CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

Volume 34, No. 3 Fall 2016

SUPREME COURT REVIEWS SEXUAL PREDATOR'S CLAIM OF JURY BIAS

A Colorado man convicted of molesting two teenage sisters in 2007 is asking the U. S. Supreme Court to allow the use of statements by the jurors about their deliberations in his case as evidence to challenge his guilty verdict. At issue in the case of **Peña-Rodriguez v. Colorado** are state and federal laws that hold jury deliberations as confidential and forbid the use of statements by jurors about deliberations as evidence to overturn a verdict.

CJLF has joined the case to encourage the U. S. Supreme Court to reject Peña-Rodriguez's claim and uphold the historic sanctity of the jury process.

The case involves an incident which occurred at a Colorado racetrack in 2007. In May of that year, Peña-Rodriguez was working as a horse keeper at the track. Three sisters, aged 16, 15, and 14, were also staying at the track with their parents. One evening, on their way to the track bathroom, the three girls walked past Peña-Rodriguez and another man who were sitting and drinking beer near the bathroom entrance. As the girls entered the bathroom, Peña-Rodriguez followed them and asked if they wanted to drink or "party." The girls said no, and the youngest sister left just before the man turned off the lights and began to grope the remaining two. The two sisters managed to push him away and escape, immediately telling their parents what happened. From the description the girls gave, the father recognized that it was Peña-Rodriguez and informed the track security guard. As they were talking, the father and the guard saw Peña-Rodriguez speeding away in his pickup. He was arrested later that evening, and the two sisters individually identified him as the man who groped them in the bathroom.

At trial, Peña-Rodriguez's defense attorney argued that he had been misidentified and that some other man had followed the girls into the bathroom. A friend testified that Peña-Rodriguez had been visiting with him in a different part of the track at the time of the assault. After 12 hours of deliberations, the jury failed to agree on a felony count of attempted sexual assault, but unanimously convicted him of misdemeanor counts of unlawful sexual contact and harassment, for which he was sentenced to two years of probation. At no time during the jury selection did the defense attorney question prospective jurors about their prejudices regarding Hispanics.

After the trial, the defense attorney took affidavits from two jurors who said that another juror had made prejudicial remarks about Mexicans during deliberations. Based upon these affidavits, the defense moved for a new trial. The judge denied the motion, citing state law barring the use of juror affidavits as evidence. The state Court of Appeals and the state Supreme Court also denied the motion, noting that the defendant had waived the right to raise a racial bias challenge to the verdict when he failed to question jurors about possible bias.

When the U. S. Supreme Court agreed to hear Peña-Rodriguez's appeal, CJLF joined the case.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF Associate Attorney Kymberlee Stapleton argues that state and federal laws, rooted in English common law and U. S. Supreme Court precedent, specifically prohibit the use of juror statements to challenge the

continued on page 6

MURDERER SEEKS TO EXPAND DEFINITION OF MENTAL RETARDATION

The U. S. Supreme Court has agreed to hear a Texas murderer's claim that the state's current standard for determining if he is exempt from execution by reason of mental retardation should be broadened to comply with new standards announced by two private psychiatric associations.

In 2002, the Supreme Court held in **Atkins v. Virginia** that the Constitution prohibits both state and federal governments from executing a murderer determined to be mentally retarded. While not announcing a standard for determining mental retardation, the Court did discuss the standard recognized at the time, *i.e.*, IQ scores below 70 and a history of poor adaptive skills. Following **Atkins**, states with capital punishment developed standards utilizing those two factors.

At issue in the case of **Moore v. Texas** is whether the states should now be required to follow the evolving standards announced by two private associations—American Psychiatric Association (APA) and American Association on Intellectual and Developmental Disabilities (AAIDD).

The Criminal Justice Legal Foundation has joined the case to encourage a decision to reject this change.

continued on page 6

The Criminal Justice Legal Foundation is a nonprofit, public interest law foundation representing the interests of law-abiding citizens in court. CJLF is an independent corporation supported by tax-deductible contributions from the general public and is qualified under IRC 501(c)(3). CJLF does not engage in any form of political or lobbying activity. The Advisory is published by the Criminal Justice Legal Foundation, Michael Rushford, Editor, 2131 L Street, Sacramento, California 95816. (916) 446-0345.

MANSLAUGHTER DEFENDANT SEEKS NEW RULE TO VOID CONVICTIONS

A Southern California man convicted of vehicular manslaughter is seeking a California Supreme Court ruling announcing that a conviction is automatically void if the defendant is not specifically advised by the judge about the consequences of his agreement to admit the facts of one of the charges during the trial.

At issue in the case of **People v. Farwell** is whether such a rule exists, or if a reviewing court can consider the entire trial record to determine if the defendant knowingly and voluntarily agreed to stipulate (admit) to facts that established his guilt of one of the charges against him.

The case involves a tragic accident which resulted in the death of a young woman. On the afternoon of Friday, June 21, 2013, Randolph Farwell was speeding through a residential neighborhood in Compton, California, with three passengers in his Pontiac Grand Prix. Police traffic forensics indicate that he was traveling between 82-92 mph when he swerved into oncoming traffic to pass a slow-moving SUV and then swerved back to avoid a head-on collision, losing control of his car. Farwell's car jumped the curb and crashed into a tree in a public park bordering the street. Front seat passenger Kahdeja Tony was killed in the crash.

At the time of the incident, Farwell was driving on a suspended license. Three years earlier he was arrested for reckless driving and participating in a speed contest whereby a police officer clocked him at 120 mph while racing another vehicle along Ocean Boulevard in Long Beach.

Following his arrest, Farwell faced charges of vehicular manslaughter and driving with a suspended license. During a pretrial hearing, Farwell sought to plead "no contest" to the suspended license charge or have a separate trial for the charge, but the judge refused. At trial, Farwell and his attorney agreed to stipulate to the facts of the suspended license charge and the judge reported this to the jury in open court. With Farwell sitting next to him, the defense attorney then told the jurors: "On June 21, 2013, Farwell was driving a motor vehicle while his license was suspended for a failure to appear and that when he drove he knew his license was suspended."

The jury found Farwell guilty on both counts and, due to his prior conviction of a serious felony, he was sentenced to 13 years in prison. Farwell appealed, arguing that the conviction for driving on a suspended license should be overturned because prior court decisions require the trial judge to expressly advise him that he would be giving up several constitutional trial rights if he agreed to stipulate (admit) to it. After the Court of Appeal denied that claim, the California Supreme Court agreed to hear Farwell's appeal.

CJLF has joined the case to encourage a decision rejecting Farwell's claim. Associate Attorney Kymberlee Stapleton introduced a scholarly *amicus curiae* (friend of the court) brief, arguing that earlier rulings, which required an automatic reversal if the trial judge did not expressly advise the defendant of the

continued on page 7

Advisory layout design by Irma H. Abella

CALIFORNIA BALLOT MEASURES DEALING WITH CRIME

Seventeen statewide initiatives have qualified for the California general election ballot this year. Most of them have been put there to benefit special interest groups and are being deceptively marketed to mislead the public into believing they are voting for something worthwhile. In 2014, $8 million was spent by pro-criminal groups to fool voters into passing Proposition 47, which was advertised as a law to help rehabilitate criminals, when it actually eliminated punishment for most thieves and drug dealers. As a result, crime rates went up immediately. For this reason, Californians need to be skeptical of every measure on next month's ballot.

Three propositions on the November 8 ballot will have a direct effect on the physical safety of law-abiding men, women, and children living in California. They are Proposition 57, Governor Brown's Public Safety and Rehabilitation Act of 2016; Proposition 62, Repeal the Death Penalty Initiative; and Proposition 66, Death Penalty Reform and Savings Act.

- **Proposition 57.** *If passed, it would amend the California Constitution to eliminate the mandatory sentences for habitual violent and serious felons that Californians voted for in the Victims' Bill of Rights, Three Strikes and You're Out, and the Marsy's Law initiatives in earlier elections*. Proposition 57 would require that a criminal convicted of the rape of an unconscious woman, the burglary of a home, the setting of a forest fire, and a long list of other crimes, be eligible for parole after serving only the base sentence, minus up to 60% time off for good behavior. Under Proposition 57, a residential burglar who has prior convictions for murder, rape, and armed robbery will be required to serve no more than six years. If he behaves well while in prison he can be released on parole in 2.4 years. Under current law, his three violent priors would keep him in prison for at least 25 years. The supporters of Proposition 57 believe that if it passes, 25,000 criminals currently in prison will become eligible for release. Thousands of them will have prior convictions for violent crimes. They do not say how many inmates in county jails will benefit, but we believe it will amount to several thousand. Proposition 57 also takes away the authority of a District Attorney to prosecute murderers and rapists who are under 18 years old in adult court and gives that authority to a juvenile court judge.

  If Proposition 57 passes, thousands of new criminals will join the ones left on the streets by Governor Brown's Realignment and the ACLU-backed Proposition 47, which have already caused a sharp increase in crime. Every legitimate law enforcement organization in the state, including district attorneys, county sheriffs, and chiefs of police, oppose Proposition 57.

Vote NO on Proposition 57.

- **Proposition 62**. *If passed, it would repeal California's death penalty and convert the sentences of every murderer on death row to life without parole*. It claims to require life-sentenced murderers to work, which is already current law. The fact is, most life-sentenced murderers are too dangerous to work alongside other inmates. Proponents estimate that millions of tax dollars will be saved from reduced trial and appeals costs. They don't tell us how much it will cost to provide life-sentenced inmates with Cadillac health care, including sex reassignment and heart transplant surgery, for the rest of their lives. They don't tell us that in states with death penalty over three times as many murderers plead guilty to avoid it, resulting in no trial, no appeals, and millions in tax savings. They don't mention that, under Proposition 62, the most punishment that a murderer serving a life sentence can get for killing his cellmate, a guard, or ordering the murder of people outside of prison is another life sentence. The proponents also don't tell us that the reason it takes so long to put California's worst murderers to death is because of the lawsuits and procedural delays that they have spent the last 30 years forcing upon our state's death penalty process. Virginia executes its worst murderers within 7 years of conviction. The families of California murder victims should be receiving the same level of justice.

Vote NO on Proposition 62.

- **Proposition 66**. *If passed, it would eliminate many of the current procedures delaying executions in California*. Presently it takes at least 5 years for the California Supreme Court to appoint an attorney for a condemned murderer's appeal and habeas corpus reviews. This is because of overly restrictive rules on attorneys to qualify to represent inmates. Proposition 66 would allow hundreds of experienced criminal attorneys to qualify for appointment. Presently, it can take over 20 years for condemned murderers to submit claims of trial error (direct appeal) and file multiple petitions attacking the competence of their trial lawyer, the judge, and the prosecutor. Proposition 66 would allow no longer than 5 years to decide these claims and require that claims against the defense lawyer go straight to the trial judge who presided over the case. Presently, the state's execution protocol is blocked by federal lawsuits, and new protocols are required to comply with an unnecessary, multi-year, judge-ordered administrative review process. Proposition 66 eliminates the administrative review process and requires the Department of Corrections and Rehabilitation to choose a different execution method if the current one is delayed by a court ruling or the shortage of an execution drug. If Proposition 66 passes, at least 17 murderers currently on death row, who have exhausted all of their appeals, will face imminent execution, and at least 10 years will be shaved off the appeals process for other condemned murderers.

Vote YES on Proposition 66.

The proponents of Proposition 57 and Proposition 62 are lying to the public about what these measures would do and why they are needed. They are also lying about Proposition 66, claiming that shortening the death penalty process will somehow cost more money. Don't buy into these lies.

Vote with police officers and prosecutors who are fighting to protect the safety of you and your loved ones.

Michael Rushford
President & CEO

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.

Beylund v. Levi: 6/23/16. U. S. Supreme Court decision upholding North Dakota's implied consent law, which allows the state to suspend the driver's license of any intoxicated driving suspect who refuses to submit to a breath test. The case involved the 2013 arrest of Michael Beylund on suspicion of drunk driving. Because Beylund was uncooperative with police and failed to provide an adequate breath sample he was arrested and taken to a hospital. After he was advised that, under the state's implied consent law, his refusal to be tested would result in suspension of his driver's license, he agreed to be tested. The test showed a blood alcohol level of over three times the legal limit. On appeal, Beylund argued that the state's implied consent law subjected him to an unconstitutional search. After two state courts rejected his claim, the U. S. Supreme Court agreed to consider it. CJLF joined the case to argue that the challenged law is a reasonable tool used in all 50 states to keep intoxicated drivers off the road, and that the privilege to drive is conditioned upon the licensee's agreement to consent to testing to protect the public from drunk drivers. The Supreme Court agreed. **WIN**

Utah v. Strieff: 6/20/16. U. S. Supreme Court decision reinstating the conviction of a Utah man for possession of methamphetamine. The decision overturned a Utah high court ruling which had held that the conviction was invalid because a police officer's discovery of the drugs, during what he thought was a lawful stop, required exclusion of the evidence. The stop was made by an experienced detective who saw the suspect leave a known drug house under surveillance. When the officer learned that there was a warrant out for the suspect's arrest, he searched him and found the illegal drugs. CJLF joined the case to argue that the Fourth Amendment protection against unlawful searches does not require that evidence be excluded because a police officer makes an honest mistake leading up to the search. In this case, it was undisputed that the officer believed that he had complied with the law. The Supreme Court's decision agreed with the CJLF argument that the extreme remedy of excluding valid evidence was not appropriate when a stop by a police officer acting in good faith uncovers a warrant authorizing arrest. **WIN**

Johnson v. Lee: 5/31/16. Summary decision by the U. S. Supreme Court overturning a Federal Ninth Circuit ruling, which ignored the high court's precedent in order to void a murderer's conviction. The case involved the 1995 stabbing murders of two women in a Los Angeles parking lot by Paul Carasi and his girlfriend Donna Lee. Overwhelming evidence, including blood and DNA, confirmed the guilt of the defendants. The mastermind of the killings, Carasi, was sentenced to death while Lee received life without parole. Five years after her conviction, Lee's claims of trial error were rejected by the California Supreme Court. A year later, Lee raised several frivolous new claims in Federal District Court, which violated the state's procedural default rule. After the court rejected those claims, the Ninth Circuit announced that the state's rule was inadequate and ordered that Lee's claims be reviewed. At the California Attorney General's request, CJLF filed a brief in the Supreme Court supporting the state's request to reconsider the Ninth Circuit's ruling. Our brief cited several Supreme Court decisions (won by CJLF) upholding procedural default rules and suggested that the lower court's ruling was so bad that a summary disposition was appropriate. The high court agreed, using CJLF arguments and research in its opinion. **WIN**

HCRC v. Department of Justice: 3/23/16. Unanimous U. S. Ninth Circuit Court of Appeals decision overturning a 2013 injunction by District Judge Claudia Wilken, blocking the fast-track process for federal appeals of state death penalty cases. That process was enacted by Congress and signed into law by President Clinton in 1996. The judge's ruling was based upon the claim of a group of government-paid defense attorneys that the process would work a hardship on them. Efforts by the states of Texas and Arizona to be approved for the fast-track process were stopped by Judge Wilken's ruling. When the U. S. Department of Justice appealed that ruling, CJLF joined the case on behalf of two family members of murder victims, Marc Klaas of California and Edward Hardesty of Arizona. CJLF argued that the defense attorneys did not have a legal right (standing) to challenge the law and that it was not appropriate for the district court to review any challenge at this time. The Ninth Circuit opinion used argument and research introduced by the Foundation to overturn the ruling and dismiss the lawsuit. **WIN**

Montgomery v. Louisiana: 1/25/16. U. S. Supreme Court ruling announcing that the Court's 2012 decision in the **Miller v. Alabama** ruling applies retroactively. The 2012 ruling announced that laws providing a mandatory life-without-parole (LWOP) sentence for juvenile murderers whose crimes would carry a death sentence if they were adults was unconstitutional, but the Court did not apply the law to older cases. CJLF joined the case to argue that the Court's ruling announced a change in procedure rather than substance and that the petitioner, 17-year-old cop-killer Henry Montgomery, received a fair trial and was properly sentenced for his crime in 1963. **LOSS**

continued on page 5

Peña-Rodriguez v. Colorado: U. S. Supreme Court case to review a convicted sexual predator's claim that he should be allowed to introduce affidavits by jurors (after the trial) that suggest one member of the jury was prejudiced against Hispanics. In 2007, Miguel Peña-Rodriguez was convicted of two misdemeanor counts of unlawful sexual contact for soliciting three teenage girls in a bathroom, and then turning out the lights and groping two of them. Several witnesses saw him fleeing the scene, and two of the girls positively identified him in a lineup. Following the guilty verdict, his defense attorney took statements from jurors indicating that one member was biased and sought to introduce those statements as evidence to overturn the conviction. Citing state law declaring that jury deliberations are confidential, the Colorado Court of Appeal and Colorado Supreme Court denied the use of the affidavits as evidence. CJLF has joined the case in the U. S. Supreme Court to uphold the Colorado courts' denial, arguing that allowing defendants to utilize jury deliberations to challenge verdicts would violate the sovereignty of the jury process and open a Pandora's Box of claims against valid convictions and sentences.

Moore v. Texas: U. S. Supreme Court case to review a Texas murderer's claim that he is too mentally retarded to be eligible for the death penalty. Bobby James Moore was convicted and sentenced to death for the 1980 shotgun murder of 78-year-old James McCarble during the robbery of a grocery store in Houston. Eyewitnesses testified to seeing Moore shoot the elderly man in the head even though he had his hands up. After more than three decades of failed appeals, Moore now claims that the state's rules governing the evaluation of mental disability in death penalty cases are unconstitutional, and should comply with the ever-changing standards announced by private associations. When the Supreme Court agreed to hear Moore's claim, CJLF joined the case to argue that allowing private organizations with political agendas to control how states determine if murderers are mentally retarded would throw every state's process for determining a defendant's mental competence into turmoil and invite endless litigation over the sentencing of guilty and fully competent murderers such as Moore.

People v. Farwell: California Supreme Court case to review a habitual felon's claim that his conviction of driving without a license should be overturned because the judge failed to instruct him that admitting his guilt to that offense would waive some of his constitutional trial rights. Randolph Farwell was convicted of vehicular manslaughter after his reckless driving resulted in his car hitting a tree at high speed, killing a female passenger. At the time of the crash, Farwell's license had been suspended after an earlier reckless driving arrest. Farwell also had a previous conviction for burglary. At trial, Farwell and his attorney agreed to admit guilt on the suspended license charge to prevent jurors from hearing the details of the earlier driving arrest. On appeal, Farwell argues that the law requires his conviction to be overturned because the judge did not instruct him on the consequences of his admission of guilt. CJLF has joined the case to oppose Farwell's claim, arguing that the law actually allows a review of the entire trial court record to determine if he knowingly and intelligently waived his trial rights when he admitted guilt on the driving without a license charge.

BOXSCORE

continued from page 4

Kansas v. Jonathan Carr/Kansas v. Reginald Carr, Jr./Kansas v. Sidney Gleason: 1/20/16. U. S. Supreme Court decision reversing a Kansas Supreme Court decision, which had overturned the death sentences of three murderers. Jonathan and Reginald Carr were convicted and sentenced to death for a December 2000 home invasion burglary, sexual assault, kidnapping, and murder of three young men and a young woman, and the rape and attempted murder of a second young woman during a six-day crime spree. Sidney Gleason received a death sentence for the murders of a female accomplice in an earlier robbery and the previous murder of her boyfriend. On appeal, the Kansas Supreme Court upheld their convictions, but overturned their death sentences, announcing that a commonly used instruction given to the sentencing jury might confuse jurors into voting for a death sentence even though they don't believe it is the appropriate punishment. CJLF argued on behalf of the National District Attorneys Association and the California District Attorneys Association to encourage a decision to overturn the Kansas court's absurd ruling. **WIN**

Jones v. Davis: 11/12/15. Federal Ninth Circuit Court of Appeals decision overturning a federal judge's 2014 ruling, which voided the death sentence of rapist/murderer Ernest Dewayne Jones because delays in enforcing the law in California meant that executing murderers "will serve no retributive or deterrent purpose and will be arbitrary." Jones, a habitual rapist, was convicted on overwhelming evidence and sentenced to death for the 1992 rape and murder of his girlfriend's mother. CJLF had joined the appeal of the judge's ruling to argue that much of the delay in death penalty cases is the result of repeated and lengthy reviews by the federal courts and cannot be blamed on the state. The judge's ruling also created a new rule of law on habeas corpus, which violates U. S. Supreme Court precedent (won by CJLF). **WIN**

TOTAL	**6 Wins**	**1 Loss**	**0 Draw**

"CLAIM OF JURY BIAS"

continued from front page

validity of verdicts. "By the beginning of this century, if not earlier, the near universal and firmly established common-law rule in the United States flatly prohibited the admission of juror testimony to impeach a verdict."

The law in Colorado provides three exceptions: 1) whether extraneous prejudicial information was improperly brought to the jurors' attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form.

Juror statements about the possibility that one of the 12 jurors might be biased against a defendant's ethnicity does not qualify as one of these exceptions.

"Trial by jury reflects the values and standards of the general public brought together for the sole purpose of deciding a peer's fate," said Stapleton. "If the Court were to allow defendants to peek into the jury deliberation room under the guise of determining whether bias played a role in the decision-making process, virtually any verdict would be subject to challenge," she added.

"MENTAL RETARDATION"

continued from front page

The case involves the conviction and death sentence of Bobby James Moore for a robbery and murder, which occurred 36 years ago. On April 26, 1980, Moore and two accomplices attempted to rob the Birdsall Super Market in Houston, Texas. Eyewitnesses testified to seeing Moore shoot 72-year-old store employee James McCarble in the head with a shotgun while he had his hands up and was co-operating. Other witnesses gave police the license number of the getaway vehicle along with other evidence, which led to the arrest of one of the accomplices at a house where Moore also lived. Police recovered a shotgun matching the murder weapon under Moore's bed. A short time later, the other accomplice turned himself into police, confessed to the robbery, and identified Moore as the murderer. Police arrested Moore at his grandmother's house in Louisiana and returned him to Houston where he confessed to killing McCarble.

At trial, Moore denied making a confession and claimed that he was in Louisiana at the time of the murder. Based upon substantial evidence to the contrary, the jury found him guilty and sentenced him to death. After nearly two decades of unsuccessful appeals, Moore won a new sentencing trial in 2001, but the new jury also gave him a death sentence.

Following the **Atkins** decision, Moore filed a state habeas corpus petition, claiming that his death sentence was invalid because he was mentally retarded. The Texas Court of Criminal Appeals conducted an extensive review of Moore's claim, finding that he did not meet any of the state's thresholds for mental retardation. When Moore appealed that decision to the U. S. Supreme Court, he argued that the Texas standards were no longer valid, and that the most recent new standards announced by the APA and the AAIDD should now be required.

When the Supreme Court agreed to hear Moore's claim, CJLF joined the case to argue that the two psychiatric organizations cited by the defense have repeatedly changed their definitions of what constitutes mental retardation, now renamed "intellectual disability." If states are required to adhere to those changes, every murderer sentenced before the newest standards are announced could challenge his sentence, claiming that he would be designated as retarded under the new ones. Allowing private organizations with political agendas to control how states determine whether or not murderers are mentally retarded would invite endless litigation over the sentencing of guilty and fully competent murderers such as Moore.

CJLF legal arguments filed, press releases, publications, and information on the ongoing fight against AB109 and Proposition 47 are available on our Website at:

www.cjlf.org

WEAK SENTENCING LAWS BENEFITTED CALIFORNIA COP KILLERS

The criminal histories of the two ex-cons arrested in the killings of three California law enforcement officers in early October are sparking outrage as information continues to emerge detailing their violent crimes and parole violations.

Patrick Healy of NBC News reported that Trenton Lovell was arrested in Lancaster on Wednesday, October 5, for fatally shooting sheriff's Sgt. Steve Owen, 53, who was responding to a burglary call. Lovell had been sentenced to six years for a 2008 armed robbery, but was paroled in just under five years after being entitled to credit for 15% of his sentence under Penal Code section 2933. Last year, while out on parole, Lovell was convicted of misdemeanor DUI causing injury and was placed on county probation simultaneously with parole.

On Saturday, October 8, John Felix shot and killed two Palm Springs officers, Jose Vega, 63, and Lesley Zerebny, 27, when they arrived at his home in response to a domestic violence call. Felix had completed his parole for a 2010 conviction of assault with a deadly weapon, which was plea bargained down from attempted murder. He was sentenced to four years in prison, but paroled after only 19 months. While on parole, Felix was arrested for possession of drug paraphernalia and even absconded at one point. Los Angeles County Sheriff Jim McDonnell says there is a need to address a system that is permitting repeat offenders to cycle in and out of custody.

Officer Jose "Gil" Vega, 63. | Officer Lesley Zerebny, 27. | Sgt. Steve Owen, 53.

"MANSLAUGHTER DEFENDANT SEEKS"

continued from page 2

trial rights being given up, were modified by the California Supreme Court's 1992 decision in **People v. Howard**. In that decision, the Court held that the determination of whether a stipulation to an offense was knowing and voluntary could be made based on a review of the entire trial record, even if the defendant was not specifically advised at the time of the stipulation. In this case, the defendant knew he would face trial on the suspended license charge. He attempted to plead no contest to that charge prior to trial, and he knew that evidence of his suspended license and why it was suspended would be introduced at trial unless he stipulated to that charge. He was sitting in court when the judge announced that the stipulation had been agreed upon and when his attorney admitted the charge to the jury. This, and the fact that Farwell was a repeat offender who had twice pled guilty to criminal charges in the past, clearly indicated that he understood what he was agreeing to. A decision ignoring these facts and establishing an inflexible rule that a conviction was void if a specific instruction was not given at the time the stipulation was entered would invite numerous appeals and risk overturning the convictions of patently guilty criminals. Watch for a decision in this important case in a future *Advisory*.

This year, CJLF has won six important decisions to prevent criminals from avoiding the consequences for their crimes and to stop activist judges from legislating from the bench. Our warning that policies shortening sentences for criminals would increase violent crime has proven correct. Because we don't ask for or receive any government support, our fight to repeal these policies and continue our legal program depends upon the tax-deductible contributions from people like you. Please help us stay in the battle by returning the card on the right with your check, or going to www.cjlf.org, or calling us at (916) 446-0345 to use your credit card. **Thank you very much.**

THIS IS MY CONTRIBUTION TO CJLF

Please fill out and mail with your check to:

Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Name: _____

Address: _____

_____

Type of Contribution (check one): ☐ Business ☐ Personal

If you itemize your deductions, your contributions to CJLF are TAX DEDUCTIBLE.
IRS I.D. Number: 94-2798865

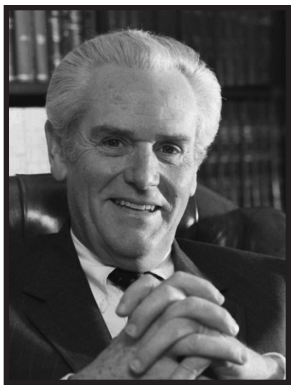
I would like to receive CJLF bulletins via e-mail. My e-mail address is:

_____

Fall 2016

CHIEF JUSTICE MALCOLM LUCAS
1927-2016

The man who restored integrity to the California Supreme Court



Malcolm Lucas, former Chief Justice of the California Supreme Court, passed away in his Los Angeles home on September 28 at the age of 89. A USC alum, he took his law degree in 1953 and partnered with another newly minted lawyer, George Deukmejian, in private practice until Governor Ronald Reagan appointed him to the Los Angeles Superior Court in 1967.

Three years later, President Richard Nixon appointed him to the Federal District Court, where he served for 13 years. In 1984, Governor George Deukmejian tapped Lucas to replace Justice Frank Richardson as an Associate Justice on the California Supreme Court. At the time, Justice Lucas was the lone conservative on the court serving with five appointees of Governor Jerry Brown, including the divisive activist Chief Justice Rose Bird, and the Court's reigning liberal lion, Justice Stanley Mosk, appointed in 1964 by Brown's father, Governor Pat Brown.

For the next three years, Justice Lucas was relegated to mostly writing dissenting opinions as Bird and the majority announced rulings expanding the rights of criminals, undermining police and prosecutors, and dictating state policy on behalf of labor unions and environmentalists.

Things changed after the election in the fall of 1986 when California voters refused to retain Chief Justice Bird, Associate Justices Cruz Reynoso and Joseph Grodin (all Brown appointees), but voted to retain Justices Stanley Mosk, Edward Panelli, and Malcolm Lucas. It was the only time since adoption of the present retention system in 1934 that any justice had been rejected.

In early 1987, when Bird left the court, Deukmejian elevated Lucas to take her place as Chief Justice, and appointed three solid appellate court justices, Marcus Kaufman, David Eagleson, and John Arguelles to serve with him.

With Chief Justice Lucas at the helm, the interests of law enforcement and crime victims regained status as legitimate factors for consideration by the court. In several criminal appeals, damaging Bird court rulings were narrowed or overturned and, in many others, important laws and convictions were upheld. Our Foundation played a role in this effort. In civil cases, the Lucas court issued holdings balancing interests within the confines of the law, rather than championing causes. The quality of the court's scholarship improved and the state's legal environment stabilized, to the disdain of many law professors and most social activists. Fortunately for the rest of us, Chief Justice Lucas and his colleagues understood that the role of the court was to be an unbiased arbiter, not an advocate.

His gentlemanly and engaging demeanor contrasted sharply with his predecessor, who mistrusted her colleagues and required them to make appointments to speak with her. He was also admired for his strong work ethic. Lucas authored many of the court's decisions; implemented several administrative reforms improving the efficiency of the courts; fought for and won increased court funding; established and oversaw committees on gender, race, and ethnic fairness; and joined with his liberal associate Stanley Mosk and renowned legal scholar Bernard Witkin to form the Supreme Court Historical Society.

The Chief Justice was also a kind and modest man who went out of his way to help others.

When he retired from the court, he joined Governor Deukmejian on our Foundation's Board of Trustees, and later as a member of our Legal Advisory Committee where he served until his death.

"Malcolm was a wonderful colleague, a man of great integrity and principle, a wise judge, and a valued personal friend," said Governor Deukmejian. "I am deeply saddened by his loss."

We will miss him.

Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

RETURN SERVICE REQUESTED

Non-Profit Organization
U.S. Postage
Paid
Sacramento, Calif.
Permit No. 419