CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

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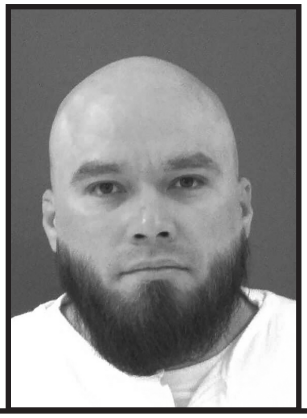
SUPREME COURT TO REVIEW CONDEMNED MURDERER'S RELIGIOUS RIGHTS' CLAIM

The U. S. Supreme Court has agreed to review a Texas murderer's lawsuit that claims the state is violating his rights by refusing to allow a minister to touch him and pray aloud in the execution chamber while he receives a lethal injection.

At issue in **Ramirez v. Collier** is whether there is a limit to religious accommodations for condemned murderers required by the Constitution and federal statutes. CJLF argues that there should be a limit, and the Court should settle on what that should be. The Foundation also notes that raising this type of claim at the last minute after decades of review on direct appeal and habeas corpus is an abuse of the legal process.

The case involves the conviction and death sentence of John Ramirez for robbery and the murder of Pablo Castro



John Ramirez attacked Pablo Castro, stabbing him 29 times with a serrated knife leaving him to die.

at a convenience store parking lot in Corpus Christi, Texas, on the night of July 19, 2004. Multiple witnesses and DNA evidence convinced a unanimous jury that Ramirez and two female accomplices were involved in the murder, another robbery, and an attempted robbery later that evening. According to the evidence, Ramirez and the women had been using drugs all day and decided to rob someone to buy more drugs. The three drove around Corpus Christi looking for someone to rob when they spotted Castro, the night clerk at the Times Market, emptying garbage in the parking lot dumpster. Ramirez attacked Castro, stabbing him 29 times while one of the women went through his pockets, finding $1.25. Witnesses at an adjacent car wash saw the attack and ran to Castro's aid as Ramirez and the women drove off. The witnesses identified the van the subjects were driving and one identified Ramirez as the assailant. A

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LA JUDGE REJECTS GASCÓN'S REDUCED SENTENCE FOR VIOLENT FELON

CJLF has filed argument in the California Second District Court of Appeal case in support of a Los Angeles judge who refused to drop the sentence enhancements against a criminal charged with 35 felonies. At issue in **Nazir v. Superior Court** is progressive District Attorney George Gascón's directive requiring all LA prosecutors to drop the sentencing enhancements for defendants facing trial in the county. Sentencing enhancements are provided by state law for defendants who use a gun during the commission of a crime, belong to a criminal gang, or are charged with multiple crimes.

In May 2020, former Los Angeles District Attorney Jackie Lacey charged Rehan Nazir with 35 counts of offenses, including kidnapping, assault with a firearm, multiple use of firearms, extortion, false imprisonment, and burglary, involving numerous victims. On November 3, 2020, George Gascón was elected to replace Lacey and assumed office on December 7, 2020. Gascón immediately issued a series of "special directives," including SD 20-08, announcing that sentencing enhancements provided under state law would no longer be filed in any new cases and must be withdrawn for cases pending trial.

At a hearing on December 11, 2020, the deputy prosecuting Nazir cited the special directive in his motion asking the judge to dismiss the firearms enhancements. The judge refused, noting that under state law he is required to consider each offense charged and that Gascón's special directive was a policy decision and not a law. A week later the judge denied a written motion from the deputy to dismiss the enhancements finding that, due to the circumstances of the crimes and Nazir's character, a decision to dismiss would not be in the interest of justice. Nazir asked a higher court for a writ ordering the judge to comply, but the court of appeal refused.

In May 2021, the California Supreme Court ordered the court of appeal to rehear Nazir's claim and asked the Supe-

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VIEWPOINT

ARE CRIMINAL JUSTICE REFORMS MAKING US SAFE?

The answer is yes if you believe the October 27, 2021, Los Angeles Times Op-Ed by former Los Angeles District Attorneys Ira Reiner and Gil Garcetti and former federal prosecutor Miriam Aroni Krinsky. Their piece, "Stop obstructing criminal justice reforms. It's making us all less safe," cites so-called "evidence-based policies like the ones [progressive LA District Attorney Gascón] is implementing in Los Angeles hold people accountable without relying on extreme sentences, and they save taxpayer dollars that could be invested in things that actually have an impact on crime, such as public health, housing, education and violence prevention." The trio point to the 1980s and 90s when, "California embarked on a disastrous social experiment.... that ratcheted up punishment in criminal cases. The negative impact of these policies overwhelmingly fell on poor, Black and brown communities." Let's take a look at that negative impact.

Thieves looting jewelry store in Los Angeles.

A little context: In 1965, at the behest of liberal politicians, distinguished criminologists, and behavioral scientists, California Governor Pat Brown signed SB 822, "The Probation Subsidy Act," into law. Under the Act, the state paid counties $4,000, the equivalent of over $34,000 in today's dollars, to keep "mostly harmless" property felons, such as car thieves and burglars, in local jails or rehabilitation programs instead of sending them to overcrowded state prisons. At the time, and for the next several years, the prevailing wisdom advanced by criminologists and social scientists was that "obviously harmless" offenders could be left in the community and successfully treated with little or no threat to public safety. As a means for reducing the number of criminals going to prison, the Act was a success. The state's inmate population between 1965 and 1978 dropped from a high of 28,482 (1966) to a low of 21,325 (1978). But the crime rate rose dramatically, including violent crime. In the five years preceding the implementation of probation subsidy (1960-1965), violent crime rose by 18%, or roughly 3.6% per year. In the five years after its implementation (1966-1970), violent crime increased by 68%, or 13.6% per year. By 1980, violent crime had risen by 216% and the homicide rate had increased by 300%. The end result of keeping "low-risk" criminals out of prison was a savings to the state in corrections costs, which was offset by the cost burden to local governments for the arrest and prosecution of thousands of offenders, many of whom had evolved into violent criminals during this experiment. The state budget avoided the direct costs of the trauma and death caused by this crime wave, but the public paid the full price.

Beginning in 1982, and continuing over the next three decades, several changes in criminal justice policy contributed to what social scientists have characterized as the "get tough" movement. Over this period, the public largely abandoned the theory that reliable risk assessments could be made about a criminal from factors other than the seriousness

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Advisory layout design by Irma H. Abella

BOXSCORE

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

In re Alexander: 9/16/21. Federal Ninth Circuit review of a CJLF petition on behalf of the families of five murder victims asking the court to vacate 24 invalid stays of execution, prohibit the district court from granting any additional stays, and lift restrictions on California's preparations for executions. For 15 years, a federal district court in San Francisco has blocked the executions of every death-sentenced murderer in California who has exhausted his appeals and become eligible for execution. The original 2006 order stayed the execution of Michael Morales—sentenced to death for the 1981 kidnapping, rape, and brutal murder of a high school cheerleader on the claim that the state's three-drug protocol amounted to cruel and unusual punishment in violation of the Eighth Amendment. Since 2006, two precedent-setting U. S. Supreme Court decisions provided the state with opportunities to challenge the stays, but the state has failed to take action. CJLF filed its petition in the Ninth Circuit in January 2019 after the district court rejected a similar petition filed by district attorneys and refused to consider the Foundation's *amicus curiae* (friend of the court) brief. After Governor Newsom issued his moratorium and repealed the state's execution protocol, the federal case was dismissed, and the court stay was removed. This left nothing to be decided in the Ninth Circuit, and the petition was dismissed. **DRAW**

People v. McDaniel: 8/26/21. Unanimous California Supreme Court decision rejecting a Los Angeles gang enforcer's claim that his death sentence was unconstitutional. One of Donte McDaniel's victims was shot so many times in the face his head collapsed. He also killed a 52-year-old woman, and attempted to kill two younger women who were left permanently disabled. On direct appeal, McDaniel argued that his death sentence was invalid because the jury did not use the *beyond a reasonable doubt* standard to find the aggravating circumstances or to select the death sentence. The *beyond a reasonable doubt* standard is required in the law for a finding of guilt. CJLF joined the case to argue that nothing in California law or state legal history requires jurors meet that standard for finding aggravating circumstances or sentencing. Nobody can explain how a jury would even go about sentencing a murderer to death *beyond a reasonable doubt*. The Supreme Court agreed, citing CJLF and utilizing our arguments in the majority opinion. A decision to uphold the murderer's claim in this case would have overturned every death sentence given to the state's worst murderers over the last 43 years. **WIN**

In re Friend: 6/28/21. Unanimous California Supreme Court ruling interpreting a provision of Proposition 66 that was intended to bring a clear end to most capital cases to instead allow extended relitigation. The case involved a death-sentenced murderer's request that the court severely water down voter-enacted limits to repeated appeals. A jury found habitual felon John Friend guilty of the 1984 robbery and stabbing murder of bartender Herbert Pierucci. At trial, witnesses testified about Friend's plan to rob the bartender, placed him at the murder scene with a knife, and testified about hearing his admission to killing Pierucci for roughly $300. Friend's conviction and sentence were upheld by the California Supreme Court in July 2009. His habeas corpus challenge was reviewed and denied in 2015. In 2016, state voters adopted Proposition 66, prohibiting state courts from reviewing successive habeas corpus petitions except in cases where there is strong evidence questioning the defendant's guilt. Friend had no credible claim of innocence, so he argued that the initiative's prohibition of successive petitions does not include petitions where the defendant adequately explains why some new claims were not included in the first petition. The California Attorney General supported the murderer's interpretation. CJLF argued in opposition to that misinterpretation, but the Supreme Court accepted it. **LOSS**

Borden v. United States: 6/10/21. A U. S. Supreme Court 5-4 plurality ruling announcing that violent crimes that could possibly be committed recklessly will no longer be considered "violent" for Federal Armed Career Criminal Act (ACCA) purposes no matter how clearly intentional the crime was. In 2017, habitual felon Charles Borden was caught with a handgun during a traffic stop in Tennessee. Because Borden had three prior convictions for aggravated assault, he qualified for a ten-year prison sentence under the ACCA. Borden pleaded guilty to having the gun but claimed that because one of his priors was for "reckless" aggravated assault it should not count as a violent felony. CJLF joined the case to argue that aggravated assault, be it reckless or intentional, qualifies as a violent crime under federal law. **LOSS**

Jones v. Mississippi: 4/22/21. A U. S. Supreme Court 6-3 decision rejecting a juvenile murderer's claim that his life-without-the-possibility-of-parole (LWOP) sentence was a violation of his constitutional rights. In 2004, less than one month after his grandparents took him in, 15-year-old Brett Jones stabbed his 67-year-old grandfather eight times, killing him. After hiding the body and cleaning up the blood, he was arrested while trying to leave town. At trial, Jones claimed that he killed his grandfather in self-defense. The jury found him guilty of deliberate-design murder and he was sentenced to LWOP. Six years later, the Supreme Court held in **Miller v. Alabama** that a mandatory LWOP sentence for a juvenile murderer was unconstitutional. Jones was resentenced under the new rules and again received LWOP. The following year, the Supreme Court handed down a new juvenile sentencing requirement in **Montgomery v. Louisiana**, which the Court claimed was actually included in the Miller decision. Jones argued that he is now entitled to another resentencing. CJLF joined the case to argue that the Court clearly misinterpreted **Miller** to justify a new rule not required by the Constitution. The high court utilized CJLF's arguments and research in its decision. **WIN**

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"BOXSCORE"

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In re Humphrey: 3/25/21. California Supreme Court ruling announcing that the decision to set bail for a habitual felon must be based on his ability to pay it, not public safety. The case involves a repeat felon charged with robbery after he followed an elderly man into his San Francisco apartment and robbed him. At the bail hearing, Humphrey asked to be released without bail because of his ties to the community. The judge refused, setting bail at $350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay. When the Supreme Court agreed to review that ruling, CJLF joined the case to argue that making cash bail contingent on a suspect's ability to pay violates state law that allows for the consideration of the safety of the public and the victim, the seriousness of the alleged crime, the suspect's criminal record, and the likelihood that he or she will flee. Then-California Attorney General Xavier Becerra and San Francisco District Attorney Chesa Boudin both encouraged the court to interpret state law to require "ability to pay" as a factor when setting bail. Only the bail industry and CJLF encouraged the court to follow the law. **LOSS**

O.G. v. Superior Court: 2/25/21. California Supreme Court ruling announcing that a law (SB 1391) passed by the state Legislature in 2018, which *prohibits* the very worst under-16 murderers from being tried in adult court, conforms with a 2016 ballot measure that *allows* juvenile murderers to be tried in adult court. Any criminals, including murderers, who are convicted in juvenile court can only be imprisoned *until age 25.* In this case, O.G., a 15-year-old street gang member, murdered two people, one with a gun and another with a knife, to gain respect from his fellow gang members. When the Ventura County District Attorney requested that the killer be tried in adult court, the presiding judge agreed, questioning the validity of SB 1391. The murderer appealed, and a unanimous panel of the Second District Court of Appeal held that SB 1391 violated Jerry Brown's 2016 Proposition 57, which allows the prosecution of juveniles in adult court. Proposition 57 specified that it could not be amended by the Legislature unless the amendment furthers the intent of the initiative. When the Supreme Court agreed to hear the murderer's appeal, CJLF filed argument stressing that the intent of Proposition 57 was to give judges the discretion to order the prosecution of a violent juvenile in adult court. SB 1391 ignores that intent by taking away that discretion. Then-California Attorney General Xavier Becerra filed argument in the case supporting the murderer's claim. In its unanimous ruling, California Supreme Court held that SB 1391 "is fully consistent with and furthers" the intent and purpose of Proposition 57. **LOSS**

Deck v. Jennings (formerly Deck v. Steele): 10/19/20. Unanimous Eighth Circuit Court of Appeals decision reinstating the death sentence of a double murderer. Undisputed evidence proved that Carman Deck robbed and executed an elderly couple in their Missouri home in 1996. On appeal, Deck raised claims successfully challenging his sentencing hearing twice, and new juries sentenced him to death at each new hearing. After the third hearing in 2008, Deck petitioned the federal district court on habeas corpus, arguing that the length of time spent between his conviction in 1998 and on his third resentencing trial in 2008 violated his rights and that his attorney for the third sentencing trial was incompetent because he failed to raise that claim. The district court agreed and overturned his sentence. When the Eighth Circuit agreed to review that ruling, CJLF submitted argument on behalf of the family of the victims, noting that the district court invented a new constitutional right for Deck with no legal precedent to support it. CJLF also noted that a lawyer who does not present a claim never raised before and unsupported by precedent is not incompetent. The Eighth Circuit followed that argument in its decision. The U. S. Supreme Court declined to review the case. **WIN**

TOTAL	**3 Wins**	**4 Losses**	**1 Draw**

"LA JUDGE REJECTS REDUCED SENTENCE"

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rior Court to file argument justifying its refusal to dismiss the enhancements. The court of appeal invited CJLF and the California District Attorneys Association to file argument in defense of the judge's decision, and the California Public Defenders Association and the California Attorneys for Criminal Justice to submit argument supporting Nazir. Also filing argument supporting Nazir are U. C. Berkeley Law School Dean Erwin Chemerinsky and California Attorney General Rob Bonta.

In a scholarly *amicus curiae* (friend of the court) brief, Foundation Associate Attorney Kymberlee Stapleton argues that for over a century California law has vested the power to dismiss an action "in the furtherance of justice" with judges. This discretion also includes the power *not to dismiss* an action. A special directive, which is a local policy decision, cannot require what is expressly prohibited under state law, nor can local policy strip a judge of his independent decision-making authority. Once Nazir's case was brought before a judge, the decision to dismiss previously introduced charges and enhancements no longer belonged to the District Attorney; that decision belonged to the judge. Stapleton cites multiple California Supreme Court decisions upholding the broad discretion of judges to retain or dismiss charges, allegations, and even prior convictions "in the furtherance of justice."

"After the charging documents were submitted to the court, the judge's authority to keep or dismiss enhancements became absolute," said Stapleton. "We agree with the judge that Nazir, a violent habitual felon, deserves the full sentence allowed under state law," she added.

Case Report

A Summary of Foundation Cases Currently Before the Courts

Ramirez v. Collier: U. S. Supreme Court review of a Texas murderer's lawsuit that claims the state is violating his rights by refusing to allow a minister to touch him and pray aloud in the execution chamber while he receives a lethal injection. Ramirez was convicted of the 2004 stabbing murder of a man and the robbery of a woman at knifepoint. At issue is whether there is a limit to religious accommodations for condemned murderers required by the Constitution and federal statutes. CJLF argues that there should be a limit and the Court should settle on what that should be. The Foundation also notes that raising this type of claim at the last minute after decades of review on direct appeal and habeas corpus is an abuse of the legal process and that the court should apply it's 1971 decision in **Younger v. Harris** to limit civil lawsuits in criminal cases to "unusual circumstances." The absence of clergy holding hands with a murderer did not meet this standard when the methods of execution were hanging, electrocution, or the gas chamber, and it does not apply today when the method of execution is painless euthanasia.

Schubert v. CDCR: Sacramento Superior Court case involving 44 California District Attorneys and CJLF, representing two crime victims' groups seeking an injunction to block Governor Gavin Newsom's plan, announced last May, to grant early release to 76,000 habitual violent and serious criminals from prison. CJLF joined the case to represent the victims' groups after a July ruling by the Superior Court judge announced that while the DAs would likely win on the merits, they lacked standing, and unless new plaintiffs with standing joined the suit, there would be no trial. On August 18, the Foundation intervened on behalf of the groups whose members would be directly affected if the criminals who attacked them or murdered their loved ones were released from prison. In the lawsuit, CJLF argues that the new administrative regulations allowing the early releases do not override numerous statutes which specify when and how a prison inmate qualifies for parole or credits. Unless the Newsom administration backs down, it will be required to defend this new policy against CJLF in open court.

Shinn v. Ramirez & Jones: U. S. Supreme Court review of a Ninth Circuit ruling that announced new delays in the death sentence of an Arizona double murderer and overturned the conviction of a man found guilty of killing a 4-year-old girl. At issue in **Shinn v. Ramirez & Jones** is whether the attorneys for the murderers can introduce new evidence on federal habeas corpus that they failed to present during years of state court review, which is prohibited under federal law. A jury convicted David Ramirez, a parolee with two violent prior felonies, on strong evidence of the 1989 stabbing murder of his girlfriend and her 15-year-old daughter. He also raped the daughter before killing her. Barry Jones was convicted of the 1994 sexual assault and murder of his girlfriend's 4-year-old daughter. Both defendants tried to introduce new evidence on federal habeas corpus years after their convictions and sentences were upheld. The Ninth Circuit ruled in favor of both murderers on appeal, announcing that the U. S. Supreme Court's 2012 ruling in **Martinez v. Ryan** allowed the new evidence. CJLF joined to argue that federal law clearly restricts the introduction of new evidence that could have been presented during the state court review of the convictions and sentences. To the extent that the **Martinez** decision might be interpreted to conflict with that restriction, the federal statute prevails.

United States v. Tsarnaev: U. S. Supreme Court review of a 2020 First Circuit Court of Appeals ruling that overturned the death sentence of one of the Boston Marathon bombers. Muslim terrorist Dzhokhar Tsarnaev, along with his brother, set off two pressure-cooker bombs at the 2013 Boston Marathon, killing three people and maiming hundreds of others. Tsarnaev can be seen on camera intentionally placing his bomb near a group of children watching the race. Tsarnaev also killed a young MIT police officer while attempting his escape. On appeal, Tsarnaev claimed that the trial judge's questioning of potential jurors regarding pretrial publicity violated his rights. The Court of Appeals agreed and overturned his sentence. CJLF has joined the case to argue that the trial judge followed a 1991 Supreme Court decision specifying the requirements for questioning potential jurors and noted that the appeals court does not have the authority to add new requirements. Tsarnaev also claims that the trial judge erred in excluding marginally relevant evidence that his brother committed an earlier unrelated murder. CJLF argues that the judge was well within his discretion to exclude that evidence under the Federal Death Penalty Act.

Nazir v. Superior Court: California Court of Appeal case to review a Los Angeles trial judge's refusal to follow LA District Attorney George Gascón's request to drop sentencing enhancements for a criminal facing 35 felony counts. In May 2020, LA District Attorney Jackie Lacey charged Rehan Nazir with multiple counts of illegal use of firearms, false imprisonment, extortion, and burglary involving several victims. In November, LA County voters replaced Lacey with George Gascón, who immediately announced that he would drop sentencing enhancements for any defendant facing trial. When Nazir's case came before a judge, the deputy prosecuting him asked the judge to dismiss several counts that would increase his sentence upon conviction. The judge refused, noting that doing so was not in the interest of justice. Nazir appealed. Because Gascón's office will not defend the judge's decision, the appeals court invited CJLF and the California District Attorneys Association to submit arguments in support of the judge's decision. Among those joining on the criminal's side are California Attorney General Rob Bonta and Berkeley Law School Dean Erwin Chemerinsky. CJLF is arguing that the state law vests wide discretion with judges to dismiss or preserve charges in criminal cases and a local District Attorney's policy does not override it.

In re Mohammad: California Supreme Court case to consider whether California's 2016 Proposition 57 requires early parole consideration for inmates currently serving a sentence for both violent and nonviolent felony offenses. The defendant in this case was convicted in 2012 of nine violent crimes and six nonviolent crimes. While the initiative was advertised as permitting early parole eligibility for state prisoners "convicted of a nonviolent felony offense" after completing the full term of their primary offense, a state appeals court held that, because Mohammad had a nonviolent crime among his convictions, Proposition 57 requires that he be eligible for early release. CJLF has joined the case to argue that the lower court has misinterpreted the initiative to create the absurd result that criminals convicted of multiple violent crimes and at least one nonviolent crime are required to receive a shorter sentence than a criminal convicted of only one violent crime. The case was argued in October, and a decision is expected by early January.

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"Case Report"

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Brown v. Davenport: U. S. Supreme Court review of a Sixth Circuit Court of Appeals ruling overturning the conviction and life sentence of Michigan killer Ervine Davenport. Davenport, who is 6'5" and weighs 300 lbs., admitted strangling Annette White, 5'2" and 103 lbs., in 2007, but he claimed he did so in self-defense. White's seminude body was found in a field the morning after her death. Overwhelming evidence convinced a jury to convict Davenport in 2008. During the trial, Davenport was partially shackled, which is unconstitutional. But, after the trial, every juror stated that the shackles did not influence their unanimous decision. On direct appeal and on habeas corpus, Davenport claimed that the shackles prejudiced the jury, but every court reviewing this claim found it to be harmless error. The Sixth Circuit disagreed, holding that the federal district court used the wrong standard to find the error harmless. CJLF has joined the case to argue that federal law and Supreme Court precedent require that the federal courts give great deference to state court findings of harmless error, and that a clear violation of existing law and precedent must be found in order to overturn a state court decision. The Sixth Circuit failed to do this and improperly applied the wrong standard.

"RELIGIOUS RIGHTS' CLAIM"

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short time later, Ramirez put his knife to the throat of a young mother waiting at the drive-up window of a fast-food restaurant and stole her purse. He and his accomplices then tried to rob another woman at a different fast-food restaurant, but she managed to escape. Both victims identified Ramirez. Police arrested both women after midnight on July 20, 2004. Ramirez fled to Mexico and evaded capture for three years.

Following his conviction in 2008, Ramirez's claims of trial and sentencing error and ineffective assistance of counsel were reviewed for over 12 years by multiple courts. None of his claims were upheld. In March 2019, the U. S. Supreme Court ruled in **Murphy v. Collier** that the Texas policy of allowing prison-employed chaplains, but not outside clergy, into the execution chamber discriminated against murderers who adhere to different religions. In response, Texas changed its rules to allow clergy from all religions to be in the viewing room, but none in the execution chamber.

Alabama did the same, but an execution there was blocked by a federal appeals court on a claim that it infringed upon the free exercise of religion, and the Supreme Court declined to lift the stay. Texas then changed its rule to allow clergymen in the chamber, but to prevent interference, the state required them to stand three feet away and remain silent.

Last year, after unsuccessfully petitioning the Texas Department of Corrections to change the rule, Ramirez filed a civil lawsuit asking a federal judge to stay his execution, arguing that Texas had failed to accommodate his religious needs. The judge denied the stay, and later a divided panel of the Court of Appeals also refused to grant a stay.

When the Supreme Court agreed to hear Ramirez's appeal, CJLF joined the case. In a scholarly *amicus curiae* (friend of the court) brief, Foundation Legal Director Kent Scheidegger argues that this case is just the latest example of a convicted murderer using a civil lawsuit to raise new claims to delay his execution after exhausting state and federal court review of his conviction and sentencing challenges. The brief notes that religious accommodations involving a clergyman touching a murderer at the moment of execution did not exist through most of the twentieth century. Further, the opportunity to file a civil lawsuit to obstruct a state criminal case was addressed in the Supreme Court's 1971 landmark decision, **Younger v. Harris**. That decision held that federal court review of such challenges was limited to "unusual circumstances," such as bad faith or harassment. In order to qualify for review, the murderer must show that the procedure he is challenging will subject him to great and immediate irreparable injury. The absence of a clergyman holding hands with a murderer did not meet this standard when the methods of execution were hanging, electrocution, or the gas chamber, and it does not apply today when the method of execution is painless euthanasia. CJLF is asking the Court to utilize the standard announced in **Younger** to limit federal court review of last-minute lawsuits such as this one.

"For years, a lack of clear policy regarding civil lawsuits filed after years, sometimes decades, of state and federal court review has allowed murderers and activist judges to halt executions," said Scheidegger. "It is time to put limits on this abuse of process and respect the rights of the victims and their families," he added.

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And, check out our blog, *Crime & Consequences*, offering a fresh perspective on crime and law. For news and commentary on major criminal justice issues, go to:

www.crimeandconsequences.com

CRIME & CONSEQUENCES

"ARE REFORMS MAKING US SAFE?"

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Daylight shooting on busy street.

of the crime and the offender's criminal history. Several ballot measures were adopted by voters to remove impediments to the arrest and prosecution of criminals and adjust the consequences to fit the crime. The last major reform was California's 1994 adoption of the "Three Strikes and You're Out" initiative, which increased the sentences for repeat serious and violent offenders. Between 1992, two years before Three Strikes was adopted, and 2014, violent crime in California dropped by two-thirds, and homicide dropped by more than half. While more repeat felons were going to prison, tens of thousands of Californians were spared from becoming victims of violent crime and murder, particularly urban Blacks and Hispanics who are disproportionately victimized by crime. The so-called "disastrous social experiment" was arguably the most successful domestic policy effort in California history.

Reiner, Garcetti, and Krinsky tell us that "despite fear-mongering claims, there is no evidence that the recent increase in certain serious crimes—and particular homicide—is associated with criminal justice reforms. (The increases occurred in places where the reforms were embraced and where they were not.)"

There are two problems with this assertion. First, the most dramatic progressive "reforms" have been implemented statewide, starting with the so-called Public Safety Realignment law (AB 109) in 2011, which essentially reinstated the Probation Subsidy Act of 46 years earlier. Realignment reduced the prison population by 30,000 inmates in three years, prohibited prison sentences for most criminals, including car thieves, burglars, drug dealers, and wife beaters, and reduced state supervision of the criminals it released. The year after it became law, violent crime in California increased for the first time in all but one of the previous 15 years by 12%. It has continued to increase in seven of the past ten years as the state enacted Proposition 47 (a 2014 Soros/ACLU-financed ballot measure that turned many felonies into misdemeanors with essentially no consequences for offenders), and Proposition 57 (the 2016 Soros/Brown bankrolled initiative that dramatically reduced the sentences for serious and violent criminals and authorized the early release of thousands of inmates, including rapists and murderers). Last year, Los Angeles had the most murders in a decade. This year, after 11 months of Gascón's reforms, homicides are up 95% and the county is awash with criminals stealing cars; assaulting strangers on busy streets, beaches, and parks in broad daylight; and rampaging through department stores stealing everything in sight with impunity. Last year, Oakland's murder rate rose by 129%, and in Chesa Boudin's San Francisco there were double the shootings from 2019.

Contrast all this with cities who voted to keep those awful "tough-on-crime" district attorneys—like San Diego where homicides only increased by 1.7% last year.

Finally, while the LA Times Op-Ed touts savings in tax dollars from progressive policies that leave criminals on the streets, the California corrections budget has increased every year since the adoption of Realignment, along with the cost of local jails and police departments.

Nothing that these three soft-on-crime, former law enforcement officials assert in their LA Times Op-Ed stands up to scrutiny. It's pure propaganda. The Los Angeles Times might consider hiring a 9-year-old with a computer to check out the facts before publishing this hogwash.

Michael Rushford
President & CEO

Help us stay in the fight for public safety. Crime is out of control, yet progressives, funded by billionaires like George Soros, are resisting any effort to restore law and order. But the people are pushing back, electing pro-law enforcement leaders in liberal strongholds, including Virginia and Seattle. CJLF is challenging pro-criminal laws in the courts and exposing the impact that soft-on-crime policies have on our communities. With your support we can continue our work to stop the madness. Make your 2021 tax-deductible contribution today by returning the card on the right with your check, giving at our website www.cjlf.org, or calling us at (916) 446-0345 to contribute with your credit card. **Many thanks.**

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Fall 2021

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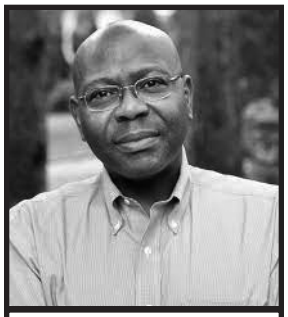

Jason Riley, Manhattan Institute Senior Fellow

As if we already did not know this, sometimes the national media exposes itself so blatantly it defies logic. Manhattan Institute Senior Fellow Jason Riley authored a November 30 Op-Ed in the Wall Street Journal discussing the amazing double standard in the way the national media covered the death of George Floyd, the Rittenhouse case, and the Waukesha massacre. "The protests that followed Floyd's death rested on two assumptions. The first is that Floyd, a career criminal and drug addict, was somehow representative of black America, which is not only false but deeply insulting. The second is that police acted out of racial animus, which has never been proven. This is what happens when racial identity becomes the centerpiece of politics and public life in a multiracial society." But that was the prevailing narrative and the riots and murders swept the country in response to Floyd's death were generally reported as justified. "The Biden administration has picked up where the Obama administration left off." Although the criminals killed by Rittenhouse were white, he was immediately characterized as a racist, white supremacist in "a clumsy attempt by President Biden and his allies to further a narrative about bias in the criminal justice system."

"The same press outlets that portrayed Mr. Rittenhouse as a white supremacist have had remarkably little to say about the racial identity of Darrell Brooks, the black suspect in Wisconsin who is accused of plowing his car through an annual Christmas parade last month and killing six people, including an 8-year-old boy, all of whom were white. Given the suspect's history of posting messages on social media that called for violence against white people and praised Hitler for killing Jews, you'd think that his race and the race of his victims would be relevant to reporters. Race is all anyone would be talking about if a white man had slammed his vehicle into a parade full of black people. Yet suddenly the left has gone colorblind.... They want to talk about so-called hate crimes that involve white assailants and black victims, but not those involving black assailants and white or Asian victims. They want headlines to read 'White Cop Shoots Black Suspect,' even when there's no evidence that the encounter was racially motivated. This is playing with fire." Amen.

Happy Holidays

from the Board of Trustees and the staff of the Criminal Justice Legal Foundation