[ms-0398.027.001.018]

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SACRAMENTO
3 HON. JAMES T. FORD, JUDGE, DEPARTMENT 25
4 ---o0o---

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5 NICHOLAS C. PETRIS, et al.,
6
7 Petitioners,
8 vs. No. 363610
9 MARCH FONG EU,
10 Respondent,
11 JOHN K. VAN DE KAMP et al.,
12 Real Party in Interest,
13 CRIME VICTIMS CALIFORNIA
JUSTICE COMMITTEE, et al.,
14
15 Intervenors and
Real Parties in Interest.
16

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18 REPORTER'S TRANSCRIPT OF PROCEEDINGS
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21 ---o0o---
22 TUESDAY, MARCH 20, 1990
23 ---o0o---
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26 Sandra Spivak, C.S.R. No. 1738
27
28

APPEARANCES:

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1 Third, this hearsay preliminary hearing feature is
2 voluntary. Our declarations say it is not going to be used
3 in every case. I dare say it is not going to be used in
4 every case, if the results were not to be to have more
5 people plead guilty.
6 THE COURT: Wait a second. If you are not going
7 to use it, why do it? Why propose it, if it is not going to
8 be used?
9 MR. MUELLER: We are going to give the District
10 Attorneys the option to use it when it is appropriate, so
11 they have more flexibility in some cases.
12 THE COURT: Well, aren't like cases going to be
13 treated alike?
14 MR. MUELLER: No, they are not. Some cases are
15 going to have preliminary hearings on hearsay, and some they
16 are not.
17 If they have a recalcitrant defendant, they are
18 going to say, All right, we will bring the guy in, and you
19 can look at the whites of his eyes.
20 But we don't think that is necessary in most cases,
21 because the defense counsel can figure that out.
22 But to base it on one factor, to pull an 85 percent
23 figure out of the air, in a criminal justice system that is
24 so dramatically different than the State system, is not the
25 kind of clear and convincong evidence that is necessary to
26 show that there is going to be that kind of change in guilty
27 pleas.
28 If you went to Las Vegas to take a bet on it, and

1 they wanted to give odds it would go from 95 to 85 percent,
2 I bet they would say There is no way we can tell, no
3 quanitfiable evidence, let alone if you want to go there and
4 lay a bet on the kind of evidence these petitioners have
5 brought to the Court. Any odds maker is going to say We
6 can't figure that out, there is just too many variables.
7 But we can figure out the criminal justice system in
8 the Federal side is, and will be, a lot different than the
9 State side.
10 And there are so many factors in here, it is
11 impossible to quantify let alone come up with a figure that
12 is going to be triple.
13 THE COURT: How many civil trials do we try in
14 California in a year? Does anybody know?
15 MR. GOODWIN: Your Honor, I think it is about four
16 thousand.
17 THE COURT: Four thousand.
18 So if a third of the consequence occurs, we will not
19 have civil litigation in California.
20 If only, if only, if their estimate is only off a
21 third, we will not do civil trials in California.
22 MR. MUELLER: But, darn it, there is no basis --
23 THE COURT: What is the calculable cost for that?
24 MR. MUELLER: There is no basis for this estimate.
25 They have pulled out a figure of fifteen percent or five
26 percent, this ten percent is just a figure that is floating
27 around there, that doesn't have any relationship to our
28 system.

1 THE COURT: But their worst case is eleven
2 thousand, say, more trials, if it goes to an absolute analog
3 of the Federal system.
4 And we only try four thousand civil cases now.
5 If it's only four thousand instead of eleven
6 thousand, we are dead.
7 Right?
8 MR. MUELLER: Your Honor, that may be true, but
9 that doesn't mean they have proved or shown any evidence,
10 any concrete evidence that there is going to be one more
11 trial.
12 THE COURT: But let's -- Mr. Bomse, let's do this:
13 If you are right, and if -- or even if you are a
14 third right, and there are four thousand more criminal
15 trials, the cost is incalculable.
16 Because we will eliminate civil litigation in this
17 State.
18 The legislature doesn't have the money for more
19 judges and courtrooms et cetera et cetera.
20 I mean, they are not going to provide that. They
21 haven't seen fit to do so to this point. We are barely
22 making it as it is.
23 We sink.
24 What kind of economy can we have, where you can't go
25 to trial in a civil litigation? The economy of the State of
26 California, I suppose, would collapse. So how could the
27 legislative analyst say what that costs? It is unknown. It
28 is catastrophic.

1 setting forth what is in the initiative.

2 THE COURT: They have listed all the things that

3 are there.

4 But I don't think it is appropriate for the

5 legislative analyst to go on to say that it may well be that

6 some of these run afoul of the United States Constitution.

7 I mean, that is just a matter of argumentation

8 MR. BOMSE: Well, I think, your Honor, that all we

9 would do, having in mind what the legislature suggests what

10 the task of the legislative analyst is, which was to

11 communicate to the average non-lawyer, not even necessarily

12 graduate-degree-ed voter, is to tell them there is something

13 fairly fundamental going on here, which is that --

14 One of the things which we have always learned from

15 high school civics on is that this is a Federal system in

16 which we have an independent Constitution, in which the

17 rights may well be different here.

18 And all we are really suggesting is that that be

19 said in language that says there is a fundamental change

20 afoot here. In the sense that the State courts would no

21 longer have the ability to interpret the State Constitution

22 in a different way.

23 All we propose here, at page 7 of our petition:

24 That the measure would fundamentally

25 change the system of Government in

26 this State, by removing from

27 California State judges the ultimate

28 responsibility of interpreting many

1 of the rights in the state
2 Constitution.
3 A statement which I think is unquestionably true.
4 I don't think one could --
5 THE COURT: Well, the initiative precisely
6 purports to do that, and says so in no uncertain terms, I
7 think.
8 I mean, that is not to be gainsaid. The initiative
9 has as its objective the preclusion of utilization of State
10 Constitutional rights in criminal cases.
11 MR. MUELLER: In criminal cases. But it does not
12 substantially change our system of Government. That is our
13 argument. Legislative --
14 THE COURT: Well, we have had our own Constitution
15 that was available to our citizens irrespective of the
16 Federal Constitution, you know, to the degree that was
17 certainly not less than the U.S. Constitution.
18 And this, in criminal cases, precludes it. Right?
19 MR. MUELLER: Well, it won't go against the
20 Federal Constitution.
21 But the question is whether or not the legislative
22 analyst's document states that, and it states in it in black
23 and white. It quotes the initiative.
24 THE COURT: We have an express right to privacy in
25 California's Constitution, and we do not in the United
26 States Constitution.
27 Right?
28 MR. MUELLER: I understand. But privacy is in

1 here: people can read it.

2 I am not going to argue the merits of the this whole

3 privacy issue, because I don't understand -- I don't know

4 what that is. But the fact is, it is denominated in here as

5 one of rights being affected by this initiative. It sets

6 forth --

7 THE COURT: I hope you are not unclear about it,

8 Mr. Mueller, because if you are, maybe Mr. Bomse has a

9 point: we have to make it clear.

10 It is clear privacy rights under California's

11 Constitution, which are express, unlike the Federal

12 Constitution, will not be available in criminal cases.

13 Right?

14 Isn't that ...

15 MR. MUELLER: It is set forth in here:

16 In criminal cases the rights of a

17 defendant to due process of law, and

18 all of the other rights set forth as

19 being construed by the courts of this

20 State in a manner consistent with the

21 Constitution of the United States.

22 So that is set forth there.

23 But that is not a fundamental change in the system

24 of our Government.

25 We don't have any quarrel with putting into the

26 legislative analyst (sic) what the initiative says. And

27 that is what the legislative analyst has done. What we

28 quarrel with is pure argument.

1 They have a forum to argue whether or not they
2 believe this is going to change fundamentally our system of
3 Government -- which it clearly does not.
4 It does not change civil rights at all, it doesn't
5 have anything to do with what, how the legislature works.
6 People are not --
7 THE COURT: It may have significant impact, would
8 it not? On, um, abortion issues, does it not, Mr. Mueller?
9 MR. MUELLER: To the extent of in criminal cases.
10 THE COURT: Well, isn't that how we regulate
11 abortion? We make it a crime. Wouldn't that make it a
12 criminal action?
13 MR. MUELLER: Well, again, I am not really
14 prepared to discuss that particular issue, because I don't
15 think that is an issue that they have raised.
16 What they have raised is whether or not this
17 fundamentally effects a change in our system of government.
18 I don't think that whether or not this changes
19 abortion rights or whether it changes some other rights is,
20 equates with a Fundamental change in the system of
21 government.
22 And that is what they want to put in there.
23 And that is argument, and they are entitled to put
24 that in their arguments. But the law is that the
25 legislative analyst's document is not supposed to be
26 construed in a fashion that is argumentative.
27 THE COURT: That is true.
28 MR. MUELLER: Or prejudicial for or against