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May 23, 2011

VIA OVERNIGHT DELIVERY

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

RECEIVED

MAY 24 2011

CLERK SUPREME COURT

Re: *People v. Tare Nicholas Beltran*
Supreme Court No. S192644
First Appellate District No. A124392
California Women Lawyers' *Amicus Curiae* Letter
in Support of the People's Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Amicus curiae California Women Lawyers submits this letter in support of the People's petition for review under rule 8.500(g) of the California Rules of Court.

Statement of Interest. California Women Lawyers (CWL) represents lawyers across California. Throughout its thirty-year history, CWL has promoted the advancement of women's interests and elimination of gender bias. In pursuing its values of social justice and gender equality, CWL often appears as *amicus curiae* in cases affecting women's access to justice and equality under the law. CWL also regularly weighs in on proposed California and federal legislation implicating these concerns.

The People's petition for review raises a question speaking directly to CWL's mission of eliminating gender bias: Should California knock down a murder charge to voluntary manslaughter because the killer contends that his wife or girlfriend "provoked" him into killing her?

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Review Should be Granted. Over the past 25 years, scholars have questioned the legal principles that allow men to escape a murder conviction by arguing that the wife- or girlfriend-victim provoked him into killing her. The scholarship details the theoretical and practical problems with giving killers an expedient and well-worn path to explain away murders committed in the domestic-violence context. Most importantly, this thicket of scholarship demonstrates that California's continued adherence to the provocation defense in this context should be reexamined: The time has come for this Court to consider whether the traditional rationale supporting the provocation limitation on murder convictions outweighs the gender inequities resulting from allowing men to pass off murders of wives and girlfriends as voluntary manslaughter.

Two of the most influential law review articles published in the field are Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill* (1992) 2 S.Cal. Rev.L. & Women's Stud. 71 (Coker), and Nourse, *Passion's Progress: Modern Law Reform and the Provocation Defense* (1997) 106 Yale L.J. 1331 (Nourse). Both articles survey the landscape of the provocation doctrine and its application in the domestic-violence context. Coker's article was on the forefront of analyzing the provocation doctrine in light of burgeoning domestic-violence social science. (2 S.Cal. Rev.L. & Women's Stud. at pp. 71-78.) Nourse's article was "[b]ased on a systematic study of fifteen years of passion murder cases" and suggested that the doctrine be "retained as a partial excuse" but modified so that it operated "only in the limited set of cases in which the defendant and the victim stand on an equal emotional and normative plane." (106 Yale L.J. at pp. 1332, 1337.)

The complex legal, societal, and normative questions endemic to this topic have generated a wealth of additional scholarship. (See, e.g., Percy, et al., *"Sticky Metaphors" and the Persistence of the Traditional Voluntary Manslaughter Doctrine* (2011) 44 U.Mich. J.L.Reform 383; Ramsey, *Provoking Change: Comparative Insights on Feminist Homicide Law Reform* (2010) 100 J.Crim.L. & Criminology 33; Forell, *Gender Equality, Social Values and Provocation Law in the United States, Canada, and Australia* (2006) 14 Am.U. J.Gender, Soc. Pol'y & L. 27; Rozelle, *Controlling Passion: Adultery and the Provocation Defense* (2005) 37 Rutgers L.J. 197; Miller, *(Wo)Manslaughter: Voluntary Manslaughter, Gender, and the Model Penal Code* (2001) 50 Emory L.J. 665 (Miller); Taylor, *Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense* (1986) 33 UCLA L.Rev. 1679.)

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Some academics argue that the provocation defense should be completely abolished in the domestic-violence context, while others suggest that modifications might be enough to cure the inherent gender inequities. (E.g., compare Miller, *supra*, 50 Emory L.J. at p. 671 [“men who kill women in the heat of passion should no longer find any shelter in the harbor of voluntary manslaughter”] with Nourse, *supra*, 106 Yale L.J. at p. 1338 [proposing a modification termed “warranted excuse”].) On the opposite end of the spectrum are those who have defended the status quo. (See Dressler, *Why Keep the Provocation Defense?: Some Reflections on a Difficult Subject* (2002) 86 Minn. L.Rev. 959.)

The social science, public policy, and legal theories have matured to a point that this Court can—and should—consider the profound inequities inherent in reducing criminal culpability on the killer’s say-so that his wife or girlfriend “provoked” her own murder.

Conclusion. CWL urges the Court to grant review so that it can rule on the parameters of the provocation limitation on murders occurring in the domestic-violence context—an issue that affects all California citizens regardless of gender.

Respectfully submitted,

GREINES, MARTIN, STEIN & RICHLAND LLP

By 
Lara M. Krieger

Attorneys for *Amicus Curiae*
California Women Lawyers

cc: See Attached Service List

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **May 23, 2011**, I served the foregoing document described as: **CALIFORNIA WOMEN LAWYERS' AMICUS CURIAE LETTER IN SUPPORT OF THE PEOPLE'S PETITION FOR REVIEW, DATED MAY 23, 2011** on the parties in this action by serving:

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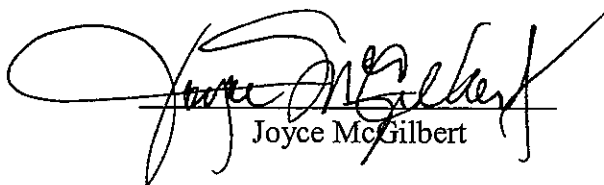
Matthew Rosen
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By Envelope - by placing the original a true copy thereof enclosed in sealed envelopes addressed as above and delivering such envelopes:

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Executed on **May 23, 2011**, at Los Angeles, California.

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


Joyce McGilbert