[ms-0398.027.001-015]

file

California Attorneys for Criminal Justice CACJ

February 12, 1990

Leon Williams, Chairman
San Diego County Board of Supervisors
1600 Pacific Hwy.
San Diego, CA 92101

Re: Californians for Privacy
1990 Wilson Initiative

Dear Supervisor Williams:

I am writing to call your attention to an initiative that will appear on the June 1990 ballot. Its official title is the "Crime Victims Justice Reform Act." It has now been given the designation Proposition 115. The initiative's twelve major components were all turned down by the State Legislature. The initiative is sponsored by Senator Pete Wilson and is a key component of his gubernatorial campaign.

Opposition to the Wilson Initiative is being directed by Californians for Privacy. California Attorneys for Criminal Justice, which is the state's largest group of criminal defense lawyers, is one of CFP's member groups and I am CACJ's current president.

A variety of groups have already gone on record opposed to the Wilson Initiative. They include the San Francisco County Bar Association, American Academy of Pediatricians; American Association of University Women, California Women Lawyers, American College of Obstetricians and Gynecologists, California Abortion Rights Action League, National Council of Jewish Women, Women's Law Center, Women For and the American Civil Liberties Union.

The ballot argument in opposition to Proposition 115 was signed by former appellate justice Shirley Hufstedler, Robin Schneider (CARAL President) and W. Benson Harer, Jr., M.D. (Chair, Dist. 9 of the American College of Obstetricians and Gynecologists).

I understand that the Board of Supervisors has appointed a committee to study the impact of

10551 Jefferson Boulevard
Culver City, CA 90232
Phone (213) 204-0502
Fax (213) 204-2438

Proposition 115 on the county level and determine what position, if any, the Board should take regarding passage of the initiative. I have provided a variety of written materials to Elliot Lande, Director of the Office of Alternative Defense Counsel, who I understand is a member of the study committee. I am enclosing some brief materials for your consideration:

1. Californians for Privacy fact sheets concerning the Wilson Initiative's impact on court congestion, sexual privacy, news media access to the courts, religious freedom, medical records confidentiality and medical treatment and freedom of speech.

2. Dennis Riordan's article, "Abortion Rights in Califonria -- Under Attack".

3. January 1, 1990 editorial from the Los Angeles Times, "Strained to the Breaking Point."

From the perspective of the San Diego County Board of Supervisors, I believe you will find the Wilson Initiative destructive of essential protections guaranteed to Californians under our State Constitution. In a single broad stroke, its passage would require that rights provided by California constitutional provisions may not be construed to afford greater protection to defendant than those afforded by the United States Constitution. In sum, the independence of our state courts to analyze and decide criminal cases in accord with our own state constitution will be lost.

Realizing that the Bar Association is comprised of attorneys engaged in every aspect of the practice of law, let me summarize several other ways in which the Wilson Initiative will destroy basic rights and overburden the taxpayer:

If the United States Supreme Court overturns Roe v. Wade, the path will be clear for abortion to be criminalized in this state. In fact, Penal Code secs. 274-276 are presently on the books making it unlawful to have or furnish an abortion except under very restrictive circumstances. Those statutes have not been enforced because of Roe and California Supreme Court decisions which guarantee freedom of choice under state constitutional provisions (Article I, sec. 1). Without the protection of Roe or an independent California constitutional right of privacy, implementation of anti-abortion criminal laws will be possible.

California currently disposes of 95% of its criminal cases by way of guilty plea. By contrast, only 75% of the cases in federal court settle before trial. Unquestionably, this comparatively high rate in our state can be attributed two components of the criminal justice system the Wilson Initiative will virtually abolish. First, defense counsel are afforded full discovery of the prosecutor's evidence allowing them to begin a thorough investigation of the case at the earliest possible stage. Secondly, a preliminary examination takes place in municipal court where essential government witnesses must be called and questioned by both sides. There is no trial unless the judge finds probable cause to believe the defendant committed the crime charged.

Discovery and the preliminary hearing give both defense and prosecution a comprehensive view of the strengths and weakness of the evidence very early on in the proceedings. It is easy to see why, with the system as it presently is, the parties are in a position to made a reasoned and intelligent settlement of most cases. Without full discovery or the testing ground of the preliminary hearing, the rate of cases going to trial will increase dramatically. Additionally, defendants whose cases are now dismissed by independent judges who find the evidence insufficient to allow the case to continue, will be held in custody and forced (along with the taxpayers) to endure the expense of a trial.

The dollar cost of the initiative thus would be tremendous. Superior court trials (perhaps averaging four to five days statewide) are far more expensive than preliminary examinations (perhaps averaging one or two hours). The present system can barely accommodate the existing trial load. An increase of only several percentage points (and more than that is likely) means millions of dollars must be spent for additional courtrooms, judges, prosecutors, publicly-funded defense counsel and support staff.

The so-called "speedy trial" provisions of the Wilson Initiative will prevent courts from continuing preliminary examinations or trials at the request of defense counsel even when that attorney is otherwise already committed to be in another trial or hearing. In order to reduce the caseloads of public defenders and appointed counsel to levels where they can always be ready to begin within very strict time limits, defender offices must obtain sizeable staff increases. Once again, the cost to the taxpayers will be a heavy one.

In his recent budget proposal to the Board of Supervisors, Public Defender Frank Bardsley included the following caveat:

> It should be noted that the 1991 request does not include any staff that will be necessary should the Crime Victims Justice Reform Act Referendum be passed by the voters in 1990. Under this act, the Public Defender attorneys would not be able to double or tripe set trials in anticipation of the case settling before trial. If so, the Public Defender's felony attorneys would, at a minimum, have to be doubled from 98 attorneys to 196 attorneys. The passage of this referendum will cost the County an estimated $10,258,000 annually.

Mr. Bardsley's prediction is conservative at best. It does not account for the clerical and investigative staff necessary to support this doubling of felony attorneys nor the requirement for additional office which to accommodate them. More criminal trials mean more prosecutors, judges and courtroom personnel will be needed to handle the increased load.

Californians for Privacy is presently preparing an analysis of the cost impact of the Wilson Initiative. I hope to have some additional information regarding this specific issue for the members of the Board within the next week.

Presently, civil cases struggle to seek out an available courtroom under the crush to try the criminal case load. With the number of criminal trials rising dramatically should the Wilson Initiative pass, the only civil parties who will have their day in court will be those who can afford to pay to a have private judge hear their cases.

News media access to criminal cases which are of interest to us all would be severely curtailed. A prosecutor may charge a criminal case by indictment which is brought about by a secret grand jury hearing, rather than by complaint which must be tested at a public preliminary hearing. Under present law, if there is an indictment, the defendant is still entitled to a preliminary examination. Should the Wilson Initiative pass, there will be no such right and the press will be excluded from much of the newsworthy evidence until trial.

As I mentioned, where there is a preliminary hearing the prosecutor must now call the critical witnesses, eg., the eyewitness to a robbery. The Wilson Initiative permits the

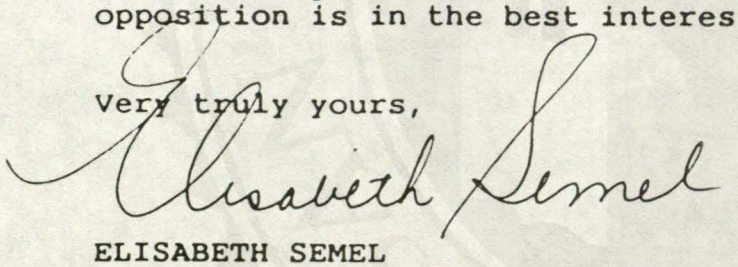
deputy district attorney to present his case through a police officer who will simply recite the hearsay statements of the various witnesses. Not only will the defendant be denied a right to confront and cross-examine these vital witness, but the media will be left with reading police reports or listening to the truncated, second or third-hand versions of stories that the officers relate on the stand.

These are but a handful of the mammoth and destructive changes passage of the Wilson Initiative would bring about. Doubtless, members of the Board of Supervisors are interested in reform of the criminal justice system and may even favor some of the provisions of the initiative. We hope, however, the Board will agree that its cost both in dollars and loss of precious state constitutional rights, is too great a price to pay.

As I mentioned, Californians for Privacy has gathered a variety of analyses that have been conducted concerning the initiative including those prepared by state legislative committees and individual attorneys. In the event you or your aides would like to receive copies of any of these documents, I would be happy to provide them.

I am certain the Board will conscientiously study this measure. I hope to have the opportunity to meet with you or members of your staff to further detail the reasons why opposition is in the best interests of the San Diego public.

Very truly yours,



ELISABETH SEMEL
President, CACJ

ES:rj
Encl.

cc: Louis Katz, Esq.
Tom Adler, Esq.
Ron Bobo, Esq.
Elliot Lande, Esq.

County Board of Supervisors

Brian Bilbray
Supervisor 1st District

George Bailey
Supervisor 2nd District

Susan Golding
Supervisor 3rd District

Leon Williams
Chairman
Supervisor 4th District

John MacDonald
Vice Chairman
Supervisor 5th District