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CALIFORNIA COURT, IN 6-1 VOTE, BARS DEATH SENTENCES

Holds Penalty Is Cruel and Unusual—Bases View on the State Constitution

NYTimes

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Special to The New York Times

SAN FRANCISCO, Feb. 18—
Capital punishment was de-
clared unconstitutional today
in the State of California.

In a historic 6-to-1 vote, the
state's Supreme Court ruled
the death penalty illegal, say-
ing that it constituted cruel
and unusual punishment.

"It degrades and dehuman-
izes all who participate in its
processes," the court said. "It
is unnecessary to any legiti-
mate goal of the state and is
incompatible with the dignity
of man and the judicial proc-
ess."

The court ordered that in
all cases where the death pen-
alty had been imposed but not
carried out the punishment be
changed to life imprisonment.

Today's decision was based
on the court's interpretation of
the state constitution and thus
removes any chance for appeal.

The ruling was made in the
case of Robert Page Anderson,
who had been convicted of
murder, attempted murder and
first-degree robbery.

107 Under Sentence

In the state, 107 persons are
under sentence of death—102
men at San Quentin Prison and
five women at the women's
prison at Frontera in southern
California.

On San Quentin's death row
are Sirhan B. Sirhan, the con-
victed assassin of Senator Rob-
ert F. Kennedy; John Linley
Frazier, convicted mass mur-
derer, and Charles M. Manson,
the hippie cult leader.

The landmark decision inter-
prets a section of the Cali-
fornia Constitution that pro-
hibits "cruel or unusual" pun-

ishment and refrains from con-
sidering the Eighth Amendment
to the United States Constitu-
tion, which prohibits "cruel
and unusual" punishment.

The question, the court said,
is whether the death penalty
when judged by contemporary
standards is cruel or has be-
come an unusual punishment.
It found the death penalty to
be both.

The lone dissenter, Justice
Marshall F. McComb, said that
he believed the death penalty
was a deterrent to crime, and
that swift justice, including
execution, would help to deter
the rising crime rate.

In the majority opinion, writ-
ten by Chief Justice Donald R.
Wright, the court said:

"Our conclusion that the
death penalty may no longer
be exacted in California con-
sistently with Article 1, Section

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6, of our Constitution is not
grounded in sympathy for
those who would commit
crimes of violence but in con-
cern for the society that dimin-
ishes itself whenever it takes
the life of one of its members."

Today's ruling was based on
a suit filed by the N.A.A.C.P.
Legal Defense and Educational
Fund, Inc., and the American
Civil Liberties Union. It touched
off a sharp controversy across
the state. Gov. Ronald Reagan
who said that he was deeply
disappointed, led the criticism.

Attorney Hails Ruling

"It's a case of the courts set-
ting themselves up above the
people and the Legislature," the
Governor said.

Anthony G. Amsterdam, a
professor of law at Stanford
University and the attorney
who argued the case before the
court here early last January,
hailed the decision.

"It is very heartening," he
said, "that in this day when the
rhetoric of violence and the

rhetoric of law and order are
abused on all sides that the
California Supreme Court
should have had the courage
to see its obligation under the
Constitution to enforce this
most basic guarantee of civil-
ized society by putting an end
to capital punishment, which
epitomizes man's inhumanity
to man."

Mr. Amsterdam also argued
against capital punishment be-
fore the Supreme Court of the
United States last month.

There has not been an execu-
tion in the United States for
more than four years. And just
last month, the New Jersey
State Supreme Court also
struck down the death penalty.

Across the country, some 690
men and women at various
prisons are under death sen-
tence. But today's ruling af-
fects only those in California.

In the last 79 years, Califor-
nia has executed 502 persons,
308 by hanging and 194 by gas.
Four were women.

Ten state legislatures have
struck down capital punish-
ment. In one of them, West
Virginia, the upper house of the

Legislature voted last week to
reinststate it.

Miss Davis Seeks Bail

SAN FRANCISCO, Feb. 18
(AP)—An attorney for Angela
Davis said today that her de-
fense would ask immediately
that she be freed on bail.

The attorney, Doris Brin
Walker, said, "In our opinion,
he decision removes the single
obstacle to setting bail in his
case."

Mis Davis is charged with
murder, kidnapping and con-
spiracy in the Aug. 7, 1970,
escape attempt at the Marin
County Civic Center in which
four died. She has been held
without bail since her arrest in
October, 1970.

Defense Fund Cheered

The N.A.A.C.P. Legal Defense
and Educational Fund, Inc., said
that yesterday's decision was
"one of the most encouraging
to occur" in the group's five-
year battle to abolish capital
punishment.

"We will carry on our cam-
paign in othe rstates to pre-
vent executions," said James
M. Nabrit 3d, associate counsel
of the fund, in a news confer-
ence at the group's office at 10
Columbia Circle.



United Press International

ATTACKS RULING ON DEATH PENALTY: Gov. Ronald Reagan talking with newsmen after a state court ruled that capital punishment was unconstitutional in California. He charged that the courts had set themselves "above the people and the legislature."