SUNSHINE OF SCRUTINY OR SPOTLIGHT OF CELEBRITY?

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On March 30, 1997, the California state prison at Corcoran vaulted into the national spotlight. Until then, the town of Corcoran had been little more than a green sign alongside Interstate 5, a bump in the road that runs along the west side of California's agricultural heart and connects Los Angeles and the state capital, Sacramento. Corcoran prison is one of the most secure lock-ups in the state of California. It is one of the two locations where the prison system houses its most dangerous and violent inmates — the so-called "level four" prisoners. On this early spring Sunday night, however, the sometimes venerated, sometimes vilified CBS newsmagazine "60 Minutes" turned its attention toward the Corcoran facility.

"60 Minutes" anchor Mike Wallace presented a report, entitled "The Deadliest Prison", that detailed alleged abuses of prison inmates by prison guards. According to Wallace's report, prison guards staged "gladiator" fights between inmates, both for sport and for gambling, allowing men in the Secure Housing Unit (where the worst of the level four inmates live) to beat one another violently while in the exercise yard. When the fighting got too ugly, the guards would fire riot guns — which discharge wooden blocks — into the yard to break up the fight. When the riot guns failed, the guards would turn to rifles. On one occasion, the guards released two black men, Preston Tate and Anthony James, and two Hispanic inmates into the yard together. As in most prisons, inmates of different racial backgrounds do not get along well, and their intermingling is likely to result in fights or other violence; in this case, a fight was exactly what happened. The fighting soon grew too violent for the guards watching from the control tower, and they fired into the yard to break up the fight. The correctional officers claimed they gave verbal commands to stop fighting before firing; James claims that the guards simply fired without warning. Inmate Tate was killed.

"60 Minutes" based their story largely on the testimony of four different people — Lt. Steve Rigg and Officer Richard Caruso, who had been guards at Corcoran, and Vincent Taloomis and James, both former Corcoran inmates. Taloomis was released after a guard trying to stop a fight fired a bullet that hit Taloomis in the neck and rendered him quadriplegic. James is in a federal prison. The "60 Minutes" report lighted a fire of public interest into the allegations of abuse at Corcoran and throughout the California Department of Corrections (CDC). But it also added to a storm of debate about prisoners, the media, and the First

Amendment that had already begun to blow and which would begin to rage in earnest just two days hence.

RUMBLINGS ON THE HORIZON

In October 1995, officials of the CDC submitted a proposal for new regulations to the state Office of Administrative Law. That CDC submitted the regulations was not significant, for it is a routine procedure of CDC and every state department and agency to submit requests to change operating regulations. (Regulations, as distinct from laws, do not need legislative approval to be changed — regulations are the internal day-to-day operating manual for an executive branch department. Laws, on the other hand, set the guiding principles and overarching mechanisms the legislature tells the bureaucracy to follow, and they generally give a department the authority to tailor its own regulations.) What was significant, for many people, was that these regulations changed a CDC policy that had been in place for 20 years. This new policy altered the access to prisoners the CDC would grant the media.

The OAL rejected the new regulations, saying that CDC had not allowed for an appropriate period of public comment. The regulations were resubmitted in April 1996, rejected, and resubmitted in October. By April of 1997, OAL approved the regulations, and they were permanently in effect throughout the entire California prison system. In short, the CDC contended that its proposal only eliminated the practice of setting up face-to-face interviews with prisoners for members of the media. The new regulations also terminated inmates' ability to correspond confidentially with members of the media. Previously, if a reporter for a newspaper or radio or television station wanted to interview a specific inmate, the journalist could ask CDC officials to arrange such a meeting. (CDC could also exercise some discretion over the time of the interview and, in certain limited cases, could deny the request. CDC policy also allowed prison wardens to grant prior approval for the use of audio or video recording devices.) In general, however, until 1995 CDC arranged the interviews for reporters; with the new policy, they would no longer do so.

According to critics, however, the policy change was hardly as benign as CDC portrayed it. It was, in fact, an insidious attempt to prevent the press from gaining access to the prison system and reporting on situations that could be potentially embarrassing to the CDC and the administration of Governor Pete Wilson. The opponents said the regulations cut off access to specific, individual prisoners. The CDC had left open two narrow options for interviewing specific prisoners:

reporters could try to convince inmates with whom they desired an interview to place the journalist on their list of visitors, or they could ask family and friends of the inmate to serve as intermediaries for the information that the reporter wanted. For the media, neither of these options was acceptable. In the first case, it could take weeks to set up a visiting hours arrangement with a prisoner, and even if the reporter could gain access to the prisoner, he would not be allowed to use any of the "tools of the trade," video or audio recording devices or even pen and paper, as he interviewed the inmate.[1]

(CDC officials contend this is an incorrect understanding of the regulations, that there is no specific prohibition of pen and paper. They did admit that there may be inconsistency of application in the 31-prison system. According to Peter Sussman, president of the Northern California chapter of the Society of Professional Journalists, when he visited Solano State Prison in the summer of 1997, he was not allowed to bring in a pen, and he had to leave a three-inch square piece of paper in his pocket at the guard's desk in the reception area. "As a practical matter," he said, "they just don't let you bring in pen and paper.")

Addressing the problems of the second method, Sussman said, "As a journalist, I am attempting to create a record. To use the words of family and friends is rumor, not journalism." Journalists also argued that in terminating confidential correspondence with the media, prisoners would no longer be sure that what they said to the press, especially if it was critical of the CDC, would not be used as a justification for punishing them. Opponents of the regulation change further argued that the new CDC policy negated a very important function of the press — to serve as a watchdog over the activities of the CDC bureaucracy. By restricting access to inmates, removing the protections of confidential correspondence, and eliminating journalists' ability to record the information they gathered, the CDC violated the spirit and the letter of the First Amendment: "Congress shall make no law...abridging the freedom...of the press...."

One critic of the new CDC policy was California Senator Quentin L. Kopp, an Independent from San Francisco. In a June 1996 letter to the CDC director objecting to the change of regulations, Kopp wrote, "Throughout its history, the media has been responsible for identifying inefficiency, waste, and fraud in government spending. The Department of Corrections is no different than other public institutions in terms of such scrutiny.... I have not been offered any factual basis linking media access to any intrusion upon penological interests."

Kopp is a tall, lanky fellow with a gravelly, yet booming, voice. Generally regarded as one of the true characters in the California Senate, he also commands a good deal of respect in California politics, even among those who disagree with him. At one point or another, both Republicans and Democrats have taken exception with his opinions, but they have also expressed admiration for the passion of his convictions. His colleagues, Capitol staffers, and the media also consider him among the Senate's sharpest intellects. Rarely one to back away from a good fight, Kopp generally votes for a "law-and-order" agenda, but he is also a passionate advocate for the First Amendment freedoms of speech and the press. The issue of media access to inmates, however, would put Quentin Kopp at the center of a maelstrom equal to any other in his contentious career.

THE WIND PICKS UP

The California Department of Corrections is the nation's largest prison system. By the spring of 1998, approximately 156,000 men and women were entrusted to its care, and the department estimates that it will pass the 200,000 inmate mark sometime in 2002. The Department of Corrections is responsible for incarcerating all adults convicted of felony crimes (juveniles and misdemeanors are handled by different systems). Its annual budget is roughly $4 billion per year. This makes Corrections the largest single department — measured by fiscal resources — of any in the state budget of roughly $70 billion. In the last 20 years, California prisons have grown at a phenomenal rate, rising from a population of about 20,000 in 1977 to the levels mentioned above, an increase of 780 percent. In 1984, there were 12 prisons in California; by 1994, there were 29. The Central California Women's facility is believed to be the largest women's prison on earth. Since 1981, California voters have approved almost $2.5 billion in bonds for new prison construction. A myriad of tougher sentencing laws began to come into effect in the late 1980s, including the "three strikes" law. The CDC projects these will cause at least a moderate growth in the prison population in the early 21st century.[2]

On February 18, 1997, Kopp introduced Senate Bill 434, a measure in direct opposition to CDC's recently adopted media regulations. Though Quentin Kopp had opposed CDC's policy while it was in its nascent regulatory form, the idea to pursue a change legislatively did not come until late 1996, after CDC had submitted its third request for new regulations to the Office of Administrative law. At that time, the American Civil Liberties Union representative in Sacramento, Francisco Lobaco, approached Kopp's staff and suggested that the senator carry a bill to allow media access on the same terms as had existed before October 1995. For Kopp, the decision was an easy one, based on two grounds, the almost absolute nature of the freedom of the press and the watchdog function of the media. "I am a

person who tries to honor the First Amendment, which is sometimes difficult. Even though state prisoners are not the highest type of citizens, nevertheless, a free press is the best practical guarantee of proper operation of prisons."

The ACLU, however, did not want to take the lead as the "sponsor" of SB 434. A "sponsored bill" is one that a person or organization like the ACLU asks a legislator to carry on its behalf (since no one but a legislator may actually introduce a bill). Most of the 4000-5000 bills that pass through the California Legislature in its biennial session are sponsored bills.

Sitting in his office on a rare sunny February day a year after the introduction of SB 434, Lobaco explained why the ACLU chose not to be the sponsor of the legislation. The idea for SB 434 was not the ACLU's alone; the organization had been working extensively with media groups. "We let the journalists take the lead on this because it affects them. It would also have had a better chance of getting through — the ACLU is viewed as a First Amendment lobby, but also as a criminal rights lobby." But Lobaco didn't think that *who* sponsored SB 434 meant as much to legislators and their staff as *what* the bill was about. "This struck me as being fundamentally outrageous and as something that could be sold to members of the legislature as outrageous and of the gulag."

One of the strongest forces in the storm surrounding SB 434 was the institution that stood to lose or gain the most with the bill's passage — the press. Two groups representing different segments of the press provided Kopp with the predominance of the media's input. The California Newspaper Publishers' Association represents the business people who own and control the fiscal operations of a variety of newspapers large and small. The women and men who write the words that fill the pages of newspapers and magazines were represented by the Northern California chapter of the Society of Professional Journalists (SPJ), headed by Sussman.

Both Kopp's staff and Lobaco described Sussman as a key player, integral to their efforts to secure the bill's passage. Sussman brought over a decade of experience in prison-media issues to the table. He had been a staff member of the *San Francisco Chronicle* for 29 years, most recently as the editor of Sunday Punch, a popular weekly section of features and commentary. In that section, he had occasionally published pieces by a federal prisoner named Dannie Martin. In 1988, Martin wrote an essay that detailed prisoner reactions to policies a new warden introduced. Martin criticized the policies, saying they further depersonalized prisoners and heightened tensions in the facility. Two days after

the essay was published in Punch, Martin was placed in the "hole," charged with violating a rarely enforced regulation prohibiting federal prisoners from writing articles under their own name in the news media. Sussman organized a lawsuit against the federal prison system, citing a violation of Martin's and the *Chronicle's* First Amendment rights.[3] Sussman's contacts in the press and knowledge of the journalistic profession would prove invaluable to the author and the bill's proponents.

As introduced, SB 434 specifically targeted the changes in CDC's regulations. First, it said that confidential correspondence with "representative of the news media" was to be one of an inmate's civil rights. The bill then defined what a news media representative was. Most significantly, the bill declared that the free exchange of information "benefits the public and fosters a safe and efficient prison system" and that "there is no legitimate reason for a blanket ban on interviews." It then directed the CDC to allow the media to interview prisoners.

As in Congress, bills introduced in the California Legislature must pass through two houses before they go to the governor's desk for signature. A bill introduced in the Senate, for example, is referred to one or more policy committees for analysis of the measure's policy effects and how well these will mesh with the existing laws of the state and previous efforts in this particular issue area. Committee analysts generally also point out pertinent issues for the legislators to consider as they decide how they will vote on a measure. If a bill is determined to have a fiscal effect (that is, it will require the state to spend money), then it will automatically also be referred to the house Appropriations Committee, assuming it passes the policy committee. After passing all committees, bills go to the Senate or Assembly Floor for vote by all the members of the house. Once a bill has passed out of both houses and the houses have concurred in all changes to the measure, the bill is sent to the governor for signature. The governor has 30 days from the bill's passage to approve or veto it. If approved, the bill becomes a law; if vetoed, the legislature may try to override the veto (by a two-thirds majority). Override of a gubernatorial veto is extremely rare in California — the last occurred in 1983. Considering the fact that a bill may die at any point in this process — a less-than-majority vote in any committee can kill a bill — it is almost surprising that *any* legislation passes. But thousands of bills do pass every year, generally because most bills do not deal with extremely controversial issues.

THE STORM BLOWS IN

SB 434 was first heard in the Senate Public Safety Committee, which deals with all matters changing the Penal Code (as did SB 434) or that deal with penal subjects in general. Before the committee hearing, Kopp submitted amendments to the bill that strengthened the measure considerably. The amendments broadened the definition of members of the news media to take into account the explosion of non-traditional media outlets, ranging from newsletters to the Internet. More significantly, the March 31 version of the bill explicitly directed CDC to allow reporters to use the "tools of the trade." The bill was heard in the Public Safety Committee the next day. By a strange coincidence, it was just two days after the "60 Minutes" report on "The Deadliest Prison."

When SB 434 blew into Sacramento, it rendered traditional party-line cleavages largely unsatisfactory for explaining how the members of the legislature would vote. The Senate Public Safety Committee consists of five Democrats, two Republicans, and Kopp, the independent. Based strictly on partisanship, one would expect that the Democrats would support such a measure and the Republicans would oppose it. To think in such a way would be logical, but wrong.

The Public Safety hearing provided the first open forum for proponents and opponents of SB 434 to present their arguments. Typically in a committee, the author presents his or her bill, the proponents and opponents of the bill offer short testimonies, and then the members of the committee ask questions of the author and the witnesses.

SB 434 supporters emphasized the fact that greater press access to California prisons would increase public and legislative scrutiny of the system, but the bill provided the prison administrators with the necessary safeguards to make sure that they could still run their institutions. "It has the logical qualifiers based on the public safety and security of the facility," Kopp said. Sussman pointed out that the press had done decisionmakers a great service just two nights before on "60 Minutes" and explained that CDC policy actually hindered that story. "If [those prisoners interviewed for "60 Minutes"] were still in the system, we would not be allowed to hear their story firsthand, and the American people would not know about these abuses," Sussman said. He also said the department's new policies posed more danger than its old ones. "The department says that the way we can get information from prisons is by rumor," communicating with prisoners through their family and friends. "The most dangerous thing that can happen in a prison is rumor." Finally, the supporters noted that the media was not a burden on the resources of CDC, for in the last year before the new regulations went into effect,

the press made only 200 requests for face-to-face interviews, an average of 6 or 7 per prison per year.

Someone once said, "Politics makes strange bedfellows." The combination supporting SB 434 was, to say the least, strange. "Downright unlikely" would be a better description. The media, civil libertarians, and prisoner rights groups were obvious members of this coalition, and the support of mental health groups, an HIV/AIDS advocacy organization, and the California Labor Federation was welcome but unexpected. Most surprising to many people, however, was the support of the California Correctional Peace Officers Association. CCPOA represents the interests of the men and women who work in daily contact with inmates — the prison guards. Viewed by Capitol insiders as a law-and-order police group, they are often seen as the close allies of Gov. Wilson, CDC, and Republicans generally. So it was quite a surprise to see the president of CCPOA, Don Novey, presenting a position of support for SB 434, literally sitting next to Lobaco, the ACLU representative. Even the committee chair, Sen. John Vasconcellos, commented that this was certainly a unique situation, asking Novey whether he ever thought he support a bill alongside the ACLU. But CCPOA had reasons of both principle and politics behind its support of SB 434.

According to Ryan Sherman, one of CCPOA's lobbyists, the principle was that excluding the media from access to the prisons would prevent the public from seeing the sorts of people the CCPOA's membership dealt with on a daily basis. "If the media can find the bad apples in our membership and get them out, that's good," for the CCPOA and the public. But Novey addressed the more political reason that CCPOA supported the bill: to show the prison wardens and the CDC that correctional officers would not be pushed around. Novey told the committee that the chapter president at Corcoran State prison was threatened with disciplinary action by the warden if the officer went to the press to discuss prison management issues and problems of safety and security that affected the guards. "Very rarely do I support a Quentin Kopp bill," Novey said. "We have not had a security problem with the media in 27 years."

The only opponent of SB 434 was the Department of Corrections.[4] CDC argued that the measure had nothing to do with the press's right to know what was going on in the prison system, because there were other manners in which the press could gain information from prisoners. "This measure bolsters inmate rights," said Mike Neal, CDC's legislative liaison. "We have no problem with [the public's right to know]."

Then party cleavages began to fall apart. Democratic Senator Adam Schiff, a former U.S. attorney, expressed serious reservations about some of the bill's provisions. He, like the Department of Corrections, was concerned that interviewing inmates on camera would increase their public notoriety, creating two potentially hazardous situations. First, seeing inmates on camera would "re-victimize the victims" — that is, the victims of the inmate being interviewed would be forced to relive the pain associated with the crime experience. (This, of course, assumed that the press wants spoke to a particular inmate about his crimes.) Second, inmates who were interviewed on camera had the potential to become "big wheels" — gaining influence and power within the inmate population because of their infamy and eventually using this power against the prison authorities in some way. Schiff said he would support the bill if it could be made to prohibit the use of video recording devices. "I think the media's interest and the public interest would be satisfied, serving the broader interest without sacrificing the pursuit of fact-finding within the institutions," he said.

The polite but tense atmosphere of the committee hearing broke at one point. As Sen. John Burton spoke to Tip Kendall, the CDC's media spokesman, Kendall began to shake his head at the Democratic senator. Burton lost his temper and began to yell at Kendall, saying, "Don't shake your head at me like that! You don't want to mess with me!"

After about half an hour of discussion (three or four times the debate an "average" bill gets in committee), the committee voted. SB 434 received six affirmative votes, four from Democrats, one from Kopp, and one from Republican Bruce McPherson, a former newspaperman. Schiff voted against the bill, as did Republican Richard Rainey.

Though it focused on the expansion of inmate rights in the Senate Public Safety hearing, CDC later offered several more arguments to oppose Kopp's bill. They continued to maintain that the changes in CDC policy were not really very substantive. In an interview roughly a year after the Senate Public Safety hearing, CDC representatives Neal and Kendall said, "There's nothing in the system [a reporter] can't get. A good reporter can get the story they want." All CDC had really done, they contended, was taken away the reporters' convenience, something to which the media had no right. Neal also offered another reason: the media is not even-handed in its portrayal of convicts, often glorifying them and their misdeeds. "If news programs would give equal time to victims, this policy might not have arisen."

CDC also adamantly defended its right to make these policies in the prison. For this position, it cited two authorities. The first was a legislative action, the second a U.S. Supreme Court case from 20 years previous. California Penal Code sections 2600 and 2601, sometimes known as the "Inmate Bill of Rights," define the civil rights that state prisoners must be accorded, even though their incarcerated status makes them non-citizens, of a sort. In 1994, Senator Robert Presley, in keeping with the California electorate's sentiment that prison punishment was too soft, obtained passage of a revision to these sections of the Penal Code. The key changes concerned in the case of SB 434 were that Presley's bill allowed the department of corrections to use the standard of "legitimate penological interests" to determine some of the privileges prisoners would be accorded. Based on this statutory change, the CDC has altered, curtailed, or removed privileges relating to mail, recreation equipment, grooming, and access to the media. (According to Kopp, Sen. Presley stated for the record that he did not intend that his bill would be used to curtail the media's access to prisons.) In 1977, the U.S. Supreme Court rendered a decision in *Pell v. Procunier*. According to Charles Davis, professor of political science at Southern Methodist University, the case

> *established three fundamental propositions regarding access to prisons. First, the Court said that the First Amendment does not guarantee the public or the press a right to obtain information. Second, journalists have no greater rights of access than the general public. Third, the public's need for access to information will be balanced against other social needs, such as law enforcement interests and personal privacy.*[5]

LANDFALL

After the Senate Public Safety Hearing, the next major stop for SB 434 was the floor of the full Senate. On May 12, Kopp amended the bill slightly, tweaking the definition of "representative of the news media" and adding Senator McPherson as a co-author. (Previous co-authors were liberal Democrats Senator Vasconcellos and Assembly member Carole Migden.)

Again, party divisions did not prove predictive of senators' votes on this measure. Kopp believed that bipartisan support of the bill would be necessary to make sure that the bill passed out of the legislature and that the governor would sign it. To that end, he had worked to gain Republican votes — both to show the rightness of the bill and to overcome the loss of votes from conservative Democrats who objected to it. Before the bill came up for debate on the floor, Randall Henry, the Kopp staff member working on SB 434, met with the Republican Ray Haynes' staff. Haynes' office prepares the Republican floor analyses of bills, and without a favorable analysis, SB 434 would attract few, if any, Republican votes. The result of this meeting was the slight change in the definition of a media representative,

narrowing the language to include only "bona fide journalists engaged in the gathering of information for distribution to the public."

On May 15, Kopp took up the measure for debate on the floor. He outlined the situation that gave rise to the legislation, how the bill would change current policy, and tried to clear up any misconceptions members might have about his measure. Then he sat down and prepared for his closing speech.

Lengthy debate on any single measure is unusual in the California Senate. With many thousands of measures to consider each year, many are passed "on consent" (adopted without debate or discussion). Others are discussed for a few minutes, and then voted on. For a bill to receive more than a half an hour of the Senate's time, as SB 434 did, indicates that it has stirred deeply held convictions.

Republicans Haynes and McPherson were the first to rise and urge their colleagues to support SB 434. Two Democrats then spoke against it. The first was Majority Leader Charles Calderon, though the speculation since has been that Calderon was trying to portray himself as a proponent of law and order — to better position himself for a run at attorney general the next year. Then Adam Schiff rose, declared that SB 434 was not a First Amendment issue, and again stated that his opposition was based on the fact that the bill would allow video recording devices in the prisons. Other members rose and expressed support and opposition, based on long-standing animosities with the CDC, based on their views of the bill's consequences, and based on their idea of how far CDC could go in using "legitimate penological interest."

Then conservative Orange County Republican Ross Johnson rose and offered one of the most eloquent floor speeches given in the entire debate over SB 434. Coincidentally, it was also one of the shortest. He emphasized every utterance, punctuating each word for effect. "This bill is worthy of support for a very simple reason. A free, democratic society doesn't have anything to fear from a free, unfettered press. Please vote 'aye.'"

Kopp then rose to close on the bill. In what has been described by some as the most impassioned speech they have ever heard him give, Kopp nearly spat each word from his mouth, roaring that if SB 434 was not a First Amendment issue, then nothing was. "For 20 years, under the Department of Corrections rule, there were no abuses of the conjective, hypothetical, fantasy nature of some TV reporter

coming in day after day after day after day. If you want to find a bogeyman, you can find it anywhere." He quoted from a column that appeared on the opinion pages of the conservative-leaning *Orange County Register*, written by columnist Linda Seebach: "'Publicity about abuses in the operation and management of the system are deeply embarrassing to the officials concerned. If they make it harder for journalists to find out, there will be less unfavorable publicity.'"

SB 434 needed a simple majority of the 40-member body to pass. When the vote was tallied at the end of the traditional roll call the Senate uses, SB 434 was approved by a 23-8 margin. In the end, 14 Democrats supported the measure, while three opposed it. Eight Republicans voted "aye," while five cast "no" votes. The bill now passed to the Assembly.

HEADING

Because the bill passed out of the Senate, it began to look as if SB 434 might actually land on the governor's desk sometime in the late summer or early fall of 1997. To ensure that the measure might eventually be signed into law, Kopp, his staff, and the bill's sponsors began to communicate with the governor's office to see what the chances of gaining Wilson's signature might be. In late May, Kopp and Henry met with Michael Sweet, one of the governor's deputy legislative secretaries.

As SB 434 stood at that time, it would never come close to securing Wilson's signature. As Kopp discovered at that meeting, Wilson himself was personally responsible for the change in CDC regulations that had inspired the bill. Disgusted with seeing prison inmates on television reports, the governor asked the Department of Corrections if there was anything it could do about inmates becoming media celebrities.[6] In response, the department drafted the policies that it eventually implemented.

According to Sweet, it is not unusual — though certainly not the normal order of business — for Governor Wilson to ask departments or agencies that fall under the purvey of the executive branch to change their regulations to suit a personal policy preference. Generally, when a department or agency of the executive branch wants to change its policies or procedures in a significant way, it must secure the approval of the governor's office. Had the Department of Corrections' media policy originated in the department, it would need first to get approval from the Youth and Adult Correctional Agency (the umbrella administration that oversees CDC and all other corrections activities in California). After obtaining a go-ahead

from YACA, the policy change would need a green light from Wilson's office before CDC could implement it.

Wilson, however, had personally involved himself in changing CDC's media procedures. Because Kopp's bill directly opposed these changes, there seemed no chance that it might gain the governor's signature. The chief objection at the outset was that the Kopp bill amended the Inmate Bill of Rights (Penal Code section 2601) by adding confidential correspondence with the media to the list of civil rights that the state guaranteed inmates. As Sweet said, "This was a big deal because the governor is on record as being tough on crime. I knew the governor would never sign such a bill." Pete Wilson had previously adamantly supported voter approval of California's "three strikes" law, increased punishment for domestic violence offenses, the removal of conjugal visits for prison inmates, and "Son of Sam" laws. (Such statutes are named after the "Son of Sam" killer, David Berkowitz, who eventually wrote a book about his killing spree and received royalties from it. These laws prohibit inmates convicted of crimes from using their experience to gain profit.)

Sweet told Kopp he would have to remove the section of his bill that dealt with the Inmate Bill of Rights if he wanted any chance of securing its approval. The governor would sign no bill he perceived as expanding the rights of inmates. As Sweet said, "The governor gets rabid about this issue." Kopp amended his bill on May 23, within days of his meeting with Sweet.

Speaking later about SB 434, Sweet said that for him, the key determinant in telling Kopp whether his bill had any chance of passing muster with Wilson was ascertaining how involved Wilson had been in initiating CDC's regulations. By talking with other members of the governor's staff, including the governor's closest advisor — his chief of staff, George Dunn — Sweet discovered that the Wilson's level of involvement was high and direct. He later told Kopp that the changes amounted to a gubernatorial edict to CDC and that there would be no movement in the governor's position.

Kopp's office arranged another meeting with the governor's staff, this time with Sweet and those groups in support of the bill. Sussman of SPJ, Lobaco of the ACLU, Henry from Kopp's office, and Sherman from the CCPOA met with Sweet in late July to see if they could arrange some sort of a compromise that might persuade the governor to sign the measure. According to Sherman, once the CCPOA discovered that the bill directly opposed a policy the governor set down

himself, it knew that the measure could never secure a signature. "The journalists were excited about moving the bill forward," he said. "We pointed out that there was no need for this bill if the governor was on board. He could just order a change to the regulations otherwise." But the CCPOA, though traditionally allied with the governor and the CDC, chose to continue supporting the bill. The organization reasoned that their continued support would help them to make friends with those whom they normally would not see as allies, and that they saw SB 434 as a fundamentally good public policy.

The journalists and Kopp continued to hope that Wilson might change his mind, even after Sweet told them in early August that he could not help them on the bill, as he did not see how the governor would change his position. Afterward, however, Sweet explained that there was always a chance, however slight, that the governor might reconsider his previous position.

Gov. Pete Wilson's supporters and opponents alike consider him a singularly stubborn man. As Sweet said, "This governor does what he believes in. He doesn't care who his supporters or opponents are. Even if 100,000 people want him to sign a bill, and he doesn't believe in it, he will veto it. Unpopular decisions don't faze him." At the same time, he occasionally surprises his staff and the public with his position on a bill.

The general procedure for the governor's staff, in presenting a bill for Wilson's signature, is to go into his office, review the measure, and make a recommendation. Wilson then reviews the bill and recommendation and then makes his own decision, sometimes going against the recommendations of his staff.

In the case of SB 434, however, it was unlikely there would be surprises. Wilson had already established a record as "tough on crime." As Sweet stated, "The governor really believes in locking people up and protecting victims. He is very strongly opposed to providing more exposure for these inmates."

For the myriad of SB 434 supporters, the bill's prospects, which just a few weeks before had seemed quite good, appeared abysmal.

THE STORM BEGINS TO BREAK

SB 434 passed through the Assembly with barely a new ripple. In the Assembly Public Safety Committee, it passed by a vote of 6-2, with all five Democrats and

one Republican voting in favor of the measure. In the Assembly Appropriations Committee, the opponents and proponents trotted out the familiar arguments, the committee members asked the familiar questions, and the measure passed 17-3, with 13 Democrats and four Republicans in favor and three Republicans against.

The Assembly floor session on SB 434 was shorter but no less impassioned than that of the Senate debate four months earlier. When a legislative measure is up for consideration in the opposite house, the author may not present the measure on her own. The member must instead find a "floor jockey" — a member of the other house who is willing to carry the measure. For SB 434, Assembly member Migden, who supported the measure from the start, managed the bill on the Assembly floor when it came up for vote on September 5.

Again, one of the most elegant comments in favor of the measure came from Tom McClintock, a Southern California Republican. "Free nations do not hold prisoners incommunicado. As Justice Brandeis said, 'Sunlight is the best of disinfectants.' People are capable of sorting out fact and fiction for themselves."

Opponents of the measure focused on two arguments. Republican Larry Bowler harangued the legislature for trying to micro-manage the prison system. He also pointed out that the measure was supported by the ACLU, "the prisoner rights union." (This was the only supporter of SB 434 he mentioned.) Republican Brett Granlund said that the portion of SB 434 that allowed confidential correspondence with the media would better allow prisoners to run their criminal enterprises outside the prison walls.

Debate was closed, and voting was opened with the clang of a large bell. Because the Assembly uses an electronic voting system that tallies the votes instantly, displaying the total tally and each member's individual vote on a large light board above the speaker's rostrum, the vote was completed in roughly one minute, as Speaker pro tempore Sheila Kuehl recited her signature, "All members vote who desire to vote..." four or five times. SB 434 received 54 ayes (40 Democrats, 14 Republicans), and 19 noes (17 Republicans, 2 Democrats), an exact two-thirds majority. Having secured passage, it returned to the Senate for concurrence.

If a measure is changed after it leaves its house of origin and it passes the other house, it must return to the house of origin for "concurrence." This essentially means that the house of origin must accept the changes made to the measure before

it passes the bill on to the governor for signature. On September 10, the Senate considered SB 434 for the last time. Kopp rose and said, almost with some surprise,[7] that the Assembly amendments had actually improved the bill. Senator Schiff, who had opposed the bill five months before, said that the amendments had satisfied his objections,[8] and said he would now vote for the bill. SB 434 passed on a 27-8 vote in the last days of the 1997 legislative year, another two-thirds majority. At 4 P.M. that day, SB 434 was sent downstairs two floors in the Capitol building to the governor's office.

The only question that now remained was whether Gov. Pete Wilson would veto SB 434.

EPILOGUE

In his letter to Wilson seeking approval of SB 434, Kopp highlighted several points. First, the number of interview requests was hardly onerous, averaging only six or seven per prison per year. Second, SB 434 provided CDC with the ability to establish restrictions on the time, place, and manner of interviews "if it determines the interview will pose a threat to prison security or the physical safety of the public." Finally, by restricting media interviews, CDC encouraged reporters to rely on "rumors, innuendo, and sketchy memory," threatening the safety of prisoners and the tax-paying public's right to know what went on in their institutions.

Peter Sussman and the other journalists went into overdrive, gathering editorial support from California newspapers large and small. The Riverside *Press-Enterprise*, the *Sacramento Bee*, the *Contra Costa Times*, the *Oakland Tribune*, the *San Francisco Chronicle*, and the *Los Angeles Times* all weighed in on the issue. Some of these papers had expressed support in March, April, and May as the bill began to wind through the legislature. They reiterated their strong support of SB 434. The *Chronicle* summed up the tone of these arguments, saying, "The consequences of this ban are obvious, and they are intolerable in a free society. ...The public has a right to know what is going on in these institutions."[9]

On September 15, at a bill signing ceremony for a piece of victims' rights legislation, Wilson had promised to address SB 434 — assumedly to explain his opposition. He made no mention of the measure. Observers were not sure what to make of this. Did it mean that he wasn't going to veto the bill? As Sussman e-mailed to Henry, "[I assume] that there's still a thin reed of hope for avoiding a veto on our bill. ...It's thin, but it's all we've got to motivate us right now."

On October 12, however, Wilson sent a letter to the Senate, vetoing SB 434.

> *"The purpose of imprisonment is punishment and deterrence of crime. Those that are housed in state prison should not be treated as celebrities. ...Such attention is a disincentive to inmates to focus upon the remorse that is essential while in prison....The First Amendment does not guarantee the press a constitutional right of special access to information not available to the general public, nor does it cloak the inmate with special rights of freedom of speech."*

Kopp did not attempt a veto override, believing it would be a futile effort. He reasoned that Republicans who voted for the measure would not want to vote against a governor of their own party with another year to go in the legislative session. SB 434 was dead.

LIST OF INTERVIEWEES

Sen. Quentin L. Kopp
2057 State Capitol

Randall Henry
Office of Senator Quentin L. Kopp
2057 State Capitol

Francisco Lobaco, Lobbyist
ACLU

Peter Sussman
Society of Professional Journalists

Ryan Sherman
Lobbyist, CCPOA
925 L St. #

Michael Sweet
Deputy Legislative Secretary
Governor's Office
State Capitol

C.A. "Cal" Terhune
Director
Department of Corrections

Mike Neal
Asst. Director
Department of Corrections

Tip Kendall
Asst. Director
Department of Corrections

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[1] Quoting from the Department of Corrections Notice of Proposal to Change Regulations, issued April 3, 1996, "...Face-to-face random inmate interviews, and telephone interviews of any consenting inmate will still be permitted. Media may visit specific inmates under regular visiting conditions, albeit without the 'tools of the trade,' viz. pen, paper, camera or recorder...."

[2] *50 Years: Public Safety, Public Service*, California Department of Corrections, 1994. "Spring 1998 Population Projections," Calif. Dept. Corr. Population Projections Unit, 6 March 1998.

[3] For further information on the Martin case, see Dannie Martin and Peter Sussman, *Committing Journalism: The Writings of Red Hog*, New York: W.W. Norton, 1993.

[4] This would remain the case until late summer, when a couple of victims' rights groups would join the opposition to SB 434. CDC legislative liaison said that he had talked to the victim groups and asked if they would look at the bill and consider joining the opposition. (This is a standard practice in the California legislative process.)

[5] Charles Davis, "Outside, Looking In: Covering America's Prisons" (Unpublished manuscript: Southern Methodist University, 1998), p. 4

[6] Interview with Tip Kendall, Mike Neal.

[7] "Surprise" because the Senate often looks with amused bemusement on the lower house of the legislature. Above the Senate rostrum is written "Senatoris Est Civitatis Libertatum Tueri" — "It is the of the Senate to protect the liberties of the people." Senators joke that the Latin phrase really means "It is the duty of the Senate to protect the people from the Assembly."

[8] The amendments, however, did not specifically prevent television cameras from entering the prison system.

[9] "Nothing to Hide, Nothing to Fear," *San Francisco Chronicle*, 22 September 1997, p. A20