IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. JOSHUA MARTIN MIRACLE, Defendant and Appellant.	**CAPITAL CASE** No. S140894

Santa Barbara County Superior Court No. 1200303
The Honorable Brian E. Hill, Judge

BRIEF OF *AMICUS CURIAE* CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE ON BEHALF OF DEFENDANT AND APPELLANT JOSHUA MARTIN MIRACLE (RULE 8.520(f)(1))

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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	)	
vs.	)	
	)	
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TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE PRESIDING, AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

I. THE COURT SHOULD FIND THAT PENAL CODE SECTION 1018 IS CONSTITUTIONALLY VALID LEGISLATION.

A. Introduction[1]

CACJ has sought permission to appear as an *amicus curiae* here in part because of the potentially wide-ranging implications of a ruling holding that California Penal Code Section 1018 is unconstitutional. Respondent argues in its Supplemental Brief that 1018 undermines the constitutional right of self-representation, and compromises what Respondent contends is the prerogative that resides with the accused to direct his defense within the meaning of *McCoy v. Louisiana* (2018) __ U.S. __; 138 S.Ct. 5100 (hereafter, *McCoy*).

As demonstrated in the briefing from the parties, nuanced questions about what prerogative is accorded the accused in a potential death penalty case and what decisions are reserved exclusively for that accused are both matters that this Court has periodically considered. (Respondent's Supplemental Brief at pages 16-18.) In varying ways in its

[1] The undersigned, John T. Philipsborn, as Vice-Chair of the *Amicus Curiae* Committee of CACJ and counsel of record for CACJ in this case, certifies to this Court pursuant to the dictates of Rule 8.520(f)(4) that no party or counsel for a party in the pending appeal authored any part of this proposed *amicus* brief. In addition, the undersigned certifies that no party or person other than the undersigned, or *amicus curiae* and its members or counsel, has contributed any monies, services, or other form of consideration to assist in the preparation or submission of this brief.

Supplemental Brief, Respondent describes around 18 decisions on courses of conduct that have been reserved or accorded to the accused in death penalty cases decided by the Court. (Respondent's Brief at pp.16-19.) Respondent has urged this Court to find that Penal Code Section 1018 is unconstitutional, and that any death judgment that may result from adhering to it would be 'unreliable' because any individual seeking to enter a guilty plea to a capital offense in California courts is required to have counsel of record (not just an advisory or standby counsel) who consents to the entry of the plea, thus constraining the defendant's ability to forego defense counsel and choose the penalty trial approach he or she prefers. But Respondent has not demonstrated that 1018 is invalid.[2]

CACJ submits that the arguments from Appellant, and those offered here, demonstrate that Penal Code Section 1018 is valid and constitutional legislation. It should be upheld.

B. This Court Has Previously Considered and Ruled on the Argument(s) Made by Respondent.

Not surprisingly, Respondent's Supplemental Brief does not dwell on this Court's ruling in *People v. Massie* (1985) 40 Cal.3d 620, or the discussions therein of the Court's consideration, in context, of the provisions and implications of Penal Code Section 1018.

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[2] In view of the contents of the Court's September 26, 2018 Order, CACJ understands that the Court does not view access to 'advisory counsel' or standby counsel as the equivalent of representation by counsel of record.

Nor does Respondent discuss this Court's reasoning for upholding Section 1018 set forth in a number of cases up through the recent ruling in *People v. Daniels* (2017) 3 Cal.5th 961. The record in *Daniels*, explained at length in the Court's plurality opinion, shows that in California an individual can take action that forecloses a lengthy first degree murder trial and can proceed with a highly abbreviated penalty proceeding (if that individual competently and fully waives various rights) so long as waivers of the penalty jury trial right are correctly and sufficiently entered. *Daniels* and the lengthy proceedings discussed in *Deere v. Cullen* (9th Cir., 2013) 718 F.3d 1124, demonstrate that California's death penalty related court procedures do not impair the defendant's personal decision to plead guilty where the trial and reviewing courts have a sufficient record of competent, coherent, knowing, voluntary, and intelligent waivers that lawyers in this State have assisted clients in entering in potential death penalty cases.

Respondent offers no new arguments here to invalidate this Court's previous controlling rulings. In *Massie* specifically, the Court reiterated points that it had made in other decisions, notably in *People v. Chadd* (1981) 28 Cal.3d 739, and decisions that followed. In *Chadd*, the Court emphasized that in applying 1018, it was engaging in the application of the plain meaning of a California statute. In response to the State's argument (in *Chadd*) that 1018 is unconstitutional because it would allow, in effect, a defense lawyer to 'veto' a capital defendant's decision to plead guilty, the Court observed unequivocally: "The Attorney General appears to concede that in capital cases

a state could constitutionally prohibit guilty pleas altogether and insist that the prosecution prove every such charge to the satisfaction of the trier of fact." *Id.*, at 747-48.

Indeed, later in its analysis in *Chadd* (as repeated in 1985 in *Massie*), this Court recognized that the states can, as part of their procedural law, regulate the entry of pleas in criminal cases. This was a point made unequivocally by the United States Supreme Court: "The States in their wisdom may take this course by statute [of permitting certain forms of plea to be entered] or otherwise and may prohibit the practice of accepting pleas for lesser included offenses under any circumstances." *North Carolina v. Alford* (1970) 400 U.S. 25, 39. *Alford* still is good law.

In *Chadd*, this Court made reference to the ruling by the Ninth Circuit in *Massie v. Sumner* (9th Cir., 1980) 624 F.2d 72, *cert. denied* (1981) 101 S.Ct. 899. In that iteration of the *Massie* litigations and rulings, all of which relate to California, the Ninth Circuit analyzed Massie's rights in the aftermath of the United States Supreme Court's decision in *Faretta v. California* (1975) 422 U.S. 806. This Court noted in *Chadd*, at 28 Cal.3d at 752-54, that in its *Massie* decision, the Ninth Circuit had discussed the various interests that the State of California had in ensuring the propriety of guilty pleas in both capital and non-capital cases. In its 1980 *Massie* ruling Ninth Circuit observed that: "The state of California has a strong interest in the accuracy and fairness of all of its criminal proceedings; this interest is most pronounced in a case such as this where a

defendant pleaded guilty and was sentenced to death without the assistance of counsel." 642 F.2d, at 74. That interest persists today.

When the Court decided the 1985 iteration of Robert Massie's cases in *People v. Massie, supra*, 40 Cal.3d 620, the U.S. Supreme Court's ruling in *Faretta, supra*, had been controlling law for ten years. Penal Code Section 1018 had been amended in 1973 to require the consent of counsel of record when a guilty plea to a capital offense was being proposed, entered, and accepted. *Massie*, 40 Cal.3d, at 624-25.

In *Massie* (1985), this Court made reference to the decision that it had reached in *People v. Vaughn* (1973) 9 Cal.3d 321, under an older wording of Penal Code Section 1018 that mandated that no plea to a capital charge could be received from an accused who is not represented by counsel. In *Vaughn*, this Court observed among other things that the purpose of Penal Code Section 1018 (prior to its enactment in its present form) was to protect accuseds by ensuring that a guilty plea to a capital offense is both fully informed and is competently entered. *Id*., at 1327-28. Responding to the argument that the requirement that 1018 represented an unconstitutional infringement on the constitutional right of self-representation, the 1985 *Massie* court observed that in *Chadd*, the Court had "...rejected the Attorney General's alternative claim that if section 1018 could not be so construed [to allow the accused to plead guilty], it represented an unconstitutional infringement on the constitutional right of self-representation..." under *Faretta, supra*, 422 U.S. 806. *People v. Massie, supra*, 40 Cal.3d, at 624-25.

The Court reasoned in *Massie* that the accused's right to self-representation is not so entirely undermined by a rule restricting the right to enter a guilty plea in a capital case as to be unconstitutional. As the Court put it: "In short, we determined that *Faretta* did not affect the state's power to limit a capital defendant's right to plead guilty to situations in which his counsel advises such a move." *Ibid*.[3]

The U.S. Supreme Court's decision in the above-referenced *McCoy, supra*, 138 S.Ct. 1500 case does not change that landscape. Moreover, there are instances in which courts are confronted by individuals seeking to discharge counsel and represent themselves where the presence and involvement of counsel of record can clearly render more complete and reliable any judicial decision on whether the accused is competent to waive counsel or jury trial. See, for example, *People v. Shiga* (2016) 6 Cal.App.5th 22,

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[3] By CACJ's count, the California Attorney General has argued on at least five occasions that Penal Code Section 1018 is either not constitutionally valid or that the procedures used did not violate Penal Code Section 1018. The unconstitutionality arguments were made in *Chadd, supra*, and *Massie, supra.* In *People v. Quartermain*, Supreme Court Case No. S074429, the argument in Respondent's Brief was that even if submission of the case based on the transcripts of the first trial was tantamount to a guilt plea, it did not deprive the accused of the right to self-representation or violate Penal Code Section 1018. Respondent's Brief (in *Quartermain*, S074429), beginning at p.171. In *People v. Perez*, Supreme Court Case No. S236990, in the Petition for Review filed in this Court on September 1, 2016, the Attorney General raised the question of whether PC 1018 violates the right to self-representation where the defendant faced only life without parole and not death. The Court denied review on November 9, 2016. The Attorney General is also identified in an unpublished case, *People v. Williams*, 2017 WL 4875553 (Second District, 2017) as having argued that PC 1018 infringes on the right to self-representation in certain classes of cases. It does not appear that the courts involved in these matters, including this Court, have accepted the argument that PC 1018 as enacted in 1973 is not constitutionally valid.

reviewing a situation in which a trial court conducted an insufficient review of counsel waiver and self-representation claims in a non-capital case. The United States Supreme Court, and this Court, have announced considerations in *Edwards v. Indiana* (2008) 554 U.S. 164, and *People v. Johnson* (2012) 53 Cal.4th 519, that a trial court should take into account in addressing the 'gray area' accused who decides to waive the right to counsel to proceed *pro se* and seeks to be determined to be competent to represent himself.

Not infrequently, one of the issues raised where a person facing the death penalty seeks to dismiss counsel and move through proceedings quickly–or without mitigation–is whether that defendant is competent. Respondent's arguments undermine rather than promote the probability of a reliable penalty determination where the defendant may have mental impairments hard for the trial court to detect and that defendant seeks to enter a guilty plea to a capital offense and then aims to proceed without counsel into a penalty trial. Part of what CACJ hopes to offer the Court is not only some additional information about the duties of counsel surrounding the entry of a guilty plea that the Court may find useful as evidence of the way that the presence of counsel potentially enhances the reliability of proceedings that led to the guilt adjudication, but CACJ also argues here that a review of this Court's rulings in capital cases demonstrates that Penal Code 1018 does not impinge on the rights and prerogatives discussed by the United States Supreme Court in *McCoy*, *supra*.

C. The Court Should Consider Whether Respondent's Arguments on 1018 Undermine this Court's Prior Rulings on the Reasoning for the Existence of the Statute and Would Really Serve to Increase Rather than Risk Decreasing the Level of Constitutionally Required Reliability That must Attend a Death Penalty Proceeding and Outcome.

CACJ, and its membership, understands that in deciding *Faretta v. California, supra*, 422 U.S. 806, and cases that have followed it, the United States Supreme Court undertook to protect the autonomy of the individual seeking to defend him or her self against accusations of criminal conduct. The right to self-representation has been protected by the Constitution of the United States for some time. The Supreme Court explained that under Federal law the right to self-representation had been protected as of the enactment of the Judiciary Act of 1789. 422 U.S., at 813-14. In *Faretta*, the Court made reference to the notion of a 'consensus' that the legal tradition imported to the Colonies, and incorporated into the early laws of the United States "...always conceived of the right to counsel as an 'assistance' for the accused, to be used at his option. The Framers selected in the Sixth Amendment a form of words that necessarily implies the right of self-representation." 422 U.S., at 832-33.

As the *Faretta* court's analysis proceeded, however, the United States Supreme Court made it clear that: "There can be no blinking the fact that the right of an accused to conduct his own defense seems to cut across the grain of this Court's decisions, holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been afforded the right to the assistance of counsel. [Citations omitted.] For it is

surely true that the basic thesis of those decisions is that the help of a lawyer is essential to assure the defendant a fair trial." *Id.*, at 833-34.

Worthy of consideration, given the subject of the discussion here, is the fact that Anthony Faretta had been charged with grand theft in California court, and that in his initial statement to the trial court, his concern was about being represented by the Los Angeles County Public Defender who, according to Faretta, had a heavy case load. *Id.*, at 808-09. *Faretta* did not involve a death penalty case. Rather, in the end, the *Faretta* court explained that by requiring that Faretta have a lawyer represent him under the circumstances, "...the California courts deprived him of his constitutional right to conduct his own defense." *Id.*, at 836.

This Court has applied *Faretta* since it was decided. But even in view of the pronouncements of the United States Supreme Court just quoted, as explained above this Court has upheld the contents of Penal Code Section 1018 since 1973 in several different rulings. The question now is whether Respondent is correct that *McCoy v. Louisiana, supra*, 138 S.Ct. 1500, changes the calculus.

McCoy went to trial in a capital case with retained counsel. This was a lawyer who was not relieved of his duties as counsel of record for trial, notwithstanding McCoy's complaints about an evident conflict over McCoy's claim of innocence, where counsel believed that admitting guilt was a necessity to avoid the death penalty. *Id.*, at 1506. The issue framed in *McCoy* is not whether a state errs by insisting that the accused

go to trial with a lawyer with whom he has a conflict over trial strategy. Rather, *McCoy* narrowly determined that 'autonomy to decide the objective of the defense' is the right of the accused when claiming innocence, even where the death penalty is a potential outcome. *Id.*, at 1508-09. *McCoy* has a clear explanation of the contours of its reach: "Preserving for the defendant the ability to decide whether to maintain his innocence should not displace counsel's, or the court's, respective trial management roles." *Id.*, at 1508-09. The Supreme Court reiterated that trial management, including what objections to make and what witnesses to call, as well as the development of trial strategy, still resides with the lawyer who has the obligation to discuss trial strategy with the client. *Id.*, at 1509, *relying in part on Florida v. Nixon* (2004) 543 U.S. 175, 178.

Importantly, for this Court's purposes in revisiting California's interests in maintaining Penal Code Section 1018 as part of California law, the Court should note that one of the issues not present on the face of the record of *McCoy* was a question about the latter's competence to stand trial, or ability to represent himself. *Id.*, at 1509, *relying in part on Godinez v. Moran* (1993) 509 U.S. 389, 396; *Dusky v. United States* (1960) 362 U.S. 402. The Supreme Court observed that "the court had determined that McCoy was competent to stand trial...," citing *Godinez, supra*. *McCoy*, 138 S.Ct., at 1509.

This Court's briefing Order of September 26, 2018, poses interconnected questions: does a statute requiring representation and consent by counsel of record for

the entry of a plea of guilty to a death penalty eligible offense violate the Sixth Amendment right to self-representation in view of the constitutional requirement of reliability in a death penalty judgment under case law that includes *Woodson v. North Carolina* (1976) 428 U.S. 280? The accused who goes to trial in a capital case and who proceeds to a penalty determination is in a proceeding in which the sentencing court or jurors are asked to consider and decide "...[the] character and record of the individual offender and the circumstances of the particular offense." *Woodson, supra*, 428 U.S. 280. The circumstances of the offense based on the fact that the accused has been found guilty of a death eligible offense is, by definition, a predicate for a valid and reliable death penalty. California Penal Code section 190.3(a) makes it clear that in deciding penalty, jurors "shall ... if relevant," take into consideration: "The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1." Penal Code section 190.3(a). For obvious reasons, explained further below, if a California court accepts a guilty plea in a death eligible case, there is a state interest in ensuring that the plea and any factual admissions that may both become part of the death penalty calculus is the product of a voluntary, knowing, intelligent, and competently entered admission. Indeed, the defendant's very admission of his guilt of the capital offense may be the most compelling evidence in aggravation against him.

The United States Supreme Court has made it clear, with respect to the requirement of 'heightened reliability' that: "...the Constitution places special constraints on the procedures used to convict an accused of a capital offense and sentence him to death. The finality of the death penalty requires a 'greater degree of reliability' when it is imposed." *Murray v. Giarratano* (1989) 492 U.S. 1, 8-9; *accord Monge v. California* (1998) 524 U.S. 721, 732, referencing an "...acute need for reliability in capital sentencing proceedings." The U.S. Supreme Court has also emphasized, in another California-based decision, that a death penalty determination "...is an individualized determination on the basis of the character of the individual and the circumstances of the crime." *Tuilaepa v. California* (1994) 512 U.S. 967, 972.

It is clear that California's procedural laws can regulate capital proceedings so long as these do not violate either the Due Process clause or some other constitutional principles. *Green v. Georgia* (1979) 442 U.S. 95, 97; *Chambers v. Mississippi* (1973) 410 U.S. 284, 302. As explained above, reliability is often viewed as an Eighth Amendment issue in death penalty cases, but Federal courts explain it as both an Eighth Amendment and Fifth Amendment Due Process concern. A conviction, whether capital or non-capital, which is the product of misinformation "whether caused by carelessness or design is inconsistent with due process of law, and such a conviction cannot stand." *Townsend v. Burke* (1948) 334 U.S. 736, 741. See also, Rehnquist, J., concurring in the judgment in *Zant v. Stephens* (1983) 462 U.S. 862, 903.

Whether the California Legislature sought to avoid capital offense guilty pleas rooted in misinformation, or guilty pleas by individuals whose legal competency is in question, the requirement of counsel who evidences consent for a client's capital charge guilty plea is a rational cautionary requirement that California can impose.

Drilling down into the inter-relationship between the Sixth Amendment and a claim of error in a capital case, the *McCoy*, *supra*, 138 S.Ct. 1500, Supreme Court noted that deprivations of the right to self-representation are essentially structural–and these are not subject to the harmless error analysis of other sorts of errors. Yet the Court also pointed out that a structural error is one that "...will inevitably signal fundamental unfairness...." *Id.*, at 1511. Errors by trial courts involving the attempted entry of waivers of counsel by accuseds who misunderstand the proceedings or are not fully informed of the basis for the waiver, and entries of guilty pleas by individuals who misunderstand the consequences of their admissions or are not competent to do so, are structural errors–profound errors that may implicate both the Fifth and Sixth Amendments where and when they occur. This is part of the reason for the importance of the reference to *Godinez, supra*, 509 U.S. 389, in *McCoy*.

In *Godinez*, the accused was charged with three counts of first degree murder, and once in court proceedings, he sought to discharge his lawyers and plead guilty. *Id.*, at 392-93. The United States Supreme Court used the case to determine that the competence required of the accused who decides to plead guilty is not legally different

from the competence to waive the right to counsel. Importantly for the current discussion, the Court then explained:

> A finding that a defendant is competent to stand trial, however, is not all that is necessary before he may be permitted to plead guilty or waive his right to counsel. In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary. [Citations omitted.] In this sense there is a 'heightened' standard for pleading guilty and for waiving the right to counsel, but it is not a heightened standard of *competence*.

Id., at 400-01. [Emphasis in original.]

In his concurring opinion in *Godinez*, Justice Kennedy points out a matter that this Court has recognized in varying ways in its rulings: "It is true, of course, that if a defendant stands trial instead of pleading guilty, there will be more occasions for the trial court to observe the condition of the defendant to determine his mental competence." *Id.*, at 408-09. In *Medina v. California* (1992) 505 U.S. 437, 450-51, borrowing an observation from this Court, the United States Supreme Court noted that "...defense counsel will often have the best-informed view of the defendant's ability to participate in his own defense." Before that, in *People v. Medina* (1990) 51 Cal.3d 870, 885-86, this Court stated:

> [O]ne might reasonably expect that the defendant and his counsel would have better access than the [prosecution] to the facts relevant to the court's competency inquiry. Indeed, this analysis affords a satisfactory answer to [citations] concerns about the defendant's possible inability to

> cooperate with counsel in establishing his incompetence: counsel can readily attest to such defect or disability.

A trial court is under no obligation to permit self-representation by an accused who "...lacks the mental capacity to conduct his defense without the assistance of counsel." *Indiana v. Edwards, supra,* 554 U.S. 164, 176-77, *relying on McKaskle v. Wiggins* (1984) 465 U.S. 168, 176-77.

This Court discussed the ruling in *Indiana v. Edwards* when it decided *People v. Johnson* (2012) 53 Cal.4th 519, reviewing at some length the approach that will need to be used where courts have concerns–or indeed, where concerns are raised–about an accused's ability for self-representation or waiver of the right to counsel.[4]

Respondent cites this Court to *People v. Deere* (1985) 41 Cal.3d 353, as an example of a case in which the accused was permitted to waive jury trial in a capital case. (Respondent's Brief, at p.18.) More importantly in terms of the interests at issue now, the *Deere* case was a lengthy saga, punctuated by litigations before this Court and

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[4] CACJ respectfully notes that on more than one occasion, members of its *Amicus Curiae* Committee, including in past years the Chairs of the Committee, have been approached by lawyers in California seeking advice and/or independent counsel to address the competence of their clients to waive the right to counsel and to proceed *in pro se* in both capital and non-capital cases. These question persist, as demonstrated by recent and ongoing litigation. Without waiving privileges that can rightly be claimed by various counsel in the matter, CACJ notes that one recent example of this participation occurred in an ongoing case in Stanislaus County, *People v. Jauriqui*, Stanislaus County No. 1456524, a potential capital case in which counsel of record sought assistance, resulting in the appointment of a former CACJ President and a current member of the *Amicus Curiae* Committee to assist in addressing waiver of counsel issues in a pending capital case.

at least two considerations by the Ninth Circuit related to the convictions and the death sentence. A review of one of the last of the rulings in that case, *Deere v. Cullen* (9th Cir., 2013) 718 F.3d 1124, confirms that this Court's rulings of the constitutional validity of both Deere's competence to plead guilty (and waive jury) and to stand trial were upheld by the Ninth Circuit. *Id*., at 1144. A review of the record of the *Deere* litigation before the Federal District Court in the Central District and before the Ninth Circuit (as well as before this Court) reveals that: "Although Deere's psychiatric diagnosis is a medical question, his competence to plead guilty is a legal one that judges and lawyers deal with all the time. Deere and [his lawyer] conferred for countless hours before the plea was entered. It was apparent to [the lawyer] that Deere understood the proceedings and his various options but wanted to plead guilty for the reasons already stated...." *Id.*, at 1146. Part of the basis for upholding the processes used was clearly adherence to Section 1018 and the effects of the presence of a counsel of record.

A somewhat similar situation was addressed by this Court in *People v. Mai* (2013) 57 Cal.4th 986, yet another capital case in which this Court observed that: "...California has recognized limited circumstances in which, as a matter of fundamental public policy, rights and decisions that are normally personal to a criminal defendant may be limited or overruled in the service of death penalty reliability." *Id.*, at 1054. Unlike the situation in *McCoy, supra*, the *Mai* case was one in which (as in *Deere, supra*) the defendant was not claiming actual innocence. Viewing the totality of the record, this Court concluded in

Mai that there was a valid strategy employed by counsel in agreeing to what amounted to a 'slow plea' that would allow legal questions about the nature of the capital murder to be framed for further litigation. *Id.*, at 1055-56. As the Court noted, in that instance the legal utility of the requirement of the assistance and consent of counsel arguably ensured that the State would be put to its burden of proof on important factual questions in a case in which the defendant would otherwise have eased the State's task by pursuing "his desire to commit state-assisted suicide." *Id.*, at 1054.

McCoy, supra, does not reach or address such a situation. Mai's case presents a useful example of the reasoning for the existence of California's prophylactic requirements of counsel for guilty pleas in capital cases. In the decision, this Court makes reference to the policy reasoning for the necessity for counsel at time of a guilty plea as well as for the requirement on appeal of any death penalty judgment regardless of the individual's preference to waive appeal. *Id.*, at 1175.

None of the arguments offered by Respondent provide a basis for this Court to reverse or vacate pertinent parts of its previous rulings to find that Penal Code Section 1018 as it exists is unconstitutional. Indeed, Respondent has provided this Court with a number of examples of cases in which defendants have been permitted to direct their responses to capital charges in ways that recognized their constitutionally protected autonomy while also providing basic protection of the State's interests in ensuring the integrity of penalty proceedings in capital cases.

The Court's opinion in *People v. Daniels* (2017) 3 Cal.5th 961, does little to undermine the constitutional validity of Penal Code Section 1018. In *Daniels*, the plurality found that even the defendant who seeks to provide only a minimal response to the State's penalty evidence can do so, as long as the trial court ensures that legally defensible waivers of rights are entered.

In *Daniels*, this Court observed–with the benefit of years of consideration of capital cases since the Supreme Court's ruling in *Faretta, supra*–that: "a societal interest in the integrity of the capital case process may at times outweigh a defendant's stated preferences in controlling his or her own case. For example, ... state law prevents any defendant from pleading guilty to capital charges without consent of counsel, in light of 'the state's strong interest in reducing the risk of mistaken judgments in capital cases and thereby maintaining the accuracy and fairness of its criminal proceedings.'" *Daniels*, at 1004, quoting from *People v. Alfaro* (2007) 41 Cal.4th 1277, 1300.

McCoy, supra, 138 S.Ct. 1500, is not a case in which the Supreme Court found that forcing the defendant to trial with a lawyer that he had sought to fire was the problem. Rather, the constitutionally framed problem there was that by conceding guilt when his client was claiming complete innocence, counsel had undermined his client's "...[a]utonomy to decide that the objective of the proceeding is to assert innocence...." *Id.*, at 1508. The Court made it clear that the Sixth Amendment's 'autonomy' preserves "for the defendant the ability to decide whether to maintain his innocence...." *Id.*, at

1508-09. By definition, *McCoy* addresses a situation in which the defendant is not going to be pleading guilty. *McCoy* teaches that where a competent client insists that he is innocent, a lawyer cannot override that position in an attempt to secure a life sentence. *McCoy* does not address a situation in which the defendant has decided to plead guilty to a potential death penalty crime, and the State's statutes require that the defendant be assisted by counsel of record through the entry of that guilty plea and consent to it.

Rulings from this Court demonstrate that those individuals with problematic mental issues histories and persons whose apparent interest was to facilitate the entry of a death verdict, have been able to navigate the process with Penal Code Section 1018 in effect. CACJ notes that other defendants whose mental condition issues were legally problematic or whose decision making was legally questionable at the time of the entry of a guilty plea have been the subject of judicial scrutiny facilitated by Penal Code Section 1018 and the presence of defense counsel of record to shed light on the problems presented. This Court should, given its history of rulings on the subject, uphold Penal Code Section 1018.

CONCLUSION

For the reasons stated here, this Court should uphold the constitutional validity of Penal Code Section 1018 and should reiterate the utility of trial courts engaging in a colloquy with counsel of record in capital cases in which the accused seeks to enter a guilty plea and counsel of record either consents to or fails to consent to the entry of the

plea. The more fulsome the factual record, the greater the opportunity for useful review by this and other courts.

Dated: October 8, 2018

Respectfully submitted,

Stephen K Dunkle, Chair
John T. Philipsborn, Vice Chair
CACJ Amicus Committee

/s/ John T. Philipsborn
JOHN T. PHILIPSBORN
State Bar No. 83944
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PROOF OF SERVICE

I, Melissa Stern, declare that:

I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within documents entitled:

BRIEF OF *AMICUS CURIAE* CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE ON BEHALF OF DEFENDANT AND APPELLANT JOSHUA MARTIN MIRACLE (RULE 8.520(f)(1))

(X) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, addressed as set forth below;

(X) By electronically transmitting a true copy thereof;

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Party	**Attorney**
Superior Court	Santa Barbara Superior Court 118 E. Figueroa Street Santa Barbara, CA 93101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 8th day of October, 2018, at San Francisco, California.

Signed: */s/ Melissa Stern*
Melissa Stern