

Briggs Initiative

On November 7, 1978, 72% of California's voters approved the Briggs initiative, which greatly expanded the kinds of cases in which the death penalty could be imposed. The Briggs initiative replaced California's 1977 death penalty law, which had been drafted by then-State Senator George Deukmejian.¹⁶

To conform to the various capital punishment guidelines established by the United States Supreme Court, the Deukmejian and Briggs laws have three key elements in common: a defendant must be convicted of an offense with carries a possible death penalty (first degree murder, treason, train-wrecking, etc.); it must be determined that a defendant convicted of first degree murder committed the crime in conjunction with one of the many pre-defined "[special circumstances](#)"; and if any of the special circumstances are found to be true, the convicted person must receive a sentence of either life in prison without possibility of parole or the death penalty.¹⁷

The Briggs statute differed from the 1977 law in two important ways. Under Briggs, juries were required to be instructed that a sentence of life without the possibility of parole can be commuted by the Governor. This requirement contradicted a 1964 California Supreme Court ruling in *People v. Morse* (60 Cal 2d 631), in which it was ruled that instructing the jury on the Governor's commutation power over life sentences is a "half-truth," because the Governor also has the authority to commute death sentences. In 1982, a 6-1 California Supreme Court decision written by Justice Tobriner ruled that this jury instruction mandated under the Briggs law was unconstitutional (*People v. Ramos*, 30 Cal 3d 553). In a 5-4 decision, the U.S. Supreme Court reversed that California Supreme Court decision, ruling that this jury instruction did not violate the federal Constitution. On remand, the California Supreme Court again struck down the jury instruction, ruling that it violated the state Constitution.¹⁸

The Briggs statute also introduced new language in the jury instruction regarding the imposition of a death sentence after the jury has weighed all "aggravating" and "mitigating" factors in the case. The new instruction stated that the trier of fact "shall impose a death sentence if the aggravating circumstances outweigh the mitigating circumstances." In *People v. Brown* (40 Cal 3d 512), the California Supreme Court ruled that, although the instruction was constitutional, there was a potential for confusion if it was read to a jury without further explanation. The court ruled that in future trials a jury must be told the scope of its discretion.¹⁹ The U.S. Supreme Court is scheduled to review this case at the beginning of 1987.

Under state law, once a death sentence is handed down the case is automatically appealed to the California Supreme Court. As of August 31, 1986, the court had reviewed a net total of 58 death penalty cases on automatic appeal. 54 cases were decided with finality* -- 27 under the 1977 Deukmejian law, and 27 under the 1978 Briggs statute.²⁰ The following table²¹ summarizes the outcome of the 54 death penalty judgments reviewed with finality by the California Supreme Court.

	Guilt Phase		Special Circumstances Phase		Penalty Phase	
	Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed
1977 Law	16 (59%)	11 (41%)	12 (75%)	4 (25%)	3 (25%)	9 (75%)
1978 Briggs Initiative	20 (74%)	7 (26%)	5 (24%)	16 (76%)	0 (00%)	6 (100%)
TOTAL	36	18	17	20	3	15

Of the 31 death penalty cases (27 completed, three pending rehearing, and one that remains eligible for a rehearing) decided under the Briggs statute, a majority of California Supreme Court justices has voted to reverse every case. Of the 27 completed death penalty cases decided under the 1977 law, a majority of California Supreme Court justices has voted to reverse 24 cases and to affirm three.

Chief Justice Bird's supporters claim that a major contributing factor to her death penalty voting record is the flawed Briggs initiative.²² Chief Justice Bird's opponents, while acknowledging that the Briggs initiative is poorly drafted, point out that in addition to never having voted to affirm a death verdict under the Briggs statute, the Chief Justice never voted to affirm a death sentence under the 1977 law either.²³

The AMA has learned that the final edited version of the Briggs law never went into effect. A pre-proof was mistakenly substituted for the final draft and subsequently passed as our current law.

Guilt, Special Circumstances, and Penalty Phases

It is often argued that Chief Justice Bird has voted to reverse the death penalty in every case she has voted on. Technically, however, this is incorrect and is an oversimplification of the court's decision-making process in death penalty cases.

In every death penalty case the trier of fact at trial must make three separate determinations:

- **phase one**, whether or not a defendant is guilty;
- **phase two**, whether or not the crime was committed under pre-defined "special circumstances"; and
- **phase three**, if the special circumstances are found to be true, whether or not the defendant should be sentenced to death.

Under current California law, once a defendant is found guilty of committing murder under any special circumstances, the only alternative sentences considered during the trial's penalty phase are life in prison without possibility of parole, and death. By law, the California Supreme Court is required to review all death penalty cases on automatic appeal. It is the state Supreme Court's responsibility to ensure that the trial court's determinations on the three elements of each death penalty case -- guilt, special circumstances and penalty -- were properly decided.

Taking these three phases into consideration, Chief Justice Bird's voting record on death penalty cases reviewed on automatic appeal by the California Supreme Court is:

Guilt Phase

Votes to affirm conviction: 31 (54%)

Votes to reverse conviction: 26 (45%)

Special Circumstances Phase

Votes to affirm finding of special circumstances: 14 (38%)

Votes to reverse finding of special circumstances: 23 (62%)

Penalty Phase

Votes to affirm penalty: 0 (0%)

Votes to reverse penalty: 19 (100%)

When the state Supreme Court overturns a conviction in a death penalty case, the case goes back to a lower court to be retried. In cases in which the state Supreme Court affirms a conviction but reverses either the finding of special circumstances or the death sentence, the defendant remains convicted. Only that phase of the case that has been overturned is retried. When the state Supreme Court affirms a death sentence, the defendant can appeal the decision to the U.S. Supreme Court.

* "With finality" means that the time allotted for the California Supreme Court to grant a rehearing in the case has elapsed. Three cases have been scheduled for rehearings and one case remains eligible for a re-hearing.

¹ Streib, Victor, "Executions Under the Post-*Furman* Capital Punishment Statutes," *Rutgers Law Journal*, Vol. 15:399, Winter 1984, pp. 444-445.

² *Ibid.*, p. 445.

³ *Ibid.*, p. 445.

⁴ U.S. Department of Justice, *Capital Punishment 1984*, August 1985, p. 1.

⁵ Streib, *op. cit.*, pp. 445-446.

⁶ NAACP Legal Defense and Educational Fund, "Death Row, U.S.A.," December 20, 1985, p. 1.

⁷ *Ibid.*

⁸ Streib, *op. cit.*, p. 444.

⁹ Streib, p. 480.

¹⁰ Streib, pp. 446-447.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Los Angeles Times*, "High Court Ruling Eases Death Penalty Restrictions," by Phillip Hager, January 23, 1986, I: p. 12.

¹⁴ *Los Angeles Times*, "Agony Over Resuming Executions," by Dan Morain, August 18, 1985, I: p. 1.

¹⁵ *Ibid.*

¹⁶ Uelmen, Gerald, "California Death Penalty Laws and the California Supreme Court: A Ten Year Perspective," prepared for the Senate Committee on Judiciary of the California Legislature, April 22, 1996, p. 2.

¹⁷ *Ibid.*

¹⁸ *Ibid.* pp. 52-53.

¹⁹ *Ibid.* pp. 55-56

²⁰ *Ibid.*, pp. 2-3.

²¹ *Ibid.*, p. 5.

²² "Let the Record Reflect," *op. cit.*, pp. 58-59.

²³ Johnson, Phillip, "The Court on Trial," *op. cit.*, pp. 9-10.