

Death Penalty Comes Back In The Golden West

SAN FRANCISCO, Calif. — The death penalty has had its moment in the public eye. There is no question that the public execution is the most dramatic of the state's penal system, says Anthony Amsterdam, Stanford law professor and the man who argued against the death penalty before the U.S. Supreme Court. His statement all the more surprising in view of the recent success of California's proposition amendment to the state constitution which legalizes the death penalty for certain crimes.

1972 may well be remembered as the year of conflict over capital punishment. On Feb. 18 this

year, the California Supreme Court declared death a form of cruel and unusual punishment. The decision brought Angela Davis out on bail, saved California's 106 men on Death Row, and brought about a violent controversy within the state. Governor Reagan and State Attorney General Evelle Younger immediately tried to appeal the decision and organized an initiative ballot to amend California's constitution.

On June 29 the boom fell, as the U.S. Supreme Court ruled (5-4) that the death penalty, as presently administered, was in violation of the Eighth Amendment to the Constitution. On that same day, Proposition 17, providing capital punishment for eight crimes, qualified for the California ballot. Last week, three and one-half months later, Proposition 17 swept the state with a two-to-one majority and wrote legalized murder expressly into the California constitution.

To the supporters of the proposition in California, this means that the public has spoken, pronouncing a clear mandate for death penalties in certain cases, leaving the door open for others,

at the discretion of the legislators. But to Anthony Amsterdam, and to the opponents of Proposition 17, the decision of the voters on Nov. 7 doesn't mean much at all.

Critics of the death penalty aren't dismayed by Proposition 17's success because they see the death penalty being phased out of our society in a broad fashion. "No one really wants the death sentence any more," said Anthony Amsterdam in a recent interview. "The governor commutes them, judges don't recommend them, juries don't ask for them, and neither do the prosecutors. The public can always be whipped up by men such as Younger, but when it comes down to it, no one wants to do the killing."

Amsterdam supports his statement by pointing out that in the last five years the death sentences of 1200 men and women have been delayed or commuted, mostly by the work of five lawyers and their offices. "With the resources that the supporters of Proposition 17 had at their control, including unofficial memos to all law officers in the state asking them to 'volunteer' to cir-

culate petitions and campaign for the proposition, with these resources, and the confused wording of the amendment, it is almost laughable that they only managed to get a two-to-one majority."

In fact, some of the terms of Proposition 17 seem in open contradiction with the Supreme Court decision. Of the eight crimes proposed for the death penalty, four cannot be reinstated because of the Supreme Court's ruling that capital punishment must be mandatory and not left to the discretion of judge or jury. Also included among the eight are trainwrecking, which went out with Jesse James, and perjury resulting in death of an innocent person—which has never been prosecuted. The legislature, which was supposed to have the right to broaden these categories, has now discovered that it has to narrow crimes to keep them within the guidelines set by the court.

The only real crime that comes under the proposition is assault by a life inmate resulting in death, and Younger, the state's attorney general, doesn't think that prosecution for such a crime could be cleared for five years.

The proponents of Proposition 17 have waged an expensive, sensational campaign which may have gotten them nowhere. The statute leaves the legislators entrusted with confusion, and in any case the ACLU is planning to appeal it to the Supreme Court, where they may have a good chance of winning.

Amsterdam has summarized the aftermath of Proposition 17 for California: "The results of 17 are misleading of public sentiment; in 1960 (when Caryl Chessman was executed) it would have gone the other way. (Besides) I don't believe there is cause for alarm. All Proposition 17 did was to put three obsolete capital statutes on the books."

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Dr. James G. Teer, society president and Wildlife Science Department head, presented the award noting the 700-member group is the university's largest honorary society with objectives to further research and scholarship.

Library Director John Smith pointed out this is the fourth annual gift from the society, bringing total contributions to \$2,000 since 1969. The funds are used to purchase proceedings of international conferences and society members can suggest purchases.

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