

CHAPTER 1: PASSAGE OF THE THREE STRIKES LAW

On March 7, 1994, at 2:45 p.m. a piece of paper was delivered to the Secretary of the State of California that would directly affect thousands of Californians in the following years.¹ Assembly Bill 971, after having passed the California legislature a few days earlier, had been signed by Governor Pete Wilson and would officially be placed in the California statutes under Penal Code § 667(b).² Then, as an added exclamation point, on November 8, 1994, after receiving almost 72 percent of the vote, a public initiative known as Proposition 184 would also be placed in the California statutes--under Penal Code § 1170.12.³

Penal Code § 667(b) and § 1170.12 are almost identical except for a few minor word differences, and in practice they are treated as the same law. Even though neither statute mentions the phrase “Three Strikes,” combined they are known in the singular as the “California Three Strikes law.”⁴ It is a law that has become well-known nationally

¹ *People v. Cargill*, 38 Cal. App. 4th 1551, 45 Cal. Rptr. 2d 480 (1995).

² See § 667(b) in appendix A. The text and history of AB971 and all other bills were found at the California State Senate and Assembly Bill web site at: http://info.sen.ca.gov/cgi-bin/pagequery?type=sen_bilinfo&site=sen&title=Bill+Information (accessed October 21, 2003). The California Penal Code was found on the internet at the state of California government web site at: <http://www.leginfo.ca.gov/calaw.html> (accessed October 21, 2003). All further references to statutes by “§” are to the California Penal Code unless otherwise noted.

³ See § 1170.12 in appendix B. Propositions and their results can be found at: http://www.uchastings.edu/library/Research%20Databases/research_databases_main.htm (accessed October 21, 2003). See also California Secretary of State, *Statement of Vote: November 8, 1994, General Election*, (Sacramento, 1994), 107.

⁴ The details of the Three Strikes law will be discussed in chapter 5, but, in general there are two parts to the law. Part one is like a “two strike” law and states that if someone has one prior serious or violent felony conviction on their record and then commits a current felony, then he or she can receive double the sentence for the current felony. Part two is the “three strike” part of the law and states that

because of its extreme harshness, and its ability to be triggered after the commission for ANY felony--including misdemeanor crimes such as shoplifting that can be elevated to “felony status” if the offender had been convicted of specific prior crimes. The conviction of a “petty theft” can be elevated to a felony, for instance, if the offender had been convicted of a prior crime of petty theft, grand theft, burglary, robbery and other “theft”-related crimes. While many other jurisdictions have passed “strikes” laws or recidivist sentencing enhancement statutes, California’s is the most draconian.⁵

But for two deaths, the California Three Strikes law probably would not have passed with such harsh penalties. The first death was of a young woman shot in the head during a robbery. Her death resulted in her very articulate, stubborn father being driven to see the passage of a harsh, punitive law. The other death was of a young girl who had been kidnapped from her home during a sleepover with her friends, resulting in a massive manhunt, and the later discovery of her rape and murder. This second death occurred precisely when the Three Strikes initiative was in the signature-gathering phase. Had either of these deaths not occurred, the odds of the California Three Strikes law being passed with such harsh provisions seem very slim. It took the timing of a public initiative already in place with a stubborn crusading father and the publicity of the second death to propel the Three Strikes law into force.

if someone has two or more prior serious or violent felony convictions, then he or she will receive at least a minimum of 25 years-to-life before being eligible for parole.

⁵ Michael Vitiello, "Three Strikes: Can We Return to Rationality?" *Journal of Criminal Law and Criminology* 87, no. 2 (1997): 395-481, 397. See chapter 12 for more details on how other states have used their “strike” laws.

The Death of Kimber Reynolds

On June 29, 1992, 18-year-old Kimber Reynolds was visiting her hometown and had just finished a late dinner with a friend at a popular restaurant in the city of Fresno.⁶ She and her friend were approaching her car which was parked on the street in front of the restaurant when two individuals on a motorcycle sped up to them and attempted to rob Kimber of her purse. A struggle ensued, and then Kimber was shot in the head with a .357 magnum handgun. She died two days later. The assailants in the robbery were later located; the one that witnesses said did the shooting, Joseph Michael Davis, was killed after a gun battle with the police; the other, Douglas David Walker, pled guilty to robbery and was sentenced to 9 years in prison, with the possibility of release through “good time credits” after only serving 50 percent of the term.⁷

Kimber’s father, Mike Reynolds, 49-years-old, was enraged at her death and the short sentence of the living assailant, and called a meeting with various local representatives of the criminal justice system. Included at the July gathering were a superior court judge, an appellate judge, a municipal court judge, a well-known local defense attorney, a representative of the Fresno Police Department, an expert in juvenile justice issues, and a radio talk show host.⁸ The major focus of the group was on how to

⁶ Kimber was the third and youngest child of the Reynolds’ and was a student at the Fashion Institute of Design and Merchandising in Los Angeles. She was back home in Fresno to be the bridesmaid in a friend’s wedding. Donna St. George, "Daughter's Slaying Sparked the '3-Strikes' Movement," *New Orleans Times-Picayune*, January 15, 1994, A15.

⁷ Dan Morain, "A Father's Bittersweet Crusade," *Los Angeles Times*, March 7, 1994, A-1. Walker was paroled on November 14, 1998. "Parolee in Reynolds Killing Jailed," *Fresno Bee*, November 25, 1998.

⁸ Mike Reynolds, Bill Jones and Dan Evans, *Three Strikes and You're Out! A Promise to Kimber* (Fresno, CA: Quill Driver Books, 1996). There was some controversy about whether it was appropriate for judges to be involved in writing a law on which they might someday have to make decisions. James A. Ardaiz, the presiding justice of the Fresno-based 5th District Court of Appeal,

craft a law that would have the most impact on the greatest number of criminal offenders. Reynolds believed that a habitual offender statute that would include only serious or violent felonies, would affect only an insignificant number of people.⁹ The group decided that using “any felonies” as the criteria for the last strike would impact a significant number of people.

Reynolds contacted his local assemblymen, Republican Bill Jones and Democrat Jim Costa, and on March 1, 1993 they put forward Assembly Bill 971 which in its original version mandated a tripling of the usual sentence upon the commission of any third felony.¹⁰ Reynolds later stated: “So what we originally decided to ask for was more than what we really wanted. We asked for AB971 to apply to all felonies when, in fact, we were willing to negotiate that down to just serious and violent felonies for

admitted his role, along with two other Fresno Municipal Court judges, in drafting a core document. Dan Morain, "Judge Admits His Role in '3 Strikes' Law," *Los Angeles Times*, November 3, 1994, A-3. After Reynolds indicated the residence of one of the other judges, reporters from the *Los Angeles Times* did a search of the property records and found the house belonged to Municipal Judge William Kent Levis of Fresno (who declined to talk with the *Times* about his involvement). Dan Morain, "California Elections/Proposition 184," *Los Angeles Times*, October 19, 1994, A-3.

⁹ It would seem that Reynolds' observation about the law not affecting as many people if it were limited to serious and violent offenses is the main argument that can be used against his 3-strikes law. Why lock up a significant number of people, many of whom would not have been convicted of another serious or violent crime?

¹⁰ The original AB971 was found on the internet at: http://info.sen.ca.gov/pub/93-4/bill/asm/ab_0951-1000/ab_971_bill_930301_introduced (accessed October 21, 2003). Ironically, Assemblyman Jim Costa was not entirely unacquainted with the criminal legal process. He had been arrested in 1986: “[W]hile driving a state-leased automobile, Costa had picked up a prostitute and then offered money to an undercover police woman to join them in a threesome. Arrested on a misdemeanor charge of soliciting, and released on his own recognizance, Costa initially would say only that ‘a mistake has been made.’” He was “fined one dollar and sentenced to three years probation.” Reynolds, Jones and Evans, *Three Strikes*, 153. Mark Arax, "A New Political Fire Tests Costa," *Los Angeles Times*, February 6, 1994, A3. And, then in 1994, in the heat of the Three Strikes debate, police found marijuana in his apartment while they were investigating a burglary there. Costa claimed the burglars were using drugs during the burglary or he was being framed by the burglars. The police said Costa's claims were “possible but unusual.” They decided not to press charges because the amount of marijuana was too small and the question of possession too hazy. Arax, "A New Political Fire."; Reynolds, Jones and Evans, *Three Strikes*, 153.

the first two convictions.”¹¹ On April 20, 1993, Reynolds brought four busloads of people to Sacramento, but AB971 failed to get out of the Assembly Public Safety Committee that was controlled by Democrats.¹²

Believing he would not be able to get his bill passed in a Democrat-controlled legislature, Reynolds turned to the California public initiative process. To get on the ballot, Reynolds would need to gather over 385,000 valid signatures during a 150-day period.¹³ Reynolds was told that the first step in putting forward an initiative is that a public opinion poll on the issue needs to be conducted by an independent organization. If the results are favorable, the proponents of the initiative can use them to shop around to seek funding for the initiative. Reynolds was told it would cost \$15,000 for a cheap poll or \$35,000 for an in-depth one.¹⁴ Instead, Reynolds was lucky and was able to piggyback a question on a survey being conducted by the Gun Owners of California Inc., a pro-gun lobbying group, that was conducting its own survey on Californians’ feelings toward gun control laws. The response to Reynolds’ question about the Three Strikes law was 73 percent in favor.¹⁵

¹¹ Reynolds, Jones and Evans, *Three Strikes*, 39. Reynolds also admitted he was willing to negotiate the good time credits down to 50 percent, but never had to, and therefore the law eventually passed at the original 80 percent for second strikes and 100 percent for third strikes, because the third strike is an indeterminate sentence (see chapter 5 for more details).

¹² The roll call of votes can be found at: http://info.sen.ca.gov/pub/93-94/bill/asm/ab_0951-0000/ab_971_vote_930420_000001_asm_comm (accessed October 21, 2003).

¹³ The number of valid signatures needed to pass a general law by public initiative in California is established as five percent of all the votes for governor in the prior gubernatorial election. CAL. CONST. art. II, § 8(b), http://www.leginfo.ca.gov/const/article_2, (accessed October 21, 2003).

¹⁴ Similar rates existed in 2001-2002 when groups trying to amend the Three Strikes law paid to have a professional poll done to see about the prospects of changing the law through a public initiative. Personal discussions with group leaders of Families to Amend California’s Three Strikes (FACTS) and Citizens Against Violent Crime (CAVC).

¹⁵ Reynolds, Jones and Evans, *Three Strikes*, 56.

With his poll results, Reynolds was able to receive a start-up fund of \$40,000 from the National Rifle Association (NRA) and \$50,000 from the California Correctional Police Officer's Association (CCPOA)(also known as the prison guard union). A direct mailing effort was conducted by Pat Robertson's Christian Coalition.¹⁶ In addition, Reynolds put up \$60,000 of his own money.¹⁷ The NRA promoted the concept that "Guns don't kill people, people kill people," and therefore, in line with its conservative leanings, the NRA has advocated longer sentences for convicted criminals.¹⁸ The CCPOA has generally publicized its advocacy of longer sentences as a "concern for the victims." The more cynical view is that it does so primarily to obtain greater job security for its members and an enhanced opportunity to receive promotions when the prison system is growing.¹⁹

The Death of Polly Klaas

On October 1, 1993, 12-year-old Polly Klaas was kidnapped from her Petaluma home as she and two friends were preparing to go to bed during a slumber party. The Klaas family immediately took the case to the media, where grandfather Joe Klaas (a

¹⁶ Reynolds, Jones and Evans, *Three Strikes*, 57; Dan Morain, "'Three-Time Loser' Bid Supported by Lungren," *Los Angeles Times*, December 7, 1993, A-3.

¹⁷ Vlae Kershner and Greg Lucas, "'3 Strikes' Leader Warns Assembly He Doesn't Want Ballot Measure Softened," *San Francisco Chronicle*, January 5, 1994, A13.

¹⁸ See Daniel Burton-Rose, Dan Pens and Paul Wright, *The Celling of America: An Inside Look at the U.S. Prison Industry* (Monroe, Maine: Common Courage Press, 1998), 6-14. The NRA also helped by giving \$90,000 to the three strikes campaign in the state of Washington in 1993. Arlene Levinson, "Ballot Measures in Washington State, Texas Express General Fear of Crime," *Associated Press*, October 26, 1993.

¹⁹ CCPOA member Lt. Kevin Peters is quoted as follows: "You can get a job anywhere. This is a career. And with the upward mobility and rapid expansion of the department, there are opportunities for the people who are [already] correction staff, and opportunities for the general public to become correctional officers. . . . with 'Three Strikes' and the overcrowding we're going to experience with that, we're going to need to build at least three prisons a year for the next five years. Each one of those institutions will take approximately 1,000 employees." Burton-Rose, Pens and Wright, *The Celling of America*, 137.

former DJ at KGO--a radio station in San Francisco) and father, Marc Klaas, were articulate speakers. Joe Klaas's experience with the media was put to good use, and the family sent videos of the photogenic Polly with a cute smile to all the media outlets. Within a very short time Polly Klaas became known worldwide.²⁰

About the same time as the Klaas kidnapping, Reynolds had filed his petition with the Secretary of State's office and had begun the process of collecting signatures. After the first three weeks, Reynolds noted his disappointment: "I thought all we had to do now was sit back and wait for the signatures to roll in. But we were in for a big shock. After all that work, all that money, all the time we put into this effort, we only got 15,000 signatures back. It was barely enough to fill one box. I can still remember bringing that box home and watching Sharon [his wife] break into tears just looking into it. At that point it really began to look like an impossible goal. We started thinking that we would never get there."²¹

Reynolds, shortly thereafter, was able to get the endorsement of Republican Party U.S. Senate candidate Michael Huffington, who also agreed to donate \$200,000 to Reynolds' campaign, and then to get the endorsement of U.S. Representative Dan Lungren, who was going to be running for California Attorney General.²² As a condition for Huffington's contribution, Reynolds secretly agreed that he would seek to

²⁰ Barry Bortnick, *Polly Klaas: The Murder of America's Child* (New York: Pinnacle Books, 1995). Also Joe Klaas, speech given at Furama Hotel, Los Angeles on October 6, 2001.

²¹ Reynolds, Jones and Evans, *Three Strikes*, 65.

²² Eventually Huffington would give at least \$350,000 to Reynolds' campaign. Dan Morain, "'Three Strikes': A Steamroller Driven by One Man's Pain," *Los Angeles Times*, October 17, 1994, A-3.

push his initiative through, even if AB971 eventually were to pass. This agreement was kept from Assemblyman Bill Jones who was the principle author of AB971.²³

Also at this time, during the November elections in the state of Washington, voters passed a “three strikes” law by means of a public initiative with a 76 percent favorable vote, to become the first of what would be many “strikes” laws.²⁴ The “three strikes” movement in Washington had attracted national interest, including support from such notable people as William J. Bennett, the former U.S. Education Secretary and drug czar.²⁵ But, unlike Reynolds’ law, the Washington statute would be limited to only violent and serious offenses, as would be the case in the vast majority of other states that enacted “strikes” laws in the 1990s.²⁶

In California, a poll showed that “crime” had become the number one public concern.²⁷ The U.S. Senate had voted 91 to 1 in favor of its federal “three strikes” legislation.²⁸ On November 10, 1993, California Democrat Assemblyman Tom Umberg

²³ Reynolds, Jones and Evans, *Three Strikes*, 67.

²⁴See Peter Lewis, "'Three Strikes You're Out': Three-fourths Yes and It's In," *The Seattle Times*, November 3, 1993, CA; "1993 Election Results," *The Seattle Times*, November 3, 1993, C6.

²⁵ William J. Bennett, "Yes on 593: Three Strikes and You're Out," *Seattle Times*, September 19, 1993, B7; Barbara A. Serrano and Peter Lewis, "Other States Eye 'Three Strikes' Initiative," *Seattle Times*, November 2, 1993, B3.

²⁶ In fact, later, David La Course, an activist who helped write Washington State’s Three Strike law, said California’s broad approach “has hurt the movement.” La Course maintained that states should be tough with career criminals, but the laws should only target “violent crimes.” Laura M. Litvan, "Can 'Three Strikes' Reduce Crime?" *Investor's Business Daily*, November 30, A1 and A26. Washington’s law went into effect on December 2, 1993. Jolayne Houtz, "Taxpayers to Beat the Costs of 593," *Seattle Times*, November 4, 1993, B1.

²⁷ Seventy-eight percent of the California public identified “crime and law enforcement” as an “extreme concern.” Vlae Kershner, "Crime is Now No. 1 Concern, State Poll Says," *San Francisco Chronicle*, November 24, 1993, A1.

²⁸ Bruce Alpert, "'3 Strikes You're Out' Law Targets Repeat Offenders," *New Orleans Times Picayune*, November 7, 1993, A6; Helen Dewar, "Senate Approves Life Sentences for Three Felonies," *Washington Post*, November 9, 1993, A4. The Three Strikes legislation was added to President Clinton’s Crime Bill which would eventually be passed in its entirety in 1994. 18 U.S.C.S. § 3559.

of Santa Ana proposed to put forward state legislation the following year similar to the state of Washington's "three strikes" law.²⁹

Then on December 4, news bulletins would change the face of Reynolds' efforts dramatically. That day, Reynolds' petition drive received an enormous (but horrible) boost. The body of Polly Klaas was found in a field near an abandoned sawmill near Cloverdale, California. Richard Allen Davis, the alleged kidnapper and killer, had a long history of violent crime. Reynolds has said: "When Polly's body was found, KGO radio gave out our telephone number, told people about Three Strikes, and asked them to call for petitions. The resulting volume of calls blew out our phone system that night. We had four lines with a sixty-call backup. It was overloading and recycling every two minutes. It was unbelievable. The phone company brought in a special team and rerouted our lines through a company in Sacramento that could handle the volume."³⁰

Dan Morain, writing for the *Los Angeles Times* stated: "It became almost a mantra, repeated in the newspapers, on talk radio and on television. In a burst of recognition, hundreds of thousands of people signed Reynolds' initiative petitions. Politicians from California to the White House, keen to the message, wrapped themselves in the 'three strikes' concept."³¹

²⁹"Wilson Calls for War on Crime in State," *The San Francisco Chronicle*, November 11, 1993, C4. The Umberg bill was probably also politically motivated by the fact that Umberg was anticipating a run at the attorney general position in the 1994 election. Eric Bailey, "Umberg Launches Race for Attorney General," *Los Angeles Times*, February 18, 1994, B5.

³⁰ Reynolds, Jones and Evans, *Three Strikes*, 70.

³¹ Morain, "A Father's Bittersweet Crusade."

The death of Polly left the public, in small towns and big cities alike, feeling insecure and vulnerable. Children in many communities were afraid that “some monster” would come and “snatch them from their homes.”³² Tormented parents tried to talk to their children about the abduction of Polly. “This is the one thing that’s shaken me. There is no place to go. There is no place that’s safe,” said Molly McVay, who had already moved with her 10-year-old daughter to the small town of Sonora to escape the “violent” atmosphere of the big city.³³ A child resource center in the city of Orange, California, reported it received phone calls throughout the day from parents asking about ways to protect their children.³⁴ Mike Reynolds and Marc Klaas were becoming well-known names in California and around the nation.³⁵ Klaas, who already had the national spotlight, was initially a very strong supporter of Reynolds’ initiative-- and, although he later would oppose it, his original support for the initiative in December and January definitely helped keep the Three Strikes issue in the forefront of

³² Richard C. Paddock and Jennifer Warren, "Fear, Anger, Calls for Action Are Legacy of Polly's Death," *Los Angeles Times (Los Angeles Edition)*, December 8, 1993, A-1.

³³ Paddock and Warren, "Fear, Anger, Calls for Action."

³⁴ Richard C. Paddock and Jennifer Warren, "Fear, Anger, Calls for Action Are Legacy of Polly's Murder," *Los Angeles Times (Orange County Edition)*, December 8, 1993, A-1.

³⁵ There was an in-depth story discussing the death of Kimber and the initiative in the *New York Times*. Jane Gross, "Drive to Keep Repeat Felons in Prison Gains in California," *New York Times*, December 26, 1993, 1. Marc Klaas appeared on the “CBS This Morning Show” and was invited to the White House. "Marc Klaas, Father of Murdered Daughter Polly, Discusses His Upcoming Meeting with President Clinton Regarding Child Safety," *CBS This Morning: CBS News Transcripts*, December 20, 1993. Klaas also appeared on the talk-show “Geraldo.” Geraldo Rivera, "Polly Klaas: Maybe She Died So That Other Children Might Live," *Geraldo*, January 4, 1994. The Reynolds family was featured prominently in a “20/20” episode. Tom Jarriel, "'Three Strikes and You're Out' - Denying Parole," *20/20 (ABC)*, January 14, 1994. Polly Klaas was mentioned in President Clinton’s 1994 State of the Union address. Bill Clinton, "CNN Specials: State of the Union Address," *CNN*, January 25, 1994. See also St. George, "Daughter's Slaying Sparked the '3-Strikes' Movement."

the public mind and caused more and more people to endorse the initiative.³⁶ News articles and TV programs were giving daily updates on Richard Allen Davis, the circumstances of the Klaas kidnapping and murder that usually also included announcements about Reynolds' Three Strikes initiative.³⁷ Reynolds used conservative radio shows effectively to help influence many of their listeners.³⁸ The idea that the Three Strikes law would have prevented the Polly Klaas tragedy was becoming deeply engrained in the minds of Californians.

The 1994 elections were looming. Democrat Kathleen Brown, the early frontrunner and the strongest challenger to Republican Governor Pete Wilson, appeared to be extremely vulnerable on the issue of crime because she was the sister of former Governor Edmund G. (Jerry) Brown, Jr. Jerry Brown was the governor who had appointed the controversial Chief Justice Rose Bird to the California Supreme Court. Bird had become notorious because of her judicial efforts to keep death penalty sentences from being enforced.³⁹ Kathleen Brown knew that crime was going to be a hot issue in the upcoming election and she announced her full support for the death

³⁶ "And what we're going to do in California is pass a one, two, three strikes you're out initiative which will put dangerous felons away for good after their third--after their third felony," said Klaas on CBS' *Good Morning America*. "Marc Klaas, Father of Murdered Daughter Polly."

³⁷ Some of the major news items spread out over separate days focused on Davis's arrest, his testimony that officers had helped him get his car out of ditch while an alive Polly Klaas was tied up in a wooded nearby area, the discovery of Polly's body, and then her funeral and memorials. See Bortnick, *Polly Klaas: The Murder of America's Child*. Also, as an example, see Dennis Georgatos, "Slaying Suspect's Life Marked by Constant Trouble," *Associated Press*, December 9, 1993.

³⁸ Radio talk-show hosts John Kobylt and Ken Chiampou of KFI-AM in Los Angeles focused on the Assembly Public Safety Committee and its chairperson, Democrat Tom Umberg. Eric Bailey, "Politically Perilous Times for Safety Panel; Legislature," *Los Angeles Times*, January 24, 1994, A1. When Umberg tried to debate Kobylt and Chiampou on the question of whether Reynolds' initiative was too broad, he received several death threats from listeners. Eric Bailey, "News Analysis; Assembly Public Safety Committee Turns Tough," *Los Angeles Times*, January 25, 1994, A3.

³⁹ Bill Stall, "Crime Issue May Aid Wilson Campaign," *Los Angeles Times*, December 12, 1993, A-3.

penalty and the Three Strikes law.⁴⁰ Another Democratic candidate for governor, John Garamendi, pushed things further, not only endorsing the Three Strikes law, but also proposing to repeal the “inmate bill of rights” and calling for the housing of convicted criminals in “boot camps.”⁴¹ U.S. Representative Lynn Woolsey, who represented Petaluma and was known as a liberal Democrat, felt it necessary to call for stricter criminal penalties and tougher parole standards.⁴² The picture of Richard Allen Davis was featured on pamphlets issued by a Republican state assembly candidate in the San Diego area, who declared that the incumbent was soft on crime and a supporter of bills such as those that allowed Davis to receive short sentences for his previous crimes.⁴³ And, U.S. Senator Diane Feinstein declared that the Polly Klaas killing would probably ensure the passage of Clinton’s national crime bill in 1994.⁴⁴

⁴⁰ Bill Stall, "Kathleen Brown Outlines 33-Point Anti-Crime Plan," *Los Angeles Times*, December 14, 1993, A1.

⁴¹ Bill Stall, "Garamendi Urges Repeal of 'Inmate Bill of Rights'," *Los Angeles Times*, Dec. 29, 1993, A-1. Commenting on the Governor’s race, Speaker of the Assembly Willie Brown said, “They’re each going to be candidate for hangman.” William Hamilton, "California Rivals Focus on Crime," *Washington Post*, January 7, 1994, A3. The California inmate bill of rights was considered the hallmark of the prison reform movement of the 1960s and 1970s. It was passed by the state legislature with two state laws in 1968 and 1975. §§ 2600 and 2601. Greg Lucas, "Wilson Turns Up Heat on Crime," *San Francisco Chronicle*, December 30, 1993, A14. Under the bill of rights, prisoners had the rights of citizens except if prison officials had “prison security or protection of the public” as a legitimate reason to revoke such rights. This standard allowed prisoners to win law suits for the right to have long hair, conjugal visits, pornographic materials, broad visitation, and many other rights. In 1994, the bill of rights did not get repealed, but it was dramatically curtailed when the broader standard of “penalogical interest” was substituted as the standard for prison officials to take actions against prisoners. Scott Armstrong, "California Moves to Restrict Quality of Life for Inmates," *Christian Science Monitor*, May 10, 1994, 3; Robert B. Gunnison, "Confident Wilson Rakes in Donations," *San Francisco Chronicle*, September 13, 1994, A2.

⁴² Paddock and Warren, "Fear, Anger, Calls for Action Are Legacy of Polly's Murder."

⁴³ "Polly Suspect Being Used in Willie Horton Role," *San Francisco Chronicle*, December 24, 1993, A3.

⁴⁴ Vlae Kershner and Carolyn Lochhead, "Politicians React With Calls for Stiffer Sentences," *San Francisco Chronicle*, December 7, 1993, A4.

Public Pressure and the Passage of AB971

Politicians beat the “tough on crime” drum and began using Three Strikes more and more as a platform issue.⁴⁵ After speaking at Polly Klaas’s funeral on December 29, 1993, Governor Pete Wilson--despite the fact the state’s crime rates were actually decreasing--called for a special legislative emergency session that would provide for first priority for the passage of crime bills in 1994.⁴⁶ Wilson also called for a “crime summit” for January.⁴⁷ On January 3rd, Bill Jones accused fellow assemblyman Democrat John Burton of being soft on crime--to which Burton, a recovering drug

⁴⁵ Across the nation, crime and the slogan “three strikes” became the hot topic among state legislators. Politicians in Alaska, Florida, Georgia, Kansas, Massachusetts, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina and Virginia proposed Three Strike bills. Robert Davis, "California Girl's Slaying Was a Call to Action," *USA Today*, January 26, 1994, 4A; Curtis Krueger, "Confronting Kids and Crime," *St. Petersburg Times*, January 16, 1994, 1D; Ben Smith III, "Miller Targets Violent Crime, Schools in Speech to Lawmakers," *Atlanta Journal and Constitution*, January 11, 1994, A1; Frank Phillips and Scot Lehigh, "Weld's Focus: Crime, Welfare; TV speech Today Sounds '94 Themes," *Boston Globe*, January 13, 1994, 25; Fred W. Lindecke, "Griffin Flips Sides, Backs Video Gaming; Money Sought for Education," *St. Louis Post-Dispatch*, January 6, 1994, 1A; "New Jersey's New Governor: Excerpts from Whitman's Address on Leadership, Taxes and Schools," *New York Times*, January 19, 1994, B4; "Cuomo Takes Anti-Crime Stance," *Washington Post*, January 6, 1994, A9; Alan Johnson, "State, Nation Take Aim at Crime," *The Columbus Dispatch*, January 4, 1994, 1A; Frank Reeves, "Repeat Offenders Targeted Bill Before State House Imposes Life Imprisonment Without Parole for Three-Time Violent Offenders," *Pittsburgh Post-Gazette*, January 14, 1994, B9; Donald P. Baker and John F. Harris, "Allen Makes Crime Top Legislative Priority," *Washington Post*, January 18, 1994, D1. By the end of January, news reports said that at least 30 states had legislation or initiative drives in place that would enact a “strikes” law. "GOP Is No Longer Bastion of Tough Talk on Crime," *Christian Science Monitor*, February 1, 1994, 2. See chapter 12 for a listing and citations of the state “three strikes” laws that were passed in the 1990s.

⁴⁶ “Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two thirds of the membership concurring.” CAL. CONST. art. 4 § 8(d). The law was held as a valid urgency statute by several California appellate courts. See, for example, *People v. Cartwright*, 39 Cal. App. 4th 1123, 46 Cal. Rptr. 351 (1995).

⁴⁷ Robert B. Gunnison and Greg Lucas, "Legislators Plan Tough Bill on Violent Crime," *San Francisco Chronicle*, January 4, 1994, A1. The Speaker of the Assembly, Willie Brown, also went along with the special session and said: “The public generally believes they are in danger and more so than they have ever been.” Jerry Gilliam, "Lawmakers Take Quick Aim at Crime," *Los Angeles Times*, January 4, 1994, A3.

addict and known to be one of the more liberal legislators, replied, “Jones is a liar. I’ve been trying to strengthen the bill.”⁴⁸

The state assembly began its January session with special tribute to the memory of Polly Klaas.⁴⁹ Along with Jones’ (AB971) and Umberg’s bills (AB167), three more “three strike” measures were proposed, one by Assemblymen Richard Rainey, a former sheriff, (AB1568) and two by Ross Johnson (AB2429 and AB9X).⁵⁰ In 1994, on January 6th, Jones’ AB971 sailed through the Assembly Public Safety Committee with a 7 to 1 vote (only Tom Bates, Democrat from Oakland, opposed the bill) and was altered into a measure to be put on the June primary ballot.⁵¹ Assembly Speaker Willie Brown openly acknowledged that he was hoping that by passing the Three Strikes law in the spring, it would be a non-issue in the November election.⁵² Reynolds, worried that Brown was going to try to pull a fast one on him, said he was going to continue collecting signatures for his initiative.⁵³ Benefiting from the Three Strikes spotlight, on January 11th, Bill Jones announced that he was running for Secretary of State.⁵⁴ It

⁴⁸ Reynolds, Jones and Evans, *Three Strikes*, 93.

⁴⁹ Gilliam, "Lawmakers Take Quick Aim at Crime."

⁵⁰ Ross Johnson’s second bill was nearly identical to AB2429, but the “X” designation allowed it to be considered during the special session--potentially allowing it to become effective sooner than if the normal legislative process took place. Vlae Kershner, "Governor Wants '3-Strikes' Plan That Is Toughest, Most Costly," *San Francisco Chronicle*, March 3, 1994, A1; Morain, "'Three-Time Loser' Bid Supported by Lungren." Text and history of the bills were found at the California State Senate and Assembly Bill web site at: http://info.sen.ca.gov/cgi-bin/pagequery?type=sen_bilinfo&site=sen&title=Bill+Information (accessed October 21, 2003).

⁵¹ Said Bates: “Right now it’s like everyone is just piling on, trying to dream up the most Draconian proposal they can.” Bailey, "Politically Perilous Times."

⁵² Greg Lucas, "'3 Strikes' Proposals OKd by Key Panel," *San Francisco Chronicle*, January 7, 1994, A29.

⁵³ George Skelton, "Capitol Journal: When You're Up Against It, Punt the Ball," *Los Angeles Times*, January 10, 1994, A3.

⁵⁴ "Fresno Assemblyman Enters State Race," *The San Francisco Chronicle*, January 13, 1994, C4.

wasn't until January 14th that the first prominent politician, Assemblyman John Vasconcellos, spoke out against the Three Strikes law, and even he had to propose as an alternative that the state return to an indeterminate sentencing scheme.⁵⁵ On January 25th, President Clinton gave his State of the Union address and received his strongest applause after announcing his support for the federal "three strikes" law.⁵⁶ And-- probably most significant--also on January 25th, it was announced that a field poll showed Reynolds' initiative had 84 percent of the public's support.⁵⁷

On January 31, AB971 and the companion bills went before the whole Assembly. Bill Jones said, "Before the session that day I went to see Willie Brown to find out if he was going to, as we say, 'Speakerize' the bill. He made it clear to me he was going to get out of the way."⁵⁸ Later Willie Brown said, "I got out of the way of this train. I tell you, I looked like Harrison Ford in 'The Fugitive.' I got out of the way

⁵⁵ Vlae Kershner, "'3 Strikes' Draws Major Opponent: Vasconcellos challenges initiative," *San Francisco Chronicle*, January 15, 1994, A17. An indeterminate sentencing scheme was used in California prior to 1977. Indeterminate sentencing generally involves a sentence with a broad range, such as five years-to-life, and then involves a parole board that decides when a person is eligible for release. For more details on the history of California's use of indeterminate sentencing, see chapter 4.

⁵⁶ Ann Devroy, "President Insists Congress Enact Reforms in Welfare, Health Care," *Washington Post*, January 26, 1994, A1. "Most violent crimes are committed by a small percentage of criminals, who too often break the laws even on parole," Clinton said. "Those who commit repeated violent crimes should be told: commit a third violent crime and you'll be put away, and put away for good. Three strikes and you are out." Leslie Philips, "Crime Hardball: 'Three strikes'," *USA Today*, January 26, 1994, 4A. *USA Today* reported that Clinton was spurred on to support the Three Strikes law because of the death of Polly Klaas. Davis, "California Girl's Slaying." All were not happy with Clinton's statements. Congressional Black Caucus members sat noticeably silently as Clinton discussed the Three Strikes law while white colleagues stood and applauded. Leslie Philips, "Clinton Pitch: Hardball on Crime," *USA Today*, January 26, 1994, 4A.

⁵⁷ The poll found 92 percent of Republicans and 78 percent of Democrats in favor of the initiative. Vlae Kershner, "Poll Shows Commanding Lead for State's '3-Strikes' Initiative," *San Francisco Chronicle*, January 26, 1994, A5.

⁵⁸ Reynolds, Jones and Evans, *Three Strikes*.

because I'm a realist. We're talking about a group of people who have zero courage. They all like their jobs and they want to be reelected."⁵⁹

On the other hand, there were some signs of hesitancy for Reynolds' AB971: all the "new" alternative bills required the last strike to be "serious" or "violent." Most criminologists and experts had spoken out against all the "strike" laws being proposed, not only in California, but across the nation.⁶⁰ Los Angeles County Sheriff Sherman Block said the Three Strikes law was flawed because it would cost the state and its counties billions of dollars; and other law enforcement officials and some district attorneys also questioned details of the measure.⁶¹ The Legislative Analyst's office estimated that Reynolds' Three Strikes law could add \$2 billion a year to the state's \$2.7 billion prison system budget.⁶² Conservative newspaper columnists were questioning the broadness of the application of Reynolds' law or noticeably not endorsing it.⁶³ Even Governor Wilson had told Marc Klaas that the Rainey bill was

⁵⁹ "Lawmakers Sure to Pass 'Strikes' Bill, Brown Says," *Fairfield Republic*, March 2, 1994.

⁶⁰ See, for example, Keith Henderson, "Three Strikes' Laws Strike Out With Law Enforcement Experts," *Christian Science Monitor*, February 1, 1994, 1. "[M]ost criminal justice experts reject the sweeping get-tough approach, saying it has a minimal effect on crime. They point out that the pris on population has nearly tripled since 1980, but crime hasn't dropped." Dennis Cauchon, "Critics: Life Terms Won't Stop Crime," *USA Today*, February 17, 1994, 1A. The former U.S. deputy attorney general--second in charge to the U.S. attorney general--commenting on the estimate that it would cost \$600,000 over 30 years to incarcerate a federal three-striker said, "One hundred-fifty American families could have health care for a year for that price. It doesn't make any sense." Ana Puga, "Ex-Deputy to Reno Assails Key Provisions of Crime Bill," *Boston Globe*, February 16, 1994, 5.

⁶¹ Kenneth Reich, "Three Strikes' Plan Flawed, Sheriff Says," *Los Angeles Times*, December 30, 1993, A-3. "It would lead to absolute gridlock of the criminal justice system," said James Fox, the District Attorney of San Mateo County. Gunnison and Lucas, "Legislators Plan Tough Bill."

⁶² Gunnison and Lucas, "Legislators Plan Tough Bill." Reynolds, however, was responding to estimates that he declared that the Three Strikes legislation would add only about 8,000 more prisoners to the system that already housed 119,000. Kershner and Lucas, "'3 Strikes' Leader Warns Assembly."

⁶³ See, for example, Debra J. Saunders, "They're Draconian Or I've Gone Lib," *San Francisco Chronicle*, January 5, 1994, A16.

more reasonable and the one Marc should support.⁶⁴ Besides limiting its provisions to only “violent” and “serious” convictions, the Rainey bill also required a prior prison term in order for a prior serious or violent felony to count as a strike, and juvenile adjudications could not be tabulated as strikes.⁶⁵ The California District Attorneys Association (CDA) also supported the Rainey bill. Reynolds, however, skeptically believed that the real reason the CDA did not like AB971 was because prosecutors would forfeit “plea bargaining power” because AB971 disallowed the use of strikes for such bargaining.⁶⁶

In public, almost all politicians were very hesitant to speak out against AB971. What happened behind closed doors, however, was very different. Reynolds was in a very strong position since he had already gathered over 300,000 signatures for the initiative.⁶⁷ Paul Sutton, Professor of Criminal Justice Administration at San Diego

⁶⁴ Michael J. Moore, *The Legacy*, (Princeton, NJ: Films for the Humanities, 1999). Reynolds’ views of Governor Wilson’s actions at this time were: “There is no doubt that Wilson privately attempted to build support for the Rainey bill while publicly maintaining his neutrality.” Reynolds, Jones and Evans, *Three Strikes*, at 164. See also Gunnison and Lucas, “Legislators Plan Tough Bill.”

⁶⁵ The Rainey bill’s sentencing scheme actually was harder on some violent offenders. For instance, in 1994 a first-time offender rapist could have been sentenced to eight years and be eligible for 50 percent conduct credits under Reynolds’ Three Strikes law, but would have had to serve all eight years under the Rainey bill. A second-strike rapist would have been sentenced to 21 years (current conviction of eight years doubled plus another five year enhancement) from § 667(a) and been eligible for parole after serving only 80 percent of the time under the Reynolds’ bill but would have to serve 100 percent of the 21 years under the Rainey bill. And finally, a third-strike rapist would have had the possibility of parole after 34 years under Reynolds’ bill (three times the eight-year current conviction plus two five-year enhancements under § 667(a)) but could receive life without the possibility of parole under the Rainey bill.

⁶⁶ Reynolds, Jones and Evans, *Three Strikes*. The CDA, however, has since changed their position on the Three Strikes law. In recent years they have consistently spoken against proposed legislation that would make the Three Strikes law inapplicable to nonviolent and non-serious offenses. Interestingly, supporting Reynolds’ theory, this change in their position has occurred when the provisions prohibiting plea bargaining have become virtually meaningless and prosecutors have gained a distinct advantage in the plea bargaining process because of the threat of a Three Strikes enhancement.

⁶⁷ In early January when the other bills were proposed, Reynolds made it very clear that he did not want his measure to be watered down. “We brought it up as filet mignon, and when Assembly Speaker Willie Brown and his team got through with it, it turned out baloney,” Reynolds said. “We will not rest

State University, said to a reporter that: “[T]o argue against a policy position offered by [Reynolds] is somehow taken to be a denial of the legitimacy of [his] pain.”⁶⁸

Reynolds, who maintained constant relations with the media, also possessed the power to accuse a politician of being “soft” on crime--a label considered highly undesirable in the election year of 1994. As Assemblyman Phil Izenberg said on the floor of the assembly during debate on the Three Strike bills: “. . . we so fear the voters that we are hesitant to talk honestly and publicly about the questions of crime and punishment.”⁶⁹ To come out against Three Strikes might even be characterized as “pro-criminal.”⁷⁰

Because 1994 was an election year, both parties found themselves in a political quandary. As Reynolds later observed: “Republicans wanted the initiative on the November ballot to help their reelection campaigns. Democrats didn’t want the initiative on the ballot because they felt it would hurt their reelection campaigns. Republicans who might have liked to see AB971 fail in order to guarantee that the initiative would be on the November ballot couldn’t vote against the bill because they intended to make support for Three Strikes a campaign issue. Democrats who philosophically disagreed with AB971 couldn’t vote against it because such a vote would be used against them by their Republican opponents in the election.”⁷¹

until the language of ‘three strikes’ becomes law.” Brown responded: “I also suspect that initiative thing will pass. It’s not unusual for the people of the state of California to vote for something that is not workable.” Kershner and Lucas, “3 Strikes’ Leader Warns Assembly.”

⁶⁸ Daniel M. Weintraub, “Lone Justice,” *Los Angeles Times*, February 14, 1995, E1, quoting L. Paul Sutton, Professor of Criminal Justice Administration, San Diego State University.

⁶⁹ Reynolds, Jones and Evans, *Three Strikes*, 139.

⁷⁰ Herbert J. Bourgeois, “Reno Seems to be Pro-Criminal,” *New Orleans Times-Picayune*, February 21, 1994, B4.

⁷¹ Reynolds, Jones and Evans, *Three Strikes*, at 145-146.

On January 31st, after the proposal had not even made it out of the Public Safety Committee the previous year, five Three Strike bills were passed by overwhelming margins in the state assembly. The Jones bill (AB971) passed by a 59 to 10 vote, the Rainey bill (AB1568) by a 62 to 2 vote, the Umberg bill (AB167) by a 66 to 2 vote, and Johnson's two bills (AB2429 and AB9X) by 64 to 1 and 63 to 1 votes, respectively.⁷² In addition, giving the NRA an additional plum, the assembly voted 40 to 34 against a gun control bill (AB1105) that had gained support from many law enforcement experts and had been earlier considered a "no-brainer" for passage.⁷³

During this time the signature gathering for Reynolds' initiative continued and demonstrated massive public support. Due to an error when printing the petitions, Reynolds feared that he might not meet state requirements and therefore started a new drive with a new set of corrected petitions. This proved to be no problem as Reynolds' drive eventually netted a total of more than 800,000 signatures--well over the 385,000 that were needed.⁷⁴

By now, Joe Klaas, the grandfather of Polly, began having doubts about Reynolds' petition and AB971. He expressed his reservation to his son Marc, but Marc still was hesitant to turn against Reynolds' initiative efforts. Then, when Governor Wilson finally conveyed his crime summit on February 7th and 8th (it had originally

⁷² See State Senate and Assembly Bills at: http://info.sen.ca.gov/cgi-bin/pagequery?type=sen_bilinfo&site=sen&title=Bill+Information and Dan Morain, "'Three Strikes' Bills Sweep State Assembly," *Los Angeles Times*, February 1, 1994, A1.

⁷³ "Legislature Knives Gun Control in the Back," *Los Angeles Times*, February 2, 1994, B6.

⁷⁴ Those trying to currently amend the law are lucky Reynolds did not try to pass his initiative as an amendment to the constitution, which only needed eight percent of the previous governor's race votes (as opposed to the five percent required for a statutory change) which Reynolds' easily acquired. See CAL. CONST. art. II, § 8(b), http://www.leginfo.ca.gov/const/.article_2 (accessed October 21, 2003).

been scheduled for January but had to be postponed because of the Northridge earthquake), Marc Klaas traveled with Reynolds and was disturbed by some of the comments Reynolds made as they went from the Los Angeles airport to the crime summit in Hollywood. According to Klaas, Reynolds pointed out the window--as they were passing a neighborhood populated by many people of color--and said "This is how we are going to take care of these people." Marc Klaas was embarrassed at the racial implications of the statement and decided that it was time to distance himself from Reynolds' campaign and put his support behind the Rainey bill.⁷⁵

On February 17th, AB971 and the other Three Strike bills came before the Senate Judicial Committee.⁷⁶ Reynolds made the following statement: "A felony is a serious crime." Looking around the room, he asked, "How many people in here have committed a felony recently? Anybody in here commit a felony last week? A felony isn't a parking ticket! A felony is a serious crime! I say that if a person commits two serious or violent felonies and then commits another felony, we should get the dirtbag off the street!"⁷⁷ The Jones-Costa bill (AB971) passed the Senate Committee by an 8 to

⁷⁵ Personal interview with Marc Klaas, April 26, 2001 and also from an opinion piece written by Klaas in the *San Jose Mercury News*, November 14, 1999. "Marc Klaas Prefers Rainey Bill to 'Three Strikes' Initiative," *San Francisco Chronicle*, February 18, 1994, D3.

⁷⁶ See State Senate and Assembly Bills at: http://info.sen.ca.gov/cgi-bin/pagequery?type=sen_bilinfo&site=sen&title=Bill+Information (accessed October 21, 2003).

⁷⁷ Reynolds, Jones and Evans, *Three Strikes*, 179. I had an interesting experience a few years later at a meeting of about 10 to 15 people at a Republican Assemblyman's office. The meeting was being held because the assemblyman was exploring the possibility of putting forward a bill to amend the Three Strikes law to violent and serious felonies. The assemblyman, who was known to have had his own difficulties with the law, asked those in the room very loudly: "Who in here hasn't committed a felony?" Nobody in the room raised their hand and everybody broke out laughing.

3 vote, the Rainey bill (AB15680) by a 9 to 0 vote, the Umberg bill (AB1670) by an 8 to 2 vote, and Johnson's two bills by 9 to 0 and 10 to 0 votes.⁷⁸

When Reynolds announced that he had gathered over 600,000 signatures for his initiative, it became obvious that he was in a very strong position to get his way.⁷⁹ On March 2nd, Governor Wilson announced that he wanted to have the toughest (and most expensive) Three Strikes bills sent to him to sign--and, thus, the Rainey bill and the other Three Strike measures fell to the wayside, with only AB971 going forward.⁸⁰ Democrats let AB971 pass without much of a fight, in line with Assembly Speaker Brown's attitude that the Reynolds' law would be passed in any event and it would be better to try to neutralize the matter as a campaign issue in the upcoming November election.⁸¹ On March 3rd, AB971 passed the state senate by a 29 to 7 vote; and on March 7th, on a public platform in Hollywood, Governor Pete Wilson signed AB971.⁸² At 2:45 p.m., when the law was delivered to the Secretary of State by a Wilson aide, it became official that thereafter anybody who committed any felony and had a prior

⁷⁸ Dan Morain, "5 '3-Strikes' Bills Okd by Senate Panel," *Los Angeles Times*, February 18, 1994, A3.

⁷⁹ See Morain, "5 '3-Strikes' Bills"; "Marc Klaas Prefers Rainey Bill to 'Three Strikes' Initiative."

⁸⁰ Kershner, "Governor Wants '3-Strikes' Plan." Wilson, although he originally considered the Rainey bill, became an ardent supporter of Reynolds' Three Strikes law and even said to Marc Klaas when Klaas was trying to get his support for the Rainey bill that Klaas ". . . didn't know how the crime victims felt." Klaas responded, "I don't think you remember who you are talking to." Peter Hecht, "Two Grieving Fathers Part Ways on '3 Strikes' Crusade," *Sacramento Bee*, July 10, 1994, A1.

⁸¹ Senate leader Bill Lockyer said that he wanted to help fellow Democrat, Diane Feinstein, in her re-election bid for U.S. Senate and did not want to have Three Strikes on the November ballot. Even though Feinstein supported the Three Strikes law, he was concerned that having the law on the ballot might cause more conservatives to vote. "If their goal is simply to cause political mischief for the November ballot, that's cut off by enactment of the (Jones-Costa) bill," Lockyer said. Morain, "5 '3-Strikes' Bills." State Senator Leroy Greene, Democrat from Carmichael, said: "I'm going to vote for these turkeys because that's what our constituents want us to do." Vlae Kershner, "State Senate Approves '3-Strikes' by Big Margin," *San Francisco Chronicle*, March 4, 1994, A3.

⁸² Kershner, "State Senate Approves '3-Strikes'"; Vlae Kershner and Greg Lucas, "'Three Strikes' Signed Into California Law," *San Francisco Chronicle*, March 8, 1994, A1.

“serious” or “violent” felony on their record could be subject to the harsh provisions of the Three Strikes law.⁸³ The new law also required a two-thirds vote of the legislature or a majority vote by the public to alter it.⁸⁴

Reynolds’ Initiative and the November Election

For all practical purposes, the damage was done. The Three Strikes law was on the statute books and it would be virtually impossible to obtain a two-thirds vote by the legislature to change matters. The passage of Reynolds’ initiative in November would be only symbolic. The turn against Reynolds’ initiative by Marc Klaas was too little and too late to stop the Three Strikes momentum. Reynolds fulfilled his promise to Michael Huffington by keeping the Three Strikes initiative alive. On the same day AB971 became the law, Reynolds submitted more than 800,000 signatures to qualify his initiative for the November ballot.

In the weeks following the passage of the Three Strikes law, news reports began trickling in regarding the first Three Strike arrests. In Los Angeles, less than seven hours after the Three Strikes measure took effect, Donnell Albert Dorsey, 37, was arrested for receiving stolen property (he was driving a stolen pickup truck).⁸⁵ With seven prior felony convictions--including one assault with a deadly weapon and two robberies--Dorsey faced a minimum sentence under the new law of 25 years-to-life. Earlier in the day, he would have faced a minimum sentence of six years with the

⁸³ Daniel M. Weintraub, "3 Strikes' Law Goes Into Effect," *Los Angeles Times*, March 8, 1994, A1.

⁸⁴ It is questionable whether the legislature could impose a two-thirds voting requirement on itself; which may also have been an additional incentive for Reynolds’ to pass his initiative because there was no question that the public could impose the two-third voting requirement on the legislature.

⁸⁵ Dean E. Murphy and Dan Morain, "50-Cent Caper Could be Ex-Convict's Last Strike," *Los Angeles Times*, March 10, 1994, A1.

chance to reduce the sentence by 50 percent with conduct credits. “He just kept asking me over and over again how this could be. He just didn’t understand. He didn’t know anything about the law,” Deputy Public Defender Nanci Gast said. “I had to go back and tell this man that he is potentially facing 25 years-to-life . . . when he gets caught sitting in a stolen car.”⁸⁶

On March 7th, five hours after enactment of the Three Strikes law, Ventura County police arrested Preston A. Sheldon, 36, for cultivating seven marijuana plants. “It’s the law and we’re going to do our best to make it work in Ventura County,” said Chief Deputy District Attorney Kevin J. McGee about the prospect of Sheldon receiving a 25 years-to-life sentence. “There’s no doubt we need a habitual offender statute.”⁸⁷ In the San Fernando Valley, on March 10th the police arrested a man who had been shot while allegedly trying to steal a car at El Camino Real High School. A second man was arrested on suspicion of drug possession when he was stopped for not wearing a seat belt. Both men had prior records and were facing sentences of at least 25 years-to-life under the Three Strikes law.⁸⁸ Similarly, shortly thereafter, John Kennedy Freeman was arrested for carrying a loaded revolver, Jed Harlan Miller was accused of stealing a truck and two bicycles, and Jose Jesus Ramirez was arrested for stealing a car battery in cases that arose in Alameda and Santa Clara counties--none of the accused would have received more than about four years in state prison if they had committed

⁸⁶ Murphy and Morain, "50-Cent Caper."

⁸⁷ Dwayne Bray and Julie Fields, "D.A. Considers Using '3-Strikes' Law in Pot Case," *Los Angeles Times (Ventura West Edition)*, March 11, 1994, B1. Later Ventura County decided not to use the Three Strikes law against Shelton stating that he initiated cultivation of the marijuana plants at least a month prior to the enactment of the Three Strikes law. Dwayne Bray, "D.A. Weighs '3 Strikes' for Slaying in Oxnard," *Los Angeles Times (Ventura West Edition)*, April 13, 1994, B1.

⁸⁸ Thom Mrozek, "Prosecutors Target 2 Suspects for 1st '3-Strikes' Cases in Valley," *Los Angeles Times (Valley Edition)*, March 11, 1994, B4.

their alleged crimes before Governor Wilson signed the Three Strikes law, but now all could potentially be sentenced to at least a minimum of 25 years-to-life.⁸⁹

During the first six weeks of the new law's existence, Los Angeles County filed 152 third strike cases and 489 second strike cases. District Attorney Gil Garcetti, judges, and attorneys complained that the number of Three Strikes cases going to trial would create a huge bottleneck in the court system and cause court resources to be transferred from the civil court system to the criminal court system.⁹⁰ Orange County officials were complaining that the influx of Three Strike cases burdened their jail system and would cause an earlier release of inmates who had non-Three Strike sentences.⁹¹

While California politicians abdicated from any effort to stop a Three Strikes law that most really did not like, in Washington, D.C., less than two weeks after the California Three Strikes law became effective, federal legislators were able to limit the national Three Strikes law to only violent and serious offenses and to allow an automatic parole hearing for third strikers who turned 70 and had served at least a 30-year prison sentence.⁹² Of course, senators and representatives in Washington, D.C. did not have a very popular initiative pushing them into action.

⁸⁹ Reynolds Holding, "'3 Strikes' Law Goes Into Action," *San Francisco Chronicle*, March 12, 1994, B3.

⁹⁰ "Large Load of '3 Strikes' Cases Filed by Prosecutors," *Los Angeles Times*, April 23, 1994, B2. For more details on the use of the law by Los Angeles County, see chapter 8.

⁹¹ Martin Miller, "Orange in Bind Over Jail's Likely Expansion," *Los Angeles Times: Orange County Edition*, April 25, 1994, B1. For more details on the use of the law by Orange County, see chapter 11.

⁹² William J. Eaton, "House Panel OKs Anti-Crime Package," *Los Angeles Times*, March 18, 1994, A22.

From March 26th to March 29th, the Los Angeles Times conducted a poll of 1,608 California adults, asking about the Three Strikes law: 65 percent were in favor of the law, but only 47 percent supported a tax increase to help pay for the increase in the number of prisoners--and only 22 percent were willing to support cuts in higher education to help pay for the increased incarceration rate.⁹³

In the June 7th primary election, the Republicans had strongly pro-Three Strikes candidates Pete Wilson running for governor, Dan Lungren for Attorney General, Bill Jones for Secretary of State, and Michael Huffington for U.S. Senate. All were vocal supporters of Reynolds' Three Strikes law, and continued to advertise the initiative whenever they spoke publicly. Democrats running for office also felt they had to show public support for it or perhaps be defeated.⁹⁴ Democrats carried things to an absurd extreme when they tried to accuse Republicans of being "soft" on crime.⁹⁵ Not only did this help legitimize in the public's mind Republican efforts to enact harsher sentences, but it also probably made the Democrats look disingenuous and desperate to try to reverse the Republicans' image of being "tough on crime."

⁹³ Daniel M. Weintraub, "The Times Poll; Residents Balk When Asked to Pay for '3 Strikes'," *Los Angeles Times*, April 2, 1994, A1.

⁹⁴ In fact, typical arguments over the Three Strikes law were about which candidate backed it first. Gebe Martinez, "Candidates for Attorney General Trade Charges at Debate Taping," *Los Angeles Times*, October 6, 1994, B1. See also, Bill Stall, "California Elections/Governor," *Los Angeles Times*, August 3, 1994, A3.

⁹⁵ In March, Kathleen Brown blamed Governor Wilson for the release of serial rapist Marvin Carter (who confessed to raping over 100 women) even though by law his term was up and there was nothing Wilson could have done legally to stop his release. Daniel M. Weintraub, "Rapist's Release Shakes Up Governor's Race," *Los Angeles Times*, March 21, 1994, A3. And, in another television ad, Umberg depicted Attorney General Dan Lungren as being partly to blame for the death of Polly Klaas because "Lungren slashed staffing for a statewide computer database that could have helped officers apprehend Richard Allen Davis, the repeat felon charged with the girl's murder." Eric Bailey, "Attorney General; Lungren Decries Opponent's Ad on Polly Klaas," *Los Angeles Times*, October 25, 1994, A3.

Opponents of the Three Strikes law had hoped that the legislature would vote to put another version of the measure on the November ballot.⁹⁶ The plan was to give voters a choice between the Reynolds and a Rainey-type initiative. Knowing, however, they would need the signature of Governor Wilson to get such a measure on the ballot, the effort eventually died.⁹⁷ The killings of Nicole Brown Simpson and Ronald Goldman started occupying the headlines after June 13th and became the “hot crime” topic when O.J. Simpson emerged as the prime suspect. Marc and Joe Klaas and a few other critics spoke out against the Three Strikes law, but their voices were muted by the overwhelming support for the measure.⁹⁸ All told, it is estimated that supporters of the Three Strikes law spent 58 times as much as their opponents.⁹⁹

On July 30th, Jerry Dewayne Williams, 27, was arrested at the Redondo Beach Pier for taking a slice of pizza from some children ages 7 to 14. He faced 25 years-to-life under the Three Strikes law.¹⁰⁰ The case would become one of the best known Three Strikes episodes and thereafter be referred to as the “pizza slice” crime.¹⁰¹ Media coverage of the Three Strikes law slowed down as the November election approached

⁹⁶ "The Smart '3 Strikes'; Give California Voters a Choice in November," *Los Angeles Times*, June 9, 1994, B6.

⁹⁷ "A Last Chance to Fix Three-Strikes Law," *San Francisco Chronicle*, June 9, 1994, A24; "Wilson Says He Will Block Try to Weaken '3 Strikes'," *San Francisco Chronicle*, June 10, 1994, D3; "Tough, and Good Policy to Boot," *Los Angeles Times*, June 21, 1994, B6.

⁹⁸ Carl Ingram, "Support Sought for '3 Strikes' Alternative," *Los Angeles Times*, June 10, 1994, A3; Lou Cannon, "A Dark Side to 3-Strikes Laws," *Washington Post*, June 20, 1994, A15. The “No on 184” campaign was led by political consultant Leo McElroy, a former Los Angeles television news reporter. Morain, "Three Strikes': A Steamroller."

⁹⁹ Moore, *The Legacy*. Through September of 1994, the “No on 184” campaign had raised only \$13,850, with the largest donation of \$10,000 coming from the California Teachers Association. Morain, "Three Strikes': A Steamroller."

¹⁰⁰ Gordon Dillow, "Stealing Pizza Could Be Third Strike for Felon," *Los Angeles Times*, August 4, 1994, B3.

¹⁰¹ Gordon Dillow, "Pizza Case Unlikely Focus of '3 Strikes' Debate," *Los Angeles Times*, September 18, 1994, B1.

and Proposition 187 (the proposed initiative to deny state resources such as education and welfare to illegal immigrants) grabbed more and more of the headlines. And, perhaps Proposition 187, with its racial overtones, helped bring even more votes supporting the Three Strikes campaign. On November 8, 1994, Proposition 184 passed by a 71.84 percent margin.¹⁰²

¹⁰² See *Statement of Vote: November 8, 1994, General Election*.