who was present, that his father deny permission. The court stressed that "there is no evidence that the [defendant] had any legal right to possession of the premises--the trial court found that [he] was a tenant 'in sufferance' of his father with no control over the use of the premises." Id., 1054. The court held, "In his capacity as the owner of the legal interest in the property, a father can transfer to the police the limited right to enter and search the entire premises including that portion of the real property which has been designated by the parent for the use of his children." Id., 1055. The seizure of contraband in the bedroom on a towel rack and in a dresser drawer was upheld. Id., 1055-56. Similarly in People v. Galle, 153 Cal. App. 2d 88, 89-90, the court upheld the search of the defendant's jacket in his bedroom closet pursuant to the consent given by his mother.[25/]

25/ Cf. Beach v. Superior Court, 11 Cal. App. 3d 1032, in which it was held that a sister, who shared an apartment with her two brothers, could not consent to the search of the bedroom occupied exclusively by her brothers and another female; and People v. Jennings, 142 Cal. App. 2d 160, 169, where the court held that under the circumstances of that case a minor daughter did not validly consent to the search of her father's home while the father was in custody.

2025 RELEASE UNDER E.O. 14176

The recent case of People v. Daniels, 16 Cal. App. 3d 36 (petition for hearing pending), is particularly in point and merits quotation at length. In that case, on the morning of an explosion in which the defendant's wife was almost killed,

> ". . . police officers went to a residence owned by defendant's mother with whom he was staying; entered with her permission; asked for defendant . . . ." Id., 41.

The defendant was present. Asked whether her son paid rent, the mother replied that he did not, that "'he merely stayed there'" "free, not paying any rent," and that the house was hers. Thereupon the officers searched the defendant's bedroom, finding evidence on top of the dresser, inside the dresser drawers, between the mattresses of the bed, and inside the defendant's suitcase. Id., 42. The court concluded:

> "We hold the mother was authorized to consent to the search of the premises owned by her, including the bedroom in which the son slept, the dresser, dresser drawers and the bed in that bedroom; in any event, the search thereof was reasonable because conducted under a reasonable belief,

2025 RELEASE UNDER E.O. 14176

in good faith, the mother was authorized to consent; and, for these reasons, the search was legal; but the mother did not have authority to consent to the search of the suitcase; any reliance upon a claimed consent to search the suitcase was unreasonable; and, for this reason, the search of the suitcase was illegal.

"Both sides direct major attention to the general rules governing a search upon consent by a co-occupant, and support their respective positions by an application of these rules to their interpretation of the evidence.

". . . .

"Pertinent and distinguishing circumstances at bench include the fact the person consenting to the search was the mother of the defendant who owned exclusively the entire premises, including the bedroom in which he slept. Consent to search was volunteered by the mother rather than requested by the officers. Defendant was not in the bedroom at the time the search was conducted.

2025 RELEASE UNDER E.O. 14176

"The evidence supports the inference, implicit in the order denying defendant's motion to suppress, defendant did not have exclusive possession or control over the bedroom which he was permitted to use; and his mother, by virtue of her ownership and the circumstances in the case, had the right to enter and search the bedroom at will. . . .

"The search of the bedroom used by a son living with a parent who owns the premises of which the bedroom is a part, when made with the consent of the parent, is reasonable, absent circumstances establishing the son has been given exclusive control over the bedroom. Parents with whom a son is living, on premises owned by them, do not ipso facto relinquish exclusive control over that portion thereof used by the son. To the contrary, the mere fact the son is permitted to use a particular bedroom, as such, does not confer upon him exclusive control thereof. His occupancy is subservient to the control of his parents. He may be excluded from the premises by them

2025 RELEASE UNDER E.O. 14176

at any time. They may enter and search the room at will, or may authorize others to make such a search.

"In the case at bench the fact defendant was an adult or was present in an adjoining room while the search was conducted did not derrogate the mother's authority to consent.

"In any event, the evidence at bench supports the finding, implicit in the order of denial, the officers reasonably and in good faith believed defendant's mother had authority to consent to the search of the bedroom occupied by him; and, under these circumstances, the search was reasonable. Contrary to defendant's contention, the fact he was present in an adjoining room when the search occurred does not insulate the situation at bench from application of the foregoing rule. The mere presence of the defendant on the premises does not dictate a finding, as a matter of law, the officers did not reasonably believe his mother was authorized to consent to a search of the bedroom. This

2025 RELEASE UNDER E.O. 14176

is not a case in which the defendant personally objected to the search under circumstances which would have supported a conclusion he was in exclusive possession of that portion of the premises searched. . . . The circumstances at bench, bearing in mind defendant's mother invited the officers to search the room in which her son slept, told them she was the owner of the house and her son lived there 'free', directed them to the room in question and accompanied them during the search, support a finding the officers reasonably believed the mother had authority to consent." (Citations omitted.) People v. Daniels, supra, 16 Cal. App. 3d at 42-45.

Application of the principles in the foregoing authorities to the case at bar establishes both that Adel Sirhan had actual authority to consent to the search and that the officers in any event reasonably and in good faith believed that he was a person with authority to permit the search. The following facts are particularly significant in this regard:

2025 RELEASE UNDER E.O. 14176

1. Consent to the search was volunteered by Adel, the oldest male (29 years of age) in the household, in the sense that had he and his brother Munir remained silent instead of proceeding to the police station, appellant's identity might have remained unknown indefinitely. The free and voluntary nature of Adel's consent is further indicated by his having been advised, unnecessarily,[26/] of his right to counsel and to remain silent. No coercion or assertion of authority was employed to secure his consent.

Mann v. Superior Court, 3 Cal. 3d 1, 8.

Cf. Bumper v. North Carolina, 391 U.S. 543, 548.

(2) Appellant had no possessory interest in the property, and his mother was sole

---

26/ See People v. Fuller, 268 Cal. App. 2d 844, 852, and cases cited. Nor, contrary to appellant's contention (App. Op. Br. pp. 453-56), was there any requirement that the valid consent be preceded by a warning that it need not be given, or that evidence obtained in the ensuing search could be used against the person giving his consent or against another person having an interest in the property. People v. Superior Court, 71 Cal. 2d 265, 270(n.7), and cases cited; People v. Pranke, supra, 12 Cal. App. 3d 935, 945; People v. Stark, 275 Cal. App. 2d 712, 714-15; People v. Bustamonte, 270 Cal. App. 2d 648, 653, People v. Linke, supra, 265 Cal. App. 2d 297, 314-15.

2025 RELEASE UNDER E.O. 14176

owner of the house and the furnishings. Adel had been part owner until less than five years previously, at which time he deeded his interest to Mrs. Sirhan.

(3) Appellant was not present and the record does not indicate he expressly withheld consent to search from the officers or anyone else. It was immaterial that he was in custody at the time.

People v. Terry, 57 Cal. 2d 538, 558-59, cert. denied, 375 U.S. 960.

In any event it is respondent's position that Mrs. Sirhan's exclusive possessory interest in the bedroom and its furnishings would have given her the right to authorize the search even had appellant been present and voiced an express objection to the search. Moreover, the two notebooks received in evidence (Exhs. 71 & 72) were in plain view in appellant's room. (Rep. Tr. pp. 4281-83, 4300-03, 4320.) Only the third notebook (Exh. 73, which contained nothing pertinent to the case and was thus never received in evidence) and the United States Treasury envelope (Exh. 74) were taken from inside the dresser drawer. (Rep. Tr. pp. 4303-05, 4310, 4349-50, 8252-53.) Secondly, respondent concludes that, in the absence of Mrs. Sirhan and in

2025 RELEASE UNDER E.O. 14176

view of Adel's age and position in the family, Adel could exercise equal possessory rights with his mother, which were until recently formally reflected in a deed, to authorize a search of the entire premises by the police. Whatever Mrs. Sirhan and Adel had lawful access to, in light of appellant's status as a non-paying guest and family member, was legitimately accessible to the police officers provided they had the consent of Mrs. Sirhan or Adel. To even suggest that the validity of the conviction of Senator Kennedy's assassin could turn upon the technical transfer of title to the Sirhan property in 1963 entirely back to Mrs. Sirhan, would be to justify the frequent popular outrage and exasperation at what has been termed the "game theory" aspect of the criminal law. People v. Gorg, supra, 45 Cal. 2d 776, 783. See also Williams v. Florida, 399 U.S. 78, 82. Thirdly, aside from Adel's actual authority, the various representations made by him, including his admitted plea that the officers not "alarm" his mother "with what had happened," led the officers to rely reasonably upon his apparent authority to consent to the search, and these representations therefore bound the entire Sirhan family, including appellant.

2025 RELEASE UNDER E.O. 14176

D. The Seizure of the Envelope From the Trash Was Valid Under the Rule of People v. Edwards, 71 Cal. 2d 1096, Which Moreover Should Not Be Given Retroactive Effect

The facts underlying the seizure of the envelope from the trash are as follows. At 8:00 a.m. on the morning of June 6, 1968 (the day following the search of the Sirhan residence), Officer Thomas Young of the Pasadena Police Department arrived at the Sirhan residence, having been "assigned to security at the rear of the residence." His duty was to guard the premises from unauthorized persons. At approximately 11:00 a.m., upon discarding a paper cup of coffee into the trash which lay inside several boxes and cans of trash and garbage in a "rear yard to the rear of the residence," he observed lying in one such box the envelope which bore on its face the return address of the Argonaut Insurance Company. He examined it merely out of curiosity. The trash area was located on the Sirhan property. Officer Young retained possession of the envelope and brought it to the police station. (Rep. Tr. pp. 4326-29, 4332-34.)

Initially, respondent submits that the valid consent given by Adel to the search of the Sirhan residence on the previous day (see the preceding

2025 RELEASE UNDER E.O. 14176

subargument herein) extended to a search of the trash area at the rear of the house on the following day. See People v. Hickens, 165 Cal. App. 2d 364, 367-69. Cf. People v. Gorg, supra, 45 Cal. 2d 776, 782-83. Although a consent once given may be subsequently withdrawn, People v. Martinez, 259 Cal. App. 2d Supp. 943, 945-46, there is nothing in the record to indicate that Adel expressed any desire to withdraw his consent.

Respondent recognizes that even in the absence of a withdrawal of consent, a consent will not continue as an indefinite authorization for search by the police under changed circumstances. However, it is reasonable to interpret the scope of Adel's consent as continuing up to the time of the seizure of the envelope from the trash 24 hours later, particularly since the police were on the premises in conjunction with the same matter that had initially brought them there, the shooting of Senator Kennedy, and since they were there to provide security as the result of the Sirhan family's identity having become publicly known.

Cf. People v. Johnson, 70 Cal. 2d 469, 477 (a

2025 RELEASE UNDER E.O. 14176

single admonition as to constitutional rights may be sufficient to cover subsequent interrogations).

Secondly, respondent submits that appellant's attempt to invoke the rule of People v. Edwards, 71 Cal. 2d 1096, restricting the circumstances under which a person's trash receptacles may be subjected to search by the police, must fail since Edwards is not entitled to retroactive application in light of applicable judicial policy considerations.

Edwards itself, in another Fourth Amendment context, held the new rule of Chimel v. California, supra, 395 U.S. 752, not to be retroactive,[27/] id., 1107-10, emphasizing the primary considerations of "'(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards.'" Id., 1107-08.

27/ See also Williams v. United States, ___ U.S. ___, ___, 39 U.S.L.W. 4365, 4368 (April 5, 1971); Hill v. California, supra, ___ U.S. ___, ___, 39 U.S.L.W. 4402, 4404 (April 5, 1971).

2025 RELEASE UNDER E.O. 14176

These same considerations militate against retroactive application of the new rule announced in Edwards.

It is particularly noteworthy that in a case of the present magnitude the trial court, after expressing initial reservations concerning the seizure of the envelope from the trash, felt free to rely expressly on the case of People v. Bly, 191 Cal. App. 2d 352, in denying the motion to strike. (Rep. Tr. pp. 4397-4401.) The trial court had no way of knowing that only a few months later this Court would expressly disapprove the Bly case, People v. Edwards, supra, 71 Cal. 2d at 1105, even though Bly had been consistent with other California law on the subject.

People v. Edwards, supra, 71 Cal. 2d at 1102-03.

Respondent strongly urges that this Court limit its ruling in Edwards to prospective application. It would indeed be ironic if the Edwards case, limiting Chimel to prospective application, were held to have established fully retroactively

/

/

2025 RELEASE UNDER E.O. 14176

its own Fourth Amendment rule.[28/]

Turning to the merits of appellant's contention, it is readily apparent that there are significant distinctions between the search which took place in the Edwards case, where this Court held unlawful the search of the defendants' trash can, and the search presently in issue. The Court's opinion was premised upon the nature of the Fourth Amendment guarantee against unreasonable search and seizure as a protection of persons and their reasonable expectations of privacy rather than a protection of constitutionally protected places. The search in Edwards was found to have infringed upon a reasonable expectation of privacy on the part of the defendants.

People v. Edwards, supra, 71 Cal. 2d 1096, 1104.

28/ At this date the issue of Edwards' retroactivity has not been considered by any reported California decision, with the exception of People v. Krivda, 12 Cal. App. 3d 963, 966, petition for hearing granted January 14, 1971, which found that the new rule should be applied prospectively only. See also the decisions limiting the rule announded in Eleazer v. Superior Court, 1 Cal. 3d 847, regarding efforts required to locate informers, to prospective application. E.g., People v. Pargo, 11 Cal. App. 3d 528, 531-35; People v. Fortier, 10 Cal. App. 3d 760, 766-67; People v. Helmholtz, 10 Cal. App. 3d 441, 446-50.

2025 RELEASE UNDER E.O. 14176

Significantly, in Edwards "the trash can was within a few feet of the back door of defendants' home and required trespass for its inspection." Id., 1104 (emphasis added). "In the light of the combined facts and circumstances it appears that defendants exhibited an expectation of privacy," which the Court termed "reasonable under the circumstances of the case." Id.

In the present case the officer who came across the envelope in the trash testified that he had been assigned to security at the rear of the Pasadena residence in order to guard the premises from unauthorized persons. There was no evidence in the record to contradict this, and his description of his function is supported by the fact that he was a Pasadena officer rather than a member of the Los Angeles Police Department, which was conducting the investigation (and which had conducted the search of the Sirhan residence on the previous day). Thus the officer was not committing a trespass; he was lawfully on the premises.

Instead the facts of the present case bring it within this Court's characterization of People v.

2025 RELEASE UNDER E.O. 14176

Berutko, 71 Cal. 2d 84: "It is clear that this case does not involve the difficult questions which arise when the officer's observation is secured from a vantage point which he has gained by trespass. . . . Rather, the instant case involves observation by an officer from a place where he had a right to be," which was a common area available to other tenants of the apartment building from which the interior of the defendant's apartment could be observed through an opening in the curtains. Id., 91.

The Court held in Berutko that "[w]hen, as in the instant case, a person by his own action or neglect allows visual access to his residence . . . , he may not complain." Id., 93-94. Similarly by June 6, 1968, neither appellant nor the other members of his family could harbor any reasonable expectation of privacy once the world had learned of appellant's identity as the political assassin of Senator Kennedy and it had become necessary to station officers on the Sirhan property.

These circumstances indicate that the officer who observed the envelope in the trash, while guarding the rear of the residence, was where he had a right to be at that time, and that therefore

2025 RELEASE UNDER E.O. 14176

the Sirhans had no reasonable anticipation of privacy at their home, at least with respect to the outlying portions of the premises such as the area where the trash was kept. There is no evidence indicating that the officer was on the premises contrary to the wishes of Mrs. Sirhan, Adel, or Munir. Presumably the Sirhan family welcomed the police protection of their lives and property; this Court may judicially notice (Evid. Code §§ 451(f), 459) the inevitable attendance of curiosity-seekers at the periphery of major events as well as the harm that befell the assassin of Senator Kennedy's brother, President John F. Kennedy, within a short period of that political assassination. The record reflects the following situation confronting the officers when they arrived to search the house on the preceding day. "We were met by a group from Burglary Auto Theft Division who had been sent to watch the house. There were a large number of newspaper reporters at the time at the scene and they assisted us in getting through the crowd into the house." (Rep. Tr. p. 63.)

Significantly, between 12:00 and 1:00 p.m. on the day preceding the seizure of the envelope, apparently upon learning of appellant's involvement in

2025 RELEASE UNDER E.O. 14176

the shooting of Senator Kennedy, Mrs. Sirhan had found it advisable to leave the Sirhan residence and move in with friends, with whom she remained for eight to ten days. (Rep. Tr. p. 113.) The record does not indicate whether the other members of the Sirhan household did the same. Cf. People v. Sanchez, 2 Cal. App. 3d 467, 474 (governmental intrusion involving abandoned house, frequented by prowlers, was not unreasonable in view of the lessened expectation of privacy). Under the circumstances the Pasadena Police Department would have been subject to accusations that it was derelict in its duty, had officers not been stationed to guard the premises.

Since he was in a position where he had a right to be, the officer who observed the envelope among the trash as he discarded a paper cup of coffee into the trash receptacles was not conducting a search, much less an unreasonable search. To observe what is in plain sight is not to search.

Harris v. United States, 390 U.S. 234, 236.

See also People v. Bradley, 1 Cal. 3d 80, 84-85 (marijuana plants properly seized by the police from the defendant's rear yard were visible to delivery men and others who came

2025 RELEASE UNDER E.O. 14176

to the defendant's door).

Even had the officer rummaged through the trash, and the record does not indicate that this was the case, this would not invalidate the seizure of the envelope under the circumstances of the present case. Analogous are the facts in People v. Maltz, 14 Cal. App. 3d 381, where an officer situated in an area adjacent to a street and accessible to the public stuck his hand 10-12 inches inside an opening under a garage door. Id., 388-89. The court held that although the officer's action

> ". . . could not be classified as a forcible entry, nevertheless it was technically an entry or trespass. As in the case of a search involving such a minor trespass, however, we do not think that the conflicting fundamental policy considerations involved in determining whether a seizure is reasonable ought to depend upon the words 'entry' or 'trespass' or upon technical rules of property. [Citing cases.] The problem involves a balancing between the rights of the individual and the rights of the public to proper and

2025 RELEASE UNDER E.O. 14176

efficient law enforcement [citing cases] . . . . ." Id., 398.

See also People v. Terry, supra, 70 Cal. 2d 410, 427-28.

For the foregoing reasons respondent submits that the seizure of the envelope from the trash area was proper.

E. Even Had the Notebooks or the Envelope From the Trash, or Both, Been Improperly Received in Evidence, Any Such Error Would Be Harmless Beyond a Reasonable Doubt in View of the Abundant Other Evidence of Premeditation and Deliberation

Respondent submits that even had the search which uncovered the notebooks, or the seizure of the envelope from the trash, or both, been invalid and the evidence in question improperly received, any such error would not require reversal of the judgment.

The rule that "a federal constitutional error can be held harmless" where the reviewing court is able "to declare a belief that it was harmless beyond a reasonable doubt," Chapman v. California, 386 U.S. 18, 24, is applicable to the admission of

2025 RELEASE UNDER E.O. 14176

evidence obtained by search and seizure.

People v. Chambers, 276 Cal. App. 2d 89, 101.

See also People v. Bradley, supra, 1 Cal. 3d 80, 89.

It is readily apparent that if the admission in evidence of the envelope from the trash were improper, any error would be rendered harmless by the proper admission of the notebooks. Conversely, error in the admission of the notebooks would be rendered harmless by the proper admission of the envelope from the trash. The notebooks and the envelope are cumulative evidence on the issue of premeditation, each reflecting a verbalization of appellant's premeditation and deliberation upon the contemplated assassination of Senator Kennedy.

But even assuming that both the notebooks and the envelope had been improperly received in evidence, there was abundant other evidence of premeditation and deliberation which would be sufficient to compel this Court to find the purported error harmless beyond a reasonable doubt.

Among this independent evidence of the intent requisite for first-degree murder are (1) appellant's

2025 RELEASE UNDER E.O. 14176

purchase of the murder weapon almost six months prior to the assassination, (2) appellant's statement to the trash collector Mr. Clark, two months prior to the assassination, that appellant was "planning on shooting" "that son-of-a-bitch," Senator Kennedy, (3) appellant's stalking of the victim -- closely following his whereabouts in Oregon and Washington, as reflected by appellant's own testimony, (4) appellant's trips to the shooting range, (5) his trip to the Ambassador Hotel two days prior to the assassination, and (6) evidence of his conduct immediately prior to the assassination, including his asking of questions relative to Senator Kennedy's intended route and security protection, his conduct during and immediately following the assassination, including his statement that he could "explain" and had committed his act "for my country," and his carrying on his person clippings relative to Senator Kennedy and the Senator's favorable position toward Israel, while leaving all his personal identification in his parked vehicle.

For the foregoing reasons it is submitted that appellant's contentions relating to search and seizure, even were they accepted as meritorious,

2025 RELEASE UNDER E.O. 14176

provide no basis for reversal of the judgment.

IV

APPELLANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED BY THE PROSECUTION'S DECISION TO PROCEED AGAINST APPELLANT BY WAY OF GRAND JURY INDICTMENT RATHER THAN PRELIMINARY HEARING AND INFORMATION

Appellant makes the unmeritorious contention that "the prosecution's selection to seek a grand jury indictment as opposed to a preliminary hearing was arbitrary and capricious and constituted an invidious discrimination against appellant denying him both due process and equal protection of the laws." (App. Op. Br. p. 463.)

Interestingly enough, defendants have contended with equal vigor, and with equal lack of success, that they may constitutionally be accused only by way of indictment.

See Hurtado v. California, 110 U.S. 516, 538;

People v. Stephens, 266 Cal. App. 2d 661, 662-63;

People v. Hamilton, 254 Cal. App. 2d 462, 466;

People v. Stradwick, 215 Cal. App. 2d 839, 840-41.

In the fiscal year preceding that of appellant's indictment, 85% of all felony proceedings in

2025 RELEASE UNDER E.O. 14176

California Superior Courts originated in preliminary hearings and informations. The total of preliminary hearings conducted that year was in excess of 71,000.

See authority cited in People v. Green, 70 Cal. 2d 654, 664(n.9), vacated, 399 U.S. 149.

Just as the customary use of prosecutorial discretion whether to file (or dismiss) charges does not violate the constitutional provisions in question, Oyler v. Boles, supra, 368 U.S. 448, 454-56; In re Finn, 54 Cal. 2d 807, 812-13, so it is well settled that these rights are not infringed by prosecutorial discretion[29/] whether to proceed by grand jury indictment or instead by way of preliminary hearing and information. Nor does the decision to proceed by indictment unconstitutionally deny the procedural rights which would have been available to appellant at a preliminary hearing.

People v. Pearce, 8 Cal. App. 3d 984, 988-89;
People v. Newton, 8 Cal. App. 3d 359, 388;
People v. Rojas, 2 Cal. App. 3d 767, 771-72;
People v. Flores, 276 Cal. App. 2d 61, 65-66.

29/ Cal. Const., art. I, § 8; Pen. Code §§ 682, 737.

2025 RELEASE UNDER E.O. 14176

See also Jaben v. United States, 381 U.S. 214, 220;

Smith v. United States, 360 U.S. 1, 9-10.

There was also no impropriety in the decision to dismiss the complaint initially filed before a magistrate and then to obtain an indictment charging an offense arising out of the same occurrence.

People v. Combes, 56 Cal. 2d 135, 145.

The objections voiced by appellant to the indictment procedure would more properly be directed to the Legislature than to this Court. The short answer to the present contention is that it is at best illogical to attack as unconstitutional an age-old procedure which itself is embodied in the Constitution's Bill of Rights--the Fifth Amendment's specific provision that "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." Nor has appellant demonstrated the existence of any invidious discrimination in the decision which defendants are to be accused by indictment, such as himself, and which are to be charged by information following a preliminary hearing.

2025 RELEASE UNDER E.O. 14176

V

THERE WAS NOTHING IMPROPER OR UNFAIR IN THE PROCEDURES BY WHICH THE GRAND JURY AND THE PETIT JURY VENIRE WERE SELECTED

Appellant contends that the alleged exclusion of racial minorities and other identifiable segments of the general population from the grand jury which indicted appellant, and from the jury venire from which the jury that tried appellant was selected, deprived him of due process of law and equal protection of the laws under the Fourteenth Amendment to the federal Constitution. (App. Op. Br. pp. 479, 493.)

A. This Court Should Not Reach the Merits of Appellant's Attack on the Selection of the Grand Jury

At the outset respondent disputes appellant's implied premise that an impermissible practice in the selection of grand jurors could affect the validity of the conviction. Respondent recognizes that this Court has held that defects in the procedures by which a defendant is bound over to superior court may merit reversal of the judgment of conviction. People v. Elliot, 54 Cal. 2d 498, 503. Nevertheless respondent finds highly persuasive the following observations

2025 RELEASE UNDER E.O. 14176

of Justice Jackson, dissenting in Cassell v. Texas, 339 U.S. 282: "This Court never has explained how discrimination in the selection of a grand jury, illegal though it be, has prejudiced a defendant whom a trial jury, chosen with no discrimination, has convicted." Id., 301. Stressing that the grand jury does not convict but only accuses, and that its accusations must be proved beyond a reasonable doubt before a trial jury, Justice Jackson opined that following the defendant's having been found guilty, "it is frivolous to contend that any grand jury, however constituted, could have done its duty in any way other than to indict." Id., 302. He concluded, "I would treat this as a case where the irregularity is not shown to have harmed this defendant, and affirm the conviction." Id., 305. See also People v. Bradford, 70 Cal. 2d 333, 344, cert. denied, 399 U.S. 911 ("Once an accusatory pleading has been filed . . . , a defendant is no longer held on the arrest warrant, and thus he cannot complain solely on the basis of an alleged defect in the issuance of the warrant"), citing Frisbie v. Collins, 342 U.S. 519. To be distinguished is the situation where the attack on the method of grand

2025 RELEASE UNDER E.O. 14176

jury selection is made prior to trial.[30/]

Respondent submits that Justice Jackson's observations apply a fortiori to the present case, involving as it does a defendant who committed his act of political assassination before the eyes of a large number of persons and who admitted in the initial voir dire of the jury that there was no dispute as to whether he had shot Senator Kennedy to death. In this posture of the case, it seems rather absurd and beside the point to be three years later evaluating the racial and socio-economic background of the 23 jurors who, on the day following Senator Kennedy's death, did what any imaginable composite of grand jurors would do in returning an indictment of murder. This is also not the context in which this Court deems it expedient to reach a constitutional issue.

In re Cregler, 56 Cal. 2d 308, 313.

See also United States v. Raines, 362 U.S. 17, 20-24.

30/ See People v. Superior Court, 13 Cal. App. 3d 672, 680-81; Montez v. Superior Court, 10 Cal. App. 3d 343; Castro v. Superior Court, 9 Cal. App. 3d 675, 680 & n.6.

2025 RELEASE UNDER E.O. 14176

B. Appellant Has Failed to Meet His Burden of Establishing a Prima Facie Case of Purposeful Discrimination Against Any Identifiable Group of the County Populace in the Selection of the Grand and Petit Jurors, Whose Numbers Included Three Negroes, Three Mexican-Americans, and One Arab

The merits of appellant's contentions relating to the selection of the grand jurors and the petit jurors are treated together, inasmuch as the constitutional standards controlling the selection of jurors are the same in both instances.

Pierre v. Louisiana, 306 U.S. 354, 362;

People v. Newton, supra, 8 Cal. App. 3d 359, 388.

The authorities defining these standards are collected in the Newton case, which held with respect to the selection of jurors:

". . . They must be selected in a manner which does not systematically exclude, or substantially underrepresent, the members of any identifiable group in the community. (Whitus v. Georgia (1967) 385 U.S. 545, 548-552; Hernandez v. Texas (1954) 347 U.S. 475, 476-478; People v. White (1954) 43 Cal.2d 740, 749-753.) Such 'purposeful discrimination,' however, 'may not be assumed or merely

2025 RELEASE UNDER E.O. 14176

asserted'; it must be proved (Swain v. Alabama (1965) 380 U.S. 202, 205), and defendant bore the burden of making a prima facie case that it existed here. (Whitus v. Georgia, supra, at P. 550.) . . ." (Parallel citations omitted; emphasis added.) People v. Newton, supra at 388-89.

At the proceedings below, appellant moved, on the grounds presently relied upon, to quash the indictment and the petit jury list. (Cl. Tr. pp. 148, 181.) Defense counsel expressly disclaimed that there had been noncompliance with the foregoing standard when he stated his objection:

". . . I want to make clear the defendant's position in this matter.

"First, we make no claim that any of the Superior Court Judges of this County did other than follow the law as is laid down in the Penal Code.

"We also want to make perfectly clear that we make no contention that any of the Judges purposefully discriminated in the selection of the Grand Jurors.

"Our position is that the very system

2025 RELEASE UNDER E.O. 14176

itself . . . has the result of being discriminatory." (Rep. Tr. p. 1924 (emphasis added).)

In addition to the extensive memoranda of points and authorities submitted by both sides (Cl. Tr. pp. 99-140, 164-78, 383-92, 470-72, 492-94), the defense introduced the following evidence in support of its motions in the proceedings below.[31/]

31/ The trial court declined to admit in evidence 1010 pages of transcript, offered by the defense, from the case subsequently determined on appeal as Castro v. Superior Court, supra, 9 Cal. App. 3d 675. (Rep. Tr. p. 8978.) Nonetheless, Appellant's Opening Brief quotes extensively from the record and the exhibits in the Castro case as well as from the record and the exhibits in the case subsequently determined on appeal as Montez v. Superior Court, supra, 10 Cal. App. 3d 343, which matters are also outside the present record. The Court of Appeal never reached the present issues in the Castro case and did not summarize the evidence relating thereto. However, the court's opinion in Montez, supra at 346-47, 350, makes reference to such evidence produced in the Castro case. Castro, like the present case, involves the 1968 Los Angeles County Grand Jury and Montez the 1969.

Of course this Court normally will not consider on appeal matters which are not part of the record of the proceedings below. People v. Washington, 71 Cal. 2d 1061, 1086.

This Court may take judicial notice (Evid. Code §§ 451(a), 452(d), 459) of the written opinion of the Los Angeles Superior Court, Judge Arthur L. Alarcon, presiding, denying the motion to quash the indictment in the Montez case (Superior Court No. A-244906) at the conclusion of a six-week hearing on remand from the Court of Appeal following its decision in Montez v.

2025 RELEASE UNDER E.O. 14176

Professor Robert Schultz testified regarding the age, racial, and socio-economic background of the nominees for the 1968 Los Angeles County Grand Jury. He concluded that the median age of the nominees was greater than that of the general county population and the educational background substantially higher. (Rep. Tr. pp. 1950, 1962-63.) The nominees also had a higher grade of employment. (Rep. Tr. pp. 1967-72.) The western portion of the county containing more expensive homes was overrepresented among the nominees, and the area of the county which contained a large Negro population was underrepresented. (Rep. Tr. pp. 1975-80.)

Professor Raymond Schultz corroborated the foregoing testimony of his brother, Professor Robert Schultz. (Rep. Tr. p. 2105.) He also analyzed

---

Superior Court, supra, 10 Cal. App. 3d 343. The opinion of the superior court, filed March 31, 1971, holds, inter alia, that "[t]he evidence clearly shows that none of the selectors of the Grand Jury intentionally, deliberately, arbitrarily or systematically excluded or purposely discriminated against persons identifiable as Mexican-Americans from the grand juries for the years 1959 to 1968" and that "a substantial number of the selectors . . . took affirmative steps to find eligible and qualified persons identifiable as Mexican-Americans to serve on the Grand Jury." (Pp. 13-14.) One hundred and nine superior court judges were among the witnesses who testified at the hearing. (P. 10.)

2025 RELEASE UNDER E.O. 14176

questionnaires returned to the defense by 89 of the superior court judges of the county. (Rep. Tr. p. 2107.) Among the conclusions he arrived at were that the judges resided in the same relative area as their nominees, which areas had high home values. (Rep. Tr. pp. 2113, 2124.) More than half of the judges in question indicated that they had made an "affirmative effort to select grand jurors from minority groups," although some stated they were unable to secure any such nominees because grand jury service "tends to work an undue economic hardship." (Rep. Tr. pp. 2132-33.) Two-thirds of the judges indicated that the persons with whom they were acquainted included individuals qualified for grand jury service from all of the major racial, age, and geographical segments of the population. (Rep. Tr. p. 2133.) All answered that they did not deliberately, systematically, or arbitrarily exclude any segment of the general population from their nominees and that their nominations were based on the qualifications of the nominees. (Rep. Tr. p. 2134.) The estimated Negro population of the county in 1965 was approximately 13% of the total population and the estimated Mexican-American population

2025 RELEASE UNDER E.O. 14176

was approximately 12%. (Rep. Tr. p. 2136.)

Three judges of the superior court were called by the defense and testified as to the background of some of their nominees for the grand jury. Judge Arthur L. Alarcon testified that in selecting nominees for the 1968 grand jury he made an affirmative but unsuccessful effort to nominate at least one who was Mexican. (Rep. Tr. pp. 2024-25.) A Mexican-American nominated by Judge Alarcon had served on the 1965 grand jury. Judge Alarcon had deliberately selected relatively young nominees for the 1968 grand jury. (Rep. Tr. pp. 2026-27.) Judge Alarcon also took into account the serious civil responsibilities required of grand jurors in overseeing the operation of the county government and the time (3-5 days a week for an entire year) that grand jury duty requires in Los Angeles County. (Rep. Tr. pp. 2028-31.) Judge Edward R. Brand testified that he did not concern himself with the ethnic background of his grand jury nominees and did not deliberately exclude any group. (Rep. Tr. pp. 2039, 2044-45.) Judge Kenneth N. Chantry made affirmative efforts to select his grand jury nominees from minority groups and sought to obtain a "cross-section" of

2025 RELEASE UNDER E.O. 14176

nominees. He never deliberately excluded any group. (Rep. Tr. pp. 2952-53.)

William Goodwin, Jury Commissioner of Los Angeles County, testified that petit jurors were selected exclusively from the Registrar of Voters list by random selection. (Rep. Tr. pp. 311-12.) Prospective jurors whose occupations are among those exempted by Code of Civil Procedure section 200 are automatically excused unless they waive exemption. (Rep. Tr. pp. 315-17.) Rule 25(1), Rules of the Los Angeles Superior Court, provides in part that persons qualified to render jury service shall not be excused except for the causes set forth in Code of Civil Procedure section 201 and that "[n]o prospective juror shall be rejected because of political affiliation, religious faith, race, color, social or economic status, occupation or sex." (Rep. Tr. p. 319.) There has not been any systematic exclusion of jurors based upon any of the aforementioned categories listed in rule 25(1). (Rep. Tr. p. 321.)

With reference to the grand jury, Mr. Goodwin testified that selection is in accordance with rule 29, Rules of the Los Angeles Superior

2025 RELEASE UNDER E.O. 14176

Court. (That rule is set forth at Cl. Tr. pp. 176-78. See also Pen. Code §§ 903-903.4.) Each judge of the court may nominate two persons, and pursuant to the procedure followed for the past four or five years each judge is instructed by the grand jury committee of the court that the "'Grand Jury should be representative of a cross section of the community'" and that therefore nominations should be made "'from the various geographical locations within the County, the different racial groups and all ethnic levels.'" (Rep. Tr. pp. 2004-05, 2010.) This committee, which was also charged with determining possible withdrawals from the list of nominations, was comprised of eight judges, one of whom was Negro and one of Chinese extraction. (Rep. Tr. pp. 2008, 2012.) At the time the nominations were made for the grand jury which ultimately indicted appellant, the Los Angeles Superior Court included, among its approximately 133 judges, four Negroes, four judges of Spanish-American descent, one of Chinese descent, and one of Japanese descent. (Rep. Tr. pp. 1894, 2016.)

The requisite qualifications for grand jurors are set forth in Penal Code sections 893 and 894. Nominees must be selected from the

2025 RELEASE UNDER E.O. 14176

judicial or supervisorial districts of the county in proportion to the population of the districts. Pen. Code § 899. The requisite number of grand jurors are chosen by lot from the names of nominees placed in the grand jury box. Pen. Code §§ 900.1, 902.

It was stipulated by counsel that the Grand Jury which indicted appellant had among its 23 members two Negroes and one Arab, a Mrs. Shalhoub, whose father was born in Syria and mother born in Lebanon. (Rep. Tr. pp. 1895, 2016-17.) According to appellant[32/] this 1968 Grand Jury also included one "Spanish-surnamed Mexican American." (App. Op. Br. pp. 507-08.)

At the conclusion of the hearings on the foregoing issues the trial court denied appellant's motion to quash, finding that the grand jurors and the petit jurors were selected in a constitutional manner and that the petit jury list "is selected from every precinct in this entire county by numbers, so that the Court finds no exclusion of any ethnic, psychological or economic groups." (Rep. Tr. pp. 461-64, 2164.)

32/ Relying on the exhibits in the Castro and Montez cases.

2025 RELEASE UNDER E.O. 14176

Appellant complains of the alleged discrimination against Mexican-Americans in the selection of the grand and petit jurors, claiming that such discrimination violated his right to a fair accusation and trial. However, with reference to the purported exclusion of Mexican-Americans, it is well settled that appellant may not found a claim of this nature upon the exclusion of minorities of which he is not a member.

People v. White, 43 Cal. 2d 740, 753, cert. denied, 350 U.S. 875;

Ganz v. Justice Court, 273 Cal. App. 2d 612, 619-20.

See also Eubanks v. Louisiana, 356 U.S. 584, 585; Fay v. New York, 332 U.S. 261, 287.

Whatever disparity there might be between the proportion of minorities on the 1968 grand jury, as compared to their proportion of the general population, and such disparity was at best negligible, it could hardly amount to the degree of gross, invidious discrimination that would constitute denial of appellant's constitutional rights. It is clear from those cases, discussed below, which have considered the issue at bar, that appellant has not made a prima

2025 RELEASE UNDER E.O. 14176

facie showing of discrimination, let alone the required demonstration of purposeful, systematic exclusion of any segment of the population.

The same is true with respect to appellant's attack on the composition of the petit jury. Significantly, he failed at trial to offer any figures as to the racial makeup of petit jury panels in the county and on appeal ignores the known composition of the particular jury which tried him.

Court's Exhibit 3,[33/] an analysis of the backgrounds of the petit jurors and six alternate jurors chosen to serve in the present case, reflects a remarkably broad racial spectrum on the part of the trier of fact in the case at bar. By race, they are listed as one Negro, two Mexican-Americans, four "other Latin," one "Spanish Irish," nine "German-English-Scotch-Irish," and one "Hebrew."

It is well settled that there need be no exact correlation between the community's makeup and that of the grand or petit jury. Carter v.

33/ This exhibit is part of the superior court file in the present case. (See Cl. Tr. p. 566; Rep. Tr. pp. 8948-50.)

2025 RELEASE UNDER E.O. 14176

Jury Commission, 396 U.S. 320, 339; People v. White, supra, 43 Cal. 2d 740, 749. A defendant is not entitled to have a person of his own race, or of any particular race, on the jury. People v. Hines, 12 Cal. 2d 535, 539; People v. Hayes, 276 Cal. App. 2d 528, 533. "Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation." Cassell v. Texas, supra, 339 U.S. 282, 286-87. Only a substantial disparity over a period of time between a group's percentage on juries and its percentage of the eligible population is prima facie evidence of discrimination, shifting to the prosecution the burden of justifying the discrepancy. Turner v. Fouche, 396 U.S. 346, 359-60; Whitus v. Georgia, 385 U.S. 545, 550-52; People v. Newton, supra, 8 Cal. App. 3d 359, 390. In Swain v. Alabama, 380 U.S. 202, 205, 208-09, the disparity held permissible was 10-15% versus 26%; in People v. Newton, supra at 389-90, it was 7.5% versus 12.4%.

See also Cassell v. Texas, supra, 339 U.S. 282, 284-86.

It is an obvious matter of everyday courtroom

2025 RELEASE UNDER E.O. 14176

reality that

> ". . . no matter what the race of the defendant, he bears the risk that no racial component, presumably favorable to him, will appear on the jury that tries him. . . . Those finally chosen may have no minority representation as a result of the operation of chance, challenges for cause, and peremptory challenges."
>
> Carter v. Jury Commission, supra, 396 U.S. 320, 343 (Douglas, J., dissenting).
>
> See also Williams v. Florida, 399 U.S. 78, 102.

Yet appellant, despite the remarkable fact of having had a fellow Arab on the grand jury that indicted him, in addition to members of other racial and ethnic minorities on the grand jury and on the petit jury that tried him, claims that he was entitled to something still more.

Not only has appellant failed to demonstrate any discriminatory disparity between the number of grand and petit jurors selected from

2025 RELEASE UNDER E.O. 14176

minority groups and their number among the population at large, but his attacks on the method of selection also fall wide of the mark of invidious discrimination.

Appellant's allegation of socio-economic discrimination is founded primarily on the selection of grand jury nominees by recommendation of the judges of the superior court and selection of petit jury panels from the records of the Registrar of Voters. Respondent submits that these procedures speak for themselves; their fairness and practicality are self-evident and almost by definition preclude the required showing of purposeful, systematic discrimination.

See Fay v. New York, supra, 332 U.S. 261, 273-77;

People v. Gibbs, 12 Cal. App. 3d 526, 538-39;

People v. Newton, supra, 8 Cal. App. 3d 359, 388-90;

Ganz v. Justice Court, supra, 237 Cal. App. 2d 612, 621;

People v. Teitelbaum, 163 Cal. App. 2d 184, 201-04, appeal dismissed, 359 U.S. 206.

Moreover, "[i]t would require large assumptions to

2025 RELEASE UNDER E.O. 14176

say that one's present economic status, in a society as fluid as ours, determines his outlook in the trial of cases."[34/]

Fay v. New York, supra at 292.

Appellant's authorities likewise do not support his contention that it is unconstitutional or unlawful for a superior court judge to exercise the function of nominating grand jurors. (App. Op. Br. pp. 534-37.)

With regard to the selection of petit jurors from the voting lists, appellant has failed to make the required showing of abuse of discretion on the part of the jury commissioner. People v. Hess, 104 Cal. App. 2d 642, 669, appeal dismissed, 342 U.S. 880. Moreover, particularly insofar as the selection of the petit jurors is concerned, appellant has failed to suggest any workable alternatives. Id.,

---

34/ "Were this true, an extremely rich man could rarely have a fair trial, for his class is not often found sitting on juries." Fay v. New York, supra at 292. If wage earners cannot afford to sit on juries (unlike the unemployed), neither can doctors, lawyers, or other busy professional people from the higher socio-economic strata which appellant finds overrepresented on grand and petit juries.

2025 RELEASE UNDER E.O. 14176

670.

Instead, to support his attack on the petit jury selection process, appellant relies substantially on the "common knowledge" that "non-voters are not merely a cross section of the community, but . . . are composed of a high percentage of racial and cultural minorities and economically deprived persons." (App. Op. Br. p. 483.) Yet this is not common knowledge, nor does appellant's surmise have any solid foundation in fact. One could just as readily speculate that a sizable portion of the county's non-voters are well-educated young persons of voting age who are apathetic toward the choices afforded by our political system.

The foregoing flights by appellant into the realm of speculation are characteristic of his attempt to build the requisite factual foundation for his claim of invidious discrimination. Appellant's argument is plagued by references to matters outside the record for which, moreover, no citation of authority is given. (App. Op. Br. pp. 487-88, 490-92.) Other assertions, cross-referenced to the exhibits and transcripts in the Castro and Montez

2025 RELEASE UNDER E.O. 14176

cases, are blatantly conclusionary, e.g., the asserted fact that "Spanish-surnamed Mexican Americans are victimized as a class by discrimination." (App. Op. Br. p. 501.) Some of appellant's assertions are plainly self-contradictory, e.g., his characterization of Pasadena as an "over-represented" "upper class district" "containing comparatively slight ethnic minority subgroups" (App. Op. Br. p. 512), while listing that city as comprising 19.9% "ethnic minorities" according to the 1960 census. (App. Op. Br. p. 511.)

What appellant again ignores is evidence of the varied background of the petit jury in his own case. Court's Exhibit 3 (see Cl. Tr. p. 566; Rep. Tr. pp. 8948-50) reflects in this respect educational backgrounds ranging from a Ph.D. to a high-school drop-out, and occupations including blue-collar and white-collar workers, teacher, housewife, and retired. Almost every geographical area of the county is represented among the jurors' places of residence.

In any event, even if the systems of grand and petit jury selection resulted in jurors of above average intelligence and education, this would not in itself be indicative of discrimination.

2025 RELEASE UNDER E.O. 14176

(Nor could this be said to prejudice appellant in view of his own superior intellectual and educational background.) It is well settled that "[t]he States remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character." (Footnotes omitted.)

Carter v. Jury Commission, supra, 396 U.S. 320, 332-33.

As for the purported discriminatory exclusion of persons of appellant's age group from juries (appellant was 24 years of age at the time of trial), this assertion of discrimination remains unproved and in any event would be inconsequential in view of the United States Supreme Court's approval of statutes fixing the minimum age qualification for jurors at 25.

Carter v. Jury Commission, supra at 333.

Respondent submits that appellant has failed to make a prima facie showing that either the particular grand jury that indicted him, or the particular petit jury that tried him, was selected in a purposefully, systematically discriminatory manner.

2025 RELEASE UNDER E.O. 14176

People v. Newton, supra, 8 Cal. App. 3d 359, 388-91.

See also People v. Evans, 16 Cal. App. 3d 510, 519;

People v. Lynch, 14 Cal. App. 3d 602, 605;

People v. Superior Court, supra, 13 Cal. App. 3d 672, 681;

People v. Gibbs, supra, 12 Cal. App. 3d 526, 538-39;

People v. Cohen, 12 Cal. App. 3d 298, 306-12;

People v. Conley, 268 Cal. App. 2d 47, 59-60;

Zelechower v. Younger, 424 F.2d 1256, 1258-59 (9th Cir 1970).

If anything, the record establishes the absence of unconstitutional discrimination in the system of grand and petit jury selection in Los Angeles County. The indicated testimony even reflects affirmative efforts to obtain jurors from minority groups.

Cf. Cassell v. Texas, supra, 339 U.S. 282, 289-90;

Smith v. Texas, 311 U.S. 128, 131-32.

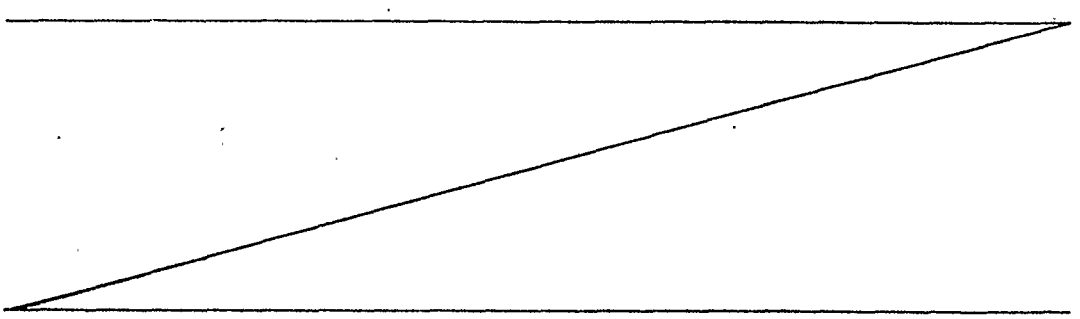
Even were appellant able to establish the existence of a pattern of disparities of a socio-economic and racial nature between selected jurors

2025 RELEASE UNDER E.O. 14176

and the general population, his attack on the methods and results of the selection processes would fail in the absence of any proof of purposeful, systematic exclusion.

As this Court held in People v. Schader, 71 Cal. 2d 761:

> "We cannot accept defendant's contention that he suffered violation of his Sixth Amendment right to be tried by a jury of his peers in that members of the jury panel came predominantly from 'high social, economic and educational strata of society.' . . . [Defendant] does not show that the composition of the panel resulted from 'intentional, systematic discrimination against persons of defendant's . . . economic status. . . .' (People v. Carter (1961) 56 Cal.2d 549, 569 . . . .)" Id., 784.



2025 RELEASE UNDER E.O. 14176

VI

APPELLANT WAS NOT DEPRIVED OF A FAIR TRIAL BY THE TRIAL COURT'S REFUSAL TO HOLD AN EVIDENTIARY HEARING ON THE ISSUE WHETHER THE EXCLUSION OF JURORS OPPOSED TO CAPITAL PUNISHMENT RESULTS IN AN UNREPRESENTATIVE JURY AT THE GUILT PHASE

Appellant contends that

> "the trial court's refusal to hold an evidentiary hearing and allow the testimony of Dr. Hans Zeisel, Professor of Law and Sociology, University of Chicago School of Law, in order to present evidence on whether 'the exclusion of jurors opposed to capital punishment results in an unrepresentative jury on the issue of guilt or substantially increases the risk of conviction,' deprived appellant of due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution." (App. Op. Br. p. 539; see Rep. Tr. p. 8969.)

The United States Supreme Court rejected this argument in Witherspoon v. Illinois, 391 U.S. 510, holding,

2025 RELEASE UNDER E.O. 14176

"We simply cannot conclude, either on the basis of the record now before us or as a matter of judicial notice, that the exclusion of jurors opposed to capital punishment results in an unrepresentative jury on the issue of guilt or substantially increases the risk of conviction. . . ."

Id., 517-18.

The court did, however, leave open the possibility that such a showing might be made in some future case. Id., 520(n.18).

This Court, subsequent to Witherspoon and several months prior to appellant's trial, denied the petitioners' motion for an evidentiary hearing regarding the foregoing claim in In re Anderson, supra, 69 Cal. 2d 613, noting that the pending studies were of a "'sociological or psychological nature'" and that therefore the "'prospect is remote'" that pending studies "'will yield views of human behavior of such incontestable, eternal truth that existing constitutional doctrines will have to retreat before them. Such studies hold too little promise to warrant what would amount to an indeterminate stay of the judicial process in a critical area.'" Id., 621.

2025 RELEASE UNDER E.O. 14176