

*People v. Clarence Ray Allen*  
Background Information  
January, 2006



**Josephine Rocha**



**Douglas White**



**Bryon Schletewitz**



**Mary Sue Kitts**

**Bill Lockyer, Attorney General  
Office of Victims Services**



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## **Introduction**

Clarence Ray Allen was a convicted murderer with multiple violent felony convictions serving a life sentence who conspired to murder eight witnesses that testified against him in his 1977 trial for the murder of Mary Sue Kitts, a young girl who informed on him about a burglary of Fran's Market in 1974. As a result of Allen's plot, a former witness and two young, innocent bystanders were murdered.

On June 1, 1981, the State of California charged Allen with the murder of Bryon Schletewitz, Douglas White, and Josephine Rocha, and conspiracy to murder Bryon Schletewitz, Ray Schletewitz, Lee Furrow, Barbara Carrasco, Benjamin Meyer, Charles Jones, and Carl Mayfield. In 1982, Allen was convicted of the crimes and the jury sentenced him to death.

Over the last 23 years, Allen has presented a series of legal claims to state and federal courts challenging his conviction and sentence. The courts have reviewed and rejected Allen's direct appeal, two state habeas corpus petitions and a federal habeas corpus petition.

The purpose of this document is to provide background information on this case. In addition to factual descriptions of the crimes, we have included photographs of the victims and victim impact statements from family members. Additionally, you will find a chronology of the litigation in this case, information on upcoming executions in California and general information on capital punishment in California.

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## **Mary Sue Kitts 1974 Murders**

The events underlying these crimes were set in motion in June 1974, when Clarence Ray Allen decided to burglarize Fran's Market in Fresno, California. Allen had known the owners of Fran's Market, Ray and Frances Schletewitz, for more than a decade. Allen enlisted the help of his son, Roger, as well as Carl Mayfield and Charles Jones, employees in Allen's security guard business who were frequent coconspirators in prior criminal pursuits.

On the night of the burglary, Roger Allen invited the Schletewitz's 19-year-old son, Bryon, to an evening swimming party. The keys to Fran's Market were then taken from his pants pocket while Bryon was swimming. Later that evening, while Bryon was on a date arranged by Allen with 17-year-old Mary Sue Kitts, Allen, Mayfield, and Jones used Bryon's keys to burglarize his parents' market. They removed a safe from the market and divided the \$500 in cash and over \$10,000 in money orders found inside. The money orders were later cashed with the help of Roger Allen, Shirley Doeckel, Kitts, Barbara Carrasco and Eugene Leland ("Lee") Furrow.

When Kitts disclosed her involvement in the burglary to Bryon, the young man confronted Roger Allen, who, in turn, told his father, Clarence Ray Allen. As a result, Allen ordered the murder of Kitts, which was carried out, through strangulation, by Furrow. Allen's compatriots dumped Mary Kitts' body in the Friant Kern Canal. Her fate was unknown for three years. Throughout these events, Allen repeatedly issued threats to his criminal accomplices that any "snitches," or those not obeying his orders, would also be killed.

Allen was eventually arrested when the last in a series of store robberies went awry, resulting in the shooting of a bystander. Ultimately, in 1977, Allen was convicted of the burglary and the related first-degree murder of Mary Sue Kitts. It was while he was serving a life sentence at California's Folsom Prison for the Kitts murder that Allen committed crimes in an effort to silence the witnesses who testified at the 1977 Fran's Market/Kitts murder trial and which resulted in his death sentence. During the Kitts murder trial, Bryon and Ray Schletewitz supplied the crucial testimony about Allen's motive -that Mary Kitts had told them that Allen burglarized Fran's Market.



**Mary Sue Kitts**

**Sentencing Statement to Fresno County Probation by Parents of  
Mary Sue Kitts (quoted from Allen's Probation report)  
November 15, 1977**

**VICTIM STATEMENT AND ASSESSMENT:**

Due to the nature of the instant offense, the matter was referred to the Victim Services Unit of the Fresno County Probation Department. The following information was submitted by Victim Services Worker Josie Rangel.

“On November 15, 1977, Mr. and Mrs. Nathan Kitts were interviewed. Regarding their emotional reaction, Mr. and Mrs. Kitts stated that no one could ever describe what their lives have been like since the loss of their daughter. Mr. and Mrs. Kitts further stated that they had been married for 19 years before they were able to have a child. Mary Sue Kitts was their only child.

Mrs. Kitts indicated that she and her husband no longer have a life. They now only exist. Mrs. Kitts is presently under a doctor's care and has been since her daughter's disappearance. Mrs. Kitts suffers from insomnia and a nervous condition.

With regards to sentencing, Mr. and Mrs. Kitts both stated that they feel the defendant should not be granted probation or given the possibility of parole. They further stated that the defendant needs to be institutionalized so that he does not harm someone else's child.”

**Josephine Rocha,  
Bryon Schletewitz, and  
Douglas White**

**1981 Murders**

While incarcerated at Folsom Prison, Allen met Billy Ray Hamilton, a fellow inmate who was about to be paroled. Allen devised a plan in which Hamilton would kill the witnesses who testified against Allen in the Mary Sue Kitts case, so that Allen would prevail on retrial if he won his appeal. Allen's son, Kenneth, visited Allen at the prison. He agreed to participate in the plot and Allen sent him coded letters outlining a plan for the execution of eight witnesses.

Soon after being paroled, Hamilton contacted Allen's son, Kenneth, who provided money, a sawed-off shotgun, a .32-caliber revolver, and seven shotgun shells. On Thursday, September 4, 1981, Hamilton went to the market accompanied by a girlfriend, Connie Barbo, after telling Kenneth that he was going to murder Ray and Bryon Schletewitz. The plan was aborted when Barbo objected to killing a 15-year-old boy who was in the store that night.

The next evening, Hamilton took additional ammunition from Kenneth and went with Barbo back to Fran's Market. Arriving just before closing time, Hamilton soon brandished the sawed-off shotgun and Barbo produced the .32-caliber revolver. Hamilton led Bryon Schletewitz, Douglas Scott White, Josephine Rocha, and a fourth store employee toward the stockroom and ordered them to lie on the floor. He told White to get up and walk to the freezer, warning White he knew there was a safe inside. When White told Hamilton there was no safe there, Hamilton responded, "Get out 'Briant.'" Bryon Schletewitz then volunteered, "I am Bryon." Following Hamilton's demand, Bryon gave up his keys and assured Hamilton he would give him all the money he wanted.

While Barbo guarded the other employees, Bryon led Hamilton to the stockroom where, from seven to twelve inches away, Hamilton fatally shot him in the center of his forehead with the sawed-off shotgun. Hamilton emerged from the stockroom and asked White, "Okay, big boy, where's the safe?" As White responded, "Honest, there's no safe," Hamilton fatally shot him in the neck and chest at point-blank range.

As Josephine Rocha began crying, Hamilton fatally shot her through the heart, lung, and stomach from five to eight feet away. Meanwhile, the other store employee escaped to the women's restroom. Hamilton found him, opened the restroom door, pointed the shotgun at his face, and shot him from three feet away. However, he had put his arm up in time to take the blast in the elbow, saving his life.

As Hamilton and Barbo fled the store, they were spotted by a neighbor, Jack Abbott, who had come to investigate the shots. Barbo retreated back into the store's restroom, while Hamilton and Abbott traded fire. Although hit, Abbott managed to shoot Hamilton in the foot as he ran to his getaway car. Barbo was apprehended by officers at the scene.

Hamilton was arrested one week later during a liquor store robbery in Modesto, California. Police seized from Hamilton a "hit list" of the names and addresses of the eight people who testified against Allen at the 1977 Kitts murder trial—Lee Furrow, Barbara Carrasco, Benjamin Meyer, Charles Jones, Carl Mayfield, Shirley Doeckel, and Ray and Bryon Schletewitz.





**Josephine Rocha**

RECEIVED

NOV 15 1982

GLENN COUNTY  
PROBATION OFFICE

Honorable Judge Roy G. McFarland  
County of Glenn  
Courthouse  
Willows Ca. 95988  
November 10, 1982

Dear Honorable Judge Roy G. McFarland:

The loss of Josephine becomes unbearable when we think of the senseless murders that could have been avoided a few years ago, a few trials ago and yes even a few murders ago.

Clarence Ray Allen coldly and brutally planned to kill whatever was in his way. Even if it included a girl of seventeen who was so full of life. He was already in prison for the murder of another young girl. Clarence Ray Allen had no regard for the life of another human being. The car next to you in a normal society and our society is not safe as long as he is alive.

The family of Josephine hope and pray no other family have to be hurt at the hands of this pitiful man as did our family, the Schlemowitz family and the White family.

When we lost Josephine we lost a daughter, a sister, a friend and a part of our selves.

It is with all of this in mind that we implore you to look into

your heart and soul and never let  
Clarence Ray Allen plan to harm  
anyone else again

Thank you for listening,  
Teresa Rocha and the Rocha family

1997 Statement of Teresa Daniele,  
Sister of Josephine

ORIGINAL

1 DANIEL E. LUNGREN  
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2 GEORGE WILLIAMSON  
Chief Assistant Attorney General  
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Senior Assistant Attorney General  
4 WILLIAM G. PRAHL  
Deputy Attorney General  
5 JANIS SHANK MCLEAN (State Bar #96177)  
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9 Attorneys for Respondents

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.  
ATTEST: **JACK L. WAGNER**  
Clerk, U.S. District Court  
Eastern District of California  
By: *[Signature]* Deputy Clerk  
Dated: DEC - 2 2005

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

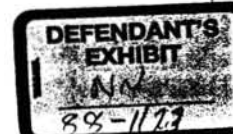
14 **CLARENCE RAY ALLEN,**  
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19  
Petitioner,  
v.  
Respondents.  
**DANIEL VASQUEZ, Warden, et al.,**

CAPITAL CASE  
CIV-S-88-1123 DFL JFM  
**DECLARATION OF TERESA R. DANIELE**

20 I, Teresa R. Daniele, declare under penalty of perjury as follows:

21 I am one of Josephine Rocha's four surviving sisters and two surviving brothers.  
22 Josephine was murdered at Fran's Market on September 5, 1980 along with Bryon  
23 Schletewitz and Douglas White.

24 Josephine or "Phina" was 17 at the time of her death. She was beginning her  
25 senior year at Clovis High School. Josephine was a fun-loving girl with a great sense of  
26 humor. She had many friends and we enjoyed each other's company--borrowing things  
27 from each other and shopping together. One of Josephine's loves was gardening with our



1 father. She was the talented artist of our family who had once won first place in a school  
2 art contest.

3 I recall that Josephine hoped to be a teacher, and to have a family and a "house  
4 full of flowers." One of her school activities was "Junior LARCS", a group that aided  
5 retarded children.

6 The evening of Josephine's death was shocking and chaotic. We received a  
7 phone call that indicated that a woman had survived at the store. My mother went to the  
8 hospital to find out if Josephine was the survivor. I stayed at home with my father while  
9 concerned relatives and neighbors came to the house with rumors and information. We  
10 did not know for sure that Josephine was dead until the coroner delivered her driver's  
11 license to our home. The sister closest to Josephine in age, Cecelia, went catatonic and  
12 my mother (and <sup>my sister</sup> sister) had to return to the hospital with her. Cecelia has since required  
13 further counseling. My father, to whom Josephine had always been close, wished that he  
14 could have taken Billy Ray Hamilton's bullets for her.

15 Josephine's funeral mass was attended by a large crowd of people, including  
16 many of her young friends from high school. It was only at the mass, finally, that our  
17 mother-who had been so strong-broke down in tears and kissed Josephine goodbye right  
18 before they closed the casket.

19 The year following Josephine's death was a blur for our entire family. I had a  
20 difficult year at Fresno State because I could not concentrate due to my grief and  
21 suffering about my sister's death. At what would have been Josephine's high school  
22 graduation, my mother was presented a yearbook in her memory.

23 Every holiday, my mother and father give each of us a remembrance in  
24 Josephine's memory. Josephine's absence leaves a void in all of our family gatherings  
25 (weddings, births, etc.) and holiday celebrations. Our family has been deeply affected by  
26 her tragic death and there has been no closure for us yet.

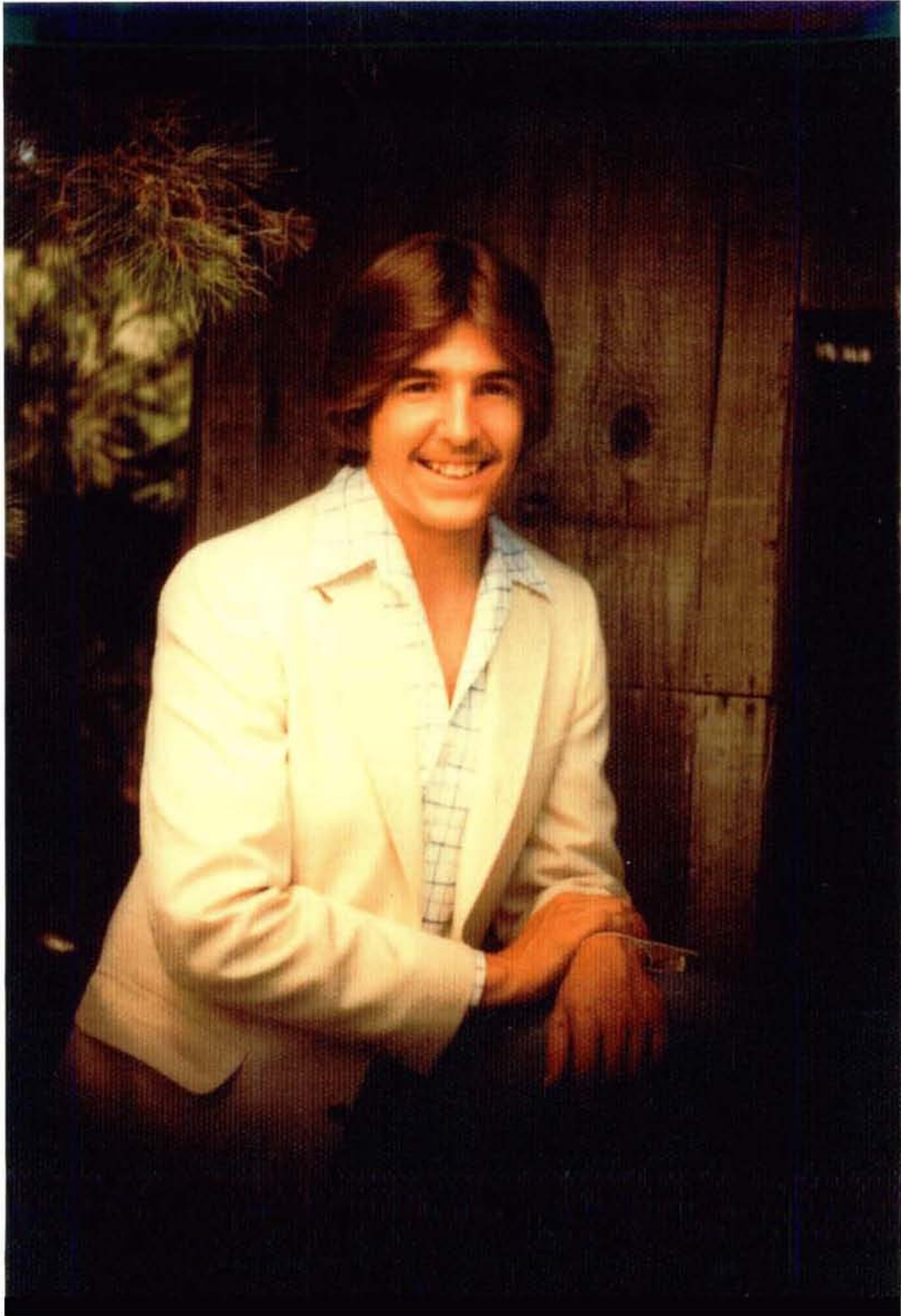
27 For me, there is a special poignancy in Josephine's death. I had worked at Fran's  
28 Market and helped Josephine get a job there. I remember Bryon Schletewitz as a good

1 boss with a great sense of humor. Neither Bryon nor Ray Schletewitz ever mentioned to  
2 me the earlier events surrounding the burglary of their market and the murder of Mary  
3 Sue Kitts that would lead to Josephine's own murder. While her death is not my fault, I  
4 still carry feelings of regret and guilt.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed in San Carlos, California on April 24, 1997.

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10 TERESA R. DANIELE  
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**Douglas White**

**Sentencing Letter to Probation from Parents, Family and Friends  
of Douglas White  
November 10, 1982**

NOVEMBER 7, 1982

REGARDING CLARENCE RAY ALLEN;

*Jane Heden, Probation Officer*

We certainly do have very strong feelings about the sentencing of Clarence Ray Allen. It is impossible for us to be in court on Nov. 22, 1982, but we would like our letter stating our views on this matter placed in the file.

Clarence Allen must be sentenced to die in the gas chamber and the sentence must be carried out as soon as possible. Many many lives have been destroyed by this man and just locking him up in prison is no answer as we know so well.

Clarence Allen has never done one decent thing in his life he has no regard for anyone but his own self. He has deliberately warped and destroyed his own son's leading them into a life of crime.

Clarence Allen has no soul, he shows no remorse and in fact seems proud of his life of crime. There is no place in this world for him and others like him.

Even tho our lives have been destroyed by the horrible death of our beloved son, we pray that for the safe being of our other children and grand children this man will be put to death as the People of Calif. have tried him and found him guilty as charged.

Nothing can bring back our son, nothing can return our lives to normal, we will grieve for Douglas the rest of our lives but if Clarence Allen & Billy Ray Hamilton go to the gas chamber and the world is rid of them forever perhaps our son did not die in vain.

RESPECTFULLY  
FROM PARENTS FAMILY AND FRIENDS  
OF DOUGLAS S. WHITE

*Roy & Madeline White*

RECEIVED

NOV 12 1982

GLENN COUNTY  
PROBATION OFFICE

2751



Statement of Nadine White  
Mother of Douglas  
April 22, 1997

04/21/97 09:21

NO. 889 P002-004

**ORIGINAL**

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2 GEORGE WILLIAMSON  
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Fax: (916) 324-2960  
9 Attorneys for Respondents

I hereby certify that the annexed  
instrument is a true and correct copy of  
the original on file in my office.  
ATTEST: **JACK L. WAGNER**  
Clerk, U.S. District Court  
Eastern District of California  
By: *[Signature]* Deputy Clerk  
Dated: APR 22 2005

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13  
14 **CLARENCE RAY ALLEN,**

Petitioner,

15  
16 v.

17 **DANIEL VASQUEZ, Warden, et al.,**

18 Respondents.  
19

**CAPITAL CASE**

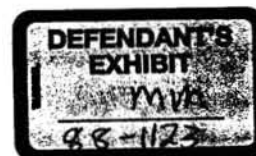
CIV-S-88-1123 DFL JFM

**DECLARATION OF NADINE  
WHITE**

20 I, Nadine White, declare under penalty of perjury as follows:

21 I am the mother of Douglas Scott White, one of the victims of the Fran's  
22 Market murders on September 4, 1980. Douglas worked at the market and was murdered  
23 in the backroom with Bryon Schletewitz and Josephine Rocha. He was my youngest child,  
24 the "baby of the family".

25 Douglas was 18 years old at the time of his death. He was attending Reedley  
26 Community College. He had graduated from Clovis High School where he was a member  
27 of the school choir.  
28



1 Douglas was a very caring young man. Many other families considered him a  
2 virtual member of their families. As a personal favor to his choir director's family, he  
3 drove to Madera to do their yard work. Although he did not have a great "singing voice",  
4 he helped the director manage the choir's activities. The choir director delivered the  
5 eulogy at Douglas' funeral, she described him simply and succinctly as "a good person".

6 At the time of Douglas' death, I was a real estate broker in Fresno. Douglas had  
7 intended to study law and architecture with the goal of joining me in my business. His  
8 murder shattered that dream. The shock of his death forced me to quit my business. At  
9 the time of Clarence Ray Allen's trial, I was employed at Gottschalk's department store  
10 in Fresno.

11 I also could not forget the terror that Douglas must have felt at the time of his  
12 death. On October 1, 1962, my first husband (Douglas' father) walked into my place of  
13 business. He shot me in the head and then committed suicide. Thus, I knew exactly what  
14 it was like to stare down the barrel of a gun as Douglas had.

15 I also knew that Douglas must have believed that if he cooperated with Billy  
16 Ray Hamilton that he would survive. Although he was 6'6" tall, we referred to him as our  
17 "big gentle teddy bear". He was a non-violent person.

18 One of Douglas' last acts before he died was typical of him. I had hurt my foot,  
19 but would not go see the doctor. Because of the pain I was suffering, Douglas had made  
20 a doctor's appointment for me and insisted that I see the doctor. Before he left for work  
21 at Fran's Market that day, he teased me about going to show a client a house while he  
22 had to work. Even then, he was anxious to join me in my business.

23 We found out about the Fran's Market murders by a phone call. Our son,  
24 George, who had just left our home and had driven by the market also returned to our  
25 house screaming that something had happened. We drove to Fran's Market. At first, we  
26 were lead to believe that Douglas had survived. However, that hope was destroyed when  
27 Ray Schletewitz himself told us that Douglas was "inside" the store with his dead son,  
28

1 Bryon. I do not remember much else about that night other than being helped by a kind  
2 paramedic who was at the scene.

3 Douglas' death destroyed our world. Holidays and anniversaries, of course, are  
4 always hard because of his absence. Douglas' four-year-old nephew told me that he  
5 wished he could have told "Uncle Doug" that he loved him before he died.

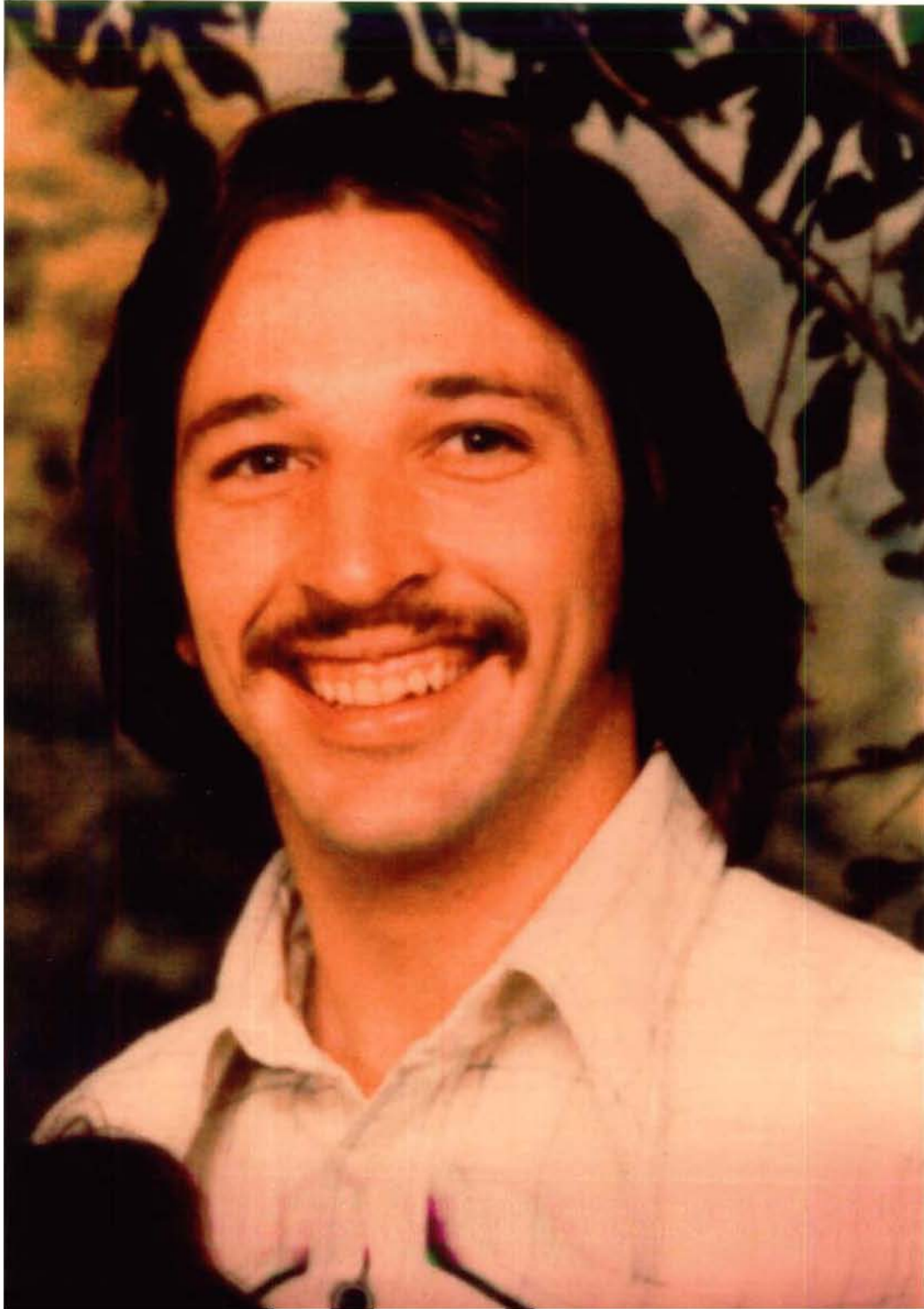
6 Once it became known that Douglas had been killed as part of a conspiracy to  
7 murder Bryon Schletewitz, we lived in terror that our own lives were in danger. Ironically,  
8 I briefly met Clarence Ray Allen some years before at his ranch. I was looking at one of  
9 his Appaloosa horses.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed in Fresno, California on April 23, 1997.

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14 NADINE WHITE

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**Bryon Schletewitz**

**Sentencing Letter to Probation from Parents  
of Bryon Schletewitz  
November 10, 1982**

Nov. 10, 1982

Mrs. Gene Schen  
County Probation Officer  
County of Glenn, Courthouse  
Weed, California 95788

RECEIVED

NOV 15 1982

GLENN COUNTY  
PROBATION OFFICE

Dear Mrs Schen:

If ever the gas chamber will again be used in the State of California, Clarence Ray Allen is overly qualified to be the first in the line-up.

Ray Allen's actions have taken their toll on our family, the climax being the life of our son, Bryon, and two innocent children. He should never again be given the opportunity to continue trying to manipulate some other weak-minded soul to successfully strike out again. We strongly feel he should already be planning, struggling with his allowed outside contacts, to definitely continue living each day in fear for our family.

It is useless to say how our lives have been affected - the change from facing each day with a challenge to work and succeed, to almost nothing. For 10 years Bryon worked every day in our family store, anxious to become a partner in the store and ranch. While in the process, one person's greed, cruelty and hate destroyed all, and caused us our deep, deep hurt and bitterness, not to mention the Roy White and Joe Rock families too.

Unless Clarence Ray Allen and Billie Ray Hamilton have their sentences carried out, as the people of California desire, there will be no more hope for justice for the law-abiding citizen. If they receive

their just reward, we may again be  
able to hold our heads up and have a  
little lighter heart, and be able to say,  
"There is still justice in our State."

If people of this caliber are allowed  
to do this while in prison, and their  
sentence is not carried through, we  
certainly will tell our remaining children,  
and our grandchildren, to refuse to ever  
testify for fear of their lives.

All of this is our dear Son's, Bryon,  
reward for responding to her subpoena to  
testify in court.

Ray and Francis Schilitowitz

November 11, 1982

Mrs. Jane Nahn  
County Probation Officer  
County of Glenn  
Weed, California 95988

RECEIVED

NOV 15 1982

GLENN COUNTY  
PROBATION OFFICE

Dear Mrs. Nahn

Every night I go to bed as late as I can stand it, hoping that when I close my eyes, my mind will be too tired to picture the horror of what happened in my family's market on the night of September 5, 1980.

Clarence Ray Allen has taken a precious part of my life from me — my brother. Dad was a good, kind, loving and genuine person and my heart will ache for him for the rest of my life.

Our parents raised Bruce and myself to be conscientious citizens. I am proud that my brother had the courage to stand up and speak the truth, tho I know he was frightened. If the death penalty is not used in this case — how will I be able to teach my children to stand up for what is right and truthful in this world? How will I explain justice to them?

For a little over two years now, I have lived in constant fear for my family's safety. The death penalty must be used in this case. I know as long as Clarence Ray Allen is alive, he will work at sending another set man to murder my father, mother, husband, children or me. He has done it before.

Why should my little family be forced to live and possibly die in the fear of what Clarence Allen has chosen to be his way of life?

Because I fear for my family's safety, I  
shall not sign my full name. I know the  
defender will have access to this letter.

Sincerely,

Patricia  
Byron W. Schickel's sister



**Statement of Bryon's father  
Raymond Schletewitz  
April 24, 1997**

4/24



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9 Attorneys for Respondents

**DOCKETED**  
APR 28 1997  
By P. COURSEY  
No. [initials]

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 CLARENCE RAY ALLEN, 15 16 v. 17 DANIEL VASQUEZ, Warden, et al., 18 Respondents.	14 <u>CAPITAL CASE</u> 15 CIV-S-88-1123 DFL JFM 16 17 <u>DECLARATION OF RAYMOND</u> 18 <u>SCHLETEWITZ</u>
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19  
20  
21 I, Raymond Schletewitz, declare under penalty of perjury as follows:  
22 I am the father of Bryon Schletewitz, one of the three victims of the Fran's Market  
23 murders on September 5, 1980. Bryon was 27 years old at the time of his death. Besides  
24 myself, he left behind his mother Fran and an older sister Patricia.  
25 My family has been victimized by Clarence Ray Allen since 1974, when he burglarized  
26 our family business, Fran's Market. Up until just before that burglary, I had never observed  
27 any close friendship between Bryon and Clarence Allen's son, Roger. However, just before  
28 the burglary, I noticed that Roger was visiting the market and talking to Bryon just before

1 closing time. Clarence Allen's wife, Darlene, repeatedly pressured Bryon to attend Roger's  
2 birthday party at Clarence Allen's house. After the burglary, I did not see Roger visit the  
3 store again. Three years later, both Bryon and I testified at the trial of Clarence Allen for  
4 the murder of Mary Sue Kitts and the burglary of Fran's Market. After Clarence Allen was  
5 convicted of murdering Mary Sue Kitts because she had told Bryon about the burglary,  
6 Darlene would occasionally come to the store. However, she would always send in Clarence  
7 Allen's niece, Misty, to make the purchases.

8 Bryon was a good, fun-loving son. I have heard it said that if you had Bryon for a  
9 friend, you had a friend. At the time of his death, he was taking more and more  
10 responsibility in running our business as I began to look to retirement. He enjoyed dancing  
11 and outdoor recreation.

12 Bryon was very close to his sister Patricia. They were always together and were best  
13 friends. Even after Patricia was married, Bryon talked to her daily until the day he was  
14 killed. His death left an empty space for her. Due to the circumstances of his death, Patricia  
15 was uneasy and worried about the well-being of her own family. She and her family moved  
16 out of state.

17 For that matter, both Josephine Rocha and Douglas White were good kids and good  
18 employees.

19 The last time I saw Bryon was just an hour or so before he was murdered. We were  
20 both at the store. Bryon had cut himself on some glass. We argued over who should go  
21 home. Finally, he prevailed upon me to go home while he stayed to close up the store. I  
22 joked with him that he should not try to be a hero. I remember telling Josephine Rocha that  
23 she would be in charge. Naturally, I have always felt guilty that I went home that night  
24 instead of staying at the store. I also know that had things happened differently and I had  
25 stayed at the store, Bryon would have felt equally guilty.

26 At home, I received a call from one of the store's neighbors that there was shooting at  
27 the store. I arrived at the market at the same time as the sheriff. I opened the front door and  
28 saw the blood. I did not go into the back room, but I expected the worst. I waited outside

1 and was told shortly thereafter that Bryon was dead. It is hard to describe the shock that both  
2 Fran and I felt. I also have to say that deep in the back of my mind that very awful night  
3 was the thought that Clarence Allen was behind what had happened because of what happened  
4 with the burglary and the murder of Mary Sue Kitts. I locked up Fran's Market that night  
5 and never returned.

6 Bryon's funeral is a blank to us. I remember a large crowd spilling out into the street  
7 and three truckloads of flowers.

8 When it became known that Clarence Allen was a suspect and that my name was also  
9 on the "hit list" seized from Billy Ray Hamilton, the victimization continued. Two molotov  
10 cocktails were thrown at the my house and a bullet was fired through our window. For a  
11 long time, we simply ignored holidays and anniversaries. It is difficult to do anything "fun"  
12 without feeling guilty.

13 I have no faith in our judicial system because of what happened. Bryon and I were  
14 innocent people who did our duty as citizens when we testified against Clarence Allen. The  
15 system which sent Clarence Allen to prison did not protect Bryon. Whenever I talk to anyone  
16 who is testifying in a case, I warn them about the dangers and suggest that they reconsider.

17 I cannot help thinking about the terror that Bryon, Josephine, and Douglas must have  
18 felt that night. My family lives with Bryon's death every day. It still seems like yesterday.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed in Fresno, California on April 24, 1997.

21   
22 RAYMOND SCHLETEWITZ

## The Trial

On August 22, 1982, a jury in Glenn County found Allen guilty of the first degree murders of Bryon Schletewitz, Josephine Rocha, and Douglas White. The jury found true that Allen had a prior murder conviction (the murder of Mary Sue Kitts), had committed multiple murder, and had intentionally killed Bryon Schletewitz in retaliation for his prior testimony and to prevent his future testimony. Allen admitted that he had previously been convicted of murder. Eight days later, the penalty phase began.

The State's evidence showed that Allen masterminded eight prior armed robberies: (1) the August 12, 1974, armed robbery at Safina Jewelry in Fresno, which yielded \$18,000 worth of jewelry; (2) the September 4, 1974, armed robbery of Don's Hillside Inn in Porterville in which \$3,600 was taken from the safe and hundreds of dollars in cash and credit cards were taken from patrons at the scene; (3) the February 12, 1975, residential armed robbery of William and Ruth Cross, an elderly Fresno couple, in which a coin collection valued at \$100,000 was taken; (4) the June 18, 1975, attempted robbery at Wickes Forest Products in Fresno, resulting in Allen's arrest; (5) the October 21, 1976, armed robbery at Skagg's Drug Store in Bakersfield, in which one of Allen's associates accidentally shot himself; (6) the November 20, 1976, armed robbery at a Sacramento Lucky's market, in which grocery clerk Lee McBride was shot and sustained permanent damage to his nervous system; (7) the February 10, 1977, robbery at a Tulare K-Mart, in which \$835 more than \$16,000 in cash was taken; and (8) the March 16, 1977, Visalia K-Mart robbery, during which Larry Green held a gun to the head of one employee and shot another in the chest, permanently disabling him.

In addition, while in Fresno County jail on June 27, 1981, Allen called a "death penalty" vote for an inmate and directed an attack in which inmates scalded the target inmate with two gallons of hot water, tied him to the cell bars and beat him, shot him with a zip gun and threw razor blades and excrement at him. Evidence also showed that Allen repeatedly threatened the life of anyone who "snitched," and had thwarted the prosecution of an attempted robbery by threatening the chief prosecution witness and his family. On September 10, 1982, the jury returned three death verdicts. Allen was 52 years old.

## Case Chronology

### The Crimes

- June 29, 1974** Allen burglarizes Fran's Market in Fresno, California. Subsequently, his accomplice Mary Sue Kitts tells the owner of the Market, Ray Schletewtiz, and his son Bryon Schletewitz about the burglary. Allen has Kitts killed. Her body is never recovered and she is assumed to be a "runaway."
- 1974-1977** Allen commits a series of armed robberies.
- 1977** Allen is tried and convicted in Fresno County of the murder of Mary Sue Kitts. He is sentenced to life imprisonment. Since no death penalty was in effect at the time of the Kitts murder, he is not eligible for a sentence of either death or life imprisonment without the possibility of parole.
- April 27, 1978** Allen arrives at Folsom Prison.
- August 29, 1980** Billy Ray Hamilton is paroled from Folsom Prison.
- September 2, 1980** Billy Ray Hamilton arrives in Fresno and stays with Clarence Ray Allen's son, Kenneth Allen.
- September 5, 1980** Billy Ray Hamilton and Connie Barbo go to Fran's Market. Armed with a sawed-off shotgun, Hamilton murders Bryon Schletewitz as well as store employees Josephine Rocha, and Douglas White. He also wounds another store employee and a neighbor, Jack Abbot.
- September 11, 1980** Billy Ray Hamilton is arrested in Modesto, California and returned to Fresno. He is carrying a list of the names and addresses of witnesses who testified against Clarence Ray Allen in his 1977 trial for the murder of Mary Sue Kitts.

## Criminal Charges/The Trial

- June 1, 1981** After a preliminary hearing, Clarence Ray Allen is charged in Fresno County with the murders of Bryon Schletewitz, Josephine Rocha, and Douglas White. In conjunction with the Schletewitz murder, it is alleged as special circumstances that Allen murdered Schletewitz in retaliation for his testimony in 1977 and to prevent his future testimony. In conjunction with all three murders, it was alleged as special circumstances that Allen had a prior murder conviction and had committed multiple murder. Allen was separately charged with conspiracy to murder Bryon Schletewitz, Ray Schletewitz, Eugene Furrow, Barbara Carrasco, Benjamin Meyer II, Charles Jones, and Carl Mayfield—all people who testified against Allen in 1977.
- March 12, 1982** Fresno County orders venue changed to Glenn County.
- June 7, 1982** Jury trial commenced in Glenn County.
- August 22, 1982** Jury convicts Allen on all counts and finds all special circumstances true. Allen admits the prior murder special circumstance outside the jury's presence.
- August 30, 1982** Penalty phase commenced.
- September 10, 1982** Jury imposes verdict of death for all three murders.
- November 22, 1982** The Honorable Roy G. McFarland, Judge of the Glenn County Superior Court, denies Allen's motion for modification of the verdict and enters a judgment of death.

### **California Supreme Court**

**December 31, 1986**      The California Supreme Court affirms the death judgment in Allen's case. The majority opinion is authored by Associate Justice Joseph Grodin.

**October 5, 1987**      Supreme Court of the United States denies Allen's petition for writ of certiorari.

**June 23, 1988**      The California Supreme Court denies Allen's petition for writ of habeas corpus on the merits.

### **Federal District Court**

**August 31, 1988**      Allen files petition for writ of habeas corpus in the United States District Court for the Eastern District of California.

### **United States Supreme Court**

**September 19, 1988**      Supreme Court of the United States denies Allen's petition for writ of certiorari.

### **Return to California Supreme Court**

**June 22, 1993**      The California Supreme Court denies Allen's second petition for writ of habeas corpus on the merits

### **Return to Federal District Court**

- April 14, 1997** Evidentiary hearing in federal district court commences.
- April 28, 1997** Evidentiary hearing in federal district court completed.
- March 10, 1999** Magistrate Judge John F. Moulds files findings and recommendation that petition be denied.
- May 11, 2001** District Court Judge Frank C. Damrell enters opinion and order adopting findings and recommendations in full and denies petition for writ of habeas corpus.

### **Ninth Circuit Court of Appeals**

- May 6, 2004** Ninth Circuit Court of Appeals affirms denial of petition for writ of habeas corpus in an opinion authored by Judge Jill Wardlaw.
- January 24, 2005** Ninth Circuit Court of Appeals denies Allen's petition for rehearing.<sup>1/</sup>

### **Return to United States Supreme Court**

- October 3, 2005** Supreme Court of the United States denies Allen's third petition for writ of certiorari.

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1. The Ninth Circuit Court of Appeals stated:

Evidence of Allen's guilt is overwhelming. Given the nature of his crimes, sentencing him to another life term would achieve none of the traditional purposes underlying punishment. Allen continues to pose a threat to society, indeed to those very persons who testified against him in the Fran's Market triple-murder trial here at issue, and has proven that he is beyond rehabilitation. He has shown himself more than capable of arranging murders from behind bars. If the death penalty is to serve any purpose at all, it is to prevent the very sort of murderous conduct for which Allen was convicted.  
(*Allen v. Woodford* (2005) 395 F.3d 979, 1019.)



## Upcoming Executions in California

There is one other execution that is definitely planned for 2006. There are three other cases that are sufficiently far along in the appellate process that it is possible an execution date could be sought for them in 2006.

Michael Angelo Morales. On December 27, 2005, the San Joaquin County District Attorney will ask the Ventura County Superior Court to set an execution date for February or March of 2006. Morales was convicted of the 1981 rape and murder of 17-year-old victim in Lodi. The jury sentenced Morales to death after finding the special circumstance of lying-in-wait.

On January 8, 1981, twenty-one-year-old Michael Morales murdered and raped seventeen year-old Terri Lynn Winchell, as a party to a conspiracy with his nineteen-year-old cousin, Rick Ortega. During early 1980, Ortega and seventeen-year-old Randy Blythe were homosexual lovers. During this time, Blythe also became Terri Winchell's heterosexual lover. While Winchell did not know about the homosexual relationship going on between Blythe and Ortega, Ortega knew about Blythe's and Winchell's sexual relationship.

Ortega and Morales conspired to murder Winchell, as "pay back" for her calling Ortega "gay" and for Winchell's involvement with Blythe. Ortega and Blythe had a stormy relationship earmarked by Ortega's overtly threatening reactions to Blythe's attempts to end the relationship. Ortega was also openly hostile towards Winchell. However, in the weeks before the murder, Ortega set up a ruse to trick Winchell into believing that Ortega wanted to make amends and become her friend. For his part, Morales "practiced" how he was going to strangle Winchell, and told his girlfriend on the day of the murder how he was going to strangle and "hurt" someone.

The day of the murder, Ortega tricked Winchell into accompanying him and Morales in Ortega's car to a remote area near Lodi, California. There, Morales attacked Winchell from behind and attempted to strangle her with his belt. Winchell struggled and the belt broke in two. Morales then took out a hammer and began hitting Winchell in the head with it. She screamed for Ortega to help and attempted to fight off the attack, ripping her own hair out of her scalp in the struggle. Morales beat Winchell into unconsciousness, crushing her skull in certain places and leaving 23 identifiable wounds in her skull.

Morales took Terri Winchell from the car and instructed Ortega to leave and come back later. Ortega left and Morales then dragged Winchell face-down across the road and into a vineyard. Morales then had sexual intercourse with her unconscious body. Morales then started to leave, but went back and stabbed Winchell four times in the chest to make sure she died. Morales then left Winchell, calling her "a fucking bitch," as he walked away. Winchell died from both the head and chest wounds. Her body was left in the vineyard naked from the waist down, with her sweater and bra pulled up over her breasts.

Within two days, Morales was arrested at his residence. The police found Morales' broken belt, containing Terri Winchell's blood, hidden under a bedroom mattress. The police also found three knives, the hammer, bearing traces of blood, hidden in the refrigerator vegetable crisper, and blood-stained floor mats from Ortega's car in the trash. Terri Winchell's purse and credit card were also in the house. Ortega's blood-spattered car was impounded. Morales had used \$11 from Winchell's purse to buy beer, wine, and cigarettes on the night of the murder

The three (3) capital cases that could possibly receive an execution date in 2006 are:

Mitchell Carlton Sims. On December 8, 2005, a three-judge panel of the Ninth Circuit Court of Appeals rejected Sims' legal claims for relief, and the court also declined en banc review. As a result, Sims' remaining legal option is to ask the US Supreme Court ("SCOTUS") to review his case. Sims will likely file a petition for writ of certiorari (request for SCOTUS to review his legal claims) sometime in the next few weeks. SCOTUS can choose to act on Sims' request at any time. If SCOTUS declines to review Sims' case during its current term, the Los Angeles District Attorney will seek an execution date in 2006.

In 1984, Mitchell Sims was hired by Domino's Pizza in South Carolina. He came to believe his boss was responsible for Sims' losing a portion of a bonus to which Sims thought he was entitled. In November of 1985, Sims was hired as a delivery driver by another Domino's Pizza establishment, located in Hanahan, South Carolina. Approximately two weeks later, on the night of December 3, 1985, Sims murdered two employees who worked at the restaurant: Gary Melkie, assistant manager, and Chris Zerr, delivery driver.

Sims and his girlfriend/accomplice, Ruby Padgett, fled to California. After arriving in Glendale on December 8, Sims visited the local Domino's, claiming he needed directions. The following night, he called the pizza store at 11:03 p.m. and ordered pizza to be delivered to his nearby motel room. At 11:26 p.m., 21-year-old Domino's employee John Harrigan left the parlor in his Toyota truck to deliver the pizza.

At approximately 11:45 p.m., Sims and Padgett entered the Domino's Pizza parlor. Sims approached the front counter, pointed a gun at the manager and ordered the employees into a back office. The manager Spiroff warned Sims that a delivery driver was expected to return shortly. Sims removed his sweater, revealed a Domino's Pizza shirt bearing John Harrigan's name tag, and chuckled, "No, I don't think so."

The employees were placed in a freezer and tied by the neck with rope fashioned in such a way that they were forced to stand on tiptoes to avoid strangling. Sims and Padgett emptied the store's register, robbed the employees and left. Police officers arrived at the Domino's Pizza parlor at 12:30 a.m, having been alerted by an off-duty Domino's employee who had coincidentally entered the store. Police rescued the employees in the store.

After proceeding to the motel room, the officers heard the sound of running water from inside the bathroom. Opening the bathroom door, an officer found the dead body of Harrigan in the bathtub. The bathtub was full of water, and Harrigan's body was submerged under the water with his back parallel to the side of the tub. His head was located immediately under the water spout, submerged approximately one inch under the water line, with cold water running onto the back of his neck. His wrists had been bound behind his back; his ankles had been bound, and his feet and hands had been "hogtied" together behind his back. His head had been covered with a pillowcase bound tightly around his neck with a rope. A folded washcloth had been placed inside his mouth, secured by a sock tied around his head.

Following the trial and conviction in the California case, Sims was tried and convicted in South Carolina of the murders of Melkie and Zerr during the commission of a robbery, and was sentenced to death. The convictions and sentence of death were affirmed by the Supreme Court of South Carolina.

Kevin Cooper. On February 9, 2004, the eve of his scheduled execution, an en banc panel of the Ninth Circuit granted Cooper's request to file a successive habeas corpus petition in federal district court in order that "easily available" scientific tests could be conducted to determine Cooper's innocence. After conducting the requested tests (which confirmed Cooper's guilt) and exploring numerous other evidentiary matters at the request of Cooper, the federal district court in May 2005 denied his habeas petition. Cooper is now seeking review of the lower court decision in the Ninth Circuit, and briefing on the matter is scheduled to conclude January 27, 2006.

After this briefing is concluded, the Ninth Circuit has a variety of options. Depending upon what course of action it chooses, and if Cooper is denied relief, Cooper's case could result in an execution date in the spring of 2006 or sometime in 2007 or even later.

Among other offenses, Cooper was convicted of the 1984 first-degree murders of Doug Ryen, Peggy Ryen, Jessica Ryen and Christopher Hughes. The jury sentenced Cooper to death after finding a special circumstance of multiple murder.

Cooper had been an inmate at the California Institute for Men, a state prison located in Chino in San Bernardino County. Cooper had been convicted of burglary under the name of David Trautman. On June 1, 1983, he was transferred to a minimum security portion of the prison. The next afternoon, on June 2, 1983, he escaped on foot and made his way to a house in the nearby Chino Hills (the Lease house), where no one was living at the time. Cooper was the subject of a massive manhunt following his escape from prison. He slept in the closet of the bedroom nearest the garage. The Lease house was the closest neighbor to the Ryen house, about 126 yards away. The window by the Lease house fireplace provided a view of the Ryen house. Cooper unsuccessfully sought assistance from two former girlfriends in an effort to get out of the area. Failing to get the help he needed to escape, and realizing he could not remain in the Lease house indefinitely, Cooper found himself in a desperate situation. So, on the night of June 4-5, 1983, Cooper murdered Doug and Peggy Ryen, their 10 year-old daughter Jessica Ryen, and a neighbor boy, 11 year-old Chris Hughes, who was spending the night with the sole survivor, eight year-old Josh Ryen. The California Supreme Court referred to the crime as a “nocturnal massacre.”

Cooper used a hatchet and a buck knife from the Lease house to commit the murders. Doug Ryen had at least 37 separate wounds, Peggy 32, Jessica 46, and Chris 25. Jessica also had some chest wounds, probably inflicted after death by a pointed instrument such as an ice pick, which Cooper used to carve on her chest. Josh had fewer injuries, including wounds to the head caused by a hatchet and a stab wound in the throat. The evidence indicated Cooper helped himself to a can of beer from the Ryen refrigerator after slaughtering his victims.

Cooper stole the Ryen family station wagon. The car was recovered in Long Beach on June 5, 1983, a day after the murders. Cooper showed up in Ensenada Mexico on June 9, 1983, where he hitched a ride aboard a boat with an unsuspecting husband and wife, Owen and Angelica Handy. The Handys were planning to sail to Costa Rica. An unexpected storm forced the Handys to sail north up the California coast to Pelican Bay near Santa Barbara. Cooper allegedly raped a woman there (never prosecuted), and was captured by the Coast Guard after he dove off the boat, swam to a dinghy and started to row for shore.

Cooper testified in his own defense and admitted being in the Lease house after his escape from prison. He denied ever being in the Ryen home. He claimed he simply walked down the hill from the Lease house on the evening of June 4, 1983, and hitchhiked out of the area, eventually making his way to Mexico where he met the Handys.

In the penalty phase, evidence was introduced about Cooper's kidnap and rape of a high school student in Pennsylvania who interrupted Cooper burglarizing a home. Cooper also had been convicted of two counts of burglary in Los Angeles County. Cooper presented the testimony of friends and relatives regarding his good qualities and their love for him.

Recently concluded post-conviction DNA testing Cooper sought to prove his innocence, proved the opposite. Cooper was the donor of the DNA from a spot of blood from the hallway inside the Ryen home which placed Cooper in the middle of the crime scene. Cooper was also the donor of DNA from two cigarette butts recovered from the Ryen station wagon. Cooper's DNA and Doug Ryen's DNA were also present on a t-shirt with smears of blood.

William Charles Payton. Payton was convicted of the 1980 rape and first-degree murder of Pamela Montgomery, and the attempted murder of two other victims, in Garden Grove. The jury sentenced Payton to death after finding the special circumstance of murder in the course of committing rape.

In August of 2002, an en banc panel of the Ninth Circuit reversed Payton's death sentence due to an alleged instructional error by the trial judge. In March of 2005, SCOTUS reversed the Ninth Circuit and sent the case back to that court for further proceedings. The Ninth Circuit, in turn, remanded the case back to a Los Angeles federal district court for the purpose of resolving a few outstanding issues. It is not known how long it will take for the district court and then the Ninth Circuit to resolve these remaining issues.

In the early hours of May 26, 1980, Payton went to the home of Patricia Pensinger in Garden Grove, California, where he had once been a boarder. After receiving permission from Patricia to sleep on her couch, Payton entered the room of one of Patricia's borders, Pamela Montgomery. Payton raped Pamela Montgomery and then used a butcher knife to stab her to death.

After cleaning himself off in the bathroom, Payton entered Patricia's bedroom while she and her ten year old son, Blaine, slept. Payton inflicted forty stabs wounds to Patricia's face, neck, back and chest. He inflicted twenty-three stabs wounds to Blaine's face, neck and back. When his knife bent he went to the kitchen and retrieved another. Upon the intervention of other borders, Payton dropped the second knife and fled. Miraculously, both Pensingers survived.

As the description of the appellate process below attempts to show, a capital case nears completion when the federal courts have made a final ruling on the defendant's habeas corpus claims. Those cases that are still being reviewed by state courts are nowhere near conclusion.

Aside from the Sims case mentioned above, there are no other California capital cases pending final review before SCOTUS.

There are numerous California capital cases currently pending in the lower federal courts, however. As of November 2005, there were 170 cases pending in the federal district courts. Of those, at least 52 are "on hold" pending exhaustion of outstanding habeas claims in state court. These cases are at different stages in the process, and, as is more fully explained below, the stage a particular case is at determines how imminent a final judgment may be out of the federal courts. Some have also asked for the status reports on certain "high profile" capital cases, many of which are still awaiting action by the CSC. Here are a few examples:

Richard Allen Davis (#S056425) - he was convicted and sentenced to death on September 26, 1996, but he was not appointed an appellate attorney until June 13, 2001. Four years later (July 11, 2005), Davis' attorney filed his opening brief with the CSC. The Attorney General's response is due no later than May 15, 2006.

Richard Allen Davis kidnapped twelve-year-old Polly Klaas from her own bedroom, strangled her to death, and left her under a piece of plywood in the brush in a deserted area, where her decomposed body was discovered two months later. Forensic evidence revealed that Davis sexually assaulted Polly. Davis was on parole for two felony assaults on women when he committed this crime, and had a history of kidnap and violent conduct. Davis was convicted of kidnapping, robbery, burglary, assault with a deadly weapon, false imprisonment, attempted lewd and lascivious acts on a child under 14 years of age, first degree murder with special circumstances.

Ramon Salcido (#S018814) - he was convicted and sentenced to death on December 17, 1990, but his opening brief with the CSC was not filed until eight years later (June 18, 1998). The case has been fully briefed before the CSC since May 26, 2000, but the court has not scheduled oral argument as yet.

On April 13, 1989, Ramon Salcido went on a homicidal spree in Sonoma County. He murdered seven victims in all, including his wife, two of his children, three in-laws, and a co-worker. One daughter, age three, remarkably survived, despite Salcido's infliction of a severe laceration to her throat. Salcido also attempted to murder another co-worker and his wife. After his crime, Salcido fled to Mexico, where he was apprehended by Mexican officials, who expelled him and delivered him to US custody for trial. The case was tried in San Mateo County on change of venue in 1990.

Richard Ramirez (#S012944) - he was convicted and sentenced to death on November 7, 1989, but his opening brief was not filed until 13 years later (March 1, 2002). The case has been fully briefed before the CSC since December 31, 2003, but the court has not scheduled oral argument.

During a string of 15 incidents committed in Los Angeles County between June 1984 and August 1985, Richard Ramirez brutally murdered, sexually assaulted, or attempted to murder 23 people. Twelve of the incidents occurred between May 29 and August 8, 1985. These so-called "Nightstalker" crimes typically involved night-time attacks on unsuspecting persons in their homes. He typically shot and killed the adult male occupants of the homes he entered and restrained eight of his female victims with handcuffs or thumbcuffs he brought to the scene. The murders and attempted murders of his female victims were often particularly brutal. He savagely cut the throats of five victims and committed other acts of mutilation. During several of the incidents, Ramirez ate the victims' food or drank soda or juice.

## **Death Penalty Litigation Process in California**

What follows is an extremely abbreviated summary of the capital appeals process. A more detailed description can be found at the Attorney General's website:

<http://caag.state.ca.us/piu/pdf/deathpen.pdf>.

The Trial. The first step in all capital cases is the trial. In order to be death-eligible, a defendant must have committed first-degree murder with at least one special circumstance. Unless the defendant can afford to hire his own attorney, the court usually appoints two attorneys to represent him during the trial.

The prosecution is broken into two parts - a guilt phase and a penalty phase. First, the prosecutor must prove beyond a reasonable doubt that the defendant committed first-degree murder and that the alleged special circumstance(s) is true. Second, the jury must determine whether the defendant should be sentenced to life in prison without possibility of parole or death. If a unanimous jury imposes a sentence of death, the following appeals process begins.

### **The Direct Appeal**

California Supreme Court. Every capital sentence is automatically appealed to the California Supreme Court ("CSC"). This is commonly referred to as the "direct appeal." Even if the defendant does not request or desire an appeal, the law requires that the CSC consider this direct appeal. Due to factors such as certification of the trial record and appointment of a new attorney to represent the defendant on the direct appeal, a final ruling out of the CSC is generally issued several years after the date of conviction.

SCOTUS. If the CSC affirms the sentence of death, the defendant can seek review in SCOTUS. If SCOTUS declines to hear the case, this process usually is completed within one year and it represents the conclusion of the defendant's direct appeal.

### **State Habeas Corpus Proceedings**

California Supreme Court. In addition to the direct appeal, a defendant may also file a habeas corpus petition with the CSC. Habeas corpus is essentially an additional avenue of appeal for defendants. It differs from the direct appeal in that it allows the defendant to raise claims based on facts outside the trial record, such as ineffective assistance of counsel.

Often, the CSC appoints a new attorney to represent the defendant on his habeas claims. (In other words, a defendant will often be represented by as many as four different attorneys during the state process - two attorneys for the trial, one attorney for the direct appeal, and one attorney for state habeas corpus proceedings.)



If the CSC believes that a hearing is necessary to resolve the defendant's claims, it will order a lower court to conduct an evidentiary hearing. After an evidentiary hearing, the lower court will present its findings to the CSC for a final determination on the defendant's claims.

It is not unusual for a capital defendant to file multiple habeas corpus petitions with the CSC. For instance, Stanley "Tookie" Williams filed five separate habeas corpus petitions with the CSC between 1989 and 2005.

If the CSC denies habeas relief to the defendant, he can appeal to SCOTUS for its review.

### **Federal Habeas Corpus Proceedings**

Federal District Court. After a capital defendant has exhausted all of his options for state habeas relief, he may file a habeas corpus petition in federal court seeking relief for alleged violations of his federal constitutional rights. The defendant's habeas petition is filed in one of the four federal district court districts in California.

It is not unusual for yet another new attorney to be appointed by the federal courts. (In other words, a defendant will often be represented by as many as five different attorneys during the state and federal process.)

In addition to legal briefs presented on the matter, the district court may order that evidentiary hearings be conducted to explore the defendant's claims.

If the defendant raises claims that were not previously presented to the CSC, the federal district court may put its proceedings on hold and require the defendant to first present those claims in a new habeas petition filed with the CSC. If so, the process described for state habeas proceedings above is followed.

There are no deadlines for the district court to act upon these habeas petitions, and final resolution of such petitions can take years.

Ninth Circuit. Once the district court has taken final action on a habeas petition, the matter will be appealed to the Ninth Circuit Court of Appeals. That court often reviews cases in two phases, first by a three-judge panel and then by an 11-judge panel ("en banc").

Similar to the district court, there are no deadlines for the Ninth Circuit to act on these capital habeas corpus petitions. As a result, final resolution by the court can take years.

For example, Stanley "Tookie" Williams filed his first brief with the Ninth Circuit on January 12, 2000, and the court did not finally dispose of Williams' initial request for habeas relief until it denied rehearing en banc on February 2, 2005.

SCOTUS. After the Ninth Circuit takes final action on the defendant's federal habeas corpus claims, an appeal to SCOTUS is generally filed.

Setting an Execution Date. If SCOTUS denies relief to the defendant, it is now time for the prosecuting agency that obtained the original conviction to request an execution date. The prosecutor asks for a "public session" to be held in the county court where the conviction was obtained, and the trial judge sets an execution date that is no sooner than 30 days and no later than 60 days from the date of the public session.

Clemency Proceedings. Upon the setting of an execution date, the Governor establishes a schedule for receiving briefs and consideration of a clemency request from the defendant.

### **SECOND OR SUCCESSIVE APPEALS**

Although a capital defendant is entitled only one direct appeal, it is typical for the defendant to request permission to file more than one habeas corpus petition in the state and federal courts. The circumstances under which the courts will agree to consider and review such second or successive appeals are quite limited, however, in light of the exhaustive state and federal judicial review conducted previously.

Second/successive appeals are often filed during the so-called "11<sup>th</sup> hour" of capital proceedings after an execution date has been set and while the Governor is considering clemency. For example, Stanley "Tookie" Williams filed second/successive habeas petitions during the weekend before his execution.

## **California Department of Corrections and Rehabilitation History of Capital Punishment in California**

Last Modified: 7/20/2005 (URL)

### **History**

Legal executions in California were authorized under the Criminal Practices Act of 1851. On February 14, 1872, capital punishment was incorporated into the Penal Code, stating:

A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The Sheriff of the county must be present at the execution, and must invite the presence of a physician, the District Attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

The various counties may have some records of the executions conducted under the jurisdiction of the counties, but the department knows of no compilation of these.

### **State Executions**

Capital punishment on a county level continued until an amendment by the Legislature in 1891 provided:

A judgment of death must be executed within the walls of one of the State Prisons designated by the Court by which judgment is rendered.

In this statute, the warden replaced the sheriff as the person who must be present at the execution and invitation to the attorney general, rather than to the district attorney, was required.

Executions were conducted at both of the California state prisons then existing—San Quentin and Folsom. There apparently was no official rule by which judges ordered men hanged at Folsom rather than San Quentin or vice versa. However, it was customary to send recidivists to Folsom.

The first state-conducted execution was held March 3, 1893 at San Quentin. The first execution at Folsom was December 13, 1895.

### **Lethal Gas**

In 1937, the Legislature provided that lethal gas replace hanging, with August 27, 1937 as the effective date. The law did not affect the execution method for those already sentenced. As a result, the last execution by hanging at Folsom was conducted December 3, 1937. The last execution by hanging at San Quentin was held May 1, 1942; the defendant had been convicted of murder in 1936.

A total of 215 inmates were hanged at San Quentin and a total of 92 were hanged at Folsom.

The only lethal gas chamber in the state was constructed at San Quentin. The first execution by lethal gas was conducted December 2, 1938. From that date through 1967 a total of 194 persons were executed by gas, all at San Quentin. This total includes four (4) women.

### **Legal Challenges and Changes**

For 25 years after 1967, there were no executions in California due to various State and United States Supreme Court decisions.

In 1972 the California Supreme Court found that the death penalty constituted cruel and unusual punishment under the state constitution. As a result, 107 individuals had their sentences changed to other than death. In November 1972, nine months after the decision, the California electorate amended the state constitution and overruled the State Supreme Court.

In 1973 the United States Supreme Court held that the death penalty was unconstitutional as it was being administered at that time in a number of states.

California legislation was passed in 1973 which made the death penalty mandatory in certain cases under certain conditions. Among these were kidnapping if the victim dies, train wrecking if any person dies, assault by a life prisoner if the victim dies within a year, treason against the state, and first degree murder under specific conditions (for hire, of a peace officer, of a witness to prevent testimony, if committed during a robbery or burglary, if committed during course of a rape by force, if committed during performance of lewd and lascivious acts upon children, by persons previously convicted of murder).

In late 1976, the California Supreme Court, basing its decision on a United States Supreme Court ruling earlier that year, held that the California death penalty statute was unconstitutional under the Federal Constitution because it did not allow the defendant to present any evidence in mitigation. Following this ruling, 70 inmates had their sentences changed to other than death.

### **Capital Punishment Reinstated**

The California State Legislature re-enacted the death penalty statute in 1977. Under the new statute, evidence in mitigation was permitted.

The death penalty was reinstated as a possible punishment for first degree murder under certain conditions. These "special circumstances" include: murder for financial gain, murder by a person previously convicted of murder, murder of multiple victims, murder with torture, murder of a peace officer, murder of a witness to prevent testimony and several other murders under particular circumstances.

In 1977, the Penal Code also was revised to include the sentence of life imprisonment without the possibility of parole. At that time, the punishment for kidnapping for ransom, extortion, or robbery was changed from death to life without parole. Treason, train derailing or wrecking, and securing the death of an innocent person through perjury became punishable by death **or** life imprisonment without parole.

Proposition 7, on the California ballot in November 1978, superseded the 1977 statutes and is the death penalty statute under which California currently operates.

Under state law, cases in which the death penalty has been decreed are automatically reviewed by the State Supreme Court. The Supreme Court may:

- Affirm the conviction and the death sentence;
- Affirm the conviction but reverse the death sentence (which results in a retrial of the penalty phase only); or
- Reverse the conviction (which results in a complete new trial).

Even if the California Supreme Court affirms the death sentence, the inmate can initiate appeals on separate constitutional issues. Called "writs of habeas corpus," these appeals may be heard in both state and federal courts.

Although the death penalty was reinstated in 1978, no executions were carried out in California until April 1992 when Robert Alton Harris was put to death in the San Quentin gas chamber. This was the first execution in more than 25 years.

### **Lethal Injection**

In January 1993, a new law went into effect allowing inmates to choose lethal injection or lethal gas as the method of execution. In August 1993, condemned inmate David Mason was executed after voluntarily waiving his federal appeals. Because Mason did not choose a method of execution, he was put to death by lethal gas, as the law then stipulated.

In October 1994, a U.S. District Judge, Northern District (San Francisco) ruled that the gas chamber was cruel and unusual punishment, barring the state from using that method of execution. That ruling was upheld by the U.S. Ninth Circuit Court of Appeals in February, 1996.

That same year, the Penal Code was modified to state that if either manner of execution is held invalid, the punishment of death shall be imposed by the alternative means. The law further stipulated that lethal injection become the "default" method of execution should an inmate fail to choose. Serial killer William Bonin was executed on February 23, 1996 by lethal injection, the first California execution using that method.

### **Execution Costs**

The cost of carrying out an execution in California is difficult to assess. The average cost to house an inmate is about \$30,929 per year. Staff assigned to the execution team receive their regular, budgeted salaries. The cost of the execution procedure, including the chemicals utilized, is minimal.

The real cost involved in the capital punishment procedure is related to the court reviews, both those mandated by the Legislature as well as the appeal procedures initiated by the convicted inmate's legal staff. These costs vary depending upon the resources of the convicted inmate and the length of the court procedures involved.

### **Inmates on Condemned Status**

All male prisoners on condemned status are housed at a maximum security custody level in three units at San Quentin State Prison. Females are housed in a maximum security unit at the Central California Women's Facility at Chowchilla. The number of condemned inmates has increased steadily since 1978.

## **Lethal Injections Procedures**

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### **When Execution Order Is Received**

As soon as the execution order is received, the condemned inmate is moved into a special security area of the prison. Based on hourly checks, staff document his/her behavior and bring anything unusual to the warden's attention.

The inmate receives priority visiting privileges; no visitors are turned away without authorization of the warden. Every effort is made to accommodate visits by the inmate's attorney including weekend or holiday visits if necessary.

### **Pre-Execution Reports**

Two reports are prepared within three weeks of the established execution date. The first is 20 days before execution; the second is seven days before execution. Each report includes:

- Psychiatric report - Results and interpretation of examinations, interviews and history of the inmate by three psychiatrists which will be used to determine the inmate's sanity.
- Chaplain report - Comments on the inmate's spiritual and emotional well-being.
- Summary of behavior - Observations noted by case worker and custody staff.
- Cover letter from warden - Includes firsthand information from interviews, observations or communication with the inmate and his/her family or friends.

The seven day pre-execution report discusses any changes that have occurred since the first report.

### **Sanity Review Requests**

Within 30 to seven days before the execution, the inmate's attorney may submit current psychiatric information that may have a bearing on the sanity of the condemned inmate. This information will be provided to the panel of psychiatrists to consider in completion of the pre-execution psychiatric reports.



## **Last 24 Hours**

During the day before the execution, the warden will make special arrangements for visits by approved family members, spiritual advisors, and friends.

About 6 p.m. the day before the execution, the inmate will be moved to the death watch cell which is adjacent to the execution chamber. From then on, a three-member staff unit will provide a constant death watch.

Soon after he is rehoused, the inmate will be served his last dinner meal. The prison makes every effort to provide the meal requested by the inmate.

Between 7 and 10 p.m., the inmate may be visited by the assigned state chaplain and the warden. The inmate may read, watch television, or play the radio. He can request special food items and coffee or soft drinks.

The family, spiritual advisors and friends the inmate has selected as witnesses may arrive up to two hours before the scheduled execution.

About 30 minutes before the scheduled execution, the inmate is given a new pair of denim trousers and blue work shirt to wear. He is escorted into the execution chamber a few minutes before the appointed time and is strapped onto a table. [The chairs previously used for lethal gas executions have been removed.]

The inmate is connected to a cardiac monitor which is connected to a printer outside the execution chamber. An IV is started in two usable veins and a flow of normal saline solution is administered at a slow rate. [One line is held in reserve in case of a blockage or malfunction in the other.] The door is closed. The warden issues the execution order.

## **The Execution**

- 5.0 grams of sodium pentothal in 20-25 cc of diluent
- 50 cc of pancuronium bromide
- 50 cc of potassium chloride

Each chemical is lethal in the amounts administered.

At the warden's signal, sodium pentothal is administered, then the line is flushed with sterile normal saline solution. This is followed by pancuronium bromide, a saline flush, and finally, potassium chloride. As required by the California Penal Code, a physician is present to declare when death occurs.

After all witnesses have left, the body is removed with dignity and care. Typically, the family claims the body. If not, the State makes the arrangements.

### **Chamber Description**

The California execution chamber is a self-contained unit at San Quentin State Prison which includes:

- Witness area——Entered via a door to the outside, the witness area has a view of the chamber through five windows.
- Execution chamber——An octagonal vacuum chamber, approximately 7-1/2 feet in diameter. It is entered through a large oval door at the rear of the chamber.
- Anteroom——Contains three telephones. One is kept open for use by the Governor; the other is for use by the State Supreme Court and Attorney General's Office; the third is connected to the Warden's office. The lethal injections are administered from the anteroom. The area also includes the valves and immersion lever used for executions by lethal gas.
- Chemical room——Includes storage cabinets and a work bench, plus the chemical mixing pots, pipes and valves used for executions by lethal gas.
- Two holding cells——Each contains a toilet and room for a mattress.
- Kitchen/officers' area——Includes a sink, cabinet, counter area and resting area for staff.

## **Witnesses**

Up to 50 individuals may witness an execution. The following are specified in the Penal Code:

Warden\* 1

Attorney General 1

Reputable citizens 12

Physicians\* 2

Inmate family/friends 5 (if requested)

Inmate spiritual advisor 2 (if requested)

State procedures also allow for:

News media representatives 17

State-selected witnesses 9

Staff escorts 4

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION**  
**DIVISION OF ADULT OPERATIONS**  
 Death Row Tracking System  
 Condemned Inmate Summary List

Printed Date: 10/20/2005

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The following is a statistical summary of inmates sentenced to death in California

Ethnicity

<u>Ethnic/Race</u>	<u>Total Count</u>	<u>Percent</u>	<u>Total Males</u>	<u>Percent</u>	<u>Total Females</u>	<u>Percent</u>
White	256	39.57	250	38.64	6	0.93
Black	229	35.39	227	35.09	2	0.31
Hispanic	123	19.01	117	18.08	6	0.93
Other	39	6.03	39	6.03	0	0.00