



**CRIME VICTIMS UNITED
OF CALIFORNIA**
130 Maple St, Suite 300, Auburn, Ca 95603 (530)-885-9544

March 26, 2018

Honorable Tani Cantil-Sakauye, Chief Justice
and Associate Justices of the California Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: *In re Humphrey*, California Supreme Court Case No.: S247278
First Appellate District, Division Two Case No.: A152056
San Francisco County Superior Court Case No.: 17007715

Request for Depublication of District Court Opinion
California Rule of Court -- 8.1125(a)(1)

Dear Chief Justice and Associate Justices:

Crime Victims United Charitable Foundation (a.k.a. Crime Victims United of California), is requesting that this Honorable Court use its power to depublish, and therefore make uncitable as binding authority, the First Appellate District's opinion in the case of *In Re Humphrey*, Case No.: A152056. The case is docketed with this Court under Case No.: S247278.

The Crime Victims United Charitable Foundation provides direct assistance and support to victims of crime and their families, while helping to prevent future victims by working with children and youth and supporting law enforcement nationwide. CVUCF's supporters include crime victims and their families, victims' advocates, law enforcement organizations and others who are determined to reverse the trend of violence in our society and help heal the personal and societal wounds caused by violent crime. CVUCF is a non-profit, 501(c)3 public benefit corporation.

CVUCF's interest in the depublication of *Humphrey* arises out of our commitment to the physical and emotional safety of the victims of crime, both during and after the adjudication of any particular defendant. What is missing from the *Humphrey*

opinion, with its focus on the financial aspects of bail, is due consideration of the safety of the public, and in this case, the safety of a particularly vulnerable victim.

In considering whether to depublish *Humphrey*, and while this Court should review the entire record and not just the statement of facts in the opinion; but this Court should also consider what is missing from the opinion.

On page 43 of the slip opinion the District Court notes that the Attorney General failed to present arguments related to the necessity of balancing public safety against a defendant's right to "affordable" bail. The *Humphrey* panel declined to address this issue, as it was raised too late in the proceedings. (i.e., for the first time at oral argument)

This is not merely an oversight by an overworked attorney. Public safety is one of the many critical assessments that courts are required to make when adjudicating bail. In fact, Penal Code § 1275(a)(1) makes public safety the primary consideration.

Which is why this Court should not permit the Attorney General's dereliction of duty before the First Appellate District contribute to the canonization of caselaw that the *Humphrey* opinion itself admits will tax and strain judicial resources. If incomplete, or incompetent public safety arguments were made by the Attorney General, then the People of this State are victims of ineffective assistance of counsel. Unfortunately, the People of this state may have to settle for the expedient of depublication of this flawed decision, in lieu of a re-litigation of the matter.

Also missing? Any reference to the input of a victim when it comes to setting bail. Courts are required to conduct factual inquiries into the seriousness of the offense, including any alleged injuries to the victim when setting bail. Penal Code § 1275(a)(2). The practical effect of the *Humphrey* decision will be more elaborate and comprehensive hearings when setting bail. Previously these were streamlined hearings using locally generated bail schedules, police reports, and County-by-County pre-trial detention programs.

If a court must now put on a full evidentiary hearing relating to the financial means of a defendant when addressing bail amount, perhaps the public safety input to a bail decision should also be augmented by testimony from alleged victims. In the present case, no mention is made about whether the victim was contacted by the District Attorney's office or any kind of victim's advocate for input on bail. Nor does a review of case's minute orders indicate that the victim appeared at any bail hearing, or was even notified that bail was being considered. Why or why not? None of this is addressed by the *Humphrey* opinion.

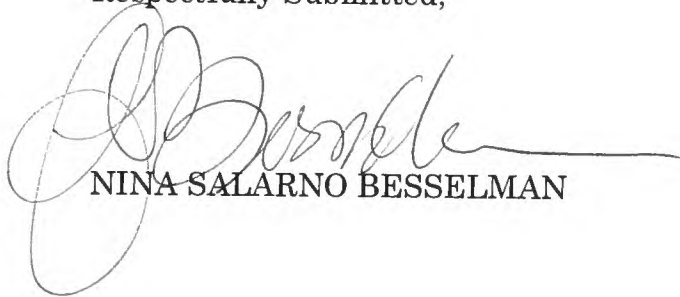
Also missing? Why was an extended pre-trial detention even necessary? Why was Mr. Humphrey's case plucked from the docket as a test case for affordable bail

public interest litigation? The opinion recounts that Mr. Humphrey was arrested after the police officer reviewed video surveillance tapes of the crime. How difficult can it be to authenticate a video tape, prepare a victim to testify and put the case before the jury? Both the defendant and the People are entitled to a speedy trial. *People v. Cole*, 33 Cal.4th 1158, 1188. If pre-trial detention is unjust because the defendant couldn't afford bail, then how unjust is pre-trial detention and violation of the right to a speedy trial, because your lawyer (and sympathetic government lawyers) want to use your case to make new law?

There are others¹ providing input on whether to depublish *In re Humphrey* on the merits or demerits of the public policy that the opinion focuses on: affordable bail. But the simple fact is, the case should be depublished because it was inadequately litigated by the California Attorney General's office, it fails to present the victim's point of view, and in the final analysis has the whiff of collusive litigation that opened the door to judicial activism in lieu of legislative remedies. The *Humphrey* opinion itself acknowledges that the issue of affordable bail is already on the to-do list of the California Legislature, where it belongs.

The opinion of the First Appellate District's opinion in the case of *In Re Humphrey*, Case No.: A152056 should be ordered depublished by this Honorable Court.

Respectfully Submitted,



NINA SALARNO BESSELMAN

¹ California District Attorneys Association, District Attorneys of Ventura and San Bernardino, The Golden State Bail Agents Association.

Proof of Service

Case Name: *In re Humphrey*,
Courts: California Supreme Court Case No.: S247278
First Appellate District, Division Two Case No.: A152056
San Francisco County Superior Court Case No.: 17007715

Document: **Request for Depublication of District Court Opinion**
California Rule of Court -- 8.1125(a)(1)

I, Nina Salarno, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding; that my business address is: 11400 Atwood Road, Auburn, CA 95603.

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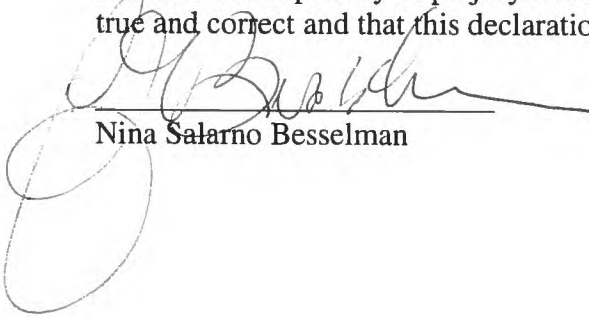
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 26, 2018, at Auburn, California.



Nina Salarno Besselman

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HUMPHREY (KENNETH) ON H.C.**

Case Number: **S247278**

Lower Court Case Number: **A152056**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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--

Date

/s/Nina Besselman

Signature

Besselman, Nina (160749)

Last Name, First Name (PNum)

Law Office of Nina Salarno Besselman

Law Firm