



CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON JUDICIARY
SENATOR BILL LOCKYER, CHAIRMAN

Special Hearing on
**THE PROCESS OF
CAPITAL PUNISHMENT**

MARCH 19, 1985

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U.S. Department of Justice
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MARCH 19, 1985

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ACQUISITIONS

SPECIAL HEARING ON
THE PROCESS OF CAPITAL PUNISHMENT CASES

March 19, 1985

Senate Judiciary Committee

Bill Lockyer, Chairman

Ed Davis	Nicholas C. Petris
John Doolittle	Robert Presley
Barry Keene	Art Torres
Milton Marks	Diane Watson

Senate Judiciary Committee
Tuesday, March 19, 1985
1:30 p.m., Room 4203

AGENDA: THE PROCESS OF A CAPITAL PUNISHMENT CASE

1. The Process Through Trial

Rod Blonien, Undersecretary
Youth & Adult Correctional Agency

- a. Apprehension
- b. Preparation for trial
- c. Guilt phase
- d. Sentencing phase

2. Observations on the Trial Process

Greg Thompson, Executive Director
California District Attorneys Association

Stuart Rappaport, Los Angeles Co. Chief Deputy Public Defender
Representing California Attorneys for Criminal Justice and
California Public Defenders Association

3. The Process of Appeal

Ralph Campbell, Director
Administrative Office of the Courts

- a. Appointment of Counsel
- b. Certification of trial record
- c. Filing of briefs
- d. Scheduling of oral arguments
- e. Decision of Supreme Court
- f. Current disposition of cases

4. Observations on the Appellate Process

Steve White, Chief Assistant Attorney General

Harvey Zall, Chief Deputy
State Public Defender's Office

Michael Millman, Executive Director
California Appellate Project

5. State and Federal Post-Conviction Appeals

Steve White, Chief Assistant Attorney General

Harvey Zall, Chief Deputy
State Public Defender's Office

Michael Millman, Executive Director
California Appellate Project

6. Clemency Procedures

Vance Raye, Legal Affairs Secretary
Governor's Office

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CHRONOLOGY OF CAPITAL PUNISHMENT IN CALIFORNIA

1851 - 1967 The death penalty was imposed 502 times. The last person to be executed in this State, Aaron Mitchell, died on April 12, 1967.

February 1972 California Supreme Court struck down the death penalty as cruel and unusual punishment under the State Constitution. People v. Anderson.

June 1972 U. S. Supreme Court defined permissible bounds for imposition of the death penalty in Furman v. Georgia.

November 1972 Proposition 17 reinstated death penalty.

September 1973 SB 450 signed into law, defining capital offenses in a manner consistent with Furman decision.

July 1976 U. S. Supreme Court, in Gregg v. Georgia, prohibits mandatory death penalty by requiring that sentencing body be given guided discretion in its decision.

December 1976 Consistent with Gregg decision, the California Supreme Court struck down 1973 law because of its mandatory nature. Rockwell v. Superior Court.

May-August 1977 SB 155 passed, reimposing death penalty in a manner consistent with Gregg and Rockwell decisions. Vetoed by Governor Brown, the legislation became effective after an override vote.

November 1978 Passage of Proposition 7, the "Briggs Initiative".

October 1980 California Supreme Court clearly upheld constitutionality of existing death penalty statutes in People v. Jackson.

PURPOSE

It is a matter of fact that the death penalty has not been imposed in this State since April 12, 1967. It is also a matter of fact that California has had a constitutionally acceptable death penalty statute since 1977, altered by the Briggs Initiative in 1978.

Public concern over the State's failure to impose capital punishment to date is obvious. However, there exists a great deal of confusion in the public mind regarding the reasons for the backlog or reversal of capital cases. Much of the frustration centers on the State Supreme Court, seen as the archetype of a legal system that condones interminable appeals and delays.

The purpose of the hearing is not to expose any malfunctioning on the part of any office at any stage in the trial and appellate phase of death penalty cases. It is intended, rather, as an informational review of the entire process, conducted in hopes that two simple questions might be answered in a non-polemic and objective way:

Why hasn't the death penalty been imposed in California?

Why do death penalty cases take so long to process?

Today's hearing focuses on the processing of capital punishment cases. A subsequent hearing will review statutes pertaining to the death penalty, the Court's interpretation and opinion relating to statutes, and possible legislative responses to the death penalty issue.

THE STATUS OF CAPITAL CASES: A NOTE ON THE DATA

The following information summarizes the status of current capital cases on appeal. At present, according to information from Judicial Council, 162 cases are pending--65 of these cases have not as yet had a certified record submitted. Of the remaining 97, 21 have been argued and are awaiting an opinion, 30 have been briefed, and 46 have not as yet been briefed. These figures reflect Court records as of March 11, 1985. The status summaries on the following pages, supplied by the Attorney General, reflect the record as of January 15, 1985. Changes in status that have occurred over the last two months indicate progress in processing the backlog, but do not render the data obsolete. What is significant, for the Committee's purpose, are the time gaps between the various stages of the process.

In those cases decided by the Supreme Court, three have been affirmed and 30 reversed. It should be noted, however, that these reversals are not based on 30 different grounds. The majority fall into one of six categories, the most common bases for arguments on appeal:

- A. Witherspoon. Potential jurors were excluded who had reservations about the death penalty, but believed they might be able to vote for it under certain circumstances.
- B. Wheeler. Prosecution improperly used peremptory challenges to exclude a particular class of defendants.
- C. Harris. The death penalty is applied unequally to specific groups of people.
- D. Ramos. The Briggs Initiative mandated an improper instruction that the jury be informed that a sentence of life without parole may be commuted by the Governor. No instruction regarding the ability of the Governor to grant clemency after the death sentence was included.
- E. Carlos/Garcia. There was a failure to instruct the jury that murder with special circumstances requires an intent to kill.
- F. Frierson. Incompetency or inadequacy of counsel impairs the defendant's right to representation.

The three cases affirmed have been stayed and are under further appeal. Harris (1981) 28 Cal. 3d 925 is before the 9th Circuit U.S. Court of Appeals. Jackson (1980) 28 Cal. 3d 264 is before the State Supreme Court following a habeas corpus petition, as is Fields (1983) 35 Cal. 3d 329.

Report date: 1-15-85

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
R. L. Bell 20879	Contra Costa	3/2/79
Caro 22461	Santa Clara from Fresno	1/8/82
Johnson aka Branner 22503	Santa Clara	2/26/82
Keenan 22956	San Francisco	1/21/83
Hitchings 23095	Humboldt	5/6/83
Roberts 23152	Solano	5/27/83
Gallego 23224	Contra Costa from Sacramento	6/21/83
Mason 23519	Alameda	1/27/84
Odle 23254	Contra Costa	8/12/83
Mickey 23341	San Mateo from Placer	9/23/83
Dyer 23374	Alameda	9/26/83
Beardslee 23593	San Mateo	3/12/84,

Report date: 1-15-85

STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Hunter 23630	San Mateo	3/28/84
Jennings 23625	Contra Costa	3/30/84
Mitcham	Alameda	6/29/84
Easley	Monterey	7/13/84
Stankewitz 22308	Inyo	10/14/81
Silva 22546	San Bernardino	3/15/82
Brown 22646	Orange	6/11/82
Pensinger 22808	San Bernardino	9/20/82
Farmer 22960	Riverside	1/17/83
Melton 23029	Orange	3/18/83
Williams 23059	San Diego	3/23/83
Bonillas 23117	San Bernardino	5/20/83

Report date. 1-15-85

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Malone 23155	San Diego	6/14/83
Bonin 23286	Orange	8/26/83
Mayfield 23349	San Bernardino	9/30/83
Viscotti 23385	Orange	10/21/83
Thompson 23452	Orange	12/6/83
Robertson 23538	San Bernardino	2/10/84
Daniels 23619	Riverside	3/14/84
Diaz 23834	Riverside	6/15/84
Thompson 23924	Orange	8/17/84
Karis 22786	Sacramento from El Dorado	9/17/82
Babbitt 22692	Sacramento	7/6/82
Griffin 21753	Fresno	11/26/80

STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Rich 21840	Shasta (Yolo trial)	12/12/80
Bunyard 21844	San Joaquin	1/30/81
Allen 22879	Fresno venue to Glenn	11/22/82
Adcox 23192	Tuolumne	7/11/83
Hayes 22477	San Joaquin	1/22/82
Sanders 22512	Kern	3/3/82
Jones 22700	Merced	7/23/82
Proctor 23185	Sacramento (pnty) from Shasta (glt.)	6/28/83
Howard 23252	Tulare	8/3/83
Neely 23020	El Dorado	3/11/83
Grant 22742	Shasta	5/28/82
Belmontes 22810	San Joaquin	10/6/82

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Williams (Kenneth) 22630	Placer	5/13/82
Sixto 22990	Kern	2/17/83
Murtishaw 23039	Kern	3/18/83
Edelbacher 23126	Fresno	5/23/83
Webster 23138	Sacramento	6/9/83
Marshall 23189	Stanislaus	6/27/83
Carrera 23362	Kern	10/7/83
Stankewitz	Fresno	11/18/83
Stanley	Butte from Lake	2/7/84
M. Turner 21618	Los Angeles	8/20/80
A. Ruiz 21853	Ventura	2/21/80
L. S. Bittaker 21942	Los Angeles	3/24/81

Report date. 1-15-85

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
V. L. Myers 21991	Los Angeles	4/21/81
R. C. McLain 22032	Ventura	5/12/81
B. Hale 22206	Los Angeles	8/24/81
Sanders 22032	Los Angeles	12/3/82
Champion (Ross) 22955	Los Angeles	12/10/82
Fuller 22970	Los Angeles	2/3/83
Clark 23019	Los Angeles	3/16/83
Morales 23153	Ventura	6/14/83
Hernandez 23197	Los Angeles	7/12/83
Robbins 23149	Santa Barbara	5/12/83
Gonzales, M. 23198	Los Angeles	7/8/83
Hendricks 23420	Los Angeles	11/8/83

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Miller 23421	Los Angeles	11/10/83
Morris 23427	Los Angeles	11/21/83
Reily, M. & Hardy (Co-appl) 23533	Los Angeles	2/3/84
Louis, V. 22203	Los Angeles	11/5/81
Ratliff, J. 22348	Los Angeles	11/6/81
Avena, C. 22485	Los Angeles	2/2/82
Crandell, K. 22467	Los Angeles	2/2/82
Bonin 22530	Los Angeles	3/15/82
Marks 22553	Los Angeles	3/31/82
Snow 22774	Los Angeles	8/31/82
Miranda 22787	Los Angeles	9/7/82
Wright, B. 22843	Los Angeles	10/29/82

**STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED**

Report date: 1-15-85

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Poggi 22855	Los Angeles	11/12/82
Moore, C. E.	Los Angeles	5/16/84
Jackson, M. A. 23750	Los Angeles	5/21/84
Pinholster, S. L.	Los Angeles	6/4/84
Andrews, J. J.	Los Angeles	6/8/84
Harris, Von Maurice	Los Angeles	6/19/84
Kaurish, J. C.	Los Angeles	7/27/84
Bloom, R. M. Jr.	Los Angeles	7/23/84
Kirkpatrick, W. Jr.	Los Angeles	8/14/84
Marquez, Gonzalo	Los Angeles	10/3/84
Allison, W.	Los Angeles	10/10/84
McDowell, C.	Los Angeles	10/31/84

Report Date: 1-15-85

STATUS OF CAPITAL APPEALS
APPEALS NOT BRIEFED

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT
Lewis, Robert, Jr.	Los Angeles	11/7/84
Carpenter, David	Los Angeles	11/26/84
Lang, Kenneth B.	Santa Barbara	12/13/84
Boyer, Richard D.	Orange	12/22/84
Turner, Thaddaeus	Merced	12/27/84

**STATUS OF CAPITAL APPEALS
APPEALS BRIEFED**

Page 1

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT	DATE RESPONDENT'S BRIEF FILED
F. Ledesma 21436	Santa Clara	3/14/80	7/25/83
Heishman 21944	Alameda	3/30/81	2/23/84
Rodriguez 22090	San Mateo from Yolo	7/8/81	2/9/84
R. Coleman 22376	S. Francisco	11/20/81	10/7/83
C. Coleman 22190	Sonoma	8/27/81	5/3/81
Hovey 22487	Alameda	2/10/82	8/28/84
Hendricks 22388	S. Francisco	12/4/81	10/3/83
Guerra 21738	San Bernardino	11/18/80	3/19/82
Garrison 21821	San Bernardino	1/19/81	5/16/83
Hamilton 21958	San Diego	3/2/81	2/23/84
Lucero 22504	San Bernardino	1/26/82	5/12/84

STATUS OF CAPITAL APPEALS
APPEALS BRIEFED

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT	DATE RESPONDENT'S BRIEF FILED
Payton 22511	Orange	3/9/82	8/18/83
Boyde 22584	Riverside	4/20/82	11/21/83
Wade 22654	San Bernardino	5/21/82	11/21/83
Howard 22647	San Bernardino	5/27/82	9/24/84
Croy 21109	Siskiyou	8/2/79	3/18/83
Monteil 21243	Kern	11/20/79	1/15/81
Ainsworth 21354	Sacramento	1/30/80	9/21/81
Leach 21586	Fresno	7/11/80	7/29/83
Balderas 21979	Kern	4/15/81	5/28/82
Johnson 22040	Sacramento from Sonoma	4/21/81	1/20/83
Chavez 22039	Tulare	5/28/81	1/17/84
Bean 22144	Sacramento	7/20/81	8/16/84

**STATUS OF CAPITAL APPEALS
APPEALS BRIEFED**

1/15/85

NUMBER & NAME OF CASE	COUNTY	DATE OF JUDGMENT	DATE RESPONDENT'S BRIEF FILED
Silbertson 22357	Stanislaus	11/17/81	12/19/83
Hamilton (Billy R.) 22311	Contra Costa fr. Fresno	10/16/81	4/3/83
Guzman 22418	El Dorado from Stanislaus	9/18/81	11/22/83
Bloyd 22464	Yuba	1/18/82	2/4/83
R. Warren 21853	Los Angeles	2/5/81	7/9/84
W. Warren 21370	Los Angeles	2/5/81	7/9/84
J. Hayes 20953	Los Angeles	8/20/81	6/29/83
J. Gonzalez 22136	Los Angeles	7/28/81	7/16/84
Willis 22703	Los Angeles	7/28/82	3/23/83
Siripongs 23082	Orange	4/23/83	10/9/84
Hamilton 22911	Tulare	12/16/82	12/7/84
E. B. Kimble 21962	Los Angeles	4/1/81	11/27/84

1/15/85

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CAPITAL APPEALS DECIDED BY CALIFORNIA SUPREME COURT

<u>Case Name</u>	<u>Result on Appeal</u>	<u>Major Ground</u>
Frierson (1979) 25 Cl.3d 142	Conviction reversed	ineffective trial counsel
Velasquez (1980) 26 Cal.3d 425	Penalty reversed	Witherspoon error
Lanphear (1980) 26 Cal.3d 814	Penalty reversed	Witherspoon error
Green (1980) 27 Cal.3d 1	Special circumstances reversed	Murder not committed during commission of felony
Thompson (1980) 27 Cal. 303	Special circumstances reversed	Murder not committed during commission of felony
Jackson (1980) 28 Cal.3d 264	Affirmed	
Chadd (1981) 28 Cal.3d 935	Conviction reversed	Acceptance of guilty plea without consent of counsel
Harris (1981) 28 Cal.3d 925	Affirmed	
Murtishaw (1981) 29 Cal.3d 733	Penalty reversed	Use of expert prediction future violence
Ramos (1982) 30 Cal.3d 553	Penalty reversed	Instructing jury re Governor's power to commute LWOP
Haskett (1982) 30 Cal. 3d 841	Penalty reversed	Instructing jury re Governor's power to commute LWOP
Hogan (1982) 31 Cal.3d 815	Conviction reversed	Use of involuntary statement

CAPITAL APPEALS DECIDED BY CALIFORNIA SUPREME COURT (cont.)

Stanketiwn (1982) 32 Cal.3d 80	Conviction reversed	Improper denial of defendant's request for competency hearing.
Arcega (1982) 32 Cal.3d 504	Conviction reversed	Use of psychiatrist's testimony of mental competency examination at guilt phase.
Gzikowski (1982) 32 Cal.3d 580	Conviction reversed	Denial of defendant's right to counsel of his choice .
Robertson (1982) 33 Cal.3d 21	Penalty reversed	Aggravating circumstance of other criminal activity requires proof beyond a reasonable doubt.
Easley (1983) 34 Cal.3d 858	Penalty reversed	Instruction at penalty phase that jury should not consider sympathy & pity.
Mozingo (1983) 34 Cal.3d 926	Conviction reversed	Inadequate trial counsel failure to investigate mental defenses .
Joseph (1983) 34 Cal.3d 936	Conviction reversed	Denial of defendant's motion to represent himself in pro per (Faretta).
Mroczo (1983) 35 Cal.3d 86	Conviction reversed	Incompetent trial counsel - multiple representation of co-defendants who had conflicts of interest .
Fields (1983) 35 Cal.3d 329	Affirmed	
Harris (1984) 36 Cal.3d 36	Guilt reversed	Use of voter registration list as sole source for jury pool deprived defendant of his right to an impartial jury draw for a fair cross section of the community.

CAPITAL APPEALS DECIDED BY CALIFORNIA SUPREME COURT (cont.)

Lanphear (1984)
36 Cal.3d 163

Penalty reversed

Instruction at penalty phase that jury should not consider sympathy & pity for defendant (Easley).

Alcala (1984)
36 Cal.3d 604

Guilt reversed

Admission of defendant's prior similar crimes to prove identity error as common elements did not establish defendant's signature.

Whitt (1984)
36 Cal.3d

Special circumstances reversed

Failure to instruct that felony murder special circumstance requires an intent to kill (Carlos-Garcia).

Mattson (1984)
37 Cal.3d 85

Guilt reversed

Admission of confession error after exercise of Miranda rights of defendant may not be further interviewed (Pettingill).

Ramos, 21352
37 Cal.3d 136

Special circumstances reversed

Failure to instruct that felony murder special circumstance requires an intent to kill (Carlos Garcia). Instruction on governor's power to commute LWOP violates State Constitution right to due process.

McDonald
37 Cal.3d

Guilt reversed

Exclusion of expert testimony on psychological factors affecting eyewitness identification.

Turner
37 Cal.3d

Special circumstances reversed

Carlos-Garcia
Failure to instruct that multiple murder special circumstance requires an intent to kill.

CAPITAL APPEALS DECIDED BY CALIFORNIA SUPREME COURT (cont.)

Holt 37 Cal.3d	Guilt reversed	Admission of evidence of defendant's use of drugs, impeachment evidence, other crimes by the defendant knowledge of prison gangs and prosecutorial misconduct.
Armendariz 37 Cal.3d 573	Conviction reversed	Denial of defendant's right to exercise peremptory challenges; Carlos-Garcia error.
Bigelow 37 Cal.3d 731	Guilt reversed	Court's failure to consider appointment of advisory counsel to in pro per defendant was prejudicial.
Anderson 38 Cal.3d 58	Penalty reversed	Carlos-Garcia Failure to instruct that felony murder special circumstance requires an intent to kill.

STATUS OF CAPITAL APPEALS
AFFIRMED BY CALIFORNIA SUPREME COURT

People v. Harris 28 Cal.3d 935

Judgment affirmed: 2/11/81

Execution date: 7/7/81

Petition for Certiorari filed in
United States Supreme Court:

5/19/81

Stay issued: 6/22/81

Opposition filed: 6/24/81

Certiorari denied: 10/5/81

Execution date: 12/15/81

Habeas Corpus petition #1 filed in
San Diego Superior Court:

11/18/81

Petition denied: 11/20/81

Stay denied: 12/1/81

Habeas Corpus petition #2 filed in
Court of Appeal:

11/24/81

Petition denied: 11/25/81

Habeas Corpus petition #3 filed in
California Supreme Court:

12/7/81

Stay issued: 12/9/81

Stay denied: 1/13/82

Petition denied: 1/13/82

Petition for Certiorari filed in
United States Supreme Court:

3/7/82

Certiorari denied: 6/7/82

Habeas Corpus petition #4 filed in
United States District Court:

3/5/82

Petition denied: 3/12/82

Stay denied: 3/12/82

Certificate of probable cause
issued:

3/12/82

Appeal to 9th Circuit Court of Appeals

Stay granted: 3/12/82

Argued and submitted: 5/11/82

Opinion granting writ: 9/16/82

(See 692 F.2d 1189)

People v. Harris
Status of Capital Appeals
Affirmed by California Supreme Court
Page 2

Report date: 1-15-85

People's Petition for Certiorari
filed in United States Supreme Court: 12/29/82
Certiorari granted: 3/21/83
Argued: 11/7/83

Opinion reversing order of 9th Circuit
issued: (Pulley v. Harris 79 L.Ed.2d 29) 1/23/84

Remanded to United States District
Court:

Memorandum opinion disposing of
several contentions issued: 7/26/84

Memorandum opinion disposing of
remaining contentions and order
denying consolidated petitions. 10/17/84

STATUS OF CAPITAL APPEALS
AFFIRMED BY CALIFORNIA SUPREME COURT

People v. Jackson 28 Cal.3d 264

Judgment affirmed: 10/23/80

Petition for Certiorari in U.S.S.C. filed: 2/6/81

Certiorari denied: 3/30/81

Execution date: 8/25/

Habeas Corpus Petition #1 filed in Los Angeles Superior Court:

8/12/81

Petition and stay denied: 8/19/81

Habeas Corpus Petition #2 filed in California Supreme Court:

8/19/81

Stay issued: 8/19/81

Opposition filed: 8/21/81

Order to Show Cause issued: 11/27/81

Return filed: 12/10/81

Order Appointing Referee: 8/4/83

Request to Substitute Trial Judge denied: 10/27/83

Application to Expand scope of reference hearing to include discrimination

issue filed: 3/27/84

Opposition filed: 4/19/84

Supplemental questions to referee filed: 5/3/84

Status Conference: 11/20/84

Reference Hearing on Incompetent Counsel calendared for: 2/18/85

Report Date: 1-15-85

STATUS OF CAPITAL APPEALS
AFFIRMED BY CALIFORNIA SUPREME COURT

People v. Fields 35 Cal.3d 329

Judgment affirmed:

12/29/83

Rehearing denied:

3/27/84

Execution date: 6/15/84

Stay Granted (CSC)

5/18/84

Petition for Certiorari filed:

6/25/84

Opposition filed:

9/7/84

Certiorari denied:

10/9/84

Order setting execution date filed in
Los Angeles Superior Court:

11/6/84

Execution date: 12/14/84

Motion to set aside execution date filed
in Los Angeles Superior Court.

11/13/84

Petition for Habeas Corpus filed in
California Supreme Court:

12/4/84

Stay issued:

12/12/84

APPENDIX A

SUMMARY OF DEATH PENALTY DECISIONS
BY CALIFORNIA SUPREME COURT BASED
ON 1977 AND 1978 DEATH PENALTY
STATUTES PLUS ADDITIONAL SUPREME
COURT DECISIONS THAT AFFECT THE
DEATH PENALTY

1. People v. Frierson (Aug. 31, 1979) 25 Cal.3d 142 -
1977 Law Case

Defendant and another shot two airline employees in the commission of kidnapping and robbery. One employee died. Defendant was convicted of first degree murder with robbery-murder and kidnap-murder special circumstances. He received the death penalty and was sentenced to death on August 5, 1978.

On appeal the conviction was reversed in its entirety for incompetence of trial counsel in failing to investigate a diminished capacity defense. At the same time a majority of the court (five Justices) upheld the validity of capital punishment under California Constitution, article I, section 27 and approved the 1977 statute within state guidelines.

2. People v. Velasquez (Feb. 1, 1980) 26 Cal.3d 425 -
1977 Law case

Defendant and another shot and killed a gas station attendant during a robbery. Defendant was convicted of first degree murder with robbery-murder special circumstances. A prior conviction for second degree

murder special circumstances was also found true. He received the death penalty and was sentenced to death on January 26, 1979.

On appeal the death penalty was reversed, but the findings of guilt and the special circumstance as to robbery-murder and the prior murder were affirmed. The penalty was reversed due to improper excusal of a juror for cause under Witherspoon v. Illinois (1968) 391 U.S. 510. Following remand by the United States Supreme Court, this same ruling was made in People v. Velasquez (Dec. 10, 1980) 28 Cal.3d 461, in a memorandum opinion.

3. People v. Lanphear (April 10, 1980) 26 Cal.3d 814 -
1977 Law Case

Defendant shot and killed a man during a robbery. Evidence of other murders and robberies showing a multistate crime spree following his escape from jail was introduced at the guilt phase. He was convicted of first degree murder with robbery-murder special circumstances. He received the death penalty and was sentenced to death on March 4, 1979.

On appeal the death penalty was reversed, but the findings of guilt and the special circumstance as to the robbery-murder aggravated by the other murders and robberies was affirmed. The penalty was reversed due

to the improper excusal of two jurors under Witherspoon. Following remand by the United States Supreme Court, the same ruling was made in People v. Lanphear (April 10, 1980) 26 Cal.3d 463, in a memorandum opinion.

4. People v. Green (Apr. 24, 1980) 27 Cal.3d 1 - 1977
Law Case

Defendant kidnapped, robbed and shotgun murdered his estranged 16-year-old bride. He was convicted of first degree murder with robbery-murder and kidnap-murder special circumstances. He received the death penalty and was sentenced to death on May 26, 1978.

On appeal the death penalty and the special circumstances findings were reversed. The robbery-murder special circumstance was reversed because you can't have robbery-murder when the robbery is incidental to the murder. The kidnap-murder special circumstance was reversed because of improper "instructions" to the jury by the prosecutor during argument. With the special circumstances reversed there could be no death penalty.

5. People v. Thompson (June 9, 1980) 27 Cal.3d 303 -
1977 Law Case

Defendant broke into a house and robbed and shot a woman and her boyfriend. The boyfriend died. The woman's estranged husband had apparently set this up in retaliation against his wife and her new boyfriend, using defendant as his arm of vengeance. Defendant was convicted of first degree murder with robbery-murder and burglary-murder special circumstances. He received the death penalty and was sentenced to death on September 27, 1978.

On appeal the death penalty and special circumstances were reversed. As in Green, the burglary and robbery were merely incidental to the murder. Thus the burglary-murder and robbery-murder special circumstances could not stand. With no special circumstances there could be no death penalty.

A. Hovey v. Superior Court (Aug. 28, 1980) 28 Cal.3d 1.

In a death penalty case pre-trial writ challenging that excluding jurors under Witherspoon made for a more prosecution prone jury at the guilt phase, and claiming that there should be two juries, one for the guilt phase and one for the penalty phase, the writ was denied. The Supreme Court found there was insufficient

data at that time to justify the need for the two juries. The court did require that henceforth death penalty jurors should be questioned individually and sequestered from other jurors in determining the existence of challenges for cause under Witherspoon.

6. People v. Jackson (Oct. 23, 1980) 28 Cal.3d 264 - 1977 Law Case

Defendant burglarized apartments of two old ladies and during each burglary murdered the old lady occupant. he was convicted of two first degree murders with special circumstances of burglary murder and multiple murder. He received the death penalty and was sentenced to death on March 19, 1979.

On appeal his conviction, including the death penalty, was affirmed. The decision also upheld all aspects of the 1977 death penalty statutes under both California and United States constitutional guidelines. (Note: Defendant is now back in court with a pending petition for writ of habeas corpus challenging the competency of trial counsel. The California Supreme Court enlarged the petition to include whether the death penalty is disproportionately imposed on minorities. Special master assigned is Bernard Jefferson).

7. People v. Chadd (Jan. 19, 1981) 28 Cal.3d 739 -
1977 Law Case

Defendant was charged with murdering, raping, sodomizing, robbing and burglarizing one woman. He was also charged with murdering, raping, sodomizing, orally copulating, and robbing a second woman. Three special circumstances of rape-murder, robbery-murder and multiple murder were alleged. Over his counsel's objections, defendant was allowed to plead guilty to all counts and admit the truth of the special circumstance allegations. At a penalty phase conducted with a jury, defendant received the death penalty. He was sentenced to death on June 6, 1979.

On appeal the entire case was reversed. The court found that despite defendant's constitutional right to self-representation under Faretta v. California (1975) 422 U.S. 806, under California law a plea of guilty to a death penalty offense requires the consent of his counsel.

8. People v. Harris (Robert) (Feb. 11, 1981) 28 Cal.3d 935
1977 Law Case

Defendant kidnapped and murdered two teenagers so he could steal their car to use in a planned bank robbery. He joked about the murders as he finished the hamburgers his two victims had been eating. He was convicted of

two first murders with robbery-murder, burglary-murder and multiple murder special circumstances. He received the death penalty and was sentenced to death on March 6, 1979.

On appeal his conviction, including the death penalty, was affirmed. The court again upheld the constitutionality of the 1977 death penalty statutes. Then in Harris v. Pulley (9th Cir. 1982) 692 F.2d 1189, the case was reversed so the California Supreme Court could determine whether Harris' death sentence was disproportionate to the punishments received by other murderers. This was reversed by the United States Supreme Court, which held proportionality review was not constitutionally required (Pulley v. Harris (1984) ___ U.S. ___, 79 L.Ed.2d 29). Other issues such as venue of the trial and the issue in the Jackson writ of habeas corpus (see above) are not yet final in the federal court system.

B. Martinez v. Superior Court (June 18, 1981) 29 Cal.3d 574

Pretrial writ where defendant challenged refusal to change venue (Placer County) in a death penalty case. The Supreme Court ruled that a change of venue should be granted on death penalty cases where there exists doubt that jurors will be fair and impartial. Other

factors such as publicity, size of population, status of both victim and defendant in community should also be considered.

9. People v. Murtishaw (July 27, 1981) 29 Cal.3d 733
1977 Law Case

Defendant shot and killed three college students and wounded a fourth because they wouldn't give him a ride back to town immediately and wanted him to wait until the movie work they were doing was completed. He was convicted of three counts of first degree murder with multiple murder special circumstances. He received the death penalty and was sentenced to death on April 27, 1979.

On appeal the death penalty was reversed, but the findings of guilt and the special circumstances were affirmed. The Supreme Court ruled that it was reversible error at the penalty phase to allow an expert to forecast that defendant would commit future acts of violence if imprisoned. Such testimony was deemed irrelevant and immaterial and unreliable.

C. People v. Davis (Aug. 31, 1981) 29 Cal.3d 814.
1977 Law Case

"Special Circumstances" are not applicable to juveniles under the 1977 statute; affirm conviction for rape-murder of 13 year old female victim by

16 year old defendant, but reduce sentence from "without parole" to "life with parole".

D. People v. Williams (December 31, 1981) 30 Cal.3d 470.

Reverse life without parole. Trial court indicated a desire but absence of authority to dismiss jury's finding of "Special Circumstances" as to accomplice in robbery-murder. Supreme Court ruled that neither the 1977 statute nor the Briggs Initiative deprived the trial court of the discretion to dismiss "Specials" within the meaning of Section 1385 of the Penal Code.

10. People v. Ramos (Marcelino) (Jan. 25, 1982) 30 Cal.3d 553 - 1978 Law Case

Defendant shot two co-workers execution style in a robbery of the fast food establishment he worked at. One victim died, one survived. He was convicted of first degree murder with robbery murder special circumstance. He was given the death penalty and was sentenced to death on January 25 1980.

On appeal the death penalty was reversed, but the conviction for first degree murder and the robbery-murder special circumstance was affirmed. The

death penalty was reversed because it was ruled prejudicial error to instruct the jury under the 1978 statute at the penalty phase that the governor could commute the alternative sentence of life in prison without possibility of parole to life in prison with the possibility of parole. The court declined to rule on appellant's claim that felony murder special circumstances were invalid absent a finding of an intent to kill since it was obviously an intentional killing.

This ruling reversing the death penalty was reversed by the United States Supreme Court in California v. Ramos (1983) ___ U.S. ___, 77 L.Ed.2d 1171, but see People v. Ramos (1984) 37 Cal.3d 136, infra.

11. People v. Haskett (Feb. 18, 1982) 30 Cal.3d 841 -
1978 Law Case

Defendant raped and repeatedly stabbed his half sister. He also repeatedly stabbed her two young children to death. He was convicted of two counts of first degree murder and one count of attempted murder. The special circumstance of multiple murder was also found to be true. Defendant was given the death penalty and was sentenced to death on November 20, 1978.

On appeal the death penalty was reversed, but the convictions for murder and the multiple murder special circumstance was affirmed. The penalty phase was reversed under compulsion of People v. Ramos, supra, 30 Cal.3d 553, for giving the commutation instruction.

E. Keenan v. Superior Court (Feb. 8, 1982) 31 Cal.3d 424.

Pretrial writ. Defendant in capital case is presumed to require two attorneys where evidence of genuine need; both attorneys or a second attorney will be provided an indigent defendant per Section 987.9 of the Penal Code.

F. People v. Superior Court (Engert) (July 1, 1982) 31 Cal.3d 797.

Pretrial writ. Special Circumstance of "especially heinous, atrocious, or cruel etc.," as set forth in Section 190.2(a)(14) of the Briggs Initiative ruled to be unconstitutionally vague.

12. People v. Hogan (July 1, 1982) 31 Cal.3d 815
1977 Law Case

Defendant bludgeoned and stabbed to death a mother and her son. A second child survived. Robbery was deemed the motive. Defendant was convicted of two counts of first degree murder with multiple murder special

circumstances. He received the death penalty and was sentenced to death on April 2, 1979.

On appeal the entire conviction was reversed because three statements obtained from defendant involved psychological coercion and were thus involuntary, requiring reversal per se.

- G. Ramos (David) v. Superior Court (Aug. 5, 1982) 32 Cal.3d 26.

Pretrial writ, wherein court struck "Special Circumstance" based on procedural jeopardy - where magistrate twice discharged "Special Circumstance" allegation after two separate preliminary examinations, two "dismissals" within Section 1387 of the Penal Code prohibit further charging under Section 739; Section 871.5 is the remedy after second discharge by magistrate.

13. People v. Stankewitz (Aug. 5, 1982) 32 Cal.3d 80
1977 Law Case

Defendant and friends kidnapped and robbed a young woman and stole her car in one county and drove her to another county where defendant shot her to death. He was convicted of first degree murder with kidnap-murder and robbery murder special circumstances. He was given

the death penalty, and was sentenced to death on October 12, 1978.

On appeal the entire conviction was reversed, because the trial court failed to hold a competency hearing under Penal Code section 1368 after representations were made by defense counsel that should have alerted the court to conduct such a hearing. This is a violation of due process under People v. Pennington (1967) 66 Cal.2d 501.

14. People v. Arcega (Sept. 30, 1982) 32 Cal.3d 504 - 1977 Law Case

Defendant bludgeoned and stabbed one woman with whom he was living and bludgeoned a young female runaway living with them. Both women died from being bludgeoned. Defendant was convicted of two counts of first degree murder with multiple murder special circumstances. He received the death penalty, and was sentenced to death on March 31, 1980.

On appeal the entire conviction was reversed. The trial court had appointed a psychiatrist to examine defendant on his plea of insanity under Penal Code section 1027. Later when his competency to stand trial was questioned, the same psychiatrist was appointed to examine defendant under Penal Code section 1368. It

was reversible error to admit the doctor's testimony as to defendant's statements, despite the Penal Code section 1027 appointment, because at the Penal Code section 1368 appointment the doctor did not first admonish defendant per Miranda v. Arizona (See Estelle v. Smith (1981) 451 U.S. 454).

15. People v. Gzikowski (Oct. 18, 1982) 32 Cal.3d 580 - 1977 Law Case

Defendant, a passenger in a car driven by his codefendant, fired a shotgun three time into the left front window of a car they had pulled up along side of, killing the two occupants. He was convicted of two counts of first degree murder with multiple murder special circumstances. He received the death penalty and was sentenced to death on September 8, 1978.

On appeal the entire conviction was reversed. His retained attorney, who felt she was inexperienced hired an experienced lead attorney. However he bowed out just before trial. The first counsel requested a continuance to hire a new lead attorney, claiming she was too inexperienced to handle it herself. Defendant and the prosecutor agreed to a continuance, but trial court refused to grant a continuance to obtain new lead counsel. They went to trial with only the

inexperienced attorney. Supreme Court ruled that defendant's due process rights were violated.

H. Odle v. Superior Court (Dec. 10, 1982) 32 Cal.3d 932

Pretrial writ. Defendant's petition for change of venue from Contra Costa County in case involving multiple murders of female stabbing victim and arresting police officer. Petition denied. Despite presumption favorable to venue change in capital cases under Martinez v. Superior Court, supra, in this case, which was now over two years after the extensive publicity, evidence showed that a fair trial could be had. Also, the motion could be renewed if, during voir dire, it showed a fair trial could not be had.

16. People v. Robertson (Dec. 10, 1982) 33 Cal.3d 21
1977 Law Case

Defendant brutally stabbed to death (170 knife wounds) a female hitchhiker he picked up. He next picked up a prostitute and after having forced sex with her he brutally stabbed her to death (120 stab wounds) and mutilated her body. He was convicted of two counts of first degree murder and nine special circumstances - multiple-murder, torture-murder, robbery-murder,

kidnap-murder, and rape-murder. He received the death penalty and was sentenced to death on May 30, 1978.

On appeal the death penalty was reversed, but the case was affirmed in all other respects. The Supreme Court found prejudicial error at the penalty phase in failing to instruct the jury that evidence of other crimes could not be considered as factors in aggravation unless they were proved beyond a reasonable doubt.

I. People v. Spears (Jan. 20, 1983) 33 Cal.3d 279
1978 Law Case

Following People v. Davis, supra, the Supreme Court ruled that special circumstances are likewise not applicable to juveniles under the 1978 statutes. Thus LWOP is not available to juveniles tried as adults under either the 1977 or 1978 statutes.

J. People v. Dillon (Sept. 1, 1983) 34 Cal.3d 441.

This case upheld the first degree felony murder law. What is important to death penalty cases is the establishment of proportionality review based upon the constitutional prohibition against cruel and unusual punishment. The question is whether this will cause state proportionality review to be established in death penalty cases despite the recent holding in Pulley v. Harris, supra, 79 L.Ed 2d 629, rejecting comparative

proportionality review as a federal constitutional requirement.

- K. Sand v. Superior Court (Sept. 8, 1983) 34 Cal.3d 567.

Pretrial writ. Where district attorney elects to seek only life in prison without the possibility of parole rather than the death penalty, Penal Code section 987.9, which provides special funds for capital cases, is no longer applicable.

- L. Williams v. Superior Court (Sept. 8, 1983) 34 Cal.3d 584.

Pretrial writ. Section 987.9 of the Penal Code does not have application where prosecutor elects to seek life without parole rather than death penalty (see Sand, supra); venue change required (Placer County) where defendant was accomplice in rape/robbery murder committed by his brother who received death penalty in much publicized separate trial; applies standards applicable for change of venue in non-capital case. (See Martinez v. Superior Court, supra, for standards in capital case).

17. People v. Easley (Nov. 7, 1983) 34 Cal.3d 858
1977 Law Case

Defendant killed a husband and wife by repeatedly stabbing them in the head and chest with an ice pick.

The codefendant had hired defendant to kill the two to resolve a power struggle between the victims and the codefendant. Defendant was found guilty of two first degree murders with special circumstances of murder per agreement to accept consideration and multiple murder. He received the death penalty and was sentenced to death on August 9, 1979.

On appeal the death penalty was reversed, but all guilt phase findings were affirmed. There was error at the penalty phase in instructing the jury under the 1978 statute that if aggravating factors outweighed the mitigating factors they must choose death. This was a 1977 statute case which permitted the jury to weigh the aggravating and mitigating factors and reach their own decision as to death or LWOP. There was also error in instructing the jury in the penalty phase not to have sympathy for the defendant. That instruction is only for the guilt phase. The errors were prejudicial.

18. People v. Mozingo (Nov. 10, 1983) 34 Cal.3d 926
1978 Law Case

Defendant, reenacting a TV show he recently had seen in prison, raped his stepmother and tied an electrical cord around her neck and feet in such a manner that by moving she strangled herself to death, as he watched. Defendant was convicted of first degree murder with

special circumstances of rape-murder and especially heinous, atrocious and cruel (But see People v. Superior Court Engert, supra). He received the death penalty and was sentenced to death on April 25, 1980.

In addition to his automatic appeal defendant filed a petition for writ of habeas corpus alleging incompetency of defense counsel. The Supreme Court ordered an evidenciary hearing before the retired Judge Spurgen Avakian. The judge ruled, and the Supreme Court agreed, that defendant had been denied the effective assistance of trial counsel for failing to investigate a diminished capacity defense. The entire case was reversed.

19. People v. Joseph (Nov. 10, 1983) 34 Cal.3d 936
1978 Law Case

Defendant shot and killed a man during a robbery. He was convicted of first degree murder with robbery-murder special circumstances. He received the death penalty and was sentenced to death on July 8, 1980.

On appeal the entire case was reversed because the trial court improperly refused defendant's timely request under Faretta v. California (1975) 422 U.S. 806, that he be allowed to represent himself. This error is reversible per se.

20. People v. Mroczko (Dec. 8, 1983) 35 Cal.3d 86
1977 Law Case

Defendant and a codefendant strangled another prison inmate by wrapping a metal coat hanger around his neck. Defendant was convicted of first degree murder with the special circumstance of a prior conviction for second degree murder. Defendant received the death penalty and was sentenced to death on September 13, 1979.

On appeal the entire case was reversed. Both defendant and his codefendant had been represented by the same counsel during their joint trial. The Supreme Court found a deprivation of the right to adequate counsel for the defendant and his co-defendant to be represented at trial by the same attorney. Reviewing the record a conflict of interest was found and the court created a "new rule" of criminal procedure requiring the appointment of separate counsel for indigent co-defendants.

- M. Carlos v. Superior Court (Dec. 12, 1983) 35 Cal.3d 131.

Pretrial writ. Supreme Court ruled that in all felony-murder "Special Circumstances" allegations, intent to kill is a prerequisite, whether the defendant is a principle or accomplice. Proof of intent to kill required at preliminary hearing and at trial.

21. People v. Fields (Dec. 29, 1983) 35 Cal.3d 329
1977 Law Case

Defendant committed a series of rapes and robberies within three weeks of being paroled from prison. One victim was forced to write him checks on her account while he kept her naked and tied to his bed (how she got to his house is unknown). Then he drove her away, and while in the car defendant shot her five times and hit her over the head. He dumped her body in an alley. In addition to the other crimes, defendant was convicted of first degree murder with robbery murder special circumstances. He received the death penalty and was sentenced to death on September 5, 1979.

On Appeal the death penalty conviction was affirmed in its entirety. In so ruling the Supreme Court ruled that it was proper to Witherspoon a jury on a death penalty case. Persons who would vote against the death penalty but who also would be objective at the guilt phase are not a cognizable class, and further, there is a need for a single jury to hear both the guilt and penalty phase. There was clarification on the definition of insanity: The court refused to reconsider the constitutionality of the 1977 death penalty statutes. He has a pending execution date of December 14, 1984.

22. People v. Harris (Lee) (April 20, 1984) 36 Cal.3d 36
1977 Law Case

After defendant and two others murdered a man in Kansas, they came to Los Angeles to rob the apartment managers of a building where one of them had lived earlier. After breaking into the manager's apartment they ransacked it for valuables after tying up the manager and his wife. Then, while defendant held them, one of the other two stabbed them both repeatedly with a butcher knife, killing them. Defendant was convicted of two counts of first degree murder with special circumstances of robbery-murder, burglary-murder, and multiple murder. He received the death penalty and was sentenced to death on May 20, 1980.

On appeal the entire conviction was reversed because jurors were selected only from the list of registered voters. Other sources, such as DMV registration, in addition to the voter lists are mandatory in order to insure a proportionate cross-section of the community. At the same time the court also ruled that under the 1977 statutes multiple special circumstances may be charged but the jury at the penalty phase must be instructed that they must be considered as only one special circumstance where based on an indivisible course of action. The court also ruled it is error to

exclude any defense evidence re mitigation at the penalty phase.

N. People v. Zimmerman (May 24, 1984) 36 Cal.3d 154

This case affirmed a sentence of LWOP for murdering a preteenage girl and her brother after defendant raped the girl during a burglary of their house. The court ruled this sentence was not cruel and unusual under the Eight Amendment. LWOP is exempt from the constitutional requirement of individualized sentencing required for death sentences. The court also ruled that exclusion for cause of Witherspoon excludable jurors did not deprive the defendant of a jury drawn from a representative cross section of the community of the guilt phase. Further, defendant was not denied a representative jury when the prosecutor peremptorily excluded all non Witherspoon excludables who had reservations about the death penalty. They are not a cognizable class for purposes of selecting a guilt phase jury.

23. People v. Lanphear (June 24, 1984) 36 Cal.3d 163
1977 Law Case

This is retrial of People v. Lanphear, supra, 26 Cal.3d 814. Following a retrial of the penalty phase ruling,

defendant again received the death penalty and was sentenced to death on December 18, 1981.

On appeal the death penalty was reversed again. This time it was because the jury was improperly instructed that it could not have sympathy for the defendant in considering penalty. (See People v. Easley, supra).

- O. Corenevsky v. Superior Court (July 5, 1984) 36 Cal.3d 307.

Pretrial writ. The trial court prohibited the prosecution from seeking the death penalty when the Imperial County auditor refused to provide defendant additional funds under Penal Code section 987.9. The Supreme Court ruled that since it was no longer a capital case section 987.9 funds were no longer available, but other sources of funds were possible (see Penal Code section 937.8) if an in camera hearing justified them.

- P. Williams (Barry) v. Superior Court (July 16, 1984) 36 Cal.3d 441

Pretrial writ. Defendant was charged with two murders with special circumstances as to each. He sought separate trials claiming the murders weren't connected and a joint trial would be prejudicial. The trial court denied the motion. The Supreme Court ordered severance. The court held that if prejudice is clearly

established by a defendant, severance may be required, even though joinder is statutorily permissible under Penal Code section 954. Thus, when substantial prejudice is clearly shown, the trial court's denial of a defendant's motion for severance constitutes an abuse of discretion under section 954, pursuant to fundamental principles of due process. Examining the facts of the two separate incidents, the court held that in the interests of justice and for good cause shown defendant's motion to sever should have been granted. In so ruling, it noted that two shootings did not share sufficient common and distinctive marks to be admissible in the respective separate trials. Second, the evidence of gang membership, the sole distinctive factor allegedly common to each incident, might indeed have a very prejudicial, if not inflammatory effect on the jury in a joint trial. Third, whether viewed as one weak and one strong case or alternatively as two relatively weak cases, joinder was prejudicial to defendant, since there was danger that the jury would aggregate all the evidence, though presented separately in relation to each charge, and convict on both charges in a joint trial. Finally, since one the the charged crimes was a capital offense, a higher degree of scrutiny and care was required.

Q. People v. Garcia (Aug. 6, 1984) 36 Cal.3d 539
1978 Law Case

Defendant drove his nephew to a liquor store, gave him a gun loaded with "dum-dum" bullets, and sent him inside to rob it while defendant waited parked in a alley. The nephew shot the clerk and fled without taking anything. The clerk died from the effects of the "dum-dum" bullet. Defendant was found guilty of first degree murder on felony murder (robbery) theory with robbery-murder special circumstances and attempted robbery. Since the prosecutor did not seek the death penalty he received LWOP.

On appeal the LWOP was reversed because the special circumstance finding was reversed. The court ruled that the intent to kill instruction requirement of Carlos v. Superior Court, supra, 35 Cal.3d 131, was retroactive to all cases not yet final. While failure to so instruct is not per se reversal it is almost impossible to come within the very narrow exceptions allowed; i.e. The jury found "intent to kill" some other way or as a matter of law the killing was intentional.

24. People v. Alcala (August 23, 1984) 36 Cal.3d 604
1978 Law Case

Defendant kidnapped a 12 year old girl whose dismembered remains were found in a forest 12 days later. Because of the advanced state of decomposition it was impossible to determine medically the time or cause of death or whether she had been sexually molested. He was convicted of first degree murder with kidnap-murder special circumstances. He received the death penalty and was sentenced to death on June 20, 1980.

On appeal the entire case was reversed. The Supreme Court found it to be reversible error to introduce evidence of prior sex crimes against other young girls committed by defendant because they were not sufficiently similar (they did not all bear the same signature). None of the other victims had been killed (although one was lucky to survive her injuries). The court also ruled that the corpus delecti of both the charged crime and the special circumstances must be proved independent of the defendant's admissions.

25. People v. Whitt (August 27, 1984) 36 Cal.3d 724
1978 Law Case

Defendant robbed a store and shot a customer who was approaching the store as defendant was leaving.

Defendant was found guilty of first degree murder with robbery-murder special circumstances. He received the death penalty and was sentenced to death on May 26, 1981.

On appeal the death penalty and special circumstance finding were reversed because of failure to instruct on intent to kill for the felony murder special circumstances as required under Carlos v. Superior Court, supra, and held to be retroactive under People v. Garcia, supra. Under the facts the error was prejudicial, since it did not fall within the limited exceptions listed in People v. Garcia, supra.

26. People v. Mattson (October 22, 1984) 37 Cal.3d 85
1977 Law Case

Defendant kidnapped, raped and murdered on separate occasions two young girls. He was convicted of two counts of first degree murder with special circumstances of rape-murder as to each victim, kidnap-murder as to one victim, lewd acts with a child under 14 - murder as to the other victim, and multiple murder as to both victims. He received the death penalty and was sentenced to death on May 10, 1980.

On appeal the entire conviction was reversed. While defendant was in custody in Nevada for kidnap, rape and

robbery he invoked his Miranda rights to silence. He was subsequently questioned by the Nevada authorities about the California cases and as to these cases he waived his Miranda rights and confessed to the two murders. Applying California, rather than federal or Nevada law, the Supreme Court found reversible error per se in the admission of the two confessions under People v. Pettingill (1978) 21 Cal.3d 321. The court also held that the corpus delicti of a felony-murder special circumstance must be established independently of defendant's extrajudicial statements.

27. People v. Ramos (Marcelino) (November 1, 1984) 37 Cal.3d 136

This is the same case (People v. Ramos, supra, 30 Cal.3d 553) following remand by the United States Supreme Court in California v. Ramos, supra, 77 L.Ed.2d 1171. On remand death penalty was reversed, along with the special circumstances. The Supreme Court ruled that, despite the United States Supreme Court ruling in California v. Ramos that the governor's commutation instruction was not in violation of federal due process, the instruction violated state constitutional due process. In addition, the court rejected its earlier finding that the killing was clearly intentional and reversed the robbery-murder

special circumstance under compulsion of Carlos v. Superior Court, supra, and People v. Garcia, supra, finding the error prejudicial since it did not fall within the limited exceptions listed in Garcia.

28. People v. Turner (November 21, 1984) ___ Cal.3d ___
1978 Law Case

Defendant who was armed, aided by an accomplice, kicked in the door to the residence of an old couple and during the burglary shot and killed both the 78 year old husband and the 77 year old wife. He was convicted of two counts of first degree murder with burglary-murder and multiple murder special circumstances. He received the death penalty and was sentenced to death on April 7, 1980.

On appeal the Supreme Court reversed the death penalty and the burglary-murder and multiple murder special circumstances. The burglary-murder special circumstance was reversed because of no instruction on intent to kill as required under Carlos v. Superior Court, supra, and the error was deemed prejudicial under the standards of People v. Garcia, supra. The court ruled that Carlos-Garcia also applies to multiple murder special circumstances and reversed them too. With no special circumstances there could be no death penalty or LWOP. In addition, the court ruled that it

was proper to use peremptory challenges to exclude those jurors who had reservations against the death penalty but did not qualify for cause excusals under Witherspoon. There was no violation of People v. Wheeler (1978) 22 Cal.3d 258. The court also refined the definition of Miranda error, but found no prejudice beyond a reasonable doubt in this case.

Note: We have petitioned for rehearing on the reversal of the multiple murder special circumstances, since it was neither briefed or argued.

29. People v. McDonald (November 21, 1984) ____ Cal.3d ____
1978 Law Case

Defendant shot a man during a sidewalk robbery. He was convicted of first degree murder with robbery-murder special circumstances. He received the death penalty and was sentenced to death on March 14, 1980.

On appeal the conviction was reversed in its entirety. The Supreme Court first found that since defendant's identity as the killer was the key issue at trial it was prejudicial error to refuse to admit expert testimony on eye witness identification (at the same time putting its stamp of approval of such expert testimony). The court further ruled that since the jury had acquitted defendant of the underlying robbery charge he could not

be retried for robbery or for the robbery-murder special circumstance. The court finally ruled that since the jury did not specify the murder to be that of the first degree (even though this was implicit in the finding of robbery murder special circumstances), the verdict was only a second degree murder verdict as a matter of law, and defendant could only be retried for second degree murder.

30. People v. Holt (Nov. 26, 1984) ____ Cal.3d ____
1978 Law Case

Defendant and another robbed one of the owners of a grocery store as he was leaving the store with the receipts. At the commencement of the robbery, defendant, who also worked at the store, shot the owner when he refused to hand over the receipts. The owner died. Defendant was convicted of first degree murder with robbery-murder special circumstances. He received the death penalty and was sentenced to death on March 14, 1980.

On appeal the case was reversed in its entirety due to prejudicial errors made at the guilt phase. The Supreme Court did not reach the merits of any penalty phase issues. In so ruling, the court found the trial court improperly: (1) permitted defendant to be portrayed as a drug abuser, (2) allowed evidence of

prior burglaries defendant had committed with his accomplice, (3) permitted impeachment of defendant without weighing the prejudicial effect against the probative value, (4) allowed impeachment with felonies not shown to involve lack of veracity, (5) permitted evidence of an escape which had no probative value whatever, (6) permitted the prosecution to introduce evidence that defendant's associates were members of prison gangs, (7) permitted a defense witness to be improperly impeached, and finally, (8) permitted the prosecutor to argue the effect of a certain finding on defendant's punishment.

31. People v. Armendariz (Dec. 17, 1984) 37 Cal.3d 573 - 1978 Law case

Defendant killed a relative during the commission of a burglary and robbery. Defendant was convicted of first degree murder with burglary-murder and robbery-murder special circumstances.

On appeal, both the judgment of guilt and the felony-murder-based special circumstance findings were reversed. The Supreme Court found it to be reversible error to deny defendant's request to reopen jury selection and exercise unused peremptory challenges when a vacancy is created on the panel before the jury is complete. The court also ruled that both special circumstance findings must be reversed because of Carlos-Garcia errors.

32. People v. Bigelow (Dec. 27, 1984) 37 Cal.3d 731 -
1978 Law Case

Defendant and another kidnapped, robbed, and then murdered a motorist who had given them a ride. Defendant was convicted of first degree murder with kidnap-murder, robbery-murder, murder-financial gain, and murder-perfecting escape special circumstances. Defendant was sentenced to death on May 8, 1981.

On appeal the conviction was reversed. The Supreme Court ruled that the failure of the trial court to consider appointment of a public advisory counsel to a defendant representing himself in a capital case was reversible error. It further defined the standards for the murder-financial gain and murder-perfecting escape special circumstances and ruled that the trial court had erred in submitting these special circumstances to the jury. It also held that the court failed to instruct that a kidnap-murder and robbery-murder special circumstance finding requires proof that the defendant intended to kill (Carlos-Garcia).

33. People v. Anderson (Feb. 21, 1985) 38 Cal.3d 58 -
1978 Law Case

Defendant shot and killed a woman during the course of a home burglary. Defendant was convicted of first degree burglary with burglary-murder special circumstances. He received the

death penalty and was sentenced to death on Oct. 10, 1979.

On appeal, the Supreme Court reversed the death penalty and the burglary-murder special circumstance.

The special circumstance finding was set aside because of no instruction on intent to kill as required under Carlos v. Superior Court, supra, and the error was deemed prejudicial per se under the standards of People v. Garcia, supra.

Murder Definitions

§187. Murder.

(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

(b) This section shall not apply to any person who commits an act which results in the death of a fetus if any of the following apply:

(1) The act complied with the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.

(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law. Leg.H. 1872, 1970 ch. 1311.

§188. Express and Implied Malice—No Other Mental State Needed to Establish Malice Aforethought.

Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

When it is shown that the killing resulted from the intentional doing of an act with express or implied malice as defined above, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite such awareness is included within the definition of malice. Leg.H. 1872, 1981 ch. 404, 1982 ch. 893.

§189. Murder of First or Second Degree.

All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, or any act punishable under Section 288, is murder of the first degree; and all other kinds of murders are of the second degree.

As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act. Leg.H. 1872, 1874 p. 427, 1949 1st Extra. Sess. ch. 16, effective Jan. 6, 1950, 1969 ch. 923, 1970 ch. 771, operative August 19, 1970, 1981 ch. 404, 1982 ch. 949, effective September 13, 1982, ch. 950, effective September 13, 1982.

Briggs Death Penalty Initiative

§190. Punishment for Murder.

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

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

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time. Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.

Ref.: Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

§190.1. Enacted 1957 ch. 1968. Repealed 1973 ch. 719.

§190.1. Enacted 1973. Repealed 1977 ch. 316, effective August 11, 1977.

§190.1. Enacted 1977. Repealed by Initiative (Proposition 7) at the November 7, 1978, General Election.

A new §190.1 follows.

§190.1. Separate Phases of Trial for Death Penalty Case.

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

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

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

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been

charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4. Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.

Ref.: Cal Fms Pl & Pr, "Criminal Procedure (Gen Intro)"; Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

§190.2. Enacted 1973. Repealed 1977 ch. 316, effective August 11, 1977.

§190.2. Enacted 1977. Repealed by Initiative (Proposition 7) at the November 7, 1978, General Election.

A new §190.2 follows.

§190.2. Special Circumstances for Imposition of Death Penalty or Life Without Parole.

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

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

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

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

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

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

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

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

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

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

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

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

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

(13) The victim was an elected or appointed official or former official of the Federal Government, a local or State government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

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

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

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

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

(i) Robbery in violation of Section 211.

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

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

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

(vi) Oral copulation in violation of Section 288a.

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

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

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

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

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

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5. Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.

Ref.: Cal Fms Pl & Pr, "Criminal Procedure (Pt XIII)"; Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

§190.25. Penalty for Murder of Public Transit Employee.

(a) The penalty for a defendant found guilty of murder in the first degree shall be confinement in state prison for a term of life without the possibility of parole in any case in which any of the following special circumstances has been charged and specially found under Section 190.4, to be true: the victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or the victim was a station agent or ticket agent for the entity providing such transportation, who, while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or was a station agent or ticket agent for the entity providing such transportation, engaged in the performance of his or her duties.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

(c) Nothing in this section shall be construed to prohibit the charging or finding of any special circumstance pursuant to Sections 190.1, 190.2, 190.3, 190.4, and 190.5. Leg.H. 1982 ch. 172, effective April 27, 1982.

§190.3. Enacted 1973. Repealed 1977 ch. 316, effective August 11, 1977.

§190.3. Enacted 1977. Repealed by Initiative (Proposition 7) at the November 7, 1978, General Election.

A new §190.3 follows.

§190.3. Determining Whether Death Penalty or Life Without Parole Is Penalty—Factors to Consider.

If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Vet-

erans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole. Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.

§190.3. 1983 Deletion. 1. affects

Ref.: Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

§190.4. Enacted 1977. Repealed by Initiative (Proposition 7) at the November 7, 1978, General Election.

A new §190.4 follows.

§190.4. Cases Under §190.2—Procedure.

(a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circum-

stance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to Subdivision (b) of Section 190.1.

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

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

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

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

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

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

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

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

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

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6). **Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.**

Ref.: Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

A new §190.5 follows.

§190.5. Death Penalty Not Imposed on Minors.

Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant. **Adopted by Initiative (Proposition 7) at the November 7, 1978, General Election.**

Ref.: Cal. Crim. Def. Prac., Ch. 123, "Fitness Hearing."

§190.5. Enacted 1977. Repealed by Initiative (Proposition 7) at the November 7, 1978, General Election.

Appellate Rules

§190.6. Time Requirements on Appeal.

The Legislature finds that the imposition of sentence in all capital cases should be expeditiously carried out.

Therefore, in all cases in which a sentence of death has been imposed, the appeal to the State Supreme Court must be decided and an opinion reaching the merits must be filed within 150 days of certification of the entire record by the sentencing court. In any case in which this time requirement is not met, the Chief Justice of the Supreme Court shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting these circumstances. A failure to comply with the time requirements of this section shall not be grounds for precluding the ultimate imposition of the death penalty. **Leg.H. 1977 ch. 316, effective August 11, 1977.**

§190.7. Contents of Entire Record.

The "entire record" referred to in Section 190.6 shall include, but not be limited to, the following:

(a) The normal and additional record prescribed in the rules adopted by the Judicial Council pertaining to an appeal taken by the defendant from a judgment of conviction.

(b) A copy of any other paper or record on file or lodged with the superior court and a transcript of any other oral proceeding reported in the superior court pertaining to the trial of the cause.

Nothing contained in this section shall preclude a court from ordering that the entire record include municipal court or settlement proceedings pertaining to the case.

Notwithstanding this section, the Judicial Council may adopt rules, not inconsistent with the purpose of Section 190.6, specifically pertaining to the content, preparation and certification of the record on appeal when a judgment of death has been pronounced. **Leg.H. 1982 ch. 917.**

§190.8. Record on Appeal Shall Be Certified When Death Sentence Imposed.

In any case in which a death sentence has been imposed, the record on appeal shall be expeditiously certified. If the record has not been certified within 60 days of the date it is delivered to the parties or their counsel, the trial court shall monitor the preparation of the record monthly to expedite certification and report the status of the record to the California Supreme Court.

Corrections to the record shall not be required to include simple typographical errors that cannot conceivably cause confusion. **Leg.H. 1984 ch. 1422.**

§190.9. Proceedings Shall Be Conducted on Record With Court Reporter Present.

In any case in which a death sentence may be imposed, all proceedings conducted after the effective date of this section in the justice, municipal, and superior courts, including proceedings in chambers, shall be conducted on the record with a court reporter present. **Leg.H. 1984 ch. 1422.**

§1239. [Repealed January 1, 1989] Notice of Appeal By Convict.

(a) Where an appeal lies on behalf of the defendant or the people, it may be taken by the defendant or his counsel, or by counsel for the people, in the manner provided in rules adopted by the Judicial Council.

(b) When upon any plea a judgment of death is rendered, an appeal is automatically taken by the defendant without any action by him or his counsel. The defendant's trial counsel, whether retained by the defendant or court-appointed, shall continue to represent the defendant until completing the additional duties set forth in paragraph (1) of subdivision (b) of Section 1240.1. **Leg.H. 1872, 1907 p. 559, 1909 p. 1086, 1917 p. 37, 1935 ch. 679, 1939 ch. 1016, 1945 ch. 40, 1968 ch. 1368, 1975 ch. 1125, operative July 1, 1976, 1982 ch. 917 §3, repealed effective January 1, 1989.**

Ref.: Cal Fms Pl & Pr, "Criminal Procedure (Pts IV, XVI)"; Cal. Crim. Def. Prac., Ch. 87, "Death Penalty."

§1240. Appointment of State Public Defender—Exceptions.

(a) When in a proceeding falling within the provisions of Section 15421 of the Government Code a person is not represented by a public defender acting pursuant to Section 27706 of the Government Code or other counsel and he is unable to afford the services of counsel, the court shall appoint the State Public Defender to represent the person except as follows:

(1) The court shall appoint counsel other than the State Public Defender when the State Public Defender has refused to represent the person because of conflict of interest or other reason.

(2) The court may, in its discretion, appoint either the State Public Defender or the attorney who represented the person at his trial when the person requests the latter to represent him on appeal and the attorney consents to the appointment. In unusual cases, where good cause exists, the court may appoint any other attorney.

(3) A court may appoint a county public defender, private attorney, or nonprofit corporation with which the State Public Defender has contracted to furnish defense services pursuant to Government Code Section 15402.

(4) When a judgment of death has been rendered the Supreme Court may, in its discretion, appoint counsel other than the State Public Defender or the attorney who represented the person at trial.

(b) If counsel other than the State Public Defender is appointed pursuant to this section, he may exercise the same authority as the State Public Defender pursuant to Chapter 2 (commencing with Section 15420) of Part 7 of Division 3 of Title 2 of the Government Code. **Leg.H. 1975 ch. 1125, operative July 1, 1976.**

§1240.1. [Repealed January 1, 1989] Duty of Trial Attorney for Indigent Defendant—Counsel on Grounds for Appeal; File Notice of Appeal and Motion for Appointment of Counsel—Request to State Public Defender to Counsel Defendant—Check Record on Appeal.

(a)(1) In any noncapital criminal, juvenile court, or civil commitment case wherein the defendant would be entitled to the appointment of counsel on appeal if indigent, it shall be the duty of the attorney who represented the person at trial to provide counsel and advice as to whether arguably meritorious grounds exist for reversal or modification of the judgment on appeal. The attorney shall admonish the defendant that he is not able to provide advice concerning his own competency, and that the State Public Defender or other counsel should be consulted for advice as to whether an issue regarding the competency of counsel should be raised on appeal. The trial court may require trial counsel to certify that he has counselled the defendant as to whether arguable meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this section shall be construed to prevent any person having a right to appeal from doing so.

(2) It shall be the duty of every attorney representing an indigent defendant in any noncapital criminal, juvenile court, or civil commitment case to execute and file on his client's behalf a timely notice of appeal when such attorney is of the opinion that arguably meritorious grounds exist for a reversal or modification of the judgment or orders to be appealed from, and where, in the attorney's judgment, it is in the defendant's interest to pursue such relief as may be available to him on appeal; or when directed to do so by a defendant having a right to appeal.

With the notice of appeal the attorney shall file a brief statement of the points to be raised on appeal and a designation of any document, paper, pleading, or transcript of oral proceedings necessary to properly present such points on appeal when such document, paper, pleading or transcript of oral proceedings would not be included in the normal record on appeal according to the applicable provisions of the California Rules of Court. The executing of such notice of appeal by the defendant's attorney shall not constitute an undertaking to represent the defendant on appeal unless such undertaking is expressly stated in the notice of appeal.

If the defendant was represented by appointed counsel on the trial level, or if it appears that the defendant will request the appointment of counsel on appeal by reason of indigency, the trial attorney shall also assist the defendant in preparing and submitting a motion for the appointment of counsel and any supporting declaration or affidavit as to the defendant's financial condition. These documents shall be filed with the trial court at the time of filing a notice of appeal, and shall be transmitted by the clerk of such trial court to the clerk of the appellate court within three judicial days of their receipt. The appellate court shall act upon such motion without unnecessary delay. An attorney's failure to file a motion for the appointment of counsel with the notice of appeal shall not foreclose the defendant from filing a motion at any time it becomes known to him that the attorney has failed to do so, or at any time he shall become indigent if he was not previously indigent.

(3) The State Public Defender shall, at the request of any attorney representing a prospective indigent appellant or at the request of the prospective indigent appellant himself, provide counsel and advice to such prospective indigent appellant or attorney as to whether arguably meritorious grounds exist on which the judgment or order to be appealed from would be reversed or modified on appeal.

(4) The failure of a trial attorney to perform any duty prescribed in this section, assign any particular point or error in the notice of appeal, or designate any particular thing for inclusion in the record on appeal shall not foreclose any defendant from filing a notice of appeal on his own behalf or from raising any point or argument on appeal; nor shall it foreclose the defendant or his counsel on appeal from requesting the augmentation or correction of the record on appeal in the reviewing court.

(b)(1) In order to expedite certification of the entire record on appeal in all capital cases, defendant's trial counsel, whether retained by the defendant or court-appointed, shall continue to represent the defendant until the entire record on the automatic appeal is certified. In any capital case, trial counsel shall check that the entire record on appeal has been prepared, and shall check for errors or omissions in that record and request any corrections thereto within the time provided by rules adopted by the Judicial Council.

(2) The duties imposed on trial counsel in paragraph (1) of this subdivision shall not foreclose the defendant's appellate counsel from requesting additions or corrections to the entire record on appeal in either the trial court or the Supreme Court. *Leg.H.* 1978 ch. 1385, 1982 ch. 917 §5, repealed effective January 1, 1989.

Ref.: *W. Cal. Sum.*, "Parent and Child" §354A.

CHAPTER 316

An act to amend Section 1672 of the Military and Veterans Code, to amend Sections 37, 128, 209, 219, 1018, 1050, 1103, 1105, 4500, and 12310 of, to repeal Sections 190, 190.1, 190.2, and 190.3 of, and to add Sections 190, 190.1, 190.2, 190.3, 190.4, 190.5, and 190.6 to, the Penal Code, relating to punishment for crimes, and declaring the urgency thereof, to take effect immediately.

[Passed over Governor's veto August 11, 1977. Filed with Secretary of State August 11, 1977.]

LEGISLATIVE COUNSEL'S DIGEST

SB 155, Deukmejian. Death penalty.

Existing law provides for the imposition of the death penalty under procedures which have been invalidated by court decision because they lack provision for consideration of mitigating circumstances.

This bill would make such a mitigating circumstances provision in the law, as to certain crimes formerly subject only to the death penalty, and would impose life imprisonment without parole rather than death or life imprisonment with parole in other cases.

This bill would also define the proof necessary to prove murder involving the infliction of torture to require proof of intent to inflict extreme and prolonged pain, and would define the proof necessary to prove that the defendant aided or committed an act causing death to require proof that the defendant's conduct was an assault or battery or involved an order, initiation, or coercion of the killing.

The bill would provide that certain of its provisions would become operative only until the operative date of A.B. 513, if later than the operative date of this bill.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1672 of the Military and Veterans Code is amended to read:

1672. Any person who is guilty of violating Section 1670 or 1671 is punishable as follows:

(a) If his act or failure to act causes the death of any person, he is punishable by death or imprisonment in the state prison for life without possibility of parole. The penalty shall be determined pursuant to the provisions of Sections 190.3 and 190.4 of the Penal Code. If the act or failure to act causes great bodily injury to any person, a person violating this section is punishable by life imprisonment without possibility of parole.

(b) If his act or failure to act does not cause the death of, or great bodily injury to, any person, he is punishable by imprisonment in the state prison for not more than 20 years, or a fine of not more than ten thousand dollars (\$10,000), or both. However, if such person so acts or so fails to act with the intent to hinder, delay, or interfere with the preparation of the United States or of any state for defense or for war, or with the prosecution of war by the United States, or with the rendering of assistance by the United States to any other nation in connection with that nation's defense, the minimum punishment shall be imprisonment in the state prison for not less than one year, and the maximum punishment shall be imprisonment in the state prison for not more than 20 years, or by a fine of not more than ten thousand dollars (\$10,000), or both.

SEC. 2. Section 37 of the Penal Code is amended to read:

37. Treason against this state consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the state. The punishment of treason shall be death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4.

SEC. 3. Section 128 of the Penal Code is amended to read:

128. Every person who, by willful perjury or subornation of perjury procures the conviction and execution of any innocent person, is punishable by death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and 190.4.

SEC. 4. Section 190 of the Penal Code is repealed.

SEC. 5. Section 190 is added to the Penal Code, to read:

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

SEC. 6. Section 190.1 of the Penal Code is repealed.

SEC. 7. Section 190.1 is added to the Penal Code, to read:

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

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

(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (5) of

subdivision (c) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Sections 190.3 and 190.4.

SEC. 8. Section 190.2 of the Penal Code is repealed.

SEC. 9. Section 190.2 is added to the Penal Code, to read:

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

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

(b) The defendant, with the intent to cause death, physically aided or committed such act or acts causing death, and the murder was willful, deliberate, and premeditated, and was perpetrated by means of a destructive device or explosive;

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

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

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

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

(i) Robbery in violation of Section 211;

(ii) Kidnapping in violation of Section 207 or 209. Brief movements of a victim which are merely incidental to the commission of another

offense and which do not substantially increase the victim's risk of harm over that necessarily inherent in the other offense do not constitute a violation of Section 209 within the meaning of this paragraph.

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

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

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

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

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

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

SEC. 10. Section 190.3 of the Penal Code is repealed.

SEC. 11. Section 190.3 is added to the Penal Code, to read:

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

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the expressed or

implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

After having heard and received all of the evidence, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall determine whether the penalty shall be death or life

imprisonment without the possibility of parole.

SEC. 12. Section 190.4 is added to the Penal Code, to read:

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

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

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

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

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

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

defendant and the people.

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

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

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

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

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

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

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

SEC. 13. Section 190.5 is added to the Penal Code, to read:

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

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

subdivision (a) of Section 1672 of the Military and Veterans Code, or Section 37, 128, 4500, or subdivision (b) of Section 190.2 of this code, the death penalty shall not be imposed upon any person who was a principal in the commission of a capital offense unless he was personally present during the commission of the act or acts causing death, and intentionally physically aided or committed such act or acts causing death.

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

SEC. 14. Section 190.6 is added to the Penal Code, to read:

190.6. The Legislature finds that the imposition of sentence in all capital cases should be expeditiously carried out.

Therefore, in all cases in which a sentence of death has been imposed, the appeal to the State Supreme Court must be decided and an opinion reaching the merits must be filed within 150 days of certification of the entire record by the sentencing court. In any case in which this time requirement is not met, the Chief Justice of the Supreme Court shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting these circumstances. A failure to comply with the time requirements of this section shall not be grounds for precluding the ultimate imposition of the death penalty.

SEC. 15. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any individual by any means whatsoever with intent to hold or detain, or who holds or detains, such individual for ransom, reward or to commit extortion or to exact from relatives or friends of such person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b) Any person who kidnaps or carries away any individual to commit robbery shall be punished by imprisonment in the state prison for life with possibility of parole.

SEC. 16. Section 219 of the Penal Code is amended to read:

219. Every person who unlawfully throws out a switch, removes a rail, or places any obstruction on any railroad with the intention of derailing any passenger, freight or other train, car or engine and thus derails the same, or who unlawfully places any dynamite or other explosive material or any other obstruction upon or near the track of any railroad with the intention of blowing up or derailing any such

train, car or engine and thus blows up or derails the same, or who unlawfully sets fire to any railroad bridge or trestle over which any such train, car or engine must pass with the intention of wrecking such train, car or engine, and thus wrecks the same, is guilty of a felony and punishable with death or imprisonment in the state prison for life without possibility of parole in cases where any person suffers death as a proximate result thereof, or imprisonment in the state prison for life with the possibility of parole, in cases where no person suffers death as a proximate result thereof. The penalty shall be determined pursuant to Sections 190.3 and 190.4.

SEC. 17. Section 1018 of the Penal Code is amended to read:

1018. Unless otherwise provided by law every plea must be entered or withdrawn by the defendant himself in open court. No plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall any such plea be received without the consent of the defendant's counsel. No plea of guilty of a felony for which the maximum punishment is not death or life imprisonment without the possibility of parole shall be accepted from any defendant who does not appear with counsel unless the court shall first fully inform him of his right to counsel and unless the court shall find that the defendant understands his right to counsel and freely waives it and then, only if the defendant has expressly stated in open court, to the court, that he does not wish to be represented by counsel. On application of the defendant at any time before judgment the court may, and in case of a defendant who appeared without counsel at the time of the plea the court must, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. Upon indictment or information against a corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to effect these objects and to promote justice.

SEC. 18. Section 1050 of the Penal Code is amended to read:

1050. The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. It is therefore recognized that the people and the defendant have reciprocal rights and interests in a speedy trial or other disposition, and to that end shall be the duty of all courts and judicial officers and of all counsel, both the prosecution and the defense, to expedite such proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings.

To continue any hearing in a criminal proceeding, including the

trial, a written notice must be filed within two court days of the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance. Continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. Provided, that upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court is a Member of the Legislature of this State and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days. A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the facts proved which require the continuance shall be entered upon the minutes of the court or, in a justice court, upon the docket. Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382 of this code, the court must immediately notify the chairman of the Judicial Council.

SEC. 19. Section 1103 of the Penal Code is amended to read:

1103. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor, except as provided in Sections 190.3 and 190.4, can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

SEC. 20. Section 1105 of the Penal Code is amended to read:

1105. (a) Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

(b) Nothing in this section shall apply to or affect any proceeding under Section 190.3 or 190.4.

SEC. 21. Section 4500 of the Penal Code is amended to read:

4500. Every person undergoing a life sentence in a state prison of this state, who, with malice aforethought, commits an assault upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury is punishable with death or life imprisonment without possibility of parole. The penalty shall be determined pursuant to the provisions of Sections 190.3 and 190.4; however, in cases in which the person subjected to such assault does not die within a year and a day after such assault

as a proximate result thereof, the punishment shall be imprisonment in the state prison for life without the possibility of parole for nine years.

For the purpose of computing the days elapsed between the commission of the assault and the death of the person assaulted, the whole of the day on which the assault was committed shall be counted as the first day.

Nothing in this section shall be construed to prohibit the application of this section when the assault was committed outside the walls of any prison if the person committing the assault was undergoing a life sentence in a state prison at the time of the commission of the assault and was not on parole.

SEC. 22. Section 12310 of the Penal Code is amended to read:

12310. (a) Every person who willfully and maliciously explodes or ignites any destructive device or any explosive which causes the death of any person is guilty of a felony, and shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) Every person who willfully and maliciously explodes or ignites any destructive device or any explosive which causes mayhem or great bodily injury to any person is guilty of a felony, and shall be punished by imprisonment in the state prison for life.

SEC. 23. If any word, phrase, clause, or sentence in any section amended or added by this act, or any section or provision of this act, or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other word, phrase, clause, or sentence in any section amended or added by this act, or any other section, provisions or application of this act, which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this act are declared to be severable.

SEC. 24. If any word, phrase, clause, or sentence in any section amended or added by this act, or any section or provision of this act, or application thereof to any person or circumstance, is held invalid, and as a result thereof, a defendant who has been sentenced to death under the provisions of this act will instead be sentenced to life imprisonment, such life imprisonment shall be without possibility of parole. The Legislature finds and declares that those persons convicted of first degree murder and sentenced to death are deserving and subject to society's ultimate condemnation and should, therefore, not be eligible for parole which is reserved for crimes of lesser magnitude.

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

parole.

SEC. 25. If this bill and Assembly Bill 513 are both chaptered, and both amend Section 1050 of the Penal Code, Section 18 of this act shall become operative only if this bill is chaptered and becomes operative before Assembly Bill 513, and in such event Section 18 of this act shall remain operative only until the operative date of Assembly Bill 513.

SEC. 26. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The California Supreme Court has declared the existing death penalty law unconstitutional. This act remedies the constitutional infirmities found to be in existing law, and must take effect immediately in order to guarantee the public the protection inherent in an operative death penalty law.

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February 27, 1984

OTHER STATES' PROVISIONS FOR DEATH PENALTY APPEALS

(In this chart, the presence of automatic sentence review is only signified if a full automatic appeal is not afforded. A list of authorities is set forth after the chart.)

STATE	COURT WITH JURISDICTION	FULL AUTOMATIC APPEAL?	SENTENCE REVIEW AUTOMATIC?
TOTALS	Every State Allows Every Capital Defendant Full Review in Highest Court Before Execution Is Possible	24 Yes 14 No	12 Yes 2 No
Alabama	Court of Appeal, subject to review as of right by Supreme Court	Yes	N/A
Arizona	Supreme Court	Yes	N/A
Arkansas	Supreme Court	No	No
Colorado	Supreme Court	Yes	N/A
Connecticut	Supreme Court	No	Yes
Delaware	Supreme Court	No	Yes
Florida	Supreme Court	Yes	N/A
Georgia	Supreme Court	Yes	N/A
Idaho	Supreme Court	Yes	N/A

STATE	COURT WITH JURISDICTION	FULL AUTOMATIC APPEAL?	SENTENCE REVIEW AUTOMATIC?
Illinois	Supreme Court	Yes	N/A
Indiana	Supreme Court	Yes	N/A
Kentucky	Supreme Court	No	Yes
Louisiana	Supreme Court	No	Yes
Maryland	Court of Appeal (State's Highest Court)	No	Yes
Massachusetts	Supreme Judicial Court	Yes	N/A
Mississippi	Supreme Court	Yes	N/A
Missouri	Supreme Court	No	Yes
Montana	Supreme Court	Yes	N/A
Nebraska	Supreme Court	Yes	N/A
Nevada	Supreme Court	Yes	N/A
New Hampshire	Supreme Court	Yes	N/A
New Jersey	Supreme Court	No	Yes
New Mexico	Supreme Court	Yes	N/A
New York	Court of Appeals (State's Highest Court)	No	No

STATE	COURT WITH JURISDICTION	FULL AUTOMATIC APPEAL?	SENTENCE REVIEW AUTOMATIC?
North Carolina	Supreme Court	Yes	N/A
Ohio	Court of Appeal, Subject to Review as of Right by Supreme Court	No	Yes
Oklahoma	Court of Criminal Appeals (State's Highest Criminal Court)	No	Yes
Oregon	Supreme Court	Yes	N/A
Pennsylvania	Supreme Court	Yes	N/A
South Carolina	Supreme Court	Yes	N/A
South Dakota	Supreme Court	No	Yes
Tennessee	Supreme Court	No	Yes
Texas	Court of Criminal Appeals (State's Highest Criminal Court)	Yes	N/A
Utah	Supreme Court	Yes	N/A
Vermont	Supreme Court	Yes	N/A
Virginia	Supreme Court	Yes	N/A
Washington	Supreme Court	No	Yes

STATE	COURT WITH JURISDICTION	FULL AUTOMATIC APPEAL?	SENTENCE REVIEW AUTOMATIC?
Wyoming	Supreme Court	Yes	N/A

AUTHORITIES RELIED UPON

Alabama - Court of Criminal Appeal subject to review by Supreme Court - Criminal Code Section 13A-5-53. Appeal is automatic - section 13A-5-55. By judicial rule, Alabama Supreme Court grants cert. in any death penalty case where review is sought. Ala. R. App. Proc. 39(c), cited in Evans v. Birtton, 472 F.Supp 707, 724.

Arizona - Appeal is automatic (Rules of Criminal Procedure, R. 31.2(b)), and is heard by Supreme Court (Arizona Constitution Article 6, section 5(3); Arizona Rev. Code, section 12-120.21 (A) (1)).

Arkansas - appeal is to the Supreme Court (Ark.Stats., section 43-2701), but it is apparently not automatic (compare Collins v. State (Ark. 1977) 261 Ark. 195, 548 S.W.2d 106, 115 with Collins v. Lockhart (8th Cir. 1983) 707 F.2d 341).

Colorado - Appeal is automatic and is to Supreme Court. (Colo. Rev. Code section 16-11-103, subds. (7) (a) and (b)).

Connecticut - Appeal is to Supreme Court (Conn. Gen. Stats. section 54-95). It is not automatic, but sentence review by Connecticut Supreme Court is automatic. (Conn. Gen. Stats, section 53a - 46b).

Delaware - Appeal is to Supreme Court but it is not automatic except with respect to appropriateness of sentence. Del. Code Ann. Title 11, section 4209(f).

Florida - Appeal is to Supreme Court (Florida Stats. Ann. section 924.08(1)), and is automatic (section 921.141(5)).

Georgia - appeal is to State Supreme Court (Geo.Code Ann. section 27-2537 (f)), and is automatic (Geo.Code Ann., Appendix to Chap. 27-25 - Unified Appeal Outline of Proceedings, section IV (B) (2)).

Idaho - automatic review in Supreme Court (Idaho Code, section 19-2827; State v. Osborn (1981) 631 P2d 187, 192-193.)

Illinois - Automatic appeal in Supreme Court (Ill. Ann. Stats., Chap.38, section 9-1(i)).

Indiana - Ann Ind. Code, section 35-50-5-9(h) provides for "automatic review" of sentence in Supreme Court; this is actually a plenary appeal. The defendant may waive the appeal, but not the sentence review. (Judy v. State (1981) 416 N.E.2d 95.)

Kentucky - Sentence review automatic, but appeal not automatic. (Ky. Rev. Stats., section 532.075(8) and Ky. R. Crim. Proc., Rules 12.04; 12.76 (a).)

Louisiana - every death sentence is automatically reviewed by the Supreme Court (La. Code Crim. Proc., Art. 905.9); there is also an appeal as of right to the Supreme Court (La. Const., Art. 5, section 5(D); La. Code Crim Proc., Art. 912.1(A)).

Maryland - Md. Ann. Code, Art. 27, section 414 provides for automatic sentence review and permissive appeal in the Court of Appeals, the state's highest court.

Massachusetts - automatic appeal in Supreme Judicial Court (Ann. L. Mass. Chapter 278, section 33E).

Mississippi - automatic appeal to Mississippi Supreme Court (Miss. Code 1977 Ann., sections 99-19-101(4), 99-35-101).

Missouri - automatic sentence review in Supreme Court; optional appeal in Supreme Court. (Ann. Mo. Stats., Section 565.035).

Montana - automatic appeal to Supreme Court - (Mont. Stats. Ann. section 46-18-307).

Nebraska - automatic appeal to Supreme Court (Rev. Stats. Neb., section 29-2525).

Nevada - appeal to Supreme Court is automatic unless defendant affirmatively waives it (Nev. Rev. Stats., section 177.055(1)). In Lenhard v. Wolff, 444 U.S. 807, 626 L.Ed.2d 20, Jesse Bishop had tried to waive his appeal, but the Nevada Supreme Court heard the appeal anyway. (State v. Bishop, 597 P.2d 273.)

New Hampshire - automatic appeal to Supreme Court (N.H. Rev. Stats. Ann., Section 630:5 (VI)).

New Jersey - N.J. Stats. Ann. section 2C: 11-3(e) (1982) provides for automatic sentence review by Supreme Court and right to appeal to Supreme Court.

New Mexico - automatic appeal in Supreme Court (N.M. Stats. Ann. section 31-20A-4).

New York - Crim. Proc. Law sections 450.70 and 460.10 provide for an appeal as of right to the Court of Appeal (the state's highest court), but it is not automatic. In New York, the bulk of the capital punishment law was declared unconstitutional (People v. Davis (1977) 43 N.Y.2d 17, 400 N.Y.S.2d 735), and the one remaining portion, which provides a mandatory death sentence for one who murders a prison guard, is presently under challenge by New York's only death row inmate.

North Carolina - automatic appeal in Supreme Court (N.C. Gen. Stats., section 15A-2000(d)(1)).

Ohio - automatic sentence review (Ohio Rev. Code, section 2929.05) plus the right to appeal to Supreme Court if the Court of Appeal affirms the death judgment (Ohio Constitution Article IV, section 2(B)(2)(a)(ii); Ohio Rev. Code, section 2953.02).

Oklahoma - automatic sentence review in Court of Criminal Appeals, the state's highest court of criminal jurisdiction, plus appeal as of right to that court (Okla. Stats. Ann., Tit. 21, section 701.13).

Oregon - automatic appeal to Supreme Court (Ore. Rev. Stats., section 163.116(5)).

Pennsylvania - automatic appeal to Supreme Court (Penna. Stats. Ann., Tit. 42, section 9711 (h); Commonwealth v. McKenna (1978) 383 A.2d 174).

South Carolina - full automatic appeal to Supreme Court (So. Car. Code, section 18-9-20), as well as automatic sentence review (section 16-3-25 (F)).

South Dakota - appeal as of right to Supreme Court; automatic sentence review (S.D. Codif. Laws, section 23A-27A-10).

Tennessee - appeal as of right to Supreme Court; automatic sentence review (Tenn. Code Ann., section 39-2-205).

Texas - automatic appeal in Court of Criminal Appeals, the states highest criminal court (Tex. Code Crim. Proc., Art. 37.071(f)).

Utah - automatic appeal to Supreme Court (Utah Code Ann., section 76-3-206, added after Gilmore volunteered for execution, Gilmore v. Utah 429 U.S. 1012).

Vermont - automatic appeal to Supreme Court (Vt. Stats. Ann., Title 13, section 7401; Rules of Appellate Procedure, R.3(b)).

Virginia - automatic appeal to Supreme Court (Va. Code, section 17-110.1(f); Rules of Va. Supreme Court, Rule 5:20(a)).

Washington - automatic sentence review in Supreme Court
(Wash. Ann. Rev. Code, section 10.95.130(1)).

Wyoming - automatic appeal to Supreme Court (Wyo. Stats.
Ann., section 6-4-103(a)).