

CALIFORNIA'S DIRTY LITTLE SECRET! ! !

"NEWS RELEASE"

CALIFORNIA'S BOARD OF PRISON TERMS (B.P.T.), DOES NOT, AND CAN NOT, POSSESS THE CONSTITUTIONAL POWER TO HOLD SO-CALLED "SUITABILITY" HEARINGS, FOR PROP. 7 PRISONERS, TO DETERMINE A PRISONER'S FUNDAMENTAL RIGHTS TO LIBERTY ACCORDING TO LAW. CASE PENDING:

Lawrence Remsen; et al., Plaintiffs v. Carol A. Daly, Chairman, Board of Prison Terms; et al., Defendants. Before the Ninth Circuit Court of Appeal for judgment against Defendants in default and for Declaratory and Injunctive relief for Plaintiffs pursuant to 28 U.S.C. §§ 2201 and 2202. in Case No.03-15871 (D.C. No. CV-02-2587-FCD).

INTRODUCTION

(1). The following information taken from the above cited case is based on indisputable facts obtained from legislative bills, statutes, and laws in effect on the date of the repeal of California's Indeterminate Sentencing Law (I.S.L.), and what influence, if any, this law had for future application after July 1, 1977, the date the 60-year-old I.S.L. ceased to exist. After the I.S.L.'s repeal, and under the new Determinate Sentencing Law, this ca'se shows the effect the repeal of the I.S.L. had on the 1978 Proposition 7 Initiative which, without voters approval, unlawfully adopted the sentencing scheme from the repealed I.S.L. which has created an unlawful sentencing structure. In violation of the State Constitution and Government Code, the drafter used the initiative process as his means to unlawfully adopt the sentencing structure from the repealed I.S.L. and submit it to the voters under the guise of an existing law, thus rendering the adopted sentencing scheme "void on its face" (See: Cal. Const. Art. I§ 26; Art. I§ 9; Art. II § 8(d): Art. II § IO(c): Art. IV §§ 9 & 16; and Gov. Code § 9609). Taking all the information together, it is the conclusion of this writer, along with every attorney and law professor who has come into contact with this case, that Prop. 7's sentencing structure was unlawfully placed on the ballot by its drafter in order to defeat the uniformity of the Determinate Sentencing Law (D.S.L.), by doing indirectly what the drafter was prevented from doing directly by the State Constitution (e.g., As a member of the Legislature, the drafter could only have prevented the repeal of the I.S.L., and the enactment of the D.S.L. by referendum certified by at least one third of his constituency. The drafter, as a member of the Senate, was only one of three in the senate who I opposed repealing the I.S.L. and voted against the enactment of the D.S.L.). You

must draw your own conclusions and act accordingly if you want to stop this governmental abuse of your Constitution and your tax dollars .

(2). What our state elected and appointed officials don't want you to know, having attempted to cover it up, and the reason for this notice, is that thousands of our citizens are being unlawfully imprisoned at a cost of over \$38,000.00 a year per prisoner under a repealed law's sentencing scheme. Before this case ended up in our federal courts, these public servant(s), including our state appointed judges, were given every opportunity to correct this flagrant abuse of imprisoning people under a repealed body of laws that cannot exist today, or be lawfully administered under current California law, yet they have refused to act. As you shall see, the reason for their failure to act is due to the culpability they will incur for the conspiracy and fraud committed after having been properly noticed in this case. This illegal use of our tax dollars, to illegally imprison citizens under a repealed law's sentencing scheme, equates into more money lost each year than the entire amount spent on education for our children (including college). If these funds had not been used to illegally keep people imprisoned, and these lost revenues were added together, ten state prisons would never have been built at a cost of 500 million dollars apiece, and over 27 thousand citizens would now be paying taxes instead of our tax money being dropped into the black hole to support an unconstitutional law that is keeping them imprisoned.

(3). What these official(s) have known and tried to keep secret from you is that the author and drafter of Prop. 7, as a State Senator, in his attempt to re-enact a repealed law, without voter approval, destroyed the uniformity of the Determinate Sentencing Law (D.S.L.). This was a violation of numerous provisions of the State's Constitution. For the abuse of his actions as a Senator, Briggs was sanctioned by his peers and forever disappeared from public office. By submitting the sentencing structure from the repealed Indeterminate Sentencing Law (I.S.L.) under the disguise of an existing law, by telling the voters the passage of Prop. 7 was necessary in order to ratify and make the state's death penalty constitutional, Senator Briggs violated the public's trust as well as the State and Federal Constitutions. Neither Senator Briggs, nor his initiative, asked the voters permission to re-enact the repealed I.S.L. The initiative definitely did not ask the voters permission to re-vest authority in the so-called parole agency to determine the offenders actual penalty or vested liberty interests. As this case proves, this was an illegal act and a blatant disregard for our laws and the State and Federal Constitutions.

(4). Because it was the drafter who made the choice to adopt the sentencing scheme from a repealed law and not the voters, this unlawful act on the part of the drafter created an unconstitutional penalty structure that violates the rights of every person subjected to its process. The result of the illegal act has created a situation where the same branch of government charged with prosecuting the offenders, are now arbitrarily deciding the actual punishment and final judgment for crime without vested discretion or constitutional authority. This has created yet another constitutional violation of the State's Separation of Powers Clause designed to prevent this kind of abuse of government power (See: Cal. Const. Art. III § 3). That said, the reader is cautioned that the issues presented herein are both shocking to the fair administration of justice and trammels the fundamental premise that our form of government is a government "of the people, by the people, and for the people." What has happened here is that our state elected officials, including those appointed to serve as judges, for personal gain in the form of their appointment, for campaign contributions, and voter approval of being tough on crime, violated their positions of trust and their oaths of office to uphold our State and Federal Constitutions. They have, by trickery and intent to defraud citizens of this State of their liberty and a lawfully imposed penalty for crime, committed fraud in the name of the People for the State of California. They have abused the people's trust by knowingly permitting the unlawful use of their tax dollars and the imposition of an illegal and unconstitutional sentence that cannot exist after its repeal under the policy of "punishment" for crime. By covering up what all three branches of our State Government knew at the time was an illegal attempt to re-enact a repealed law, the administrators of this law have taken taxpayer funds under false pretense to unlawfully imprison citizens of the United States and other countries. At a cost of hundreds of millions of tax dollars each year, this so-called law is now being used to deprive California voters and thousands of prisoners and their families of constitutionally vested rights. These are the facts.

STATEMENT OF FACT

(5). Due to the repeal of indeterminate sentencing in California effective July I, 1977, the State's parole agency known at the time as the CoQffinity Release Board (C.R.B.), and now known as the Board of Prison Terms (B.P.T.), hereinafter referred to as the "parole agency," no longer possessed the power to fix terms or grant parole to persons whose crime was committed after July I, 1977. The only statutory authority the parole agency retained under the new

Determinate Sentencing Law was to consider the possibility of parole for "class five" offenders whose penalty is determined by a jury and imposed by a court "for life" (See: e.g., Pen. Code § 190, Stats 1977 C 316; Pen. Code §§ 1170(a)(2) and 5076.1, Stats 1977 C 165). This agency was also empowered to set the conditions for ~ offenders under which they must adhere to while on parole (See: Pen. Code § 3052; Stats 1977 C 165).

(6). Effective July 1, 1977, the State of California repealed its Indeterminate Sentencing Law (I.S.L.), along with the parole agency's authority deemed necessary for the administration of this type of sentencing structure (See: SB-42, Stats 1976 C 1139 § 273; Stats 1977 C 165 § 15). In 1976, the State Legislature found and declared that the repeal of the I.S.L. was necessary, due in part to the California Supreme Court's landmark decision in the case of *In re Rodriguez*, 14 Cal.3d 649 (1975), and the Attorney General's opinion that the I.S.L. had proved to be a "failed experiment." These two important factors were based on how the I.S.L. had been administered for over 60 years and resulted in the conclusions that: (A) There was no impartial or certain way to determine the will of the Legislature as to the actual penalty to be imposed for the crime. (8) The same branch charged with the prosecution was determining, the actual penalty within too broad and uncertain a sentencing structure. (C) There was no constitutional way to determine when or if a person's "rehabilitation" actually took place. (D) The family members and the prisoners had no way to know the certainty of the penalty to be inflicted and were always kept wondering when or if they would ever be released. All these factors prompted the Legislature to state that its number one priority, in its 1976 session, was the repeal of indeterminate sentencing in California (See: SB-42, 1976 C 1139 §§ 272.5 & 273; Stats 1977 C 165 § 15). Note: The Federal Government followed California's lead and repealed its own version of indeterminate sentencing in 1982. The difference between the two systems was in California the parole agency fixed the final term a prisoner would serve while in the federal system, the judge fixed the term between the minimum to maximum sentence. In either case, there was always the question of bias or bad faith on the part of the decision maker.

(7). In repealing the I.S.L., as well as the "parole agency's" powers to fix terms and grant parole, the Legislature found and declared that the purpose for imprisonment for crime was "punishment" for the crime itself (See: Pen. Code § 1170(a)(I), Stats 1977 C 165 § 15). In repealing indeterminate sentencing, the Legislature changed the law for the purpose of imprisonment from mitigating the amount of time a prisoner would serve based on the policy of "rehabilitation" of the offender, to the purpose of "punishment" for the crime itself under the policy

of creating "certainty" in the penalty to be inflicted. The repeal of the I.S.L., and the retroactive application of the D.S.L., according to the declaration by the Legislature contained in Penal Code Section 1170(a)(I), ended the 60-year-old I.S.L. (See: Witkin & Epstein Crim. Law 2ed Vol. 3 § 1447 (1989))

(8). Because California chose to repeal the I.S.L., along with its purpose and policy, by replacing these constitutional requirements with the purpose and policy of the D.S.L., California's laws no longer provided for indeterminate sentencing and under the new law's purpose and policy, effective July 1, 1977, California's Constitution does not provide for indeterminate sentencing based on the declaration that the purpose of imprisonment for crime is "punishment"--for the crime itself. What the reader should keep in mind is that under California law, absent a constitutional amendment authorizing legislative and judicial powers to an administrative agency, no state-wide administrative agency can be empowered or vested with discretion to determine for itself the "punishment any given crime shall bear." This is the law even if the Legislature were to fix the penalty for the offense "for life." In the case of Prop. 7's 15 and/or 25 to life sentences, the Legislature did not vest discretion in any agency to fix terms or grant parole for persons whose crime was committed after July 1, 1977. In point of fact, the Legislature, in enacting the new D.S.L., repealed the parole agency's authority because they recognized that absent a grant of constitutional authority, even the Legislature cannot delegate its power to define a crime or fix the penalty for its offense (See: e.g., Witkin & Epstein Crim. Law 2ed Vol. I § 12 (1989); Witkin Const. Law 2ed Vol. 7 § 129 (1988)). Let's not forget, that when enacting the D.S.L., the Legislature declared that prisoner's families as well as the prisoners had a "substantive right" to know the certainty of the penalty to be determined by the Legislature, and imposed by a court of law. Furthermore, as of July 1, 1977, our Constitution demanded that under current law, all penalties for which a person could be imprisoned in California, according to the Legislature's declaration contained in its new law, the penalty for the crime must be determined by the Legislature in a number of years codified within the law itself, to be imposed by a court of law (See: Pen. Code § 1170(a)(I)). Accordingly, the only authority that the Legislature could vest in any agency would be to perform the "ministerial" duty of executing the law. For that, the law must be so complete in all its terms and provisions that it leaves nothing to be decided by the agency or its appointees in the performance of their assigned tasks (See: 13 Cal. Jur §§104-107). For example, under the I.S.L., and for more than 60 years, the penalty for second degree murder was 5 years to life and the average term was fixed between 3~ to 5 years. Under the new D.S.L., the penalty for 2nd degree murder was changed to 5, 6, or 7 years and the prisoner must be released on parole "subject to good-time credits." The penalty for 1st degree murder was "for life"

with or without the possibility of parole. The parole agency could determine whether or not the prisoner who was sentenced "for life" with the possibility of parole was suitable for release on parole after the prisoner had served a minimum of 7 calendar years. However, this penalty was never considered to be an indeterminate sentence and it did not have a minimum to maximum term according to law. It was fixed by the jury "for life" and was considered as an exception to the I.S.L. by the courts. The average term of imprisonment for this offense was between 8 to 13 calendar years (See: *In re Stanworth*, 33 Cal.3d 176, 182-83 (654 P.2d 1311] (1982)). The drafter of Prop. 7 could not change this by adopting the repealed law's statutory structure and submitting it to the voters under the guise of an existing law without first asking the voters to re-enact the repealed law. As you shall see, this was not the subject of the initiative. If the drafter wanted to change the penalties for these crimes from Determinate Sentences fixed by the Legislature back to Indeterminate Sentences fixed by the parole agency under the repealed policy of "rehabilitation," the subject had to be contained in both the ballot and the title of the initiative or the part omitted is void (See: Cal. Const. Art. IV § 9). Furthermore, if the purpose of Prop. 7 was to ratify the death penalty as well as increase related penalties, the drafter failed to notify the voters or give any reason for increasing these penalties over the amount the prisoner spent imprisoned for more than half a century under the repealed law. Factually, the voters were told that the penalty for life was "changed" to 25 years to life, and the penalty for 2nd degree murder was increased to fifteen years, subject to good-time credits. There was no reason to have increased the penalties for these offenses, nor was there any reason presented for voter consideration that the increase for these offenses was necessary to further a legislative purpose or policy. The only logical conclusion is that the drafter intended to defeat the purpose, policy, and uniformity of the D.S.L. (See: Cal. Const. Art. IV §§ 9 & 16).

HISTORICAL BACKGROUND

(9). As previously stated, from 1917 until 1977, the purpose for imprisonment for crime was to "mitigate" the amount of time a prisoner would serve, based on the policy of having the politically appointed parole board deciding whether or not the prisoner was "rehabilitated." The Legislature held that the purpose for imprisonment was to medically treat the prisoner and this so-called treatment required indeterminate sentencing. Under the I.S.L., prison sentences ranged from a minimum to a maximum duration such as 6 months to life. The parole agency board would hold their "suitability hearings" after the prisoner had completed his minimum term reduced by his earned good conduct credits (See: Pen. Code § 2920, repealed by Stats 1977 C 165 § 36). If, the parole board

determined a prisoner was suitable for parole, it would then fix the prisoner's term and grant parole off the term fixed. once the prisoner served his term of parole, the parole agency would discharge the prisoner off parole, thus fixing the final judgment for the offense. This would mean that each offender committing the same offense could, and often did, receive a different penalty for the same crime and there was always a disparity based on arbitrary determinations made by each parole panel. These types of sentences were known as indeterminate sentences. The law allowing for indeterminate sentencing was codified under Pen. Code § 1168 up until its repeal effective July 1, 1977.

(10). In making the change from indeterminate sentencing to determinate fixed terms, the Legislature took the average range of penalties the prisoners served for each offense under the I.S.L. and fixed a determinate range for each crime of three time periods taken from the matrix used by the parole agency. The courts would now choose one of the three time periods based on aggravating and mitigating circumstances (e.g., this ranges was certified in the parole agency's matrix used for indeterminate sentencing and certified to the parole agency in the agency's Director's Order #75/30 in 1975). As part of the reformation for the administration of justice, the Legislature placed all felonies into a seven category classification system for the purpose of effecting the "certainty" of the penalty to be inflicted. The new law was intended to apply to all felonies committed on or after July 1, 1977 so that all persons within the "class" would know at the time of sentencing the penalty to be inflicted based on the policy of punishment for the crime itself.

DETERMINATION OF PROP. 7'S CONSTITUTIONALITY

(11). This case is a facial challenge to whether the drafter of Prop. 7 could adopt the sentencing scheme from a repealed law and submit the repealed law's sentencing structure to the voters under the guise of existing law without having to re-enact the repealed law according to the mandatory provisions of our State Constitution (See: Cal. Const. Art. 1 § 26: Art. IV §§ 9 & 16 § 9609). When the Legislature repealed indeterminate sentencing, it also repealed the necessary requirements for the laws existence, such as the statutes created for the I.S.L.'s (A) Purpose (mitigation of the penalty): (B) Policy (rehabilitation of the offender); (C) Means (Parole agency's power to determine the will of the Legislature as to the actual penalty to be inflicted and/or the authority to determine the Legislature's will as to when or if the prisoner was "rehabilitated," and/or the Judicial power to determine the final judgment as to the penalty to be imposed); (E) Standards (that must be determined by the

Legislature that are necessary for the fair and impartial administration of the law); (F) Safeguards (that must be fixed by the Legislature to prevent abuse and arbitrary enforcement of the law).

(12). When dealing with a persons fundamental rights, both State and Federal Constitutions requires that for a law to be constitutional when it leaves the hands of the legislature or congress, it must be so complete in all its terms and provisions that it leaves nothing to the judgment of administrative officials to determine. Under State and Federal Constitutions an unconstitutional law is: "not a law; it confers no rights, it imposes no duties, it affords no protection and creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." (See: Witkin Const. Law 2d Vol. 7 § 87 (1988)). A repealed law has the same effect in that the repeal will operate retroactively to terminate a pending action based on the statute (See: Witkin Const. Law 2d Vol. 7 § 497 (1988)).

FUNDAMENTAL CONSTITUTIONAL GUARANTEES

(13). One of the most important fundamental principles of our free society is our tripartite form of government that makes the system work. Under this concept, the golden rule is that only our state legislature or congress can be empowered to make laws. Our Constitution mandates that the making of law is strictly legislative and only the legislature can be empowered to define a crime and fix the punishment for an offense which, according to our constitution, must be imposed by a court of law. The foundation for this requirement is based on the premise that "we are a government of laws and not of men." As a society, this fundamental principle enacted into our constitution was deemed necessary to protect individuals against arbitrary discrimination by those we elect into positions of power. (See: e.g., 16A Am Jur 2d § 276 (1998)).

(14). The creators of our constitution believed that for us to survive as a nation, no one person should have the power to accuse, prosecute, convict, and impose punishment for crime. If any of these subjects were left in the hands of one person without a basis first for individual action, it would be a violation of our constitutional guarantees and the action taken would be declared invalid. This is exactly what has happened in the case of Prop. 7. Our executive branch is only empowered to prosecute and administer laws created by legislative enactment.

But in the case of Prop. 7, because the court is only imposing a generalized sentence of a minimum to maximum duration based on the sentencing schemes created by the drafter of Prop. 7, the actual sentence imposed by the court is conditioned upon the will of the politically appointed members of the parole agency who, after having usurped the power to decide what the actual penalty will be, is also declaring a final judgment for the offense. This is not a law, it is an abomination to our constitution and contrary to what the voters were told when they passed Prop. 7 into law.

(15). The Federal Constitution's Bill of Rights, i.e., the First and Fifth Amendments as codified into the Fourteenth Amendment, were created to afford protection to the individual citizen to enable them the right to redress grievances from arbitrary and capricious state actions used to deprive them of due process and equal protection of the law.

(16). As addressed by this case, one of the primary reasons the Legislature gave for repealing the 60-year-old indeterminate sentencing law, was so that persons convicted of a crime that constituted a felony, would have the right to know the "certainty" of the penalty to be inflicted against them according to law. For this to be accomplished, the Legislature must fix the actual penalty in a number of years. This was the purpose of the new D.S.L. and is based on the Legislature's declaration contained in Penal Code § 1170(a)(1) (See: Stats 1977 C 165 § 15). Based on this declaration, that the purpose for imprisonment for crime is "punishment" for the crime itself, the penalty must be the same for each offender committing the same offense. Additionally, the declared penalty must be applied equally to each person committing the same offense, or the penalty is uncertain and "void on its face" as violating both State and Federal Constitutions' equal protection clause. Furthermore, if it is political appointees determining the will of the Legislature as to the actual penalty to be inflicted, there is no way to determine the will of the legislature as to what the penalty should be for each offender committing the same crime and again, the penalty is "void on its face" as being constitutionally uncertain and there is no due process which must come from a court of law. In short, under the Legislature's purpose of "punishment" for the crime, the penalty cannot be indeterminately left in the hands of others or it violates both the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(17). The case pending in front of the United States Court of Appeals for the Ninth Circuit, contains more than seven issues of constitutional violations. The Plaintiffs have asked the court for a default judgment against the Defendants for refusing to answer the charges based on the issues presented in the case. Any one of these issues will invalidate the drafter's sentencing scheme adopted from the repealed I.S.L., in violation of our constitution. This case has taken over three years to reach this court. There has never been a ruling on the merits due to political and appointed officials having defaulted by refusing to respond to Plaintiffs' notice served, or answer to the summons of the court. The reasons for their actions are obvious. The officials now in office do not want to entangle themselves in the conspiracy committed by the drafter to defraud the voters of California thus making them responsible for the false imprisonment of over twenty seven thousand United State's Citizens at a cost of \$38,000.00 a year per prisoner. If your constitution is important to you and you would like to prove for yourself that Prop. 7's indeterminate penalties are unconstitutional, we have provided you with indisputable proof using the weakest of the seven issues now pending before the court. This should only take three minutes of your time. First, lets look at what the title of Prop. 7 tells the voters. In relevant part, Prop. 7's title states:

"Changes the penalty for first degree murder from life to 25 years to life. Increases the penalty for second degree murder. Prohibits ~~parole~~ of convicted ~~murderers~~ before service of 25 or 15 year terms, subject to good-time credits."

Next, let's see what our constitution has to say about how its articles will be construed against legislatively created laws by initiative. First, Article 1 Section 26 states:

"The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Let's now compare the mandatory language of Article IV Section 9 against the "subject," or lack thereof, contained in the title of Prop. 7. Article IV § 9 states as follows:

"A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended." (See also: Art. II §

8(d) ~ as to the single subject rule.)

You can see for yourself that Prop. 7's title does not contain the subject to re-enact indeterminate sentencing nor are the voters asked to consider this subject anywhere else within the initiative (See: 16 Am Jur 2d §§ 30-34; Witkin Const. Law 9ed Vol. 7 §§ 101-104). We can also see that Prop. 7's title does not ask the voter to re-vest discretion in the parole agency to hold so-called parole suitability hearings. In point of fact, Prop. 7 does not mention the word "indeterminate" anywhere in the entire initiative, nor does it mention the "parole agency" by reference or by name as it must do or the agency is expressly excluded. In fact, Prop. 7's title does not state the penalty for second degree murder is 15 years to life. It only states: "Increases the penalty for second degree murder." In point of fact, the voters were told that in the case of both offenses, the offenders would be released "subject to good-time credits" and not subject to any other statute, conditions, or provisions not contained in Prop. 7's title.

18). According to law, the court in this case should enter the "default" against the Defendant(s) and grant both Declaratory and Injunctive relief requested to correct this arbitrary and illegal abuse of governmental powers. In the Declaratory and Injunctive relief part of the case, the court can invalidate Prop. 7's adopted sentencing scheme in its entirety, for being in conflict with the State and Federal Constitutions, or remand the case back to the Eastern District for further proceedings. If you would like to receive more in depth information on this subject and pending court cases, please send a self addressed stamped envelope to the address provided for on your screen. The information returned to you will be a copy of the same "notice" sent to our state lawmakers, the department heads of each public defenders' main offices, and the prosecutors' offices throughout the State. The notice contains additional information and a copy of Prop. 7's title obtained from the State Archives as it existed on the ballot measure. This notice also lists all seven issues now pending in the Ninth Circuit. Every citizen has a duty to protect their constitution. You may want to assist in its protection, if so, you can send your objections to your State Assemblymen or Senator to let them know just how you feel about imprisoning citizens of the United States under a repealed sentencing structure that cannot be constitutionally administered under the law.

End.