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11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

14 ERNEST DEWAYNE JONES,

15 Petitioner,

17 v.

18 VINCENT CULLEN, Warden of
 19 California State Prison at San Quentin,

20 Respondent.

Case No. CV-09-2158-CJC

DEATH PENALTY CASE

22 **EXHIBITS IN SUPPORT OF MOTION FOR AN EVIDENTARY HEARING**
 23 **VOLUME 6**

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23 **VOLUME 6**

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28

District attorneys troubled by Prop. 7

by Gayle Montgomery
Political Writer

Although State Prop. 7 would expand California's death penalty, even the Eastbay officials who advocate exe-



cutions are having problems with it.

The measure—sponsored by State Sen. John Briggs—lists 19 special circumstances in which the death penalty may be imposed.

These include murder for financial gain or to prevent arrest; murder of any peace officer, fireman, prosecutor, judge or elected or appointed official; murder involving especially atrocious actions; killing a victim while lying in wait; murder based on a victim's race, religion, nationality or country of origin; and other specialized cases.

For those who have resolved in their own minds whether they favor death penalties, these categories don't appear to pose any great problems. But to those involved in prosecuting cases, there are some legal roadblocks.

Alameda County District Attorney Lowell Jensen says Prop. 7 would be difficult to defend from constitutional attacks.

He says "I think the present law is about as far as you can go in line with Supreme Court decisions."

Jensen and other district attorneys helped write the current law, and they did it after studying the high court's interpretation of death penalties.

Jensen says he also fears that a rejection of the initiative by California voters would be misread by the Legislature and the Supreme Court.

"I would rather have the proposition pass and litigate it in the courts than have it defeated," says Jensen. "I'm going to vote for it. I think from a political standpoint, the voters favor the death penalty, so it ought to be passed."

William O'Malley, Contra Costa County district attorney, has similar reactions.

"I'm not against the death penalty," he says, "but Prop. 7 tries to cover everything at once. When you do that, it means trouble for us in prosecutions

"When there's a constitutional question, you just take as a basic maxim that you're going to have problems. The death penalty gets to be such an emotional thing that it ignores that the real problem with the system is procedure. We get bogged down. It's just too tough to catch 'em and convict 'em."

Defense attorneys have problems with the initiative, both on technical and moral grounds.

Alameda County Public Defender James Hooley takes issue on the section dealing with victims of certain race, religion or nationality.

"When the state starts executing people because of race, you have opened a can of worms," Hooley says.

Hooley also questions the provision that makes the killing of public officials more important than the killing of anyone else.

Continued to Page 12, Col.

Inside Eastbay

tickets, and April 15, 1979 for 30-day tickets. All tickets expire May 15, 1979 for transportation.

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...about pooling things, sharing things, borrowing cars. Those with more money chip in more."

Gay men "assemble together in tasteful bars with ferns — gay women don't have that kind of money. We do a lot of entertaining in our homes" — which they more often rent than own.

Migzen said that because most women were brought up with the notion that if necessary, somebody — husband or grown children — would support them, lesbians fear the notion of working all their lives.

"Where do you go when you're a 45-year-old dyke?" she asked.

The thought of lesbians, Migzen contended, "makes more people sick. Gay men have always been portrayed as buffoons; but still they are expected to be wage earners."

Migzen and Rubenstein say they would support each other if one was out of work. They aren't sure the relationship will last forever, but they're trying.

They have an "unwritten agreement" to remain monogamous — "not because there aren't other attractions," said Rubenstein, "but because it's difficult to sustain a good relationship when there are others involved."

Physical fitness symposium

Pittsburg—Physical fitness is the subject of a week-long symposium at Los Medanos College this week.

Symposium sessions are in the evening from 7 to 9 or 10 p.m., on Friday beginning at noon and all day Saturday.

Tonight's session will cover nutrition, tomorrow's exercise physiology, Thursday's aerobic dancing. Cardio-vascular fitness will be the subject of Friday's session, and podiatrist Richard Bogden will explain how to jog without injury and with maximum benefits Saturday beginning at 9 a.m.

Further information may be obtained from the college's admissions office, 439-2181, ext. 251.

granted Teamsters involved in picket line violence and that Safeway end a computerized work program at the firm's distribution center here.

The latest proposal was worked out by national Teamster officials and representatives of Safeway, Lucky Stores, Alpha Beta and Ralph's at bargaining sessions in San Diego, where the talks moved last Thursday in an attempt to insulate them from the emotion-charged atmosphere in Northern California.

The negotiators said the latest proposal differs from a previous agreement that was rejected by local union officials and their members, but wouldn't say just how it differed.

Chuck Mack, secretary-treasurer of Teamster Local 70 in Oakland, contended, however, that the new proposal is "the same offer, warmed over." He said his local wouldn't even vote on it.

Prop. 7 ...

Continued from Page 11

Contra Costa County's Public Defender Patrick Murphy says he personally opposes the death penalty, "but if the people want to impose it, they have a right to."

Both in Alameda and Contra Costa counties, judges decline to comment on the initiative they may be called to rule upon.

Oakland Mayor Lionel Wilson, a retired judge, says he hasn't researched the initiative, "but I really have trouble with the death penalty itself. There are some criminals I would have absolutely no hesitation in sentencing to death, but my difficulty is in the penalty's application. I just don't believe it has been applied equally."

Law enforcement officials generally favor the measure, even with its legal liabilities.

"I'll vote for it," Contra Costa County Sheriff Harry Ramsay said without hesitation. "The only way to deter murder is to have a death penalty unless there are extenuating circumstances. I think human life is the most precious thing we have."

Miller blasts asbestos-using firms

By Fred Garrison
Staff Writer

San Francisco, Oct. 23 (AP)—The state health department today blasted asbestos-using firms for not following safety rules.

The department said that 50 percent of them were in violation of the rules.

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Lesbanism: sex plays a minor role

By Ann Davis
Staff Writer

Lesbianism is a complex phenomenon, and while it often involves sexual activity, it is not necessarily defined by it. Many lesbians are simply women who love women, and their relationships can be as diverse and varied as those between men and women.



Two women posing for a photograph.

Younger, Brown aide duel on oil

By Bill Marder
Staff Writer

A younger, more progressive aide and a more conservative aide are duking it out over oil policy. The younger aide is pushing for more aggressive action on oil, while the older aide is more cautious.

Officials want to close city jail

By Fred Garrison
Staff Writer

City officials are pushing to close the city jail, citing safety and cost concerns. They argue that the current facility is outdated and does not meet modern standards.

District attorneys troubled by Prop. 7

By Leah Management
Public Affairs

District attorneys are expressing concern over the impact of Proposition 7 on their work. They worry that the new law will limit their ability to prosecute certain cases.

Big Night in Grass Valley

By Larry Libbert
Chronicle Correspondent

Grass Valley, Nevada county.

Governor Brown, a snifter of brandy in one hand, gazed steadily at an undulating belly dancer in a Grass Valley bar the night before last.

The impromptu trip to check out a local bellydancing troupe at a laid-back tavern trapped Brown's two-day swing through rural Northern California this week.

When the governor's grueling campaign schedule ended for the evening in Nevada City, a colorful gold-rush town, the always-restless candidate for reelection set about entertaining himself.

Brown and his party dined at the National Hotel, the century-old inn where the governor eventually stayed the night. His party at dinner included an assortment of aides and supporters, including Ann Getty, wife of San Francisco oil millionaire Gordon Getty, and several women she brought along.

When Brown's party left the adjoining restaurant, the governor counseled the maitre d' to share her tip with the busboys. "Who does think he is?" she asked. "The women at the table paid the check, anyway."

At 11:15 p.m., the governor of the state of California stood in the middle of the narrow main street of Nevada City, trying to

think of something to do before tripping in. A drabgy astrologer freak wandered by to ask, "What's your sign?"

"I'm an Aries, ma'am," Brown replied, sardonically. "That's where it's at."

Brown's party piled into his blue Plymouth for the ten-minute trip from Nevada City to Grass Valley. An aide, followed with five reporters perched on a mattress in the back of her van.

When the Governor entered the crowded bar in Grass Valley, he sniffed a pungent, sweet aroma. "Is there any pot in here?" he asked the bar owner. "We could be in trouble."

The governor, who has denied that he has ever smoked the illegal substance, was assured that he had just caught a whiff of intense.

The governor, kept to one corner of the room, a good distance away from the belly dancers.

During his 15-minute visit to the bar, Brown watched two local women ripple, their well-trained abdomens — one of the stomachs bare, the other shrouded — in the traditional rhythms of the Middle Eastern belly dance.

Never quite speechless, the governor reached for one of his most dependable catch-phrases.

"It's all," he announced, "part of the mosaic."

Major S.F. Opponents Of Prop. 7

District Attorney Joseph Freitas Jr., Mayor George Moscone, two San Francisco supervisors and the former dean of Grace Cathedral announced their opposition yesterday to Proposition 7, the ballot measure to broaden the existing death penalty laws in California.

The initiative, written by State Senator John V. Briggs (Rep-Fullerton), would expand the categories of murder for which capital punishment could be imposed and would increase penalties in other cases.

"We already have a death penalty law designed to withstand judicial challenges," Freitas said at a press conference in his office at the Hall of Justice. "Proposition 7 has not been carefully prepared."

Freitas accused Briggs of seeking to enhance his personal political career through the measure.

In a written statement, Moscone said Proposition 7 was "written with little concern for constitutionality and is filled with gross inequities."

Supervisors Carol Ruth Silver and Harvey Milk also announced their opposition to the measure, along with C. Julian Bartlett, former dean of Grace Cathedral, who said "the ethic of an eye for an eye is simply unacceptable morality for our time."

The press conference was also attended by representatives from the International Ladies Garment Workers Union and the Retail Clerks Union and by Randy Stallings, chairperson of Californians Against Proposition 7.

Viewpoints

Editorials

We oppose Proposition 7

The experts tell us the public is too stupid to understand Prop. 7, the expanded death penalty measure. We don't believe that.

The measure is complicated—so complicated that if you want a death penalty, you should vote against Prop. 7.

That's because in attempting to give the death penalty to almost anyone convicted of first-degree murder, Prop. 7 raises more legal questions than it answers.

There's no doubt that Californians want a strict death penalty law. Every poll and survey shows that. The Tribune favors a stricter death penalty, too. But Prop. 7 is not the way to get one.

For one thing, the state already has a death penalty law. That law was carefully drafted so it would stand up to a court test.

But Prop. 7 would throw all that hard work out the window. It's picked up all the odds and ends left out of the present law in trying to appear "tougher." Instead, it would just be more confusing.

Legal authorities doubt its validity.

William O'Malley, district attorney for Contra Costa County, says he supports the expanded death penalty in principle. "But the court has said laws must be interpreted strictly. Prop. 7 is too broad to stand a court test. It tries to cover all the bases and that's where the trouble is."

Lowell Jensen, Alameda County's district attorney, had a similar response: "Prop. 7 is just not as good as the 1977 death penalty law because it's more vulnerable to legal attack."

Even so, Jensen says he would like to see Prop. 7 pass because it would prove to the Legislature that the public wants a tougher death penalty law.

But the public already has made it clear that it wants a strict death penalty law. People don't have to vote for a bad law to get their message across.

Prop. 7 is so poorly written that if the courts throw out some parts, such as changes in jury procedure, some legal experts say the entire law would then be invalid. California could be left with no death penalty at all.

The public has a right to be heard on an expanded death penalty, but it deserves a law that's more coherent and carefully worded than Prop. 7.

The current law, which is still considered one of the toughest in the country, has a much better chance of passing a court test.

The Tribune recommends voting against Prop. 7.

With an issue as important as the death penalty, the public shouldn't say yes to any law that comes along.

prior to their alteration or termination interests of the plaintiffs failed to rise to liberty interest.

USCA 9th, 75-2717, Sept. 28, 1978, per

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Riverdell Hospital in Oradell, N. J., in 1965 and 1966.

The reporter was jailed for a total of 40 days for refusing to turn over his notes on the case. The defense claimed the material was vital to its case.

"The issues... involved in my jailing remain. They're very important issues affecting journalism, journalists and therefore the public throughout the country, and we're very hopeful the United States Supreme Court will accept our case and review it and rule in our favor," Farber said.

Superior Court Judge Theodore Trautwein ordered Farber's release, ruling it no longer made sense to keep him in jail on an indefinite civil contempt citation since the trial has ended. Trautwein also suspended a six-month jail term for criminal contempt.

"Where compliance becomes meaningless, continued commitment becomes meaningless," Trautwein said.

The Times and Farber have appealed the case to the U.S. Supreme Court. The high court has not decided whether it will consider the issues pitting the rights of a free press against the right of a defendant to a fair trial.

The Times and Farber claim the subpoena was so broad it violated the first Amendment's free press guarantees and a state shield law protection of news sources.

Farber compiled some 4,000 pages of notes on the man he called "Doctor X" in stories on suspected curare poisonings at a small hospital. The stories helped reopen the 10-year-old case and brought Farber a \$75,000 book contract.

Times Executive Editor A. M. Rosenthal said the Farber case has cost the newspaper \$1 million. The

proud of the work I do. I was independent — I like to think honest and hardworking — reporter before the Jascalevich case and I hope to be and expect to be in the future.

District Attorney Freitas Comes Out Against Prop. 7

SAN FRANCISCO (UPI) — San Francisco's district attorney came out against Proposition 7 last week, saying the measure to expand the death penalty was nothing more than a "cruel manipulation" of the voters by state Sen. John Briggs.

"California voters should understand that they are being cruelly manipulated by a man for whom the issue of life and death itself is just so much fuel for his political machine," Joseph Freitas Jr., said of the Republican lawmaker's ballot initiative.

Briggs, of Fullerton, is also the author of Proposition 6, an initiative to ban overtly homosexual teachers from public schools.

Freitas said the present death penalty law is "equal" to or "tougher" than those found in other states and is one that can withstand judicial challenges.

"Proposition 7 provides for certain 'mandatory' executions and will put a very difficult, if not impossible, burden upon juries to determine if 'aggravating circumstances' outweigh 'mitigating circumstances' affecting the numerous possible conditions that could determine the choice of penalty in a given case."

"One of Los Angeles' Best
Dim Sum Luncheons"

... New West Magazine



Rulings Summarized

Continued from Page 1

hearing violated the due process clause of the Fifth Amendment.

Treating the complaint as a challenge to the decision of the administrator, the USCA held that the conclusions of the District Court was correct. Judicial review was barred by 38 U.S.C. 211(a) even if the administrator abused his discretion in making the decision. The benefits in question, being such as the administrator "may furnish" and "within the limits of Veterans' Administration facilities," were committed to agency discretion by law and agency action with respect to them is not subject to judicial review. Furthermore, the USCA found the District Court correct in its conclusion regarding the absence of jurisdiction under 828 U.S.C. Secs. 1361, 2201, 2202 and the absence of consent by the United States to be sued.

Alternately, the USCA found that the plaintiffs fared no better when their complaint was treated as a challenge to an act of Congress. The USCA held that, with respect to the benefits the plaintiffs were receiving prior to their alteration or termination by the administrator, the interests of the plaintiffs failed to rise to the level of a property or liberty interest.

Moore v. Johnson, USCA 9th, 75-2717, Sept. 28, 1978, per Sneed, J. (tc)

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SKIP TRACING

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Poll on capital punishment.

BYLINE: By DAN MORAIN, Times Staff Writer

DATELINE: SAN FRANCISCO

BODY:

For a quarter of a century Stanley Mosk has stood at the heart of the struggle over capital punishment in California.

In 1960, as state attorney general, he suppressed his personal opposition to the death penalty and successfully defeated well-publicized efforts to save kidnaper Caryl Chessman from the gas chamber. In 1972, as a state Supreme Court justice, Mosk joined in the historic decision that deemed the death penalty unconstitutional, a ruling overturned the same year by voters.

Now, Mosk is the senior justice on a court under siege, largely by those who accuse it of defying the will of the people by blocking executions in the state.

Reflecting on this in an interview in his chambers, Mosk, 72, made an observation that may encourage those seeking to return San Quentin's gas chamber to active duty.

Foreseeable Future

"I think you could safely forecast that there will be executions in the foreseeable future," he said. "There may just be a time . . . when most of the legal problems . . . will have been ironed out, so that death penalty appeals will be treated as routinely as all other criminal appeals."

However, for Mosk and three other liberal justices facing election in November, 1986, the question is whether the "foreseeable future" comes soon enough.

Hardly a week goes by without an attack on the court's record on capital punishment. Public officials, led by Gov. George Deukmejian, accuse the court of giving murderers legal rights and remedies beyond reason. Prosecutors across the state have joined the campaign to defeat Chief Justice Rose Elizabeth Bird and other liberal justices in next year's balloting. Legislators threaten to cut off the justices' salaries unless they act more quickly in ruling on capital cases. Survivors of murder victims charge that the justices ignore the rights of victims in their zeal to protect the rights of the accused.

"When such an overwhelming percentage of the people favor the death penalty and when up to now we have not had any executions, I suppose it is inevitable that some segments of the population will place the blame on the courts," Mosk said.

However, while the Supreme Court has become a magnet for criticism, the full story behind the lapse in executions in this state -- the last one was in 1967 - is far more complex.

In tracking it, reporters from The Times examined scores of cases and interviewed legal scholars, prosecutors, defense lawyers, prisoners, crime victims and government figures in this state and across the nation. Mosk was the only California justice who agreed to be interviewed. Justices Joseph R. Grodin and Malcolm M. Lucas submitted written statements in answer to questions.

Most of those interviewed -- including many death penalty supporters -- do not single out the court exclusively in explaining the gas chamber's inactivity.

The impasse is caused in part by shortcomings in California's current death penalty law, adopted by initiative in 1978. The law is ambiguous in some places and sloppy in others. Lined up against that law is perhaps the most sophisticated death penalty defense bar in the nation. These lawyers have had a string of successes spotting flaws in the law and persuading the court to narrow it.

Intense Scrutiny

At the same time, however, the state Supreme Court does give extraordinary scrutiny to death penalty cases. It has extended new rights to defendants in capital cases, rights that often go beyond those accorded to accused killers by the U.S. Supreme Court and by judges in states where executions are now routine.

"The very fact that the penalty is final and irreversible makes it necessary for each judge, no matter what his or her personal views, to be exceedingly careful. Once the sentence is carried out, it is too late to correct mistakes," Grodin said in a written statement to The Times.

While state supreme courts nationwide reverse an estimated 43% of all death cases they decide, the Bird court has reversed more than 90% of the capital cases it has decided -- 33 of the 36 since her appointment. The three cases upheld are on further appeal. In 16 of the reversals, the court overturned the guilty verdict and ordered new trials. In the remaining 17 reversals, the convictions were permitted to stand but the death sentences were revoked and the penalty phase of the trial was ordered retried or the sentences were changed to life in prison.

"None of these holdings is incredible," said University of California, Berkeley, law professor Phillip Johnson. "The decisions are debatable either way. What creates the unusual situation is the pattern. The court comes up with these (reasons to reverse) in every case." Johnson said that a "circumstantial case" can be made that the court strains for reasons to reverse death sentences.

Others, like Stanford law professor Samuel R. Gross, say that questionable sections of the death penalty statute coupled with an innovative defense bar and the sheer complexities of the issues would give pause to the most conservative judges.

Gross said that even if there were "seven Deukmejian appointees" on the court, there would be no rush of executions, although the result might be "a few executions a year in the next couple years."

A review of the 36 cases reversed by the Bird court shows that in addition to rulings limiting evidence, which can come in any criminal appeal, the court has focused attention on at least three areas especially important in capital cases:

- * Its rulings ensure that capital defendants, nearly all of whom are poor, have almost limitless legal resources, at public expense if necessary. That stands in contrast to restrictions on public funds for appeals in many Southern states where executions are most common.

- * It pays particular attention to jury makeup to ensure that people even highly skeptical of capital punishment are allowed to sit on capital cases.

* The justices have narrowed the evidence a prosecutor is permitted to introduce in an effort to persuade a jury to impose the death sentence on a convicted murderer. At the same time, defense lawyers are permitted to introduce virtually any evidence -- a bad childhood, drug addiction, poetry written by one convicted murderer to his daughter -- when asking jurors to impose life in prison without parole rather than death. Prosecutors can only discuss the crime at hand, plus other felonies for which the defendant was convicted.

"The Supreme Court at every turn has made it harder," complained Los Angeles Deputy Dist. Atty. Lonnie Felker, echoing other prosecutors.

Court critics such as Felker blame these and other rulings for a decline in the number of death sentences being handed out in California. From 1981 through 1983, 37 to 40 death sentences a year were recorded. The number dropped to 29 last year. In the first eight months of this year, 12 people received the ultimate sentence.

But defense lawyers, such as Michael G. Millman, director of the California Appellate Project, attribute the drop to the declining murder rate.

Nonetheless, Death Row remains heavily populated. Since California put the capital punishment law back on the books eight years ago, more than 195 men -- but no women -- have been sentenced to death. Only Texas and Florida have condemned more.

California is far from unique in its deliberate pace in resuming executions since 1976, when the U.S. Supreme Court ruled that capital punishment is not cruel and unusual punishment. Today, 37 states have capital punishment laws, yet only 12 states have put prisoners to death. The death penalty is routinely carried out only in the South, where 44 of the 47 executions have taken place.

Supreme courts in three other states -- Massachusetts, Washington and Oregon -- have struck down their capital punishment laws as unconstitutional. A handful of others reverse more death penalty cases than they affirm, although none approaches the 90% reversal rate of the California court.

Defenders of the justices also note that in those states in which supreme courts regularly uphold death sentences, executions are still relatively rare. Georgia's court, for example, has affirmed 140 death sentences, but only six prisoners have been executed. The reasons, they say, is that federal courts step in to reverse many of those decisions. Nationally, federal appeals courts reverse 60% of the capital cases that reach them, the NAACP Legal Defense Fund estimates.

Public Frustration

Still, California's court is under attack like no other in the nation -- and Chief Justice Bird has become the symbol for public frustration over the court's handling of death cases.

A Los Angeles Times Poll on the death penalty found that 75% of the Californians surveyed support capital punishment. The same poll found Bird in trouble among likely voters in the 1986 election, in large part because of their perception that she opposes capital punishment. Only 28% of those polled approved of the chief justice, with 38% opposed and 34% undecided.

A loss by Bird next year would be unprecedented in this state. And she is not the only one in danger of losing. Law-and-order campaigns also have targeted for defeat Justices Grodin and Cruz Reynoso, though they have less liberal records than Bird on capital punishment. Mosk, who also has been targeted by some, has said he may retire before the election.

At the core of the complaint against the court is a contention that the justices let personal opposition to the death penalty color their legal opinions.

'Ideological Commitment'

For example, Kern County Dist. Atty. Edward Jagels, involved in the campaign to unseat Bird, charges that the justices simply "have an ideological commitment to preventing the death penalty from being enforced."

That sentiment even has been heard within the court itself. Former Justice Frank Richardson, who regularly found himself in the minority when he voted to affirm death sentences, expressed it in a 1982 dissenting opinion.

"A personal aversion toward the death penalty is both understandable and widely shared, but the sovereign people have placed the law on the books," he wrote. "It is our responsibility to enforce it. . . . Even in death penalty cases we are under a constitutional mandate not to convert procedural fly specks into reversible errors."

Lucas, Deukmejian's appointee and the only current justice who consistently votes to affirm death sentences, also suggested, albeit more delicately, that personal views have an effect.

"As a practical matter . . . it may be difficult for a justice with strong personal views to suppress those views entirely in attempting to resolve a dispute involving controversial issues," Lucas wrote in a statement to The Times.

With the exception of Mosk, the justices have not said publicly whether they personally oppose or favor capital punishment.

Bird's Position

Bird consistently has taken the most critical view of capital cases. She has cast votes to reverse all 36 death cases to come before her. She never has argued that the death penalty is unconstitutional, but she has made it clear that she treats capital cases with special care.

In her first majority opinion on a death sentence case, she wrote, ". . . Where the moral equities weigh so heavily against an individual, an appellate court has a special duty to apply its objectivity." In another opinion, she wrote, ". . . Nowhere is our exercise of conscientious judgment more critical than in those cases in which the ultimate sanction of death has been imposed."

In several cases she urged the majority to go further than it was willing. She has, for example, advocated that capital cases be tried in three phases: one for the determination of guilt, one to decide whether circumstances qualified the convicted for the death penalty and a third to determine whether to actually apply the death sentence.

She believes that even the most steadfast death penalty opponents should be allowed to sit on juries in capital cases, pointing out that they generally are more skeptical of prosecutors and thus ensure fairer trials for defendants. No other state court has gone that far, although the issue is pending before the U.S. Supreme Court.

Opposite View

At the opposite end of the issue from the chief justice is Lucas. He has voted to reverse some death sentences but wrote that his votes were compelled by past court rulings with which he disagrees.

Additionally, in his statement to The Times, Lucas laid out a position in interesting contrast to Bird's opinions calling for special care in capital cases.

"I do not believe there should be a 'death penalty' exception to the rules of law," Lucas wrote. "Naturally, in light of the extreme nature of the death penalty, each case must be given careful scrutiny, but I feel strongly that the severity of the penalty should not affect our application of the legal principles."

Grodin and Justice Otto M. Kaus are usually counted as votes against death sentences, but in two recent cases both expressed some discomfort with the majority position. They suggested that the court should look for ways to ensure that constitutional standards are upheld without always tossing out capital case verdicts.

In his written response to The Times, Grodin said the court seeks to "implement the will of the people that there be a death penalty, and . . . do so conscientiously and expeditiously." But it also must "review each case with utmost care in order to make certain the law and the Constitution have been complied with."

State Constitution Cited

Kaus, who plans to retire in October, also wrote one of the most significant opinions to date. It interpreted constitutional law to say the court may apply the state Constitution to death penalty cases, as it does with all other cases. By citing the state Constitution rather than the U.S. Constitution, the California court has been able to give defendants broader rights than they would have under rulings of the more conservative U.S. Supreme Court.

Justice Allen E. Broussard is the only sitting justice to have written an opinion affirming a death judgment under the current law -- that of Stevie Lamar Fields, convicted of the 1977 rape, robbery and murder of a USC librarian. He has voted to reverse parts of the 26 other cases he has sat on.

Reynoso voted to affirm one of the 25 cases on which he has sat. He has yet to write a majority opinion in a capital case.

The controversial record of the California Supreme Court on the death penalty predates the current lineup of justices.

The most dramatic example came on Feb. 18, 1972. By a 6-1 vote, the court took a step unique in American jurisprudence by declaring capital punishment a violation of the state Constitution's prohibition of cruel or unusual punishment. With that one stroke, the court spared from the gas chamber more than 100 condemned men, among them Charles Manson and Sirhan Sirhan.

By then, California had executed 501 men and women. But, Chief Justice Donald Wright wrote, "contemporary standards of decency" had changed. The death penalty, he said, "degrades and dehumanizes all who participate."

The court's perception of contemporary standards proved wrong. Gov. Ronald Reagan reacted by saying he had made a terrible mistake appointing Wright. State Sen. George Deukmejian sponsored an initiative to amend the Constitution and reinstate the death penalty. Then as now, a campaign theme was that the court was thwarting the people's will. The initiative was adopted by 68% of the voters in November, 1972.

U.S. Supreme Court Ruling

But by then the U.S. Supreme Court had taken a historic step of its own. Ruling that the state-by-state patchwork of capital punishment laws around the nation made imposition of the death sentence unconstitutionally arbitrary, the high court struck down all remaining death penalty laws in June, 1972. Four years later, the U.S. court cleared the way for reinstatement of capital punishment, but initiated what has grown into an intricate series of legal procedures intended to make application of the penalty more consistent.

Today, because of those rulings, the argument over the death penalty has undergone a fundamental shift, at least in court. Lawyers no longer argue whether putting prisoners to death is moral. Instead, they focus on whether the death penalty in individual cases conforms with rules laid down by the courts.

As far as courts are concerned, "the morality of the death penalty is academic," said Donald Kerson, state deputy public defender in charge of death penalty cases.

As a result, attention more than ever focuses on each word in death penalty statutes. California's law was an initiative sponsored by John Briggs, a politically ambitious state senator from Fullerton. It passed by a 71%-29% margin in November, 1978. But despite its wide support at the polls, it has created major problems, even for death penalty advocates.

Built-In Flaws

"I know one defense attorney who told all his friends to vote for it. He was ecstatic when he saw it," said Deputy Atty. Gen. Edmund McMurray, a death penalty specialist who is critical of the court but who acknowledges that the law has built-in flaws.

Justice Grodin said the court's role in death penalty cases has been "rendered particularly difficult by ambiguities in the death penalty statute."

To date, the court has not affirmed a single death sentence leveled under the Briggs initiative. The three men whose cases were upheld were sentenced under a short-lived 1977 statute authored by then-State Sen. Deukmejian. Deukmejian's law, deemed constitutional by the court, was replaced by the 1978 initiative.

The death penalty was one of two ballot measures promoted that year by Briggs, who at the same time was seeking the Republican nomination for governor. In a recent interview, Briggs, now a Sacramento lobbyist, described it as "just one more thing I was doing," and not a particularly controversial measure. The other item he had on the ballot, one to ban homosexuals from teaching jobs, lost. Briggs dropped out of the gubernatorial race for lack of support. But he had a winner in the death penalty.

To draft the law, Briggs paid \$5,000 to Donald Heller, then new to private practice after serving as an assistant U.S. attorney in Sacramento. Heller had never tried a capital case. Now a defense lawyer, Heller has become a foe of the death penalty and said he has given "several hundred dollars" to Bird's reelection campaign committee.

'Special Circumstances'

What Heller wrote was one of the toughest death penalty laws in the nation. For example, it enumerates 21 conditions -- called "special circumstances" -- that qualify a defendant for the gas chamber, more than any other state.

In Briggs' determination to be "tough," however, he laid the groundwork for much of the law's subsequent unraveling in the courts. Some sections went beyond laws in other states. Other sections were contrary to California court rulings.

Take, for example, the issue of criminal intent. Briggs wanted to make sure that criminals would be sentenced to the gas chamber for committing a robbery or other felony that resulted in a death. He deliberately left out any requirement that prosecutors prove that such defendants intended to kill their victims; of the 37 states with death penalty laws, only six others made a similar omission.

In 1983, citing a decision by the U.S. Supreme Court, the California court noted that flaw and ruled that before a death sentence can be imposed, prosecutors must prove that the defendant meant to kill his victim.

The decision, authored by Broussard, was one of the most far-reaching rendered by the court and even extended the protection beyond those covered by the U.S. Supreme Court ruling. Seven death sentences have been reversed under it so far. Dozens more condemned men will receive partial retrials, according to the attorney general's office.

The California court also has issued rulings in direct conflict with the decisions of supreme courts in those states in which executions have resumed.

For example, California's court deemed unconstitutionally vague a provision in the 1978 initiative calling for the death penalty for a murder that is "especially heinous, atrocious or cruel." The Florida Supreme Court, which has

affirmed 55% of the capital cases it has decided, upheld similar wording in that state's law. The U.S. Supreme Court upheld nearly identical wording in Georgia's law. Thirteen people have been executed in Florida and six have been put to death in Georgia.

California's court, led by Bird, has paid particular attention to jury selection. Bird's concern is that defendants not get what she has called "hanging juries."

In her most far-reaching majority opinion, Bird wrote that when juries are being impaneled, each prospective juror must be questioned about his or her feelings toward the death penalty outside the hearing of other prospective jurors. She cited a study by sociologists showing that people tend to become more willing to find a defendant guilty after hearing repeated questions about the death penalty.

As a result, judges and lawyers, who question potential jurors in groups in all other trials, must address each prospective juror separately in death penalty cases. The procedure adds weeks to the length of capital trials.

Critical of Procedure

Several other states considered California's ruling. Only Washington adopted it. The U.S. Supreme Court specifically criticized the procedure.

There are other contrasts as well. In Georgia, where the Supreme Court has affirmed 75% of its capital cases, it is common for defense lawyers to be paid less than \$1,000 to handle death penalty trials or appeals. Some inmates facing execution in Southern states have no lawyer.

In California, capital defendants find a virtually bottomless purse, a result of legislation and state Supreme Court rulings. Capital defendants can have two lawyers paid for by the state. They can hire at state expense psychologists and psychiatrists, plus other expert witnesses, and full-time investigators who look into every aspect of the crime and the defendant.

Once a defendant in California is sentenced to death, the state public defender's office takes the case. It is "one of the best law firms in the nation," said Stanford law professor Robert Weisberg. The Deukmejian Administration cut the public defender's staff in half in 1983.

Death Penalty Specialists

But to take up the slack, the California Appellate Project was set up by the state Bar, Legislature and the Judicial Council, the administrative arm of the court system chaired by Bird.

The CAP staff is made up of death penalty specialists. If they cannot handle all the pending cases, they hire private lawyers at \$60 an hour, a higher rate than that paid by any other state.

All of this taken together -- the ambiguities in the law, the innovative defense bar, the liberal majority on a court with a liberal tradition -- has left prosecutors accustomed to losing capital cases.

"The chances for reversal going in are very, very high," said Atty. Gen. John Van de Kamp. "You think you get to the end of issues, and something else comes up. For the last seven years, prosecutors have been flying blind without guidance from the court."

"You know you're going to lose. The only question is how," said Deputy Atty. Gen. McMurray.

From the perspective of prosecutors, the situation may get worse before it gets better. The last major undecided issue stemming from the Briggs initiative involves its basic sentencing procedure. The law says a jury "shall" impose a death sentence -- instead of life in prison without parole -- if it finds that

"aggravating factors" surrounding the crime outweigh anything that mitigates a defendant's culpability.

Called Too Mechanical

Defense lawyers say the formula does not allow jurors flexibility to grant mercy. They want wording that would tell jurors they may return verdicts of life in prison even if aggravating circumstances outweigh mitigating evidence.

If the court agrees and applies the ruling strictly, the bulk of the more than 150 men sentenced under the 1978 law would have to go back to court. New juries would be impaneled, and those juries would again consider whether to sentence the defendants to death -- this time using the new rules.

Such a decision would change dramatically how the law is administered, but the death penalty would remain on the books. And with the last major issue resolved, subsequent cases to come before the court would more likely be affirmed, many lawyers believe.

There is, however, one other issue before the U.S. Supreme Court that could affect death penalty cases throughout the nation. The question is whether the death penalty is applied discriminatorily and is thus unconstitutional. The case comes from Georgia, where researchers found that if the murder victim is white, chances are greater that jurors will impose a death sentence than if the victim is nonwhite. A defense win in that case could wipe all death penalty laws off the books.

Same Issue in California

Attorneys for the three Californians whose sentences were affirmed by the state Supreme Court -- Robert Alton Harris, Earl Lloyd Jackson and Fields -- have raised the same issue in their *habeas corpus* appeals.

Harris, 32, is the prisoner believed closest to the gas chamber. He was convicted in 1979 of the murder of two teen-age boys in San Diego, and his appeal already has been rejected once by the U.S. Supreme Court. His case is now before the U.S. 9th Circuit Court of Appeals on *habeas corpus*, the final appellate stage.

Atty. Gen. Van de Kamp has predicted that Harris could be executed within a year. Others are less certain. Deputy Atty. Gen. Michael Wellington, who has prosecuted Harris in appellate courts for five years, said only, "My crystal ball has gotten real cloudy."

THE COURT'S DECISIONS

These are votes by California Supreme Court justice on death penalty cases since 1977. They reflect decisions to uphold convictions; reversals in which new trials were ordered; reversals of special circumstances, which also reversed the penalty, but left intact the conviction; and reversals of penalties, which left intact the conviction and finding of special circumstances.

Justice	Death Penalty Cases	Decision Affirmed	VERDICT		Special Circumstance Reversed	Penalty Only Reversed
			Reversed/ New Trial			
Entire Supreme Court	36	3	16		8	9
Current Justices						
Stanley Mosk	36	7	14		7	8
Rose Elizabeth Bird	36	0	21		7	8
Allen Broussard	27	1	14		7	5
Otto Kaus	27	2	11		7	4
Cruz Reynoso	25	1	14		6	4
Joseph Grodin	21	1	8		7	3
Malcolm Lucas	6	1	1		3	0

Justices who have left
the court or have died

Frank Richardson	21	13	5	2	1
William P. Clark	8	5	1	2	0
Wiley Manual	6	2	1	2	1
Frank Newman	15	3	5	1	6
Matthew O. Tobriner	10	1	3	1	5

Kaus also voted once to return the case to a lower court rather than join the majority to reverse the conviction. In two other cases, he indicated he would affirm guilt, but expressed no clear opinion on penalty where the majority reversed convictions.

Grodin voted once to return the case to a lower court rather than join the majority to reverse the conviction. In another case, he indicated he would affirm guilt, but expressed no clear opinion on penalty where the majority reversed conviction.

Lucas voted once to return the case to a lower court rather than reverse.

DROPPING DEATH SENTENCES

A year-by-year breakdown of the 209 death sentences recorded in California since reinstatement of capital punishment. The numbers include at least 10 defendants whose cases were reversed by the state Supreme Court and who were resentenced to death in new proceedings.

1978	7
1979	20
1980	24
1981	40
1982	40
1983	37
1984	29
1985	12 (First eight months)

Source: State Public Defender.

TRIALS RESULTING IN DEATH SENTENCE

These state Public Defender figures show the disposition of capital trials in selected counties between 1977 and 1984. Counties are listed in order of population.

County	Cases in Which Special Circumstances Were Charged	Death Sentences
Los Angeles	907	60 (6.6%)
Orange	81	14 (17.2%)
San Diego	22	4 (18.1%)
Alameda	88	7 (7.9%)
San Bernardino	36	14 (38.8%)
Riverside	35	8 (22.8%)
San Francisco	18	5 (27.7%)
Ventura	23	3 (13.0%)
Fresno	39	7 (17.9%)
Kern	44	8 (18.1%)
Santa Barbara	17	2 (11.7%)
Imperial	18	0 (0.0%)
Statewide Total	1,847	190 (10.2%)

GRAPHIC: Photo, Justice Malcolm M. Lucas; Photo, Chief Justice Rose Bird; Table, California Supreme Court Death Penalty Decisions; Table, California Death Sentences Statistics; Table, Trials Resulting in California Death Sentences

TODAY August 10
 9:30 a.m.
 Master Calendar
 1:30 p.m.
 Master Calendar

August 20
 9:30 a.m.
 1:30 p.m.
 Master Calendar

August 21
 9:30 a.m.
 Master Calendar
 1:30 p.m.
 Co. no compl
 C-85-2022 - POSE v Howard P Foley
 AOS2521 USA - Golden, for
 disposition or to set

August 22
 9:30 a.m.
 Master Calendar
 1:30 p.m.
 Master Calendar

MAGISTRATE BRAZIL
 Phone 556-2442
 (Area 1) 423 - 17th St
 BRAZIL, Wayne D. Magistrate
 Arnold, Cynthia Secretary
 Panney, Dominique J. Law Clerk

NOTICES
 1 Before filing any written submissions, please call the San Francisco Chambers of Magistrate Brazil (415) 556-2442 for information on the Magistrate's requirements, and on scheduling of hearings on discovery and other motions. For any questions concerning the scheduling of status conferences for cases filed in San Jose, please call the Magistrate's San Jose chambers at (408) 291-7903.

BANKRUPTCIES

JUDGE KING
 Phone 556-3249
 Courtroom 1047A - 15th Floor
 King, David Bankruptcy Judge
 White, S. Virginia Secretary
 Lee, Russell Law Clerk
 Martinez, Virginia Court Deputy
 Hockenberry, Jean Court Reporter

NOTICES
 1 The law and Motion Calendar is called on Friday morning at 10 a.m. Counsel are expected to comply with the law and Motion procedure established by local Rule 203.
 2 Please take notice that Bankruptcy Judge David King will be unavailable during the period commencing August 18, 1988 through August 22, 1988. This notice constitutes a certificate of unavailability for this period.

JUDGE RAINVILLE
 Phone 566-8534
 Courtroom 1047A - 15th Floor
 RAINVILLE, Jack Bankruptcy Judge
 Cash, Nathan Secretary
 Wainwright, Jeff Law Clerk
 Evans, Bruce Court Deputy
 Hockenberry, Jean Court Reporter

NOTICES
 1 The Law and Motion Calendar is called Monday morning at 10 a.m. Counsel are expected to comply with the Law and Motion procedure established by local Rule 203.
 2 Please take notice that Bankruptcy Judge Jack Rainville will be unavailable during the period commencing August 18, 1988 through August 22, 1988. This notice constitutes a certificate of unavailability for this period.

Meeting of Creditors
 Room 15437
TODAY August 10
 9:30 A.M.

- 3-86-1789 - Feliciano San Pablo
- 3-86-1795 - H J Moir
- 3-86-1858 - J A Graves
- 3-86-1870 - S Crain
- 3-86-1895 - Charlene Soucs
- 3-86-1930 - M C Cunningham
- 3-86-1936 - Kups Engineering Corp
- 3-86-1964 - Oulton & Ann Whiting
- 3-86-1974 - Dooker Anderson
- 3-86-1988 - M Umans
- 3-86-2012 - D Mays
- 3-86-1933 - F Pierre Aguilar
- 3-86-1904 - D Davis
- 3-86-1950 - A & M Gilford
- 3-86-1981 - A J Hubbard
- 3-86-1687 - L V Clark
- 3-86-1986 - T Cris
- 3-86-1810 - Gary Gunderson
- 3-86-1827 - Stanton Long
- 3-86-1823 - Keith Mathis
- 3-86-1886 - Margaret Godwin
- 3-86-1901 - K Cleman
- 3-86-1902 - C Johnson
- 3-86-1930 - Archi Crouthers
- 3-86-1931 - Hachway Hartz
- 3-86-1932 - Anthony Hinkley
- 3-86-1933 - U & N Lewerts
- 3-86-1934 - G Davis
- 3-86-1994 - C Morse
- 3-86-2033 - W Wheeler
- 3-86-0415 - Patricia Pronto Bldg Maintenance
- 3-86-1647 - Mabel Dameron
- 3-86-1780 - Hippodote The Law Offices of Juan Hipodote
- 3-86-1860 - S Chan
- 3-86-2023 - J R O'Brien
- 3-86-1784 - Axson Corp
- 3-86-1851 - H A T Haxley
- 3-86-1901 - J S Baker
- 3-86-1903 - M Hambley
- 3-86-1904 - H Haffner
- 3-86-2011 - Elaine Chavez
- 3-86-2032 - H Henry
- 3-86-1964 - William Kelly
- 3-86-1945 - G Italian
- 3-86-1946 - H Lewan
- 3-86-1813 - Denise & Pamela Hubert
- 3-86-1954 - Ted Bacon Jr
- 3-86-1955 - Mary Garcia
- 3-86-1977 - Walter Queen
- 3-86-2017 - Keith Bishop
- 3-86-2018 - Samuel Havest
- 3-86-2019 - Charles Long
- 3-86-1844 - Ron Cook
- 3-86-1771 - Cheryl Coleman
- 3-86-1878 - Farrah & Larita Mahara
- 3-86-1925 - Barbara Hunt
- 3-86-1941 - Brown
- 3-86-2005 - L W Pao oo

Death Penalty 'Blame Briggs, Not High Court' For Reversals

LOS ANGELES — State Supreme Court Justice Cruz Reynoso, who faces voter reconfirmation in November, said last week that the author of the 1978 death penalty law is responsible for the high court's reversal of capital sentences.

"Blame Briggs, don't blame the Supreme Court," Reynoso said on the KIJ-TV talk show, "Mid Morning Los Angeles." "Blame the person who created the confusion."

Reynoso, one of six Supreme Court justices who came before the voters on the Nov. 4 ballot, defended the high court's reversal of 55 of the 58 death sentences it has considered since the Legislature passed the state's 1977 capital punishment law.

Reynoso said that Briggs' 1978 voter initiative, which replaced the 1977 law, was so poorly written that the high court had to overturn many death sentences because they were unconstitutional.

"(Briggs) had bragged he would have the toughest death penalty law in the world, and he did not pay any attention to the guidelines set down by the U.S. Supreme Court," Reynoso said of the Republican from Fullerton who left office in 1981 after 15 years.

"We have been forced to overturn cases to clarify the law. By now we've worked out most of the bugs in the death penalty law."

State Supreme Court Chief Justice Rose Elizabeth Bird has also blamed the writing of the Briggs law for the court's record on death penalty reversals.

Reynoso, the first Hispanic to serve on the high court, was appointed by former Gov. Jerry Brown in December 1981 to fill a vacancy created by the retirement of Justice Matthew Tobriner.

Bird, Reynoso and Associate Justice Joseph Grodin, fellow liberals, have been targeted for defeat in November by several groups who claim they are soft on criminals.

Bird's record of voting to reverse every death penalty sentence that has come before her has attracted the most vocal opposition from her critics. Reynoso, who has voted to affirm some death penalties, defended her.

"I have felt all along that all the justices I served with ... are qualified and deserve to be confirmed and that includes the chief justice," Reynoso said.

\$10 Million Sought in Defamation Suit

NEVADA CITY, Calif. (UPI) — A Nevada County judge heard a \$10 million suit Monday by a former fire chief who charges that he was defamed by the mayor.

Superior Court Judge Frank Francis is expected to issue his decision within the next few days.

The suit was filed earlier this year by insurance agent John Straka, former Grass Valley fire chief, over remarks about him by Mayor Jack Parman after Parman learned of a recall effort against him by Straka and others. The recall failed this year for lack of signatures.

Straka, who seeks damages of \$10 million, contends that Parman defamed him when he told a reporter that he opposed Straka's appointment to fill a vacancy on the Grass Valley City Council.

Councilman Donius Kickback Charges

LOS ANGELES (UPI) — A councilman pleaded innocent Monday to mail fraud and kickback charges stemming from a massive investigation of fraud in military projects ranging from the B-1 bomber to the space shuttle.

Louis Tury, 47, councilman for the San Gabriel Valley community of Rosemead, and another defense industry worker, John Robert Remmert, 63, of Pasadena City, were arraigned before U.S. Magistrate James Pennie. They remain free pending the outcome of their cases.

Remmert, purchasing supervisor for Rantec Electronics in Chatsworth, delayed entering a plea until next Monday before U.S. District Judge Pamela Rymor. Remmert is accused of mail fraud and accepting kickbacks on a project for use in research on the "Star Wars" strategic defense plan.

Tury pleaded innocent to two counts of mail fraud and paying kickbacks on behalf of himself and his machine shop, Tury Precision Machining. Tury was set for Oct. 14 before U.S. District Court Judge Edward Rafeedie.

Judge Strikes Down Sidewalk Sales Law

Enforcement of a San Francisco city ordinance prohibiting charitable organizations from selling on the sidewalks in a 3.5-block area of Fisherman's Wharf was struck down last week by U.S. District Judge William W. Schwarzer.

The ordinance, passed last month by the city Board of Supervisors, was "vague, overbroad" and had a "chilling" effect on First Amendment rights, Schwarzer said in issuing an injunction against the enforcement.

Attorneys for the Hare Krishna sect had brought suit against the city, alleging the ordinance infringed on their right as a non-profit organization to raise funds.

Rink Deventhal, assistant city attorney, said the law had been aimed at preventing non-profit organizations from selling in direct competition with merchants and street artists.

Charitable organizations such as the Krishnas, the San Francisco Nuclear Freeze, Greenpeace and the Lesbian Gay Freedom Day Parade Committee were selling materials that had no connection or reference to their organizations, thus competing directly with street artists, who sell artifacts they have handcrafted, and the merchants, he said.



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July 1, 1990

SECTION: Feature

LENGTH: 1602 words

HEADLINE: The death penalty in California - Closing in on the first execution

BYLINE: Rebecca LaVally;

Rebecca LaVally, former Sacramento bureau manager for Gannett News Service and United Press International, works for the Senate Office of Research.

HIGHLIGHT:

After years of litigation and delay, California inches closer and closer to implementing its death-penalty law for the first time in decades.

BODY:

Governor George Deukmejian, usually not a publicly passionate man, was livid during a hastily called news conference a few hours before Robert Alton Harris had been scheduled for an escorted walk into San Quentin's gas chamber.

Deukmejian told reporters that he and most of the state's other citizens were dismayed that the U.S. Supreme Court had just refused to lift a judge's stay of the execution on grounds that Harris had had inadequate psychiatric assistance at his trial.

"I know that I share with most Californians great disappointment and frustration," Deukmejian declared. Delaying Harris' death would "only result in the denial of justice," he complained, branding the federal appellate system "incompetent."

The death penalty in California - Closing in on the first execution California Journal July 1, 1990

The Republican governor was on safe ground in championing the execution of triple-murderer Harris under a law that Deukmejian himself had carefully crafted while serving in the state Senate 13 years ago. His long campaign to send convicts to their deaths has been consistently endorsed and aided by California voters, who paved the way for Deukmejian to reconstitute the California Supreme Court in a conservative cast early in his second term.

Execution of California's first Death Row inmate since 1967 was just what most voters had in mind when they dumped Chief Justice Rose Bird and Associate Justices Joseph Grodin and Cruz Reynoso from the high Court nearly four years ago. A single issue dominated that historic revolt against the three appointees of Democratic Governor Jerry Brown, himself a foe of capital punishment. Voters were infuriated and justices kept reversing death sentences.

In a shift that legal scholars are calling dramatic and remarkable, the state Supreme Court, now dominated by Deukmejian appointees, has swung away from throwing out most death sentences to upholding most of them. And the pace of review has quickened (see previous story).

Statistics say it all: Within two years of Bird's departure, the Court's rate of affirming capital cases moved from third lowest among the 50 states to eighth highest. The Bird Court reversed 58 death sentences and upheld just four during her decade on the bench. Under her successor, Chief Justice Malcolm Lucas, the Court affirmed 64 of the 89 capital appeals it reviewed in just three years. Among the few who lost an appeal before the Bird Court was Robert Alton Harris -- a fact the governor was quick to point out to reporters as evidence of the appropriateness of his death in the gas chamber.

Deukmejian made capital punishment an issue in both of his successful gubernatorial campaigns, repeatedly pledging to appoint "common sense judges."

In the aftermath of the purge of Bird, Grodin and Reynoso, he could mold the seven-member Court in his own image. It went from a 5-2 liberal majority in 1986 to 5-2 conservative domination in March 1987.

"Rarely has a high Court undergone such a dramatic change in so short a time," wrote Gerald Uelmen, dean of the Santa Clara University School of Law, in last November's Loyola of Los Angeles Law Review.

In a case-by-case comparison of the Bird and Lucas courts on death-penalty rulings, Uelmen concluded: "One is haunted by the sensation that two remarkably different institutions are at work, and the animus driving these two institutions is as different as night and day."

The Bird Court tended to resolve doubts in favor of reversing death sentences; the Lucas Court does not.

The new Court promptly struck down a controversial Bird Court ruling -- responsible by itself for a spate of death-sentence reversals -- requiring that murderers be shown to have had "an intent to kill" before the death penalty could be imposed.

Capital cases, most often involving first-degree murder, are elaborate. Separate phases determine guilt, whether the crime qualifies for the death penalty and, finally, whether death will be imposed. In each phase, troubles and errors can surface: the competence of the defense, the competence of a defendant to stand trial, jury selection, admissibility of

evidence, jury instruction.

The Lucas Court has been more likely than the Bird Court to rule errors harmless, with no effect on the outcome of a case, in upholding verdicts and penalties.

Deukmejian's 1977 law was enacted by the Legislature over Jerry Brown's veto and was expanded 15 months later by voter approval of an initiative authored by ultra-conservative state Senator John Briggs, an Orange County Republican.

Uelmen, who publicly supported Bird, Grodin and Reynoso in 1986, said the Bird Court, in dissecting ambiguities in the Briggs initiative, sought to encourage prosecutors "to use the death-penalty law cautiously and selectively." The Lucas Court, he wrote, "has rejected a supervisory role, and the number of new death judgments is spiraling upwards."

Says Briggs: "I used to get the hell beat out of me for drafting a bad initiative, but it wasn't a bad initiative. We had some bad judges interpreting it. The judges that replaced (Bird, Grodin and Reynoso) agreed with the people and me, and it's nice to be right, after all these years," said Briggs, who is now a lobbyist in Sacramento.

Others who fought the three justices are applauding the new Court's penchant for directing more convicted murderers toward the gas chamber. Alameda County District Attorney John Meehan, who has studied the Bird Court's decisions, says it dragged its feet in reviewing capital cases and would "reach" for reasons to overturn them.

"We had in California a death penalty that was almost a joke," recalls Meehan, former president of the California District Attorneys Association, which targeted the three justices for defeat. "You'd do everything possible to have a clean trial but, by that time, the California Supreme Court was looking for any basis to reverse it. The Bird Court created law retroactively, causing cases to be reversed. It had a tremendous amount to do with their philosophical beliefs about the death penalty itself. We found ourselves as prosecutors trying cases on what we thought the law might be by the time it (the case) reached the California Supreme Court, which is an outrageous position."

Meehan says the Lucas Court has served justice by stepping up the pace of reviewing death cases, usually making its decisions within four months of hearing oral arguments.

"They're hearing a heck of a lot more cases," Meehan said. "Sometimes, with the Bird Court, we had to wait over a year for a decision to come down after oral arguments. There was a constant delay and lack of activity by the Bird Court in even considering these cases. Many defendants were sitting over at San Quentin for years waiting for the California Supreme Court ... You couldn't get the cases litigated. The Lucas Court, procedurally, has really turned it around.

"It's the feeling among prosecutors that the Court is fulfilling its responsibilities as an appellate tribunal," Meehan concludes of the Lucas Court.

But some defense attorneys suggest the new Court, mindful of voter sentiment in 1986, seems to sway with the political wind.

The death penalty in California - Closing in on the first execution California Journal July 1, 1990

"Statistics are the black and white of it," says Elisabeth Semel, president of California Attorneys of Criminal Justice, the state's largest group of criminal defense lawyers. "The meat of it is the lives of the various defendants affected by this enormous swing the Court is taking."

She and others say errors ruled "harmless" by the Court could have enormous consequences for the men on Death Row.

"What I'm concerned about, as I read these opinions, is my perception that ... substantial, compelling issues are being dismissed in a rather perfunctory way by the Court," says Semel. "I'm concerned that efficiency, expediency ... are going to become the bywords of the review of cases rather than questions of individualized justice."

San Francisco capital defense lawyer Robert Bryan, chairman of the National Coalition to Abolish the Death Penalty, complains: "What scares me is ... the arbitrariness of the whole process. A lot of their decisions are shocking. They recognize error, but they say, well, it's harmless."

Law school dean Uelmen contends the Court is "second guessing" the thoughts of jurors when it rules errors harmless during the sensitive penalty phase -- the point at which jurors must decide whether to impose death. He calls the trend "deeply disturbing."

Justices Lucas and Grodin, in remarks published in the Los Angeles Times more than a year before the 1986 election, revealed their stark differences in reviewing death cases for troublesome flaws. Their comments, in a larger sense, define the difference between the courts of Jerry Brown and George Deukmejian.

Lucas said: "I personally do not apply 'tougher' standards to capital cases ... Assuming proper and careful attention is given to reviewing these cases, the law should be uniformly and consistently applied without regard to the penalty selected in a particular case."

Said Grodin: "... the very fact that the penalty is final and irreversible makes it necessary for each judge, no matter what his or her personal views, to be exceedingly careful. Once the sentence is carried out, it is too late to correct mistakes."

Rebecca LaVally, former Sacramento bureau manager for Gannett News Service and United Press International, works for the Senate Office of Research

Art by Rob Wilson (Hourglass with electric chair inside)

LOAD-DATE: September 1, 1992

SIMPSON ISN'T SEEN AS LIKELY CANDIDATE FOR DEATH SENTENCE

Daily News of Los Angeles (CA) - Sunday, July 24, 1994

Author: *Beth Barrett Daily News Staff Writer*

Wealthy, famous and well-represented people almost never end up on Death Row in the United States, and legal analysts say O.J. Simpson would be an unlikely candidate for the death penalty even if he were convicted of killing his ex-wife and her friend.

The District Attorney's Office has yet to decide whether to seek the death penalty in the Simpson case.

"No one (on Death Row) comes close to Simpson's prominence in terms of dollars or stature. It's inconceivable to me he'd end up there," said Palmer Singleton, staff attorney for the Southern Center for Human Rights in Atlanta, a nonprofit group that's represented dozens of prisoners condemned to death.

The District Attorney's Office will not decide for several weeks whether to seek the death penalty in the Simpson case, and may wait until the trial, said Assistant District Attorney Frank Sundstedt, who makes the final decision on capital cases after an eight-member committee considers penalty options.

"We haven't ruled out the death penalty. We haven't ruled out any penalty choice," Sundstedt said.

By law, Simpson first would have to be convicted of at least one count of first-degree - or premeditated - murder and a special-circumstance allegation before he could face either of the state's most serious penalties, the gas chamber or life in prison without parole.

The charges against Simpson include an allegation of at least one such special circumstance - multiple homicide.

Simpson was arraigned Friday in Superior Court on charges he murdered Nicole Brown Simpson and Ronald Goldman. He pleaded not guilty in Municipal Court after his arrest last month.

The district attorney's special circumstance committee hasn't considered the Simpson case because evidence still is being evaluated, Sundstedt said. When the committee meets, Simpson's attorneys will have an opportunity to present mitigating factors in the former football star's favor.

Simpson's case is similar to other potential death-penalty cases only in that it consists of "a whole panoply of factors," Sundstedt said.

Among the most significant factors is a defendant's history of violent crimes. Sundstedt said criminal history was a leading consideration in about 45 cases where the death penalty was recommended over the past 18 months.

"Obviously where there is a documented history of criminal conduct, which is provable over a period of time, that's a major, major factor," Sundstedt said.

Simpson does not have such a history of violent felonies.

In a domestic-violence case, prosecutors almost never seek a death judgment, said Henry Hall, a Los Angeles County deputy public defender in the appellate division.

"Even if this wasn't O.J., my guess is it's not a death case," said Hall, who has handled similar cases, including double murders where the district attorney did not seek the death penalty.

"He has no real criminal record, and there is a tendency for people to understand a little bit more the mind-set of people involved in domestic violence. There also would be a tremendous public outcry to executing an icon," Hall said.

Legal scholars who have studied the country's Death Row populations say it would be practically impossible for jurors to ignore Simpson's larger-than-life public image.

Far more likely to be found on Death Row is the inmate who killed someone during a botched robbery attempt following a life marred by convictions for other violent crimes, said Victor Streib, professor of law at Cleveland State University and a researcher on the nation's Death Row population.

In part that's because the killing of strangers typically is treated as a more serious crime than the killing of intimates, said Samuel Gross, a professor of law at the University of Michigan who has researched Death Row populations.

"Comparatively few people end up on Death Row for killing intimates," Gross said. "It's a reflection of general values in society and what we fear most - that is the predatory criminals who go out looking for their victims. Crimes against intimates are more easily understood or explained as expressions of rage, and most people know from experience how easy it is to lose controls of one's emotions when dealing with relatives, children or spouses."

Simpson's case does not fit a typical domestic-violence pattern in that the second person he's charged with killing, Goldman, was not a relative, Gross said.

Most men on Death Row have a long history of violence, with battery of their wives or lovers only a fraction of that history, Streib said.

"The battering dimension, the spousal abuse, is usually so buried in the sea of other violence that it can't really be concluded as a factor" in condemnations, Streib said. "Most men on Death Row have come from very violent families, live in violent neighborhoods. The people I represented said everyone is violent, everyone carries a gun, everyone batters their wives, everyone batters everyone else."

Overall, who ends up on Death Row can be a legal crap shoot because the death penalty is so infrequently imposed, affecting a very small fraction of murder suspects, Streib said.

While there are about 24,000 homicides committed each year in the United States, only between 230 and 240 people are sentenced to death, he said.

"It's not really a rational process," Streib said. "The best you can do is to stake out some things around the edges" of who likely will be condemned.

As of April 20, there were 2,848 people on Death Row in the United States - 383 in California, according to Death Row, U.S.A., a publication of the National Association for the Advancement of Colored People Legal Defense and Educational Fund in New York City.

More than 98 percent of the inmates on Death Row are male, the publication says.

Nearly 50 percent are white, nearly 40 percent African-American and the remaining 10 percent are a mix of racial groups, the publication says.

Since 1976, when the death penalty was reinstated by 37 states under new constitutional guidelines, 232 people have been executed, the report says.

California, which uses the gas chamber or lethal injection, executed Robert A. Harris in 1992 and David Mason in 1993.

Critics of the way the death penalty is administered cite a disproportionate number of African-American inmates who have been executed in cases where the victims were white.

Since 1976, 80 African-American defendants have been executed for killing white people while in only one case was a white defendant executed for killing an African-American person, according to the figures compiled by the NAACP Legal Defense and Educational Fund.

The disparity in those defendant-victim racial combinations has prompted legal challenges in some parts of the country.

President Clinton's crime bill now before Congress would allow minorities - such as Simpson, who is African-American

- to use statistics in arguing there is a bias in the application of the death penalty along racial lines, said Ronald Tabak, chairman of the death penalty committee of the American Bar Association's section of individual rights and responsibilities in New York City.

"If the background (for the crime) is the same, the likelihood of a person being sentenced to Death Row is far likelier if the person is black and the victim is white than the reverse," Tabak said.

Esther Lardent, chief consultant to the American Bar Association's Postconviction Death Penalty Representation Project in Washington, D.C., said, "In that sense, O.J. Simpson is typical of people on Death Row in that he is African-American and he's accused of murdering two white people."

But, legal experts said the equation in this case is far different because the African-American accused is O.J. Simpson.

"While Simpson is in the demographic category, other factors so dwarf that fact that about all you can say is race matters - but you can't say how it matters, because it's O.J. Simpson," Gross said.

Lardent said the public wants to believe Simpson is innocent, a presumption that is supposed to be universal, but frequently is not.

"I think it's interesting that for an anonymous black man charged with this kind of crime, it's very easy for a jury to be tainted by racial stereotypes," Lardent said. "Here you have someone people like, who are supportive, who don't believe he did it."

Further, Streib said in weighing Simpson's life, a jury likely would find too much good to recommend ending it.

"In many cases, it's hard to get any good things into the record," Streib said. "I've had cases where mothers wouldn't come to court to testify for their sons. In Simpson's case, he'll have character witnesses who are wonderful people, and he's done many good things as well."

Special circumstances that can draw the death penalty in California include multiple murders, lying in wait for a victim, or when the crime is particularly heinous, atrocious or cruel.

In general, the odds of ending up on Death Row increase with the number of victims - increasing measurably from one to two victims, Gross said.

In California, the special circumstance of "lying in wait" recently was expanded under a 1993 state Supreme Court ruling, *People vs. Ceja*, to include murderers who conceal their purpose, not just their person, said John Shepard Wiley Jr. a former federal prosecutor and law professor at the University of California, Los Angeles.

In the majority of death imposition cases, the convicted - in addition to being relatively poor, anonymous, poorly educated and having a prior record of violence - are under-represented, legal scholars said.

"The truth is, in the preliminary hearing alone Simpson's gotten three times the judicial consideration that most accused would from the point they were indicted through their appeal," Singleton said. "His situation couldn't be more different from most capital defendants."

The ABA's Postconviction Death Penalty Representation Project found that when a panel of lawyers was given only the facts surrounding a number of potential death penalty cases it was unable to predict accurately who among the accused had been sentenced to death.

The only factor that stood out in deciding the issue was the number and quality of the defendant's attorneys, Lardent said.

"If the defendant has good lawyers and lots of resources, they can find a lot of information on good character, or they might find evidence of diminished capacity or a lack of impulse control or fetal alcohol syndrome," Lardent said. "The person with funds also can pay for experts to examine witnesses, to testify about his or her psychiatric states. Otherwise, the jury can end up deciding without all the information. We've had numerous horror stories regarding attorneys in which significant issues weren't raised at trial."

Simpson has a criminal defense team that legal experts say is unprecedented - headed by Los Angeles attorney Robert Shapiro, with support from nationally recognized lawyers, F. Lee Bailey and Alan M. Dershowitz, and Santa Clara University Law School Dean Gerald Uelman, Johnnie Cochran Jr. and others.

He also has access to some of the best forensics experts in the country.

By contrast, many defendants are isolated in jail until their arraignment when a public defender is assigned to them, Singleton said.

Deputy public defender Hall said his clients don't have access to the same resources Simpson does, in that the extent of their forensics and legal representation is determined by the court.

"The biggest difference is the ease and speed with which things are done (for Simpson)," Hall said. "It's not to say (public defenders) are less qualified. It's just that his money gives him more options versus what the court lets us do."

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Page: N1

Index Terms: PENALTY DEATH ROW ; INMATE ; PROFILE ; O.J. SIMPSON ; POPULATION ; STATISTIC ; ETHNIC ; BLACK ; LAWYER ; REACTION ; CALIFORNIA ; US ; MURDER ; TRIAL

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SEP 19 1995

Allen's P. C. B. Est. 1888

Expansion of capital crimes nears passage

By MIKE LEWIS
Special to the Herald-Recorder

SACRAMENTO — For the first time in nearly two decades, the state Legislature expanded the list of death penalty crimes, including drive-by shootings and the killing of a juror, during a flurry of voting only hours before the scheduled end of the lawmakers' 1995 session.

The two measures, SB32 and SB9, easily passed the Assembly and enjoyed wide support in the Senate Friday, with only five votes cast against lengthening the list of crimes that are punishable by death.

'Does Absolutely Nothing'

Although the action marks the Legislature's first broadening of California's 1978 voter-approved execution law, the changes carry only moderate legal significance. Among the additions to the growing list of first-degree, death-eligible crimes are fatal shootings from a vehicle, a pre-emptive or revenge-motivated killing of a juror and murder committed during a carjacking.

Opponents pointed out that existing death penalty statutes indirectly cover the new offenses, making the potential new laws superfluous — except for their political mileage.

"This bill, as it relates to carjacking, does absolutely nothing," said Assemblyman Kevin Murry, during debate on the bills. The Los Angeles Democrat said a murder during a carjacking, for example, already was covered under death penalty enhancements related to robberies. "This is simply a grandstanding political bill."

Gov. Pete Wilson is expected to sign both pieces of legislation, written respectively by Democratic Senators Steve Peace of La Mesa and Ruben Ayala of Rancho Cucamonga.

Voters still must approve the measures on a statewide ballot, as they did in 1978 when Proposition 7 returned the death penalty to California and then again in 1990 when Proposition 115 expanded the list of special circumstances leading to capital punishment.

Maximum Hairsplitting?

The latter proposition added a variety of crimes to the death penalty list, including killing a witness to prevent testimony in a juvenile case and killing during the commission of mayhem and rape with the use of an object. Accomplishes to felony murder also could be

See CRIMES, page 15

CRIMES

Continued from page 1

executed without a finding that they intended to kill during the commission of a crime.

Some experts said the new provisions appear aimed at maximum hairsplitting when it comes to adding death penalty crimes.

To pass constitutional muster, death penalty enhancements must have a "narrowing effect" by finely distinguishing those actions deserving of death from other types of murder.

"In the abstract, you could toss a bunch more crap in there, but you have to know your constitutional limits," said George Williamson, chief of the criminal division in the attorney general's office. "You have to be very careful."

The proposed new set of capital crimes concerns some who say the current group of death row inmates is already underrepresented by counsel. "There are problems enough already," said state Deputy Public Defender Emory Allen.

Currently, 48 percent — 122 of the 253 death row inmates with pending appeals — did not have attorneys, according to state Supreme Court records. Allen pointed out that adding additional inmates to that list will "make a bad problem worse."

"It is a tremendous problem getting attorneys for these clients," he said. "It's hard to find people willing to take these cases."

Ayala said the issue of insufficient legal representation didn't come up while the bill went through committees. "I would suggest, however, that you can't always come up with legislation that finds a balance between the crimes people commit and the availability of representation," he said.

The death penalty bills were among several anti-crime measures under consideration as the Legislature Friday wrapped up business after Thursday's private caucuses and battles over the Assembly speakership.

can Assemblyman James Rogan and SB1143 by Sen. Richard Mountjoy, R-Monrovia, criminals defined as sexual predators — those who have committed sex crimes that they are deemed likely to repeat — can be kept in prison longer than their sentences.

Mountjoy's bill passed the Senate unanimously. Rogan's identical bill was expected to win similar support in the Assembly late Friday. Wilson has said he will sign both measures into law.

Inmates with prior sex-crime convictions would serve repeating two-year sentences for mental-health "treatment" until they could prove their appetite for sexual violence is absent under this controversial change in law. Prior to release, a jury would determine if the convicts met the sexual predator standard. If so, the inmate would remain in custody for another two-year term.

A similar law recently was declared unconstitutional in the state of Washington on the grounds that the potential for indefinite jail sentences violated federal due process protections.

• SB1162 by Sen. Tim Leslie, R-Carmel Bay, would extend the "smoke a joint, lose your license" law through 1997. The existing law was set to expire next year. Current law allows for six-month suspensions of drivers' licenses for people convicted of possessing a controlled substance.

• SB1161 by Leslie would enhance the penalties to caregivers who commit lewd or lascivious acts with dependent adults in their care. The bill passed the Assembly on a unanimous vote.

• SB508 by Sen. Tom Campbell, R-Stanford, would tighten the law regulating the disclosure of personal records of jurors after the completion of a trial.

In the past, the court had the option of sealing juror records. Although sealing is now mandatory, the court retains the option of opening those records to a petitioner if good cause can be shown. Campbell's office said the bill by an attempt to "protect" jurors from threat and harassment. It was expected to pass late



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Metropolitan News Enterprise (Los Angeles, California)

September 27, 1995, Wednesday

SECTION: Pg. 9

LENGTH: 501 words

HEADLINE: Wilson Signs Bill Allowing Death Penalty For Murdering Carjackers

BYLINE: By PAMELA MARTINEAU, Staff Writer

DATELINE: SACRAMENTO

BODY: Taking time out from his presidential campaign, Gov. Pete Wilson signed legislation yesterday that would allow prosecutors to seek the death penalty for carjackers who commit murder during a theft.

Saying the bill "sends an unmistakable message to gang bangers," Wilson signed SB 32, by Democratic state Sen. Steve Peace, of Chula Vista.

"I can think of nothing that makes less sense...than killing someone for their automobile," Wilson said during a bill signing ceremony in his office at the state Capitol.

"Criminals need to understand, if they commit this kind of crime, they will pay for it with their lives," Wilson added.

Flanked by members of law enforcement groups and victims' family members, Wilson also called on federal lawmakers to reform the nation's habeas corpus laws, saying the laws "make a mockery of the death penalty."

"It is time for members of both parties in Washington to get real and get to work to remove the kind of federal barriers to see that justice gets done," Wilson said in a halting voice still recovering from throat surgery last April.

"There's no purpose in expanding the death penalty if the federal government continues to stand by idly as the endless maze of appeals and delays minimizes its enforcement," Wilson added in a written statement.

"Old age shouldn't be the leading cause of death on death row," the statement continued.

SB 32 also adds the killing of a juror to the list of special circumstances allowing the use of the death penalty. Murders of judges and witnesses already are special circumstance killings punishable by death.

The bill will take effect Jan. 1, 1996, but because it amends an initiative statute, it must be submitted to the voters for final approval in March 1996.

Another bill that would have made carjackings a capital offense failed to pass the Assembly last year. Wilson claimed that the new Republican majority in the lower house allowed Peace's measure to pass.

Wilson Signs Bill Allowing Death Penalty For Murdering Carjackers Metropolitan News Enterprise (Los Angeles, California) September 27, 1995, Wednesday

Mary Broderick, executive director of California Attorneys for Criminal Justice, criticized the expanded use of the death penalty.

"We think it's unfortunate that both the Legislature and the governor have expanded the death penalty in this way," Broderick said. "They already have the ability in appropriate cases to bring a death penalty case against a person accused of this type of offense. We feel that the Legislature has, in essence, wasted a lot of time just to make some political gain out of a high profile type of crime."

Broderick also criticized Wilson's call for habeas corpus reform, saying political leaders have promulgated a "myth" that habeas corpus laws need to be reformed.

"If there is a need for reform it's with the abuses that stem from racism in the system, prosecutorial misconduct and police misconduct," Broderick said.

According to the Federal Bureau of Investigations, in the City of Los Angeles, there were 3,600 carjackings in 1991. By 1992, the number of carjackings in that city had nearly doubled to 6,297.

LOAD-DATE: October 20, 1995



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Fresno Bee (California)

September 27, 1995 Wednesday, HOME EDITION

SECTION: TELEGRAPH, Pg. A3

LENGTH: 263 words

HEADLINE: Death penalty bill for carjack killings signed by governor;
Legislation won't take effect unless approved by voters in 1996 primary.

BYLINE: Jon Matthews Bee C, Apitol Bureau

DATELINE: SACRAMENTO

BODY:

Gov. Wilson on Tuesday signed legislation to extend the death penalty to murder committed during a carjacking.

The action, which came at a Capitol ceremony, was the first in a series of bill-signings planned for this week by the governor.

The carjacking bill was given final approval by the Legislature earlier this month. It will not take effect unless approved by the state's voters in the March 1996 primary election.

'Reasonable limit'

The measure would allow the death penalty -- or life imprisonment without possibility of parole -- to be imposed specifically for murder during the commission of a carjacking. In addition, it would allow the same punishments for those who murder a juror in retaliation for official actions or to prevent a juror from acting.

Wilson also urged Congress to enact a "reasonable limit" to the legal appeals that can be filed by death-row inmates.

Message to gangs

Decrying carjack-related killings, Wilson said the legislation would send an "unmistakable message" to criminal gang members and other potential offenders.

"They need to understand that if they commit this kind of crime, they will pay for it with their own life.

"It is an act of cowardice, but if that does not shame them -- and clearly it does not -- then they need to know that it will cost them their own lives," the governor declared.

Death penalty bill for carjack killings signed by governor; Legislation won't take effect unless approved by voters in 1996 primary. Fresno Bee (California) September 27, 1995 Wednesday,

As he signed the legislation, Wilson was flanked by law-enforcement officials, legislators and Pamela Brewer, who was the fiance of a man who died three days after being shot in a 1993 Sacramento carjacking.

LOAD-DATE: September 28, 1995



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Los Angeles Times

September 28, 1995, Thursday, Valley Edition

SECTION: Part A; Page 3

LENGTH: 660 words

HEADLINE: DRIVE-BY MEASURE SIGNED;
LAW ENFORCEMENT: GOV. WILSON OKS BILL THAT COULD MAKE SUCH SHOOTINGS A CAPITAL
CRIME IF VICTIMS DIE. VOTERS MUST APPROVE CHANGE.

BYLINE: By JOHN SCHWADA, TIMES STAFF WRITER

BODY:

Gov. Pete Wilson, moving to recharge his flagging presidential campaign by emphasizing a strong anti-crime stand, signed legislation Wednesday that could set the stage for drive-by shooters to receive the death penalty if their victims die.

"Hanging is too good" for drive-by shooters, a truculent Wilson said at a bill-signing ceremony in Van Nuys where he was surrounded by police officers, community leaders and crime victims, including two who survived the Sept. 16 drive-by shooting at Popeye's Fried Chicken restaurant in Reseda.

Wilson also reacted testily Wednesday when reporters asked if his GOP presidential nomination bid was on the ropes.

"It'd be nice if those covering this would spend more time on the issues, less on inside baseball," the governor said, while refusing to provide his own characterization of the fortunes of his latest political bid.

That campaign has in recent days been hamstrung by financial difficulties, staff resignations and continuing signs that California Republicans are not enthused that their party leader wants to go to Washington.

Against this backdrop of sagging prospects, Wilson on Wednesday rehashed his anti-crime record in Sacramento and pulled out the stops to describe his contempt for drive-by shooters.

Wilson signed legislation that lays the foundation for amending the state's 1978 death penalty law to add fatal drive-by shootings to the list of capital crimes. Nineteen types of crimes are now punishable by the death penalty, but voters must approve any expansion.

State Sen. Ruben Ayala (D-Chino), author of the drive-by shooting law, said he expects voters to approve the death

DRIVE-BY MEASURE SIGNED;LAW ENFORCEMENT: GOV. WILSON OKS BILL THAT COULD MAKE SUCH SHOOTINGS A CAPITAL CRIME IF VICTIMS DIE. VOTERS MUST APPROVE CHANGE. Los Angeles Times September 28, 1995, Thursday,

penalty expansion in the statewide election next March.

"We're going to enact tougher laws and speak to these animals who have become so brutal that they callously disregard human life. We'll speak to them in the only language they understand," Wilson said as prepared to sign the drive-by shooting law.

"They have issued a death warrant in random fashion to decent, innocent people and, by God, we'll issue a death warrant to them. We will not tolerate this law of the jungle."

Wilson made his remarks at the LAPD's Van Nuys Division police station. He was joined there by Ayala, LAPD Chief Willie L. Williams and two survivors of the Popeye's shooting, Henry Hagwood and Brian Henderson, both of Tarzana.

Still wearing bandages, Hagwood and Henderson, who were eating at the restaurant when injured, thanked Wilson for signing the legislation. "I'm hoping it'll bring justice to our community," said Hagwood, a Bullock's employee who was shot in the neck.

Daniel Mejia, 22, of Reseda, an alleged gang member, has been arrested in connection with the shooting and charged with murder. The shooting resulted in the death of Samuel Barrios, a 16-year-old gardener who police say was associated with a rival street gang. Barrios' sister and cousin were in the audience Wednesday, applauding Wilson's stand.

Mejia is being held in lieu of \$2.6-million bail. Police expect to make other arrests in the shooting.

Williams also praised the drive-by shooting measure as another useful tool to fight crime.

Wilson used Wednesday's signing ceremony to expand on his anti-crime record, including his proposal to let taxpayers nationwide elect to have 1% of their federal taxes be used for crime-fighting efforts in their own communities.

If the plan were enacted, it could generate up to \$6.5 billion annually, or five times as much tax revenue as the "so-called Clinton crime bill," Wilson said, referring to 1994 legislation backed by the President to provide grants to local jurisdictions to hire up to 100,000 officers.

Wilson grew angry when asked if there was any way to characterize his presidential bid as anything other than disastrous. Wilson said that there was but then refused to elaborate, electing instead to walk away from the microphones and disappear into the Van Nuys Police Station.

GRAPHIC: Photo, Gov. Wilson, flanked by survivors of drive-by shooting, hands signed copy of bill to LAPD Chief Willie L. Williams. ; Photo, In a ceremony in Van Nuys, Wilson signs legislation that would add fatal drive-by shootings to the list of capital crimes, if voters approve. ; Photo, Gov. Wilson talks with relatives of Samuel Barrios, a 16-year-old who was killed in the drive-by shooting at Popeye's restaurant in Reseda. BORIS YARO / Los Angeles Times

LOAD-DATE: September 29, 1995

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March 4, 1996

Sacramento Bee
P.O. Box 15879
Sacramento, CA 95852

To the Editor:

The Bee's editorial of today in opposition to Senate Bill 32 (Peace), currently on the ballot as Proposition 195, is mistaken to say the least.

SB 32 makes three necessary changes to the death penalty law.

The first two changes relating to carjacking related first degree murders are necessary for the simple reason that carjacking is a distinct crime with distinct elements separate and apart from robbery.

On at least 3 separate occasions in the last year, various divisions of the California Court of Appeals has stated that carjacking and robbery are not the same crimes.

Carjacking first degree murders cannot easily be prosecuted as first degree murders under the robbery based special circumstance. Instead, it requires a series of procedural hoops. SB 32 solves the problem by directly making carjacking related first degree murders a special circumstance.

In the case of kidnap-carjacking, the California Supreme Court noted in the Rayford case that kidnaping and kidnaping for the purpose of robbery are crimes distinct from kidnap-carjacking. As in the case of carjacking based first degree murders, SB 32 solves the problem by directly making a kidnap-carjacking first degree murder a special circumstance.

Finally, as to the issue of jurors, the juror special circumstance applies to retaliatory murders of jurors for

SB 32
March 4, 1996
Page Two

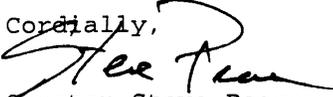
performing a public duty. This is not a new issue with me. Rather, it dates back 11 years to the efforts of then Assemblyman (now Congressman) Gary Condit, myself and other legislators to legislatively rectify drafting errors and other problems with the the 1978 death penalty law.

The juror murder provision is designed to place these kinds of despicable forms of murder in the same category as retaliatory murders of witnesses or judges which are currently special circumstances.

The Bee states that its supports capitol punishment in principle. However, its opposition to SB 32 belies that fact.

Fortunately, I have no doubt that the voters will ratify SB 32 by passing Proposition 195 on the March ballot.

Cordially,



Senator Steve Peace
Author of Senate Bill 32

TODAY'S LEGAL BRIEFING

DAILY APPELLATE REPORT
(Summaries on Page 10)

Civil Procedure: Filing of answer three weeks before hearing for default relief is an substantial compliance. *County of Stanislaus v. Johnson, C.A. 50.*

Education: Failure to exhaust administrative remedies does not exhaust district's contract for services with private company. *Personnel Commission of the Barstow Unified School District v. Barstow Unified School District (Mayflower Contract Services, Inc.), C.A. 40.*

Employment Law: Corporation acting as ERISA "fiduciary" while misdirecting employees can be sued for individualized equitable relief. *Varty Corp. v. Howe, U.S. Supreme Court.*

Environmental Law: County pollution control district can regulate emissions from terminal where pesticides are used. *Horner Farmington, Inc. v. County of San Diego Air Pollution Control District, C.A. 40.*

Environmental Law: Private suits to recover prior costs of toxic cleanup, not posing continuing threat, aren't permitted. *Meghrig v. K/C Western Inc., U.S. Supreme Court.*

Environmental Law: Federal Energy Regulatory Commission must balance environmental factors when ruling on power project application. *Raising Co. v. Federal Energy Regulatory Commission, U.S.C.A. 90.*

Immigration: Alien convicted of cocaine possession isn't entitled to voluntary departure under statute. *Batasayo v. INS, U.S.C.A. 90.*

Maritime Law: Temporary laborer hired for ship repairs cannot sue vessel owner under Jones Act for injuries. *Heise v. The Fishing Co. of Alaska Corp., U.S.C.A. 90.*

Criminal Law and Procedure: Reversal of felony murder conviction doesn't bar retrial on premeditated, deliberate first degree murder. *People v. Wilson, C.A. 2nd.*

BAY AREA

Gov. Pete Wilson named Associate Justice Michael P. Harkin to replace Ming Chin as presiding justice on the County Court of Appeal and nominated Alameda Superior Court Judge James Lamden to succeed Pheasant.

This week in Bottom Line: DreamWorks to purchase 40 percent of Pacific Data Images... *Asian Corp.* made an initial public offering of approximately 4.2 million shares... *Vanstar* flooded the market with roughly 14.7 million shares.

CALIFORNIA/THE WEST

A federal judge has ordered the California Department of Transportation to demonstrate its compliance with an injunction requiring it to control pollution flowing into storm drains that empty into the ocean.

U.S. Attorney Alan Bensie sent an extraordinary letter to the San Diego Union-Tribune that indicates the investigation of judges here, is, for now, limited to the three former judges and one lawyer already named in numerous court filings and news stories.

FORUM

The assertion that prosecutors are using the "three-strikes" law in a biased manner against blacks takes the public policy debate to new depths.

In its rush to crack down on terrorism, Congress has voted to place unconstitutional limits on habeas corpus appeals.

FOCUS

When it comes to adjudication procedures regarding possible violations of the law, there is much between the lines worth knowing.

NATION

The lawyer for a man accused of using a bank's assets to reimburse contributions to President Clinton's 1990 and 1992 political campaigns said he hopes to call the president as a witness.

A federal appeals court has ruled that a Texas law school may not discriminate against white applicants in favor of blacks and "Caucasian Americans to make up for a 'perceived racial imbalance.'"

United Airlines and the builder of United's glitch-ridden automated baggage system at Denver International Airport stepped into their latest dispute over the system.

WABCAM radio has dropped Alan Dereshowitz's cabin show after the defense lawyer called fellow host Bob Grant a racist.

INDEX

Opinions	13	Legal Notices	25
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Events	10	Rollings	9

Classified Advertising: Second Section

Workers Mised on Benefits Can Sue

The employer can be held liable for breach of fiduciary duty to each individual, the Supreme Court decides.

By David F. Pitts
Daily Journal Staff Writer

WASHINGTON — In a major victory for workers, the Supreme Court ruled 5-3 Tuesday that when an employer misleads its workers about changes in benefits, they can sue the employer individually for equitable relief for breach of fiduciary duty.

Lawyers for employers predicted the decision, which comes in a growing area of dispute, will spur more suits alleging breach of fiduciary

duty by workers unhappy with benefit plans covered under the Employee Retirement Income Security Act of 1974 (ERISA), says Justice Stephen G. Breyer, writing for the court in affirming the 8th U.S. Circuit Court of Appeals. "We are not aware of an ERISA-related purpose that denial of a remedy would serve. Rather, we believe that granting a remedy is consistent with the literal language of the statute, the act's purposes, and pre-existing trust law," *Varty Corp. v. Howe*, 96 Daily Journal D.A.R. 3151.

Breyer's 25-page opinion said the employer in this case clearly was acting as a fiduciary and then violated the fiduciary obligations ERISA section 404 imposes on benefit plan administrators. And the 1985 decision in *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, holding that suits under section 409 are allowed only for the benefit of the plan — not individual employees — does not control, because individual relief is "appropriate" under ERISA section 402(a)(3), he added.

In a 26-page dissent, Justice Clarence Thomas, joined by Justices Sandra Day O'Connor and Antonin Scalia, said the decision cannot be squared with the holding in *Russell*, and that the majority's holdings that the employer was subject to fiduciary obligations under ERISA and that section 402(a)(3) provides individual relief for breach of fiduciary duty "cannot be squared with the text" of

ERISA. "Because these holdings are fundamentally at odds with the statutory scheme created by Congress, I respectfully dissent," Thomas said. Robert N. Eccles of the D.C. office of Law Aspects O'Melroy & Myers, who filed an amicus brief for Varty on behalf of many corporations including Rockwell International Corp. and Eastern Kodak Co., said the decision will "lead to more litigation in the area of whether something was done in a fiduciary capacity" and "push the typical remedy for someone not entitled to benefits under the plan to seek relief."

The decision also "leads to having more ERISA claims as exclusive, rather than claims under state law, because 'now there is less pressure to look outside ERISA for a remedy,'" Continued on Page 8

Death Penalty Quietly Moves Into Broader Territory

Propositions 195 and 196, with little fanfare or opposition, add three capital-punishment crimes, yet there are some constitutional questions.

By Mike Lewis
Daily Journal Staff Writer

SACRAMENTO — Lacking the first-time death penalty issues usually created, a push to add new capital offenses to the list of crimes punishable by execution is quietly headed to voters on the March 26 ballot.

By most accounts, the two death-penalty measures are likely to pass. In fact, so confident are the supporters of the two initiatives, Propositions 195 and 196, that no campaign is being mounted to their favor. Just as little noise is being mounted in opposition.

"It really is kind of leaded against us," said Lance Lindzey, director of Death Penalty Focus of California, an anti-capital punishment group based in Oakland. "There is large public support for the initiatives, and it has been hard for us on the abolitionist side to get our voices heard."



DANE R. GILLETTE — You can't look at the sheer number [of proposed modifications] but how they fit into legal categories.

Proposition 195 would add to the list of death-penalty crimes the offenses of murder while carjacking and retaliatory killing of a juror. Proposition 196 adds driver's spoons to the list of special circumstances that make murder punishable by death. Various state polls show the death penalty running at 70 percent approval.

The two initiatives represent the final step in the Legislature's first successful move to expand the death penalty in more than a decade.

Proposition 195 began last year as Sen. Steve Price's SB32, which passed the Assembly and Senate with only nine veto cases in opposition.

Sen. Ruben Ayala's SB9, now Proposition 196, passed both houses with 15 votes against it. Gov. Pete Wilson signed both bills in late September, but because they amend the death penalty, they still must receive voter approval in the March primary.

The question arises, of course, as to just

how far lawmakers can go in expanding and retreating capital punishment statutes.

The U.S. Supreme Court has ruled that any state modifications of capital punishment laws must make a "narrowing" effect, meaning that they must make the death-penalty crimes more specific, not less. The potential three new amendments, added to the existing 10, discover special circumstances, could expand the law to its constitutional limit, according to some legal experts.

But Dan R. Gillette, the attorney general's chief penalty coordinator, said as long as the modifications continue to fit within constitutional guidelines, the total number of special

Bill Would Allow for a Venue Change By Prosecutor

But the measure, which would also tighten the requirements for such a change by either side, raises constitutional questions, experts say.

By Mike Lewis
Daily Journal Staff Writer

SACRAMENTO — As part of a wide-ranging push for criminal trial reform, the Assembly Judiciary Committee on Tuesday voted to allow prosecutors to apply for a change of venue while at the same time making it harder for a judge to grant such a request from either side. In addition, the measure would require judges to hold a hearing before they grant the change, and would require the parties to call the witnesses called by the other side to the courtroom, which later would be tried.

The changes, said the bill's author, Assemblyman Dan Goldsmith, 8 (S.W.), "will give the parties a right to a fair trial" and "level the playing field between the prosecution and the defense." "The People have a right to a fair trial," he said. "The constitution, which later passed the Senate, would require the parties to call the witnesses called by the other side to the courtroom, which later would be tried."

The measure would also require the parties to call the witnesses called by the other side to the courtroom, which later would be tried. "The People have a right to a fair trial," he said. "The constitution, which later passed the Senate, would require the parties to call the witnesses called by the other side to the courtroom, which later would be tried."

Value-Neutral News, an agency with the American Civil Liberties Union, testified that the bill isn't needed. According to the Judicial Council, the policymaking body of the state's courts, California has averaged seven changes of venue annually since 1990. And since the trend has been going down, not up. From 1981 through 1993, the state averaged eight

Senate Rivals Trade Hits Over War Chest Issue

Campaign finances and backroom dealing are at the heart of the dispute.

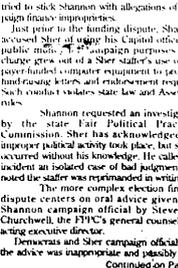
By Tom Drexler
Daily Journal Staff Writer

SACRAMENTO — The campaign finance controversy that has flared in a heated Senate race is rife with political intrigue and legal questions surrounding one of the law surviving parts of an election reform initiative passed by voters in 1988.

With Democrats trying to hold on to their slim upper-house majority, the campaign to fill the 11th District Senate seat is crucial. The Republican Tom Campbell is crucial. The two main adversaries in the March 26 election are Democratic campaign official by Steven G. Churchwell, the FPCC's general counsel and acting executive director.

Democrats and Sher campaign officials say the move was inappropriate and possibly gave the move was inappropriate and possibly gave

Moving Up



Judge James Lamden of the Alameda Superior Court has been named to fill a vacancy on the 1st District Court of Appeal. See story, page 2.

ABA Comes Out In Favor of Universal Citing

A committee of the American Bar Association is recommending the nationwide adoption of a universal legal citation standard that would reduce conflict and confusion caused by the growth in electronic distribution of court opinions.

The ABA's Special Committee on Citation Issues, which has been studying the issue since last fall, said in a draft report released Monday that all court jurisdictions should begin providing official citations to rulings containing the year, the court, a sequential number for the decision and paragraph numbers.

The format system would allow opinions to be cited regardless of their source, whether in print or electronic form. Many jurisdictions do not require published opinions as precedent until they have appeared in print.

Death Penalty Quietly Moves Into Broader Territory

Propositions 195 and 196, with little fanfare or opposition, add three capital-punishment crimes, yet there are some constitutional questions.

By Mike Lewis
Daily Journal Staff Writer

SACRAMENTO — Lacking the firestorm that death penalty issues usually create, a push to add new special circumstances to the list of crimes punishable by execution is quietly headed to voters on the March 26 ballot.

By most accounts, the two death-penalty measures are likely to pass. In fact, so confident are the supporters of the two initiatives, Propositions 195 and 196, that no campaign is being mounted in their favor. Just as telling, none is being mounted in opposition.

"It really is kind of loaded against us," said Lance Lindsey, director of Death Penalty Focus of California, an anti-capital punishment group based in Oakland. "There is large public support for the initiatives, and it has been hard for us on the abolitionist side to get our voices heard."

Proposition 195 would add to the list of death-eligible crimes the offenses of murder while carjacking and retaliatory killing of a juror. Proposition 196 adds drive-by shootings to the list of special circumstances that make murder punishable by death. Various state polls show the death penalty running at 70 percent approval.

The two initiatives represent the final step in the Legislature's first successful move to expand the death penalty in more than a decade.

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The question arises, of course, as to just



DANE R. GILLETTE — "You can't look at the sheer number [of proposed modifications] but how they fit into [legal] categories."

how far lawmakers can go in expanding and refining capital punishment statutes.

The U.S. Supreme Court has ruled that any state modifications of capital punishment laws must have a "narrowing" effect, meaning that they must make the death-eligible crimes more specific, not less. The potential three new amendments, added to the existing 19 discrete special circumstances, could expand the law to its constitutional limit, according to some legal experts.

But Dane R. Gillette, the attorney general's death penalty coordinator, said as long as the modifications continue to fit within constitutional guidelines, the total number of special

circumstances is irrelevant.

He added that if the attorney general's office saw something potentially unconstitutional in new legislation, the Legislature would be warned.

"You can't look at the sheer number [of proposed modifications] but how they fit into [legal] categories," he said. "We are less concerned about the total number than we are about the circumstances in any particular case. You look at what is done in other states and see if California matches up."

However, he added, it is conceivable, although unlikely, that those who seek to fur-

Continued on Page 7

Bill Would Allow Venue Change By Prosecutors

■ But the measure would also tighten requirements for change by either side, constitutional experts say.

By Mike Lewis
Daily Journal Staff Writer

SACRAMENTO — A legislative push for a change in the Assembly Judicial Committee voted to allow prosecutors to change venue without making it harder for a defendant to move from either side. AB2145, which would require prosecutors to get approval from the committee, could be granted — proponents called it "pollsters' who see should or shouldn't."

The changes, said assemblyman Jan G. speed the pretrial phase between the prosecutor and the defense. "The People have a the committee, who

The mandatory pretrial explained, would allow the extensive pretrial to determine coming that process to a focused examination.

The bill would require granting a change in that a juror pool is available. "With the return from a prosecutor or then would conduct whether an unbiased

Valerie Small National American Civil Liberties Council, the policy courts, California has of venue annually the trend has been 1990 through 1993

Senate Rivals Trade Hits Over War Chest Issue

■ Campaign finances and backroom dealing are at the heart of the dispute.

By Tom Dresslar
Daily Journal Staff Writer

SACRAMENTO — The campaign finance

tried to stick Shannon with allegations of campaign finance inapproprieties.

Just prior to the funding dispute, Shannon accused Sher of using his Capitol office and public money for campaign purposes. The charge grew out of a Sher staffer's use of taxpayer-funded computer equipment to produce fund-raising letters and endorsement requests. Such conduct violates state law and Assembly

Moving Up



ABA Committee In Favor of University

By James Evans
Daily Journal Staff Writer

A committee of the American Bar Association is recommending the adoption of a university

Initiatives Push Death Penalty Into Broader Territory

Restaurant C
McDonald's

Continued From Page 1

ther modify the law eventually could run out of legal territory to carve out.

The argument over the death penalty in California, both opponents and supporters agree, has long since moved away from a question of whether the state should impose death for the most egregious murders and toward a debate over which crimes ought to qualify for capital punishment.

Legal experts said the two propositions only marginally expand what crimes are death-eligible.

Under existing law, criminal defendants are eligible for the death penalty or life without parole when found guilty of first-degree murder with one or more special circumstances, such as murder committed during rape, robbery or kidnapping. Technically, Proposition 195's carjacking-murder already falls under existing law to make the crime a death or life-without-parole candidate because such acts involve robbery, experts said.

Peace, in official ballot arguments supporting Proposition 195, said that adding the specific carjacking circumstances to

the statute reduces the number of legal hoops a prosecutor must pass through to make a capital case.

"On at least three separate occasions in the last year, various divisions of the California courts have held that carjacking and robbery are not the same crime," wrote Peace.

To support Proposition 195's inclusion of retaliatory killing of a juror, Peace argued that the death penalty already covers the retaliatory murder of judges, prosecutors and witnesses.

Experts note that Proposition 196's inclusion of drive-by shootings also can be covered under existing law if the shooting is intentional murder and committed with a special circumstance, such as more than one killing.

However, Proposition 196 raises one potential legal quandary, according to legal observers. Because it would make all felony murder drive-by shootings potential capital offenses, it creates a legal distinction regarding the location of the shooter. For example, they noted, a murder from inside a moving car would be a capital offense while the same type of kill-

ing by a shooter standing outside the vehicle might not be a capital crime.

The Legislature first placed executions under state court and prison jurisdiction

In January, Ayala and Peace introduced new bills to expand capital punishment for people who kill someone under 14 years old and for certain gang-related killings.

in 1891 when lawmakers passed a constitutional amendment removing capital punishment control from county sheriffs. Since then, despite brief suspensions of

capital punishment under court rulings in 1972 and 1976, the state has executed 505 people. The most recent inmate to be put to death was William Bonin, the so-called freeway killer, who received a lethal injection last month.

Currently, 435 inmates, including eight women, sit on death row. Of that number, 125, or 28 percent, lack court-appointed counsel — a fact that has prompted opponents of the death penalty expansion to complain that California shouldn't potentially add more people to the row's population while there is so much difficulty finding qualified counsel.

But such opponents, once concentrated among Democrats, have become increasingly rare. Both sponsors of the two ballot measures are Democrats; Peace is from La Mesa and Ayala represents Rancho Cucamonga.

Assemblyman Kevin Murray, D-Los Angeles, one of the few legislative voices against the additions to the capital punishment statutes, said in floor debates last session that the proposed enhancements amounted to nothing more than politick-

Lindsey agreed. "It shows you what a political instrument [the death penalty] really is," he said. Lawmakers "just want some of its political mileage."

"These are bizarre [initiatives]," he said. "And they play on fears. So I am sure people will vote for them."

There are more proposals pending that would extend the law. In January, Ayala and Peace introduced new bills to expand capital punishment for people who kill someone under 14 years old and for certain gang-related killings.

Peace's SB1376 would add to the list of special circumstances intentional murder when committed along with an attempted murder, and intentional murder committed by a street-gang member as part of gang activities. This bill failed in the Senate Judiciary Committee on Tuesday but was granted reconsideration.

Ayala's SB1404, which passed the same committee by a vote of 42, would add intentional murder of someone known to be under 14 to the special circumstances list. Both bills, if passed by the Legislature and signed by the governor, require voter approval.

Associated Press

JOHANNESBURG — A judge has barred using McDonald's work it's still unclear whether itself can use its name

Last year, McDonald's court order barring Dr using its name, golden symbols for a Johann called 'MacDonald's.' Monday that the order

A Pretoria Sup ruled last year that the ny had lost the right to in South Africa. Under apartheid days, a fore using its trademark for ders the right to use its

McDonald's trader istered here since 1968 never opened a restaur tional economic sancit appealed, asking the account a new law pass ing protection to world

Venue Change Request Would Go to Prosecutor

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MARCH 24, 1996, SUNDAY, SUNDAY EDITION

SECTION: ;Pg. 6/Z1

LENGTH: 2256 words

HEADLINE: STATE PROPOSITIONS AT A GLANCE

BODY:

PROPOSITIONS AT A GLANCE

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PROPOSITION 192

A \$ 2 billion bond measure that would provide more than \$ 1 billion to strengthen 1,100 small bridges, overpasses, on-ramps and off-ramps around the state against future earthquakes. It also contains \$ 650 million to begin earthquake-proofing work on Bay Area toll bridges.

* ARGUMENTS FOR: Passage of the bond would improve the safety of state highways, giving them a better chance of withstanding future earthquakes. It also would free up \$ 2 billion in highway construction money for other highway projects.

* ARGUMENTS AGAINST: Projects paid for out of bond funds would be exempted from state environmental laws. No money is contained in the measure for mass transit. Toll bridge revenue, rather than bond funds, is the appropriate source to repair toll bridges.

* SUPPORTERS: Governor Wilson; California Chamber of Commerce.

* OPPONENTS: Planning and Conservation League.

* FISCAL IMPACT: Assuming an interest rate of 5.5%, the cost would be about \$ 3.4 billion over 25 years.

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PROPOSITION 193

Would exempt from reassessment homes and up to \$ 1 million in real property transferred from grandparents to grandchildren whose parents are deceased. Current law exempts from reassessment real property transferred from parents to their children.

STATE PROPOSITIONS AT A GLANCE The San Francisco Chronicle MARCH 24, 1996, SUNDAY, SUNDAY
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-- ARGUMENTS FOR: A glitch in current law is corrected in which property transferred from grandparents to grandchildren whose parents are dead is reassessed, usually leading to increased property taxes.

* ARGUMENTS AGAINST: Property tax inequities created by Proposition 13 are perpetuated.

* SUPPORTERS: California Tax Reform Association; Senior Legislature.

* OPPONENTS: San Jose lawyer Gary Wesley.

* FISCAL IMPACT: Overall fiscal impact would be minor -- about \$ 1 million a year after several years.

PROPOSITION 194

Seeks to remove one of the perceived impediments to the state approved "joint venture" program that allows prisoners to work for private employers by denying inmates unemployment insurance when they lose their jobs because they are released from prison.

* ARGUMENTS FOR: Unemployment benefits for inmates are a disincentive for businesses to participate in the program; inmates should not be entitled to unemployment benefits simply because they are released from prison.

* ARGUMENTS AGAINST: Unemployment insurance is paid for by private employers at no cost to taxpayers. Under the joint venture program, employers are entitled to below-market rents, a 10% tax credit and do not have to pay health and dental benefits for inmate labor.

* SUPPORTERS: State Senate Republican Leader Rob Hurtt of Garden Grove wrote the measure.

* OPPONENTS: The California Labor Federation; the Friends Committee on Legislation, a group affiliated with the Quaker church.

* FISCAL IMPACT: Overall impact likely to be minor. Greater participation in the program could result in some increased revenue for the state.

PROPOSITION 195

Makes murder during a carjacking and murder of a juror new special circumstances, juries can return upon conviction of a defendant, requiring a sentence of either death or life without possibility of parole.

* ARGUMENTS FOR: Strengthens California's death penalty law.

* ARGUMENTS AGAINST: Preserves existing death penalty law.

* SUPPORTERS: The Legislature voted overwhelmingly to put Prop. 195 on the ballot. Those in favor tend to be death penalty supporters.

* OPPONENTS: Those opposed generally oppose capital punishment.

* FISCAL IMPACT: The legislative analyst concluded it will have minimal impact on the criminal justice system because most murders during a carjacking can already be prosecuted as murder during a robbery, and law enforcement officials cannot recall a case where a juror was murdered.

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PROPOSITION 196

Makes murder during a drive-by shooting a special circumstance.

* ARGUMENTS FOR: Puts drive-by shooters on notice that they will be subject to the strongest penalty that the state can impose.

* ARGUMENTS AGAINST: Preserves existing law and avoids costs and constitutional challenges which would arise from an expanded death penalty.

* SUPPORTERS: The Legislature voted overwhelmingly to put Prop. 196 on the ballot. Those in favor tend to be death penalty supporters.

* OPPONENTS: Those opposed generally oppose capital punishment.

* FISCAL IMPACT: The legislative analyst concluded its potential impact is unclear because it is unknown how many drive-by shootings would be prosecuted as capital crimes that are not already covered by some other special circumstance.

PROPOSITION 197

Would repeal the mountain lion's status as a specially protected mammal and permit governmental agencies and landowners to kill mountain lions imminently threatening public health, safety or livestock. It would require the state Fish and Game Commission to manage lions as it manages mammals that are not rare, endangered or threatened and require the Department of Fish and Game to implement a mountain lion management plan that "promotes health, safety, livestock (and) property protection."

-- ARGUMENTS FOR: Lions have increased. People, livestock, other mammals, endangered species and pets are in serious jeopardy.

* ARGUMENTS AGAINST: The gun lobby is using the horrible death of a Northern California mother to fool voters into legalizing the trophy hunting of mountain lions.

* SUPPORTERS: California Sheriffs' Association, State Association of Counties, National Rifle Association, California Farm Bureau Association, California Cattlemen's Association, California Forestry Association.

* OPPONENTS: California State Park Rangers' Association, Sierra Club, Mountain Lion Foundation, Humane Society of the United States, Bay Area Open Space Council, Planning and Conservation League, Friends of California Parks.

* FISCAL IMPACT: Authorizes up to \$ 250,000 for each of the next three years and \$ 100,000 annually thereafter until 2020 to prepare and carry out a lion management plan. The money will come from the state's Habitat Conservation Fund. The measure also will authorize an additional \$ 250,000 a year to administer public safety and information programs related to mountain lions.

PROPOSITION 198

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Would alter California's current primary election system. Instead of getting a single-party ballot, voters would receive a ballot listing all candidates for each office. The candidates with the most votes from each of the state's eight officially recognized parties would then advance to the November election.

* ARGUMENTS FOR: Proponents see the measure as a way of increasing voter participation and getting candidates to appeal to a broader base of the electorate, including the state's 1.5 million independent voters

* ARGUMENTS AGAINST: Opponents say it would invite electoral mischief and weaken the political parties.

* SUPPORTERS: Former state Senator Becky Morgan; Eugene C. Lee, former director, Institute of Governmental Studies at UC Berkeley, and Dan Stanford, former chairman, California Fair Political Practices Commission.

* OPPONENTS: California Republican Party Chairman John Herrington and former California Democratic Party Chair Bill Press.

* FISCAL IMPACT: Minimal overall impact on the state; counties could realize some minor savings in preparing fewer ballots.

PROPOSITION 199

Would end rent-control on mobile homes.

* ARGUMENTS FOR: Mobile home park owners claim that rent control is bad for taxpayers because it requires a costly bureaucracy to regulate it.

* ARGUMENTS AGAINST: Tenant groups claim the initiative is aimed at enriching mobile home park owners and that rent increases would drive widows, widowers and senior citizens on fixed incomes from their homes.

* SUPPORTERS: Western Mobilehome Park Owners Association, Mobilehome Park Owners Alliance.

* GROUPS AGAINST: Golden State Mobilehome Owners League, California Labor Federation, AFL-CIO

* FISCAL IMPACT: Local agencies with rent control laws would see increased costs to administer the phase-out of rent control. Later savings statewide probably would total at least several million dollars annually.

PROPOSITION 200

Would create a no-fault system of auto insurance by requiring insurers to compensate their own customers for injuries suffered in auto accidents, regardless of who was at fault.

-- ARGUMENTS FOR: Money saved by eliminating lawyers from the compensation process would help reduce insurance premiums. An accident victim would get paid even if the other driver did not have insurance or other assets.

* ARGUMENTS AGAINST: There is no guarantee that rates would go down. A victim could not sue even reckless drivers unless they were drunk or committing a felony, so compensation for any injuries would be limited.

* SUPPORTERS: Jennifer Frank, director of Voter Revolt to Cut Insurance Rates; Jim Conran, executive director, Consumer First; Regene Mitchell, president, Consumer Federation of California, Harvey Rosenfield, author of Proposition 103.

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* **OPPONENTS:** Wendell Phillips, president, California Council of Police and Sheriffs; J. J. Hannigan, former commissioner of the Highway Patrol.

* **FISCAL IMPACT:** Major annual savings to state and local governments in emergency health costs, reduced claims, and health insurance costs but major annual revenue losses in vehicle registrations, gross premium taxes. Administrative costs also would increase: \$ 15 million to implement the law and about \$ 10 million annually thereafter.

PROPOSITION 201

Would make losers pay winners' legal fees and expenses in shareholder lawsuits against companies for securities-law violations. At the start of a suit, shareholders would have to post a bond equal to the company's estimated costs unless they owned more than 5 percent of the company. -- **ARGUMENTS FOR:** Groundless lawsuits would be discouraged, freeing companies with volatile stock prices from exorbitant legal costs. Plaintiffs with strong cases could recover more money because their legal expenses would be paid by companies found guilty.

* **ARGUMENTS AGAINST:** Shareholders with legitimate complaints would not sue because they could not afford to post the bond and then risk losing it if the case goes against them.

* **SUPPORTERS:** Governor Pete Wilson, Attorney General Daniel Lungren, Assembly Speaker Curt Pringle, Thomas Proulx, co-founder of Intuit, California Republican Party, Association for California Tort Reform.

* **OPPONENTS:** Consumer Attorneys of California, Association of Defense Counsel of Northern California, Ralph Nader, American Civil Liberties Union, California Democratic Council, California State Labor Federation, AFL-CIO.

* **FISCAL IMPACT:** Unknown, but probably not significant.

PROPOSITION 202

Would limit lawyers' fees to 15 percent of any settlement won within 60 days of an offer in personal-injury or property-damage disputes. If an offer were rejected, the lawyers could receive their usual percentage of any winnings beyond the proposed settlement.

* **ARGUMENTS FOR:** Lawyers would earn less in cases requiring little work, leaving more for their clients. Settlements would be encouraged, and lawyers would have less incentive to file weak cases just to make a quick profit.

* **ARGUMENTS AGAINST:** Lawyers would have to disclose virtually everything about their clients' cases immediately, leaving them at a strategic disadvantage. The limited fees would not always cover lawyers' costs, so consumers would have difficulty finding representation in legitimate cases.

* **SUPPORTERS:** Governor Pete Wilson, Attorney General Daniel Lungren, Assembly Speaker Curt Pringle, Thomas Proulx, co-founder of Intuit, California Republican Party, Association for California Tort Reform.

* **OPPONENTS:** Consumer Attorneys of California, Association of Defense Counsel of Northern California, Ralph Nader, American Civil Liberties Union, California Democratic Council, California State Labor Federation, AFL-CIO.

* **FISCAL IMPACT:** Unknown, but could affect the number and costs of cases filed against state and local agencies.

PROPOSITION 203

Would provide \$ 3 billion to build or repair schools, with \$ 2.025 billion earmarked for primary and secondary schools and \$ 975 million to be split among the university, state and community college systems.

* ARGUMENTS FOR: Will help meet school enrollment growth, make schools earthquake safe, wire classrooms for computer technology and ease overcrowding.

* ARGUMENTS AGAINST: Bonds cost the state money in interest payments. Half the state budget goes to schools already, mostly to bureaucrats.

* SUPPORTERS: Fran Packard, president, League of Women Voters of California; Lois Tinson, president, California Teachers Association, and Kirk West, president, California Chamber of Commerce.

* OPPONENTS: Gail Lightfoot, chair, Libertarian Party of California; Ted Brown, member of the executive committee, Libertarian Party of California, Pam Probst, teacher.

* FISCAL IMPACT: assuming an interest rate of 5.5%, the cost would be about \$ 5.2 billion over 25 years.

LOAD-DATE: March 25, 1996

DA's crowded death-row docket - COURTS: 16 defendants are targeted _ the most ever _ despite the decline in the county's murder rate.

The Orange County Register - Sunday, October 20, 1996

Author: STUART PFEIFER: *The Orange County Register*

The prosecutors who gather in the Orange County District Attorney's Office to decide which killers deserve the death penalty have not changed. Neither, they say, has the way they make those grim decisions.

The county's murder rate dropped in 1995 and is on pace to decline again this year.

Yet at no time in the county's history have as many accused murderers faced the death penalty as the 16 now targeted by the District Attorney's Office.

In the past 20 months, the district attorney's homicide unit has seen its load of death-penalty cases quadruple. It took the county 10 years after the 1978 reinstatement of capital punishment to impose its first 16 death sentences. It could take as little as one year to condemn the next 16.

The dramatic increase has overwhelmed the Public Defender's Office, which is now asking the county to hire private attorneys to represent death-penalty defendants.

Michael Giannini, a supervising attorney in the Orange County Public Defender's Office and a veteran death-penalty defense attorney, said he can't help but wonder what role politics plays in the increase.

"The DA being an elected official has to decide which cases are the worst of the worst and call for the death penalty," he said. "We in the defense think that number should be very, very few. The number of cases should be drastically reduced."

Prosecutors say they seek death in only a fraction of eligible cases and only after a thorough review by the office's "special-circumstances committee."

Still, they are at a loss to explain the increase.

"Is it just the luck of the draw? Suddenly it's coming up tails, and soon it will be coming up heads? I don't know," said Assistant District Attorney John Conley. "We're praying this is a temporary situation."

The office no longer has the luxury of allowing prosecutors to try several murder cases before embarking on a death-penalty case, perhaps the most important the office prosecutes.

Conley said the county simply may have seen an increasing number of gruesome, unmitigated killings that fit the "worst of the worst" criteria.

There was Edward Charles III, a Fullerton gas-station mechanic who murdered his mother, father and brother, drove their corpses to a high school parking lot and torched the car. He later tried to pin the killings on his grandfather in a foiled plot from his jail cell.

There is Gerald Parker, who earlier this year was linked to the "bedroom basher" slayings in which five women and one unborn child were beaten by an intruder in the late 1970s.

And Gunner Lindberg, accused of stabbing to death Thien Minh Ly as the college student glided along a Tustin High School tennis court on in-line skates. Lindberg allegedly boasted of the killing in a letter to a friend, referring to the victim with an ethnic slur and enclosing newspaper clippings about the crime.

"They're some real bad cases," Conley said. "The good side is we're talking about a year, year and a half. Maybe it's just a streak of extremely bad luck _ for the victims and the system."

A criminology professor said Conley may have reason to be optimistic.

"The numbers are not so big that we could not rule out just happenstance," said William Thompson, a professor at the University of California, Irvine.

Giannini said he believes the increase also could be related to changes in state law that gave prosecutors more special circumstances to make a killer eligible for death. Conley estimated that 60 percent of all Orange County murders are eligible for the death penalty.

"They have gotten into this strange devil's bargain," Giannini said. "They pushed and pushed to get the special circumstances added. Now they're sitting on a mound of cases and they feel obligated to go forward with the death penalty."

Said Thompson, "The real issue is whether the number of truly heinous crimes has shot through the roof or whether the standards for what we call a truly heinous crime have lowered."

Since the death penalty was reinstated in California in 1978, Orange County has sent 32 killers to death row. By the end of 1997, that number could jump 50 percent.

In contrast, San Francisco County _ a community with a more liberal electorate and one-third the population of Orange County _ has sentenced just four killers to death.

Only Los Angeles County and Alameda County have more killers awaiting execution. Neighboring San Diego County, with a slightly larger population than Orange County, has sentenced 28 percent fewer people to death.

"It seems to undermine the legitimacy of the death penalty if it's applied in an arbitrary way," Thompson said. "The fact that there's county-to-county variation does create an impression of arbitrariness."

In Orange County, juries have soundly supported the district attorney's decisions to seek the death penalty. In 15 death-penalty cases since 1992, juries have returned 14 death verdicts and only one of life in prison without parole.

"We are being more restrictive in seeking the death penalty than in prior years," Conley said. "It's borne out by the statistic that jurors are usually agreeing with us."

Conley said he is confident that the office makes responsible decisions when deciding whether to seek death. Defense attorneys attend committee meetings and have influenced the office not to seek death, he said.

"I don't think the committee is responsible for any of this," Conley said. "It's factors outside it. The very fact defense attorneys always come, I believe, is evidence they don't feel they're wasting their time."

SIDEBAR AND LIST: Who's targeted for death penalty, and why

Sixteen people are facing the death penalty in Orange County Superior Court. Here is how they got there:

JOHN ABEL: Abel, 52, was serving a 52-year sentence for armed robbery in Folsom State Prison last year when detectives linked him to a Jan. 4, 1991, slaying at a Tustin bank. Abel is accused of shooting to death Armando Miller, 26, after Miller had withdrawn \$20,000 for business transactions involving his family's market in Orange. Investigators had closed the case because of a lack of leads when an anonymous tip led them to Abel.

ERIC WAYNE BENNETT: An Orange County jury last month recommended death for Bennett, a Costa Mesa flooring installer convicted of raping and murdering a 50-year-old Laguna Hills woman in 1994. The victim, Marie Evans Powell, had hired Bennett to repair flooring in her home. Bennett, 25, denied any involvement in Powell's death, but DNA evidence linked him to the crime. Superior Court Judge Kathleen O'Leary is scheduled to sentence Bennett on Dec. 13.

EDWARD CHARLES III: A third jury will be asked to decide next year whether Charles, 24, deserves to die for killing his father, mother and younger brother, whose bodies were found inside a torched car in 1994. The jury that convicted

him deadlocked on the penalty he should receive, favoring death, 11-1. A second jury recommended death, but the verdict was overturned after it was revealed that a juror had sought spiritual guidance from a church deacon before voting. A new trial on Charles ' penalty is scheduled to start March 25.

WILLIAM CLINTON CLARK: Clark was convicted of killing Kathy Lee, 47, during a 1991 robbery at a Comp USA computer store in Fountain Valley. Lee was shot to death when she went to the store to pick up her son. In addition, Clark, 42, has been convicted of ordering the 1994 slaying of Ardell Williams, a key witness to the murder of Lee. Jurors deadlocked on whether he should get the death penalty. He is next due back in court for a hearing Jan. 10.

JONATHAN D'ARCY: D'Arcy, 34, is serving as his own attorney as he stands trial on murder and torture charges stemming from an attack on a bookkeeper at a Tustin janitorial services company. D'Arcy allegedly stormed into the office Feb. 2, 1993, demanded money he believed he was owed, then doused Karin LaBorde with gasoline and set her ablaze. LaBorde, 42, suffered burns over 98 percent of her body. D'Arcy's trial is scheduled to begin Nov. 12.

ROBERT MARK EDWARDS: Edwards, 35, is accused of sexually torturing and murdering Marjorie Deeble, 55, at her Los Alamitos home in 1986. The case was unsolved until 1993, when Edwards was charged with a strikingly similar slaying on Maui. Both cases involved older women whose attackers broke their noses, strangled them and tortured them in a distinctive manner. Edwards says he was dating Deeble's daughter at the time of the slaying, and insists he was selling LSD at a rock concert on the night the crime occurred. His trial continues this week.

JOHN JOSEPH FAMILARO: Pictures of 23-year-old Denise Huber appeared on handbills and billboards throughout Orange County after the Newport Beach waitress vanished while coming home from a rock concert June 3, 1991. Three years later, authorities in Dewey, Ariz., found her body in a freezer stored inside a stolen rental truck next to Familaro's mother's home. Familaro, 39, a house painter who once lived in Lake Forest, is accused of kidnapping, sodomizing and bludgeoning Huber at a Laguna Hills warehouse. His trial, scheduled to begin Nov. 4, will likely be postponed.

MARK RICHARD HILBUN: Hilbun arrived at the Dana Point post office May 6, 1993, with the word "psycho" emblazoned on his shirt. The ex-postal worker, who had just stabbed to death his mother and her dog, shot and killed letter carrier Charles Barbagallo and wounded a postal clerk. By the time Hilbun's 38-hour crime spree was over, six more people were wounded by gunfire. Jurors quickly convicted him of the attacks in August but could not agree on whether he was sane at the time. A date for the new sanity phase will be set Nov. 15. If he is found sane, Hilbun, 42, would face the death penalty.

GUNNER LINDBERG: Lindberg, 21, is charged with murder, robbery and a hate crime for allegedly stabbing to death a young Vietnamese man on the tennis courts at Tustin High School on Jan. 28. Authorities say Thien Minh Ly, 24, a former Vietnamese student leader at the University of California, Los Angeles, was in-line skating at the school when Lindberg and another assailant attacked him, stabbing him repeatedly. Lindberg was arrested after he reportedly bragged of the slaying in a letter to a friend. His trial is set to begin Nov. 4.

RUBEN SONNIE MARTINEZ: Martinez, 21, a gang member from Norwalk, is accused of killing Uwe Jurgens, 52, a machine shop supervisor who interrupted a carjacking. Police said Martinez stole a produce truck in Santa Ana, then crashed it in Brea. Jurgens stepped out of the machine shop to find Martinez trying to steal another car at gunpoint from an employee. Police said Martinez told Jurgens, "Get out of here," then shot him in the back when he turned to leave. His trial is set to start April 21. paralyzed. His trial is scheduled to begin Nov. 4.

GERALD PARKER: Authorities say Parker, 41, a convicted rapist, recently confessed to being the "bedroom basher," who bludgeoned six Orange County women in the late 1970s. Five of the victims died. The sixth, a pregnant woman whose unborn child died as a result of the attack, had identified her husband as the assailant. Kevin Green spent 16 years in prison before DNA evidence and Parker's reported confession cleared him. Parker's six murder charges are the most faced by an Orange County defendant since serial killer Randy Kraft was convicted of 16 slayings and sentenced to die in 1989. Parker's trial is scheduled to begin April 28.

BILL CHARLES POYNOR: A convicted armed robber, Poynor is charged with the murder of a bank courier who disappeared while delivering cash to automatic teller machines. The charred body of the courier, Robert T. Walsh, was pulled from a burning car in the parking lot of an Orange strip mall April 16, 1995. Poynor, 52, who was on parole for a string of bank robberies when he was arrested, also is charged with holding up banks, flower shops and movie theaters around the time of Walsh's slaying.

STEPHEN M. REDD: In the early 1970s, Redd was a decorated Los Angeles County sheriff's deputy. By the 1980s, he had become a bank robber who wounded a La Habra police officer in a shootout. After he allegedly killed Alpha Beta store manager Timothy E. McVeigh on July 18, 1994, he became Orange County's most notorious fugitive. Redd, 51, was arrested in March 1995 in San Francisco, where he had been living among the city's homeless. In an interview after his arrest, Redd said he turned to crime because he felt rejected by society. "I feel free to rewrite the rules," he said. Opening statements in his murder trial are expected to begin this week.

NOEL URIEL VARGAS JR.: Vargas, a 20-year-old gang member from Norwalk, is accused of killing 7-Eleven clerk Nirmal Singh of Fullerton during a robbery. Authorities allege that Vargas and a 16-year-old accomplice entered the La Habra convenience store at 3 a.m. Aug. 21, 1995. Videotape from a surveillance camera showed Singh, 44, a father of three, begging for his life before one of the robbers shot him. One of the assailants then grabbed \$50 from the register before they fled.

ANTOINETTE YANCEY: Prosecutors say Yancey assassinated Ardell Williams, a crucial witness in the murder trial of her boyfriend, William Clark. Yancey allegedly befriended Williams and earned her trust before killing her March 13, 1994. Yancey visited Clark at the Orange County Jail two hours after Williams was killed, authorities contend. Yancey, 30, the third woman ever to face the death penalty in Orange County, is on trial.

Caption: GRAPH:BLACK & WHITE PHOTO Caption: GRAPH: PENDING CASES - bar graph shows statistics from 1992-1996 GRAPH: MORE DEATH-PENALTY JUDGMENTS SOUGHT - Bar graph shows the number of pending OC cases in which the death penalty is sought has jumped to 16 from 5 in January 1995 (GRAPHICS REPORTING BY STUART PFEIFER) FAMALARO HILBUN VARGAS CLARK YANCEY BENNETT LINDBERG REDD CHARLES PARKER Credit: The Orange County Register

Memo: NEWS FOCUS - SIDEBAR ATTACHED

Edition: MORNING

Section: METRO

Page: B01

Index Terms: STATISTICS ; LIST ; OC ; COURTS ; DEATH ; SENTENCE ; MURDER

Record Number: OCR709259

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TODAY'S LEGAL BRIEFING

DAILY APPELLATE REPORT

(Summaries on Page 8)

CIVIL PROCEDURE, CONTRACTS: Release proceeding is properly treated as a contract and award is confirmed under arbitration statutes. *Whoop Inc. v. Dyno Productions Inc.*, C.A. 2nd.

CIVIL PROCEDURE, GOVERNMENT: Mandamus is sole remedy for applicant aggrieved by civil service examination process. *DeCar v. County of Los Angeles*, C.A. 2nd.

INSURANCE: Insurer that offered defense under reservation of rights needed to pay contingent fee negotiated later by policyholder. *State of California v. Pacific Indemnity Co.*, C.A. 2nd.

JUVENILES, FAMILY LAW: Mother's failure to reunify with sibling and history of drug rehab failures justify denial of reunification services. *Randi R. v. Superior Court (Orange County Social Services Agency)*, C.A. 4th.

TAXATION, CIVIL PROCEDURE: Taxpayers recover attorney fees where government's position regarding timeliness of filing wasn't substantially unjust. *Lewis v. United States*, U.S.C.A. 9th.

TORTS: Plaintiff allegedly injured by unidentified chemicals can't sue multiple defendants in hope of discovering tortfeasor. *Bockath v. Aldrich Chemical Co.*, C.A. 2nd.

TORTS: Failed application for order for writ of state can't support later claim for malicious prosecution. *Merlet v. Rizzo*, C.A. 1st.

CRIMINAL LAW AND PROCEDURE: Juror's comments following death verdict suggest possible misconduct and justify disclosure of restricted jury questionnaires. *Zamudio v. Superior Court (Petaluma)*, C.A. 2nd.

BAY AREA/CALIFORNIA

San Francisco's Cooley Goddard has hired Baker & McKenzie partner Thomas Sevrasin to build an international practice at the high-technology firm. At Baker's San Diego office, Sevrasin founded the international practice group, which now has eight attorneys. He will join Cooley in Palo Alto by early June. Page 2

When U.S. Bankruptcy Court Judge Randall J. Newsome takes over the helm of a national organization of bankruptcy judges, he hopes to bring a clear direction to the group. Until now, the Washington, D.C.-based National Conference of Bankruptcy Judges has been occupied with a variety of issues that Newsome believes should take a back seat to more vital problems. Page 2

Concluding that privileged defense materials in a murder case are not in the possession of prosecutors, a judge has turned down bids by the public defender to dismiss the case or recuse the district attorney's office. Page 3

In what is believed to be the largest jury verdict in a construction claim in state history, Enserch Corp. was awarded \$33.3 million in a suit alleging fraud and breach of contract against Exton Corp. The trial was heard in a specially built courtroom near Santa Barbara by a private judge. Page 3

Convicted of a fatal car collision, the director of the Los Angeles County district attorney's family support division was placed on three years' informal probation, fined \$2,810 and ordered to perform 200 hours of community service. Page 3

A San Diego Superior Court judge denied motions to overturn a \$174.9 million compensatory damage award given to Mycogen Plant Science Inc. by a jury at the end of March. The award is the largest compensatory damage award ever in California, according to the law firm that represented the company. Page 3

FORUM

The demise of the State Bar is not a cause for cheering by anyone involved in the tragedy. There are innumerable victims in the tragedy. Page 4

While the political gods are locked in a fierce duel for the death of the State Bar, consumers and legal staff pray that it will all end soon. Page 4

FOCUS

The 2nd Circuit has concluded that, at least for

EXPANDING CAPITAL PUNISHMENT

Making More Crimes Death-Eligible Has Public Appeal but Major Constitutional Problems



By Peter Blumberg
Daily Journal Staff Writer

SACRAMENTO — Legal experts have warned for years that any significant expansion of California's death penalty risks a constitutional showdown that could wipe out the state's capital punishment law altogether.

But year after year, expansion proposals just keep coming. It's uncertain whether any of the current legislative measures will reach the governor's desk. But in a state where the public strongly supports the death penalty, Capitol observers say the political push to add new death-eligible special circumstances to first-degree murder is sure to continue despite concerns expressed by the prosecutor's bar, the state attorney general's office and even the U.S. Supreme Court that California is pushing the envelope.

One controversial bill introduced this year would apply the death penalty to repeat child molesters and rapists. This marked the first attempt to make a crime other than murder eligible. The author has temporarily withdrawn the bill, but two Democratic candidates for governor have pledged to support it.

Another novel measure, believed to be the first of its kind in the nation but killed in committee Thursday, would have applied to murderers committed in violation of domestic violence restraining orders. Two other pending proposals are essentially rewritten from earlier years — one applying to murderers of children under age 14 and the other dealing with gang-related murders.

Another bill by San Francisco independent Quentin Kopp, narrower and more technical than the others, would make it easier to prosecute capital murder cases involving kidnapping, arson and a special circumstance called "lying in wait."

As usual, this year's crop of bills draws its strongest opposition from the defense bar and civil libertarians and its strongest support from law enforcement and victims' groups. The bill authors are a mix of Democrats and Republicans, several of whom are up for re-election



'The idea is to limit death penalty-eligible crimes to the truly most heinous and special homicides.'

LAWRENCE BROWN,
executive director,
California District
Attorneys' Association

Continued on Page 9

HIGH COURT MUST RULE ON DEATH ISSUES

■ The 1st District says it has no authority over an inmate's access to his spiritual adviser and other peripheral questions.

By Anna Marie Stolley
Daily Journal Staff Writer

In a ruling of first impression, a state appeal court has held that peripheral issues surrounding a capital case fall within the exclusive jurisdiction of the state Supreme Court.

The 1st District Court of Appeal, ruling Friday in the latest chapter of a widely noted death penalty case, refused to determine how much access the condemned prisoner should have to his spiritual adviser in the hours before execution. *Thompson v. Department of Corrections*, A097924.

Under California law, death judgments are appealed directly to the state high court. But lower courts sometimes raise questions involving the administration of those judgments.

While the appeal court cautioned that its ruling Friday should not be seen as "upending the floodgates," parts of the opinion suggested to attorneys that if the ruling stands, more and more of such peripheral issues could be channeled to the high court, not lower courts. Lawyers noted there was little precedent on this jurisdictional issue.

In the case before the appeal court, Martin County Superior Court had ruled that Thomas M. Thompson, convicted in 1987 of raping and murdering a Laguna Beach woman, should be permitted to see his minister up to the time Thompson enters the execution chamber.

But the Department of Corrections appealed, arguing that the minister should leave at least six hours before the time of execution so that final preparations can be made without any interference.

The appeal panel noted that the state Supreme Court, in an unpublished order modification in a different death penalty case, *Williams v. Department of Corrections*, S05348, found that a spiritual adviser should be permitted to stay until 11:30 p.m. or until final preparations for removal from the area of the holding cell to the execution chamber are ready to begin, whichever is later.

Although the appeal panel in *Thompson* made reference to the *Williams* order modification, it refused to apply the unpublished modification to the case at hand.

In a terse, eight-page opinion, the panel instead chose to dismiss the department's appeal on the grounds that the panel simply lacked jurisdiction in death penalty cases.

"Our lack of jurisdiction becomes unambiguously clear when we consider that resolving the present dispute requires an interpretation of peripheral questions in the *Williams* order," said Justice Paul R. Earle, with Justice James R. Llanos and Justice Bruce Concurring.

"We cannot do this without encroaching on the Supreme Court's exclusive domain. Further, for us to assume the role of interpreter of Supreme Court orders involving the implementation of the death penalty could well result in impermissible inconsistency and potential confusion among the five divisions of this court."

Thompson's conviction has a complex procedural history — and was recently reviewed by the U.S. Supreme Court.

So the high court ruled that a 1st District Court of Appeal

Continued on Page 9

COPYRIGHT LAW

Compilations Of Public Data Could Gain Protection

■ Critics of a 'noncontroversial' bill say it would allow one publisher, such as the owner of Lexis, to control access to court decisions.

By James Evans
Daily Journal Staff Writer

Controversial legislation to grant copyright protection where it has not previously applied has passed the House of Representatives, causing shudders among librarians, researchers and small publishers who depend on access to government information, especially court decisions, for their livelihoods.

The Collection of Information, Copyright Act, HR2622, would allow those who compile electronic and print data to sue over copyright work, which traditionally has not qualified for protection. One criticism of the legislation is that it improperly gives courts control of public information to whichever party initiates the litigation.

The bill, sponsored by Rep. Howard Coble (R-N.C.), was introduced in the House Judiciary Committee as "noncontroversial" because it enjoyed bipartisan support, and it should be able to pass without normal debate.

That procedural maneuver was frustrated despite opposition from numerous groups, including the American Association for the Advancement of Science, the American Association of Legal Publishers, the Public Library Association, the Electronic Frontier Foundation and individual universities and libraries.

Legislative critics fear that the bill would allow the bill, which would give copyright protection to the State Judiciary's holdings.

"I've read through the bill and I'm concerned that it would allow people to sue over copyright work, which is not what we want," said James P. Farnsworth, a professor at Health Hall School of Law, who also was an opponent of the legislation.

"I wish that were so," said Farnsworth, but pointed these words to the bill's Section 101, which would give copyright protection to the data.

"There is some previous legislative authority to justify the bill," Farnsworth said. "There are some companies that are already doing this work that are in a market that is subject to that treatment."

Jonathan Ruff, a partner with Wolfson & DeC. office of San Francisco's Maritime Law Center who represents the United Database Association, is made especially uncomfortable by a clause in the bill that would allow a publisher to sue over copyright infringement if the publisher can show that the data is a "substantial" part of the publisher's business.

"The legislation is mainly passed by David E. Hoover and Thomas M. Thompson," said Farnsworth. "It would make it difficult for some of the publishers to access court decisions."

"It would make it very difficult for law school publishers to enter the market because that court decisions would not be available to West and Westlaw users," Farnsworth said.

"But the greatest effect will have to be on

Continued on Page 9

THE BYSTANDER

'Gang of Four' Shares High-Tech Moment

Readers of Sacramento Lawyer magazine — a publication of the Sacramento County Bar Association — may not fully realize the historic nature of the current issue unless they peruse some of the small print inside. The cover of



SPEEDY TRIAL ACT

Case Is Dropped On Judge's Delay

■ The jurist admits she erred, and an insider trading indictment against a lawyer is dismissed.

GAL E F I N G

ELLATE REPORT

ies on Page 8)
ONTRACTS: Referee proceed arbitration and award is con- tates: *Whoop Inc. v. Dyno* 1.

GOVERNMENT: Mandamus is aggrieved by civil service *Curr v. County of Los Angeles*.

hat offered defense under n't pay contingent fee negoti. *State of California v. Pacific*

AW: Mother's failure to reunit of drug rehab failures justify vices. *Randi R. v. Superior (ial Services Agency), C.A. 4th*.

CEDURE: Taxpayers recover ment's position regarding substantially justified. *Lewis* 9th.

dly injured by unidentified ple defendants in hope of disath v. *Aldrich Chemical Co.*

ion for order for writ of sale or malicious prosecution.

PROCEDURE: Juror's com- dict suggest possible miscon- of redacted jury question- of *Court (People), C.A. 2nd*.

/CALIFORNIA

y *Godward* has hired Baker has Shoemith to build an he high-technology firm: At . Shoemith founded the up, which now has eight oley in Palo Alto by early

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Page 3

Court Judge denied motions on compensatory damage

EXPANDING CAPITAL PUNISHMENT



Daily Journal/1990

A problem with expanding the death penalty 'is the thinness of the distinguishing characteristics between capital and noncapital murder.'

FRANKLIN ZIMRING, professor, Boalt Hall

Making More Crimes Death-Eligible Has Public Appeal but Major Constitutional Problems

By Peter Blumberg
Daily Journal Staff Writer

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Continued on Page 9



Daily Journal/1998

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In April, the high court ruled 5-4 that a 9th U.S. Circuit Court of

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■ Critics bill say it publisher Lexis; to court de

By James E. v.
Daily Journal Sta

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Wider Death Penalty Gains Foes

Continued From Page 1
this year.

Caught in the middle are Attorney General Daniel Lungren and the California District Attorneys Association. Both are strong advocates for capital punishment but are wary of going overboard with expansions that could ultimately trigger a backlash from the courts.

"It's the overall policy question of how far do we expand California's death penalty law," said Lawrence Brown, executive director of CDA. "The idea is to limit death penalty-eligible crimes to the truly most heinous and special homicides."

That said, CDA is backing the Kopp bill, SB1878, as well as AB1538, by Assemblywoman Sally Havig, D-Artesia, which adds murder intentionally committed by a street gang member to further the gang's activities to the list of special circumstances.

Brown said Havig's proposal is less vulnerable to a court challenge than a similar measure by Sen. Charles Calderon, D-Montebello, SB1079, which stalled in committee because it did not require an "intent to kill."

The general fear shared by Brown and others is that applying the death penalty too broadly could subject it to a constitutional challenge for failure to provide a meaningful basis for distinguishing between those who receive the sentence and those who do not.

That was a concern raised in *Furman v. Georgia*, 408 U.S. 238, the landmark 1972 U.S. Supreme Court ruling declaring the death penalty unconstitutional because it was being arbitrarily and capriciously applied.

In 1977 California reinstated capital punishment, reserving the death penalty sanction for criminals who commit first-degree murder under special circumstances, such as multiple murders or murder during commission of a felony.

The list has been amended several times in the last 25 years — each time through a statewide referendum — and now includes more than 30 special circumstances.

Among others, they include: murder for financial gain; murder by a defendant previously convicted of murder or convicted of more than one murder in the current proceeding; murder committed to avoid a lawful arrest; unnecessarily torturous murder; and murder because of a victim's race, color, religion, nationality or country of origin.

The most recent additions, approved by voters in 1996, extended the death penalty to carjacking murders, drive-by shooting murders and murders of jurors.

In capital appeals cases, the California Supreme Court has consistently rejected defense attorneys' argument that the special circumstance list is overly broad, notes Senior Assistant Attorney General Dane R. Gillette, the state's capital case coordinator.

"It's not an argument we think should succeed, but it's one we want to avoid if at all possible," he said. "Theoretically, if you had so many special circumstances that everyone who committed murder would

become death-eligible, you would not have adequately narrowed the classification."

Gillette recalled that during an oral argument in 1994, U.S. Supreme Court Justice Harry Blackmun raised that very point, and admonished California to refrain from expanding the death penalty unnecessarily. *Tuilaepa v. California*, 512 U.S. 967.

"Blackmun is no longer on the court, but it's at least something to keep in mind," Gillette said. "It is a concern."

Blackmun's bench remarks weren't the first warning. In 1988, Gov. George Deukmejian, the original author of the special-circumstance law when he was a state senator, came out against a proposal for a broad expansion of the death penalty, arguing that "the entire capital punishment scheme, as amended by [proposed bill] SB44, has the potential of being declared unconstitutional, instead of just

'The entire capital punishment scheme ... has the potential of being declared unconstitutional.'

George Deukmejian, former governor in a 1988 bill

the offending provisions."

Commenting on the proposals currently before the Legislature, Brown said: "I don't think any one of these necessarily could break the camel's back. But at some point, is our law going to be so expansive that the whole law comes down?"

Boalt Hall Professor Franklin Zimring said one straightforward way to safeguard against toppling the death penalty entirely is to draft each new special circumstance with a severability clause.

But Zimring is no fan of the expansion proposals, calling them political grandstanding efforts aimed at raising the "status" of certain types of victims.

"The general problem that raises is the thinness of the distinguishing characteristics between capital and noncapital murder and the terrible invitation to victim groups that their interests have been demeaned or disregarded unless they are in the capital group," he said.

Each of the current proposals raises difficult issues.

Proponents of AB1698 by Ted Lempert, D-Palo Alto, argue that the threat of the death penalty may be the best way to add teeth to a restraining order system that frequently fails to prevent murders stemming from domestic disputes.

But opponents question the deterrence argument, saying that batterers are not prone to coolly contemplating the consequences of their actions. They also argue that many murders charged under this law would already be death-eligible because killing a witness to a judicial pro-

ceeding — such as a battered spouse who has gone to court for a restraining order — is already a special circumstance. AB1698 was killed Thursday by the Assembly Appropriations Committee.

The redundancy issue also figures into the debate over AB1538, the gang-related murder bill. Citing the need for a new special circumstance, Brown pointed to a recent murder case in Los Angeles where an innocent family made a wrong turn down an alley and a gang member shot and killed a child in the car, having mistook the family for a rival gang.

But opponents counter that the vast majority of gang-related cases that might trigger the new law are already covered under existing special circumstances, including drive-by shootings and carjackings.

AB1538 has cleared the Assembly and is pending before the Senate Public Safety Committee.

Calderon, author of SB1799, says there's something wrong with a penal code that makes murdering politicians (elected officials) a special circumstance, but doesn't provide the same punishment for murdering young children.

But opponents ask whether it's fair to apply the death penalty to the murder of a child who is 13 years and 11 months old, but not a child who is 14 years and one day old. They also note that no other state provides the death penalty for child murders absent other aggravating factors.

SB1799 will be taken up the Senate Appropriations Committee today.

Kopp's bill, SB1878, seeks to overturn court decisions holding that the "lying in wait" special circumstance requires that the killing occur during the lying in wait period, almost immediately upon confrontation. The courts have held that it does not apply if the perpetrator waits to capture the victim, then takes the victim to another location and kills the victim.

The bill would also eliminate any distinction between committing a murder during the commission of arson or kidnapping and committing arson or kidnapping to facilitate a murder.

Opponents argue the bill would create a major change in the law, eliminating the longstanding requirement imposed by courts that a felony murder must be based on an independent felony.

SB1878 is scheduled for reconsideration before the Senate Appropriations Committee today.

Capitol observers say it's difficult to gauge whether any of the still active bills will become law. On the one hand, they say, AB1538 and SB1799 face an uphill battle given that nearly identical proposals repeatedly have been rejected in recent years.

And none of the bills have thus far generated much fanfare the way some major crime bills manage to do, such as the 1994 "three strikes" sentencing law and last year's "10-20-life" gun sentencing law.

But as ACLU lobbyist Francisco Lobaco observed, "In an election year, the possibility of these bills going to the governor's office [is] always greater."

High Court Must Rule on Death Issues

Continued From Page 1

Appeals decision to reverse a conviction it had already upheld, was a grave abuse of discretion. The Supreme Court sent the case back to the 9th Circuit with directions to deny habeas relief.

Meanwhile, Thompson had asked the Marin court to allow his spiritual adviser, paroled Margaret Harrell of the United Church of Christ, access to him up until the time of execution.

The Superior Court issued a temporary restraining order against the Department of Corrections, which the department protested to the state Supreme Court.

However, at the time of the California Supreme Court review, the 9th Circuit had reversed Thompson's conviction. So the state high court dismissed the question of Thompson's pre-execution spiritual well-being as moot.

The department then filed a notice of appeal in the 1st District.

In refusing to hear the matter, the appeal panel applied Article VI, Section 11 of the state Constitution, which says that the state

need to be done in preparation," Lee said. "The clothing needs to be removed, the heart monitor applied ... there's a lot going on and having the spiritual adviser around is one more thing to worry about."

Lee said the ruling, if upheld, could increase the number of cases that would go to the Supreme Court on questions of the administration of death judgments.

The decision will be appealed to the state high court, she said. Lee added that the decision could be applied to another case before a different division in the 1st District.

In *Thorburn v. Department of Corrections*, A076423, the appellate issue concerns a physician's ability to assist in the administration of lethal injection without violating medical ethics codes. The case is not yet scheduled for oral argument.

Jordan Eth of the San Francisco office of Morrison & Foerster, counsel for Thompson, disagreed on the potentially broad impact of the ruling.

"In that last paragraph, they really narrowed their ruling," said

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February 1, 2000

SECTION: Feature

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HEADLINE: Propositions

HIGHLIGHT:

Big-time Indian casinos are back, and so are school funding and campaign finance reform, among other hot topics.

BODY:

Proposition numbering: In 1983, the Legislature passed a law requiring that ballot measures be numbered consecutively from election to election, retroactive to the November 1982 election. The law was designed to keep voters from confusing ballot measures that may have shared the same proposition number in different election cycles. The law as amended in 1996 provides for a 10-year turnover, so the ballot odometer rolled back to "Proposition 1" in November 1998. But legislators can circumvent the numbering sequence by passing legislation that leapfrogs their pet proposals to the top of the ballot: That's just what happened this year with the Indian gaming initiative, which by legislative decree became "Proposition 1A."

Proposition 1A

A constitutional amendment to allow Indian tribes to offer Nevada-style gambling, including slot machines, blackjack and other "house-banked" card games.

Background: For nearly a decade, California's tribal casinos

have operated under a legal cloud. Federal laws allow tribes to offer only those casino games that are legal in their state; in California, that means the lottery, horse racing and some card games. As a result, federal attorneys and former Governor Pete Wilson moved to shut down the tribes' video slot machines, contending they violated the state's constitutional ban on Nevada-style gambling. Wilson also negotiated new tribal-state compacts in 1998 that, among other requirements, placed strict limits on the number and style of slot machines allowed in tribal casinos. Outraged, the state's wealthy casino tribes poured \$67 million into a 1998 campaign that resulted in overwhelming passage of Proposition 5, which allowed tribes to expand their video slot machine gambling. But less than a year later, the state Supreme Court tossed out Proposition 5, ruling the initiative violated the state constitution's ban on casino-style gambling. Subsequently, nearly 60 tribes and Governor Gray Davis negotiated new tribal-state compacts last year that allowed the tribes to expand their current gambling. The compacts also require gaming tribes to set aside \$1.1 million of their revenues annually for every tribe that doesn't operate a casino, as well as provide unspecified funds for state regulation, impacts on local governments and gambling addiction programs. Those compacts, however, are contingent upon passage of Proposition 1A to amend the state constitution. Unlike the record-breaking spending that characterized Proposition 5, when wealthy tribes squared off against equally well-heeled Nevada casinos in a campaign where spending by both sides nearly topped \$100 million, the Proposition 1A campaign amounts to spare change. Tribes have committed to spending whatever it takes to win but, in the first round of fund raising, reported a modest \$7.3 million in contributions. They reported spending about \$5.8 million, much of it on television advertising already on the air. In contrast, Proposition 1A's opponents, a small, under-funded group of church members, citizen groups, and alcohol and gambling addiction treatment professionals, raised and spent a total of \$2,237. That's total. Needless to say, the No on Proposition 1A side does not expect to run any radio or TV advertising in the campaign.

Proposal: The exact number of slot machines that would be allowed in California should Proposition 1A pass remains in dispute. Tribes and the governor say it's a modest expansion, leading to a potential total of about 43,000 slot machines. The state's Legislative Analyst, meanwhile, has estimated there could be more than 100,000 slot machines running in California tribal casinos. Tribes also will be allowed to offer blackjack and other "house-banked" card games that currently are considered illegal.

Arguments for: Proposition 1A means economic survival for California Indians, supporters contend. That's the fundamental message given by tribes in their second campaign to win voter approval of tribal gaming. They say Proposition 1A will finally

clarify the legal rights of tribes to run casinos on tribal land. Tribal spokespersons, such as Mark Macarro of the Pechanga Band of Luiseno Indians, who appears frequently in tribal TV campaign ads, maintain that Indian gaming on tribal land is the only viable option to keep tribal members off welfare. Tribes say that Indian gaming provides 50,000 jobs for Indians and other California residents while generating \$120 million annually in state and local taxes. Aside from jobs, they note, casino revenues have enabled tribes to provide their members with better health care, education and housing.

Arguments against: Proposition 1A will "trigger a massive explosion" of legalized gambling in California, contends Assemblyman Bruce Thompson (R-Fallbrook), a longtime gambling foe who wrote one of the ballot arguments against the initiative. By increasing the number of slot machines and by permitting previously illegal blackjack card games, Thompson and other opponents believe that Proposition 1A will usher in an unwelcome era of gambling-related problems, such as addiction, underage gambling and other negative impacts on local communities. And they predict it will heighten efforts by cardrooms and horse racing tracks to be allowed the same gambling rights as Indian casinos. Another opponent, Leo McCarthy, former lieutenant governor and Assembly speaker, warns that expanded gambling under Proposition 1A will dramatically increase the number of gambling addicts in California. Calling video slot machines the "crack cocaine" of gambling, McCarthy said their proliferation can quickly turn many problem gamblers into pathological gamblers. A dramatic increase in problem gamblers will cost California millions, he said, in social and economic costs of gambling, such as bankruptcies, unemployment benefits, divorce and child abuse.

-- Claudia Buck

Proposition 12

Parks bond used to buy and maintain recreational, cultural and natural areas.

Background: In the past quarter-century, voters have approved about \$1.9 billion in general obligation bonds to pay for improved natural areas and the purchase and improvement of parks and beaches -- passing a bond about every four years from 1960 to 1988. This, however, is the first statewide parks bond in the last 10 years. Proposition 12 needs only a simple majority to pass.

Proposal: This bond would provide funds to protect land around lakes, rivers and streams, and the coast, build neighborhood parks and reduce pollution. Every city and county would get a part of this money. The amount of money each receives is based on population (per capita). Some cities plan to use the money to develop school parks or build trails, volleyball courts

and other recreational facilities in existing parks.

Arguments for: Proposition 12 has a list of supporters that includes the California Taxpayers Association, the California Chamber of Commerce, the California Association of Realtors, as well as the Sierra Club and the League of Conservation Voters. Supporters say the measure is needed because parks around the state have deteriorated, becoming unsafe and unusable. They say Proposition 12 will provide substantial grants to communities to renovate existing parks, as well as acquire open spaces in urban areas.

Arguments against: Opponents, including state Senator Ray Haynes (R-Riverside), Assemblyman Brett Granlund (R-Yucaipa) and Lewis Uhler of the National Tax-Limitation Committee, say the bond money provided by this proposition, if passed, will go mostly to special interest groups and cities such as San Francisco, which is looking to receive \$45 million, and the Los Angeles area, which is slated to receive \$190 million. They say the government doesn't need to acquire more land since California has trouble paying for the upkeep of the parkland it already has.

-- Melissa Mikesell

Proposition 13

The Safe Drinking Water, Clean Water, Watershed Protection Act will provide a \$1.97 billion general obligation bond to extend existing water supplies in California and to protect and restore waterways.

Background: The last statewide water bond, for \$995 million, was approved by voters in 1996.

Proposal: This water bond would provide water to 8 million Californians by increasing underground storage, and promoting better conservation, recycling and water management. Bond money also would be used to control pollution of lakes, rivers and the California coast. The price tag for this initiative is \$1.97 billion. Distribution of the money is population-based.

Arguments for: Supporters of the water bond include Governor Gray Davis, the California Chamber of Commerce and the Nature Conservancy as well as the bill's author, Assemblyman Mike Machado (D-Stockton). Supporters say that Proposition 13 doesn't just add more facilities -- from dams to reservoirs and canals -- it also looks for solutions to meet the state's growing water needs. Building dams, supporters say, has a devastating impact on the environment. That is why supporters want to look for ways to recycle, conserve and preserve the state's water supply and the Delta's delicate ecosystem. The majority, \$630 million, of the bond money will be spent on managing water supply. Another \$468 million will be used for watershed protection (all spending is subject to appropriation by the Legislature). In addition to the \$1.97 billion included in the bond, California will also be

eligible to receive \$600 million in federal matching funds.

Arguments against: Opponents include the Libertarian Party of California and Dennis Schumpf, director of the Tahoe City Public Utility District. They prefer that allocations of money for water infrastructure upgrades come from current budgets, rather than through expensive bonds. Opponents also argue that too much of the money goes to pay for water treatment plants and watershed programs in specified areas -- including the Central Valley and Los Angeles. They point out that 60 percent of the bond money will benefit Southern California. These improvements, they say, should be paid for locally.

-- Melissa Mikesell

Proposition 14

California Reading and Literacy Improvement and Public Library Construction and Renovation Act of 2000.

Background: Cities and counties pay most of the cost of building, operating and maintaining libraries. This bond provides for the state to pick up part of the bill. Similar to 1988's Proposition 85, also sponsored by legislators, Proposition 14 will assist cities in the construction or renovation of existing libraries.

Proposal: This \$350 million bond will help communities pay to upgrade or build libraries. The state will pay 65 percent, assuming the city or county can demonstrate its ability to pick up 35 percent of construction and all maintenance and operating costs. The minimum grant is \$50,000 and the maximum is \$20 million. Priority is given to cities and counties that offer joint projects between schools and local libraries.

Arguments for: Many communities have outgrown their libraries, but without state money, they are unable to meet the needs of library patrons, say Senators Richard Rainey (R-Walnut Creek) and Dede Alpert (D-San Diego), who both support the proposition. They say local participation is important, and the grant money won't be beyond the reach of local communities since grants are available in small as well as large amounts. They hope to encourage schools and libraries to work together, providing after-school homework centers for students.

Arguments against: Since this bond would require cities or counties to pay 35 percent of construction costs, only the wealthiest communities will be able to afford the bond. Opponents, such as state Senator Ray Haynes (R-Riverside), say only those communities with surplus cash will be able to afford renovation or construction -- but the entire state will have to pay the bill.

-- Melissa Mikesell

Proposition 15

A statewide bond that would sponsor the construction of local crime laboratories.

Background: California cities and counties operate 19 local crime laboratories for collecting, analyzing and interpreting crime scene evidence. Cities and counties pay for their own crime laboratories through fees and fines collected from persons convicted of certain offenses -- including drug and alcohol violations.

Proposal: This measure would allow the state to sell \$220 million in general obligation bonds for construction, renovation, and infrastructure costs associated with these laboratories. Like all general obligation bonds, there will be no increase in taxes and the bonds will be paid back from the state's general fund. Local governments can apply for grants from the state to build local forensic labs. The local government will have to provide 10 percent of total project costs and agree to pay the ongoing operation costs.

Arguments for: Since the money will be used to update crime labs, supporters, such as Assemblymen Bob Hertzberg (D-Van Nuys) and Tom Torlakson (D-Martinez), U.S. Senator Dianne Feinstein, the State Sheriffs' Association and the California Professional Firefighters, say this bond could help law enforcement agencies solve crimes. New and updated labs, they say, will help speed up the analysis of evidence because of improved equipment and facilities -- including high-tech equipment used for examining DNA, toxicology, blood typing, body fluids from sexual assaults, drugs, ballistics, arson evidence and explosives. Supporters also say that California's current facilities are out-of-date and unable to process the volume of evidence brought in by law enforcement.

Arguments against: The opposition to this measure comes from the Libertarian Party, which contends the state should use private labs rather than build new facilities at taxpayer expense. Opponents say there are plenty of private companies that provide the type of services, including DNA testing, fingerprinting, handwriting analysis and audio and video analysis, that the forensic crime labs proposed by this bond would perform.

-- Melissa Mikesell

Proposition 16

This \$50 million bond issue will provide funding to the Department of Veterans Affairs for the purpose of designing and constructing veterans' care homes in California.

Background: The state Department of Veterans Affairs operates two residential homes for veterans, one in Yountville in Napa County, the other in Barstow in San Bernardino County. These two homes have enough beds for approximately 1,800 elderly or

disabled California veterans. No veterans' ballot initiative has ever failed in the state.

Proposal: Authorizes the state to sell \$50 million in general obligation bonds to pay the state's share (35 percent) of construction costs for new homes at Lancaster and Saticoy, and for the renovation of the state's 100-year-old veterans home at Yountville.

Arguments for: Supporters, including state Senator Joe Dunn (D-Garden Grove), the American Legion, the Veterans of Foreign Wars and American Association of Retired Persons, say this bond is necessary to meet the needs of California's military men and women.

Arguments against: The Libertarian Party of California opposes this bond, arguing that the money to complete these new facilities should come from the state's budget -- rather than being paid for by costly bond measures.

-- Melissa Mikesell

Proposition 17

This proposition would modify the state Constitution to permit nonprofit organizations to conduct raffles.

Background: The state Constitution requires that any change to the lottery system be approved by the voters. Currently in California, the only legal raffle is the California State Lottery. All other raffles are illegal.

Proposal: This proposition would amend the Constitution to allow private nonprofit groups to charge money to win a prize in a lottery system, so long as 90 percent of the profits go to the nonprofit organization. Some regulatory fees would be associated with raffles.

Arguments for: Supporters, including the proposition's author, state Senator Bruce McPherson (R-Santa Cruz), and Florence Green of the California Association of Non-Profits, say the current law puts nonprofit organizations and law enforcement in an awkward position. Since raffles are illegal, law enforcement can shut down any lottery-style raffle. But few are willing to stop charities from raising money for scholarships, medicine and health care, parks and wildlife preserves, libraries, food banks, religious groups -- even law enforcement agencies. They say no commercial raffles would be allowed.

Arguments against: State Senator Dick Mountjoy (R-Arcadia) and the Committee on Moral Concerns are among the opponents of this proposition. They fear this legislation will allow phony charities to make money on raffles. They say that if charitable raffles are permitted, they should be limited -- especially as to time and frequency.

-- Melissa Mikesell

Proposition 18

Changes the language of Penal Code section 190, which defines the special circumstances under which first-degree murder is punishable by either death or life imprisonment without parole.

Background: Typically first-degree murder is defined as murder that is intentional or deliberate or that takes place during certain other crimes. The sentencing is typically 25 years to life imprisonment with the possibility of parole. However, under certain circumstances the sentencing for first degree murder may be life imprisonment without parole. One circumstance involves murder committed while "lying in wait." Court interpretation, from the Rose Bird Supreme Court, of "lying in wait" has led to prosecution only when the murder was committed immediately upon the confrontation between the murderer and the victim -- ruling out such interpretations as waiting for the victim, capturing the victim, or transporting the victim before committing the murder.

Proposal: This measure would change the language from "while lying in wait," to "by means of lying in wait." This overcomes the court's interpretation of "while lying in wait" as excluding cases of kidnapping, and limited only to cases where the criminal's goal was primarily to kill.

Arguments for: Supporters, including former Governor George Deukmejian and Ventura County District Attorney Michael Bradbury, say this proposition corrects an odd decision by the California Supreme Court under former Chief Justice Rose Bird. They argue that current case law allows a murderer who kidnaps with the intent to kill to get a lesser sentence than a kidnapper who kidnaps but doesn't intend to kill.

Arguments against: Opponents, including state Senator John Vasconcellos (D-San Jose), say this proposition would only increase the number of crimes punishable by death. They argue that the death penalty hasn't been shown to deter crime, and therefore shouldn't be extended to any further circumstances.

-- Melissa Mikesell

Proposition 19

Extends the sentence of life in prison without the possibility of parole, for second-degree murder, to anyone who murders a peace officer employed by the Bay Area Rapid Transit, the University of California and the California State University system.

Background: In 1998, voters approved Proposition 222, which enhanced criminal sentences for persons convicted of murdering police officers under specific circumstances. Later in 1998, the Legislature passed a bill requiring any amendments to this statute be subject to voter approval, which is why this amendment is on the ballot. Existing law allows that punishment for murder in the second degree of specified peace officers is life without

the possibility of parole if the crime occurs while the officer is on duty, and if it is aggravated.

Proposal: This proposition would extend the stiffer sentence of life in prison without the possibility of parole to anyone who murders under the same circumstances a BART, UC or CSU peace officer.

Arguments for: This measure merely asks voters to extend the same protection that police officers have to BART, UC and CSU peace officers. Since these peace officers investigate many of the same crimes as do police officers, supporters, including state Senator Richard Rainey (R-Walnut Creek), and President of the BART Board of Directors, Thomas M. Blalock, think this enhanced sentence should be extended.

Arguments against: The main opponent to this proposition is the Libertarian Party of California, which argues the measure represents an unwarranted expansion of the state's authority.

-- Melissa Mikesell

Proposition 20

Allocates part of state lottery revenues to be used for purchasing instructional material in California classrooms.

Background: Since 1985, the state has operated the California State Lottery. Fifty percent of revenues are returned to players as prizes, at least 34 percent is allocated to public education and a maximum of 16 percent can be used to administer the lottery. The amount school districts receive is based on student enrollment. The state currently provides schools almost \$600 million each year that must be spent on education materials -- including textbooks, computer software and arts and crafts. This equates to about \$100 per student per year.

Proposal: Proposition 20 does not affect the total dollar amount of the lottery funds allocated toward education. Rather, it redistributes the education money, increasing the annual amount of funds dedicated to instructional materials.

Arguments for: Supporters, including Assemblymembers Tony Cardenas (D-Sylmar) and Nell Soto (D-Ontario), say this proposition is necessary to provide schools with a continuous flow of funding for textbooks and instructional materials.

Arguments against: Opponents, including Wayne Johnson of the California Teachers Association, Sandy Clifton of the Association of California School Administrators and Leslie DeMersseman of the California School Boards Association, say Proposition 20 will take away local control over spending decisions. While opponents agree schools need more textbooks, they say the flow of money from the lottery is too unstable and won't allow districts to plan ahead.

-- Melissa Mikesell

Proposition 21

An initiative statute increasing penalties for juvenile and gang-related crimes.

Background: California's overall crime rate has decreased the past seven years. Juvenile crime also has dropped overall, though arrests for violent juvenile offenses went up 60 percent between 1983 and 1998, in part because of increases in gang-related crime. Two years ago, Republican Governor Pete Wilson, along with several law enforcement organizations, tried passing legislation to stiffen criminal penalties for violent juvenile offenders.

Democratic lawmakers rejected the plan, saying it went too far and more should be done to prevent juveniles from committing crimes rather than just locking them up. Thwarted by the Legislature, Wilson and the bill's sponsors put their plan, dubbed "The Gang Violence and Juvenile Crime Prevention Act," on the ballot as Proposition 21. Last year, Democratic lawmakers tried circumventing Proposition 21 by passing legislation that included \$11 million for programs to avert school violence and juvenile crime and toughened some penalty provisions for youthful offenders. Governor Gray Davis signed the legislation but vetoed the appropriations, citing the \$100 million he had already included in the state budget for school violence prevention. A court challenge last December by opponents of Proposition 21 resulted in some modifications to the ballot arguments by proponents, such as language saying a juvenile convicted of a brutal murder is likely to be released within three years under the current system. That language was altered by Superior Court Judge James T. Ford, along with some of the opposition's ballot arguments. Ford toned down the claim by opponents that Proposition 21 would "put kids in prisons with adult inmates," saying in those instances when juveniles are sentenced to adult prisons, they are always housed in separate facilities.

Proposal: Proposition 21 requires juvenile offenders 14 years and older accused of certain murder and sex offenses to be tried in adult court, instead of juvenile court, and that certain convicted juveniles serve in adult prisons instead of youth authority institutions. It limits the discretion of probation departments when determining whether a juvenile accused of certain crimes should be held or released before appearing before a judge. It bans the sealing or destroying of criminal records for juveniles 14 years and older who are convicted of serious or violent offenses. It adds two to 10 years onto sentences of gang members, depending on their offense. It expands the "special circumstances" under which a youth convicted of gang-related murder can be eligible for the death penalty, expands the use of wire taps against suspected gang members and requires anyone convicted of a gang-related offense to register with local law enforcement. The Legislative Analyst's Office estimates a one-time cost to the state of approximately \$750 million if

Proposition 21 is adopted, and ongoing annual costs of \$330 million. It estimates the one-time cost to local governments at \$200 million to \$300 million and ongoing yearly costs ranging from tens of millions to more than \$100 million.

Arguments for: Supporters of Proposition 21 include former Governor Pete Wilson, the California District Attorneys Association, California State Sheriffs' Association, California State Police Chiefs Association, seven crime victims' organizations, Secretary of State Bill Jones and Insurance Commissioner Charles Quackenbush. Supporters say tougher sanctions are required to combat the problem of violent juvenile crime, which has been increasing while adult crime has declined. They also say that preventive measures, such as education, are important, but won't be enough to combat the juvenile crime wave some predict will occur due to a 33 percent increase in the state's juvenile population over the next 15 years.

Arguments against: Opponents of Proposition 21 include the American Civil Liberties Union, the California Teachers Association, Catholic Conference of Bishops, League of Women Voters of California, Center on Juvenile and Criminal Justice, Assembly Speaker Antonio Villaraigosa, Marc Klass, whose daughter's murder helped push the adoption of California's "Three Strikes" law, and the archbishop of Los Angeles, Cardinal Roger Mahony. They argue that the funds to implement Proposition 21 would be better spent on preventive measures targeting at-risk youths and gang members. They say California already has tough laws to combat gangs and youth crime, such as trying and incarcerating 14-year-olds as adults in some circumstances. They contend the measure will do nothing to keep kids out of gangs or prevent school shootings.

-- Noel Brinkerhoff

Proposition 22

An initiative statute banning out-of-state gay marriages from being recognized in California.

Background: Currently, California law does not allow couples of the same sex to marry. It also provides that a legal marriage occurring outside of California is valid within the state. Four years ago, the issue of homosexual marriage became a hot topic when Hawaii appeared to be on the verge of legalizing such unions. Although that effort never succeeded, conservatives around the country responded by passing legislation in Congress and dozens of state Legislatures that allowed states to disregard out-of-state same-sex marriages. In California, state Senator William "Pete" Knight (R-Palmdale) tried unsuccessfully several times to pass legislation that banned out-of-state gay marriages before taking his cause directly to voters with Proposition 22, dubbed "The Knight Initiative" by opponents.

Knight has insisted his effort is about preserving the

traditional form of marriage between men and women and that there is no personal motivation behind his cause. However, Knight's family has been a subject of discussion in the Proposition 22 debate. Knight has a son, David, who is gay, and the senator has said that their relationship has been strained since David told him four years ago about his homosexuality. Knight also had a gay brother, John, who died of AIDS in 1996.

Last December, Vermont came close to making same-sex marriages a reality when the state Supreme Court ruled that gay and lesbian couples should be entitled to all the benefits that married couples enjoy, although the court stopped short of actually legalizing homosexual marriage. Both sides of the Proposition 22 debate have used the Vermont decision to support their arguments; proponents say it demonstrates the urgency for California to pass the initiative and preserve the "traditional" form of marriage; opponents say the court decision demonstrates the growing acceptance of the homosexual lifestyle. Last year, the Legislature and Governor Gray Davis approved several gay rights measures granting domestic partner benefits for state employees, increasing criminal penalties for hate crimes against homosexuals and banning harassment of gays and lesbians in public schools.

Court action also took place on Proposition 22 after state Attorney General Bill Lockyer -- a liberal who once served in the Legislature -- changed the title of the measure from "Defense of Marriage" to "Limit on Marriage." Lockyer said the change more accurately described the measure's intentions. Supporters of Proposition 22 challenged the modification in court, saying Lockyer's action was prejudicial and would sway voters to oppose it. Superior Court Judge James T. Ford, however, agreed with Lockyer's justification for altering the title and left the change intact.

Surveys have shown that a majority of Californians do not support the concept of gay marriage. As for Proposition 22, most polling has it topping 50 percent in support, with some surveys showing a 20-point lead. Historically, however, initiatives targeting homosexuals have enjoyed leads in pre-election polls, only to lose on Election Day. Previous examples include Prop. 6 in 1978, the so-called "Briggs Initiative" that required the firing of gay teachers, Prop. 64 in 1986, an initiative sponsored by supporters of Lyndon LaRouche that sought the isolation and quarantine of AIDS patients, and Prop. 102 in 1988, an initiative sponsored by former Republican Congressman William Dannemeyer and tax reformer Paul Gann that would have required doctors and blood banks to report all AIDS cases to health officials, including those not verified by medical testing.

Proposal: At 14 words, Proposition 22 is easily the shortest ballot measure in recent memory. It simply reads: "Only marriage between a man and a woman is valid or recognized in California."

Arguments for: Supporters of Proposition 22 include Senator

Knight, the Committee on Moral Concerns, Church of Jesus Christ of Latter-day Saints, California Catholic Conference of Bishops, plus 150 other churches and religious organizations, the California Republican Party, GOP legislative leaders Assemblyman Scott Baugh (R-Huntington Beach) and Senator Ross Johnson (R-Irvine), and the Hispanic Business Roundtable. They argue that the measure is designed to protect the traditional form of marriage between men and women and ban legalized gay marriages in another state from being recognized in California. They say it is not meant as an attack on gays and lesbians, nor will it take away any rights currently enjoyed by domestic partners.

Arguments against: Opponents of Proposition 22 include various gay rights organizations, the American Civil Liberties Union, the League of Women Voters, the California Teachers Association, plus 20 other labor organizations, the California Democratic Party, presidential candidates Al Gore and Bill Bradley, Lieutenant Governor Cruz Bustamante, U.S. Senators Dianne Feinstein and Barbara Boxer, Assembly Speaker Antonio Villaraigosa (D-Los Angeles), Republican Congressman Tom Campbell and approximately 100 religious leaders in California. They argue that Proposition 22 is not about gay marriage, since current law already forbids it, but about undermining the rights that gays and lesbians have already won. A vote against the measure is a vote against government interference in people's private lives, opponents say, adding that opposing Proposition 22 will not legalize gay marriage.

-- Noel Brinkerhoff

Proposition 23

An initiative to require ballots in federal and state races to offer voters the option of voting for "none of the above."

Background: The percentage of voters turning up at the polls over the last several decades, both in California and nationwide, has been on a steady decline. The rise of negative campaigning and the perception that most candidates are beholden to corporate, rather than citizen interests, has made voters loathe to exercise their voting privileges. Often as a statement of rebellion, voters stay away from the polls rather than cast a vote for what they consider unacceptable choices. This, coupled with a growing number of registered voters who do not wish to affiliate with either of the two major political parties -- particularly pronounced among youth -- has given rise to a growing number of people who wish to exercise a little defiance at the polls. It is their belief that voters should have the opportunity to show their disapproval for all candidate choices by casting a vote for "none of the above." In 1975, Nevada passed a provision allowing the "none" option and since that time, in four different races, "none of the above" received more votes than either of the

candidates. Several years ago, an organization connected with Ralph Nader tried to place a similar measure on the California ballot, but failed to gather enough signatures. This time around, with the backing of computer industry entrepreneur and Seagate Technology founder Al Shugart, Proposition 23 was born. Shugart previously made a political name for himself in 1996 when he tried to run his dog, Ernest, as a candidate in the 17th Congressional District to convey his frustration with the political party system. Though ultimately blocked from doing so by election officials, Shugart went on to found the Friends of Ernest, a nonprofit, nonpartisan organization to promote public interest in politics.

Proposal: In all state and federal elections, California voters would be given the option to cast a vote for "none of the above" along with listed candidates. The "none" option would apply to presidential, congressional, legislative and statewide races in all elections. The measure would not apply to elections for judges and local offices. The number of votes received for "none of the above" would be tallied and reported but would not impact election results. Candidates with the most votes, whether listed on the ballot or as write-ins, would win election. Only minor costs are expected to result from the measure's implementation.

Arguments for: The measure's sponsor, Friends of Ernest Political Action Committee, is the primary supporter of Proposition 23. They argue that voters disenchanted with the political process should be able to register their displeasure with a slate of candidates. They view the opportunity to vote "none of the above" as a way to express their dissatisfaction with lackluster candidates and negative campaigning. It is their contention that voting "none of the above" would send a message to candidates that constituents want to see issue-oriented and positive campaigning. They feel certain that more voters would turn up at the polls if they could register their discontent.

Arguments against: In their ballot arguments against Proposition 23, the Green Party argues that this measure only gives voters a false sense of accomplishment. More meaningful, they say, would be systemic changes to the political process. They advocate allowing instant runoffs where voters rank their vote choices or proportional representation, which requires a lower threshold for candidates to win a race.

-- Kathleen Les

Proposition 24

The Case of the Missing Initiative

When does 25 come after 23? When the California Supreme Court says it does. In early December, 1999, the state's high court took the unusual step of removing Proposition 24 from the

statewide ballot. By a 5-2 vote, the court said the initiative, which sought to link a legislative pay cut to a new system of redrawing California's political boundaries, violated state constitutional provisions mandating that the provisions of a law deal with a single subject. The court's action was an ignominious end to the GOP's intrigue-plagued attempt to block a Democrat-controlled redistricting in California. Bakersfield Republican Representative Bill Thomas spearheaded the Proposition 24 effort on behalf of his GOP colleagues in the House. He stuffed a competing redistricting proposal being pushed by GOP gadfly Ron Unz (see next section), and convinced state and national party leaders to bankroll the slow-starting signature-gathering process. Thanks to an 11th-hour direct mail pitch, the initiative qualified, but within weeks it had been challenged by, among others, state Superintendent of Public Instruction Delaine Eastin. The high court agreed to hear the case, and with a day to spare, struck down Proposition 24. It was only the fifth time since the inception of the initiative process that a proposition had been removed from the ballot. Though another redistricting proposal is in the circulation pipeline for the fall, gun-shy GOP leaders are leery of pumping another pile of money into it, and the prospects of such an initiative appearing on the November ballot are considered less than 50-50.

-- Steve Scott

Proposition 25

Campaign finance reform initiative to limit the size of campaign contributions and require Internet disclosure of money received.

Background: If there's one subject in which Californians have plenty of voting experience, it is campaign finance reform. Since 1988, statewide election ballots have included no fewer than five different measures seeking to limit the amount of money any one person or group can give to political races. In most cases, these measures have also sought to place voluntary limits on the amount that can be spent on campaigns. Three of those five measures were approved by voters, but in each case, the proposals ran afoul of either the state or federal courts, which have tended to view political contributions as a form of free speech. The most recent attempt, 1996's Proposition 208, was stayed in early 1998 by the federal courts, and is still hanging in legal limbo. The end result: California is still one of six states that puts no limits on the size of political contributions and the source of those contributions in state races. Enter Ron Unz, the Silicon Valley software magnate responsible for 1998's successful bilingual education initiative, Proposition 227. Angered by a last-minute infusion of money against 227, Unz chose campaign finance reform as his next project. He hooked up with Tony Miller, one of the

architects of Proposition 208, and set about writing an initiative that would pick through the legal minefield. Unz's original strategy was to couple campaign finance reform with a scheme to change the way new legislative and congressional district lines are drawn. The link was designed to win the support of Republican leaders, who were scrambling for a way to have an impact in California's redistricting process in the wake of their across-the-board defeats in 1998. Eventually, the GOP establishment chose to back what became Proposition 24, the redistricting initiative removed from the ballot by the state Supreme Court. Undaunted, Unz pressed ahead with a stripped-down measure, using his own money to help underwrite the signature-gathering campaign.

Proposal: The central features of Proposition 25 are its restrictions on the size of campaign contributions. These limits -- \$3,000 per individual for legislative and local races, and \$5,000 per individual for statewide contests -- are considerably higher than those included in any of the previous reform initiatives. Corporate contributions would be banned altogether. The measure also proposes a schedule of voluntary campaign spending limits for candidates. Candidates and ballot-initiative campaigns that agree to the caps would be given broadcast advertising credits underwritten by a \$1 per taxpayer allocation from the state general fund. Proposition 25 also proposes immediate Internet disclosure of campaign contributions and the immediate posting on the Internet of all campaign advertising -- printed as well as broadcast. Statewide candidates and initiatives would have to disclose the names of their top two donors in campaign ads. Proposition 25 would also relax some of the major donor reporting requirements by boosting from \$10,000 to \$100,000 the threshold needed to trigger a major-donor filing.

Arguments for: Supporters of Proposition 25 include Unz and Miller, as well as Common Cause, the sponsors of many of the state's past campaign-reform efforts. Also on board in support is Arizona Senator John McCain, a Republican presidential candidate who has made campaign reform the centerpiece of his campaign. Backers say the state's political process is corrupted by special-interest campaign contributions. Limiting the size of these contributions, supporters contend, is the only way to curb the influence of money in politics, and they argue the limits in Proposition 25 are guaranteed to withstand court scrutiny. The spending limit and advertising disclosure will, they maintain, level the playing field between well-funded and under-funded candidates, and will also lift the curtain behind which special interests hide in initiative campaigns.

Arguments against: Opposing Proposition 25 is a coalition of business, public employee groups and organized labor, including the California Chamber of Commerce, the California Teachers Association, and Service Employees International Union. Many of these groups contribute to campaigns, mostly through political

action committees. Also opposing the measure is the League of Women Voters, which opposes limits on initiative campaigns. They argue that spending and contribution limits make it easier for wealthy candidates to dominate the political process, since the U.S. Supreme Court has said that individuals can spend as much of their own money as they want on campaigns. Opponents say the measure will create the same "soft money" loophole that currently allows political parties to collect and spend tens of millions of dollars, ostensibly for "voter outreach." They also contend the measure amounts to a \$55 million taxpayer subsidy to finance political advertising.

-- Steve Scott

Proposition 26

An initiative to amend the state constitution to lower the requirement for approving local school bonds from a two-thirds majority to a simple majority -- 50 percent plus one vote.

Background: California public schools, from kindergarten through community college, will need several billion dollars each year for construction, modernization and renovation to keep pace with booming enrollment and to repair time-worn facilities. The state currently helps local governments pay for these items by using bonds from the school facilities program. Bonds are like long-term loans that help spread out payments over years. The state often asks voters to approve bonds to build and maintain schools throughout California. However, it takes the approval of two-thirds of the voters to approve local school bonds. California is one of four states with this requirement. Local school districts have long objected to the super-majority requirement because many school bond measures have failed to meet the two-thirds vote required. Since 1986, 47 percent of school bond measures failed to receive a super-majority. In 1993, teachers' groups, school districts and the business community joined state Senator Jack O'Connell, (D-San Luis Obispo), in lobbying the Legislature to put the issue before voters. As a result of their efforts the Legislature placed Proposition 170, a constitutional amendment, on the November 1993 ballot. The measure would have allowed a simple, rather than two-thirds majority of voters, to approve bonds for schools when those bonds raise property taxes above the 1 percent limit prescribed in Proposition 13, which passed in 1978. Voters resoundingly defeated Proposition 170 by 69 percent to 31 percent. The Howard Jarvis Taxpayers Association, which led the campaign to defeat the 1993 measure, out-raised opponents nearly two-to-one (\$1.18 million to \$633,500). The group has vowed to raise millions more this year to defeat Proposition 26.

Proposal: Proposition 26 would amend the California Constitution by changing the requirement for approving local

school bonds from a two-thirds majority to a simple majority -- 50 percent plus one vote. The measure would also require local school bond measures to include a list of specific projects that would be completed with bond funds. Districts would have to submit to two independent audits of bond projects each year. Audits would examine whether bond money was spent on school facilities (and not other items like salaries or operating expenses) and would determine if projects are completed on time and within budget.

Arguments for: The California Teachers Association and computer industry multimillionaire Reed Hastings have joined forces to put the initiative on the ballot. The measure is also supported by business and labor groups as well as the League of Women Voters and the California Congress of Seniors. These groups argue that any tax increases would be minimal. They contend that a simple majority vote on bond measures would allow school districts to obtain the benefits of local bond money and a better chance to qualify for a share of funds from 1998's Proposition 1A, the voter-approved \$9.2 billion statewide bond measure to modernize and build schools. To be eligible for those funds, schools must put up matching local funds, which they usually obtain through bond proposals. Proponents say Proposition 26 will provide needed funds for new school construction necessitated by booming enrollment and smaller classes mandated by the state's class-size reduction program. Funds also are needed for repairs of aging or dilapidated school facilities and to provide schools with intercoms, phones and other security devices to ensure student safety.

Arguments against: Opponents of the measure, including the Howard Jarvis Taxpayers Association, consider the two-thirds requirement on local school bonds a fire wall against future tax increases. Critics argue that if the measure passes, so will most bond measures and Californians will see higher property taxes and a crippling burden of bonded indebtedness. Opponents have charged that property taxes could double as a result of the initiative, therefore placing a heavy load on property owners whose tax money pays off the bonds. Furthermore, opponents argue that the accountability measures contained in the initiative are either weak or duplicate existing laws. The Jarvis group also contends that if the two-thirds requirement is rescinded for school bonds, there will be attempts to do the same for parks and water projects and other bond elections.

-- Emelyn Rodriguez

Proposition 27

An initiative statute permitting congressional candidates to sign a voluntary pledge to limit their terms in office and making these pledges a matter of public record on ballots and

voter-education materials.

Background: For the third time in a decade, advocates of term limits for Congress members are going directly to voters. In 1992, voters passed Proposition 164 mandating a limit of three terms for U.S. representatives and two terms for U.S. senators. Supporters argued it was in their power to regulate congressional term limits at the state level because the state bears the responsibility of preparing ballot materials. But the U.S. Supreme Court, ruling in an Arkansas case, determined that states lacked authority over terms of federal officeholders. The ruling effectively nullified California's measure as well. Then, two years ago, Proposition 225 asked voters to call on their elected officials to enact a federal constitutional amendment to cap congressional terms. Similar measures passed in nine other states, but these, too, failed to pass muster with the courts. A new approach, since adopted in Colorado, Alaska and Idaho, takes a less-incendiary tack. If Proposition 27 passes, California would join these states in allowing congressional candidates to sign a voluntary non-binding pledge to limit U.S. representatives to three two-year terms and U.S. senators to two six-year terms. Candidates would be under no obligation to sign such a pledge, but those who do could make their pledge public on voter materials. With this information in hand, presumably voters supporting term limits would make their candidate selections accordingly.

Proposal: Federal law sets no limits on the number of terms congressional members can serve. Under this measure, candidates for Congress are offered the opportunity to sign a declaration stating their intent to serve no more than six years as a U.S. Representative or 12 years as a U.S. Senator. Candidates can request the Secretary of State to include mention on election materials stating whether or not they declared their intent to limit their term in office. It is estimated that the cost to the state and counties to implement the declaration statements would be relatively minor.

Arguments for: Proposition 27 supporters include the California Term Limit Coalition and U.S. Term Limits, the nationwide advocacy group promoting congressional term limits. Supporters point to what they see as success with legislative term limits approved by voters in California and argue that turnover in federal officeholders would produce a higher number of citizen legislators with stronger ties to their local communities. Voluntary term-limit pledges will, they say, give voters a means for both knowing which candidates are willing to minimize their years in office and provides a way for voters to hold elected officials accountable to their pledge.

Arguments against: Ballot arguments against Proposition 27 have been filed by the Sacramento City Taxpayers' Rights League. It is their contention that term limits will undercut the state's ability to receive federal funding because the most senior

congressional members have the clout to direct money to their states. They argue further that without long-term, experienced lawmakers with sound working knowledge of the political system, a knowledge vacuum emerges -- to be filled by lobbyists and special interest groups who use the system to the disadvantage of the average citizen. Voters always have the option of voting their representatives out of office, say those who oppose the measure, if indeed there is dissatisfaction with congressional representatives.

-- Kathleen Les

Proposition 28

An initiative to repeal a cigarette tax imposed by Proposition 10.

Background: Despite the millions that tobacco interests paid trying to extinguish it, voters in November 1998 narrowly approved Proposition 10, a measure imposing a 50-cents-per-pack cigarette tax to fund early child-development programs. This year the issue is revisited by Ned and John Roscoe, owners of one of the nation's largest discount cigarette store chains, Cigarettes Cheaper!

Proposal: This measure repeals the excise tax imposed on cigarettes and other tobacco products by Proposition 10, passed by voters in November 1998. It eliminates funding of early childhood development and smoking prevention programs enacted by Proposition 10. It also indirectly affects other programs funded by existing tobacco taxes -- specifically health education, research and breast cancer programs funded by Proposition 99 of 1988. And the measure would prohibit imposition of additional surtaxes on the distribution of cigarettes or tobacco products unless enacted by the state Legislature.

Arguments for: Supporters, including the California Association of Retail Tobacconists, say they want to lift a heavy tax burden on cigarette smokers, who they claim have been unfairly discriminated against. They also contend the program is fundamentally flawed, wastes taxpayer money and creates a huge government bureaucracy. The repeal campaign argues that neither county nor state officials oversee or control the spending to ensure that funds will be spent effectively. They also point out that since the passage of Proposition 10, hundreds of millions of dollars have been collected but counties have not spent any of the money.

Arguments against: Opponents of the measure include actor/director Rob Reiner, who championed Proposition 10, the American Cancer Society and the American Lung Association. These critics say tobacco companies are attempting to put their profits ahead of the interests of children and families. They argue that tobacco companies are trying to thwart the will of voters by

repealing Proposition 10. If the measure passes, opponents say it will slash more than \$680 million a year from critical programs that benefit children. These programs provide services such as preschool education opportunities and child care, smoking prevention aimed at pregnant women and parents of young children, and health care for children including immunizations and boosters. Backers of the cigarette tax say that counties have not yet spent money because the initiative first required the creation of decision-making panels to approve spending plans. They say the initiative comes just as the first counties are putting their Proposition 10 tax money into action.

-- Emelyn Rodriguez

Proposition 29

A referendum that would formally approve the so-called Pala Compacts, tribal gaming agreements signed by former Governor Pete Wilson and 11 tribes in 1998. The compacts, approved by the state Legislature, place strict limits on both the type and the number of gambling devices allowed each tribe.

Background: After 17 months of negotiations, former Governor Pete Wilson reached agreement with the Pala Band of Mission Indians in San Diego County on the first tribal-state compact in California. Although written expressly for the Pala tribe, it was intended as a "model compact" that could be adopted by the rest of California's gaming tribes. Since 1988, federal law has required all tribes running casinos nationwide to negotiate a compact with their state government. But for nearly 10 years, most of California's tribal casinos have operated without such an agreement. The Pala Compacts were enacted after federal authorities threatened to shut down some 13,000 existing video slot machines at Indian casinos, contending they violated the state constitution's ban on Nevada-style gambling machines. The majority of the state's wealthy gaming tribes bitterly opposed the Pala Compacts, saying they threatened tribes' economic security by forcing them to install new types of gaming machines that gamblers would not find acceptable. They also felt the Pala Compacts, by requiring casino tribes to allow union elections among reservation employees and to meet with local officials to mitigate traffic and environmental concerns, interfered with their sovereign rights as independent governments. Faced with shutting down their existing machines and signing the unpalatable Pala Compacts, the tribes subsequently launched a history-making, near \$100 million effort to qualify and pass Proposition 5 on the November 1998 ballot. It passed but was later overturned by the state Supreme Court. A revised version of that measure, now renamed Proposition 1A, is currently on the ballot, along with Proposition 29.

Proposal: The Pala Compacts would limit the total number of

video gaming machines operating in California tribal casinos to no more than 19,900 statewide. Every tribe, whether it operates a casino or not, would receive an initial allotment of 199 machines. Those choosing not to engage in casino gambling could "sell" their allotment to a gaming tribe, thus enabling non-casino tribes to reap financial benefits. No single tribe would be allowed to run more than 975 gaming machines, fewer than what some casino tribes currently own. Unlike the video slot machines now available in California's tribal casinos, the Pala Compact requires that tribes run a new lottery-style slot machine that would have the look and feel of a conventional slot machine but would operate as a lottery-style device, in order to comply with the state constitution. The Pala Compacts also require tribes to allow union elections among casino service workers and require tribes to negotiate with local governments to mitigate the traffic, public safety and health impacts of casinos. The compacts also set the legal age for gambling in tribal casinos at 21, instead of 18 as currently allowed. The fate of Proposition 29 is directly linked to that of Proposition 1A on the ballot, the measure to amend California's constitution to allow blackjack, slot machines and other casino-style gambling on Indian reservations. Proposition 1A would enact provisions agreed to last September by Governor Gray Davis and nearly 60 California tribes. If Proposition 1A passes, it would pre-empt and nullify Proposition 29.

Arguments for: Without the limits on Indian gambling contained in Proposition 29, supporters say that California is destined to become "Las Vegas-by-the-Sea", with full-fledged casino-style gambling available to its residents. Proposition 29's supporters include Art Croney, executive director of the Committee on Moral Concerns; Harvey Chinn, state director of the National Coalition Against Gambling Expansion; and Cheryl A. Schmit, co-chair of Stand Up for California!. By allowing a "modest" expansion of tribal gambling, they say Proposition 29 would enable tribes to maintain their economic security while still meeting concerns of local communities. They say Proposition 29 preserves the rights of local residents and communities to resolve negative impacts created by casinos, such as traffic congestion, zoning issues, sanitation and pollution problems, as well as ensure adequate law enforcement and fire protection.

Arguments against: Proposition 29 is no longer needed, according to Richard Milanovich, tribal chairman of The Agua Caliente Band of Cahuilla Indians, because the gambling provisions it contains have been rendered moot by the compacts signed by tribes and Governor Davis last year. Milanovich said Proposition 29's strict limits would end the ability of tribes to support their families and stay off welfare.

-- Claudia Buck

Propositions 30 and 31

Referendum to ratify the Fair Insurance Responsibility Act and two laws passed by the Legislature that allow third-party lawsuits in some insurance cases.

Background: To most Californians, a "Royal Globe" is what Prince William uses for his geography lesson. But to insurance companies, especially large automobile liability providers, the phrase "Royal Globe" is frightening enough to make them spend more than \$50 million to insure it doesn't become part of the state's legal lexicon. It refers to a 1979 state Supreme Court decision (Royal Globe Insurance Co. vs. Superior Court) that interpreted state law to allow accident victims the right to sue the insurer of the person at fault if that company used unfair claims practices -- deliberately withholding payments, needless delays, etc. Over the next nine years, these bad-faith lawsuits caused a substantial increase in auto-related litigation, a development that companies say helped drive up the cost of car insurance. In 1988, with its majority switching from more liberal to more conservative, the Supreme Court reversed its earlier decision and outlawed these third-party lawsuits. Since that second ruling, California's civil litigation attorneys, who routinely battle insurance companies in the high-stakes Sacramento political wars, have lobbied the Legislature to re-institute third-party lawsuits. With Republicans George Deukmejian and Pete Wilson occupying the governor's office, the efforts went nowhere. But the election of Democrat Gray Davis as governor changed the political dynamic. In the summer of 1999, the state Legislature approved Senate Bill 1237, which reinstated third-party lawsuits. With the insurance and business communities breathing down his neck, Davis asked the Legislature to hold the bill up just before it was to be sent to his desk. Another measure, Assembly Bill 1309, was crafted that narrowed the scope of the original bill, and Davis signed the two legally interconnected measures in October, ignoring an 11th-hour advertising and lobbying campaign. Saying the legislation would ultimately cost them more than \$1 billion a year in additional claims, a coalition of most of the big names in car insurance Allstate, State Farm and 20th Century among them -- immediately set about the process of qualifying referenda -- ballot measures designed to strike down laws approved by the Legislature and signed by the governor. Using techniques developed by California's Indian tribes in their successful qualification of 1998's Proposition 5, the insurers organized a gargantuan campaign of television advertising, direct mail and paid signature-gatherers to collect the 419,260 signatures needed to place the laws before the voters on the March ballot. They succeeded with time to spare, at a cost of roughly \$30 million. Trial lawyers, the lobbying group which engineered the Legislature's passage of the new laws, began organizing as well,

but lagged badly behind the insurers, who had already dumped \$42 million into the campaign by the end of December.

Proposal: A "Yes" vote for Propositions 30 and 31 would ratify the actions of the Legislature and the governor in re-instituting third-party lawsuits. Proposition 30, the main legislation, lets an individual or business file a third-party lawsuit against an insurance company when a claimant is awarded more than they asked the insurer for and the insurer unfairly handles the claim. In cases where the damage award is under \$50,000, the cases could go to a new arbitration system set up by the law. Proposition 31, which can only go into effect if Proposition 30 passes, eliminates the ability of businesses to sue other businesses, requires that property-damage suits can only occur in auto cases, disallows certain types of emotional distress, and restricts lawsuits in cases where arbitration is chosen. In each case, the groups who put the proposition on the ballot are asking for a "no" vote, while those defending the law as passed by the Legislature ask for a "yes" vote.

Arguments for: The primary legislative supporters of the new law, and the main supporters of a "yes" vote on Propositions 30 and 31, are the state's civil litigation trial lawyers, led by their trade organization, the Consumer Attorneys of California. Also backing the measure are Consumers Union (publishers of Consumer Reports magazine), the California Congress of Seniors, the state Nurses Association and Harvey Rosenfield, author of the landmark 1988 insurance initiative, Proposition 103. Their cover group is called Consumers and their Attorneys, Yes on the Governor's Insurance Reforms. They contend that insurance companies, especially the large out-of-state conglomerates responsible for the referenda, routinely engage in unfair claims practices -- deliberately delaying claims, sometimes for years. The only way to hold these companies accountable, they argue, is to let them be sued. Supporters (and Governor Gray Davis, who as of this writing had taken no position on the referendum) dispute claims by opponents that the new laws give drunk drivers license to sue, insisting the law explicitly prohibits such lawsuits. Supporters also say insurance industry projections of the impact on premium costs are inflated, and note that one major in-state carrier, Mercury, does not oppose the new laws.

Arguments against: The primary opponents of the new laws, and the main financial backers of the ballot measures to overturn them, are several of the larger car-insurance carriers operating in the state -- Allstate, State Farm, Liberty Mutual Group, and Farmers Insurance Group among them. They are joined by the California Chamber of Commerce, the consumer group Voter Revolt, Mothers Against Drunk Drivers and the Civil Justice Association of California. Their cover group is called Consumers Against Fraud and Higher Insurance Costs. Opponents contend the frivolous lawsuits produced by the new laws will drive up total insurance costs in California by \$1 billion a year, translating to premium

hikes averaging \$200 to \$300 a year. They contend the law isn't needed since consumers can take their disputes to court or the state Department of Insurance if they don't like the size of the settlement. Citing an analysis by Mothers Against Drunk Driving, they contend the new laws will let some drunk drivers sue insurers, in cases where the drunk driver was at fault but nobody was injured. They contend insurers by and large operate in good faith and that the laws are the work of trial lawyers looking to drum up more business.

-- Steve Scott

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BODY:

For the Weekly's handy one-page tear-out voter guide, turn to the inside back cover of next week's issue.

Alongside several endorsements, we've run this illustration, signifying that our choice in the particular race is the lesser of two evils or just one of life's gloomier compromises.

The New (Not Necessarily Improved) Rules of the Game

It's been less than four weeks since New Hampshire voted, but somehow the California primary is already upon us. This year's primary not only comes three months earlier than ever before; it's also been re-configured. For the first time in a presidential year, voters will participate in a blanket primary, in which all candidates of all parties will appear on every ballot and voters may cast their vote for any of them, regardless of party.

But before you decide to vote outside your party, you should know this: While the total votes cast for the candidates will be tallied and announced, only the votes of Democrats for Democrats will be counted in the apportionment of delegates to the Democratic Convention; likewise with Republicans. Despite passage of a California ballot initiative for open primaries, the two major parties have informed the state's election officer that delegates selected by non-party members -- for instance, by Democrats who cast their ballot for Republican John McCain -- will not be seated at the convention. McCain might get more votes than George W. Bush overall, but if Bush prevails on the Republican coded ballots, he will win every one of the state's Republican delegates.

For every other office on the ballot, however, a vote is a vote is a vote. Republicans crossing over to vote, say, for Democrat Adam Schiff in his challenge to Republican Congressman (and former House Prosecutor) James Rogan will have their votes counted along with everyone else's. Democrats crossing over to vote for Rogan will have their votes counted, too, though they risk spending eternity in the fires of hell.

That said, here are our primary recommendations:

PRESIDENT OF THE UNITED STATES-- BILL BRADLEY

This year's election takes place in a political environment unlike any we've known for many decades. For the first time in eons, the government is running a surplus, and is projected to do so for years to come. That means that the fundamental question for American public policy has become what to do with this

unexpected bounty. The options range from cutting taxes on the rich (the Bush position), to paying down the debt and shoring up existing programs (the party line of both Gore and McCain), to initiating new programs -- such as universal health insurance -- to meet our vast unmet needs (the Bradley approach).

This doesn't obviate, of course, the significance of the differences among the candidates on questions of choice, gun control, defense policy, environmental protections, campaign-finance reform and so forth. But when candidates agree on these issues -- as Al Gore and Bill Bradley generally do -- then the question of how we use the opportunity that our prosperity affords us becomes decisive. Bill Bradley's priority is to use the surplus to reduce the grotesque inequalities that characterize our time. On this paramount issue, he's the only major candidate who's got it right -- and the candidate who wins our support.

Now, if only he had a snowball's chance . . .

Clearly, the man of the moment in American politics is Republican John McCain. To his credit, the Arizona senator has pushed the GOP toward the center of the political spectrum. Against the ferocious opposition of his Republican Senate colleagues, he has allied himself with Democratic progressives to fight for campaign-finance reform and controls on big tobacco. He has opposed Boy George's proposal to return the projected budget surplus to the wealthy in the form of tax cuts, and he's gone so far as to suggest that the government might even be able to spend that money wisely. Rejecting the mania for English-only, he's been a staunch supporter of bilingual education. With winks and nods, he's suggested he's a more tolerant conservative than his rivals on issues of choice. And by beating Bush in New Hampshire and Michigan, he has shown that millions of rank-and-file Republicans want the GOP to lose its obsession with feeding the rich, smashing the state and censoring sex lives. McCain has pushed a sizable chunk of the electorate away from a politics of abject lunacy, which is no small achievement.

And if that were all there was to John McCain, we'd think long and hard about recommending him to our readers. Alas, there's more.

McCain is a conservative Republican, an Arizona Republican, a Goldwater Republican -- and while he shares some of Barry's centrist heterodoxy, he shares even more of his right-wing orthodoxy. McCain voted 82 times in the course of his Senate career against bills securing a woman's right to choose. He voted against legislation that would have protected physicians and women from violent assaults at family-planning clinics and doctors' offices. Though McCain speaks reverentially of Theodore Roosevelt, his record on environmental protection couldn't be further from T.R.'s. In 1998, McCain received a flat zero from the League of Conservation Voters -- meaning he didn't support a single significant environmental measure that came before Congress. On the Hill, and on the campaign trail today, McCain's an unwavering opponent of gun control, voting against the ban on assault weapons, and even against legislation that banned the sale of guns designed to evade airport-security checks.

In short, there's still a good deal of that old Republican abject lunacy left in McCain. He's made a positive contribution to American politics -- but not so positive that liberals or even moderates should feel at all comfortable supporting him.

When the presidential campaign got under way a year ago, the chief difference between Bill Bradley and Al Gore was that Bradley was the phlegmatic one, Gore the robotic. Both were centrist Democrats -- liberal on social issues, modest to a fault on economic. Over the course of the past year, though, Bradley has

surprised the Bradleyologists by proposing to reinvent activist government now that there's a surplus. For his part, Gore has remained fixed in the triangulated center.

The case for Al Gore is the case for continuity. Alone among the candidates, Gore can claim some credit for the Clinton-administration policies responsible in some degree for America's prosperity. (How much credit is rightly Gore's and how much responsibility is rightly the administration's, we'll never know.) The vision of the Gore candidacy is the vision of the post-1994 Clinton administration: a feel-good centrism. Gore unabashedly supports tolerance of and equality for all Americans, and, Bradley's charges to the contrary, he's an unequivocal supporter of a woman's right to an abortion. On matters economic, Gore opposes Republican tax cuts by defending Medicare and Social Security and reducing the deficit (or now, paying down the debt). He proposes incremental augmentations of government social programs, while maintaining fiscal discipline to keep interest rates low. Today's America is a much wealthier nation than the one Clinton and Gore took over in 1992. But it's also a land of stunning and growing economic inequality, about which Gore says very little.

Gore's not entirely silent about our transformation into two Americas, though. On one key issue, he's actually terrific. Gore decries the ease with which employers violate the nation's labor laws to thwart their employees' unionization efforts. He proposes to amend the labor law to impose tough penalties on law-breaking businesses.

Gore argues that while he can be trusted to manage the economy, W. puts our prosperity at risk with his tax cuts -- an argument that's out the window if the Republican nomination goes to McCain, whose proposed tax cuts are smaller than Gore's. Gore has embraced Clinton's tactic of forestalling the Republicans' supply-side silliness by advocating using the surplus for things even Republicans can't object to, namely, Social Security and debt reduction. But he's taken that strategy and turned it into a weapon against Democratic demand-side decency. Over the past couple of months, he's repeatedly contended that such proposals as Bradley's plan for universal health care are a profligate use of the surplus, that the funds should instead be directed to debt repayment. Problem is, with the single exception of his support for union rights, none of Gore's proposals would substantially reduce the inequality that's the underside of our prosperity. In fact, by thwarting any significant social programs that could get in the way of debt retirement, his plan for the surplus could actually exacerbate the division between haves and have-nots.

Gore's health-care proposal, for instance, is to expand incrementally the Children's Health Insurance Program (CHIP), which the administration funds in conjunction with the states. But CHIP is a demonstrable failure, especially in California. The cumbersome outreach program has enrolled fewer than 25 percent of the eligible children in this state.

Where Gore proposes tinkering with a failure, Bill Bradley wants to scrap it in favor of an entirely new edifice. Bradley's health-care proposal calls on the government to subsidize the health insurance of the medically uninsured poor, with payments that would insure children in families with incomes up to three times the poverty level, and adults in families with incomes up to twice that level. It's an ambitious and costly plan. But it's also a socially necessary and politically shrewd plan. (Because it places the burden on neither the insurance industry nor small business, it would escape much of the special-interest lobbying that brought down the 1994 Clinton initiative.) Studies by the Urban Institute and Consumer Reports, as well as assessments of such public-health

experts as UCLA's E. Richard Brown, have concluded that Bradley's proposal is vastly superior to Gore's.

Gore complains Bradley's plan will leave Medicaid recipients in the lurch (which it won't) and that it costs a helluva lot (which it does). Bradley, however, proposes to fund it not just out of the surplus, but by closing oil-industry tax loopholes and by holding defense spending to its current level -- very commendable proposals in themselves. (Gore says he'll swell the Pentagon's kitty by \$127 billion over the next decade.)

Bradley's campaign proposals are rooted in what Catholic doctrine calls a "preferential option for the poor." Even when he was in the Senate, Bradley was a quiet but key force behind the creation and expansion of the Earned Income Tax Credit, a subsidy to the working poor. He also voted against welfare reform (for which Gore campaigned long and loud), fearing it would prove calamitous during the next economic downturn. On this year's campaign trail, he's joined Gore in proposing steeper penalties for labor-law violators and in calling for a hike in the minimum wage. Unlike Gore, he wants to link the minimum wage to the median wage, so it will rise automatically, free from the whims of Congress, as prosperity increases.

Of course there's one nagging concern about Bradley: While he's sounding mighty progressive now, he had 18 years in the Senate during which he was nobody's liberal, at least on economic issues. It's not surprising that he's campaigning to Gore's left on good-government and social issues -- calling for campaign-finance reform, and for gun-control legislation far more sweeping than what Gore supports. These are the kinds of proposals he supported in the Senate. The surprise is that he has also reinvented himself as a Democrat in the Roosevelt tradition, willing to use public resources to solve public problems.

Bill Bradley is saying exactly what needs to be said during this campaign season, reminding Americans that they should ensure (and, with the surplus, that they can ensure) that our prosperity be widely shared. His problem isn't his message; it's his delivery. Bradley has proved himself a miserable campaigner, oddly unable to defend his proposals on their considerable merits, opting instead simply to attack Gore for lying. His inability to dispel Gore's misrepresentations is disquieting -- though not half so disquieting as Gore's willingness to level ludicrous charges against Bradley's programs. As a campaigner, Gore's certainly shown himself to be one shrewd and tenacious operator, even as his message has grown less and less inspiring.

On the largest question of our time, however -- how should we try to shape the globalized economy? -- Bradley and Gore, like Bush and McCain, are simply and terribly wrong. All four candidates, in varying degrees, have been proponents of a laissez-faire global order, backing treaties devoid of environmental standards and guarantees of worker rights. All support China's admission to the WTO.

There is, however, one candidate on the ballot who supports fair global trade standards: Ralph Nader, who's a candidate in the Green Party primary. The veteran consumer activist has announced that he's running (albeit as a gadfly candidate) for real this time: a distinction he has to make because four years ago and, briefly, eight years ago, he also proclaimed his gadfly candidacy, and then neglected to wage a campaign, gadfly or otherwise. (It is the fate of liberalism in the 2000 election that neither its mainstream candidate nor its protest candidate has the slightest idea how to run for office.)

Still, the idea of a protest candidacy for the presidency -- not to mention an inept protest candidacy -- makes us a little nervous. Even in these

triangulated times, there are still glaring ideological differences between the two parties on a range of key questions, and the one arena in which these differences are most decisive will be the next president's Supreme Court appointments. The Court is currently divided 5-4 or 4-5 on a range of fundamental issues, not least the efforts of the Rehnquist Reactionaries to resurrect the doctrine of states' rights. Over the past two years, Rehnquist's Gang of Five have increasingly ruled that federal laws do not apply to states. For the past 65 years, American conservatism has been bent on repealing the New Deal, but Rehnquist & Co. seem bent on negating the Civil War.

With his judicial appointments, a Republican president could turn the clock back to God knows when. Which is why, while we regard Nader as the most valuable of public citizens, we do not support what may or may not emerge as his presidential candidacy.

For his part, Bill Bradley seems poised between the virtuous marginality of Nader and the robo-centrism of Gore. Like John McCain, and quite unlike Al Gore or George W. Bush, Bradley gives every indication of having a moral center. Unlike McCain, though, he favors policies that would reduce the screaming inequality in American life, that would make health care a right rather than a privilege, and a decent wage for a working-class job the norm rather than the exception. Bradley calls us, if sometimes inexpertly, to become a better nation -- and it's been a long time since a presidential candidate has sounded that call at all. On Election Day, we recommend you answer his challenge with a vote for Bill Bradley.

UNITED STATES SENATOR

MEDEA SUSAN BENJAMIN

The Feinstein Conundrum -- a regularly recurring feature of California life, like the swallows' return to Capistrano -- is back. Every six years, liberals and progressives have to determine whether Dianne Feinstein's re-election is of such strategic importance that they must discount the fact that her politics frequently make them retch.

Dianne Feinstein is a centrist, which is not to say she ends up in the middle on every issue, but rather that she bounds from left to right (or wrong) depending on the subject. Her environmental record is generally good, and she deserves credit for the Desert Protection Act, which preserves a vast tract of California's natural resources. She's taken an active role in the ongoing fight for a Patient's Bill of Rights; she's a solid defender of gay rights and a woman's right to choose. She was, of course, the author and driving force behind the federal ban on assault weapons.

On the other side of the ledger, she led the charge to make capital punishment a Democratic as well as Republican cause celebre; she's the author of some superheated anti-gang legislation that today seems a bit of '90s hysteria; she withdrew her support from Bill Clinton's universal health program, under pressure from business lobbies, at a critical moment; she ran ads in her last Senate campaign that both reflected and fanned the anti-immigrant backlash of that year. She's a leading backer of increasing trade ties to China (from which her husband, financier Richard Blum, made a bundle before he dropped his Chinese investments to avoid a conflict of interest).

Happily, there's an alternative on the March ballot, a candidate we enthusiastically recommend. We do not mean to damn by faint praise when we say that Medea Benjamin is the best candidate the Green Party has thus far put forth. Both a visionary and a very effective hands-on activist, Benjamin is one of the key figures in the burgeoning movement to democratize the process of

globalization, to make the creation of the brave new economy not the exclusive terrain of financial powers. Benjamin is the founding director of the human-rights organization Global Exchange, an author and activist who's played a central role in exposing the global sweatshops and in creating the organizations that have brought this issue to public attention. An economist and nutritionist who worked for the U.N., the World Health Organization and the Swedish International Development Agency before she founded Global Exchange, she leads the organization that turned the spotlight on Nike's use of abused, poverty-wage workers in Asia, and that helped expose the near-slavery conditions in which Saipan garment workers were forced to labor. She was a key figure in starting up the student anti-sweatshop campaign that's swept America's campuses, and she was one of the major leaders of the anti-WTO demonstrations in Seattle last November. From outside the Senate, she's already done more to create a more just and livable planet than about 97 of the members inside the Senate.

Of course, if Feinstein falters and her likely Republican opponent, Tom Campbell, climbs in the polls -- where she currently leads him by nearly 40 percent -- a realpolitik factor may kick in this fall which, at this point, seems fairly superfluous. But it's a long, long time from March to November, and in the primary we're enthusiastically supporting Medea Benjamin for U.S. senator.

UNITED STATES REPRESENTATIVE

24th District -- Brad Sherman

Democrat Brad Sherman is seeking his third term in this West Valley seat. Sherman's a reasonably progressive Democrat -- about as progressive as this district can bear -- and has done a yeoman's job securing funds to acquire more land in the Santa Monica Mountains National Recreation Area, and slowing down the rush to build a large housing tract on the Ahmanson Ranch near Woodland Hills. He has our clear support.

26th District -- Howard Berman

If anyone personifies the split personality of much of the Democratic Party on matters of economic world-view -- capitalist on global economics, laborist on domestic economics -- it's Howard Berman, the veteran Democratic congressman from this mid-Valley district. Berman's one of the few free-trade diehards in the L.A. delegation. At the same time, he's also the key member of Congress helping the United Farm Workers in their fight against the re-imposition of the bracero "guest worker" program, the leading House strategist to increase funding for Legal Services, a leader in the cause of protecting online privacy, and the most powerful House member to press the cause of immigrant rights. In the past couple of years, he's used his clout and his smarts for causes ranging from funding the Hansen Dam recreational facilities to advancing the Comprehensive Test Ban Treaty. His value and virtues far outweigh what, from our perspective, is his free-trade deviation from everything else that he's about.

27th District -- Adam Schiff

Adam Schiff, a former criminal prosecutor in the U.S. Attorney's Office, has represented most of this Burbank-Glendale-Pasadena district in the state Senate for the past four years, where he's authored and pushed to enactment some notable consumer, labor and environmental legislation. He's our clear choice over incumbent Republican Congressman James Rogan, but let's be straight about this: Anyone selected at random off the street would be our clear choice over incumbent Republican Congressman James Rogan.

The issue isn't just that Rogan represents this increasingly Democratic and non-white district with a voting record suitable to Orange County in the '50s. It isn't just that he opposes a woman's right to choose, or restrictions on tobacco companies, or campaign-finance reform, or linking trade treaties to a minimum observance of human rights and environmental standards from the signatory nation (all policies that Schiff supports). It isn't just that he masquerades as a moderate in his district, when in fact he's a right-wing zealot on the Hill.

The issue, of course, is that Rogan played a starring role in the impeachment travesty he and his colleagues inflicted on the nation a year ago. As one of the most rabid members of the House Judiciary Committee, he argued that releasing the Starr Report didn't go far enough, that the committee should have also released even more salacious material than Henry Hyde was willing to put on the Internet. As a House prosecutor in the Senate trial, he argued for calling more witnesses than the Republican senators, or even his fellow House prosecutors, could abide. Few people are more responsible for putting the nation through a totally avoidable partisan jihad than Rogan. America hasn't seen such a combination of puritanical zeal and legalistic hogwash since the Salem Witch Trials. James Rogan does not deserve to sit in Congress, or any other body that requires of its members a scintilla of judgment and good sense.

29th District -- Henry Waxman

Westside Congressman Henry Waxman remains the legislative genius of American liberalism, but here's why the Democratic recapture of the House really matters: When the Dems were in power, Waxman authored and passed more clean-air and safe-water and Medicaid-extension and anti-poverty and anti-tobacco legislation than any other member. He's been able to do a little of that even with the Republicans in control, a clear tribute to his legislative legerdemain, but much of his past three years has been taken up by his having to knock down the cockamamie conspiracy theories of Dan Burton, the Clinton-hating and close-to-certifiable lunatic who chairs the House Government Reform Committee, where Waxman's the ranking Democrat. It's a necessary duty, but a waste of Waxman's prodigious talents.

30th District -- Xavier Becerra

Xavier Becerra remains one of the leading House liberals, and a consistent champion of the rights of immigrants, a not-very-popular cause that nonetheless has been picking up steam lately. The Big Becerra News, though, isn't his exploits either in Washington or his downtown congressional district. The news is his recent announcement that he's running for mayor in the 2001 election. To call that effort a longshot is to be too kind. Most polls are largely unknown to the L.A. electorate, but Becerra's largely unknown to L.A. political elites as well. The only foreseeable practical effect of his candidacy is to take some of the wind out of the sails of Antonio Villaraigosa -- like Becerra, an attractive young progressive, but unlike Becerra someone who's crisscrossed L.A. for several years, built up the most impressive crosstown and multiracial progressive coalition since the early Tom Bradley, and has a genuine shot at being elected mayor.

Becerra can have a long and productive career in Congress, to which we enthusiastically support his re-election, and from which we'd prefer he not stray to a campaign that can only subvert (how much, we don't know) the most significant progressive electoral alliance L.A.'s seen in a generation.

31st District -- Hilda Solis

Something unheard-of is going on in this Eastside--Alhambra--El Monte district: A veteran Democratic officeholder has had the temerity to try to unseat a veteran Democratic congressman. This violates Politicos' Club Rule No. 1: "Thou shalt not oust thy fellow incumbent." But state Senator Hilda Solis isn't much on club rules, and incumbent Democratic Congressman Marty Martinez clearly deserves to be retired.

Martinez is the kind of congressman notable only for his gaffes -- and for a series of votes that run counter to his constituents' interests. An NRA member who boasts he owns a dozen handguns, Martinez consistently opposed the Brady Bill, and last June, in the wake of Columbine, he was the only one of the 28 House Democrats from California -- for that matter, of the 39 House Democrats from Pacific Coast states -- who voted to undercut a bill mandating background checks on gun buyers at gun shows. In late '97, 80 percent of House Democrats opposed the Clinton administration's "fast-track" trade proposal, which would have prohibited amendments to any future trade deals, because the White House refused to guarantee that worker rights and environmental standards would be included in all such treaties. Virtually every L.A.-area Democrat went against fast-track, but Martinez gave his vote to the White House in return for administration support for extending the 710 freeway. Martinez represents a district where wages have been demonstrably depressed by wage standards in nations that repress their workers, a district where gun violence has been epidemic -- but you sure wouldn't know it from his votes.

For the past six years, Hilda Solis has represented a state Senate district that almost totally overlaps Martinez's congressional district. In her years in the Legislature, she authored the bill raising the minimum wage, and when Pete Wilson vetoed it, she provided the seed money for the initiative campaign in which state voters authorized the raise. She repeatedly hauls herself to union picket lines, holds hearings spotlighting the plight of exploited workers, and helps workers in their efforts to unionize. She's authored 16 bills on domestic violence, and last year wrote and steered to enactment the Environmental Justice Act, which gives the state the authority to review new developments in communities already home to a number of polluting projects. Her legislation created the San Gabriel River and Mountain Conservancy, and, in contradistinction to Martinez, she's a champion of gun control and a consistent supporter of choice.

Though political institutions and insiders are loathe to oppose an incumbent, Solis has the support of over 50 local elected officials within the district, as well as the backing of feminist organizations, the Sierra Club and the L.A. County Federation of Labor, which has made the Solis race a top priority. From our perspective, there's no Democrat worthier of endorsement than Solis, and none worthier of abandonment than Martinez. After all, he abandoned his own supporters a long time ago.

32nd District -- Julian Dixon

Quiet, savvy and effective, this Crenshaw-area congressman has navigated through L.A.'s transit wars to win substantial federal funding both to augment L.A.'s inadequate bus fleet and to complete the subway to North Hollywood. He's also been way ahead of the curve on police-brutality issues, holding hearings last summer and securing \$1 million in federal funds to restart the D.A.'s roll-out unit, which investigated officer-involved shootings until Gil Garcetti closed it down in 1995. Dixon's prescience here stands in stark and depressing contrast to that of most local Democrats, who only now are starting to pipe up. This man clearly merits re-election.

33rd District -- Lucille Roybal-Allard

The 33rd, which starts downtown and runs down the 710 corridor, is probably home to more immigrants than any congressional district in the U.S. Lucille Roybal-Allard, its dedicated and talented representative, chairwoman of the Congressional Hispanic Caucus and now a member of the Appropriations Committee, has authored some significant health-outreach legislation (she's behind the ads popping up on radio touting folic acid for pregnant women), won funding for more buses for the cities that abut the Long Beach Freeway, and joined Julian Dixon to get the funds to restart the roll-out unit.

34th District -- Grace Flores Napolitano

Before she was elected to this seat in 1998, Napolitano was one of the Assembly's dimmer bulbs, and she hasn't exactly lit up the Congress since her arrival, either. She's one of the very few major elected officials to support Marty Martinez over Hilda Solis (see District 31), perhaps because she shares his views on trade, or just sees in the lunkish Martinez a kindred spirit. Nonetheless, if the Democrats are to retake the House from Tom DeLay and his minions, they need to hold on to every seat, Grace Napolitano's included.

35th District -- Maxine Waters

The indomitable Maxine remains Congress' foremost advocate for the very people -- inner-city youth -- that most of her fellow legislators just want to lock up. Her contempt for her Republican colleagues on the House Judiciary Committee during last year's inquisition was a thing of beauty and a joy forever.

36th District -- Jane Harman

Two years ago, Jane Harman chose not to seek re-election in this South Bay swing district, which she'd represented since 1992, so that she could run for governor on the Democratic ticket and have Al Checchi beat the living crap out of her. Nonetheless, her gubernatorial bid confirmed what Harman had been saying for years: that she was a centrist, somewhat in the Feinstein mold (culturally liberal, fiscally conservative), not because she represented a more conservative district than her L.A. Democratic colleagues, but because she genuinely believed that stuff.

Republican Steve Kuykendall, elected to the state Assembly in 1994 courtesy of a last-minute six-figure donation from Philip Morris, narrowly squeaked by his Democratic opponent to win what had been Harman's congressional seat in '98. But Harman's continuing popularity in the district, and her deep-pocket ability to fund her own campaign, makes this a very competitive race this year -- among the Democrats' best shots at picking up one of the five seats they need to retake the House. She is almost certainly the most progressive candidate this district can elect, and she has our clear support.

37th District -- Juanita Millender-McDonald

Millender-McDonald of Carson has championed voting rights for the homeless, domestic-violence insurance, and funding for the Alameda Corridor, with set-asides for local hiring.

38th District -- Gerrie Schipske

This Long Beach--area district, where over half the registered voters are Democrats and fewer than one-third Republicans, is one of the more puzzling and frustrating political terrains in L.A. Since 1992, it's been represented by Republican Steve Horn, a former university president who, as Republicans go, is more or less a moderate. But when Horn took the distinctly immoderate step of voting to impeach the president in December of '98, he was voting to negate the

clear preference of his district, where voters had returned Clinton to office in '96 by a 17 percent margin over Bob Dole. For a onetime political scientist, Horn shows a surprisingly weak grasp of the notion of democratic sovereignty.

This is a seat the Democrats have a good chance of recapturing this November. They are not likely to do so, unfortunately, if their candidate is government professor Peter Mathews, a left-leaning and largely unfunded candidate who's run and lost to Horn twice before. The two candidates vying more plausibly to take Horn out are Gerrie Schipske, an attorney and nurse with a long record of activism in progressive causes, who narrowly lost an Assembly election a few years back, and Erin Gruwell, who's a mix of schoolteacher, activist and phenomenon.

At 30, Gruwell had no plans to run for office until the national Democratic leadership asked her to last October. A few years ago, Gruwell came off the campus of UC Irvine to teach English in an inner-city Long Beach high school. Her students were largely gangbangers, and when she found not one of them had ever heard of the Holocaust, she began an intensive and unusual course of instruction. The curriculum was re-oriented to group violence, the Holocaust, Bosnia. Gruwell brought Holocaust survivors and civil rights activists into her classroom, then raised money, and took her class to Washington, Amsterdam (Anne Frank's house), Auschwitz and Sarajevo. Her students kept diaries (published last year as The Freedom Writers Diary) and appeared on TV talk shows, and all 150 of them are now in college -- in some cases, with money that Gruwell raised.

Gruwell is a whirlwind of enthusiasm, with very decent instincts that she doesn't seem, however, to have fully sorted through. Commendably, she gives higher priority to shoring up Social Security and providing universal health care than she does to debt retirement, but has few ideas as to how we can get to universal health care. She understands that jobs have been lost and wages lowered in her district as a consequence of trade with low-wage nations, but she's still unsure how she feels about upcoming "free-trade vs. fair-trade" questions. Clearly, Erin Gruwell is going places fast, but she needs a little more time to think through some basic issues.

Gerrie Schipske's had that time. Initially a nurse-practitioner, she worked as a legislative assistant in Congress, then became an attorney specializing in issues of health access and care. She's run prenatal and senior health-care programs in Long Beach, and currently is a health-care-policy consultant to the Service Employees International Union, the nation's largest health-care-worker union, which is actively engaged in unionization campaigns in Long Beach--area hospitals. In the precise areas where Gruwell is weak, Schipske is strong: She does have a clear vision of how to expand health coverage, and understands that trade accords need to include guarantees of worker rights and environmental standards.

Gruwell may be the more electable of the two candidates, but electability is a gossamer thing, and today's sure thing may be tomorrow's trivia question. Knowledge is more durable, and it's on that count that we're endorsing Gerrie Schipske in the 38th.

STATE SENATOR

21st District -- Jack Scott

In 1996, Adam Schiff was elected to represent this Silver Lake--Glendale--Pasadena--La Ca ada Flintridge district -- the first time a Democrat had won this seat since the early part of the century. That same year, in the Assembly district that makes up the southern half of the 21st, Scott Wildman was elected to the Assembly -- the first time a Democrat had won that seat since the

beginning of the century. Also in '96, in the Assembly district that makes up its northern half, Jack Scott was elected to the Assembly -- and this district had the same political history as the other two.

Now, Schiff is moving on to challenge James Rogan, and Wildman and Scott are challenging each other for Schiff's seat. This is anything but an easy call. Scott, an affable, low-key historian and former president of Pasadena City College, has been a moving force for gun-control legislation and a steady voice for education funding, especially at the college level. He authored the act that establishes low-cost auto-insurance policies (\$450-a-year) in L.A. and San Francisco counties. He's sponsoring a bill requiring the licensing of all handgun purchasers and the registration of all handguns. Representing a fairly conservative district, Scott is seldom that demonstrative on behalf of progressive causes, but he's usually a reliable vote, though his support for choice-related legislation is not consistent (Planned Parenthood gave him an 87.5 percent rating).

Scott Wildman is well-named: He's something of a legislative bomb thrower, raising a ruckus over a hodgepodge of causes. The former union organizer is a consistent progressive on labor, environmental and cultural issues, as voluble as Scott is soft-spoken. He's transformed a legislative backwater -- the Joint Legislative Audit Committee -- into a wide-ranging investigative agency best known for digging up some of the dirt on the Belmont High project. On the key issue of runaway production, he's rallied the entertainment community behind his efforts to reward film producers for making their films here in L.A.

Bomb throwing is a fine American tradition, and every legislature needs some members who aren't afraid to raise unpopular issues and level uncomfortable allegations. For the past two decades, state Senator Tom Hayden has played that role very adeptly. But Hayden -- contrary, perhaps, to the popular impression -- has also been able to compromise, count votes and get his proposals passed. These are skills that Wildman has not yet fully learned, and at times, his zeal has impaired his allies' ability to win meaningful, but not complete, victories for causes that Wildman supports. Rule 1 for bomb throwers is not to blow yourself up.

This is, as we said, a close call. Wildman is more consistently progressive, but less consistently effective in promoting his causes. He's an energetic organizer, but with surprisingly few achievements to show for it. For his part, Scott's not one to be ahead of the curve on most issues, but he has shepherded more significant bills into law than Wildman has. Each has his virtues and shortcomings, but in the end, we think Jack Scott will be the better senator.

23rd District -- Sheila James Kuehl

Curses! Drat! Phooey!

In theory, a race between two demonstrably superb elected officials should be a joy, a delight, a day in the park. No matter which one you vote for, you -- and the state -- come out ahead. What could be nicer?

Well, how about dental surgery without anesthesia? In fact, the choice between Wally Knox and Sheila Kuehl is a capital-B Bitch. With Tom Hayden term-limited out of his Westside state Senate district, and Kuehl and Knox term-limited out of their own Westside Assembly districts, the two Assembly members are now running against each other for the right to succeed Hayden. Normally, the problem in American politics is getting just one excellent candidate into a race. In this race, we have two.

Sheila Kuehl, still known to old Dobie Gillis fans as Zelda -- the brightest kid in Dobie's high school class -- was a founding director of the Women's Law Center and a law professor at Loyola Law School before being elected to the Assembly in 1994. As the first open lesbian (or gay) in the Legislature, she was widely expected -- by people who didn't know her -- to have a difficult time fitting into its old-boy culture. By her second year, however, she had become the member that other members went to for help in brokering disputes and interceding with their colleagues. (She even gets along with Gray Davis.) Ranked year after year in the annual California Journal survey as the most intelligent, honest and effective member of the Assembly (like Zelda, still the brightest kid in the class), she was elected by her colleagues in 1997 to be speaker pro tem -- the number-two official in the lower House.

More important, she uses her talents to push the envelope of social tolerance and generosity. Her important legislative achievements include the act mandating nurse-to-patient ratios in California hospitals, which she authored and steered to enactment, and the Patients' Bill of Rights, which she negotiated with the Guv. She overcame the combined political power of the state's D.A.s to take the task of child-support enforcement (which most of them had performed lackadaisically at best) away from them and give it to a new state agency. Her bill protecting gay students from harassment failed three times before she finally garnered the required 41 Assembly votes to get it passed. Ten of her bills on domestic violence, and violence against children, have been enacted. On the downside, although she has an almost completely pro-union record, a number of unionists in Santa Monica, her hometown, accuse her of subverting the Hotel Employees and Restaurant Employees' campaign for a living wage for all employees in the city's upscale beachside area by calling instead for an unenactable citywide application of the living wage.

Wally Knox went from Harvard to Vietnam to UC's Hastings Law School, where he specialized in labor law and then became one of L.A.'s premier union/employee attorneys. Elected to the L.A. Community College Board of Trustees in 1987, he, like Kuehl, went to the Assembly in 1994. During the past year, a series of important bills he had been working on for much of his tenure there finally made it through the Legislature to receive the Guv's signature. Knox's greatest hits include the law that restored overtime pay for workers putting in more than eight hours a day, a bill adding gays and lesbians to the categories of people protected under hate-crime legislation, and a bill limiting handgun purchases to one a month. As chairman of the Revenue and Taxation Committee, he pushed to enactment the reinstatement of the state renters' credit and an increase in the senior housing credit. A pet project of his has been to secure state funding for placing mini--high schools of at-risk youth on community college campuses -- an idea that's catching on across the state, and that tremendously reduces the students' drop-out rate. He's become best known over the past year for his successful fight to make the phone companies reverse their decision to create another Westside area code, which had already forced dialers in the 310 area code to dial 10 digits even for local calls. In the process, he exposed a number of dubious phone-company practices.

Knox combines a taste for the best kind of pork-barrel politics -- getting the funds appropriated and Caltrans scheduled to build another lane on the 101-405 transition road -- with an intellectual curiosity and social concern about the political economy that's virtually unique among his colleagues. Studies he commissioned on the waning of the California middle class provided the first definitive data on the re-composition of the state and L.A. economy, and they are now the basis for further study by think tanks and universities. With Robert Reich, he sees declining investment in worker productivity as an Achilles' heel

of the American economy, and would like to see a tax credit for investing in workers just as the state offers a tax credit for investing in new equipment. His proposal for further HMO reform is to place far steeper penalties on the insurance companies for denying or delaying treatment, which they now do in virtually a third of all cases. On the downside, he's succumbed to some of the law-'n'-order false panaceas of our time, particularly when in contested election campaigns. (Knox campaigns to the right of where he governs.)

Which is to say, both Knox and Kuehl have shown themselves to be uncommonly visionary, tenacious and politically skilled leaders. That voters should have to choose between them is, at minimum, maddening. Both are on the short list of Sacramento's best legislators -- and both consistently devote their talents to important and worthy causes. Kuehl is the leading feminist, and Knox the leading labor advocate, in the Assembly. (Wanna choose between women and workers?) On merit, there's really not a dime's worth of difference between them.

Get down to the level of a nickel, however, and we're going with Kuehl, who, if elected to the Senate, would be the first and only open gay or lesbian in that body, and even more of an inspiration to gay and lesbian kids than she already is. That said, it's hard to think of any other opponent against whom we wouldn't endorse Knox.

Like we said at the outset: Curses! Drat! Phooey!

25th District -- Ed Vincent

The third of three successive Senate districts that features a race between two Democratic Assembly members to succeed an outgoing Democratic incumbent brings us to the bottom of the barrel of the candidate pool. Veteran state Senator Teresa Hughes has been termed out of this Inglewood--Gardena--South L.A. district, and the race to succeed her pits Inglewood-area Assemblyman (and former Inglewood mayor) Ed Vincent against Dick Floyd, a veteran assemblyman from a Carson--Long Beach district that isn't in Hughes' district at all. (Floyd has had to move into the Senate district.)

Vincent is one of the Assembly's lesser lights; Floyd, increasingly, is its black hole. As the legislator from the district that's home to Hollywood Park and its casino, Vincent carries the water of the gambling industry and, for good measure, Big Tobacco. The blustery and erratic Floyd carries some labor legislation, but often so clumsily that it doesn't get through, as he did last session with his last-minute bill -- ultimately vetoed by Davis -- banning "big box" retailers, a serious issue, but one that needed airing and debate.

In a sense, this race is a kind of reverse image of the Kuehl-Knox contest -- this one featuring two legislators you'd rather not have in Sacramento at all, that one featuring two you'd wish could both stay there forever. Still, we see one factor that tilts this race in Vincent's favor: Almost alone among L.A.'s African-American elected officials, Vincent is actively promoting Latino political involvement and cultivating a whole generation of Latino political leaders within his district. In a time of increasing Balkanization, and pervasive insecurity within the black political elite, Vincent's multiracialism is far-sighted and -- sad to say -- brave. It's enough for us to endorse him, despite his manifest flaws.

27th District -- Betty Karnette

Democratic incumbent Karnette is seeking a second term in this Long Beach--Harbor area--Palos Verdes district. This is a seat the Republicans still have designs on; chiefly for that reason, the moderate Karnette has our support.

MEMBER OF THE STATE ASSEMBLY

39th District -- Tony Cardenas

Assemblyman Tony Cardenas has had a relatively unimpressive four years in Sacramento, perhaps because he's been building a mini-TELACU (Latino L.A.'s ranking business-political machine) in his northeast San Fernando Valley district. With prompting from Richard Polanco, he got it into his head that he should run for speaker, an idea that his colleagues, fortunately, couldn't get into their heads. He is, nonetheless, the best of the candidates in the 39th.

40th District -- Bob Hertzberg

Hurricane Hertzberg continues to storm through Sacramento, a whirlwind of activity, affability, deal making and hugs. Earlier this year, he was elected speaker by an unprecedented unanimous vote. The Hertzberg speakership will certainly be more centrist than its Villaraigosa predecessor; we just hope Hertzberg realizes that absent pressure from the Legislature, the natural tendency of the governor is to do next to nothing about everything. Remember, Bob: The achievements of Davis' first year -- gun control, HMO regulations, affordable auto insurance -- were forced on the Guv by you guys. Keep it up.

41st District -- S. David Freeman

We mean no insult when we say that the field of candidates to succeed the term-limited Sheila Kuehl in this Santa Monica--to--West Valley district does not seem to include anyone who's quite up to the standard that Kuehl has set. A first-rate legislator can still fall short of the Kuehl standard. What's striking about the three main Democratic aspirants, however, is their utter experiential dissimilarity. Former Santa Monica City Council member Tony Vazquez, longtime Agoura Hills City Council member Fran Pavley, and DWP chief S. David Freeman are all mainstream Democrats, but they seem to come from different planets.

Tony Vazquez is a community activist who served on the Santa Monica City Council from 1990 to 1994, having been elected as part of the Santa Monicans for Renters Rights slate. He lost his seat in '94 largely due to the opposition of the police, whom he'd estranged by criticizing their crack-down on non-white youth. Clearly the most progressive candidate in the current race, Vazquez has been endorsed by the County Federation of Labor and the Latino Legislative Caucus. His commitment to social-justice causes, however, is to some degree undercut by his inability to make a compelling, complex case on behalf of his beliefs. Or maybe we've just been spoiled by Sheila.

Fran Pavley, a middle school teacher who's served four terms as mayor and council member of Agoura Hills, is a longtime environmental activist and has been a member of the California Coastal Commission since 1995. She's won awards and endorsements from both the Sierra Club and the League of Conservation Voters. She certainly brings sterling environmental credentials to the race, though her lack of familiarity with the kind of income-equity causes that Vazquez espouses is matched only by Vazquez's lack of familiarity with some of the growth-control issues that she knows so well. The extent to which either of them is ready to represent all of this diverse urban-suburban-exurban district is not at all clear. Or maybe we've just been spoiled by Sheila.

S. David Freeman is -- well, he's not the sort of person who runs for the state Assembly. At age 74, he's spent his life striking a balance between one great legacy of the '30s -- public power -- and one great legacy of the '60s, the environmental cause. An engineer and attorney, Freeman became an expert on energy policy, and in 1977, Jimmy Carter appointed him to chair the Tennessee Valley Authority -- one of the great New Deal regional development projects that had aged badly, becoming the bane of conservationists and anti-nuclear

activists. Freeman closed down its existing nuclear plants and stopped the construction of new ones. He then began moving from one power company to another, going to Sacramento to shut down the Rancho Seco nuclear plant, and eventually responding to Richard Riordan's invitation to take over L.A.'s DWP. There, he's put together a compact by which L.A. will help restore the Owens Valley -- undoing at century's end some of the damage that William Mulholland did there at the century's start. For all this, he's received awards from environmental groups and the United Nations, and praise from Ralph Nader and our own Republican mayor.

And now he's running for state Assembly? Beyond doubt, Freeman will bring a level of water and energy expertise to the legislative branch that Sacramento's seldom if ever seen, and that it surely could use. We're not sure how conversant he is with the wide range of specifically 41st District issues, but then, we feel that way about his two opponents, too.

In the end, though, we're persuaded that Freeman's particular talents are right for the times. California badly needs to rebuild its aging infrastructure, and the current prosperity makes this the first time in decades that such a project is plausible. We think Freeman can make valuable contributions to that end. We're not sure he's totally up on all the other controversies a legislator must confront. But then we've been spoiled by Sheila.

42nd Assembly District -- Paul Koretz

The field of candidates to succeed the term-limited Wally Knox in this Westside district isn't quite so disparate as the one for Sheila's old seat. Of the three Democratic candidates, physician Daniel Stone certainly comes to the race from off the beaten path, but the two presumed leaders -- attorney Amanda Susskind and West Hollywood City Councilman Paul Koretz -- each seem to have started planning for this race when they were in utero. They're principled, political pros, and they're good at what they do.

Stone, the associate medical director of the Cedars-Sinai Medical Group, is founder and chairman of Physicians for RU-486 -- the group that won U.S. researchers the right to work with the drug, which would, of course, transform both the practice of abortion and the issue of choice. He's running, he says, to bring a physician's perspective to the Legislature, to be a physician advocate for universal health care. We think that Dan Stone would be a fine assemblyman -- not so much for his medical and public-health experience, though, as for his intelligence, organizational skills, and principled liberalism. Problem is, the other two candidates share those qualities and bring a level of experience that Stone cannot match.

Susskind is an attorney who brings an almost Hertzberg-like level of energy to her campaign. Until she quit her firm to campaign full-time, she worked in a practice serving as an on-call city attorney for many smaller cities and school districts around the state, with a particular expertise in budgets and public finance. She's also served on both the County Parks and Recreation and Housing commissions. Susskind would surely be one of the most unintimidated freshman legislators to come to Sacramento. Our one significant reservation about her is her fiscal conservatism, which we fear would only abet Gray Davis' reluctance to invest the money pouring into the state treasury in the overdue rebuilding of the state.

West Hollywood City Council member Paul Koretz is endorsed by Gray Davis, but ironically, he would have no such reluctance. In his career both as an activist and a councilman, Koretz has demonstrated a tenacious liberalism reminiscent of Henry Waxman -- and an absence of charisma that is Waxmanesque as well. The

onetime Southern California director of the League of Conservation Voters and a former aide to L.A. Councilman Marvin Braude, Koretz has involved himself in just about every Westside liberal movement imaginable. Due to his leadership, West Hollywood became the first city in the nation to ban Saturday-night specials. He authored the city's 1985 ordinance limiting smoking in public places. Perhaps most notably, he's committed himself deeply to the battles of the new L.A. labor movement for decent wages and living standards. He authored his city's living-wage ordinance, and took a leading role in the Westside support actions for embattled hotel workers. A stand-up guy, Koretz, and we're standing with him on election day.

43rd District -- Paul Krekorian

Scott Wildman is running for the state Senate, and three Democrats are in the race for his Burbank/Glendale-area Assembly seat. Moderate Democrat John Hisserich is a talented public-health professional who brings a good deal of expertise to the vexing questions of how to improve health care and increase the number of insured Californians. An associate vice president of health affairs at USC, he's coordinated research for USC's cancer center, opened Kaiser's first hospice care program, and run community-clinic outreach programs in the city's poorest neighborhoods. He's also served as an alternate on the Coastal Commission.

Attorney Dario Frommer comes to the race from a longstanding professional relationship with Gray Davis, whom he most recently served as appointments secretary. Anyone who can survive working for Davis, a notoriously volatile boss, will obviously thrive under adversity. Should Frommer be elected, however, his willingness to push Davis in the direction of greater governmental activism is subject to question: If anyone in this entire class of candidates is a Davisite, it's Frommer. And if California is to make the kind of public investments required to restore its former luster, it's gonna take a lot of pushin' on Davis.

Paul Krekorian, an attorney with an entertainment law/first amendment practice, is the most progressive candidate in the field. He's a longtime activist and litigator in the cause of gun control, and he's poised to take up Wildman's fight against runaway film and TV production -- a key issue in this studio-studded district. He's also played a leading role in the political mobilization of Glendale's Armenian community -- and Glendale is home to more Armenians than any city this side of the Middle East. Politically, intellectually, and ethno-symbolically, Paul Krekorian is the right choice for the 43rd.

44th District -- Barry Gordon

Jack Scott is running for the Senate against Scott Wildman, so his Pasadena-centered district, too, has a contested primary, with four Democratic candidates seeking the job.

The first of the two frontrunners is Carol Liu, a longtime Bay Area schoolteacher, administrator, teachers union officer and Democratic activist who moved to La Ca ada--Flintridge 16 years ago. She's been on the La Ca ada--Flintridge City Council since 1992, twice serving as mayor during that time. On the council, she's concentrated on growth and environment issues, but her urban-activist past gives her a broader perspective on social issues than you might expect from the mayor of an upscale suburb. She'd be an excellent legislator.

Barry Gordon, however, would be a stellar legislator (and not just because he was, briefly, a child star -- to some of us of a certain age, forever the kid in A Thousand Clowns). Gordon grew up to become president of the Screen Actors

Guild (plainly, an incubator of political careers) and an attorney with an entertainment and business practice. In 1998, he ran for Congress against Republican James Rogan, and despite being outspent two-to-one, he came within three points of knocking off the loathsome Rogan. Gordon is a feisty progressive, a supporter of single-payer health care, of handgun licensing and registration, of worker rights and the living wage. He'd be a dynamic addition to the Assembly, and he has our support in the March 7 election.

45th District -- Jackie Goldberg

The speaker, Antonio Villaraigosa, is term-limited out of Sacramento at the end of this year, and is already running for mayor of L.A. In his old Echo Park-to-Eastside Assembly district, meanwhile, a high-stakes contest to succeed him is reaching a crescendo.

The front-runner is L.A. City Council Member Jackie Goldberg, the working-class heroine of Los Angeles. Sometimes bumptious, sometimes difficult, but a brilliant organizer, a canny strategist and the most far-sighted and dedicated officeholder in city government, Goldberg has put her mark on her district and her city in her seven years on the council. She's the author of the city's landmark living-wage ordinance, which she steered, stunningly, to unanimous passage. She authored the city's worker-retention ordinance, which bars new city contractors from sacking the workers they inherit. She's set up the best living-wage enforcement bureau in the U.S., and at the Hollywood-Highland development now rising in the middle of her district, she's developed an innovative plan that will enable the retail establishments currently under construction to pay decent wages and offer health insurance to their employees -- an arrangement that sets the standard for socially responsible development in (and outside) this city. It's hard to think of another urban official who's done more to revive urban progressivism over the past half-decade.

There's more: Goldberg also authored the city's ban on Saturday-night specials and the ordinance establishing domestic-partner benefits. She's added new parkland to her district and improved the parks that were already there. She played a key role in reviving the city's policing of slum housing conditions. Her staff has organized numerous neighborhood groups throughout her district, in precisely the kind of poor, immigrant communities frequently devoid of organization. And in large part because of her diligence, Hollywood -- moribund, comatose Hollywood -- is showing real signs of life, with new development (paying decent wages) and refurbishment springing up throughout the district. In the Assembly, she'd be an intellectual presence and a political force for raising working-class incomes and strengthening unions, for smart growth and smart schools (she was a classroom teacher in Compton for 15 years), for universal health care and human rights.

We're for her. Avidly.

Goldberg's opponent, Cesar Portillo, was a kindergarten teacher and, for the past eight years, has been the director of governmental affairs for the AIDS Healthcare Foundation, headed by Michael Weinstein, an old rival of Goldberg's who lost a City Council primary to her in 1993. Portillo would surely be a good vote on most issues in Sacramento, though Goldberg's expertise at legislation and organization is way out of Portillo's league. He's running to her right on several issues, contrasting, for instance, his support for the death penalty to her opposition to it. Chiefly, he's running a slash-and-burn campaign against her, broadcasting a series of half-truths verging on lies -- among them, that Goldberg is somehow responsible for the Belmont fiasco, though she had actually been off the board for several years when the key decisions were made.

The Goldberg-Portillo race also has a larger significance for the future of L.A. politics. Portillo's chief sponsor is state Senator Richard Polanco, a centrist Latino nationalist; just as Goldberg's chief sponsor is Speaker Villaraigosa, a progressive multiethnic coalition-builder. Polanco, a notorious player of the race card, argues that because a Latino (Villaraigosa, whom he hates) represented the district, it should not be allowed to fall into Anglo hands. Villaraigosa, and the new, Latino-led L.A. County Federation of Labor, argue that Goldberg is the elected official who's done more for the Latino working class than anyone else. Goldberg's candidacy is the single highest priority for the County Fed (and the United Farm Workers), which sees this as a battleground in the fight to persuade the coming Latino majority to vote on class interest rather than skin color. The battle between Goldberg and Portillo is really the battle for the future of L.A. (It is also the first L.A.-area election in a district this large where both candidates are openly gay.)

One final caveat: The last time Polanco involved himself in this kind of campaign -- Richard Alarcon's state Senate race against Richard Katz in 1998 -- he put out some astonishing last-minute smear mailings containing allegations that were howlingly untrue. Last-minute mail on behalf of Portillo may be similarly creative.

Don't be snookered. Jackie Goldberg will be a great state legislator, and she deserves your support.

46th District -- Gil Cedillo

The invaluable Mr. Cedillo persuaded his legislative colleagues to enact some of the most humane and progressive legislation of the last session: expanding prenatal care to undocumented women; expanding Medicaid to 250,000 working adults; extending food stamps to legal immigrants for one more year; requiring hospital chains to get the attorney general's approval when they take over nonprofit hospitals, to assure that patient-care standards don't decline; prohibiting state contractors from using state funds on union-busting activities. Unfortunately, he failed to persuade the governor to sign the last two, but Cedillo's a determined and wily guy. We support him wholeheartedly.

47th District -- Herb Wesson

Freshman legislator Wesson may have been chief deputy to Yvonne Burke and a onetime staffer for Nate Holden, but in his first year in the Assembly he's surpassed his mentors. This Crenshaw-area assemblyman is one of Sacramento's rising stars.

49th District -- Gloria Romero

With Antonio Villaraigosa and Gil Cedillo, Romero forms a trio of Latino electeds who've all done serious time in the labor movement. The three, along with Hilda Solis, are at the epicenter of the most dynamic force in L.A. politics today -- the labor-Latino alliance. Romero is a conscientious progressive, and we emphatically endorse her.

51st District -- Jerome Horton

Incumbent Ed Vincent is running for the state Senate, and this Inglewood-centered seat is being sought by six Democrats, some of them real lulus. A non-lulu, and the best of the bunch, is Jerome Horton, a CPA with the State Board of Equalization and a member of the Inglewood City Council. When a drive-by shooting came way too close for comfort a few years back, Horton plunged into various neighborhood improvement activities, which eventually led to his election to the Council. An expert in public finance, he was able to straighten out some of Inglewood's many budget woes and put a better management team in

place. He also assembled a community group supporting the workers seeking to organize a union at the Hollywood Park Casino. Horton's the class act in this field.

54th District -- Alan Lowenthal

Halfway through his first term representing this Long Beach--San Pedro--Palos Verdes--area district, Alan Lowenthal has distinguished himself as a fighter for both environmental justice and economic revitalization in this heavily industrial region. He's championed the cleanup of the L.A. River and the dredging of the port, as well as stricter pollution standards on the harbor's petroleum coke piles. He's authored ambitious gun-control legislation barring gun sales in residential neighborhoods -- one reason why the Republicans, in the person of L.A. City Councilman Rudy Svorinich Jr., are coming after him. (You may be thinking it wouldn't be so terrible to get Svorinich off the Council by sending him to Sacramento, but remember: He's term-limited out next year anyway.) Lowenthal is fighting exactly the right battles for his district, and he has our enthusiastic support.

55th District -- Jenny Oropeza

Suddenly, the South County area has become home to a number of dynamic, progressive candidates -- none more so than Long Beach City Council Member Jenny Oropeza, one of four Democrats vying to succeed Dick Floyd in this Carson--Long Beach--area district. Other candidates include R. Keith McDonald, a former pro-football player who's the son of Representative Juanita Millender-McDonald, and Eddie Tabash, an abortion-rights activist and attorney, until recently based in Malibu. But it's Oropeza who seems the best of all possible legislators for this multiracial district that's working-class to the core. Now in her second term on the Long Beach council, Oropeza secured funding for the city's first new park in 20 years and for badly needed affordable housing. She played a key role in persuading the owners of the Long Beach downtown high-rises to recognize the union that their janitors had organized, and has assisted the various unionization campaigns in Long Beach hospitals. Oropeza is the most effective politician/organizer on behalf of economic-justice issues we've met in some time, and we support her unstintingly.

56th District -- Sally Havice

Havice, a moderate Democrat, faces another tough fight this November in her Cerritos-area district, which has a huge Democratic registration edge but still dismal Democratic voter turnout.

JUDICIAL

Judge of the Superior Court, Office No. 31 -- Katherine Mader

COUNTY

District Attorney -- Steve Cooley

Clip this endorsement. Put it in your scrapbook and save it, because it may be the only time you'll see this paper endorse a law-and-order Republican for district attorney. But what other choice is there?

Current D.A. Gil Garcetti seemed promising when he first ran for office eight years ago. A Democrat who spoke of using the office as a force for crime prevention and positive social change, he seemed willing to use the bully pulpit that goes with the office to promote those causes. He still talks the talk, particularly at election time, but his record is spotty at best.

But all these failings pale when compared to Garcetti's handling of the Rampart scandal, which has more seriously undermined the credibility of the justice system in this county than any other event in L.A.'s history. It's hard to tell exactly what he's done, since he refuses to talk about most things connected to the scandal, but what he hasn't done is glaring. He's dragged his feet about releasing the names of defendants involved in cases brought by rogue officers; he hasn't provided any insight into why his office failed to take action when, before any of the scandal came to light, one of his own assistants dismissed a case because Officer Perez had lied on the stand; and perhaps most egregious, he's failed to affirm in any meaningful way to the people of this city that his office is committed to truth and justice. He has, belatedly, restarted the rollout team, but in doing so he has failed to adequately address flaws in the program that rendered it ineffective in actually rooting out officer wrongdoing.

Thus we turn to Garcetti's contenders. Environmental attorney Barry Groveman is at first glance appealing. A Democrat who both established the District Attorney's environmental crimes unit and helped with the drafting of Proposition 65, the state's far-reaching toxic-chemical initiative, Groveman has demonstrated knowledge of and concern with environmental issues. But he then took what he'd learned and went into private practice, sometimes defending the very kind of polluters he'd previously tried to regulate.

As a private attorney, Groveman's clients have also included a variety of governmental agencies, most prominently the L.A. Unified School District, where his impact has been significant. He takes credit in one instance for persuading district officials to abandon a proposed school site on contaminated land. But observers point out that Groveman also led a group of attorneys whose job it was to deflect the district's responsibility for the cleanup of toxics near Jefferson Middle School, an action critics say had the effect of exposing the children there to unacceptable levels of risk. Working behind the scenes, Groveman helped engineer last fall's palace coup that toppled Superintendent Ruben Zacarias, a move that, depending on your viewpoint, was either long overdue, unnecessarily cruel or both. In short, while Groveman has certainly affected change at the district, it's tended to be of the wrecking ball variety: We've seen less of his ability to build things back up. We also worry that he'd be supervising an office full of attorneys with vastly more prosecutorial experience than he possesses. As a city attorney he prosecuted misdemeanors, but he has little felony experience.

Groveman, a moderately liberal attorney of intelligence and energy, might be someone worth taking a chance on in ordinary times. But these are in no way ordinary times. Whoever takes over the District Attorney's Office must move swiftly to re-establish its credibility, making clear that its mission is to make cases fairly and honestly and to punish wrongdoing regardless of the perpetrator.

Steve Cooley, the other candidate for Garcetti's job, has many of the qualities we'd like in a top prosecutor. A head deputy district attorney who directs the welfare-fraud unit, he's got a reputation for honesty, integrity and effective, hands-on management. He's outspoken about the need to re-evaluate policy in light of the Rampart scandal, promising that he'd initiate immediate action if a cop were found to be lying. And he's been highly critical of Garcetti's glacial slowness in dealing with the crisis.

Cooley is far from perfect. He is a Republican who talks a tough line on crime and served on a Pete Wilson judicial-appointments review body. He's never going to be the sort of outspoken advocate for crime prevention we'd like to

see, nor will he give much thought to the underlying economic and social conditions that breed crime. But his positions aren't knee-jerk. He says he would make it mandatory office policy that third-strike prosecutions not be pursued except in cases of serious felonies, and he's opposed to Proposition 21, the draconian child-punishment law that Wilson has placed on the March ballot.

We've had a long string of politically ambitious district attorneys who've used the position as a stepping stone. At a time when the office is in crisis, we think it's time to turn to someone -- even a highly imperfect someone -- who is first and foremost a good and honest prosecutor, which is why, reluctantly but unambiguously, we're supporting Steve Cooley.

Supervisor, 2nd District --No Endorsement

Supervisor, 4th District --No Endorsement

Supervisor, 5th District --No Endorsement

This year, despite all the frenetic campaigning for other offices, the three incumbents up for re-election on the County Board of Supes -- Democrat Yvonne Burke and Republicans Don Knabe and Mike Antonovich -- face no opposition at all. Their free ride is certainly not due to their unassailable performance, or their unchallengeable political orientations, which, in fact, vary widely. Knabe is a moderate Republican, while Antonovich is really the sole remaining Reaganite to be found in L.A. government. (Recently, he opposed his fellow supes' ban on gun shows on county property.) Yvonne Burke is a mainstream, at times corporate, Democrat. Zev Yaroslavsky and Gloria Molina get into more scraps for more causes (some but not all of them liberal) than Burke, and hold more liberal positions (not all of which they fight for) than Burke as well.

The bigger scandal here is that, alone of all the political offices in L.A., that of supervisor -- perhaps the most powerful of all -- now goes unopposed. By creating term limits for some offices (city and state) but not other (county and federal), we've created a two-tier system in which some levels of government are in perpetual turnaround while others almost never see a single electoral challenge. Being a supe these days is almost like being a lifetime peer: You can't pass it down to your kids, but you can stay as long as you want. Supervisorial districts in L.A. now contain almost 2 million people, and insurgent campaigns need to buy TV time in the nation's second largest and costliest media market. Such campaigns are prohibitively expensive, which again benefits incumbents, since there's no statute on the books to forbid them from raising money from the folks, and the mega-conglomerates, who do business with the county. Consequently, anyone looking to run for office looks anywhere but the position of county supervisor -- at least until one of the supes decides to retire.

In short, an entire level of government has ceased to be subject to the democratic control of elections. Just thought you'd like to know.

STATE MEASURES

1A -- No

Proposition 1A, which would greatly increase Indian "gaming" (the genteel word for gambling) in California, results from a compact that California's tribes signed last year with the governor and the Legislature. It would permit them to erect new casinos on tribal land, to enlarge existing ones and to install anywhere from 40,000 to 100,000 slot machines. Unlike 1998's ballot measure, Proposition 1A would enable casino employees to form unions at work. Since it benefits Native Americans and creates decent-paying jobs with benefits, we should be for it, right?

Wrong. First off, the number of Native Americans it benefits is really quite small. Second, job creation, even good job creation, can never be the primary criterion for a public project's merit: if it were, we should be supporting more funding for the B-2 bomber and Star Wars. Problem is, those weapons programs wouldn't contribute to, and might actually imperil, national security. And in like fashion, the addition of 200 more casinos to California wouldn't contribute to, and might well imperil, the quality of California life -- and Californians' lives.

Gambling is many things for many people, but looked at in aggregate, it is a mechanism for upward redistribution of income -- the paychecks of working Californians ending up enriching Steve Wynn and his shareholders, or the 100 millionaires of the Morongo Tribe. For many people, it is an addiction; for others, an opportunity for corruption. (An opportunity enhanced by the fact that regulation of the state's tribal casinos will be far more lax than Nevada's regulation of its nontribal casinos, since the tribes have sovereignty.) Indeed, the only reason Davis and the Legislature were so eager to sign this compact was that the tribes had contributed millions of dollars to their campaigns the corruption has already begun. Nor are we encouraged that the minimum age for gambling at these casinos will be 18 -- three years younger than the Nevada standard. All in all, 1A is a sucker bet for California.

12 -- Yes

As everyone from Richard Riordan to Mike Davis has noted, L.A. doesn't have much in the way of parks -- in fact, less parkland relative to its size than any other major American city. Worse yet, since Proposition 13 passed fully 22 years ago, the funds for acquiring new parkland anywhere in California have largely dried up. Now that the state is experiencing a new birth of prosperity, though, the Legislature and the governor have placed a major bond issue on the March ballot to make up lost ground on parklands. Proposition 12 is a \$2.1 billion bond measure for parkland acquisition and improvement, with about \$1.16 billion going to the state for mountains, coastlands, rivers and other natural resources, and \$940 million going to cities and counties to do with as they will. The cost to taxpayers will be about \$4 a year per Californian for a period of around 25 years. It's an important measure and a good deal, and we strongly recommend its passage.

13 -- Yes

The substance of the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Bond Act is all there in the title. This is a \$1.97 billion bond issue to provide more water to Californians by increasing underground storage, promoting better conservation and recycling. It will also go to better controlling river, lake and coastal pollution. We live, let us remember, in a semi-arid climate, and we ain't got water to waste (although moving the primary from dry June to rainy March may cause some people to forget this fact). Vote Yes on 13.

14 -- Yes

And vote Yes on 14, which is a \$350 million bond to build new or enhance old libraries. The tab for the libraries will be split between the state and municipalities, with priority given to cities and counties that build joint facilities with their school districts. With urban space already built up and with schools in need of more and better after-school programs, that's a very sound priority.

15 -- Yes

The sponsors of the Hertzberg-Polanco Crime Lab Construction Bond -- which authorizes a \$220 million bond issue to build, just as you surmised, new crime labs -- argue that cops and prosecutors need better tools and technology to do their work. So they do, but funding new and better crime labs serves blind justice as much if not more than it serves prosecutorial interests, since one of the projects the funding will go to will be more DNA testing facilities. In short, Prop. 15 will better enable the system to nail the real culprits and to exonerate the innocent -- some of them, as we've recently seen, who are doing hard time through wrongful convictions.

16 -- Yes

Currently, the state operates two residential homes for elderly and disabled veterans -- one in Napa County, one in Barstow (if that's not a two-tier system, we don't know what is). Prop. 16 is a \$50 million bond issue that will enable the state to build two new residences and renovate the Napa facility.

17 -- Yes

In California, church elders, PTA Pooh-Bahs and Boy Scout troop leaders are all habitual criminals. Here's why: It turns out that raffles are illegal in California. That's right: raffles. The things where they give you prizes if you're holding the right number.

Nonprofit organizations are forbidden from conducting raffles, and have been for the last hundred years. Rather than encourage another century of scofflaws, the people behind Prop. 17 want you to legalize raffles for nonprofits. Now, there's something to be said for the frisson of lawbreaking, but since no one conducting a raffle realized he or she was breaking the law, it was never much of a frisson. We can't think of a single reason to vote against this.

18 -- No

George Deukmejian is still running against Rose Bird. The purpose of Prop. 18, he tells us at the outset of the ballot argument, is to correct "two odd decisions by the Rose Bird Supreme Court." The goal of this measure is to extend the death penalty to murderers who killed their victims after transporting them to another location, or if arson or kidnapping were instrumental to the murder. You've gotta give the Duke credit: It takes a real visionary to realize that the problem with California today is that there aren't enough people on death row, and that it's still Rose Bird's fault. No other advanced industrial democracy has had capital punishment for years; the Republican governor of Illinois has just ordered a stop to executions because too many death row inmates were being proved innocent. But the Duke fears that California isn't dispatching enough inmates. The fear's understandable, since violent crime is way down. The only way to meet the Duke's quota, it seems, is to classify more crimes as capital. This measure extends an already barbaric practice, and we strongly recommend a vote against it.

19 -- No

There's a two-tier system for second-degree murder sentences in California. Second-degree murder is generally punishable by 15 years--to--life, but second-degree murder of a sheriff or police officer is punishable by 25-to-life. Prop. 19 extends this additional police-officer protection (if it is a protection; it's certainly not a perk) to the police officers who work for the Cal State Universities and the Bay Area Rapid Transit System. On the one hand, we certainly believe that all cops are created equal. On the other hand, we don't think longer incarcerations are what California needs now, with existing prisons already jammed and new prisons prohibitively expensive. We also don't think a

statutory change so minuscule should have to be voted on by upwards of ten million Californians. (Note to Richard Riordan: When you're termed out, maybe you'd like to reform the state constitution.) That's one argument for and two against, which is enough to turn us against this somewhat silly proposition.

20 -- No

This measure mandates that half the money going to school districts from the state lottery be earmarked for textbooks. We know there's a shortage of textbooks in many California schools, but there's also a glut of mandates coming down from on high -- in this case, from Sacramento. This one-size-fits-all approach gives no flexibility to districts where the most pressing need may be higher teacher salaries or equipment. Prop. 20 is poorly thought out. We recommend a No vote.

21 -- No

Old Republican governors never die; they just grow steadily meaner. On the heels of George Deukmejian's Prop. 19 comes Pete Wilson's Prop. 21 -- a vicious piece of mischief from the Little Marine. It's a hodgepodge of tough-on-crime posturing directed at young people. It requires adult trials for juveniles 14 or over charged with sex crimes or murders. It reroutes juveniles 16 or older convicted in adult court from Youth Authority camps to adult prisons. It stops the sealing of records of juveniles convicted of certain serious crimes. It increases the penalties for certain gang-related crimes, and adds to the number of felonies that qualify as "strikes" under the Three Strikes law.

Prop. 21 will come up for a vote at about the same time the number of Americans in prison passes the 2 million mark. We imprison more people than the rest of the industrial democracies combined. We particularly imprison more kids. Indeed, according to Amnesty International, only six nations have executed minors in the 1990s: Iran, Pakistan, Nigeria, Saudi Arabia, Yemen and the U.S. All told, 19 children were executed during the decade -- 10 of them in the U.S.

Many programs present alternatives to locking up an entire generation of nonwhite boys and young men. But there's one problem: They can't be used as political wedge issues by demagogic Republicans trying to show the Democrats as soft on crime. (In fact, Prop. 21 is so ludicrous that its opponents include Republican Senatorial candidate Tom Campbell, Republican L.A. D.A. candidate Steve Cooley, and Cardinal Mahony.) It was Pete Wilson who put this issue on the ballot, back when he still planned to run for president: It was intended to help him win the March primary. Now Wilson's career, like Deukmejian's, is over, but neither one can refrain from putting the kind of inflammatory initiative on the ballot that helped win elections in more violent and frightened times than these.

Crime is down, jails are overflowing, Gray Davis is more than happy to execute everyone on death row -- and still Petethe Mean and Duke the Dull think they can score political points by playing the soft-on-crime card. Vote these bastards down.

22 -- No

Speaking of cruel, atavistic nonsense, here's Prop. 22, the Knight Initiative, which saves the state from the scourge of gay marriage. Never mind that state law already stipulates that a legal marriage can only exist between a man and a woman. This is just a nasty piece of gay-bashing from state Senator Pete Knight, a homophobic dimwit estranged from his gay son. If anyone's concerned about a threat to the sanctity of marriage, they should write Knight's fellow Republican, Rupert Murdoch, and complain about Fox TV's Who Wants To

Marry a Multimillionaire? Prop. 22 is simply a way to demean and debase gays, lesbians, people who believe in human equality, and people who believe loving couples should have the right to stay together under the umbrella of the law.

When you consider that the three initiatives placed on the ballot by Republican electeds this March are the Deukmejian measure, the Wilson proposal, and this, you can understand why the Republicans are in trouble in California.

23 -- No

Another piece of nonsense, as stupid as the Knight initiative is cruel. This measure gives voters the option to vote for "None of the Above" in candidate elections in California, but the vote will have no bearing on the outcome of the election. (That is, the winning candidate could receive four votes, and "None of the Above" six votes, and the winning candidate would still win.) Like term limits and cutting legislators' pay, the None-Above option is a non-solution to voter alienation. Voters seeking a wider range of options, or a cleaner political process, need to look toward ending winner-take-all races in favor of proportional representation systems, or to genuine campaign-finance reform. The only state that has the None-Above option is Nevada, which remains the most politically alienated state in the nation. This proposition only deepens the problem it professes to cure.

24 -- This measure was removed from the ballot by the California Supreme Court.

25 -- Yes

Californians have voted for campaign-finance reform repeatedly over the past 15 years. But the state remains one of only six states that have no spending and contribution limits at all. A series of court decisions have negated every single reform initiative, meaning that this is a state where Rupert Murdoch can write a last-minute million-dollar check to the state Republicans, or the states' HMOs can deluge legislators with contributions to forestall a patients' bill of rights.

Prop. 25, the handiwork of maverick Republican Ron Unz and Democratic former Acting California Secretary of State Tony Miller, is the latest stab at campaign finance reform, and unlike previous efforts, it's been written to withstand a court challenge. The measure restricts individual and political-action committee donations to \$3,000 for district and local campaigns and \$5,000 for statewide campaigns. It prohibits the transfer of funds between campaign committees -- historically, the way the state legislative leadership funds the campaigns of candidates in hotly contested districts. It prohibits any donations from corporations and places new restrictions on business and union PACs. It would also limit the period for fund-raising to one year before the election, so that elected officials wouldn't constantly be trolling for dollars while in office. Soft-money donations to the parties for activities not related so specific to candidates or not involving electronic advertising (like registration, get-out-the-vote and so on) are left unregulated -- that is, the sky's the limit.

The measure also sets a series of voluntary spending limits for state and district offices -- ranging from \$700,000 for Assembly seats to \$16 million for governor (the figures are for the primary and general combined), as well as \$6 million for initiative campaigns. In return for adhering to these limits, a statewide candidate or initiative would receive state-funded credits to buy airtime, up to \$1 million worth for governor and \$300,000 for lesser candidates, and all state candidates, could have the state send out four bundled mailings, again, at state expense. All donations to a candidate under \$100 are matched 10-to-1 by state funds for media credits.

Finally, the initiative breaks new ground on issues of public disclosure of donations and expenditures. All donations of \$1,000 or more would have to be posted on the Internet within 24 hours, and all campaign ads of any kind (TV, radio, mailers, phone recordings), no matter how slanderous, would have to be posted on the Internet, too. The largest funders of every campaign would have to be listed on all ads and campaign material. When campaign ads feature individuals' endorsements (like that of TV "consumer-advocate" David Horowitz for the utility industry's position in a recent campaign), the fact that the individual was paid by the campaign has to be part of the ad (in Horowitz's case, he was paid \$150,000). Slate mailing, too, have to prominently list their funding sources.

Like every campaign-finance reform initiative in recent history, Prop. 25 has split the reform movement down the middle. Critics argue that its contribution caps are too high -- but they were so drafted because the courts have struck down lower limits. If, in the wake of one recent court ruling, the courts now uphold the lower limits of Prop. 208, still currently being litigated, Prop. 25 specifically says that 208's lower limits supersedes its own. Critics also argue that it does nothing to restrict millionaire candidates (an Al Checchi or Michael Huffington, say) from funding their own races, but that's because under the terms of the U.S. Supreme Court's ludicrous 1976 Buckley v. Valeo decision, to do so would be unconstitutional. Finally, some reformers won't be satisfied by anything short of full public financing of campaigns. Neither will we, but there's no plausible chance that such a measure could be enacted in California in the foreseeable future. There's some validity to all the above objections, but in the end, they make the perfect the enemy of the good. Yes, the contribution caps are too high, but at the moment, California has no limits at all. By the same token, partial public funding is much better than none.

Our chief concern is the potential effect 25 may have on the ability of unions to wage political campaigns, particularly since, in recent years, unions have done a stellar job of getting union and nonunion working-class Californians, including many new immigrants, to the polls. The huge, last-minute campaign contributions from the California Teachers Association and the Service Employees to decent candidates would be scrapped, but, since the offsetting (or more than offsetting) last-minute contributions from Philip Morris or Rupert Murdoch to indecent candidates would also be banned, this strikes us as a wash. On the other hand, the kind of campaigns that unions have grown very adept at in recent years -- those directed at their own members, and independent expenditure campaigns targeting other groups of voters -- would be unaffected. Unions' political efforts, and clout, should emerge from 25 in pretty good shape.

On balance, we think this measure is a significant step toward fairer elections and a cleaner political culture. We strongly urge a Yes vote on Proposition 25.

26 -- Yes

Proposition 26 is the single most important measure on the primary ballot. It would end one of the most undemocratic and debilitating features of California life. Currently, when a school district asks voters to approve a bond measure so that new schools can be constructed or old ones improved, it requires a two-thirds popular vote to pass the measure. Prop. 26 reduces that requirement to a simple majority.

The current two-thirds requirement is bad law that leads to worse pedagogy. The requirement for a supermajority is rare in American law; it is something the founders consciously shunned. It takes only a simple majority of Congress, for instance, to declare war. To the opponents of Prop. 26, like the leaders of the

Howard Jarvis Taxpayers' Association, however, the vote of one tax opponent can -- and should -- cancel out the votes of two tax supporters. How this squares with the notion that all men are created equal is not at all clear.

The practical consequences of the two-thirds requirement have been devastating for California schools, and schoolchildren. Since 1986, 94 percent of local school bond measures have received a majority vote, but only 54 percent have received the two-thirds required for passage. For years, an aging, disproportionately Anglo electorate has refused to build schools for disproportionately Latino public school children: By using the two-thirds provision, a minority has thwarted the majority's desire, and need, for schools. Meanwhile, the scarcity of classrooms grows steadily more severe.

The two-thirds requirement may well be the single greatest threat to California's future. We strongly recommend scrapping it, and restoring majority rule in California, by voting for Prop. 26.

27 -- No

This year, half the measures on the ballot seem to have been drawn up by a splinter group of Reform Party Waco conspiracy theorists and UFOlogists. On the heels of Prop. 23's nonbinding None-of-the-Above silliness comes Prop. 27, which permits -- rather than mandates -- congressional candidates to sign nonbinding -- rather than meaningful -- ballot declarations that they intend to serve no more than three terms in the House or two terms in the Senate. Blocked from pursuing term limits by court rulings that the Constitution lets Congress determine the terms of congressional membership, and deluded that term limits are in any way a serious effort at political reform, the proponents of this measure have offered a proposal which, if enacted, would have an impact so minute as to approach the political equivalent of absolute zero. Does the California initiative process have an affirmative-action program for flakes? Where do these people come from?

28 -- No

Here's a welcome change. Prop. 28 isn't stupid, just evil.

This measure repeals Prop. 10, the tobacco tax that California voters enacted in November '98. The money from Prop. 10 goes to fund childhood immunization programs, health education and smoking-prevention projects for pregnant women, and preschool programs. Prop. 28 is funded by a large tobacco chain store that distributes and markets cigarettes. The stench here is not that of cigarettes, but greed.

29 -- Yes

This proposition is an alternative to 1A, the Indian Gaming measure. It, too, would authorize casinos on tribal lands, but they would be far smaller, devoid of slots, required to hold union elections for their employees, and subject to environmental regulations. It's a far better proposal for California than Prop. 1A, but the big bucks, of course, are behind that measure. As is often the case in casinos, the fix is in.

30 -- Yes31 -- Yes

Say you're in an auto accident, and the other party is at fault, but his or her insurance company won't pay up, or keeps offering a ridiculously small amount, or just keeps delaying. Under the Royal Globe decision of the Rose Bird Supreme Court, you could sue the other party's insurance company. Then George Deukmejian persuaded state voters to dump Bird and her cohorts, and the conservative justices whom Deukmejian appointed in their stead reversed Royal

Globe, meaning, if the insurance company stiffed you, you just had to lump it. Now, with Democrats in control of the Legislature and the Governor's Office for the first time since the Royal Globe reversal, a bill went through last year restoring your right to sue. With that, insurance-industry giants Allstate, State Farm and Farmers shelled out for a ballot measure requiring state voters to vote the new laws up or down. Prop. 30 ratifies the law the Legislature enacted, and 31, which only kicks in if 30 passes, ratifies certain restrictions the Legislature passed as corollaries to the right-to-sue bill. The insurance companies argue that if these measures pass, the number of lawsuits against them for bad faith, holding up claim checks and the like, will soar raising your premiums. Of course, if the companies actually paid the claimants what they were owed, the number of claims wouldn't soar at all, but it's hard to change the habits of a lifetime. The companies have taken to the airwaves, highlighting some fraudulent claims they might be compelled to pay off if 30 and 31 pass, but the real fraudulent claims here are the companies'. They are, essentially, trying to hoodwink us into letting them continue to shortchange us. Like the state's consumer groups, we strongly recommend a Yes vote on 30 and 31.

COUNTY MEASURE

A -- No

At present, the directors of the county's various departments -- Health, Welfare and so on -- are political appointees, which they should be, since they must carry out the mandates of the elected Board of Supervisors. All their underlings, however, are civil servants. Measure A reclassifies the department heads' top deputies out of civil service, so that they can be political appointees as well. Since these are often policy-making positions, the proposal makes some sense; we supported an equivalent measure for L.A. city government. The workings of county government, however, are nowhere near so transparent as the city's. The supes might very well swap deputy-director appointments (my guy here, your guy there) absent the kind of public scrutiny from which the county, in fact, has long been immune. We're against Prop. A.

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SERIES: Reporters and editors for The Times interviewed the candidates in recent weeks. Last of three parts.

HEADLINE: COMMENTARY;
GARCETTI'S KEY THIRD-TERM GOAL: RAMPART SCANDAL CLEANUP

BYLINE: Garcetti was interviewed by Times staff writers Molly Selvin and, Tim Rutten

BODY:

On March 7, GIL GARCETTI faces two challengers in his quest for a third term as district attorney of Los Angeles County. The 58-year-old Garcetti, a career prosecutor, was first elected in 1992. He led the office during the trials of O.J. Simpson and Lyle and Eric Menendez and takes credit for major initiatives that have helped to cut crime countywide. Garcetti was interviewed by Times staff writers Molly Selvin and Tim Rutten.

Question: Let's talk about the Rampart scandal. Is this the most distressing thing that's occurred?

Answer: It is. It is the most important case my office has ever handled since I've been the D.A. It is my obligation now to get to the bottom of this, and I will, we will, be working closely with the LAPD. I think we will have a better police department when we finish with this, because not only will officers be fired, but I think they will learn that it's simply not worth it, because you are very likely to go to state prison.

Q: How do you respond to those who question your own deputies for having relied on the testimony of these officers . . . in hundreds, dozens, thousands of cases perhaps?

A: Our role is to seek justice based within the law and the ethics that we have as prosecutors. But prosecutors are human beings, they're not clairvoyant. When a police officer tells you that this is what happened, and there doesn't seem to be any independent inconsistency of that other than a defendant saying that's not the way it happened, and you have no other reason to disbelieve this officer, you haven't seen other cases where there's a doubt or a question or a gut reaction, you're going to go forward.

Q: Is there anything that you feel you've learned from this about the necessity of additional skepticism regarding police testimony? Any change you've adopted, things you've put in place, attitudes you're attempting to cultivate through training? Because clearly, this could happen again.

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A: It could happen again. There have been some small changes. And some of those have been at our direction, some have been, you're just a more aware prosecutor. I'm the one who does the final hiring, and I bring up this issue about police officers and their testimony. And their fudging and their lying, prosecutors have to be aware of that. We have an incredible training program that we didn't have some years ago. And then we finish training and I meet with them all, for two or three hours, and this is one of the issues I bring up: when you have a doubt, when you have a question. We talk about that when something hits me wrong, or I know this officer lied, or whatever, that's your responsibility to know how to go forward. But most important, when you do have an officer who you believe is lying, that has to be reported to the head deputy D.A. . We prosecuted officers for perjury. We're not talking about a bucketful of officers, but we do that.

Q: Other than Mark Fuhrman, when was the last time an LAPD officer was prosecuted?

A: I can't answer that. I don't know about LAPD, but we just prosecuted the police chief of Hawaiian Gardens for testifying in court, for perjury.

Q: If the LAPD had had an honest officer-involved shooting evaluation system, maybe it would have noticed the bad shootings in Rampart. Same question for your office. If you had had the "roll-out" teams (a recently reactivated program in which prosecutors go to the scenes of police shootings), if you guys had gone to Shatto Place--where two apparently unarmed men were shot, one fatally, by police in 1996--would it have been different?

A: Certainly if we had gone to disgraced former Officer Rafael Perez, it would not have made a difference.

Q: How about Shatto?

A: I don't think so. Based on what I know, I can say categorically, in the Javier Francisco Ovando case in which officers shot an unarmed man, planted a gun on him and perjured themselves to send him to prison , when they had two police officers Perez and Nino Durden who said this is what happened, we had no other criminal evidence, the physical evidence all corroborated what the officers said, and we didn't have any reason at that time to doubt the two officers. So we show up, and there is nothing we're going to find.

I know, based on my experience, that the vast majority of officer-involved shootings are not close cases in terms of being criminal conduct. Maybe bad tactics, judgment, whatever. But there is, based on the facts we're able to establish, there's no criminality on the police officer's part. In an Ovando shooting, perhaps even the Shatto Place shooting, where you have one bad shooting, is it worth it to have roll-out teams that maybe would have uncovered it? My answer would be yes. It is worth it. We started this program again.

Q: You've been in office for eight years. Even the president of the United States doesn't serve three terms. Why should voters reelect you again?

A: Both the experience and the wisdom that I have gained out of difficult experiences have made me a better district attorney and a more effective district attorney and, with humility, a more respected district attorney. I believe I can accomplish a lot more because of that. In my second term, I was a more effective D.A. than in the first term, and I can even do better in the third term. There still is a lot to do. I really want to focus on juvenile crime. Juvenile crime to me is where we can do more to prevent crime rather than simply react to the latest crime and prosecute it.

Q: What's your position on Proposition 21, on juvenile crime?

A: I'm neutral. Most of it I like. I don't like the continuing expansion of the death penalty. If we continue to expand the death penalty, pretty soon all first-degree murderers are going to be special circumstance cases.

I think juvenile crime is so important right now. The system has ignored the first, second, even the third-time minor offender. We kiss them off until he or she has committed a violent crime, and then we come down on them like a ton of

bricks. There's a huge mental health problem with kids who are coming into the juvenile justice system, and everyone kind of kisses that off. Why do we wait for them to physically mature? No one's taking care of the mental illness problem until, again, they kill someone or rape someone, and then they're put in prison, and they're still not getting any real help there.

I'm still answering your question about why I still have the passion about being district attorney. We really have to do something about financial elder abuse, because you have a huge, vulnerable group of people there. It's over 900,000 people in the county of Los Angeles who are age 65 or older, and we're going to hit 950,000 by the end of this year or next year. In the area of cyber-crime, we have one lawyer and three investigators assigned to it right now. We are the first office in the nation, local prosecutor's office, that has this. And we prosecuted some cases. I will guarantee within a couple years you're going to have 20 lawyers there. Cyber-crime is just taking off. And the vulnerability and what it could mean to individuals, families and businesses is immense. And I want to be on the cutting edge of that. What we continue to do with family violence: I'll take a fair amount of credit for the somewhat dramatic reduction in the number of domestic homicide cases in L.A. We go into the bars and clubs where young people go and try to warn the women about drug rape, because that's a huge problem in the community. And we try to tell the guys you may not be a street thug, but you're a rapist, and you're going to go to prison for the rest of your life if you engage in drug rape. This is what the D.A. should be doing. The last thing is in the area of hate crimes. Since I created the nation's first hate crime unit, it has been hugely successful.

Q: Back to Rampart, do you think you ought to provide more information to the defense bar?

A: No. We have provided the defense with as much information as I think we can without compromising the integrity of our investigation. We gave information to the public defender, and they can do whatever they want with those cases. If you want to go seek a writ, that's our responsibility. I really don't want to compromise that investigation. We're not talking about the extraordinarily large number of cases that has been printed. We're in reality talking about a few hundred. It is my responsibility not only to hold the guilty accountable but to protect the innocent.

Q: How much of what occurred in Rampart was made possible because of the taint that attaches to the words "gang membership?"

A: I don't know if I can answer that question. You had an officer who was by all accounts an excellent officer, who at some point went 180 degrees. What made a cop go bad, I don't know. Is it money? Is it power? Is it just an evil streak that comes through?

Q: Virtually everybody caught up in these injustices, though, were immigrants or children of immigrants; they almost all have Latino surnames. They almost all were alleged to be members of gangs or associates of gangs. Did the system accept the word of police officers against theirs more readily because of who they were?

A: The answer is no. I've never seen evidence of that. Does the system treat the kind of individual you described a little harsher? Maybe. There is no perfect system of justice in the world. This is, I think, the best it gets. Are there going to be mistakes? Absolutely. It's going to cut both ways. It's really hurtful, I think, when an innocent person is convicted or pleads guilty or is forced into that position.

Q: Let's talk about the Belmont Learning Complex. What should the D.A.'s office be doing on this? Why no action yet?

A: There has been plenty of action by our office. We have been working with LAUSD chief investigator Don Mullinax for a very long time. We're not an investigative agency, we're a prosecutorial agency. So we have to rely 99% of the time in our cases on an investigating agency, be it the police department or regulatory agency, to handle the investigation. With Belmont, I can tell you we've been extremely active for a long time. We have at least five or six people working full-time as a team on reviewing all of Belmont to determine, is there evidence, beyond a reasonable doubt, that a crime is committed, first. Second, that a particular individual committed that crime. I want to prosecute

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that case because I was as outraged as everyone else about how much that has cost. And the kids who are suffering as a result. But I also have to understand the ethics and the legal responsibilities I have. I don't prosecute people who are dumb, who are incompetent, who are less than criminally negligent. When we're ready to move forward on something, we'll move forward.

Q: Is there a sense of when that might be?

A: My guess is that this team that I just told you about will be working together for several months.

Q: Several months more?

A: And probably working longer than that. Will we have anything before that, in terms of criminal prosecution, I don't want to speculate.

Q: How about the assignment of trial deputies? Is there any merit to allegations that internal politics and favoritism somehow militate against having the strongest prosecutors in the toughest cases?

A: I rarely get involved directly or indirectly in the assignment of lawyers to cases. I do occasionally get involved. And it's strictly on the basis of who is the best trial lawyer that we can put on this case who is available, who can handle this particular case given the circumstances of the case, given the nature of the case, given the likely defendant and defense lawyer in the case. We have to consider all of that, and do. Since I've been D.A., I have probably been directly or indirectly involved in the assignment of half a dozen. All the others are done usually by the head deputy.

Q: Is there anything else you want to say?

A: I'm very proud of where we've come in eight years. We begin with the hiring of the deputies. I've changed the diversity of our office, and I think it benefits everyone to have as much diversity as we have. The training that we had was really shameful. I directed a change in that. We now have a full month of training to start off with. We're second to none in the nation on training. They come back after six months for an additional three days. The computerization of our office. That was a big undertaking, but everyone has a computer. The morale of the office, contrary to what my opponents say, I think is extremely high. I easily won the plebiscite conducted last month among deputy district attorneys here. Pay raises have been beyond anyone's expectations. I have fought for them. And they got parity. Even my detractors, who said I'd never get it done, were amazed that we were able to get parity with the county counsel. And the promotions. The promotions have been immense. Women and minorities have seen the change in the office. I'm proud of that. Because our office now more closely resembles, I think, the community that it serves.

GRAPHIC: PHOTO: Gil Garcetti PHOTOGRAPHER: GINA FERAZZI / Los Angeles Times

LOAD-DATE: February 25, 2000



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Ventura County Star (California)

February 29, 2000, Tuesday

SECTION: Editorials; Pg. B09

LENGTH: 1384 words

HEADLINE: Letters: Help our children

Vote for Prop. 18/Taxes won't be raised/Dumbfounded by stance/Don't be conned again/The Mikels buzz/Little know deception

BYLINE: Polly Vlasic/Pete Kossoris/Victoria Myers/William Maple/Dorothy Drummond/Bill and Rose Edwards/Elinor Gustafson

BODY:

Help our children

I am asking people to please vote for Proposition 26. My oldest child started school in 1979, when the effects of the old Proposition 13 started to become apparent. As a frequent PTA volunteer, I saw with my own eyes, year by year, as the schools went downhill.

Every year, there was less money, more students per teacher, less maintenance of buildings. My children's education clearly was impacted.

It is time to stop that trend. Our children deserve an excellent education. Proposition 26 will help.

-- Polly Vlasic,

Thousand Oaks

Vote for Prop. 18

Re: your Feb. 22 editorial, "Cracking down on violent crime":

I have been a Ventura County deputy district attorney for 34 years and prosecuted major crimes and capital crimes for 28 of those years. I proposed Proposition 18 as a result of the 1997 Diana Haun-Michael Dally trial where the defendants were having an affair and plotted to kill Dally's wife, Sherrie. Haun lay in wait for her outside a Target store, kidnapped her and beat her and stabbed her to death.

Because of some bizarre Rose Bird court decisions from the 1980s, Haun could not be charged with a kidnap special circumstance or found guilty of a lying-in-wait special circumstance, nor could her paramour be charged with a kidnap special circumstance. That is despite the fact both kidnap and lying in wait are listed in the penal code as special

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circumstances.

Fortunately, both Haun and Dally are in prison for premeditated murder convictions and will probably never get out.

Proposition 18 will correct the tortured interpretations of the law these 1980s decisions represent, as well as a similar misinterpretation regarding the arson special circumstance.

Consequently, it was passed by huge bipartisan majorities: 66-2 in the Assembly and 28-6 in the Senate and has been endorsed and/or voted for by Republican leaders like former Govs. Pete Wilson and George Deukmejian and Democratic leaders like Gov. Gray Davis, Attorney General Bill Lockyer, former Speaker Antonio Villaraigosa, incoming Speaker Rob Hertzberg and Lt. Gov. Cruz Bustamante.

The ballot arguments against this proposition center entirely on opposition to the death penalty. I hope all but the most adamant opponents of the death penalty will concur with the bipartisan support this measure has attracted and vote for it.

-- Pete Kossoris,

Thousand Oaks

Taxes won't be raised

It really bothers me that they are advertising that Proposition 26 will raise your taxes. That is totally false! This initiative won't raise a single tax. It only allows us to take it to the local taxpayers to make a fair and informed decision.

How sad it is that bonds for jails or sports stadiums can be passed at a majority-plus one, but bonds for schools that are educating our children and our future leaders have to be passed by two-thirds. Don't we value our children's futures more than sports or deviants? If we do, we surely need to start doing something about voting Yes on Proposition 26.

Our schools are old and in need of repair. Most people work in a safe, warm/cool, dry workplace. Don't our children deserve the same conditions? They can't vote to change things, but we can and must do it for them!

-- Victoria Myers,

Simi Valley

Dumbfounded by stance

Re: your Feb. 27 editorial, "Intolerance under the guise of virtue":

I was dumbfounded by your editorial against Proposition 22. Rarely have I read such a lengthy piece that said so little. If, as claimed in your editorial, "Proposition 22 therefore serves no purpose," why go to such efforts to turn voters against it?

What is meant by your statement that "it would be in society's best interest to maximize the number of household units by expanding the number of family arrangements eligible for such legal and financial support"? If the Star is not endorsing same-sex marriage," what sort of expanding definition can we assume?

Proposition 22 takes a simple stand that, "Only marriage between a man and a woman is valid or recognized in California." The Star, on the other hand, has resorted to lengthy doubletalk to endorse social engineering under the guise of tolerance.

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-- William Maple,

Newbury Park

Don't be conned again

When we voted for Proposition 5 in 1998, we believed that nice man in the blue shirt when he said it was needed to "keep the gaming they had then." Our state Supreme Court (not nasty out-of-state casino operators) saved us then, but it won't be able to if we let ourselves be conned again.

Please read your voter information guide. Proposition 1A invites Las Vegas-type casinos into every Californian's back yard. Tribes without tribal lands can and will buy land and build casinos (all financed and operated by those same out-of-state bad guys). A San Diego county tribe chose Harrah's Entertainment from among "several competitors" to build a \$100 million casino on its land. Those competitors are surely romancing tribes all over the state.

Now, those very sincere-sounding women on TV are telling us the tribes that have casinos will share with those that don't. The voter guide explains that the payments could be up to \$1.1 million per year per tribe. The tribes with gaming now were able to spend \$63 million on Proposition 5 and, just through Jan. 22, \$15.3 million on Proposition 1A. With profits like that, they could have shared with poorer tribes instead of trying to turn California into a spread-out Las Vegas.

We still want to help the Indians and we can. Proposition 29 does allow the Indians the gaming they have now. Never heard of it? Back to your voter guide. Vote No on Proposition 1A and Yes on Proposition 29.

-- Dorothy Drummond,

Simi Valley

The Mikels buzz

What are they saying about Judy Mikels?

Sen. Cathie Wright, 19th State Senate District: "After closer examination of the records of two Republican candidates and the way they are conducting their campaigns, there is no doubt in my mind who will best serve the 19th Senate District: Supervisor Judy Mikels."

Ventura County District Attorney Michael Bradbury: "Judy Mikels is a proven leader who will do a great job in the Senate. She's shown that she can tackle tough problems and find real solutions."

Sheriff Bob Brooks: "Judy Mikels is law enforcement's choice. Judy is a proven leader who has put taxpayers and public safety first, while helping make Ventura County one of the safest in the nation."

Retired Assemblyman Nao Takasugi, respected Oxnard leader: "Judy is a proven leader with a solid record -- she supports public safety and believes in cutting government waste. She listens to the concerns of local residents and works hard to solve the problems we face in the region."

Fillmore City Councilman Roger Campbell: "Without doubt, Judy Mikels is the best choice for residents in the 19th State Senate District. She's been a friend of Fillmore and the Santa Clara River Valley."

Los Angeles City Councilman Hal Bernson: "Judy Mikels is unquestionably the superior choice for state Senate for our communities. I will do all I can to help her win."

Judy Mikels has also been endorsed by the Ventura County Deputy Sheriff's Association and the Ventura County

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Professional Firefighters Association. All of this plus endorsements from the entire Simi Valley City Council, who have known and worked with Judy during the years that she was an elected city councilwoman.

If I may quote Sen. Wright again, "Judy Mikels is an honest, experienced public servant who has lived here among us. Judy Mikels is a local resident who knows the many challenges facing our local neighborhoods and schools."

-- Bill Edwards & Rose Edwards,

Simi Valley

Little-known deception

Re: your Feb. 24 editorial, "An 'open primary' that really is not":

Help! It would seem that many of us would like, and need more information about, this little-known deception. Surely it must have been published before, but overlooked or just not digested by most, until the time is upon us.

Is there a solution?

We spent a long time deciding our ballot, and were so happy to finally have the opportunity to vote as we please for the first time. I wonder how many other people have very strong feelings about this.

-- Elinor Gustafson,

Thousand Oaks

LOAD-DATE: February 29, 2000



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Los Angeles Times

June 10, 2002 Monday
Home Edition

SECTION: PART A MAIN NEWS; Part 1; Metro Desk; Pg. 1

LENGTH: 1030 words

HEADLINE: California Courts Sentencing Fewer Killers to Death Row;
Justice: The decline comes as violent crime falls. D.A.s are more selective in capital cases.

BYLINE: STUART PFEIFER, TIMES STAFF WRITER

BODY:

The number of defendants sentenced to death in California is falling at its most rapid pace since the state reinstated the death penalty 25 years ago, according to an analysis of state records.

The drop in death sentences between 1999 and 2001--from 43 to 21--came as violent crime also plummeted. But the falling crime rate explains only part of the decline in death sentences. Publicity about innocent people freed from the nation's death rows and reluctance by prosecutors to pursue a penalty that may never be imposed have reduced the number of cases, attorneys and legal experts say.

"The D.A.s are becoming more discriminating in seeking the death penalty," said Gary Schons, an assistant attorney general who oversees death-penalty appeals in several Southern California counties.

"They have had the benefit of having lived with this law for nearly 25 years," Schons added. "They have also seen the tremendous cost of getting cases through the system, both in fiscal costs and the emotional costs to the survivors."

California is home to the nation's largest death row, with more than 600 convicted murderers awaiting execution. The state has executed nine people since reinstating capital punishment in 1977.

Although district attorneys said they have not changed their criteria for deciding whether to seek death, state records indicate a greater proportion of defendants eligible for death are receiving life in prison instead. In 1999, 19.3% of defendants convicted of capital murder received death sentences. By 2001, the number had fallen to 12.6%.

In San Diego County, for instance, none of the 27 people convicted of capital murder in 2000 and 2001 were sentenced to death.

"Some of it may be the fact that it's so difficult to execute someone," said San Diego County Public Defender Steven J. Carroll. "It takes so much time and money, the decision-makers may be deciding it isn't worth it to try unless it's a really aggravated case."

California Courts Sentencing Fewer Killers to Death Row; Justice: The decline comes as violent crime falls. D.A.s are more selective in capital cases. Los Angeles Times June 10, 2002 Monday

The same pattern can be seen in other urban counties. In Los Angeles County, 15 defendants were sentenced to death in 1998--14% of those who were potential capital cases. Last year, the number of death sentences fell to seven, or 9%.

In Orange County, where seven killers were sent to death row in 1997, only one defendant received death last year--a Santa Ana gang member convicted of shooting a man in the back of the head during a street robbery. Prosecutors sought the death penalty in one other case--a Santa Ana man who intentionally drove his car onto a preschool playground and killed two children. The man's attorneys argued he was mentally ill, and the jury recommended a sentence of life in prison without parole.

One of the state's largest shifts has occurred in Riverside County. In 1998 and 1999, prosecutors obtained 13 death sentences out of 24 eligible cases. In 2000 and 2001, they obtained five death sentences out of 35 eligible cases, according to records.

Riverside County Dist. Atty. Grover Trask said that despite the numbers, his test for what makes a death-penalty case remains the same: Is the death penalty appropriate, given all the circumstances, and would a jury be likely to return a death verdict?

His approach has changed through the years. For instance, Trask said he has learned that juries in his county are less likely to return death verdicts when the defendant is young or the crime is committed among family members.

"We understand the costs and other issues. We obviously do not want to go forward on cases where there's no reasonable likelihood a jury will return a verdict of death," Trask said.

California's experience mirrors a national trend. The 214 death sentences imposed in the United States in 2000 were the lowest since 1980, according to a U.S. Justice Department report.

The drop in death sentences in California corresponds with a big fall in murders across the state. The number of homicides in California dropped from 3,876 in 1992 to 2,074 in 2001.

The declines also come as the death penalty is under increased scrutiny. There have been highly publicized reports of wrongly convicted inmates freed from death rows and allegations of racial bias in application of the death penalty. Illinois and Maryland imposed moratoriums on capital punishment. The 9th U.S. Circuit Court of Appeals has reversed eight California death sentences since November.

Several polls have found that support for the death penalty in California and the nation is declining, although a majority still supports it. A 2000 Field Poll found that most Californians would support a moratorium on the death penalty until its fairness is studied further.

Although the death penalty might not be as popular as it once was, prosecutors point to other factors as reasons for the declining numbers. Many gang leaders who caused the spike in homicides in the early 1990s are behind bars, resulting in fewer of the killings that could warrant the death penalty.

"There's public sentiment moving away from the death penalty ... but that's not the big factor," said Santa Clara County Dist. Atty. George Kennedy, whose office obtained just one death sentence in the last three years. "We've been lucky during that time period not to have the kinds of cases that jurors will return death on."

District attorneys in many counties--Los Angeles, Riverside and Orange among them--have established committees of veteran prosecutors to help decide whether to pursue death sentences. They review available evidence and invite comment from defense lawyers before making the choice.

Carroll, the San Diego public defender, said his attorneys start investigating the backgrounds of murder defendants

California Courts Sentencing Fewer Killers to Death Row; Justice: The decline comes as violent crime falls. D.A.s are more selective in capital cases. Los Angeles Times June 10, 2002 Monday

as soon as possible--exploring a defendant's family history and psychological background--so they can make a powerful argument against the death penalty to San Diego County Dist Atty. Paul Pfingst.

"We don't go in and try to prove our client innocent to the D.A. What we try to do is convince him a death decision is not appropriate," Carroll said. "We've had tremendous luck in doing it. So we've had much fewer death cases going through."

Times staff writers Ray F. Herndon and Doug Smith contributed to this report.

GRAPHIC: GRAPHIC: Sentencing in California CREDIT: PAUL D. RODRIGUEZ / Los Angeles Times

LOAD-DATE: June 10, 2002



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APRIL 24, 2003, THURSDAY, FINAL EDITION

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LENGTH: 1067 words

HEADLINE: How prosecutors choose death penalty;

Stanislaus D.A. says Laci case meets most of his criteria

SOURCE: Chronicle Legal Affairs Writer

BYLINE: Harriet Chiang

BODY:

It's the hardest call for a prosecutor to make. But the district attorney in Stanislaus County indicated Wednesday that he is leaning toward seeking the death penalty in the murder trial of Scott Peterson.

"This case cries out for the ultimate (punishment)," District Attorney Jim Brazelton said. "I owe it to Laci and Connor."

Brazelton said he would talk to relatives of Laci Peterson to hear what they want done with her husband, who has pleaded not guilty to killing his 27-year-old wife and her unborn baby. "I intend to give the family's opinions a lot of weight," he said.

But in general, he said, cases involving multiple murders -- especially when one of the victims is an unborn baby -- deserve the death penalty.

Despite Brazelton's comments for a syndicated television show, veteran prosecutors predict that the district attorney is likely go through an intense and exhaustive process before deciding whether to seek capital punishment for the Modesto fertilizer salesman.

And they say it may be a closer than most think.

"You're talking about the most serious punishment there is," said Bob Kochly, district attorney of Contra Costa County. "You're also talking about incredible resources. Everything takes longer when you're seeking death."

Peterson is eligible for the death penalty because he's been charged with two murders -- those of his wife and the unborn child, whom the couple intended to name Connor. A multiple murder is one of the special circumstances that triggers the death penalty.

How prosecutors choose death penalty; Stanislaus D.A. says Laci case meets most of his criteria The San Francisco Chronicle APRIL 24, 2003, THURSDAY,

But local district attorneys interviewed say they pursue capital punishment only in a fraction of the eligible cases. They said Peterson's spotless criminal record and apparent lack of violent history will weigh in his favor.

On the other hand, the fact that the victims were a pregnant woman and her full-term baby may sway Brazelton toward seeking death.

There are also the unknowns -- at least for the public. How did Laci Peterson die? How much did she suffer?

"It's supposed to be for the worst people and for the worst crimes," said San Mateo County Public Defender John Digiacinto. "But that isn't always what happens, and it varies by county."

Some prosecutors say they take a far more practical approach, gauging whether they have a strong enough case for a jury to send a defendant to the death chamber.

"I plug everything in, and I make an evaluation of whether a jury may reasonably come back with death," said Alameda County District Attorney Tom Orloff, who estimates that his office seeks capital punishment in about a quarter of eligible cases. "That's kind of the bottom-line test. All murders are bad. How bad is this one?"

Each county sets its own guidelines, but each generally goes through a similar process.

Because the decision carries so much emotional and political baggage, district attorneys usually rely on a committee of lawyers to make a recommendation.

There is no set formula. "This is a very fact-specific decision," said Santa Clara Assistant District Attorney Karyn Sinunu, who oversees homicide cases. Prosecutors in her county, she said, do not seek the death penalty in the majority of eligible cases.

Prosecutors tend to focus on the defendant and the crime. If a defendant has a history of violence or the killing was particularly heinous or vicious, a prosecutor is likely to pursue a death sentence.

But they also take into account mitigating factors -- including whether the defendant is particularly young, has mental problems or was a victim of child abuse. They often rely on defense lawyers to provide information on defendants' background.

"Basically, it can be anything," Orloff said.

One factor Brazelton may take into account is the fetus of Laci Peterson, who was 7 1/2 months pregnant when she was killed. "Jurors seem to place significant weight on the vulnerability of the victim," Orloff said.

But being charged with a child's murder does not carry an automatic death sentence. The defendant's mental state and the way the murder was carried out also play a part in what prosecutors decide to do.

In San Mateo County, prosecutors chose not to seek the death penalty against Megan Hogg of Daly City, who suffocated her three children in 1998, because she had a history of mental problems.

However, Santa Clara County prosecutors sought capital punishment for William Michael Dennis, who was charged with hacking to death his eight-months-pregnant ex-wife and her fetus.

Dennis, who was ultimately convicted of the Halloween 1984 murders and is now on death row, was a former Lockheed machine operator with no criminal record. But Sinunu said the 4-year-old daughter of Dennis' ex-wife had watched as her mother was killed, and prosecutors took that into account.

One of the pivotal issues in most murder cases is how the victim died. Coroner's officials in Contra Costa County,

How prosecutors choose death penalty; Stanislaus D.A. says Laci case meets most of his criteria The San Francisco Chronicle APRIL 24, 2003, THURSDAY,

where Laci Peterson's body was found last week near the bay, have said they may never know her cause of death.

On Wednesday, Brazelton said the cause of death didn't concern him. He said he was sure Laci hadn't gone swimming.

But other veteran prosecutors said cause of death is a big issue. "The manner in which the murder is carried out is probably one of the most -- if not the most -- important factor for the prosecution in assessing whether to seek the death penalty," said Steve Wagstaffe, chief deputy district attorney in San Mateo County.

"That decision is made more difficult when the precise circumstances of the killing are not clear," he said.

Even if the cause of death remains a mystery, veteran defense lawyers say Scott Peterson's conduct after his wife's disappearance -- his arrogance, lack of cooperation with police, the sale of her car and news of his extramarital affair -- may come back to haunt him.

"A prosecutor could try to reach backward and say he probably committed the offense with the same mind-set," said Emeryville defense attorney Ted Cassman.

Ultimately, public pressure may prompt Brazelton to seek the death penalty against Peterson.

"As long as district attorneys are elected county officials," Contra Costa prosecutor Kochly said, "they have to do what the residents of their county want, within the dictates of the law." Chronicle staff writer Stacy Finz in Modesto contributed to this report. / E-mail Harriet Chiang at hchiang@sfnchronicle.com.

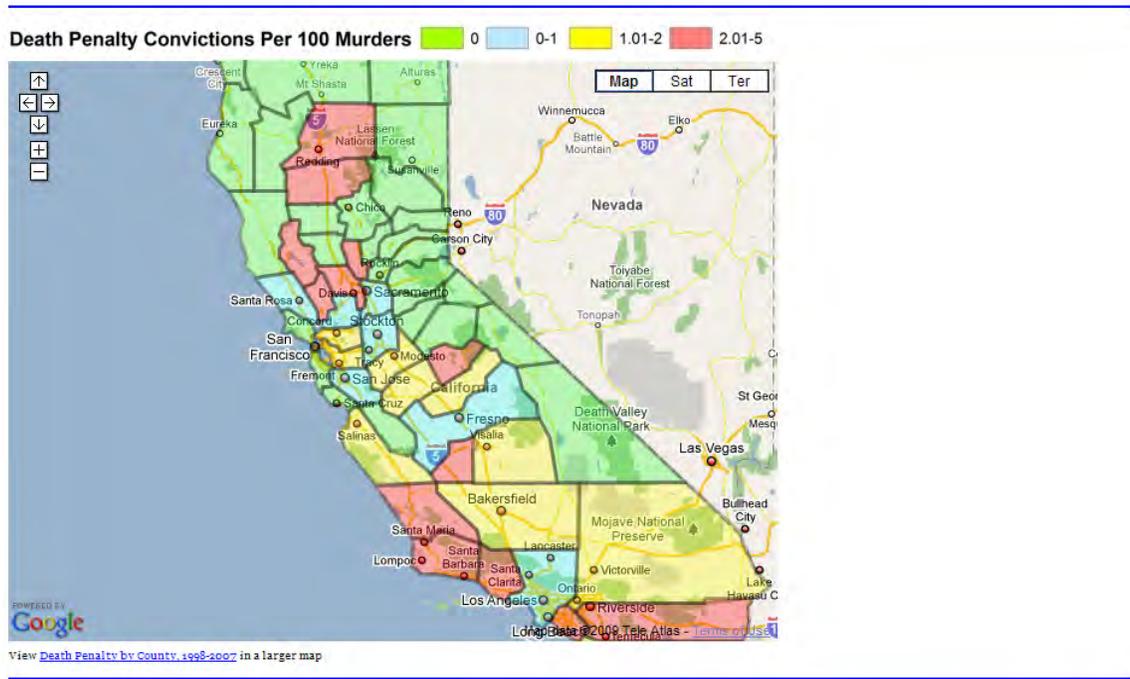
GRAPHIC: PHOTO, District Attorney James Brazelton (left) and Sharon Rocha, mother of Laci Peterson, enter Stanislaus County Superior Court. / Scott Peterson is eligible for the death penalty because he's been charged with two murders. / Al Golub/Modesto Bee

LOAD-DATE: April 24, 2003

Interactive map: See where murderers most often get the death penalty

Published Wednesday, Jul. 01, 2009

The state is considering new lethal injection guidelines for executing criminals. From 1998 to 2007, California prosecutors obtained about one death sentence per 100 murders, according to a Bee analysis of new crime data. But there was wide disparity by location. Riverside County, for instance, issued death penalty convictions at a rate three times higher than the statewide average. On the opposite side, San Francisco County hasn't issued a death sentence in at least a dozen years.



Notes: Counties with an asterisk had fewer than 100 murders, so it doesn't take many convictions to change their rates.

Several factors can affect how often prosecutors obtain death penalty convictions. These include, but are not limited to, how often prosecutors seek the death penalty, law enforcement's murder arrest rates, the makeup of juries and the frequency of particularly heinous killings.

Fixed Merced and Mariposa county figures at 3:30 PM Thursday 7/2; added one murder conviction to each.

Source: Office of the California Attorney General, [Criminal Justice Profiles](#) (Tables [1](#) and [6](#))

Among large counties, Riverside had the highest rate of death penalty convictions. Here's what Riverside District Attorney Rod Pacheco, a former Assemblyman who was elected in 2006, had to say in an interview with The Bee, edited for length, about his office's approach to prosecuting murders. He started out by noting that many of the convictions came or started under his predecessor's watch ...

I have changed the approach. It's not that the prior district attorney's approach was not acceptable. Our violent crime rate is now exceedingly low. It used to be one of the worst. But I opened up the process ... to law enforcement and to the victim's family. We ask them, "Do you have a recommendation for us." We also bring in the defense attorneys and say "Tell us anything you want about this case."

Has that changed the number of death penalty prosecutions?: Every case is different. I don't know if we've had more or less (death penalty prosecutions) ... The people here have a very different view of public safety than the people in San Francisco.

You've been vocal about the length of time it takes in California to exhaust all the appeals of a convicted death row inmate: It's horrific. We need to reform the death penalty in California. It takes about five years for some (convicted murderers) to even be represented by a lawyer.

Have tough budget times affected the number of death penalty prosecutions?: It's funny you should ask that. I had a judge suggest that we not pursue the death penalty (because of financial considerations.) That's not a suggestion that is appropriate. Morally, I don't think I should consider the relative cost of a death penalty conviction.

The Northern California ACLU has published extensive studies of geographic patterns in death penalty convictions, arguing that they show where a murderer lives is often the most important factor in whether he gets condemned. Natasha Minsker is the director of the office's Death Penalty Policy Program. She started this interview, edited for length, by summarizing her office's findings.

Large counties continue to send more people to death row than smaller and mid-sized counties. And the culture of the district attorney's office is the biggest factor in these convictions.

Why are their fewer convictions in the smaller counties?: We've heard from people that it is a combination of budget problems and futility. It takes a lot of resources from the office, and it costs a lot of money.

How much does the political leanings of juries come into this?: I have seen no evidence that political beliefs play a part in this. In Northern California, Alameda County stands out as having the most convictions, and it is one of the most progressive counties in the state. ... (Because the voir dire process weeds out jurors who say they can't impose the death penalty) the juries you end up with in Alameda County are all still pro-death penalty.

What has been happening since 2007?: We feel like we see these trends changing over time. In 2008, only five counties accounted for 90 percent of the death sentences.

LETTERS

The Sacramento Bee - Tuesday, March 19, 1996

Proposition 192 Prop. 192: Another evasion," editorial, Feb. 26: Retrofitting bridges is absolutely necessary. The plan to retrofit the Santa Monica freeway would have cost \$3 million to \$4 million. Because Caltrans wasn't quick enough, we spent \$24 million on the rebuild and the economy lost another estimated \$90 million due to the collapse (estimated at \$1 million per day). We certainly don't need to relearn the experience

We cannot continue to cover this emergency retrofit work from a fund not designed or budgeted for it. The rest of our highway system suffers greatly from this draw down.

The Bee's "higher standard" of voting No on Proposition 192 is shortsighted and shows a lack of intelligent viewing of the critical need (belatedly) for funds. A Yes vote on Proposition 192 is the right choice. Maybe then our legislators and governor would get the message that we will support transportation needs, and begin to do the better job to which the editorial alludes.

Skip Brown Roseville

The highway lobby is spending \$2 million to trick voters into believing that Proposition 192 would provide more funding to make highways and bridges earthquake safe. It would not. It would just shift money into new highway construction.

By law, seismic retrofitting already is first priority for the \$2.4 billion we pay each year in gas taxes. Proposition 192 simply substitutes expensive debt-financing from the general fund for existing gas taxes, so the gas-tax funds can be diverted to subsidize new highway construction.

Using scarce general fund money to pay for highways steals money from schools, higher education, parks and other critical needs.

Gerald H. Meral Executive Director Planning and Conservation League Sacramento

Proposition 194 Re "Yes on Prop. 194," editorial, Feb. 28: Despite currently falling short of expectations, the Joint Venture Program still employs 150 people in the prison system, thereby economically disenfranchising 150 people outside that system. The potential attraction for JVP employees is a (literally) captive labor force at low wages, without expenses for medical insurance, sick leave, paid holidays, etc.

Now the people of California are asked to sweeten the pot by additionally lowering unemployment insurance premiums for employers. It doesn't make sense. If these men and women don't get unemployment benefits, we taxpayers will have to support them on welfare.

The paltry wages paid prisoners can't make even a small dent in the costs of incarceration, damages perpetrated in criminal acts and support for their families. Balanced against the loss (both current and potential) of jobs in the open market, this is a bad deal for the taxpayer and we should not make it any worse.

Roxanne Bate de Koning West Sacramento

Proposition 195

Re "No on Prop. 195 and 196," editorial, March 4: Changes relating to carjacking-related first-degree murders are necessary for the simple reason that carjacking is a distinct crime with distinct elements separate and apart from robbery.

Carjacking first-degree murders cannot easily be prosecuted as first-degree murders under the robbery-based special circumstance. Instead, it requires a series of procedural hoops. Proposition 195 solves the problem by directly making

carjacking-related first-degree murders a special circumstance.

In the case of kidnap-carjacking, the California Supreme Court has noted that kidnapping and kidnapping for the purpose of robbery are crimes distinct from kidnap-carjacking. As in the case of carjacking-based first-degree murders, this measure makes a kidnap-carjacking first degree murder a special circumstance.

As to the issue of jurors, the juror murder provision is designed to place these kinds of despicable forms of murder in the same category as retaliatory murders of witnesses or judges, which are currently special circumstances.

Sen. Steve Peace D-Chula Vista Sacramento

Proposition 196

The Bee argues that there is no difference between a drive-by and any other murder. But in fact, drive-by shooting is especially cowardly, the murderers who commit this heinous crime are harder to identify and arrest, and it is extremely dangerous to innocent bystanders.

The Bee editorial also tried to argue that Proposition 196 would be hard to defend in court. But the California District Attorneys Association and the Department of Justice - the very prosecutors who must defend the proposition from any legal challenges - support Proposition 196. The professional prosecutors have no doubt it will stand up in court.

Finally, The Bee could not be further off-base when it accused Proposition 196's sponsors of looking for "more tough-on-crime political campaign fodder." I am the only sponsor, and I have no intention of running for any office when my current term ends in 1998. I support the proposition for one reason - to help make California safer.

Sen. Ruben S. Ayala D-Chino Sacramento

Proposition 197

Re "Managing lion population," letter, Feb. 20: The purpose of Proposition 197 is to open a hunting season on mountain lions again in California. People who say it isn't about hunting are either lying or ignorant. Hunters and ranchers vowed to keep on fighting to hunt lions after Proposition 117 was passed by California voters in 1990, and that is just what they did.

As far as not being able to kill lions under Proposition 117, on Feb. 19 a 180-pound male mountain lion was tracked down in Foresthill near Auburn and killed because people complained about a mountain lion taking their pets in their neighborhood. After a necropsy of the lion, authorities found goat meat and bones inside the cat's stomach. They had no problem killing the mountain lion, despite what opponents of Proposition 117 have said. If any lion is a threat to people or pets, the lion can be tracked down and killed.

People need to realize that if living in an area that is rural and where there are deer, they may also encounter mountain lions. How many times does the Department of Fish and Game have to warn people to keep their pets inside when they live in the country? A large raccoon or fox could kill a pet just as easily as a mountain lion.

Janice Clark Sacramento

Mountain lions do not eat nuts, berries, fruit and grass like other big-game animals. They eat meat. Mountain lions are not scavengers like the bear or coyote. They like fresh meat.

A mountain lion is a killing machine. Its favorite target is deer, but when it can't find a deer it will kill anything.

Since passage of Proposition 117 the lion population has soared. They are killing off our deer and big horn sheep herds. They are in our yards killing our dogs and cats and stalking our children.

Proposition 197 does not call for the extermination of mountain lions. It simply returns the management of the lion back to the Department of Fish and Game. Proposition 197 calls for a three-year study to be done on mountain lions. The funding for this study will come from existing funds. There will be no new costs.

The opposition of Proposition 197 will exploit the sport hunting issue. They want people to vote on emotions, not

common sense.

Use common sense not emotions and vote Yes on Proposition 197.

Jim Epting Palermo

Proposition 198

Proposition 198 is the Emancipation Proclamation for the California electorate.

When "Big Daddy" Jesse Unruh sold the voters of California on the joys and benefits of closed primary elections, he very effectively handcuffed this state's entire voting public and delivered them in chains into the hands of the politicians and political parties. The slave voters could then be placed on the auction block by the party leaders and sold to the highest bidder among the special interest groups.

Before that happened, voters could reasonably control their destinies by crossing party lines and electing exceptionally well-qualified individuals by popular vote. They could elect candidates, who could and would work for the good of the people and the state.

Once the public choice was eliminated with the scrapping of the open primary, anyone who did not faithfully echo the political concepts of the party leader and did not hew faithfully to the party line did not get party support. Without party support, a candidate is toast. Thus the door was open to political hackery and bossdom. The public lost control of its destiny.

Howard W. Wood North Highlands

For years there has been a drive to bring back the "open political primary" to foster the nomination of moderate candidates in all parties. The current situation shows the fallacy of such an idea.

Today, Democrats, faced with the certain nomination of President Clinton, need not vote. However, with an open primary, they would be smart to vote for a person thought to be unelectable, such as Pat Buchanan, hoping for a Democratic victory.

Open primaries would encourage this type of "ballot box terrorism," not the nomination of moderates.

Peter Lorenzo Sacramento

Re "Measure allows voters of all stripes in on party," March 10: Bruce Cain, associate director of the Institute of Governmental Studies at UC Berkeley, referred to Tweedledee and Tweedledum candidates. How apt. These two worthies were fighting over a rattle. I find today's political candidates are battling each other on much the same level.

Moira Neuterman Rancho Cordova

Proposition 199

Proposition 199, called Californians for Mobile-Home Fairness, is a classic in mislabeling a proposition.

It is an end run that would tie the hands of local governments. It is a narrowly crafted initiative that favors only the mobile-home park owners. It does nothing to make more low-cost housing available to anyone.

As a former mayor of Roseville and a former Placer County supervisor, it is my firm belief that local governments need flexibility in dealing with issues. Proposition 199 would tie the hands of local governments.

I urge a No vote on Proposition 199.

Phil Ozenick Roseville

The park owners who are sponsoring Proposition 199 are spurred on by greed. They care for nothing other than lining their pockets.

We, the mobile-home owners, are the victims. The aim of people in business is to make a profit, and we don't discount that. But if the proposition passes the owners of these parks will have the power to raise our rents without limits, whenever they so desire.

It's a costly process to move a mobile home - \$10,000 or more. They really are misnamed, since they are not that mobile. So somewhere along the way, if we couldn't afford the rent or the cost of moving, we would be evicted. Guess who gets the home - the park owners, of course.

Agnes G. Hahn Citrus Heights

Proposition 200

Re "200, 201, 202: Yes, yes and no," editorial, March 12: Proposition 200 does not benefit all motorists, as suggested by The Bee's editorial. Motorcycle riders will pay significantly higher premiums because there is no exemption in this poorly drafted law.

California insurance rates have fallen since 1988, when California voters last rejected no-fault. In the 13 states that have no-fault, premiums have increased an average of 40 percent since 1969.

The need for mandatory insurance coverage is a separate issue, and could be easily addressed by the Legislature if it had the will to do so. Giving up the right to seek legal remedy for gross negligence on the part of another driver will hurt motorists who have no other alternative.

Mark R. Parker Sacramento

The proponents of Proposition 200 cite a Rand study that they say indicates auto insurance rates would go down under no-fault. However, reality does not support these Rand results at all. In fact, every other state that has no-fault auto insurance has seen rates go up.

In Hawaii, rates skyrocketed more than 50 percent after becoming a no-fault state. These statistics are based on recent data provided by the National Association of Insurance Commissioners.

United Policyholders and more than 75 consumer activists and organizations, including Ralph Nader, and Consumers Union, oppose Proposition 200. I urge readers to look beyond the flashy TV commercials and see who is opposed to this no-fault plan.

Ina De Long Sacramento

On July 16, 1995, my son was killed in an accident in Georgia. Georgia is a no-fault state. As of February 1996, there has been no settlement for expenses incurred. I find it hard to believe that no-fault insurance is the answer to anything.

My family has not only had to endure the hardship of losing a son, but also the financial hardship, the cost of the funeral, the expense to fly back to Georgia, the loss of a small business and numerous other problems.

We have written letters to the insurance company that has financial responsibility, but its attempt to settle with us has been an insult. The insurance company didn't even include property as part of the settlement. Where does no-fault come in to pick up all expenses and pay the property damages?

Terrill L. Sherrer Sacramento

Proposition 202

The editorial urging a No vote on Proposition 202, which would limit attorney fees, states, "[I]t wouldn't require businesses to abide by the same rules in negotiating with lawyers: The contingency fee cap only applies to individuals or groups of individuals pursuing tort claims." I believe The Bee is misleading the public.

In reading the text of the proposed law, I find the claimant defined as "any natural person or persons seeking compensation." This means only corporations would not abide by this law since they are not considered to be a person

or persons. However, many businesses are a person or persons such as a Realtor, a CPA, a doctor, and a other business owners who are not incorporated. Even corporate CEOs and directors may have to abide by Proposition 202 when they act as individuals.

John Rusk Carmichael

Proposition 203

It is with horror that I opened the supplemental voting pamphlet and saw Proposition 203. I can't think of a more disgusting waste of money.

The senior citizens are already paying huge amounts for education for the so-called young with no classes being offered to the post-employment citizenry.

The California "kids" can't make it in school because only a small percentage know the American language. I am 68 years of age. When I grew up, my home was fluent in high German but we kids never learned the language because we had to make it in the then-prevailing language of our schools.

Nothing infuriates me more than expecting the senior citizens to keep paying for the education of those who will not, or cannot, learn to read, much less anything else. Now, we are being asked to pay for computers so that they, the so-called students, can go on the Internet. Clinton politics. Forget it.

The parents of those so-called students should shoulder the costs of many of the items the proposed bond issue is expected to provide.

Evelyn H. Robbins Antelope

As president of the California Chamber of Commerce and as a parent, I support Proposition 203 because it gives our schools and the economy a shot in the arm that is long overdue. As a father, I support Proposition 203 because devoting \$3 billion to classroom seismic safety and technological improvements is a much-needed improvement. As voters, we must protect our children and give them the best opportunities to excel in an increasingly competitive world. As a businessman and taxpayer, I support Proposition 203 because it conforms to both the letter and the spirit of the state's spending limit laws - without raising taxes.

California needs Proposition 203. If passed, Proposition 203 would help our schools, economy and work force. Respected organizations such as the California Taxpayers' Association, League of Women Voters, Congress of California Seniors and California Labor Federation agree. Vote Yes on Proposition 203.

Kirk West, President California Chamber of Commerce Sacramento

Re "Prop. 203: Schools need it badly," editorial, Feb. 26: Years ago when the Air Force set out to construct a new air field, the first thing it did was build a nice officers' club. Then, when it ran out of money, the Air Force would go back to Congress for funds to build the runways. We have a similar situation with our present school systems.

The powerful teachers unions, via a series of strikes, have been successful in obtaining salaries ranging from nominally \$20 to \$40 per hour, with unexcelled perks. Few engineers and scientists are compensated like that.

As you probably have surmised, I do not agree with The Bee's editorial endorsing Proposition 203 - no runways.

Carl W. Chapman Carmichael

Proposition 203 would help all California students. This vital bond measure would authorize \$3 billion to be spent over the next two years, with roughly two-thirds for elementary and secondary schools, and one-third for colleges and universities. It could pay for a backlog of repairs and upgrades to existing facilities and to provide some of the new technologies needed to prepare Californians for the jobs of the very-near future.

With the defeat of two prior bond issues in this decade, school repair backlogs have grown to multibillion-dollar levels. Further, college-enrollment growth projections state the need to build new facilities to educate the next generation. The total expenditure needed is \$1 billion per year, every year, to maintain and expand what has become a priceless state

resource: our colleges and universities.

Proposition 203 addresses only part of this problem, but it may be the best, and possibly the last, opportunity to begin revitalizing California's colleges and universities for the challenges of the coming century.

Warren Halsey Fox, Ph.D. Executive Director California Postsecondary Education Commission Sacramento

I agree there are schools that are in need of repairs. I don't agree we need more schools, at least not until we fully utilize the existing facilities. Most schools sit idle for three months each year. What's wrong with the year-round school? I know parents with children in the year-round system. They went in reluctantly but are now strong supporters. There is nothing wrong with double sessions either. We can do a lot before a \$3 billion bond is necessary. I recommend a No vote on Proposition 203.

Jack Elkin Auburn

Education is an important tool in dealing with the crime problem. Well educated members of society are less likely to become part of the criminal underclass who are threatening the security and well-being of our great state.

The California State Police Association urges the voters to invest in California's future by approving Proposition 203.

Ron Adamik, President California State Police Assn. Sacramento

Proposition 203, the public education facilities bond act of 1996, is STYLs voided here absolutely ridiculous. Not that anyone will listen, but why not use some of the "surplus" money from the lottery for this financing? If no one wins the pot at the end of the week, turn it over to the schools. Another thought to save money is no television advertising.

Vote No on Proposition 203. Let's get the lottery to do what it promised. Kaylaine Robinson Pionee

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