700319-1	Kassie	Joan	Claw	H
FVI700319-2	Terrence	Lee	Smith	H
FSB700702	Lorenzo	Inez	Arias	H
FSB700702	Lorenzo	Inez	Arias	H
FSB700702	Lorenzo	Inez	Arias	H
FSB700702	Lorenzo	Inez	Arias	H
FVI700493-2	Kenneth	Lamont	Davis	B
FVI700493-1	Steven		Jones	H
FMB700200	Sherhaun	Kerod	Brown	B

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB702190	Andrew	Robert	Ramirez	H
FVA801940	Ivan	Benjamin	Hancock	B
FVA801940	Ivan	Benjamin	Hancock	B
FVA701479	Tyson		Atlas	B
FWV702177	David		Weed	B
FWV702177	James	Cleo	Dean	B
FWV702177	Quincy		Porter	B
FVI800122-1	Kassie	Joan	Claw	H
FBA700552	Garrett	Kazuo	Ige	AS
FBA700552	Garrett	Kazuo	Ige	AS
FBA700552	Lawrence	Parker	Hughes	B
FBA700552	Lawrence	Parker	Hughes	B
FBA700564	Alvaro	Enrique	Flores	H
FBA700564	Alvaro	Enrique	Flores	H
FVI800058	Angel	Robert	Salazar	H
FVI800058	Angel	Robert	Salazar	H
FBA800042	Collin	Lee	McGlaughlin	C
FBA800042	Collin	Lee	McGlaughlin	C

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FBA800042-2	David	Brian	Smith	C
FBA800042-2	David	Brian	Smith	C
FVA800162	Bertha		Martinez	H
FVA800162	Bertha		Martinez	H
FVA800162	Bertha		Martinez	H
FSB800668	Cesar		Pulido	H
FSB800668	Mike		Garcia	H
FVI800808	Jesus		Garcia	H
FVI800808	Jesus		Garcia	H
FVI800808	Jorge	Angel	Lizaraga	H
FVI800808	Jorge	Angel	Lizaraga	H
FVA800950-3	Robert	G	Castro	H
FVA800950-2	Steven	Ray	Eynon	C
FBA800404	Tracy		Petrocelli	C
FSB803778	Gina	Marie	Gomez	H
FBA900039	Thomas	Deshawn	Reed	B
FVI900518	John	Henry	Yablonsky	C
FSB901542	Anthony	Dwight	Scott	B

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB901542	Anthony	Dwight	Scott	B
FSB901542	Clinton	Tyrone	Walker	B
FSB901542	Clinton	Tyrone	Walker	B
FSB903068	Armando		Fonseca	H
FSB903068	Armando		Fonseca	H
FSB903068	Eric	John	Estrada	H
FSB903068	Eric	John	Estrada	H
FVI901482	Cesar	Roberto	Rodriguez	H
FVI901482	Cesar	Roberto	Rodriguez	H
FVI901482-5	Edgar	Ivan Chavez	Navarro	H
FVI901482-5	Edgar	Ivan Chavez	Navarro	H
FVI901482	Eduardo	Gomez	Alvarado	H
FVI901482	Eduardo	Gomez	Alvarado	H
FVI901482-7	Pablo		Sandoval	H
FVI901482-7	Pablo		Sandoval	H
FSB902924	Matthew		Green	B
FSB904563	Rickie	Lee	Fowler	C
FSB904563	Rickie	Lee	Fowler	C

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB904563	Rickie	Lee	Fowler	C
FSB904563	Rickie	Lee	Fowler	C
FSB904563	Rickie	Lee	Fowler	C
FSB903492	Carlos		Dubose	B
FSB903492	Davion		Whitmore	B
FVI902229	Dennis	Lynn	Flechtner	C
FVI902229	Dennis	Lynn	Flechtner	C
FVI902229	Dennis	Lynn	Flechtner	C
FVI902692-3	Forrest	Christopher	Taylor	B
FVI902692-3	Forrest	Christopher	Taylor	B
FVI902692-4	James	Dawntay	Ellis	B
FVI902692-4	James	Dawntay	Ellis	B
FVI902692	Sandra	Maruette	Smith	B
FVI902692	Sandra	Maruette	Smith	B
FVI902692	William	Anthony	Jacobs	B
FVI902692	William	Anthony	Jacobs	B
FWV903084-2	Nolan		Lopez	H
FWV903084-1	Rodolfo	Miguel	Rodriguez	H

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FVI902705	Anthony	George	Gooden	B
FVI1000420-3	David		Gomez	H
FVI1000420-1	Edgar		Gutierrez	H
FVI1000504	William	Edward	Lewis	C
FBA1000308	Cesar	Omar Gonzalez	Rascon	H
FCH1000232	Samir	Mustapha	Wahid	UN
FMB1000505-1	Diana	Marie	Jordan	C
FMB1000505-2	Heidi	Lane	McDermott	C
FSB1101328	Ian	Anthony	Roderiquez	C
FSB1102089	Matthew		Green	B
FBA1100269	Jose	Luis Lopes	Fontenot	H
FBA1100269	Jose	Luis Lopes	Fontenot	H
FSB1102845-1	Gerald	Lee	Nance	C
FSB1102845-2	Lori	Anne	Whipple	C
FSB1103091-1	Emmanuel		Pimentel	H
FSB1103091-1	Emmanuel		Pimentel	H
FSB1103091-1	Emmanuel		Pimentel	H
FSB1103091-2	Jesus		Urzua	H

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB1103091-2	Jesus		Urzua	H
FSB1103091-2	Jesus		Urzua	H
FSB1104013	Antonio	Marquis	Eubanks	B
FSB1104013	Crystal	Ann	Carmelo	H
FSB1104013	John	F.	Dozier	B
FWV1102433	Christopher	Patrick	Wilson	B
FWV1102433	Napoleon	Dajon	Phipps	B
FSB1104807	Robert	Darrell	Johnson	B
FWV1102812-2	Genesi	Leon	Ramirez	H
FWV1102812-1	Hector	Javier	Meza	H
FWV1102812-3	Johnathan		Zuniga	H
FWV1102812-5	Johnny	Eugene	Hernandez	H
FWV1102812-4	Robert	Chico	Zapata	H
FVI1201464	Willie		Hines	B
FVI1200578	Octavio		Romero	H
FVI1200578	Octavio		Romero	H
FSB1201452	Gary	Michael	Gallion	C
FSB1201452	Laurie	Jean	Cone	C

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FSB1201452-2	Shawna	Marie	Bayless	C
FVI1200836-3	Deonta		Walker	B
FVI1200836-1	Larry		Fradiue	B
FVI1200836-4	Randy		Rollins	B
FVI1200836-2	Raymond	Larry	Fradiue	B
FSB1203461-1	Albert	Arturo	Valdez	H
FSB1203461-1	Albert	Arturo	Valdez	H
FSB1203785-3	Jorge		Cinco	H
FSB1203785-3	Jorge		Cinco	H
FSB1203785-2	Jose	Luis	Lopez Galindo	H
FSB1203785-2	Jose	Luis	Lopez Galindo	H
FSB1203785-1	Juan	Carlos	Lomeli	H
FSB1203785-1	Juan	Carlos	Lomeli	H
FBA1200690-1	Christian	Leonard	Bunty	C
FBA1200690-1	Christian	Leonard	Bunty	C
FBA1200690-2	James	Linzy	Franklin	C
FBA1200690-2	James	Linzy	Franklin	C
FVI1300018-1	Bianca	Annie Mae	Stanch	B

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FVI1300018-3	Rayshawn		Stanch	B
FVI1300018-2	Ronald	Dean	Greer	B
FVI1300181-1	Anthony	Christopher	Solis	H
FVI1300181-2	Ruben		Abad	H
FSB1301449-2	Kiesha	Renee	Smith	B
FSB1301449-1	Michael		Mitchell	B
FSB1302024	Jose	Eduardo	Gomez	H
FSB1302024	Jose	Eduardo	Gomez	H
FVA1301388-1	Edward		Morales	H
FVI1302698	Eric	David	Robbins	C
FSB1304695	Sue	Robert	Seiuli	PI
FWV1303835-2	David		Mendez	H
FWV1303835-1	Jorge	Alberto Esteban	Cisneros	H
FSB1305104-1	Freddie	Lee	Weston	B
FSB1400022	Jordan	Vales	Sartorio	UN
FSB1400022	Jordan	Vales	Sartorio	UN
FVA1400155-1	Irene	Pauline	Carreles	H
FVA1400155-2	Jesse	Paul	Giron	H

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FWV1400654	Diego		Dominguez	H
FSB1402026	Vincent	Alex	DeLeon	C
FVI1401637	Jesse	Peyton	Rose	C
FSB1402378	Travon	Lewis	Stokes	B
FSB1402378	Travon	Lewis	Stokes	B
FSB1402378	Travon	Lewis	Stokes	B
FVI1402154	John	Sterling	Payton	C
FMB1400414	Christopher	Brandon	Lee	C
FVI1404194	Charles	Ray	Merritt	C
FVI1404194	Charles	Ray	Merritt	C
FVI1404194	Charles	Ray	Merritt	C
FVI1404194	Charles	Ray	Merritt	C
FSB1500068	Jerome		Rogers	B
FSB1500068	Jerome		Rogers	B
FSB1500074-2	Deserae	Lenore	James	C
FSB1500074-1	Michael	Angelo	Perez	H
FSB1500074-3	Virginia	Marie	Backlund	C
FVI1500234-2	Logan	Anderson	Swank	C

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
FVI1500234-1	Wesley	Elijah	Swank	C
FVI1501365	Frank	Joseph	Covin	H
FVI1501365	Frank	Joseph	Covin	H
FWV1502979-1	David	Nash	McKell	C
FWV1502979-1	David	Nash	McKell	C
FWV1502979-2	Richard	Corry	Roach	C
FWV1502979-2	Richard	Corry	Roach	C
FVI1502585-1	DMorrion	Avery	Holmes	B
FVI1502585-2	Michael	Rayneil	Phillips	B
FVI1503066-2	Angel	Armando	Torres	H
FVI1503066-1	Sebastian		Barbosa	H
FVI1503175	Johnny	Michael	Oliva	H
FSB1600375-1	Desmond	Keyontre	Stevenson	B
FSB1600375-3	Jason		Allen	B
FSB1600375-2	Robert	Almond	Green	B
16CR-029514	Charlie	Banks	Green	UN
16CR-029513	Denzel	William	Mincey	B
16CR-029512	Dontane	Marcel	Noblecole	B

TABLE 2: LIST OF CASES, PC187 FILED WITH SPECIAL ALLEGATION PC190.2 - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT LAST FIRST	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE
16CR-053365	Dean	Eric	Dunlap	C
FWV17000504	Joe		Montgomery	H
FWV17000504	Joe		Montgomery	H
FSB17000616	Roberto	Estrada	Lopez	H
FSB17000616	Roberto	Estrada	Lopez	H
FVI17000756	Kenneth	Scott	Welch	C
FWV17001291	Fernando		Palomera	H
FMB17000171	Rafael	Ari	Aikens	B
FMB17000171	Rafael	Ari	Aikens	B
FSB18002619	Isaac	Paul	Aguirre	H
FSB18002623	Matthew	Ruben	Manzano	H
FSB18002623	Matthew	Ruben	Manzano	H
FSB18002622	Richard		Garcia	H
FSB18003279	Nimeone	Armad	King	B
FSB18003279	Nimeone	Armad	King	B
FSB19001456	Treelle	Lajohn	Potts	UN
FVI19001162	Jackee	Raquel	Contreras	H

TABLE 3: LIST OF CASES, JURY OR JUDGE RETURNED A VERICT OF DEATH - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT FIRST NAME	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE	SENTENCE
FSB022986	Gregory	C.	Whiteside	B	DP
FSB022986	Gregory	C.	Whiteside	B	DP
FSB032026	Lorenzo	Inez	Arias	H	DP
FSB032026	Lorenzo	Inez	Arias	H	DP
FSB032026	Lorenzo	Inez	Arias	H	DP
FSB032026	Lorenzo	Inez	Arias	H	DP
FSB032026	Luis	Alonso	Mendoza	H	DP
FSB032026	Luis	Alonso	Mendoza	H	DP
FSB032026	Luis	Alonso	Mendoza	H	DP
FSB032026	Luis	Alonso	Mendoza	H	DP
FSB057389	John	Wayne	Thomson	C	DP
FVA701267	Gilbert	Bernard	Sanchez	H	DP
FMB700200	Sherhaun	Kerod	Brown	B	DP
FSB904563	Rickie	Lee	Fowler	C	DP
FSB904563	Rickie	Lee	Fowler	C	DP
FSB904563	Rickie	Lee	Fowler	C	DP
FSB904563	Rickie	Lee	Fowler	C	DP
FSB904563	Rickie	Lee	Fowler	C	DP
FVI902692-4	James	Dawntay	Ellis	B	DP
FVI902692-4	James	Dawntay	Ellis	B	DP
FVI1404194	Charles	Ray	Merritt	C	DP
FVI1404194	Charles	Ray	Merritt	C	DP
FVI1404194	Charles	Ray	Merritt	C	DP

TABLE 3: LIST OF CASES, JURY OR JUDGE RETURNED A VERICT OF DEATH - JANUARY 1, 2007 - JULY 8, 2019

COURT CASE #	DEFENDANT FIRST NAME	DEFENDANT MIDDLE NAME	DEFENDANT LAST NAME	DEFENDANT RACE	SENTENCE
FVI1404194	Charles	Ray	Merritt	C	DP

LIST OF DISPO CODES

RACE	DESCRIPTION
A	Asian Indian
AI	American Indian
AR	Arab
AS	Asian
B	Black
C	Caucasian
CH	Chinese
CM	Cambodian
F	Filipino
G	Guamanian
H	Hispanic
J	Japanese
K	Korean
L	Laotian
PI	Pacific Islander
S	Samoaan
UN	Unknown
V	Vietnamese

**PROOF OF ELECTRONIC SERVICE (CAL. RULES OF COURT,
RULE 8.78(F))**

Pursuant to rule 8.78(f) of the California Rules of Court, the undersigned declares under penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause, and am employed by the San Bernardino County District Attorney's Office, located at 303 W. Third St., San Bernardino, California 92415.

On November 20, 2020, I served true copies of the foregoing Proposed Brief of Amicus Curiae California District Attorneys Association in Support of Plaintiff and Respondent the People of the State of California on the parties in this action:

Counsel for Petitioner:

Elias Batchelder, Supervising Deputy State Public Defender
elias.batchelder@ospd.ca.gov

Counsel for Respondent:

Kathy S. Pomerantz, Deputy Attorney General
Kathy.pomerantz@doj.ca.gov

By electronic service: I electronically filed the document with the Clerk of the Court by using the TrueFiling system. The parties to the case are registered TrueFiling users and will be served by the TrueFiling system.

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

Executed on November 20, 2020, San Bernardino, California.



Robert P. Brown

