



## Episode 2: America, Fast Forward

More than any other state, California is obsessed with ballot initiatives. Jenna tells the story of one of the state's most notorious initiatives, the Three Strikes proposition, as well as the campaigns to reform and repeal it. All of which were fought with ballot initiatives.

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Jenna Spinelle: A quick heads up. This episode contains some disturbing stories of child abduction and violence. If this episode isn't for you, we'll see you next week.

Spinelle: For me, 1993 was peak childhood. I was seven and things were just really carefree. I grew up in Pottsville, Pennsylvania, a town of about 13,000. My friends and I would regularly walk from my house to the corner store for candy. It was about a 15-minute walk and we never thought anything of it. Then I started hearing about stranger danger in school. A police officer came and spoke to our class. He told us to be careful about talking to anyone we didn't know and never get in a car we didn't recognize. All the talk about being afraid of strangers really affected me so much so that whenever my mom would run into the grocery store, I would duck under the seat of her car to make sure I was out of sight. I was so scared that someone might come and kidnap me out of the car. And that's when I first heard about Polly Klaas.

News Clip: In Northern California, a major break in the search for 12-year-old Polly Klaas, the Petaluma girl abducted from a slumber party two months ago.

Spinelle: Polly's kidnapping shook California. 4,000 people volunteered to look for her, search parties worked day and night. Polly had curly light brown hair and a big spunky smile. Some people called her America's child. They said she was the symbol of innocence lost.

News Clip: In the past two months, the search for one 12-year-old girl in one small town has come to represent a whole nation's fears about random crime.

Spinelle: Two months later, her body was recovered. Over 1,500 mourners came to Polly's memorial service in Petaluma, and it was televised live. Joan Baez and Linda Ronstadt performed, Bill Clinton sent a message of sympathy, and California's governor delivered a eulogy.

Gov. Pete Wilson: A single event is so shocking, and so unsettling that it makes the entire nation tremble.

Spinelle: The man convicted of murdering Polly Klaas was named Richard Allen Davis. He had a criminal record that spanned decades, including a prior kidnapping conviction. And in 1994, less than a year after Polly's memorial service, California voters had affirmed the state's three-strikes law. Three strikes basically said if someone commits three felonies over any amount of time, and two or more are serious or violent felonies, that person has to serve a 25 to life sentence minimum. Today, we're going to focus on Three Strikes, how it started, the impact it's had, and the people who are using another initiative campaign to flip the script. This is When the People Decide. I'm Jenna Spinelle. Three Strikes in California, its introduction, reforms made to it, and proposals to repeal it all involve ballot initiatives called propositions in the golden state. Polly Klaas's murder is one of two cases credited with sparking three strikes. The other was Kimber Reynolds, whose murder happened a year before Polly's in 1992, Kimber was 18. She was leaving dinner with a friend in Fresno, California, when two men on a stolen motorcycle pulled up and grabbed her purse. She resisted. This is her dad, Mike Reynolds, talking on the news.

Mike Reynolds: Then one of the men without warning, literally without provocation pulled out a .357 Magnum, which is one of the most powerful handguns in the world, and placed it in her ear and pulled the trigger.

Spinelle: The man was Joe Davis. He was 25 years old and had been in jail multiple times for theft, drugs, and gun crimes. A repeat offender, just like Polly's killer. Mike sprung into action.

Reynolds: If I could do anything to prevent this from happening to other kids, I would do everything I could. And I'm still trying to keep that promise today.

Spinelle: After Kimber's murder, Mike Reynolds wrote a three strikes law and started working to get it on the ballot. It would be called Proposition 184. The NRA donated \$40,000 to the campaign. And Mike sought support from the California Correctional Peace Officers Association, the labor union for the state's prison workers. Average citizens supported the measure too. Remember, Polly and Kimber's deaths happened pretty close to one another. Many people in California were scared about random acts of violence, especially by repeat offenders. Mike's three strikes prop tapped into this fear and anxiety and the campaign collected 15,000 signatures per day to get it on the ballot. Seeing that it had broad public support, the legislature went ahead and passed three strikes into law and the governor signed it months before the election. But Mike Reynolds still campaigned hard for a ballot initiative. That's because a proposition voted on by the people is so much harder to amend or repeal than a law passed by elected officials. In November 1994, California passed three strikes with 72% of the vote; one of the highest margins I've seen in researching initiatives. That same year and the year after, 22 other states also passed three strikes laws. The specifics of each state's law differed, but they had one thing in common. One report I read described it like "vengeance as public policy". I remember hearing about Pennsylvania's three strikes law on the news. I can picture my parents and grandparents faces and how scared they were. Even when I was older and heading to college, my mom gave me a can of mace to carry in my backpack. I remember looking at her and asking her when she thought I would need to use it. The world was a scary place to her. The federal government also enacted a habitual offender law. Washington was the first state to pass three strikes, but California's tougher version and the stories behind it garnered national attention.

Manuel Pastor: So if you want to understand propositions and what damage they can do to a state, and then also what promise they hold, California is the place to be.

Spinelle: Manuel Pastor is a professor of sociology and director of the Equity Research Institute at the University of Southern California. He studies issues that impact low income urban communities and the social movements advocating for change in those communities. And he says, if ballot initiatives are a way for people to poke, prod, and test democracy, then California is the lab where it all starts. From tax reform, to cannabis legalization, to the gig economy, the golden state has really powerful examples of initiatives taken directly to the people.

Pastor: California is America fast forward in terms of its demography, in terms of its widening inequality, in terms of its political polarization, in terms also of its use of propositions. And perhaps in terms of progressives, beginning to learn how to use the propositions themselves.

Spinelle: But it took a while for progressives to get there. Conservatives were the first to realize the power of initiatives.

Pastor: In the early 1960s, in 1964, California voters actually rejected fair housing in favor of the right to discriminate, seeking to overrule basically what the Supreme Court had said that they were ordered to do.

Spinelle: Manuel says those early props were a response to racial anxiety and mainly wielded by voters who already had a lot of political power, white voters. In the 1990s, conservatives put forth initiatives on immigration, affirmative action and bilingual education.

Pastor: With Proposition 187, we sought this strip undocumented residents of nearly every social service that they could have access to, implemented three strikes laws. We've gone crazy on propositions.

Spinelle: California's Prop 187 paved the way for anti-immigration initiatives in several other states like Arizona, Florida, and Oregon. And of course, voters approved three strikes. Scholar Daniel Martinez HoSang calls it a "genteel apartheid." But over the decades, things changed in California. More diverse and more progressive voters began using the tools of propositions. You can see this in initiatives that raised taxes on millionaires and reclassified as some nonviolent felonies, as misdemeanors. Progressive causes began to balance out the conservative ones. But of course, this only reinforced the use of ballot initiatives in the state. In fact, Manuel says it's become a whole business.

Pastor: There's the people, there's the politicians, and there's the profiteers. So what I think is unappealing about people versus politicians is that we elect them. They come from us. And what we've got going on is profiteers who step into that relationship. Almost everyone who's painting a politician as out of touch with the people, is trying to pedal some snake oil policy that they've got in place.

Spinelle: I'm generally optimistic about the potential initiatives have to create real political change, but there's a difference between citizens fighting for a cause they believe in and a business venture. Treating it like a business creates problems. If you want to start your own initiative today in California or any other state that has them, there are consultants waiting at every step. If you have the money, you can pay for signature gatherers, you can pay to have the initiative worded, and of course there's PR and polling help. Another problem with the flood of initiatives, at least in California, is that it's so much information. People don't know exactly what they're voting for.

Pastor: You need a PhD to be able to read it and interpret it. And you know what? I have a PhD and I can't read it and interpret it. I have gone to a grocery store and been approached by people who have three or four different propositions, several of which actually contradict one another, but they're being paid to collect signatures for each of them. This is an industry, not a passion march to justice.

Spinelle: But of course there's definitely passion involved, especially in the movement to reform Three Strikes.

Susan Champion: It's interesting because Polly Klaas's sisters have actually spoken out against laws like Three Strikes.

Spinelle: Susan Champion is the Deputy Director of the Three Strikes Project at Stanford Law School. For over a decade, she's been studying and working to reform California's three strikes law.

Champion: Often victims themselves don't want the defendant to get an extreme sentence. I have a client right now whose victim wrote a letter asking the court to give him mental health treatment because she felt that he seemed mentally ill and shouldn't be in prison for 25 years to life. The role of victims in our criminal legal system is complicated. And oftentimes these long prison sentences don't actually serve them, but the public has its own outrage. And it's very easy to leverage that into bad policy.

Spinelle: There are a few reasons experts like Susan think Three Strikes is bad policy. First, it doesn't accomplish what it's set out to do.

Champion: There are horrific crimes that occur. However, so often these laws are built on the premise that you're putting someone away who is incorrigible and cannot be rehabilitated and will go out and definitely commit some sort of violent crime. And that's just not the case in the way that the law was administered. There were thousands of people in California prisons that were serving life sentences for non-violent crimes.

Spinelle: Susan learned this with her first client.

Champion: I had a client who was serving a life sentence in a California prison for trying to sell some commercial beer steins, like some commemorative beer steins that he had stolen from a commercial storage facility. So he was caught at a flea market with these beer steins that had been stolen and got a sentence of 25 years to life. His prior strike offenses were stealing his mother's VCR and a daytime burglary of a home where nobody was actually in the home. He himself was homeless. So he took what he could and put it in his backpack and then went to the streets where he was living and was later found with the stolen objects. So this gentleman was serving a life sentence for those three offenses. And essentially it was clear that they were the result of a drug addiction.

Spinelle: It is unclear whether Three Strikes has had a direct impact on public safety. Many experts point out that crime went down in the '90s around the country, including before three strikes was enacted. And violent crime rates have gone back up and fluctuated again, since the mid 2010s. We also know that incarceration is expensive and tax payers pay the price. More than \$100,000 per inmate in California in 2021.

Champion: And I think we've learned over time that actually not only is incarceration expensive, not only does putting mentally ill individuals in prison only exacerbate their mental health conditions. Prisons are scary places for nonviolent offenders who are then with truly violent offenders and can actually make them more likely to commit a crime

upon release. We've seen that data, we've begun to see that prison is not a solution for crime. Certainly incapacitates people, but it does not enhance public safety.

Spinelle: Susan didn't see herself in law originally. She was an actor working at a Shakespeare company in Oregon. She became a criminal lawyer in her 40s. With her experience in law and in theater, she's a pro at communication, how to read an audience, verbal and nonverbal cues. And she knows how easily some people can be manipulated by stories and emotions. She used this expertise when she joined an initiative campaign to reform three strikes in 2012. Susan and her colleague set out to ask people about their concerns with three strikes. The campaign expected to hear about the cost to taxpayers, which she estimates was about \$60,000 per inmate in 2012. This meant more than 8 billion in taxpayer dollars. Turns out that people were more upset with the injustice. The fact that both violent and non-violent offenders faced the same sentences. People were totally fine spending the money to keep someone with a violent charge in prison. So one of the goals of the reform initiative was to adjust the law so that if a charge was classified as a third strike, it had to be a serious or violent felony. Susan worked with a broad coalition. This meant working hand in hand with law enforcement to write the reform bill.

Champion: So it was crafted with a lot of nuance. There were a number of crimes that could make someone ineligible for release. Even a nonviolent offender could be ineligible for release under the initiative if they had a certain prior offense in their criminal history like rape or a violent rape or murder or something like that.

Spinelle: On election day in 2012, the Three Strikes reform initiative passed with almost 70% of the vote. It was affirmed in every county in California. While Three Strikes was still law, some of its most vicious teeth were taken out. Courts now have the ability to review past offenses and reduce sentences for nonviolent offenses. Basically a window opened for thousands of people serving 25 to life for minor third strike crimes.

Champion: So when it passed, there was certainly a great deal of joy and enthusiasm in prison. And the courts were flooded with individuals who were seeking to come out, but it's hard. Change is difficult.

Spinelle: Susan emphasized throughout our conversation, why it was important to get broad support.

Champion: These are really the expensive initiatives and spending millions of dollars to help 3,000 people is a pretty good bet. Spending millions of dollars to help no one is not as good a bet.

Spinelle: She kept saying, "What's the point in going through all the work, the polling, sharing people's heartbreak for public sympathy if you don't win?" That meant some compromise.

Champion: Frankly, there were a lot of individuals that were left behind and it was heartbreaking to make that decision. The Three Strikes Reform Act could have had an impact on more people, but the polling sort of demonstrated that the more people it impacted, the lower the approval rate would get. And it was really important to our group that this measure pass.

Spinelle: One of the people left out was Zakiya Prince's husband.

Zakiya Prince: My husband's name is Tyrone and he has been incarcerated for 19 years.

Spinelle: She remembers when she first heard about Three Strikes.

Prince: My parents, especially my dad was always very, for lack of a better phrase, pro Black. So when they started talking about our legislators and news coverage started talking about this three strikes law, I remember hearing concerns from my dad about how this was going to impact our community.

Spinelle: Today, Zakiya knows a lot about Three Strikes. Tyrone, father to her three-year-old daughter is incarcerated under it. Tyrone is incarcerated at the Correctional Training Facility in Soledad, California. On a good day, it takes Zakiya about two hours to get there from her home in the Bay Area. With traffic, the trip home takes three or four hours.

Prince: He tries to be the best father that he can, even though he has bars as a barrier. We absolutely need him here with us.

Spinelle: Tyrone was sentenced to 35 to life after his arrest for a third strike in 2002. The Three Strikes reform Susan Champion worked on gave Tyrone's family hope, but he did not qualify to be resentenced under that prop because his crime, while nonviolent, was classified as serious under the law. In 2016, a proposition to give nonviolent offenders better access to parole, also left out Tyrone when authorities excluded Three Strikers. This is about when Zakiya decided that she needed to do something.

Prince: It just felt like another blow, another way that they are trying to keep three strikes intact. And so it was just really discouraging. And so that's when I ultimately started trying to figure out what I can do to change the law.

Spinelle: Three Strikers were eventually included in this reform from the proposition in 2016. And in 2021, Tyrone went up for parole, but he was denied. And Zakiya's mission was well underway. Zakiya became a part of the movement beyond reforming to abolish Three Strikes. This is California. So they're approaching it through ballot initiatives. That's how Three Strikes was cemented into California law. That's how it was reformed. And that's how Zakiya and her fellow criminal justice advocates will need to repeal it. Her organization Repeal, Reunite, Reinvest California wants to get something on the ballot in 2024. That seems like a long way off. And it is, but that's how long it takes to raise money, collect signatures, and build the public support they'll need to win. Zakiya has been working with the Ballot Initiative Strategy Center, a nonprofit that supports initiative campaigns with progressive causes. Her goal is to repeal Three Strikes the same way it was passed, by leveraging personal experiences with the criminal justice system. This time though, instead of inciting fear about random acts of violence, the stories will be about how Three Strikes has impacted incarcerated people and their families. Her organization plans to raise as much money as possible, do constant polling, and hold community listening sessions.

Prince: I was just having a conversation with someone last week and they didn't know that there was still a Three Strikes law. And this person is kind of in politics. And so there's so many people who are misinformed about Three Strikes. And so we want to use that money and that data to really inform the community. And then ultimately our longterm goal is to win.

Spinelle: There's a fact about ballot initiatives that Zakiya and her partners are well aware of. That's the time it takes to repropose an initiative if it fails. Voters need a sort of pallet cleanser period and organizers need time to raise money and build support for their causes. Take recreational cannabis legislation. Way back in 1972, it failed to

pass in California, the first state to try legalization through ballot initiative. It took more than 40 years to get it back on the ballot and win. That's even after it was legalized in four other states and the District of Columbia. Zakiya knows if their campaign fails, this means potentially wasting all the money she's been hustling to raise, all of the outreach she's done, and years if not decades of still being kept apart from Tyrone. So she says they want to be sure they have the 50% plus one vote needed to pass any proposition in California.

Prince: I want my husband home now. My daughter wants her father home now. And there are so many other families that are in the same exact position that we are in, but it's so important to be strategic about the policy. And so we have to make sure that we're making wise decisions and that we don't push to do something now that is, unfortunately, doesn't have a great chance of passing.

Spinelle: Stakes are high and the process is fragile. Zakiya will spend much of the next two years, raising money, pouring over poll data, gathering signatures, and telling her family story to media outlets and voters across the state, all while being a mom to Nova Lou and making the day long trip to see Tyrone every other week. She knows it will be a lot of work, but she is definitely up for the challenge.

Prince: I absolutely believe that I'm supposed to be creating change. And I'm just excited about this step. And it's also really important for me to make sure that other people in the community or folks who are impacted know how to make these changes, because I feel like we're so often left out of the initiative space. You have to have a lot of money. Typically, it's white folks who are in these spaces and funding it and creating the initiatives.

Spinelle: She dreams of the day she has her family together again, and the big party she'll throw to celebrate.

Prince: We are going to party because we know we're bringing our loved ones home. And it's only going to be a matter of time before we are all together, and really living out our lives to the fullest. It is just going to be a jubilant time, a time of just pure joy. I'm sure there's going to be tons of tears and I like to dance. So we're going to be dancing and just having a great time.

Spinelle: A lot could change between now and 2024, when Zakiya hopes to propose the repeal of three strikes to California voters. What new narratives will shape public policy in that time? Will feelings about criminal justice continue to shift? It's impossible to know. But if California leads the way, it will be huge for the rest of the country, the state that's shown us the best and the worst of initiatives America fast forward.

Spinelle: When the People Decide is produced by LWC and the McCourtney Institute for Democracy at Penn State. The show is reported and hosted by me, Jenna Spinelle. Paulina Velasco is managing producer. Jen Chien is executive editor. Jimmy Gutierrez contributed to this episode. Additional editing support from Juleyka Lantigua. Cedric Wilson mixed this episode. Fact checking by Mark Betancourt. You heard archival footage in this episode from KABC, NPR, and CBS. Special thanks to Jason Cone, Joe Dominic, and Jim Newton for their help on background research for this episode. Follow When the People Decide for upcoming episodes on Apple Podcasts, Spotify, or wherever you listen to your favorite podcasts. I'm Jenna Spinelle. Thanks for joining us.

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