

CALIFORNIA'S DIRTY LITTLE

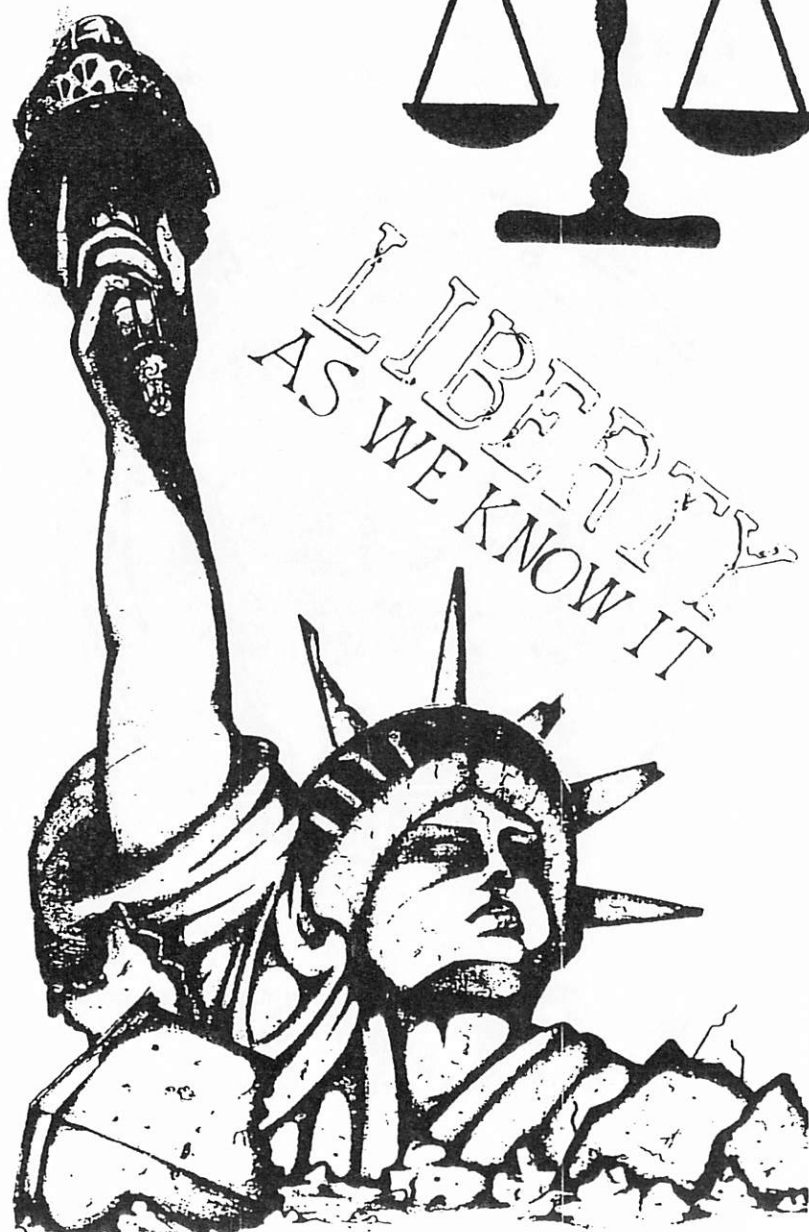


SECRET

By, Kenneth Gay



LIBERTY
AS WE KNOW IT



California's Dirty Little Secret

One of the most frequently asked question is, why has it taken 30 years to process your appeal through state court? The answer to the question is simple, fraud. The details of how this fraud is executed, is complicated.

In order to fully understand how the appeal process has been altered, it is necessary to understand how it is supposed to operate. Under normal circumstances, once you are convicted, an attorney and his client will determine what type of appeal to file, and to what court. The types of appeal are Direct Appeal, which challenges the evidence presented at trial. Or any other irregularities that occurred during the course of the trial. Or a Writ of Habeas Corpus. This type of appeal challenges the conviction based upon newly discovered evidence, or constitutional violations. Such as a prosecutor who withheld evidence. Or a judge that made a decision contrary to established law. These appeals must be filed within one year of the sentencing. Ordinarily, the appeal would be filed to the district court. This is a federal court that monitors the outcomes of state criminal trials to ensure that the accused constitutional rights were respected. This is the way death penalty appeals were processed prior to June 6, 1989.

The district courts, and the California Supreme Court were reversing 79% of all capital cases they reviewed. In 1986 Republican politicians convinced victim rights groups that if elected they would rid the state of the liberal supreme court, and jump start the death penalty. Governor George Deukmejian, and his Republican colleague, Dan Lungren, were elected. As the newly elected Attorney General, it was Dan Lungren's responsibility to argue on behalf of the state in favor of executions. Within three years of their election, Deukmejian and Lungren were able to unseat justices, Rose Bird, Cruz Renoso, and Joseph Grodin from the California Supreme Court. The governor quickly replaced the justices with his own appointments. Justices, Eagleson, Kaufman, and Aguellas. They quickly reverse the trend of the former court. The new court affirmed 79% of all capital cases they reviewed. However, capital cases were still being sent to the federal district court. Something had to be done to stop these cases from being overturned in the first place.

On June 6, 1989 the California Supreme Court justices created Policy 3. Under the United States Constitution any new laws must be approved by the legislature. The justices knew they had tremendous leeway under the newly elected Attorney General, who would not challenge their new laws. So, they violated separation of powers, and enacted Policy 3. This policy gave the California Supreme Court complete control over all aspects of capital cases. Cases would no longer be sent to the federal district courts for review. Thus, effectively blocking federal court review of state court trials. All capital cases would be sent directly to the California Supreme Court. The new policy also gave the court complete control over the type of appeal that would be filed. The attorney and his client would only be allowed to file a Direct Appeal. The writ of Habeas Corpus would be deferred until after the Direct Appeal was adjudicated. This was a violation of the constitutional prohibition against the suspension of the Writ of Habeas Corpus.

These new laws could not have been enacted without the cooperation of the Governor and the Attorney General. As members of the executive branch it was their responsibility to challenge any laws that did not comply with the state and federal constitutions. But, more importantly, these new laws could not have been enacted without the cooperation of the appellate defense attorneys.

Ordinarily, attorney's would be randomly selected from a pool of qualified lawyers. If a defense attorney raised a challenge to the new rules, the Attorney General, the federal courts, and well as the United States Attorney General would quickly quash the new laws as unconstitutional. The California Supreme Court justices had a plan to combat this possibility as well. Shortly after the enactment of Policy 3, they created the California Appellate Project, (CAP) From this point forward, all lawyer's who represented condemned inmates would have to sign a contractual agreement with CAP to defer their legal training, and comply with the newly created policies. The new policies gave specific directions on what issues to be raised. Any investigations and filings required prior approval of the court. In exchange, the attorney's would be rewarded with generous salaries.

The Republicans who conspired to create this illegal appellate process believed that they were going to use this denial of rights to expedite executions. What they failed to realize was, by altering the Constitution, they damaged the effectiveness of it. In other states executions were occurring within eight years of sentencing. If the new judges were to adhere to the constitution and simply deny all appeals, the appeals would be expedited into federal court. The federal court would likely reverse their decisions, as they do 73% of the time now. By altering the constitution, and suspending the Writ of Habeas Corpus, the process was significantly delayed. These delays created an unintended benefit. Cash. A death penalty case would ordinarily cost a state two million dollars to process from trial to execution. This was accomplished within eight years. As a result of policy 3, many attorneys who once were willing to tackle capital cases, were no longer willing to represent the condemned. Suddenly, there was a shortage of qualified attorneys. A condemned prisoner now waits for as long as seven years on death row awaiting the appointment of counsel. Once counsel is appointed, he or she is ordered to file only the Direct Appeal. No investigation into the constitutional violations, or other legal strategies is permitted by the court. The average delay in the investigation and filing of the Writ of Habeas Corpus is 17.3 years. Much of the documents, witnesses, and forensic evidence that was available shortly after trial is now lost. As a result, 13 people have been executed at a cost of nearly two billion dollars.

According to the leading authority on capital punishment in California, Justice Arthur L. Alarcon, nearly two trillion dollars has been spent on capital punishment over the past twenty-four years. Four billion is "unaccounted for." A complete copy of Justice Alarcon's report can be found at: "A Roadmap to End or Mend the California's Legislature's Multi-Billion Dollar Debacle." <http://www.org/ccfai/documents/CCFAJFinalReport.pdf>."

There are 145 Habeas Corpus, capital attorneys in California. There are 730 condemned prisoners. Each of these attorneys are paid \$2 20 per hour, five days per week, for 27.6 years. A Direct Appeal brief and the reply are all filed within the first seven years, and there is no other work to be done. What attorney wouldn't appreciate that? Honest ones who would not sell out their clients...

This illegal appellate process could not exist if the condemned inmates were allowed to represent themselves. It has always been a cornerstone of American jurisprudence that any individual has a constitutionally guaranteed right to represent himself if he should chose to do so. The California Supreme Court justices took the extraordinary, and unprecedented step of prohibiting all condemned inmates from self-representation.

The stage was now set for one of the most prolific embezzlement schemes in American history to prosper for twenty-four years and counting. The question on everyone's mind is, how could this type of fraud exist for so long? First and foremost, the California Bar Association has strict rules against attorney encroaching upon other attorney's clients. No decent, honest attorney would put his license on the line to represent a murderer. Everyone else involved has

greatly benefited from the fraud. With the exception of the victims who were promised executions, and those few innocent individuals on death row, who have had to wait 30 years to have their cases adjudicated in the federal courts. 73% of all cases that eventually reach the federal courts are reversed. This demonstrates and confirms the California Supreme Court's violation of federal law.

The attorney's who participate in this fraud, and the California Supreme Court justices, are involved in a fraudulent paper mill. The court has approved ten claims that can be filed on behalf of death row inmates. All Direct Appeal briefs contain the exact same claims, same issues, and the same case citing's. The court has a pre-determined adjudication of these claims. All denials quote the same state laws. 98% of all Direct Appeals are denied. The average time to process such an appeal is 27.6 years at a cost of 20 plus million per case. The courts collect these huge sums of money from the state and federal governments and distribute it to CAP, who distributes it to its lawyers and support staff.

The state Attorney General's office hires additional staff (more lawyers) who argue in favor of the 10 claims approved by the court. Same claims, same issues, same case citings. The Attorney General boost that his trial prosecutor's around the state have the highest conviction rates in the nation. This is because the trial judges and prosecutors routinely violate defendant's rights during trial in order to obtain a conviction. They know that their decisions will not be reviewed by the California Supreme Court for 27.6 years. Long after they have retired from the practice of law.

The federal district courts benefit in two ways. First, they aren't seen as the bad guys reversing dozens of death penalty cases. The cases trickle in over decades and are divided up into 29 districts.

Secondly, they collect huge amounts of federal tax dollars to support federally funded capital lawyers. When a case reaches the federal court, new federal attorneys are appointed. Because the state court process is ineffectual, the federally funded investigation will inevitably discover new evidence and deficiencies with state counsel's performance. The federal judges then rule that the case must be returned to state court to give that jurisdiction an opportunity to correct the problems. Meanwhile, the federal court, and the federal lawyers, continue to collect federal dollars on a case they are not actually working on. Four billion unaccounted for. This return to state court to give them an opportunity to correct the problems usually requires an additional fifteen years. Which means the state and the federal government is collecting money from each case at the same time. There is no oversight.

Condemned inmates also benefit from this illegal appellate process. The inmate must wait seven years for the appointment of counsel. 13.9 years for his Direct Appeal to be filed. 17.3 years for his Writ of Habeas Corpus to be filed. 27.6 years to get a decision from the state court. Everyday that a condemned prisoner lives he benefits. Some condemned inmates have been here since the death penalty was reinstated in 1976. They are essentially serving a life sentence. 56 inmates have died awaiting state court decisions. 43 have died while awaiting federal court review. 56 have committed suicide. While another 730 of us languish here. Our constitutionally guaranteed right to Due Process, Equal Protection, and the right to access the federal courts, all violated and discarded by a handful of greedy lawyers and politicians.

Politics and revenge fueled a desire for executions. It drove a few dishonest politicians to violate their oath and the United States Constitution. As result everyone settled into a routine that ignores the rights of the victims, and neglects the fact that when rights are summarily denied, the possibility of convicting an innocence person increases.

The ultimate question is a simple one... Why should you care? You should care because the founding fathers understood how powerful the government apparatus is. So they instilled into the constitution individual rights, designed to even the playing field. Due Process, Equal Protection, and the right to Access the courts aren't just hollow terms meant for a few people lucky enough never to be arrested. When government officials strip away these rights, incarcerate people for profit, and take away their ability to challenge the legality of their incarceration, it is called, slavery. If it can happen to me, there is no reason to believe it cannot happen to you. 6

If you think this does not concern you, remember these words, "All that is needed for evil to prosper is for good men to do nothing."

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"GET INVOLVED!"

- DeathRowInmate.org/Legal
- DRI Legal Correspondent

Policy 3

The California Supreme Court (CSC) created these "laws" in 1986 without legislative or judicial council approval. Violating separation of powers. These laws violate Due Process, Equal Protection, and Block access to the federal courts for decades. By taking the appellate "Strategy" out of the hands of the appellee and defense counsel, the CSC has created an appellate process that rearranges the order in which specific appeals are filed, what issues can and will be approved for investigative funding, and effectively suspends the writ of Habeas Corpus until after the Direct Appeal has been filed.

As a result of these new laws, defense counsel, working under the direct supervision of the California Appellate Project (CAP), and The Habeas Corpus Resource Center (HCRC) are ordered by the CSC to file only the Direct Appeal. This is normally done after a delay of up to seven years after sentencing. The records correction and Direct Appeal may take as many as five years to complete. Then, and only then is defense counsel appointed for the collateral challenge/Habeas Corpus. The CSC has committed to adjudicating the Direct Appeal first. This creates two very serious violations of appellee's rights. 1. Once the conviction has been affirmed, and the CSC determines that the evidence against petitioner is "overwhelming," the petitioner who files a subsequent Habeas Corpus petition must establish that the constitutional violation contributed to the conviction. The Harmless Error Standard. 2. Once the conviction is affirmed, defense counsel is required to file a writ of Cert. to the United States Supreme Court. Naturally, the Cert. Petition contains no constitutional claims because the collateral challenge has yet to be heard by the CSC.

The State and United States Constitutions are explicit, "The Writ of Habeas Corpus shall not be suspended." The CSC delays the appointment of counsel for five to seven years. Then, appoints counsel specifically for Direct Appeal, delaying the investigation and filing of the Habeas Corpus Petition for an additional ten years. The average elapsed time from sentencing to the filing of the Habeas Corpus Petition is 17.3 years. This delay of the investigation and presentation of the Habeas Corpus Petition has a devastating effect on the appellees ability to present claims that are supported by evidence. The late filing of the collateral challenge also creates procedural defaults. Giving rise to the Harmless Error Standard. Put another way, if the appellee filed a Habeas Corpus Petition first,

challenging the constitutionality of his conviction, the CSC would only consider whether the violation occurred. If the court determined that a violation occurred, the CSC would automatically reverse the conviction, because the evidence, and entire record of the trial, which only comes into play when the Direct Appeal is filed, would not be at issue.

As a result of these new laws, all appellate defense counsel have deliberately and intentionally surrendered the rights of their clients in order to obtain appointment.

X This fact is supported by the fact that defense counsel allows all strategic decisions to be made by the CSC. The type of appeal to be filed, and when. What issues will be investigated, upon prior approval of the CSC, and what issues will ultimately be presented for adjudication. This complete reliance upon the CSC for all strategic decisions gives the CSC complete authority to render whatever decisions they please, knowing that their rulings, which are contrary to well established federal law will not be reviewed by the United States Supreme Court on a writ of Cert, because the constitutional violations are excluded from the writ. Effectively blocking access to the federal court. This type of absolute control over the defense strategy and defense counsel was outlawed in 16th century England. It was called, "Star Chamber."

To ensure that the CSC wicked deeds proceed without interference, all attorney's who accept these death penalty cases must sign a contractual agreement promising to follow these illegal and unconstitutional appellate procedures. Furthermore, all death row inmates are 100% excluded from filing any petitions in their own defense. The CSC and the attorneys they appoint have striped appellee's of any rights that ensure that their appeals are process in a timely and constitutionally effective manner.

Nowhere in the United States of America is this type of violation of civil, legal, constitutional, and human rights occurring, with the exception of California. Some capital appellee's have been delayed in the CSC for as much as 36 years. This problem would not exist without the participation of the federal district courts. Despite the fact that California failed to qualify for inclusion in the Anti-Terrorist, Effective death Penalty Act (AEDPA), the federal district courts of California have continued to apply the "Exhaustion Requirement." Once the appellee completes the CSC appeal process, and proceeds into federal court, that court then grants funding, and new federal counsel investigates the validity of the state's decisions. Naturally, because the state court process excluded evidence and delayed the process, new evidence and new claims are presented. This requires all claims not previously adjudicated by the state court to be returned for exhaustion. There are dozens of federal Habeas Corpus Petitions that are stalled (delayed) in federal court, while the CSC takes an average of fifteen years to exhaust these new claims.

Currently, the CSC maintains a 98% affirmance rate of all Direct Appeals. And it naturally follows that they have a 95% affirmance rate of all Habeas Corpus Petitions. The highest in the nation. Once these cases are adjudicated in federal court, after being delayed for three decade, 73% of them are reversed. Proving that the CSC adjudications are contrary to well established federal laws.

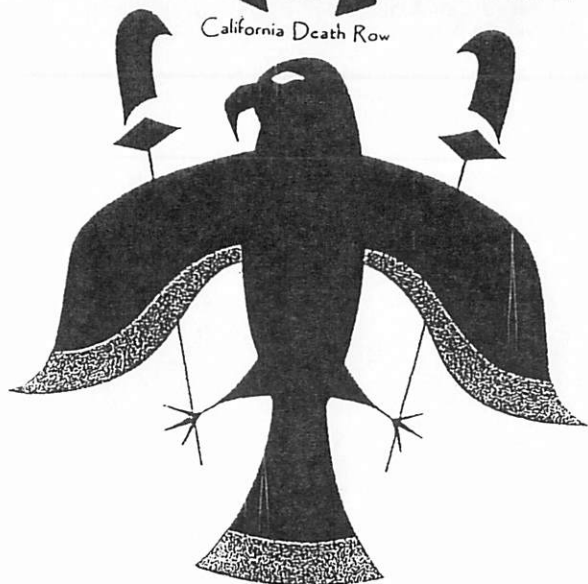
According to Justice Aurthur L. Alarcon, four billion dollars of tax payers money is "Unaccounted for." The California death penalty is a multi-billion dollar embezzlement scam. With so much money, and politics interfering with the judicial process, it is no wonder this illegal appellate scheme has prospered for 36 years!

But its days are numbered...

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California Death Row



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