

of emergency repair funding is a question with no easy answer. Many interests rose to be major players in the negotiations to reroute the Cypress Freeway. Was it worth it?

"[The Cypress] divided the community," said Bill Love of CERT. "The people in West Oakland were literally cut off from downtown. This is sweet. We moved a freeway. How many people can say that they have moved a freeway?"

Case 6

INTRODUCTION

In *Let the Games Begin*, you have a situation in which people were clearly of (at least) two minds: An overwhelming majority in California expressed itself clearly in favor of tougher treatment of criminals. Yet, a California, and national, audience of the popular *60 Minutes* television program was horrified by what it saw occurring behind California prison walls—along with the prospect that, because of a press blackout, far worse might be happening.

Whether or not the situation depicted in *60 Minutes* reflected the true situation at Corcoran State Prison at the time the case was written is not what the case is about. In fact, a jury found, after brief deliberation, that there was insufficient evidence to convict the four correctional officers accused of having deliberately caused, for their own amusement, the deadly turmoil exposed on tape. If it, or anything like it, could have happened, the importance of media access to prisoners and their conditions is clear. Others argue that access is inconsistent with the need to maintain order in a correctional institution.

Consider the dilemmas facing the various actors drawn to the issue. Was the author of the legislation selected because of his deep and abiding civil liberties credentials? How did his authorship compare with his political image? What was the position of the governor, and should it have affected the author's thinking?

What reputation problem burdened the media in making their case that the violence behind prison walls had to be exposed? How did it empower the Department of Corrections in questioning press motives? What evolving public attitudes might have burdened the case for access?

What was surprising about the position taken by the correctional officers union? Why was the governor, their chief beneficiary and benefactor, willing to part company with them? Consider the possible explanation of their respective motives beyond their statements and beyond the immediate issue confronting them.

If you were a rising political star in the California Legislature and had to vote on the proposed legislation, what would you have done? Would you have done the same if faced with a veto override? How would you explain your position to the power groups offended by your vote? To your constituents on the other side of the issue? Would you consider pressuring the author to drop so controversial a measure that the governor said he would veto anyway? Why would you want to have to express yourself on a controversial matter when it would have no effect? Or, would it?

Outside Public View: Let the Games Begin!

Research and original writing by Nathan A. Paxton

WHAT, NO TUNICS?

Ordinarily, CBS would have been hard pressed to defend itself against the charges of sensationalism leveled in response to the violence displayed on the 60 Minutes program it aired on March 30, 1997. It featured four muscular men. Racially paired and similarly dressed, they circled warily around the narrow space that enclosed them. This was not a classic movie replay of Spartacus or Demetrius and the Gladiators. There were no tridents, nets, maces, swords, or armor. This was not the Coliseum in Caligula's Rome. Entitled "The Deadliest Prison," the segment was filmed in the exercise yard in Corcoran State Prison in California, home of some of the state's worst criminals—the Level Fours.

Yet, implied *60 Minutes*, there were similarities to ancient Rome. The four men had been trained in violence. They knew that they were expected to fight for their survival. They probably knew, because it had happened before, that they were fighting for the entertainment of their captors. Wagers had been placed on the outcome. Winning was everything. It was only when the incentive to disable and destroy turned into the potential for maiming and killing that the guards in the control tower raised their riot guns loaded with wooden blocks, and then their rifles loaded with bullets. One of the fighters, inmate Preston Tate, was shot and killed. According to inmate Anthony James, currently housed in a federal prison, the shot was fired without warning. There were videotapes of the event. In an earlier encounter, a similarly ugly incident, inmate Vincent Taloomis was shot in the neck, rendering him a quadriplegic. Reinforcing the charges made by James and Taloomis were two correctional officers, Lt. Steve Rigg and Officer Richard Caruso.

One can imagine senior anchor Mike Wallace defending his program on grounds that the gladiatorial combat portrayed, which literally resembled a Roman circus, was an essential part of the scandal being exposed. But many viewers, while titillated by the events described, were understandably outraged.

THE DEPARTMENT OF CORRECTIONS

In the wake of the *60 Minutes* controversy, longstanding accusations of systemwide abusive practices by the California Department of Corrections began to surface. The allegations were like a cancerous tumor, hidden, it was charged, by a systematic cover-up. The media spotlight finally focused on a CDC regulation adopted officially in 1997 that narrowed, and sometimes denied, press access to inmates, reversing a policy of more liberal access that had been in effect for two decades. Previously, face to face interviews with inmates were arranged subject to reasonable limitations, and requests were almost never denied. Recording devices were usually allowed. According to media representatives, the CDC would no longer allow them to interview inmates in any situations that might prove embarrassing to the Wilson administration. In the few cases they were allowed personal access, reporters claimed they were prevented from carrying even pencil and paper, the basic tools of journalism. CDC denied this was their policy but conceded the regulations may not be uniformly enforced throughout its 31 institutions. Worse still, the press charged, confidential communications from inmates to the media were prohibited, raising fears of possible retaliation against inmates who provide information critical of CDC.

In fact, the new limitation had unofficially been in force since late 1995, before it went through the hearing and approval process required by California law. According to reporters, there was no written copy of the rules during the hiatus that would allow anyone to determine whether they were in violation. What had so emboldened this massive bureaucracy that it set caution aside?

Far ahead of growth in the general population, CDC will have increased *tenfold* over roughly a quarter century from 1977 to 2002. A population of just 20,000 will have grown to some 200,000 in what is already the nation's largest prison system. (This does not include incarcerated juveniles or misdemeanor convicts in local jails.) With some 33 institutions, and a

budget of more than \$5 billion, Corrections will be the largest department in California government.

Determinate sentencing, adopted at the beginning of that period, invited increasingly higher sentences. Then, a tough new "three strikes and you're out" initiative passed under which the third strike can be a nonviolent act. The initiative campaign for its passage relied not on rising crime statistics, but on a pair of grisly, heavily publicized murders. That it was media coverage that may have emboldened CDC is more than a little ironic.

THE OFFICE OF ADMINISTRATIVE LAW

It is said that a civilized society lives by the rule of law rather than the arbitrary dictates of those in power. Laws of general application require the concurrence of two, and sometimes all three, branches of government. Regulations, promulgated by a single agency in the executive branch, may directly, and sometimes harshly, affect the lives of hundreds, thousands, or even millions of people. Such regulations must advance laws adopted through the initiative process or spelled out in the constitution, and they may not conflict with laws adopted by the governor and the legislature. Regulations (except in defined emergencies) must be adopted pursuant to public notice, hearing, and the approval of the courts when challenged. As an added safeguard, regulations are scrutinized by the Office of Administrative Law (OAL) before the courts take jurisdiction. It can toss out a regulation for substantive inconsistency with law or deficiencies in the process through which it was adopted. CDC did not submit its regulation to OAL until April of 1996, and its first submission was rejected. Soon after the regulation was finally promulgated and approved, a federal court challenge was filed by members of the press.

LOBACO'S LOW-BALL

The mild-mannered, but passionate and effective, Sacramento lobbyist for the American Civil Liberties Union, Francisco Lobaco, warily approached the office of one of the leading advocates of law and order. Because Lobaco was going to ask him to carry a measure that could easily be characterized by detractors as "protecting the rights of convicted felons," ACLU did not wish to be known as the sponsor of the bill. Extrinsic controversy—ACLU's initiation of the legislation—should not divert from

CDC's policy "being so fundamentally outrageous . . . that [it] could be sold to members of the Legislature as . . . of the [Communist] Gulag."

KOPP ON THE BEAT

Then-Senator Quentin Kopp is now a Superior Court Judge. While in the legislature, he was regarded as a brilliant and highly skilled, albeit cantankerous, San Francisco Independent. Although he was literally independent, on law and order issues, he was predictably pro law enforcement. His gravelly, booming voice was frequently heard over the hundreds of squawk boxes that pervade the Capitol and nearly every office building in downtown Sacramento. How could Lobaco presume to persuade him to carry the bill?

What Lobaco understood about Kopp was that his need to be heard, his love for debate, and his consequent faith in the wisdom of free speech protections were paramount. Kopp was a lawyer who understood the significance of the First Amendment. He was a part time media host, whose controversy-laden radio talk show was well known to the San Francisco Bay Area. As a consummate politician, he was quite comfortable in dealing with the press.

Not unlike a gladiator preparing for combat, Kopp girded himself to do battle with the CDC. As early as June of 1966, he wrote, in a conservative style meant to appeal to the Republican administration, "Throughout . . . history, the media . . . [have] been responsible for identifying inefficiency, waste, and fraud in government spending. The Department of Corrections is no different than other institutions in terms of such scrutiny. . . . I have not been offered any factual basis linking media access to any intrusion on penological interests."

SB 434 would establish confidential correspondence with the news media as an inmate's civil right in the state. It 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 directed the CDC to allow the media to interview prisoners. It applied to state prisons and prisoners only and had no affect on federal prison policy.

As in Congress, bills introduced in the California Legislature must pass two houses before reaching the desk of the chief executive. A bill is referred to one or more policy committees in each house for analysis of the measure's

policy effects. Laws do not operate in a vacuum, but interact with often complex and comprehensive bodies of existing law. Analysts identify issues and options for legislative members of the relevant committees to consider. If a bill is determined to have a fiscal effect (that is if it requires the state to spend money), it is automatically referred to the fiscal committee of the house in which it is being heard. Any one of the narrow channels through which a measure must pass—policy committees, appropriations committees, and often subcommittees of very few members—can become a graveyard.

If it survives, it must be approved by a majority of the members of each house—sometimes a two-thirds majority—before it enters the politically volatile domain of the executive. The governor has 30 days from the bill's passage to approve or veto it. If it is approved, the bill becomes a law. A governor's veto is only rarely overridden. It may seem surprising that any legislation ever passes. And, of the thousands that do each year, few deal with extremely controversial issues.

A PRESS-ING MATTER

One of the strongest forces in the storm surrounding SB 434 were the lobbyists for the press. The California Newspaper Publishers' Association represents the business people who own and control the 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 are represented by the northern California chapter of the Society of Professional Journalists (SPJ), headed by Peter Sussman. Both Kopp's staff and Lobaco considered Sussman integral to the bill's passage.

Sussman brought a decade of experience in prison-media issues to the table. He had been on the *San Francisco Chronicle's* staff for 29 years, most recently as editor of *Sunday Punch*, a popular weekly section of features and commentary. In that section, he occasionally published pieces by an insightful federal prisoner named Dannie Martin. In 1988, Martin wrote an essay that criticized policies a new warden had introduced. He contended they depersonalized prisoners and heightened tensions in the facility. Two days after the essay was published, Martin was placed in the "hole." The charge was violating a rarely enforced regulation prohibiting federal prisoners from writing news articles under their own name. Sussman

filed suit in federal court alleging violations of Martin's and the paper's First Amendment rights.¹

"STRIKE ONE" AGAINST CDC: 60 MINUTES

Typically, the author presents his or her bill before a committee, the proponents and opponents of the bill offer brief testimony, and the members ask questions of the author and the witnesses. SB 434 was first heard in the Senate Public Safety Committee, composed of five Democrats, two Republicans, and Independent Kopp, who submitted several amendments that strengthened the measure considerably. One amendment broadened the definition of members of the news media to take into account the explosion of nontraditional media outlets, from newsletters to the Internet. Another explicitly directed CDC to allow reporters to use the "tools of the trade." SB 434 supporters assured members that with increased scrutiny there would be no threat to security of the system. "It has the logical qualifiers based on the public safety and on the security of the facility," Kopp said.

Was it a coincidence that the bill was heard and approved just two days after 60 Minutes aired "The Deadliest Prison"? Sussman pointed out dramatically that CDC policy nearly prevented the 60 Minutes story, and that it would have deprived lawmakers of precisely the kind of information they needed. "The department says . . . we can get information from prisons . . . by rumor," communicating with prisoners through their family and friends. "The most dangerous thing that can happen in a prison is [to rely on] rumor." Supporters noted that even CDC estimated the press made only 100-200 requests for face-to-face interviews per year, an average of six or seven per prison—an insignificant burden. Media sources believed the number was much smaller.

"STRIKE TWO" AGAINST CDC: DON NOVEY AND CCPOA

That the press, civil libertarians, mental health, AIDS and prisoner rights groups were the core of the coalition supporting SB 434 surprised no one.

¹For further information on the Martin case, see Dannie Martin and Peter Sussman, *Committing Journalism: The Prison Writings of Red Hog* (New York: W. W. Norton, 1993).

When the California Labor Federation joined them, it was somewhat unexpected. But the first real surprise was the support of the powerful and politically unpredictable California Correctional Peace Officers Association. CCPOA represents the correctional officers (the term prison guard is strenuously resisted and resented) who work in daily contact with inmates. Viewed by Capitol insiders as a law-and-order police group, they were seen as close allies of Gov. Wilson, CDC, and Republicans generally. At the hearing, the colorful and enigmatic CCPOA leader, Don Novey, took a seat next to Francisco Lobaco and the ACLU. The committee chair, Sen. John Vasconcellos, took note of the extraordinary picture. But Novey had his reasons—actually several of them.

According to Ryan Sherman, one of CCPOA's lobbyists, denying the media access to the prisons would prevent the public from seeing the sort of people CCPOA's members dealt with on a daily basis. Sherman added, "If the media can find the bad apples in our membership and get them out, that's good," for the CCPOA and the public.

Novey addressed the hardball politics. "Very rarely do I support a Quentin Kopp bill," Novey said, but "we have not had a security problem with the media in 27 years." Novey was there to make a different point: it was the prison wardens and CDC who were creating the security risks by covering up. Novey told the committee that the chapter president at Corcoran State Prison was threatened with disciplinary action if he dared to discuss prison management issues—especially problems of safety that directly affected the guards. If there were problems, the media were the officers' only hope. Novey had come to the hearing to show the prison wardens, and the CDC, that despite longstanding affection for the governor, correctional officers would not be pushed around. CDC was effectively isolated.²

²This 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.)

DOWN BUT NOT OUT

CDC argued that the measure had nothing to do with the press' right to report what was going on in the prison system, because there were other ways the press could gain information from prisoners. "We have no problem with [the public's right to know]." The problem is that "this measure bolsters inmate rights," said Mike Neal, CDC's legislative liaison.

The first committee critic of the measure was Democratic Senator Adam Schiff, a former U.S. Attorney. He, like CDC, was concerned that interviewing inmates on camera would increase their notoriety. Seeing inmates on camera would "re-victimize the victims"—force them to relive the pain associated with the crime experience. It would increase the esteem of some of the worst and most manipulative inmates among their admiring peers within the prison. The big wheels would then turn this power against the prison authorities. Schiff said he would support the bill if it could be made to prohibit the use of video recording devices.

CDC'S "THIRD STRIKE"

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

After extraordinarily lengthy discussion, the committee voted. SB 434 received six affirmative votes, four from Democrats, one from Kopp, and one from Republican Bruce McPherson, a former newspaper publisher. Schiff voted against the bill, as did Republican Richard Rainey.

RETRENCHMENT AND COUNTER-ATTACK

Though it focused on the expansion of inmate rights in the Senate Public Safety hearing, CDC later offered several other arguments against Kopp's bill. They continued to maintain that the changes in CDC policy were not really 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 take away a

reporter's convenience, something to which the media had no right. Neal also argued that the media were not even-handed in their portrayal of convicts, often glorifying them and their misdeeds. "If news programs would give equal time to victims, this policy might not have arisen," he said.

In a well-formulated legal attack, CDC claimed it had long had the highest court in the land on its side. The United States Supreme Court, in a California case involving the CDC—*Pell v. Procunier*—decided 20 years ago that the First Amendment does not guarantee the public or the press a right to obtain information. It added that journalists have no greater rights of access than the general public; and, that the public's need for access to information will be balanced against other social needs, such as law enforcement interests and personal privacy.³

In a political counter-offensive, CDC maintained that only a few years earlier the legislature itself had reaffirmed its power to adopt legitimately restrictive policies. In 1994, then-Senator Robert Presley (currently director of Corrections under Governor Davis)—keeping with the California electorate's sentiment that prison punishment was too soft—obtained passage of a measure that spelled out criteria applicable to a body of law known as the "Inmate Bill of Rights." A key change allowed CDC to use "legitimate penological interests" to justify denial of certain privileges. Relying on the language, CDC curtailed, or removed privileges relating to mail, recreation, grooming, and, now, media access. According to Kopp, however, Sen. Presley had stated for the record that he did not intend that his bill would be used to curtail media access to prisons.

BOTH SIDES NOW

Senator Kopp believed that bipartisan support was necessary to make sure the bill passed and the governor signed it. He also thought it important to have Republican votes to overcome the loss of votes from conservative Democrats who objected to it. On May 12, Kopp amended the bill, tweaking definitions and adding Senator McPherson as a co-author. Previous co-authors had all been liberal Democrats—Senator Vasconcellos and San Francisco Assembly Member Carole Migden. Before the bill came up for

³Charles Davis, "Outside, Looking In: Covering America's Prisons" (Unpublished manuscript: Southern Methodist University, 1998), 4.

debate on the floor, Randall Henry, the Kopp staff member working on SB 434, met with 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 the meeting was a change in the definition of a media representative, to include only "bona fide journalists."

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 measure is unusual in the California Senate. With thousands of bills to consider each year, those without opposition are passed "on consent" (i.e., adopted without debate or discussion). Others are discussed for a few minutes. For a bill to receive more than a half hour of the Senate's time, as SB 434 did, demonstrated that it had stirred deeply held convictions. Moreover, while floor debate is not usually viewed as decisive for the resolution of issues—most controversial matters are faced in committee and most members have already made up their minds—a number of members were attracted to the debate precisely because it might be decisive.

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, speaking perhaps in anticipation of running for attorney general the next year. Then Adam Schiff rose, declaring that SB 434 was not a First Amendment issue, and stating that his opposition was based on the fact that the bill would allow video recording devices in the prisons.

Other members rose in support, some on long-standing animosity toward the CDC, others on projections of the bill's consequences or on interpretations of how far CDC could go relying upon the standard they had voted for previously, "legitimate penological interest."

Conservative Orange County Republican Ross Johnson rose and offered one of the most eloquent floor speeches given in the entire debate. 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 with what some have described as the most impassioned speech they have ever heard him give. Kopp declared, his voice rising, that if SB 434 was not a First Amendment issue, nothing was.

"For 20 years," he said, "under the Department of Corrections [own] 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." Kopp quoted from a column that appeared on the opinion pages of the conservative *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 21 favorable votes to pass in the 40-member body. It received 23, two more than required. There were eight negative votes and nine abstentions or absences. There were substantial numbers of both parties on each side as well as in the ranks of those who did not vote. A few more Democrats than Republicans supported the measure, while a few more Republicans than Democrats opposed it.

LIKE A ROCK

Governor 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 reviews the bill and recommendation and makes his own decision, sometimes going against the recommendations of his staff.

Because the bill passed the Senate, it began to look as if SB 434 might actually land on the governor's desk. Kopp, his staff, and the bill's sponsors communicated with the governor's office to evaluate the prospects of securing Wilson's signature. In late May, Kopp and Henry met with Michael Sweet, one of the governor's deputy legislative secretaries. Kopp got some bad news: Wilson himself was personally responsible for the change in CDC regulations that had inspired the bill. He had become disgusted with seeing

prisoners on television treated like celebrities.⁴ According to Sweet, it is not unusual for a governor to ask departments or agencies under the purview of the executive branch to change their regulations to suit a policy preference. And, when a department or agency wants to change procedures in a significant way, it must secure the approval of the governor. There seemed little chance that a governor so heavily invested in a position would be willing to admit error and change it.

The chief objection was that the Kopp bill "liberalized" the Inmate Bill of Rights by adding confidential correspondence with the media to the list. Sweet said, "This is a big deal because this Governor is on record as tough on crime." 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 (prohibiting inmates from profiting from their crimes). "I know the Governor would never sign such a bill."

Sweet told Kopp he would have to remove the offending section of his bill that dealt with the Inmate Bill of Rights if he wanted any chance of securing approval. "The governor," said Sweet, "gets rabid about this issue." Kopp went back to Sweet, this time accompanied by the bill's supporters—Sussman of SPJ, Lobaco of the ACLU, and Sherman from the CCPOA—to see if they could arrange a compromise that might allow the governor to sign the measure. On May 23, within days of the second meeting with Sweet, Kopp removed the operational portions of the bill from the Inmates' Bill of Rights, but added their equally sensitive equivalent elsewhere as accruing to journalists.

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: "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." It was the press, he said, who wanted to move the bill forward. CCPOA had gone along because, although they thought that SB 434 was a fundamentally good policy, they hoped their continued support would help them make friends among the media whom they normally did not see as allies.

⁴Interview with Tip Kindal, Mike Neal.

IN THE ASSEMBLY

SB 434 passed the Assembly with barely a ripple. It passed in the Assembly Public Safety Committee by 6-2, with all five Democrats and one Republican voting in favor. In the Assembly Appropriations Committee, 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. The member must instead find a "floor jockey"—a member of the other house 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 a vote on September 5.

Again, one of the most eloquent comments in favor of the measure came from Tom McClintock, a southern California Republican at least as conservative as Senator Ross Johnson. "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 blamed the legislature for trying to micromanage the prison system. He said 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 opened with the clang of a 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. SB 434 received 54 ayes (40 Democrats, 14 Republicans), and 19 noes (17 Republicans, two Democrats), an exact two-thirds majority—seemingly significant since that is required, albeit in both houses, to override a governor's veto. 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 means that the house of origin must accept the changes (or get the second house to agree to a compromise) before it passes the bill on to the governor for signature or veto. On September 10, the Senate considered SB 434 for the last time. Kopp rose and said, almost with surprise,⁵ that the Assembly amendments had improved the bill. Senator Schiff, who had opposed the bill five months before, said that the amendments had satisfied his objections,⁶ and he would 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, having received two-thirds support on both sides, was sent to the governor's office.

In his letter to Wilson seeking approval of SB 434, Kopp highlighted several points: First, the number of interview requests was hardly onerous. Second, SB 434 empowered CDC to establish restrictions on the time, place, and manner of interviews "if it determines the interview will pose a threat." Finally, media interviews, eliminate otherwise necessary reliance on "rumors, innuendo, and sketchy memory," that threaten the safety of prisoners and the tax-paying public's right to know.

Peter Sussman and the other journalists went into overdrive, generating a tidal wave of 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. 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."⁷

⁵"Surprise" because the Senate often looks with bemusement on the lower house of the legislature. Above the Senate rostrum is written "*Senatoris Est Civitatis Libertatum Tueri*"—"It is the duty 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."

⁶The amendments, however, did not specifically prevent television cameras from entering the prison system.

⁷"Nothing to Hide, Nothing to Fear," *San Francisco Chronicle*, September 22, 1997, A20.

EPILOGUE

On September 15, at a bill signing ceremony for a piece of victims' rights legislation, Wilson had promised to address SB 434—supposedly to explain his opposition. He made no mention of the measure. Supporters argued there was still a thin reed of hope of avoiding a veto. It was thin, but it was all they had to motivate them. On October 12, Pete 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.

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

**MAKING GOVERNMENT WORK:
California Cases in Policy, Politics, and
Public Management**

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Barry Keene, editor

The California Cases Project is Sponsored by
The Center for California Studies
California State University, Sacramento
Timothy A. Hodson, Executive Director
Barry Keene, Case Project Director

*These case studies were prepared by graduate students serving as Senate
and Judicial Fellows under the direction of The Center for California
Studies, which manages the Capital Fellows programs.*

Institute of Governmental Studies Press
University of California, Berkeley
2000

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Library of Congress Cataloging-in-Publication Data

Making government work : California case in policy, politics, and public management /
Barry Keene, editor.

p. cm.

Includes bibliographical references.

ISBN 0-87772-396-6

1. Political planning--California--Case studies. 2. California--Politics and
government--Case studies. 3. Local government--California--Case studies. 4.
Intergovernmental cooperation--California--Case studies. I. Keene, Barry.

JK8749.P64 M34 2000

320'.6'09794--dc21

00-059712