



California's Three Strikes Law: 15 Years of Controversy

National Public Radio

Washington, D.C.

Ina Jaffe, *Correspondent* Amy Walters, *Producer* Philip Bruce, *Editor*

COMMITTEE COMMENTARY

"California's Three Strikes Law: 15 Years of Controversy" is a thought-provoking three-part series that aired on NPR's *All Things Considered* in October 2009. With a total running time of just 20 minutes, the series remarkably manages to be at once thorough and concise. Born of a movement instigated by the murder of teenager Kimber Reynolds by a repeat criminal offender, in 1994 California enacted the three-strikes law by initiative. Initiatives are a means by which proposed laws are submitted directly to voters. The California three-strikes law ensures that repeat felons pay a heavy price when they commit a third offense—a sentence of 25 years to life imprisonment. Unlike other states with similar laws, in California the third strike can be any felony, even petty theft. This not so well known fact is a principal focus of the NPR series. Through profiles of anguished family members of both victims of crime and offenders, correspondent Ina Jaffe gauges the impact of the law over the past 15 years. She talks to two prosecutors with starkly different views on the law and how it should be enforced, allowing them to each make their case. At issue is whether equal justice is served when the law's application can vary from one county to another. Jaffe also interviews legal experts for their perspectives on the law. In addition, the series features a clip from Governor Arnold Schwarzenegger, whose efforts were instrumental in defeating an effort to amend "three strikes" in 2004. As a result of this balanced and informative series, listeners will come away with a fuller and more nuanced understanding of California's three-strikes law and the powerful role that initiative plays in forming public policy in the state.



INTERVIEW with Ina Jaffe

Ina Jaffe, correspondent for "California's Three Strikes Law," has been a California-based reporter for NPR since 1988. In recent years she has focused primarily on politics. Because of the wide range of subjects legislated by initiative, covering politics in California has meant covering most of the major issues facing this state. That has included the three strikes law and the unsuccessful effort in 2004 to amend it.

Where did the initial idea for "California's Three Strikes Law" come from?

The most controversial part of the three strikes law remains the thousands of people who are sentenced to 25 years to life for minor, nonviolent crimes. I'd long been aware of some attorneys' efforts to win the release of some of these prisoners and learned that recently some had been successful. I'd hoped to do a story or stories looking at these efforts in the fall or winter of 2009, but I had not yet settled on anything specific. So I spent the spring and summer having long background conversations with possible sources and doing other research in between my normal assignments. In late September, my editor and I learned that *All Things Considered* would be broadcasting from our West Coast production center in October. We decided this was an excellent opportunity to put a series of stories about an important California issue on our evening news magazine.

What resources were required to develop your series?

Once we'd made the decision to go ahead with the series, we had just three weeks to put it together, from conception to interviews, obtaining archival sound, writing, editing, and producing.

It would not have been possible for us to do this so quickly if I hadn't done so much background work the previous four months. The main resources required were human: long days, long weeks, lots of driving.

How do you think your series treats or offers insights or perspectives on legal issues and legal institutions? How does it do so in ways not previously addressed?

It's not uncommon to see stories about the impact of the law on the lives of ordinary people. The three strikes stories also show the impact that individuals can have in shaping the law. For example, California's three strikes law came into being because of one man's personal tragedy. Also, the way the law is applied varies widely, depending upon the individual beliefs of county district attorneys. The stories also show the unbreakable bond between the law and politics. California's three strikes law is one of many affecting the criminal justice system to be passed by the voters and it was the voters who rejected efforts to amend it.

How does “California’s Three Strikes Law” foster public understanding?

This series continually raises the issue of the punishment fitting the crime. Though “three strikes” is commonly viewed as a way to protect society from “monsters,” such as men who rape and murder children, the general public is less aware that the law also puts away thousands of petty criminals. At a time when California’s prisons are so crowded that a federal court has ordered a substantial reduction in the inmate population, it’s important for the public to reexamine who they want to keep locked up and why.

What does winning the Silver Gavel Award from the ABA mean to you?

It is humbling that the ABA has honored a series of stories that focus on something that’s no longer the “hot” issue but still a major force in our state’s criminal justice system. Hopefully, this attention will inspire public dialogue—in California and across the nation—about the issues raised in these stories.

EXCERPT

Today, a tale of two counties, as told by NPR’s Ina Jaffe.

INA JAFFE: Kern County, in California’s Central Valley, is known for agriculture, oil wells and country music. In legal circles, it’s also known as the county with the highest rate of prosecuting and sentencing people under the three-strikes law. In his Bakersfield office, District Attorney Ed Jagels says he’s proud of that record.

ED JAGELS (District Attorney, Kern County): Yeah, because I don’t know one of these individuals that has been sentenced as a three-striker who didn’t deserve the sentence. I don’t know one of these individuals who would not have re-offended in serious ways had he gotten a short sentence instead of a longer one.

JAFFE: Jagels complains that the national media lie when they report on California’s three-strikes law. They single out cases where the third strike was a nonviolent crime, but they never look at the whole record, he says.

Mr. JAGELS: It could be an auto theft. But if the individual has previously been convicted of, let’s say, a rape, an assault with a deadly weapon with great bodily injury, it seems to me if he hasn’t learned his lesson and we catch him for an auto theft, he needs that severe penalty of 25 to life.

JAFFE: Local media was fixated on what’s come to be known as the doughnut case. Robert Fassbender was arrested for stealing a pack of doughnuts worth about a dollar. He’s not a model citizen. He’s been in and out of jail, mainly for petty crimes. But back in the 1970s, Fassbender had two convictions—two strikes—for robbery, so he found himself facing 25 years to life for the doughnuts. Shortly before trial, the charges were dropped, but not because the Kern County D.A. had any second thoughts about the case.

JAGELS: It was dropped because based on changed witness testimony, it wasn’t certain that he was guilty. Had he been guilty, it would’ve been a perfectly appropriate sentence. The guy had a horrendous criminal record. He was the perfect candidate for the three-strikes statute. ...

JAFFE: Bernice Cubie is one of about 3,000 California prison inmates serving 25 to life for nonviolent crimes. But it’s highly unlikely that Cubie—or the doughnut guy—would have been prosecuted as third strikers just 100 miles south, in Los Angeles County.

STEVE COOLEY (Los Angeles County District Attorney): Because 25-to-life is the same sentence we give to first degree murderers.

JAFFE: Says Los Angeles County D.A. Steve Cooley.

COOLEY: And to give that to someone who committed a petty theft, or a two-bit forgery, just seemed disproportionate.

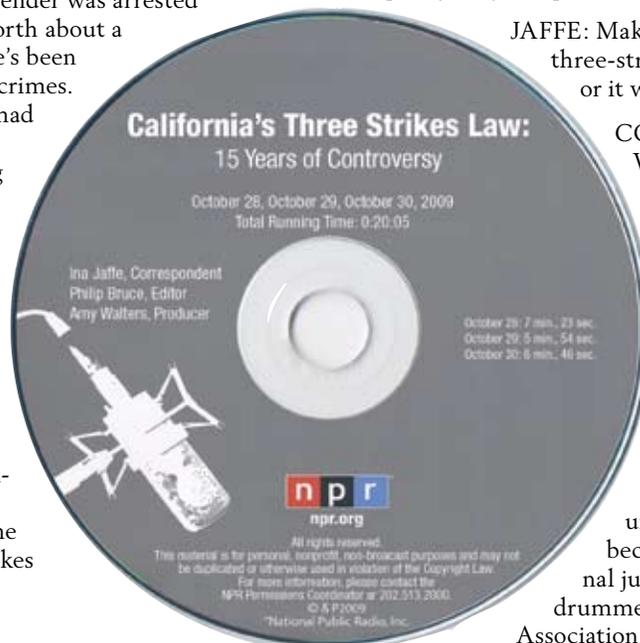
JAFFE: The three-strikes law allows prosecutors to disregard some prior offenses. Cooley takes full advantage of that. He almost never charges a nonviolent offense as a third strike. Cooley says it’s almost as if there were different laws in different counties.

COOLEY: The three-strikes law is probably not being evenhandedly applied because different prosecutors for different reasons—some ideological and otherwise—are coming up with their own policies—or in some cases, they don’t want to have a policy they can point to. We’re doing it right here.

JAFFE: Make no mistake, Cooley supports the three-strikes law. He just thinks it needs reform or it won’t last.

COOLEY: That’s how you lose good laws. When you disproportionately apply them, someone will take it away from you. Either the public will take that powerful tool away, the legislature might do it, or the courts might do it. And as a matter of fact, the Supreme Court voted 5 to 4 to uphold our three-strikes law. So four justices of the Supreme Court weren’t real happy with how the three-strikes law is being applied in California.

JAFFE: But the three-strikes law is unlikely to be changed anytime soon. It’s become such an icon in California’s criminal justice system that Steve Cooley was drummed out of the State District Attorney’s Association for trying to reform it.



For more information and to listen to “California’s Three Strikes Law,” go to www.npr.org/templates/story/story.php?storyId=114219922&ps=rs