



Advisory

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CJLF ARGUES TO REINSTATE BOSTON BOMBER'S DEATH SENTENCE

This fall the U. S. Supreme Court will review a 2020 First Circuit Court of Appeals ruling, which overturned the death sentence of one of the Boston Marathon bombers. The case of **United States v. Tsarnaev** involves the conviction and death sentence of Muslim terrorist Dzhokhar Tsarnaev, who, along with his brother, set off two pressure-cooker bombs at the 2013 Boston Marathon, killing three people and maiming hundreds of others.

The evidence of Tsarnaev's guilt was overwhelming and included his confession. Tsarnaev can be seen on camera intentionally placing his bomb near a group of children watching the race. That bomb filleted open, to the bone, the leg of Boston University student Lingzi Lu, who bled to death within minutes. The bomb also shredded the body of 8-year-old Martin Richard, sending nails, glass, and BBs through his spinal cord, pancreas, liver, kidney, spleen, intestine, and abdominal aorta, and nearly severed his left arm. He bled to death on the sidewalk while his mother helplessly watched. The bomb placed by Tsarnaev's brother, Tamerlan, nearly blew the legs off of 29-year-old Krysten Campbell, who bled to death on the sidewalk. The bombs caused hundreds of permanent injuries, including loss of limbs, blindness, and hearing loss.

While looking for a vehicle to steal for their escape, Tsarnaev sneaked up on the parked patrol car of a young MIT police officer and shot him to death. After the brothers carjacked an MIT graduate student and forced him to withdraw money from an ATM, the student managed to escape at a gas station in Watertown and reported the two terrorists and his stolen SUV to police. When officers spotted the car and began following,

the terrorists stopped and began shooting and throwing bombs at them. After Tsarnaev's brother was wounded in the shootout, Tsarnaev ran over him while trying to escape in the stolen SUV. He abandoned the vehicle a few blocks away and was found hiding in a boat in a resident's backyard the next day. Tamerlan died, partly as a result of having been run over.

Prior to trial, Tsarnaev made four separate requests for a change of venue due to pre-trial publicity he claimed would prejudice his case. The district court judge denied them, noting that while coverage of the bombing was extensive, it was not "blatantly prejudicial" toward him and that he would address possible juror bias during jury selection. The judge kept his word, summoning over 1,300 prospective jurors to fill out a 100-question questionnaire, inquiring into their background, social media habits, views on the death penalty, and knowledge of the case. Later, the court called back 256 of the prospective jurors for further questioning over 21 days, narrowing the pool down to 75 people, from which the parties selected the 12 jurors. During that process, Tsarnaev again petitioned the court of appeals asking for a change of venue. The court denied the request after reviewing the process the district court was undertaking and determining that it had taken ample time to weed out prospective jurors who might harbor bias against the defendant.

At trial, Tsarnaev never disputed his guilt, claiming instead that his older brother was the mastermind of the bombings and had influenced his participation. After a 17-day trial, the jury unanimously found Tsarnaev guilty on all counts. At the close

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FORMER U. S. ATTORNEY MCGREGOR SCOTT JOINS CJLF BOARD

McGregor Scott, a Sacramento lawyer who served two terms as U. S. Attorney for California's Eastern District, has been elected to the Criminal Justice Legal Foundation Board of Trustees. Scott, who joined the law firm of King & Spalding as a partner after resigning as U. S. Attorney following the election of President Biden, served for eight years as a Deputy District Attorney for Contra Costa County prior to his election as District Attorney for Shasta County in 1997.

As U. S. Attorney during the Trump administration, Scott cracked down on the wide-ranging organized criminal activity by gangs operating out of California prisons and the estimated \$30-\$40 billion in fraudulent claims paid by California's Employment Development Department to prison inmates and international criminals during the Covid-19 pandemic.



McGregor Scott

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SACRAMENTO DA RUNNING FOR CALIFORNIA ATTORNEY GENERAL

Last Spring, career prosecutor and twice-elected Sacramento County District Attorney Anne Marie Schubert announced her candidacy for California Attorney General. Schubert, who as a Deputy District Attorney formed the first cold-case unit and served as its first prosecutor, pioneered DNA investigations which led to the arrest and her office's conviction of the Golden State Killer (who raped dozens of women and murdered at least 13 across California roughly 40 years ago). A self-described, tough-on-crime prosecutor, Schubert contrasted herself from Governor Newsom's recently appointed Attorney General Rob Bonta, a progressive former Assemblyman who has supported multiple pro-criminal measures which have flooded California communities with habitual criminals.



Anne Marie Schubert

Characterizing California's criminal justice system as "in chaos," she noted that "[w]hen the L.A. district attorney, who is supported by the newly appointed attorney general, has to be sued by his very own prosecutors to enforce the law against violent criminals, that is chaos." Since announcing her candidacy, Schubert has garnered the support of virtually all of California's major law enforcement organizations and victims' groups.

In 2018, she became the target of attacks by Black Lives Matter (BLM) after declining to prosecute two Sacramento police officers for the fatal shooting of Stephon Clark, a black repeat offender on probation. The officers were responding to a 911 call reporting that a thin black man wearing dark pants and a hoodie was breaking car windows. When a police helicopter observed a suspect matching that description breaking a car window with a tool bar, they directed officers on the ground to his location. The officers spotted Clark in front of a house and ordered him to stop and show his hands. Clark ran into the backyard while the officers in pursuit repeatedly ordered him to stop. Clark then abruptly turned, faced the officers with something shiny in his hand, and the officers opened fire. The shiny object turned out to be a cell phone.

As Schubert's office investigated the shooting, BLM protests flooded downtown Sacramento for several days, blocking major streets around the state capitol, the business district, and the District Attorney's office. As the investigation began, the national news featured civil rights activists criticizing Schubert's failure to immediately file charges against the officers. In response, Democrat Attorney General Xavier Becerra announced that his office would open a parallel investigation into the shooting. Nearly a year later, Schubert held an hour-long televised press conference meticulously breaking down the circumstances surrounding the shooting and showing that there was no evidence supporting the prosecution of the officers. Weeks later, Becerra's office announced that its separate investigation also failed to find any evidence that the officers had acted improperly. BLM and other race hustlers have continued to criticize Schubert while ignoring Becerra.

Each of California's last three Attorneys General, Jerry Brown, Kamala Harris, and Xavier Becerra, have used the office to further their political careers while declining to enforce criminal laws that they did not agree with and supporting ballot measures and legislation that has turned the state's once-effective criminal justice system into a revolving door for even the most violent criminals.

"Because it's who I am, I feel strongly that politics shouldn't be part of the position. I have some liberal views on some issues and some conservative views on others, but that shouldn't play a role in this job. The state, in my opinion, is at a crossroads: What do we want our justice system to be?" said Schubert.



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THE PROGRESSIVES FUNDING A MASSACRE

It has become apparent over the past several years that many of those devoted to the progressive movement taking over the Democrat party are divorced from reality and ignorant of history. This is particularly true when it comes to criminal justice policy. In 1994, more than twice as many Californians were victims of violent crime than in 2011. Murders in the Golden State dropped by 60% during that period. There were comparable reductions in New York, Texas, Illinois, Florida, and most other states. There have been mountains of research devoted to finding out why this occurred. Perhaps the best compilation of data on this phenomenon is Professor Barry Latzer's 2016 book, *The Rise and Fall of Violent Crime in America*. Latzer concluded that while differences in culture between different racial and ethnic groups have historically influenced crime rates, society's response to crime plays a major role in the level of violent crime. In the mid-1990s, Americans of every racial and ethnic group demanded a stronger law enforcement response to the criminals dominating its cities during the crime wave of the 1970s and 1980s. That stronger response, including major improvements in policing, delivered two decades of vastly safer cities and neighborhoods, disproportionately benefitting those living in high-crime urban neighborhoods. None of the thousands of young adults who joined the Black Lives Matter protests last summer know anything about this.

This cohort of mostly middle-class whites and black activists came out of college believing that crime is caused by racism, poverty, and money-grubbing businesses. They have been taught to hate this country and that all of its institutions and its history must be torn down and replaced to create a socialist utopia. These progressives were small children when their parents voted out soft-on-crime politicians and adopted ballot measures such as the Victims' Bill of Rights and Three Strikes and You're Out. They grew up in a much safer America because of this.

I believe that most college professors, politicians, and reporters, certainly those over the age of 40, know the truth. But they don't care about it any more than they care about the lives of working class poor and urban minorities they claim to champion. While it's difficult to understand their motives, it is clear from their actions that they are committed to a cause that includes advancing policies that are allowing the slaughter of thousands of mostly urban black men, women, and children by remorseless criminals primarily of the same race.

From a distance, one could make the case that what's happening in black urban neighborhoods is genocide. The formula seems clear: convince the targeted population that the system is rigged against them; enact policies that take down the guardrails of civil society, including de-emphasizing nuclear families, education, religion, a work ethic, and personal responsibility; and provide subsistence income and services to discourage employment and make them totally dependent. Then, denounce law enforcement efforts to control crime and remove criminals as racist, and implement policies that reduce policing and eliminate consequences for crime. The result: urban criminals are left free on the streets to indiscriminately murder, rob, and rape law-abiding people who have no way out of the neighborhood, while the professors, politicians, and journalists live safe in places with private security and where police are welcome.

Progressive hedge-fund billionaire George Soros has spent millions to enact these policies, popularly known as "police and sentencing reforms." He has bankrolled the election of progressive (pro-criminal) district attorneys in American cities with the highest levels of violent crime. But there is a group of uber-wealthy Californians funding this movement as well. A recent article in *Politico* identifies four multimillionaires in the San Francisco Bay Area that have joined Soros, collectively giving \$22 million for criminal justice reforms and

to elect progressive DAs. Patty Quillin, wife of Netflix CEO Reed Hastings, Quinn Delaney, wife of Bay Area real estate developer Wayne Jordan, Elizabeth Simons, daughter of hedge-fund billionaire James Simons, and Kaitlyn Krieger, wife of Instagram co-founder Mike Krieger, joined together in 2017 to launch Smart Justice, an independent committee that can raise unlimited sums to fund social justice projects. Apparently, none of these people have any idea what urban life is like for the people of color they claim to care about.

One of these places is Los Angeles, where District Attorney George Gascón's campaign was bankrolled by the progressives. His policies to release suspects without bail, reduce charges and seek the lowest sentence possible coupled with California's progressive sentencing reform laws have turned parts of LA County into war zones. According to the Sheriff, homicides are up 95% so far this year. Auto theft is up 40%, arson is up 22%, rape is up 8%, and aggravated assault is up 13%. The overwhelming majority of murder and assault victims are black, as are the perpetrators committing these crimes. Compare this with Florida's Miami-Dade County with 2.7 million people. Without California's progressive criminal justice reforms or anti-law enforcement state attorney, homicide and rape are up 13.7% and 12% respectively, but assault and auto thefts are both down. Violent crime overall is down by over 16%. Blacks and Hispanics are far safer there.

So what is the end game for progressives? Does it look like minorities are receiving social justice in Los Angeles or San Francisco, Baltimore, Chicago, New York, and DC? I doubt that anyone actually living in the high crime neighborhoods of these cities would think so.

Michael Rushford
President & CEO

HIGH COURT TO REVIEW NINTH CIRCUIT RULING IN TWO MURDER CASES

The U. S. Supreme Court has agreed to review 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. David Ramirez & Barry 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. On the day of the murders, police were summoned to the victims' apartment by neighbors who heard screaming. Ramirez was found covered in blood inside the apartment alone with the victims' bodies. Both died of multiple stab wounds, and the girl was found nude. Ramirez later admitted having sex with the young girl on the night of the murders as well as on four prior occasions. At trial, Ramirez did not deny his guilt, but claimed that his difficult childhood and mental disabilities disqualified him from a death sentence. The judge disagreed and, based upon the aggravating circumstances, sentenced him to death. After several years of review on appeal and state habeas corpus, Ramirez claimed for the first time on federal habeas corpus that his trial attorney was incompetent because he failed to introduce evidence of his "mental retardation, brain damage, impaired intellectual functioning,



David Ramirez and Barry Jones, who violently murdered and caused the death of their victims, have been granted reviews.

childhood poverty, childhood neglect and abuse, *in utero* exposure to pesticides and alcohol, and the fact that he was the product of the rape of his 15-year-old mother by his uncle. He also contends that [his attorney failed] to provide [appointed expert] Dr. McMahon with additional information concerning Ramirez's low IQ scores and poor grades."

Barry Jones was convicted of the 1994 sexual assault and murder of his girlfriend's 4-year-old daughter. Neighbors testified to seeing Jones hit the child the day before she died. Friends testified that while visiting Jones that evening they saw the little girl lying on a couch bleeding and crying in pain. Jones lied, saying that a paramedic had examined her. Early the next morning, after the little girl died, Jones dropped her and her mother off at a hospital and drove away. The medical examiner determined that the child died from an infection caused by blunt force trauma to the abdomen and that she had also been sexually assaulted. For these crimes, Jones received a death sentence. After his conviction

and sentence were upheld by Arizona courts on direct review and state habeas corpus, Jones claimed for the first time, on federal habeas corpus, that his trial attorney had been incompetent for failing to sufficiently challenge the medical evidence by introducing experts questioning the timeline for the child's injuries.

In Ramirez's case, the federal district court denied the murderer's claims, finding that based upon the trial record, the defense attorney was not incompetent. In Jones's case, the district court initially denied the claims but granted them after the Ninth Circuit sent the case back. 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.

When the U. S. Supreme Court agreed to hear Arizona's appeal, CJLF agreed to join the case. In a scholarly *amicus curiae* (friend of the court) brief, Foundation Legal Director Kent Scheidegger argues that the Antiterrorism and Effective Death Penalty Act of 1996 clearly restricts the introduction of new claims and 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.

"Both murderers had the opportunity to make their cases in state court," said Scheidegger. "The Ninth Circuit defied an Act of Congress to give them a do-over that the law forbids. We hope the Supreme Court will correct this error and restore the rule of law," he added.

"BOSTON BOMBER'S SENTENCE"

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of a 12-day penalty trial, the jury unanimously recommended the death sentence, which the judge imposed.

On appeal, Tsarnaev claimed that the trial judge's questioning of potential jurors regarding pretrial publicity was inadequate, and that the judge's decision to exclude evidence of his deceased brother's involvement in an earlier, unrelated murder was improper. The court of appeals accepted both claims and overturned his sentence.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Legal Director Kent Scheidegger argues that the trial judge acted properly, following a 1991 Supreme Court decision specifying

the requirements for questioning potential jurors. The brief further argues that the appeals court does not have the authority to add new requirements, and also that the trial judge did not err in excluding marginally relevant evidence of his brother's involvement in an earlier, unrelated murder. "The trial judge in this case did a thorough job in screening potential jurors and was well within his discretion to exclude the unrelated evidence under current federal law. The appeals court ruling overturning this horrible murderer's sentence was improper and should be reversed," said Scheidegger.

Oral argument is scheduled for October 13, 2021.

SUPREME COURT TO REVIEW RULING VOIDING MURDERER'S CONVICTION

The U. S. Supreme Court has agreed to review a Sixth Circuit Court of Appeals ruling that overturned the conviction of a brutal murderer. The Sixth Circuit held that because Ervine Lee Davenport's partial shackling during his trial was not harmless error, his conviction was invalid. CJLF has joined the case of **Brown v. Davenport** to encourage a decision reinstating the conviction.

On January 13, 2007, the partially-clothed body of Annette White was found in a Kalamazoo, Michigan field. The previous evening, Davenport, a habitual felon, had agreed to drive White home from a friend's house where they had been smoking crack cocaine. An autopsy later concluded that White had been strangled to death.

Following his arrest, Davenport, who is 6'5" and weighs 300 lbs., admitted strangling White, 5'2" and 103 lbs., but claimed he did so in self-defense. At trial, experts testified that it would have taken roughly 5 minutes to strangle the victim to death, but that she would have blacked out in less than a minute. Evidence indicated that after Davenport killed the woman and disposed of her body, he went to her home and ate some food, then stole some of her belongings, including a stereo. Other evidence included Davenport's own words that he "offed her" and testimony from witnesses of him bragging that if he had a problem with someone he would choke them.

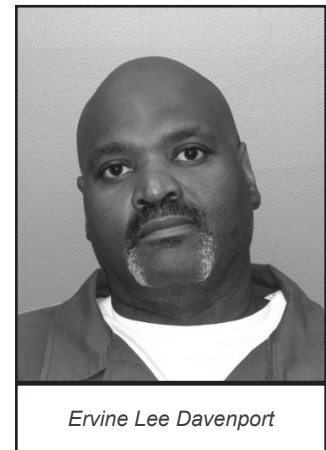
The combined evidence convinced the jury to convict Davenport of first-degree murder. He received a sentence of life in prison without the possibility of parole.

During the trial, Davenport was partially shackled, which is unconstitutional without a showing of a specific need for shackling. After the trial, every juror stated that the shackles did not influence their unanimous decision. On both direct



appeal and on federal habeas corpus, Davenport claimed that the shackles prejudiced the jury, but the state courts and federal district court disagreed and found it to be harmless error. A divided panel of the federal Sixth Circuit Court of Appeals disagreed, holding that the federal habeas court used the wrong standard to find the error harmless.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Associate Attorney Kymberlee Stapleton argues that it was the Sixth Circuit who used the wrong standard to overturn Davenport's conviction.



Ervine Lee Davenport

tion. Federal law requires that court to respect the findings of the lower courts which, guided by U. S. Supreme Court precedent, held that the shackling, while an error, had no effect on the jury or the outcome of the trial and was therefore harmless.

"The Sixth Circuit in this case misapplied law and precedent to overturn the conviction of an admitted murderer. The Michigan state courts thoroughly evaluated and rejected Davenport's claim that his partial shackling at trial affected the jury's verdict. Federal habeas courts must give great deference to a state court's determination of harmless error. We are encouraging the U. S. Supreme Court to make this clear in its decision," said Stapleton.

Oral argument is scheduled for October 5, 2021.

We need your help to continue our fight to restore law and order. As Americans push back against so-called "progressive" policies that have turned our cities into crime-ridden cesspools, our Foundation is exposing the politicians who support them and the billionaires bankrolling them. We are fighting in court to block the early release of thousands of criminals and to uphold the sentences of our nation's worst murderers. Your support helps us survive to carry on the fight. Please make your 2021 tax-deductible contribution today by returning the card on the right with your check, giving through our website www.cjlf.org, or calling (916) 446-0345 to contribute with your credit card. **Many thanks.**

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VICTIMS' GROUPS JOIN LAWSUIT TO BLOCK INMATE RELEASES

In a court filing on August 18, two victims' groups, Crime Victims United and Citizens Against Homicide, joined a lawsuit by district attorneys to block new regulations announced on May 1 by the California Department of Corrections and Rehabilitation (CDCR) making 76,000 inmates eligible for early release.

The new regulations would allow the early release of criminals convicted of both violent and non-violent crimes, including murderers and sex offenders. Inmates that prison officials determine have behaved well or participated in rehabilitation programs would be eligible for release after serving one-half of their sentences.

On May 29, Sacramento District Attorney Anne Marie Schubert was joined by 43 other California district attorneys in a lawsuit seeking a preliminary injunction against CDCR to prevent the regulations from taking effect. The district attorneys argued that the CDCR rushed the regulations through an expedited process by claiming that the agency needed them to address an emergency, but provided no evidence indicating what the emergency was. They also argued that making thousands of violent criminals eligible for early release would threaten public safety. On July 14, a Sacramento Superior Court judge declined to issue a preliminary injunction blocking the releases but indicated that the district attorneys' legal arguments

were likely to prevail. However, the judge also expressed doubt that the district attorneys had legal standing to bring the suit and suggested that the complaint could be amended to bring in plaintiffs with such standing.

The victims' groups have joined the lawsuit as plaintiffs whose members will likely suffer personally if the criminals who assaulted them or murdered their family members are released years before their sentences are completed. Adding parties with legal standing will allow the suit to move forward.

CJLF Legal Director Kent Scheidegger and Sacramento Attorney Thomas Hiltachk, who are representing the victims' groups, have filed an amended complaint arguing that the CDCR regulations cannot override state laws that govern the process by which inmates gain credits for good behavior. While the CDCR claims that it has this authority under Proposition 57, that ballot measure did not repeal existing laws regarding inmate releases.

"An administrative agency cannot, under its rule-making authority, override state laws passed by the Legislature or included in a ballot measure adopted by the voters," said Scheidegger. "These proposed regulations enact a major policy change with a substantial impact on public safety. A change in the law of this magnitude must be enacted by the Legislature or the voters, not by the Governor through the CDCR," he added.



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