APPENDIX LIST ON PETITION FOR
REHEARING ON CERTIORIRI DENIAL

APPENDIX No.		No. of pages
# 1	December 18, 2023 Waiver, served upon the USSC on December 26, and not received by this Court until January 10, 2024 (after Denial of Cert.)	5
# 2	September 15, 1976 Enrolled Bill Report showing that the Prisoners family and parents have a Due Process and Equal Protection right to know when the prisoner is returning home to family.	14
# 3	August 18, 2023 Letter Brief to Majority Whip Nancy Skinner documenting the Legislature's Notice of this sentencing structural defect.	28

CALIFORNIA INSTITUTION FOR MEN
PROOF OF SERVICE BY MAIL
(C.C.P. §1013a, §2015.5; Fed.R.Civ.P. 5; 28 U.S.C. 1746)

(A) In re: Remsen et al, Case # 22A1085 & 23-6111

I am over the age of eighteen years, a citizen of the United States, a resident of the State of California, and not a party to the within action. My mailing address is: P.O. BOX 3100 CHINO, CA 91708.

On the following date: (B) December 26, 2023, I served the following document(s): (C)

1) December 18, 2023 Waiver from All Respondents executed by Counsel Sara J. Romano of the California Attorney General's Office

On the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, addressed as follows to the following parties: (D)

Supreme Court of the United States
Office of the Clerk
Attn. Scott S. Harris, Deputy Clerk &
Emily Walker, Case Analyst
1 First Street, N.E.
Washington, DC. 20543

I am readily familiar with the normal business practices for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, in a sealed envelope with postage fully prepaid, it is deposited in a box so provided at the correctional institution in which I am presently confined.

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct

(E) Name James Watts CDCR# P-56950

Signed James Watts Dated December 26, 2023

CIM MAILROOM ACKNOWLEDGEMENT OF MAILING

DATED _____ STAFF _____

SIGNED _____

WAIVER

SUPREME COURT OF THE UNITED STATES

No. 23-6111

Lawrence Remsen, et al. (Petitioner) V. Jennifer Shaffer, et al. (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- (●) I am filing this waiver on behalf of all respondents.
- ( ) I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- (●) I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- ( ) I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature: Sara J. Romano Digitally signed by Sara J. Romano Date: 2023.12.18 17:03:33 -08'00'

Date: 12/18/23

(Type or print) Name: Sara J. Romano

( ) Mr. (●) Ms. ( ) Mrs. ( ) Miss

Firm: California Attorney General's Office

Address: 455 Golden Gate Ave., Ste. 11000

City & State: San Francisco, CA Zip: 94102

Phone: 415-510-3613 Email: sara.romano@doj.ca.gov

A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service or cover letter is required.

cc: Lawrence Remsen
Alicia Richards

23-6112

DOCKET NO: 22A1085

IN THE
SUPREME COURT OF THE
UNITED STATES OF AMERICA

ALICIA RICHARDS & LAWRENCE REMSEN

Petitioners, et al.

- Against -

KATHLEEN ALLISON, Secretary, California Department of Corrections & Rehabilitation; JENNIFER SHAFFER, Exec. Officer of the State's Parole Agency; ROB BONTA, as State Attorney General; GAVIN C. NEWSOM, Governor of California

Respondents, et al.

ON PETITION FOR WRIT OF CERTIORARI FROM THE

SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

ALICIA RICHARDS
LAWRENCE REMSEN
CIM Alpha - Seven
P.O. Box - 3100
Chino, CA 91708

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 28, 2023

Mr. Lawrence Remsen
Prisoner ID C-67186
Alpha -7 (CIM) OH-156-L
P.O. Box No. 3100
Chino, CA 91708

Re: Lawrence Remsen, et al.
v. Jennifer Shaffer, et al.
No. 23-6111

Dear Mr. Remsen:

The petition for a writ of certiorari in the above entitled case was filed on August 29, 2023 and placed on the docket November 28, 2023 as No. 23-6111.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

Scott S. Harris, Clerk

by

Emily Walker
Case Analyst

Enclosures

Supreme Court of the United States

Lawrence Remsen, et al.
(Petitioners)

v. No. 23-6111

Jennifer Shaffer, et al.
(Respondent)

To Rob Bonata, California Attorney General Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on August 29, 2023, and placed on the docket November 28, 2023. Pursuant to Rule 15.3, the due date for a brief in opposition is Thursday, December 28, 2023. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Beginning November 13, 2017, parties represented by counsel must submit filings through the Supreme Court's electronic filing system. Paper remains the official form of filing, and electronic filing is in addition to the existing paper submission requirement. Attorneys must register for the system in advance, and the registration process may take several days. Further information about the system can be found at https://www.supremecourt.gov/filingandrules/electronicfiling.aspx.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Mr. Lawrence Remsen
Alpha -7 (CIM) OH-156-L
P.O. Box No. 3100
Chino, CA 91708

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

Lawrence Remsen C-67186
CIM-A7 OH-156 L
P.O. Box 3100

January 25, 2024

United States Supreme Court
Office of the Clerk
Attn. Senior Clerk Scott S. Harris and
Case Analyst Emily Walker
1 First Street N.E.
Washington D.C. 20543-0001

Re: Petition for Rehearing
Including Certificate on
Docket # 23-6111

Dear Ms. Walker:

Enclosed is our Petitioner for Rehearing. Please know that we made a strong effort to only address issues that were not addressed in the original Petition (See Rule 44).

Please file the Petition for Rehearing. We also have interested counsel. It is appropriate to have USSC admitted counsel contact you when we have confirmation of their intent to represent us? Your help in this regard is appreciated.

Very Truly Yours

Lawrence Remsen

Very Truly Yours

/S/
Alicia Richards

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

February 29, 2024

Lawrence Remsen
#C-67186
P.O. Box 3100
Chino, CA 91708

RE: Remsen, et al. v. Shaffer
No: 23-6111

Dear Mr. Remsen:

The petition for rehearing in the above-entitled case was postmarked January 26, 2024 and received February 7, 2024 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By:

Emily Walker
(202) 479-5955

Enclosures

APPENDIX - 2

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
GOVERNOR'S OFFICE	SB 42
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
LEGAL AFFAIRS	Nejedly & Way

Senate Bill 42 generally substitutes for the indeterminate law a system of determinate sentences. The bill conceptually moves from a "rehabilitative" model to a "punishment" model as the purpose of imprisonment for crime. The central purpose of the bill is to insure uniformity in sentencing for similar offenses and to permit a convicted person to know at the outset the length of his term.

With the exception of the most serious violent offenses (which remain indeterminate sentences), the legislation provides for four levels of determinate sentence choices, with three alternatives within each level. The four levels of sentences are (1) 16 months, 2 years or 3 years (this sentencing level applies to all felonies unless otherwise specified in the Penal Code); (2) 2, 3 or 4 years (e.g., bribe, robbery, simple manslaughter); (3) 3, 4 or 5 years (e.g., attempt to kill Governor, simple kidnapping); and (4) 5, 6 or 7 years (e.g., murder in the second degree, rape). These terms represent an average of parole board practice over the past five years utilizing the median time served for various offenses.

The trial judge, upon conviction, sentences the defendant, if imprisonment is ordered, to one of the three sentences prescribed for the specified crime. The judge must prescribe the middle of the three sentence choices unless there is a specific finding of fact indicating mitigating or aggravating circumstance whereby the judge may sentence the defendant to the lower or upper term respectively.

Additionally, in determining the sentence length, the judge must consider other factors such as armed with a deadly weapon, use of a firearm, an excessive taking or damage, the infliction of great bodily harm, additional crimes of which the defendant stands convicted, and the defendant's prior record of felony terms served (with specific provisions for specified dangerous priors), provided such factors are plead and proven. There is a presumption that such factors, if plead and proven, will be utilized to lengthen the sentence unless the judge finds circumstances in mitigation, in which case the judge may strike the additional punishment. Reasons for all sentencing decisions made by the judge are required to be stated on the record. The attached sheet provides a fuller exposition of typical sentences under the bill.

It cannot be known whether sentences imposed under S.B. 42 will be longer or shorter; my guess and that of most law enforcement officers is that sentences will remain roughly the same. Violent crimes by repeat offenders will probably receive slightly longer terms and certain drug-related offenses may receive slightly shorter ones. What is certain is that trial judges will have the discretionary authority to lengthen sentences, should they wish to exercise it. Moreover,

IGN

	DATE	LEGAL AFFAIRS SECRETARY	DATE
		J. Anthony Kline	9/15/78

after S.B. 42, the Legislature will have the power to lengthen sentences for particular crimes. Certain legislators, such as Vasconcellos, Meade and Kapiloff, opposed S.B. 42 because they believe the Legislature will abuse this power when the media sensationalizes a crime, as in the deKaplany case.

For the purpose of promoting uniformity in sentences for similar offenses, the Judicial Council is required to establish rules for the trial judge's consideration regarding the following: placing the defendant on probation or sentencing to state prison; considering mitigating and aggravating circumstances; sentencing concurrently or consecutively for additional crimes; and imposing additional punishment for prior prison terms, armed with a deadly weapon, use of a firearm, extensive taking or damage and the infliction of great bodily injury. An additional requirement in the bill that the Judicial Council annually report to the Legislature and the Governor on sentencing practices in other jurisdictions is intended to provide a rational means of evaluating future legislative efforts to lengthen or shorten terms.

The legislation abolishes the Adult Authority and the Women's Board of Terms and Paroles and establishes a statewide Community Release Board to make parole determinations regarding both men and women who continue to be sentenced indeterminately. The Community Release Board shall be composed of nine (9) members, all appointed by the Governor. Two (2) shall be from the Adult Authority, two (2) from the Women's Board, and five (5) from anywhere. The Community Release Board shall also review sentences to promote uniformity, with the authority to recommend resentencing of a defendant if the Board determines that the sentence prescribed by the trial judge is "disparate". Pursuant to amendments by Assemblyman McAllister, the meetings of the Community Release Board are public, hearings are transcribed, and notice is given to the district attorney, police chief, defense attorney and others.

The Department of Corrections is required to permit the inmate to earn a reduction in sentence for good behavior and participation in prescribed activities while in prison. Maximum reduction for good-time is one-third of the term. Behavior constituting violations of good-time are specified and a procedure for denial of good-time for such violations or failure to participate are provided for in the bill.

A determinate period of parole of one year for those determinately sentenced and three years for those indeterminately sentenced is provided for in the legislation, with a provision to revoke parole for a period of up to 6 months for behavior in violation of the

conditions of parole. Although the Department of Corrections opposed limiting parole to one year for most offenses, law enforcement, including Ray Procunier, accepted this limitation for several reasons. First, over 70% of all parole violations occur in the first year; second, over 80% of all parole violations are detected by the police, not the parole officer, and could be the basis for an independent criminal prosecution; lastly, limiting most parole's to one year could result (if the number of parole offenses remains the same) in much closer supervision during the critical first year.

The claim of a few people that S.B. 42 will result in the release of large numbers of dangerous convicts is unfounded. This claim is based on the requirement that the Community Release Board "retroactively" apply terms prescribed by S.B. 42 for all inmates sentenced under prior law. However, S.B. 42 does not require that an S.B. 42 sentence be applied. Indeed, section 1170.2(b), at page 128 of the bill, authorizes the Community Release Board to impose a longer term and retain an inmate where a majority of the Community Release Board "determine that due to the number of crimes the prisoner was convicted of, or due to the number of prior convictions ..., or due to the fact that the prisoner was armed with a deadly weapon when the crime was committed, or used a deadly weapon ..., or inflicted or attempted to inflict great bodily injury..." The only type of potentially dangerous prisoners that might be released are those who are mentally disordered. Ray Brown and Jerry Lachner have met to discuss methods of dealing with this problem under the LPS Act. (If necessary, they will prepare a clean-up bill which Senator Nejedly will introduce in January as an urgency measure.)

If you sign this bill, as I strongly recommend, California will be the first major state to move decisively toward determinate sentencing. Among all the states, only Maine has already enacted a law repealing indeterminate sentencing. Illinois and Minnesota are in the process of doing so. All of the major states have indeterminate sentence laws. Only a few of the smaller states have partial determinate sentencing laws, but nothing on the magnitude of S.B. 42.

Attachment

JAK:er

September 3, 1976

HIGHLIGHTS
of
SENATE BILL 42

SENTENCING

SB-42 generally replaces the indeterminate sentence with a determinate sentence imposed by the trial court at the time of sentencing. The exceptions are capital crimes and those offenses having straight life sentences, with or without the possibility of parole, i.e., first degree murder, kidnapping for robbery or ransom. The bill establishes a narrow range of three specific time periods for those other crimes, all of which will become determinate. The sentence ranges are 16 months, 2, or 3 years; 2, 3, or 4 years; 3, 4, or 5 years; and 5, 6, or 7 years. The sentencing judge is required to choose the middle sentence in the absence of a motion and supporting evidence in mitigation or aggravation of the crime. All felony sentence decisions must be supported by a statement of reasons on the record by the sentencing judge.

Note: § 1170.

ENHANCEMENTS

PRIOR PRISON TERMS

Senate Bill 42 provides for an additional term of one year for each prior prison term (three years for violent felony priors). However, if there are sufficient circumstances in mitigation, the trial court may strike the additional punishment, provided reasons are stated for the record. A five-year wash-out is provided for most priors (ten years for violent felony priors).

Note: P.C. § 667.5.

CONSECUTIVE SENTENCES

Senate Bill 42 provides an additional sentence of one-third the middle term of the crime for which the consecutive sentence is imposed.

Note: P.C. § 1170.1a(b).

LIMITATIONS

The enhancements for both prior terms (not including the three year priors) and consecutive sentences shall not exceed five years. P.C. 1170.1a(e). Except for the most serious felonies specified in P.C. § 667.5(c), or for felonies involving arming, use of a firearm, or great bodily injury, the term of imprisonment shall not exceed twice the base term imposed by the trial court. Note P.C. 1170.1a(f).

ARMING, USE OF A FIREARM, GREAT BODILY INJURY, OR EXCESSIVE TAKING

Enhancements of 1, 2, or 3 years, or a percentage of the base term are prescribed for arming, use, G.B.I., or excessive taking, respectively. In no instance can these enhancements be added where they are an element of the crime. No more than one enhancement can apply to the sentence for any single offense. The court may strike the additional punishment if there are sufficient circumstances in mitigation but reasons must be stated for the record.

Note: P.C. § 12022, 12022.5, 12022.6, 12022.7, 1170.1a(d).

GOOD TIME

SB-42 has a good time provision for reduction of the court ordered sentence. The total possible good time credit that may by granted is four months for each eight months served in prison. One of the four months is for participation in programs. The remaining three months are for refraining from assault with a weapon, escape, assault, possession of a weapon, possession of a controlled substance, attempt to escape, urging others to riot if violence results, destruction of state property, falsification of documents, possession of escape tools and the manufacture or sale of intoxicants. Depending on the offense, either 45, 30, or 15 days good time credit can be lost. Extensive procedural guidelines are established.

Note: P.C. § 2930

PAROLE

The parole period for all inmates receiving a determinate sentence shall run no longer than one year, and no longer than three years for those inmates remaining indeterminately sentenced. The parole period runs continuously, except for a parolee who absconds.

Note: P.C. § 3000

PAROLE REVOCATION

The maximum return for a technical violation in the absence of a new conviction is for six months, but in no case to extend beyond the total parole period specified in the bill.

Note: P.C. § 3057.

JUDICIAL COUNCIL

The Judicial Council has a number of duties, including the adoption of rules to promote uniformity in sentencing by providing criteria for the consideration of the trial judge, and monitoring that uniformity by acquiring and distributing statewide sentencing data every three months.

Note: P.C. s 1170.3, 1170.4.

COMMUNITY RELEASE BOARD

The Community Release Board will consist of two members from the Adult Authority and two members from the Women's Board of Terms and Paroles, and five other members appointed by the Governor. The duties of the C.R.B. shall include reviewing prisoners' request for reconsideration of denial of good time, determining questions of parole revocation, setting terms for inmates remaining indeterminately sentenced, and applying the retroactive provisions of the bill.

Note: P.C. § 5075.

RETROACTIVITY

The retroactive provisions of the bill will fix determinate sentences for those inmates currently incarcerated who would have received a determinate sentence if they had been sentenced after the effective date of the bill. The C.R.B. is obliged to determine what the length of imprisonment would have been under § 1170 without consideration of good time credit. The C.R.B. shall choose the middle term of the longest commitment offense, enhanced by any court imposed aggravations, using the terms set in the bill. A special provision allows the C.R.B., upon a majority decision, to set a higher term because of factors such as number of crimes convicted of, number of prior convictions, arming or use of a deadly weapon, infliction or attempted infliction of great bodily harm. In this event, the inmate shall be entitled to a hearing, with representation by legal counsel. In no instance can an inmate be required to serve a term longer than a parole date previously set by the Adult Authority, or longer than he could have served under the indeterminate sentence law.

The good time provisions are not retroactive. Those inmates currently incarcerated would retain their present parole eligibility and will be eligible to receive good time credit for the period of incarceration remaining after the effective date of the act.

All parole provisions in the bill will be retroactive.

Note: P.C. § 1170.2.

EFFECTIVE DATE

Senate Bill 42 will become effective on July 1, 1977. The California Department of Corrections will have a ninety day grace period after the effective date of the bill in which to make an orderly transition to SB-42's determinate sentencing provisions.

BENEFITS OF SB 42, AS AMENDED APRIL 22, 1976
IN COMPARISON WITH CURRENT LAW

1. In accord with the almost total lack of belief in or proof of the validity of any kinds of predictors either as to the causes of crimes or the cure of offenders, SB 42 explicitly places personal responsibility on offenders and recognizes that prison is punishment for the act, thus completely changing the emphasis of the system from a sick-treatment-medical model. [1170(a))1):P.126. Also proposed amendments.]

2. Places length of prison sentence within narrow limits in hands of people's representatives (the legislature) for almost all crimes, a change from current unlimited sentencing discretion of executive appointees. [1170(a)(2); 1168: Pp. 125-126.] (But small number of punishment categories and interrelationship of offenses in those categories makes it difficult to logically change any one crime's punishment as a result of an immediate emotional reaction without considering the effect on the whole.)

3. Logically orders prison time in increasing amounts proportionate to the increasing injury of the crime to the victim or public interest, a complete change from the current disparity inherent in a system based on treatment rather than punishment. [1170(a) (1): P.126]

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*Keyed to P.C. Section and Page of April 22 Amended version.

4. Makes crime, for those left indeterminate, rather than "prediction of behavior" criteria for parole date setting ~~with Judicial Council guidelines~~. [3041:P.144]

5. Legislatively fixed range of sentences eliminates disparity in prison sentences for same crimes currently due to changing political, social and economic influences on appointed parole board system with unlimited sentencing discretion. [1170(a)(1):P.126]

6. Removes disparity in prison sentences for same crimes currently due to use of invalid behavior science predictors presently legally required under current indeterminate rehabilitation system. [1170(a)(1):P.126]

7. Avoids disparity in prison sentences for same crimes currently due to conscious or unconscious influences of personal biases of parole board members under a system which provides unparallelled discretion in sentencing. [1170(a)(1): P.126]

8. Retains flexibility in sentences due to specifics of the particular incident and offender but only within very narrow bounds rather than the unlimited possibilities for abuse of current system. [1170(b):P.127)

9. Requires for the first time a body to provide criteria to trial judges for their guidance in selecting sentences even within the strictures of the Act. [1170(a)(2): 1170.3: Pp. 126 & 135. Also proposed amendments.]

10. Requires, for the first time, a body to provide periodic statewide and national sentencing data to trial judges as an additional guide to their sentencing choices as an additional impetus for uniformity in sentencing. [1170.4:P.135. Also proposed amendments.]

11. Requires trial judges for the first time to state reasons on the public record for selection of probation or the specific prison sentence within the narrow confines required. [1170(b); 1170.1:Pp.127]

12. For the first time, provides notice to the public of the actual prison time to be served for each crime, to law enforcement a knowledgeable basis for charging and plea bargaining, to the offender and defense the real benefits or not of any plea bargain offered, and to the offender and his family and friends and all others interested (victim) the actual time he will serve in prison less good time immediately upon the completion of sentencing; a complete change from the current unknown quantity inherent in indeterminancy until parole is granted. [1168;1170(b): Pp.125 & 127.]

13. Logically provides additional prison time for prior prison terms rather than present illogic of law pertaining to prior convictions. [667.5:P.123]

14. Provides for wash-out regarding prior prison terms - 5 years for most; 10 years for eight most serious crimes (may be only state with such provision). [667.5:P.123. Also proposed amendments.]

15. Simplifies by consolidation and makes time certain and proportionate when ordered for multiple and conflicting penalty provisions for consecutives and enhancements of arming and use. [1170.1a;12022;12022.5:P.128,160-1.]

16. Adds a great bodily injury enhancement possibility whenever the element is present in the circumstances of any crime rather than as an element of only selected crimes as present. [12022.7:P.162.]

17. Adds two great societal injury enhancement possibilities where deprivation of property or damage to the public as defined in existing criminal offenses are present in amounts in excess of $100,000 or $500,000. [12022.6:P.162.]

18. Abolishes habitual offender sections and replaces with a list of most serious crimes requiring that defendant must be

convicted of one such crime in order to be sentenced with special prior term enhancements for having had such prior terms as well. /667.5:P.123. Also proposed amendments./

19. Provides greater incentive for good behavior in prison by certain time reductions for refraining from special overt acts. /2931/

20. Provides continued external incentive for program involvement by tying small part of time reduction to participation only, not anyone's judgment of success. /2931(c):P.138./

21. Sets up specific statutory safeguards against abuse in good time denial and remaining parole release, postponement or recision hearings exceeding any current court requirements. For example: Complete discovery of prisoner's central file by prisoner (exceeds OLSEN, eliminates "unnamed source" information). Provides for legal counsel at parole hearing if date is rescinded or set 3 years beyond minimum eligible parole date. (Injects attorneys into correctional system.)

22. Limits parole periods to short times consistent with current studies. Limits imprisonment for technical parole revocation to short periods rather than current discharge date which can be relatively distant and imposed without the due process of a new conviction. 1 year determinately sentenced; 3 years

indeterminately sentenced; maximum revocation 6 months - parole period continuous (eliminates "life on the installment plan"). [3000;3057;Pp.142 & 147.]

23. Requires retroactivity of new sentences to those already imprisoned if time would be shorter under new law with narrow flexibility to retain beyond these shorter times only those deemed still dangerous on the basis of specified facts not mere speculation. [1170.2:P.132. Also proposed amendments.]

24. Requires administrative review of all prisoners for disparity with remedy of recall. [1170.1b:P.130. Also proposed amendments.]

Bruce Koklich, V-25135
Lawrence Remsen, C-67186
Alpha - 5 (CIM) MH-156-L
Post Office Box No. 3100
Chino, California 91708

NOTICE & LETTER BRIEF

Aug. 18, 2023

The Honorable Nancy Skinner
Senate Majority Whip
senator.skinner@senate.ca.gov
State Capitol
Sacramento, California 95814

Re: State Sentencing Laws and
Cal. Supreme No. S280562
U.S. Supreme No. 22A1085
& U.S. Supreme # 23-5097.

The Honorable Nancy Skinner:

In reference to our last correspondence dated 12/29/20, regarding the way our State's Sentencing Laws are being unlawfully enforced and in conflict with the Legislative Declaration in Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15, as to the Pupose & Policy for imprisonment for crime, we have attached additional information for your consideration on whether or not uncertain (indeterminate) sentencing can exist after its repeal effective July, 1, 1977.

Senator Skinner, as a lawmaker yourself, you already know from State and Federal Law that the Legislatively declared purpose for the law controls all other provisions for which the purpose and policy for that law was made (See: SB-42 [1976] and its Seven Category Sentencing Structure; cf. AB-476 @ Pg. 17, lns. 21 thru 36; cf. APPENDIX 1 - Our most recent Notice to the Director of the California Appellant Project with ATTACHMENT 1 - REQUEST TO TAKE JUDICIAL NOTICE). This Attachment not only shows the disparity on how one part of the class for which the Determinate Sentencing Law was created, are being denied the same rights and privileges as the rest of the class (See: Cal. Const. Art. I § 7(b)). Petitioners posit that this was due to the unlawful actions taken by John V. Briggs who was a maverick Senator back in 1978 when he used the People's Initiative when he did not have the votes for a Referendum in his attempt to defeat the DSL (See: 1978 Prop. 7 Initiative).

As shown in our previous correspondence, at the end of the day, the 1978 Prop. 7 Initiative, like all other uncertain punishment that conflicts with the Legislatively Declared Purpose and Policy in Pen. Code § 1170(a)(1), as it existed in 1978, must be declared as being "Void on its Face, as an unlawful attempt to reenact the Indeterminate Sentencing Law (ISL) by adopting the sentencing structure from the repealed ISL without submitting the subject to the voters and for adopting the sentencing struture from the repealed law in violation of our State Constitution (See: Cal. Const. Art. I § 26, Art. II § 8(d) & Art. IV § 9; cf. Gov. Code § 9609). Moreover, State Law shows that crimes set forth in SB-42 (1976) as Category Four and below could not be changed from determinate terms back to indeterminate term under the repealed ISL even if the subject had been presented in Prop. 7 (See: Association for Retarded Citizens v. Dept. of Developmental Services, 38 C3d 384, 390-94 [211 C.R. 758] (1985) Held: Initiative cannot be used to vest an administrative agency authority it no longer possess]). To those of us who have served longer punishments than those existing from 1917 thru 1977, before repeal of the ISL, we have been denied equal protection of the Determinate Sentencing Law and the Legislative Declaration in Pen. Code § 1170(a)(1); while the taxpayers' dollars

are used illegally to pay for the unlawful sentencing and incarceration of thousands of prisoners under a repealed sentencing law (See: SB-42 [1976] & AB-476 [1977]).

Based on our previous Notice and Letter Brief and the information contained therein, the questions we are presenting are critical and as a representative of the people with a highly ethical reputation, can you stand back and allow persons to be deprived of their liberty by a ministerial agency acting under a repealed sentencing law that cannot be constitutionally administered by the same branch charged with the prosecution? Especially when all the evidence shows that the Parole Agency is acting without jurisdiction by deciding when or if a person should be given their freedom by performing a strictly judicial power on who is and who is not a threat to public safety. This is in direct conflict with Article III § 3 of the State Constitution and the Legislative Declaration in Pen. Code § 1170(a)(1) (See: Stats 1977 Ch. 165 § 15 cf. AB-476 Pg. 17, lns. 21 thru 36; cf. People v. Olivas, 17 Cal.3d 236, **243-44** & **246-47** [131 CR 55] (1976); cf. Alleyne v. Unied States, 133 S.Ct. 2151, **2155-65** [186 L.Ed. 2d 315] (2013); cf. Cal. Const. Art. III § 3).

Senator Skinner, for your information, we now have three (3) cases on these matters pending. Two are in the United States Supreme Court (See: Case No's 23-5097 & 22A1085). We have one in the State Supreme Court (See: Case No. S280562). And we are in the process of filing a Fed. Rules of Civil Proc. Rule 71 Petition to enforce the Ninth Circuit and United States Supreme Court decisions that have already ruled that:

1. California Repealed its ISL effective July 1, 1977, along with all its "Ways, Means, Purpose & Policy, necessary for uncertain sentencing to exist, and the ISL has never been constitutionally reenacted according to law (See: Pen. C. §§ 12 & 13);

2. The State's Parole Agency's authority is confined to those persons with SB-42 Category Five Crimes whereby they are sentenced to a determinate straight life sentence which has no minimum term and the term fixing and extending authority the Parole Agency possessed from 1917 thru 1977, was expressly repealed;

3. Prisoners have a vested liberty interest based on their contractually earned good-time and participation credits to be released on time, once those credits have vested (See: Pen. Code § 2931, Stats 1977 Ch. 165 § 38; cf. Alleyne v. United States, supra, 133 S.Ct. @ pp. **2155-65**; cf. Toussaint v. McCarthy, 801 F.2d 1080, **1094-97** (9th Cir. 1986); Toussaint v. McCarthy, 597 F. supp. 1388, **1416-18** (N.D. Cal. 1984); Sandin v. Conner, 515 U.S. 472, **478-80** [115 S.Ct. 2293] (1963) and Wolff v. McDonnell, 418 U.S. 539, **555-57** [94 S.Ct. 2963] (1974)).

Please take notice that we are not only challenging the constitutionality of having the courts impose to a certainty the punishment for crime at the time of sentencing pursuant to Pen. Code §§ 12 & 13, after the Parole Agency had its term fixing & extending powers repealed and returned back to the courts, we are challenging proportionality as to the amount of time each offender serves as compared to those who have committed greater crimes but have served lesser punishment (See: APPENDIX 1 - Letter to the California Appellate Project with ATTACHMENT 1 - REQUEST TO TAKE JUDICIAL NOTICE ...).

Please take notice that if what was declared as the Legislative Policy in Pen. Code § 1170(a)(1) is true, then Prop. 7 could not be used to defeat that policy and no matter what the circumstances are once that policy is made, all other statutes must conform and if the Legislature does not follow its own policy and/or the courts do not impose the final punishment to be served at the time of sentencing, a fundamental constitutional structural error has occured (See: e.g., Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, **357** [51 S.Ct. 476] (1931) and Thome v. Macken, 58 Cal.App.2d 76, **81** [135 P.2d 16] (3d Dist. 1943) Re: Declaration for the Purpose & Policy).

Based on all the issues we raised in our prior "NOTICE & LETTER BRIEF", and those contained herein, we posit that **ALL** the State Court Judgments imposing "Term to Life" sentences after repeal of the ISL EFFECTIVE July 1, 977, are "**void ab inito**" for uncertainty in the term and the conflict with Pen. Code § 1170(a)(1)'s Legislative Declaration and because the courts lack jurisdiction to impose indeterminate sentences when uncertain punishments cannot exist under California Law without its "Ways, Means, Purpose & Policy"; so that all offenders whose crime was committed on or after July 1, 1977, serve the same punishment as fixed by the Legislature and imposed to a certainty by a court of Law (See: Pen. Code §§§ 1170(a)(1), 2931, & 3000, Stats 1977 Ch. 165 §§§ 15, 38, & 42; cf. AB-476 at pg. 17, lines 21 thru 36 & Pen. Code §§ 12 & 13).

Senator Skinner, we have posed the above questions to our State Representatives because we can't understand how or why they can stand by knowing people are being deprived of their liberty and being subjected to uncertain punishments, whereby the same branch of government is making law and deciding different punishments for different people committing the same crime? Is this not a terrible waste of taxpayer dollars while our streets are being lined with homeless people? In short, while I was growing up, and during my service in the Marine Corps, and after I was arrested back in 1981 and came to prison in 1983 and to this date, I still can't believe we think its more important to spend our taxpayer dollars to keep people in prison under a repealed sentencing law whereby the same branch in charge of their prosecution, is performing the Legislatures exclusive function based on its own policy declaration, while our streets are full of homeless people who are forced to live on our streets because our laws are not being enforced according to their terms and provisions. We say, **NO**, not in this Country!

In conclusion, we are submitting indisputable factual evidence of how the Executive Branch Attorney General has committed a fraud on the courts and against the State taxpayers in violation of the Rules of Professional conduct (See: APPENDIX 1 - Notice & Letter Brief to the California Appellate Project at p. 2 ¶ 6 In re Butler and APPENDIX 2 - copy of pages taken from the AG's filings in the "Butler" case claiming that when Prop. 7 was passed both Pen. Code § 187's in the 1st and 2nd degrees were indeterminate terms when in point of fact and law, both were determinate terms. For example, a 1st degree Pen. Code § 187 has always been an exception to indeterminate sentencing as its fixed by the Legislature and imposed by a court "FOR LIFE" (citations in Attachment 1).

Our last question to you and your consituency is why should the taxpayers be forced to fund a Statewide Ministerial (Outlaw) Agency to make law and force different offenders committing the same crime to serve different punishment that are being arbitarily and capriciously decided by the same branch charged with the person's prosecution? Is this not only "Fundamentally Unfair" but an

APPENDIX - 3

Bruce Koklich, V-25135
Lawrence Remsen, C-67186
Alpha - 7 (CIM) OH-156-L
Post Office Box No. 3100
Chino, California 91708

"NOTICE & LETTER BRIEF"

Pursuant to: 31 USCS 5323

July 18, 2023

CALIFORNIA APPELLATE PROJECT
Los Angeles Office
Richard B. Lennon,
Executive Director
520 S. Grand Avenue, Fourth Floor
Los Angeles, California 90071

Re: Prior Notice on State Sentencing Laws

Dear Mr. Lennon:

Greetings. Please accept this as our follow-up notice to our previously filed "LETTER BRIEF" mailed on April 11, 2023 and proving that those sentenced to "Life Without Parole", and others unlawfully imprisoned, must be resentenced by a court of law based on the laws in effect and the specific language used in the Prop. 7 Initiative on Nov. 7, 1978.

Its now been almost three months and we have had no response to our claims and this means to us that you have not found reason to ignore the errors we uncovered in the statutes or laws that would give rise to a legal dispute on how our State Sentencing Laws are being unconstitutionally construed and implemented. For example, we adopt herein all the issues we previously submitted and add that our notices to the California Appellate Project (CAP), provided indisputable factual evidence of the following facts:

1. California's Indeterminate Sentencing Law (ISL) was repealed effective July 1, 1977 and has never been constitutionally reenacted (See: SB-42 [1976] & AB-476 [1977]); and

2. Along with the repeal of the ISL, California's Legislature repealed the Parole Agency's Term Fixing Powers and returned them back to the courts pursuant to Pen. Code §§ 12 & 13 (See: Pen. Code §§ 12 & 13 and Gov. Code § 815.6); and

3. In the AB-42 legislation, the Legislature stated that the purpose for imprisonment for crime was "Punishment for the Crime Itself" and confined the Parole Agency's jurisdiction to SB-42's Category Five List of Crimes and no other (See: SB-42 and its Seven Category Sentencing Structure; cf. AB-476 as to the Legislatively Declared Purpose for Imprisonment for all Crimes committed on or after July 1, 1977); and

4. As interested parties being held to serve uncertain punishments for crimes committed after July 1, 1977 and who were part of SB-42's Seven Category Sentencing Structure whose punishment was fixed by the Legislature as "determinate terms" below Category Five and that at the time

the Prop. 7 Initiative was ratificed on Nov. 7, 1978, at which time, the Parole Agency had no jurisdiction nor term fixing powers. This indisputably proves that there has been a fraud on the courts costing the state and federal taxpayers billions of dollars for the false imprisonment of people under a repealed laws sentencing structure where the same branch of government charged with the prosecution has been unlawfully performing judicial and legislative powers by providing different punishments for different offenders committing the same crime for over the last 40-years; in violation of numerable provisions of our State and Federal Constitutions (See: Cal. Const. Art. 1 § 7(a)&(b), Art. 1 § 17, Art. III § 3 & Art. IV § 9 and the 1st, 5th, and 8th Aemndments as codified under the 14th Amend.); and

5. As a Judicial Officer in charge of CAP, you must be familure with State Law and controlling decisions made after Prop. 7. As this case shows inter alia, we are challenging Prop. 7 as being "Void on its Face" because Senator John V. Briggs, Prop. 7's author did not have the power of initiative when he did not have the power of referendum and the constitution prevents him from adopting a section, such as the term to life sentencing structure, from the repealed ISL (See: Letter Brief dated April 3, 2023 at paragraph 2 and cases cited therein). This means that decisions made after Prop. 7, such as "Dannenburg, Felix, & Butler", are of no account and are a fraud on the State's Highest Court. For example, nowhere in any of those cases, which cannot be retroactively applied to crimes committed before those decisions, are simply an unlawful attempt to make law and contravene the mandatory legislative declaration on the purpose and policy for imprisonment for ALL crimes committed on or after July 1, 1977 (See: Stats 1977 Ch. 165 §§§ 15, 38, & 42; cf. AM Jur. 2d § 23 on Public Policy regarding the Legislative Declaration in Pen. Code § 1170-(a)(1), Stats 1977 Ch. 165 § 15, citing: Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, 51 S.Ct. 476 (1931) and Thome v. Macken, 58 Cal.App.2d 76, 136 P.2d 116 (3d Dist. 1943)). Furthermore, the purpose of the ISL and the DSL are dimetrically opposite. For example, prior to the ISL's repeal, the sentence for SB-42 Category Four and below were indeterminate sentences ranging from 6 months to life to 5-years to life and the Straight Life sentence was an exception to indeterminate sentencing as a fixed determinate term of Life with or without the possibility of parole (See: In re McManus, 123 C.A. 395, 396 n.1 [266 P.2d 929] (1954); cf: ATTACHMENT 1 - LIST OF DECISIONS FOR JUDICIAL NOTICE, etc.). But after July 1, 1977, the purpose for imprisonment became "punishment for the crime itself" (See: Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15); and

6. Please take notice that we are alleging that the State's Sentencing Laws are not being lawfully enforced according to law and anything that would allow for uncertain punishments for crimes committed on or after July 1, 1977, not only contravene the Legislative Declaration in Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15, but cannot exist under the American Justice System. For example, in reading In re Butler, Case No. S237014 Filed Jan. 17, 2017, on page 3, the Attorney General violates the "Rules of Professional Conduct" (Rules 3.1 thur

3.4) when he states that: "The DSL, however provided for a form of indeterminate sentencing for a small class of offender who commit serious, violent crimes, such as first and second-degree murder..." etc. When in point of fact and law, on July 1, 1977 under the DSL, both 1st and 2nd degree 187's were determinate terms of 5, 6, or 7 years for second, and Straight Life for 1st. In short, the punishment for 1st degree remained as a determinate term from 1917 to date, otherwise, as stated in the case of In re Lynch, 8 Cal.3d 410, 419-422 [105 CR 217] (1972), the sentence would be void for uncertainty (ibid) (See: also, People v. Walker, 18 Cal. 3d 232, 243-44 [133 CR 520] (1976)) and

7. Lastly, we wanted you to be aware that in addition to showing that Prop. 7's Pen. Code § 190.2 was found to be unconstitutional twice yet it seems as though no one wants to enforce its terms and provisions stating in the last paragraph of the initiative that if any part of Prop. 7 is found to be unconstitutional, and the person has been sentenced to "Life Without Parole", they will instead be sentenced to "25 years to life"; but see Prop. 7's 190.4 as to the court fixing the term at 25 years (Emphasis Added). Based on these truths and those previously presented, we are in the process of filing a complaint with the State Bar and the Judicial Counsel against the list of Attorney Generals who committed a fraud on the court in the Butler, supra, case in violation of the Rules of Professional Conduct and their Oaths of Office. We will do this before removing the entire matter to a federal district court on the State Attorney General's failure to enforce the law according to its term and provisions (See: Maine v. Thiboutot, 448 U.S. 1, 20-21 [100 S.Ct. 2502] (1980)). In closing, we need to know CAP's intentions before we turn this matter over to the Department of Justice and Janet Yellen the Sec. of the Treasury in our "Whistleblower Complaint" for the unlawful use of federal funds for the lack of "Truth in Sentencing" and the unconstitutional imprisonment of so many under a sentencing scheme (ISL) that was repealed and has never been lawfully reenacted (See: SB-42 [1976] AB-476 [1977]; cf. Pen. Code §§ 12 & 13 and repeal of Pen. Code §§ 671, 2920, 2940, 3020 thru 3025, and amending 5077 to remove the last vestage of the Parole Agency's term fixing powers, Stats 1976 Ch. 1139 and Stats 1977 Ch. 165).

Respectfully submitted on behalf of all those being held under a repealed laws sentencing structure in violation of the State and Federal Constitutions.

Sincerely yours,

Bruce Koklich

Lawrence Remsen

Lawrence Remsen

CC: Governor Gavin C. Newsom
The Hon. Senator Nancy Skinner
Lori Austin, Chair of the State and Federal Taxpayers Coalition
Rob Bonta, State Attorney General, et al.

PROOF OF SERVICE BY MAIL

Case Name: Lewis Harden, et al.,

vs.

Board of Parole Hearings & the Department of Corrections and its Officers, et al.

Case Number: _____

I James Watts, P56950, declare and state as follows: I am 18 years of age or older and not a party to this action. My address is 14901 Central Ave., Chino, California 91710.

On July (Month) 18th (Day) 2023, I served the attached "Letter Brief" to Enforce Mandatory State Law Statutes and on matters now pending appeal in the State and Federal Courts, by placing a true copy enclosed in a sealed envelope with postage fully paid thereon in the United States Mail at the CIM Post Office Box Chino, CA. 91710, addressed as follows:

PARTIES SERVED

NAME	ADDRESS	DATE SERVED
Jeffery Macomber, Secretary for CDCR	Post Office Box No. 942883 Sacramento, CA 94283-0001	7/18/23
Board of Parole Hearings Jennifer Shaffer, Executive Officer	Post Office Box No. 4036 Sacramento, CA 95812-4036	7/18/23
Richard B. Lennon, et al, Executive Director	CALIFORNIA APPELLATE PROJECT LOS ANGELES OFFICE 520 S. Grand Ave. 4th Floor Los Angeles, California 90071	7/18/23
Rob Bonta, Attorney General	1300 "I" Street, Suite 125 Sacramento, CA 94244-2500	7/18/23
Gavin C. Newsom, Governor of the State of California	Governor's Office State Capitol, First Floor Sacramento, CA 95814	7/18/23
Lori Austin, Chair of the State and Taxpayer Coalition	2539 Lotus Lane Central Point, OR 97502	7/18/23

I James Watts, declare under penalty of perjury and under the laws of the United States of America, the foregoing is true and correct, and that this declaration was executed on July (Month) 18 (Day) of 2023, at 14901 Central Avenue, Chino, California 91710.

Mr. James Watts: _____ Date: 7/18/23
Signature

TABLE OF AUTHORITIES

PROOF OF SERVICE BY MAIL

Case Name: ALLEN R. AUTEN, Petitioner, et al.,

vs.

KATHLEEN ALLISON, CDCR Sec.; JENNIFER SHAFFER, Executive Officer of the BPH; ROB BONTA, (A), CAL, Attorney General; JAMES HILL, (A) CIM Warden; and GAVIN C. NEWSOM et al, Governor of the State of California,

Respondents, et al.

Case Number: _____

I Lori Austin, declare and state as follows: I am 18 years or older and not a party to this action. My address is 2539 Lotus Lane, Central Point, Oregon 97502-8407.

On April (Month), 18th (Day), 2022, I served the attached **NOTICE AND WRIT OF HABEAS CORPUS**, by placing a true copy enclosed in a sealed envelope with postage fully paid thereon, in the United State Mail, at the Post Office at Central Point, Oregon 97502 addressed as follows:

PARTIES SERVED

NAME	ADDRESS	DATE SERVED
California Supreme Court Attn: Clerk of the Court San Francisco, CA 94102-4797	Earl Warren Building 350 McAllister Street	4.18.22
Calif. Inst. for Men J. Hill, (A) Warden	Post Office Box No. 128 Chino, California 91708	4.18.22

I declare under penalty of perjury and under the laws of the United States of America, the foregoing is true and correct, and that this declaration was executed on April (Month) 18th (Day), 2022, at 2539 Lotus Lane, Central Point, Oregon 97502.

Mrs Lori Austin: Lori Austin
Signature

4.18.22
Date

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 3-95)
SP 05 90192

LIST OF DECISIONS CALLING FOR JUDICIAL NOTICE THAT SUPPORT THE CLAIMS THAT PETITIONERS ARE BEING UNLAWFULLY IMPRISONED UNDER A REPEALED LAW'S SENTENCING STRUCTURE THAT CANNOT BE LAWFULLY ADMINISTERED BY A MINISTERIAL PAROLE AGENCY ACTING UNDER THE SAME BRANCH CHARGED WITH THE PROSECUTION BUT WHO IS LACKING JURISDICTION AND THE POWER TO FIX TERMS DECIDING DIFFERENT PUNISHMENTS FOR DIFFERENT OFFENDERS FOR THE SAME CRIME, AFTER THE PURPOSE FOR SUCH LAW CEASED TO EXIST.

1. **Alleyne v. United States,** 133 S.Ct. **2151, 2155-63 & 2164-65** [186 L.Ed. 2d 314] (2013).

Held: "... **any** fact that, by law, increases the penalty ... is an **element**" that **must** be submitted to the jury and found beyond a reasonable doubt" (citation). "Mandatory minimum sentences increase the penalty for a crime. It follows, then, that **any** fact that increases the mandatory **minimum** is an "element" that must be submitted to the jury." In short, any fact that increases the **minimum** term **must** be decided by a court of law and **not** some ministerial agency **see United States v. Gonzales,** 520 U.S. 1, **6** (1997)

2. **In re Morgante,** 204 Cal.App.4th 904, **935-937** [139 CR3d 430] (2012)

Held: "The central thesis of the DSL., diametrically opposed to those of the ISL, are reflected in the legislative findings and declarations set forth in the first provision. The DSL commences with the propostion that the purpose of imprisonment for crime is **not** rehabilitation, but "**punishment**", and states that "[t]his purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances." (§1170, subd. (a)(1); see also Morris, The Future of Imprisonment: Toward a Punitive Philosophy, 72 Mich. L. Rev. 1161.) "The Legislature further found and declared That the elimination of dispartity and the provision of uniformity of sentences can best be achieved by **determinate** sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion." (1170, subd. (a)(1).)

3. **In re Schoenfeld,** 2012 WL 661801 (Cal.App. 1 Dist.)

Held: "Because Schoenfeld's crimes were committed while the ISL was in effect, the Board had to determine the period of his confinement in prison under both the ISL and the regulations applicable to the subsequently enacted determinate sentencing law (DSL)." "The shorter term had to be applied to Schoenfeld." **(In re Stanworth,** (1982) 33 Cal.3d 176, **188).** Schoenfeld was convicted of 27 SB-42 Cateogry Five Crimes of Kidnap for ransom that carried a term of "Life" with the possibility of parole, which has no minimum term.. The Parole Agency fixed Schoenfelds actual term at 45 years and then reduced that term to 31-years showing that Schoenfeld served less than 1.14 years for each of his 27 life crimes.

4. **Himes v. Thompson,** 336 F.3d 848, **851-852** & **860-861** (9th Cir. 2003)

Held: at s/n 2: "The **good time** date refers to an inmates entitlement to a reduction in prison term if the inmate faithfully has observed the rules of the institution. Once an inmate's good time date arrives, the inmate is entitled to unconditional release, and the Board of Parole loses its 'jurisdiction'

over the inmate." **cf. Sandin v. Conner,** 515 U.S. 472, **478-480** [115 S.Ct. 2293] (1995) Held: Credit earning creates a vested liberty interest.

5. **Armstrong v. Davis,** 275 F.3d 849, **856** (9th Cir. 2001)

Held: "The board serves as the parole authority for the state of California, see Pen. Code § 3000(b)(7). It conducts parole hearings for prisoners sentenced to a term of **life** with the possibility of parole, who are the **only** adult prisoners subject to such hearings under California law." See Cal. Penal Code §§ 1168, 1170 s/n 4. holding: "Prisoners sentenced to lesser terms, under California's Determinate Sentencing Law, see Cal. Pen. Code § 1170, are released on parole dates that are computed by the prison authorities pursuant to established rules."

6. **People v. West,** 70 Cal.App.4th 248, **255-259** [82 CR 549] (1999)

Held: "In 1976 the Legislature repealed the ISL and replaced it with the Determinate Sentencinng Act (DSA) (Stats 1976 Ch. 1139 p. 5140; Pen. Code § 1170.) The DSA became operative on July 1, 1977 (**cf.** Witkin & Epstein, Cal. Criminal Law § 1446, p. 1712) The DSA no longer emphasized reformation of the offender. Instead, its focus was on punishing crime through the imposition of the prison term of fixed duration. This purpose is made clear by the very first subdivision of the new law. Pen. Code section 1170, subdivision (a)(1), stated: The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and provision of uniformity of sentences can best be achieved by **determinate** sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the trial court with specified discretion." "The difference between indeterminate sentencing and determinate sentencing was explained in **In re Gray,** 85 Cal.App.3d 255, **259** [149 CR 416] (1978)" The court in **West,** goes on and states inter alia, at pg. **257-258** that: "Effective July 1, 1977, California **repealed** its indeterminate sentencing law. On that date, the Uniform Determinate Sentencing Act of 1976, as amended by statutes in 1977, became operative. The DSA returns the sentencing power to the courts, but requires sentencing judges to impose the middle of three statutorily determined lengths of incarceration for a crime unless there are circumstances in aggravation or mitigation" see **Way v. Superior Court,** 74 Cal.App. 3d 165, **170** (1977).

7. **Terhune v. Superior Court,** 65 Cal.App.4th 864, **873-874** [76 CR2d 841] (1998)

Held: "But under the determinate sentencing law, the Legislature has decreed that '[a] the expiration of a term of imprisonment ... imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931, if applicable, the inmate **shall** be released on parole for a period not exceeding three years, unless the parole authority for good cause waives parole and discharges the inmate from custody of the department.'" (Pen. Code § 3000, subd. (b)(1).) Describing the language as "**a mandatory 'kick-out' provision**" the Supreme Court has stated, "The Board of Prison Terms has

no discretion to grant or withhold parole to a prisoner who has served a determinante term." (citations) **Note:** at the point in time this case was decided the ISL had already been repealed along with the Parole Agency's Term fixing powers.

8. **People v. King,** 5 Cal.4th 59, **65-67** [19 CR2d 233] (1993)

Held: "we have held that the punishment for first degree murder of '25 years to life' is **not** a life sentence."

9. **Haygood v. Younger,** 769 F.2d 1350, **1352-1358** (9th Cir. 1985)

Held: n.2 "Until 1977, California had an indeterminate sentencing law under which a prisoner's specific sentence would be determined by the California Adult Authority within limits set by law. At the time, the State's continuous term policy required that, when a prisoner had two or more terms which were order to be served consecutively, they would become one continuous term in which none of them would be discharged until all were discharged. (See: Pen. Code § 1168 (West 1970)." As of July 1, 1977, **all** persons whose crime was committed after July 1, 1977 must be sentenced under the Determinate Sentencing Law (See: SB-42 [1976] and AB-476 [1977] Ways & Means Bills); **cf.** Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15).

10. **People v. Caruso,** 161 Cal.App.3d 13, **17-20** [207 CR 221] (1984)

Held: "As a general proposition, statutes which create suspect classifications or which draw distinctions that impinge on fundmental interest are subject to strict scrutiny (Citations)". "Under our Determinate Sentencing Law (DSL) 'the purpose of imprisonment for crime is punishment'" (§ 1170, subd. (a)(1)). "The enactment of the DSL marked a significant change in the penal philosophy of this state regarding adult offenders." (Citations)

11. **People v. Caddick,** 160 Cal.App. 3d 46, **51-53** [206 CR 454] (1984)

Held: "By the 1970's, the rehabilitative model of indeterminate sentencing had been somewhat discredited." "[Widespread] recognitiion of the failure and abuses of the rehabilitative ideal was the primary factor in the dismantling of the indeterminate sentencing system. (Parnas & Salerno, **The Influence Behind, Substance and Impact of the New Determinate Sentencing Law in California (1978) 11 U.C. Davis L. Rev. 29.)**" "Effective July 1, 1977, the Indeterminate Sentencing Law was **repealed** and **replaced** by the determinate Sentencing Law. (Stats 1976 Ch. 1139.) By this law, the Legislature completely reversed the purpose of sentencing in California from rehabilitation to punishment, specifically finding and declaring 'that the purpose of imprisonment for crime is punishment,' and that '[this] purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances." (Pen. Code § 1170, subd. (a)(1).) Rehabilitation and individualization of sentencing is no longer a dominate purpose of the sentencing law. (Parnas & Salerno, op. cit. supra, 11 U.C. Davis L. Rev. @ pgs 29-32.) Sentences are now fixed by the trial court in accordance with statute and within specified discretion. (Pen. Code § 1170.)" "The determinate sentencing law retained the opportunity for prisoners to have their fixed sentences reduced by good behavior and participation in prison programs (Pen. Code § 2931) (People v. Saffell (1979) 25 Cal.3d 223 [157 CR. 897])."

12. **People v. Wright**, 30 Cal.3d 705, **709-715** [180 CR 196] (1982)

Held: (1). "Prior to 1977, a system of indeterminate sentences was followed in California. In 1976, the Legislature enacted the Determinate Sentencing Act (Stats 1976 Ch. 1139) adopting a system of specification of three possible terms of imprisonment for each offense (Pen. Code § 1170, subd. (a)(2))." (30 Cal.3d 712) (2). "An unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions (Citations)" In this case no discretion was conferred on the Parole Agency over less than SB-42 Category Five Crimes (See: SB-42 Ways & Means Bill). "This doctrine rests upon the premise that the legilative body **must** itself effectively resolve the truly fundamental issues. It cannot escape responsibility by delegating that function to others or by failing to establish an effective mechanism to assure the proper implementation of its policy decision." This was not done in the case of the 1978 Prop. 7 Initiative nor by the people enacting the "Three Strike's Initiative". (30 Cal.3d 714) NEWMAN, J., Concurring "Nearly 50 years ago this court stated: 'In the creation of the board of harbor commissioners ... it was attempted to confer upon that board power to impose penalties for any violation ...'" "This provision was declared unconstutional (Citation)." "The court there held that conceding the legislature could delegate to the plaintiff the authority to make rules and regulations ... the penalty for a violation thereof was in the hands of the legislature, and the error was **not** cured by fixing a maximum penalty, for the vice law in attempting to delegate such legislative power to plaintiff (Citation)."

13. **In re Stanworth**, 33 Cal.3d 176, **177-183** [187 CR 783] (1982)

Held: "in 1966 defendant Dennis Stanworth was sentenced to death following his plea of guilty of first degree murder." "He also plead guilty ... to (4) counts charging aggravated and simple kidnaping, forcible rape, oral copulation, and robbery." (Two 1st degree murders, four kidnaps with injury and other crimes). Because of **People v. Anderson**, 6 Cal.3d 628 (100 CR 152) (1972), Stanworth's sentence was modified to "Life" on each murder and kidnaping count. In 1979, the Parole Agency fixed Stanworth's term at "**twenty-three years, four months, and nine days.**" That is 3.9 years for each of Stanworth's Six Life Sentences. Lastly, the court held that Stanworth was "... **not** sentenced to an **indeterminate sentence** but to a **determinate life sentence** ..."

14. **Guzman v. Morris**, 644 F.2d 1295, **1296-1297** (9th Cir. 1981)

Held: "On July 1, 1977, California's DSL went into effect, **replacing** the ISL. Cal. Pen. Code §§ 1170 et seq. The **purpose** of the DSL is to achieve uniformity in sentencing. The DSL seeks to achieve this by requiring that **all** persons convicted of the same crime be given the same sentence, subject to certain aggravating, mitigating, or enhancing circumstances. Cal. Pen. Code § 1170(a)(1), (b). Criminal statutes under the DSL now contain three 'base' sentences. For example, the robbery statute under which Guzman was convicted now provides for sentences of two, three, or four years. The DSL requires the judge to impose the middle of the three sentences, unless he finds 'cimcumstances in aggravation of mitigation.'" Cal. Penal Code § 1170-(b). See generally **In re Gray**, 85 Cal.App.3d 255, **259** [149 CR 416, **418**] (1978)."

15. **In re Jeanice D.**, 28 Cal.3d 210, **217-223** [168 CR 455] (1980)

Held: "Furthermore, even if the '25 years to life' language left any question as to the nature of the sentence established by the section, any such doubt dissolves in the concluding sentence of Pen. Code section 190.'" "That sentence provides in relevant part: 'The provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title 1 of Part 3 of the Pen. Code] relating to credit, i.e., reduction in time of confinement, for good behavior and participation in designated programs] **shall** apply to reduce **any minimum term of 25 ... years in state prison imposed pursuant to this section,** but such person shall **not** otherwise be released on parole prior to such time'" (Italics added.) RICHARDSON, J. dissent "One exception to the indeterminate term concept was the express **life** term when imposed for first degree murder under former section 190. Such a term was **not** deemed an indeterminate term. (**In re McManus** (1954) 123 Cal.App.2d 395, **396** [266 P.2d 929].). The distinction between this life term and the indeterminate term with a maximum of life is illustrated by the language of former section 190 (as amended in 1957): 'Every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for **life.**'" (b.) "**The Determinate Sentencing Law.** The determinate sentence law (DSL) effective July 1, 1977, amended section 1168 and repealed the provisions governing the fixing of term by the Adult Authority (former § 3020), substituting 'determinate terms' for substantially **all** offenses which formerly had carried indeterminate terms and which had not been reduced to misdemeanors."

16. **In re Rogers**, 28 Cal.3d 429, **431-436** [619 P.2d 415] (1980)

Held: "The determinate sentencing law (DSL) became operative July 1, 1977. Thereafter, the Community Release Board was required by law to determine the proper determinate term for prisoners who had been previously sentenced under the ISL, and who would have been sentenced under the DSL if their offenses had been committed on or after July 1, 1977. (§ 1170.2, subd. (a).)." "Under the statutory scheme of the DSL, the Board of Prison Terms is given **no** discretion as to the setting of parole. Once a prisoner has completed his fixed (minimum) term, the Board is mandated to release him. This was not true under the ISL where the Adult Authority was given broad discretion in determining whether an individual should be released on parole."

17. **In re Caudillo**, 26 Cal. 3d 623, **630-635** & **649-650**[164 CR 692] (1980)

Held: "The jury found petitioner (Caudillo) guilty of kidnapping, forcible rape, sodomy, oral copulation, first degree robbery, and first degree burglary, with a finding that he had inflicted great bodily injury on the victim in the course of the burglary (id. @ 627). Caudillo's crimes were committed in 1975 prior to the repeal of the ISL and he faced a prison term under the ISL of 15 years to life. After a serious offenders hearing, the Parole Agency fixed his term at seven years for his three life crimes. "The Legislature enacted the DSL in 1976, finding 'that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature ..." (Pen. Code § 1170, subd. (a)(1).)" Caudillo served less than 2.5 years for each of his life crimes under either the ISL or the DSL (See Dissent by MOSK, J. @ pp. **642-643**).

18. **In re Flodihn**, 25 Cal.3d 561, **575-576** [159 CR 327] (1979)

Held: "On July 1, 1977, the DSL became became effective. By its terms **only** those individuals who have committed offenses on or after July 1, 1977, are sentenced to determinate terms. Those individuals who have committed offenses prior to that date are sentenced to indeterminate terms and have their DSL term/parole date computed as follows: (a) In the case of **any** inmate who committed a felony prior to July 1, 1977, who would have been sentenced under Section 1170 if he had committed it after July 1, 1977, the Community Release Board **shall** determine what the length of time of imprisonment would have been under Section 1170 without consideration of good-time credit and utilizing the middle term of the offense bearing the longest term of imprisonment of which the prisoner was convicted increased by any enhancements justified by matters found to be true and which were imposed by the court at the time of sentencing for such felony." (See DISSENT BY: BIRD @ pp. **571-576**)

19. **People v. Saffell**, 25 Cal.3d 223, **228-231** & **233-236** [157 CR 897] (1979)

Held: "As we unanimously concluded in **People v. Olivas**, 17 Cal.3d 236, **251** [131 CR 55] (1976) 'personal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions.'" "We coupled that expression in **Olivas** with the holding that 'once it is determined that (a) classification scheme affects a fundamental interest or right the burden shifts; thereafter the state **must** first establish that it has a compelling interest which jusitifies the law and then demonstrate that the distinction drawn by the law are necessary to further that purpose.'" (ibid & Citations) Defendants may point out that public safety is an interest entitled to such protection. However, when "It makes one conviction the basis for commencing another proceeding under another Act to determine whether a person constitutes a threat of bodily harm to the public, or is an habitual offender and mentally ill, that is a new finding of fact [citation omitted] that was not an ingredient of the offense charged." (**Specht v. Patterson**, 386 U.S. 605, **608** [87 S.Ct. 1209] (1967); **cf.** U.S. Const. 14th Amendment; Cal. Const. Art. 1 § 7(a)&(b) & Art. 1 § 16) **cf.** DISSENT BY: NEWMAN @ pp.**236-237** Holding: The constitutional infirmity of the statute arises because the lenght of the initial term is based on the crime committed and **all** persons convicted of the same crime **must** be given the same term of confinement."

20. **In re Eric J**, 25 Cal.3d 522, **530-532** [159 CR 317] (1979)

Held: (4) "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more **similarly situated** groups in an unequal manner (Citations)." Obviously, the DSL was created to effect **all** persons whose crime was committed on or after July 1, 1977 (Pen. Code § 1170(a)(1)) (5). "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law (Pen. Code § 1170(a)(1)) receive like treatment." "This distinction has been significantly sharpened recently. Under the Indeterminate Sentencing Law, which ws the system under review in **People v. Olivas**, 17 Cal. 3d 236 [131 CR 55] (1976), the purposes of imprisonment were deterrence,

isolation and rehabilitation." (Citations) "The enactment of the Uniform Determinate Sentencing Act marked a significant change in the penal philosophy of this state regarding adult offenders." "The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion." (Pen. Code § 1170, subd. (a)(1)" (Emphasis on Original)

21. **People v. Superior Court,** 78 Cal.App.3d 134, **139-141** [144 CR 89] (1978)

Held: "While there are simpler ways of saying that **all** persons who committed crimes before July 1,1977, will be sentenced under the Indeterminate Sentencing Law, (repealed by stats 1977 Ch. 1139) the conclusion that this was the legislative intent is compelling when the 1977 versions of section 1170 and 1170.2 are compared with their 1976 counterparts. The 1976 Act clearly provided that determinate sentences were to be given to **all** persons sentenced after July 1, 1977, whenever the crime was committed. One of the very purposes of the 1977 amendments was to make the date of the criminal act determinative. We quote from the Bill Analysis of AB476, prepared by the Assembly Committee on Criminal Justice, and included as an exhibit to real party's return to the alternative writ. Item 14 on page 5 of the analysis provides: 'DATE OF S.B. 42 SENTENCE [¶] S?B? 42: the determinate sentence **will** apply to those cases sentenced after July 1, 1977. Those sentenced before will be sentenced indeterminately and will receive the retroactive application.'"

22. **In re Carl Lee Gray,** 85 Cal.App.3d 255, **259-262** [149 CR 416] (1978)

Held: "Effective July 1, 1977, California repealed its indeterminate sentencing law. On that date, the Uniform Determinate Sentencing Act of 1976, as amended by statutes in 1977, became operative. The DSA returns the sentencing power to the courts, but requires sentencing judges to impose the "middle"of three statutorilydetermined lengths of incarceration for a crime, unless there are 'circumstances in aggravation or mitigation,' in which case the longer or shorter period will be imposed.'" (Pen. Code § 1170.2, subd. (b); see **Way v. Superior Court,** 74 Cal.App. 165, **170** [141 CR 383] (1977).)

23. **People v. Olivas,** 17 Cal.3d 236 **243-244** & **246-247** [131 CR 55] (1976)

Held: "'On the other hand, in cases involving 'suspect classifications' or touching on 'fundamental interest', [fns. omitted] the court has adopted an attitude of active and critical analysis, subjecting the clasification to strict scrutiny.'" In this case, the fundamental liberty interest being denied is stated by the Legislative Pen. Code § 1170(a)(1) declaration that **all** persons whose crime is committed on or after July 1, 1977, including the offender's family members, have the right to know the determinate term at sentencing as fixed by the legislature and imposed by a court to a finality (See: SB-42 Enrolled Bill Report Stats 1976 Ch. 1139; SB-42 Ways & Means [1976] and Stats 1977 Ch. 165 AB-467 at pg. 17, lns. 21 thru 36 [1977]).

24. **People v. Ramirez**, 25 Cal.3d 260, **265-266** & **278** [158 CR 316] (1979)

In cases where a liberty interest is grounded on State law claims, the United States Supreme Court has held that a prisoner may derive a due process liberty interest from either the Constitution or State law (Citing: **Meachum v. Fano**, 427 U.S. 215, **226** [96 S.Ct. 2532] (1976] and **Wolff v. McDonnell**, 418 U.S. 539 [94 S.Ct. 2963] (1974) (**See:** Ramirez, supra at p. **278**, Held: "When a state creates or [as in this case based on Pen. Code § 2931, Stats 1977 Ch. 165 § 38] recognizes rights and specifies the conditions of their forfeiture, it may not thereafter arbitrarily deny such rights. The State action must be guided by due process considerations" (Citations).

25. **Sandin v. Conner**, 515 U.S. 472, **477-480** [115 S.Ct. 2293] (1995)

Held: "our due process analysis begins with **Wolff.** There, Nebraska inmates challenged the decision of prison officials to revoke good time credits under a state statute that bestowed **mandatory sentence reduction for good behavior,** id. at **546**, n. 6 revocable **only** for "'Flagrant or serious misconduct'" id. at **545**, n. 5 (citation omitted). We held that the Due Process Clause itself does not create a liberty interest in credit for good behavior, but that the statutory provison [like Pen. Code § 2931 in this case] created a liberty interest in a "**shortened prison sentence**" which resulted from good time credit which were revocable only if the prisoner was guilty of serious misconduct, **Wolff**, id. at **557**. The Court characterized this liberty interest as one of "**real substance**" ibid., and articulated minimum procedures necessary to reach a "mutual accommodation between institutional needs and objective and the provisions of the Constitution," id., at **556**".

26. **Wolff v. McDonnell**, 418 U.S. 539, **554-559** [94 S.Ct. 2963] (1974)

Held: "The complaint in this case sought restoration of good time credits and the Court of Appeals correctly held this relief foreclosed under Preiser. But the complaint also sought damages and Preiser expressly contemplated that claims properly brought under § 1983 could go forward while actual restoration of good time credits is sought in state proceedings id. 411 U.S. at **499** n. 14, 36 L.Ed. 2d 439. Respondent's damages claim was therefore properly before the District Court and required determination of the validity of the procedures employed for imposing sanctions, including loss of good time, for flagrant or serious misconduct." [418 U.S. 55] "Such a declaratory judgment as a predicate to a damage award would **not** be barred by Preiser; and because under that case, only an injunction restoring good time improperly taken is foreclosed, neither would it preclude a litigant with standing from obtaining by way of ancillary relief an otherwise proper injunction enjoining the prospective enforcement of invalid prison regulations." (Emphasis Added)

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