

*Supreme Court of the State of California*

<p>PEOPLE OF THE STATE OF CALIFORNIA,</p> <p style="text-align: center;"><i>Plaintiff- Respondent,</i></p> <p style="text-align: center;">vs.</p> <p>JAMES LEO CARNEY, <i>et al.</i></p> <p style="text-align: center;"><i>Defendants- Petitioners.</i></p>
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No. S260063  
Appeal No. C077558  
Sacramento County Superior Court  
No. 11F00700

PETITIONERS LOUIS AND  
LONNIE MITCHELL’S MOTION  
AND DECLARATION TO TAKE  
JUDICIAL NOTICE; EXHIBIT A

*Honorable Kevin McCormick, Judge*

**PETITIONERS LOUIS AND LONNIE MITCHELL’S MOTION  
AND DECLARATION TO TAKE JUDICIAL NOTICE**

**EXHIBIT A**

Law Offices of Beles & Beles  
Robert J. Beles Bar No. 41993  
Paul McCarthy Bar no. 139497  
One Kaiser Plaza, Suite 2300  
Oakland, California 94612-3642  
Tel No. (510) 836-0100  
Fax. No. (510) 832-3690

*Attorneys for Petitioners LOUIS and  
LONNIE MITCHELL*

Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,  
  
*Plaintiff-Respondent,*  
  
vs.  
  
JAMES LEO CARNEY, *et al.*  
  
*Defendants-Petitioners.*

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PETITIONERS LOUIS AND LONNIE MITCHELL'S MOTION AND DECLARATION TO TAKE JUDICIAL NOTICE

**PETITIONERS LOUIS AND LONNIE MITCHELL'S MOTION AND DECLARATION TO TAKE JUDICIAL NOTICE**

I, Paul McCarthy, declare under penalty of perjury as follows:

1. I am the co-counsel for petitioners Louis and Lonnie Mitchell, who move that this court take judicial notice of the document attached as Exhibit A, pursuant to California Rules of Court 8.520(g), 8.252(a), and Evidence Code section 459.

2. Exhibit A is a true copy of a screen image of a website that appears to be that of applicant Amicus Populi, which is seeking leave to file an amicus brief.

3. This exhibit is relevant to this review proceeding because it tends to show that Amicus Populi is not a separate entity as is alleged in

the application for leave to file an amicus brief.

4. The exhibit was not presented to the trial court or any lower court because it did not become relevant until applicant Amicus Populi filed its application.

5. The court may take judicial notice of the exhibit under Evidence Code section 452(h) as a fact that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. The existence of this web site can be immediately determined by simply going to the site <https://amicuspopuli.org>.

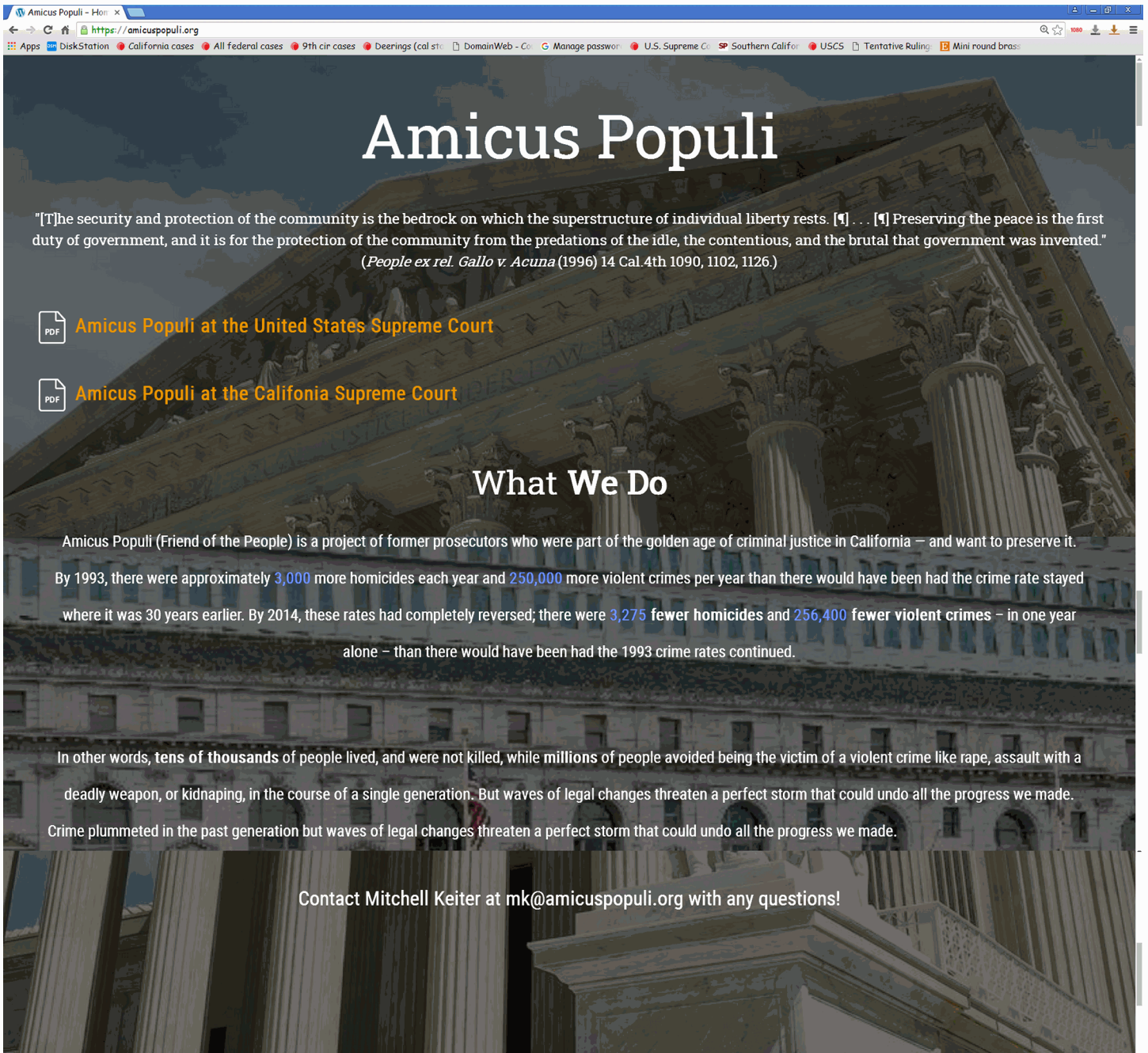
6. The matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

I declare under penalty of perjury that the facts stated in this declaration are true and correct. Executed in Oakland, California, on Tuesday, February 2, 2021.



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Paul McCarthy  
Attorney for Petitioners.



## By 2014...

- The homicide rate was 30.6 percent of its 1980 peak;
- The rape rate was 42.3 percent of its 1980 peak;
- The robbery rate was 30.2 percent of its 1992 peak;
- The aggravated assault rate was 38.4 percent of its 1990 peak;
- The burglary rate was 22.9 percent of its 1980 peak;
- The arson rate was 15.4 percent of its 1980 peak;
- And the total violent crime rate was 35.6 percent of its 1992 peak.

Crime dropped this fast thanks to case decisions by appellate courts, statutes enacted by the Legislature, and initiatives approved by the electorate. These legal reforms reshaped the legal landscape and generated “Phase

**Exhibit A**

Three” in the history of California criminal law. ([Mitchell Keiter, \*How Evolving Social Values Have Shaped \(And Reshaped\) California Criminal Law\* \(2009\) 4 California Legal History 393.](#))

These changes are threatened by changes new laws and leadership. Through appellate advocacy before the Supreme Courts of the United States and California, Amicus Populi works to preserve the public safety benefits achieved over the last generation – for the next.



## Director Biography

Mitchell Keiter is a certified appellate law specialist, with his own civil appellate practice at [Keiter Appellate Law](#). He started his career as the youngest Deputy Attorney General in the California Attorney General’s Criminal Division. He then worked at the California Supreme Court as a Chambers Attorney, before becoming a law professor teaching criminal law, criminal procedure, evidence, and appellate advocacy. His publications have been cited by the Parliament of Victoria, Australia, the Harvard Law Review, the Wisconsin Supreme Court and the Maryland Court of Special Appeals (its highest court).

He has argued six cases on behalf of the People of the State of California, and has filed briefs in ten more. He filed his most recent amicus curiae (friend of the court) [brief](#) on behalf of former [California Senator Ray Haynes](#), who had been instrumental in limiting the exculpatory effect of the intoxication defense in California. The brief successfully urged the Supreme Court to [affirm the conviction](#) of Joaquin Soto, who broke into an apartment and stabbed Israel Ramirez to death as Ramirez’ family hid in the bedroom. Soto contended he should be guilty of only manslaughter because he had consumed so much methamphetamine, marijuana, and alcohol that he honestly, albeit unreasonably, perceived and acted on a need to defend himself against his Ramirez. The Supreme Court [affirmed the conviction](#) by a 5-2 vote. The result adopted a position urged by [Keiter in 1999](#).

## Newspaper:

Proposition 57

[“Sentencing reform ballot measure will discard progress” Nov. 7, 2016](#)

[Los Angeles/San Francisco Daily Journal](#)

"Voters are free to rein Prop 57" Jan. 23, 2019 L.A./S.F. Daily Journal

### **Death Penalty/Life Imprisonment Without Parole**

"Death penalty articles highlight conundrum for Californians" Nov. 8, 2016 L.A./S.F. Daily Journal

"Proposition 34 will undercut justice" Nov. 2, 2012 L.A./S.F. Daily Journal

"Why Should Murderers Get Parole?" May 23, 1995 L.A. Times

### **Terrorism/Human Shields**

"Who caused the death of Kayla Mueller?" Apr. 27, 2015 L.A./S.F. Daily Journal

### **Intoxication Defense**

"The Self-Induced Excuse: Killers Using Intoxicants Should Still be Accountable For Their Acts" Jan. 19, 1999 L.A./S.F. Daily Journal

"Excuses for Intoxicated Killers" S.F. Chronicle, Aug. 8, 1995

*Just Say No Excuse: The Rise and Fall of the Intoxication Defense* (1997)

87 Journal of Criminal Law and Criminology 482

### **Firearm Enhancements ("10-20-Life")**

"Have Gun, Will Punish: Danger Posed by Firearms Justifies Laws Adding Years to Sentences" Oct. 27, 1997 L.A./S.F. Daily Journal

## **Law Review:**

### **History of California Criminal Law**

*How Evolving Social Values Have Shaped (And Reshaped) California Criminal Law* (2009) 4 California Legal History 393

### **Felony-murder**

Ireland *at Forty: How to Rescue the Felony-murder Doctrine from its Midlife Crisis* (2008) 36 Western State University Law Review 1

### **Indirect homicides (Provocative Act doctrine)**

*Fifty Years of the Washington-Gilbert Provocative Act Doctrine: Time for an Early Retirement?* (2014) 9 California Legal History 163

Transferred intent and dangerous homicides

*With Malice Toward All: The Increased Lethality of Violence Reshapes Transferred Intent and Attempted Murder Law* (2004) 38 University of San Francisco Law Review 261

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**PROOF OF SERVICE**

I, the undersigned, depose and state: I reside or do business within the County of Alameda. I am over eighteen years of age and not a party to this action. My business address is 1 Kaiser Plaza, Suite 2300, Oakland, CA 94612-3642. I served the following documents:

**Petitioners Louis and Lonnie Mitchell's Motion and Declaration to Take Judicial Notice; Exhibit A**

I served the following persons by the Truefiling system on Tuesday, February 2, 2021.

Office of the State Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 Attorney for <i>Respondent</i>	Mitchell Keiter 424 South Beverly Drive Beverly Hills, CA 90212 Attorney for <i>Applicant AMICUS POPULI</i>
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Kimberley A. Donohue P.O. Box 944255 Sacramento, CA 94244-2550 kimberley.donohue@doj.ca.gov  Attorney for <i>Respondent</i>	Steven Greenberg P.O. Box 754 Nevada City, CA 95959-0754 Attorney for <i>Appellant JAMES CARNEY</i>
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I served the following persons by mail on Monday, July 6, 2020:

Sacramento District Attorney 901 G Street Sacramento, CA 95814	Clerk, Sacramento Superior Court 720 9th Street Sacramento, CA 95814
Louis Mitchell AV1575 P. O. Box 1050 Soledad, CA 93960-1050	Lonnie Mitchell AV1574 P.O. Box 8800 Corcoran, CA 93212-8309

I declare under penalty of perjury that the above is true. Executed in Oakland, California on Tuesday, February 2, 2021.





**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PEOPLE v. CARNEY**

Case Number: **S260063**

Lower Court Case Number: **C077558**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **nazcalito@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
REQUEST FOR JUDICIAL NOTICE	judicial notice + exhibit
OPPOSITION	opposition-amicus application

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Mitchell Keiter Keiter Appellate Law	mkeiter@msn.com	e-Serve	2/2/2021 5:32:00 PM
Office Office Of The State Attorney General Court Added	sacawtruefiling@doj.ca.gov	e-Serve	2/2/2021 5:32:00 PM
Stephen Greenberg Court Added 88495	sgberg1@mac.com	e-Serve	2/2/2021 5:32:00 PM
Mitchell Keiter Keiter Appellate Law 156755	Mitchell.Keiter@gmail.com	e-Serve	2/2/2021 5:32:00 PM
Paul McCarthy Beles & Beles Law Offices 139497	nazcalito@gmail.com	e-Serve	2/2/2021 5:32:00 PM
Kimberley Donohue Office of the Attorney General 247027	kimberley.donohue@doj.ca.gov	e-Serve	2/2/2021 5:32:00 PM
Jeralyn Keller Attorney at Law 72565	jbk@kellerlaw.net	e-Serve	2/2/2021 5:32:00 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

2/2/2021

Date

/s/Robert Beles

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Signature

McCarthy, Paul (139497)

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Last Name, First Name (PNum)

Beles & Beles Law Offices

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Law Firm