



Advisory

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GOVERNOR ANNOUNCES INITIATIVE TO RELEASE MORE CRIMINALS

In a remarkable January 28, 2016 announcement, Governor Jerry Brown unveiled an initiative constitutional amendment he plans to qualify for the November ballot that would allow for the early release of thousands of hard-core habitual felons. This announcement came one week after an FBI report indicated that both violent crime and property crime jumped significantly higher in over 70% of California cities with populations of 100,000 or more.

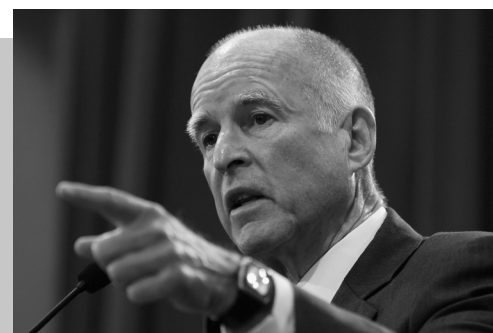
The Governor's "Public Safety and Rehabilitation Act of 2016" would allow early parole for habitual felons in prison for serious crimes, such as residential burglary, even if they have prior convictions for violent crimes, such as second-degree murder or rape.

Specifically the initiative would:

- Give parole eligibility to any felon in prison for the conviction of a supposedly non-violent felony, including grand theft, drug trafficking, residential burglary, assault, assault with a deadly weapon, assault on a police officer, exploding a destructive device, and arson, regardless of a criminal's prior convictions.
- Authorize the Department of Corrections and Rehabilitation to award "good time" credits to reduce the sentence of any inmate in prison for a serious felony who participates in a program with no limitation on how much of the sentence can be reduced.
- Transfer authority from the District Attorney to juvenile court judges to decide which violent juvenile offenders may be tried as adults. This includes murderers, rapists, and child molesters who are under 18 years old.

Less than two years ago, Governor Brown asked the Supreme Court to block any further federal court mandated inmate releases, arguing that "further releases would include inmates with violent records who thus pose a substantial risk of committing new and violent crimes."

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Governor Jerry Brown

MIKE RAMOS ADDRESSES CJLF BOARD



San Bernardino DA Mike Ramos

The CJLF's February 25 Board of Trustees Meeting featured a luncheon addressed by San Bernardino District Attorney Mike Ramos. Ramos, who is President-Elect of the National District Attorneys Association and is seeking the 2018 Republican nomination for California Attorney General, focused on the impact on local crime rates resulting from Governor Brown's Public Safety Realignment and the 2014 adoption of Proposition 47. With crime increasing dramatically due to these laws, he warned that the Governor's "Public Safety and Rehabilitation Act," an initiative announced in January, would reverse 35 years of very effective criminal justice reforms and put the safety of millions of law-abiding Californians at serious risk. Ramos pledged to work with law enforcement leaders across the state to defeat the measure if it qualifies for the November ballot.

Among the CJLF Trustees and supporters attending the luncheon were former California Governor Pete Wilson, Ventura County District Attorney Greg Totten, former Congressman Elton Gallegly, La Cañada Flintridge Mayor David Spence, and former NFL defensive back and victims' advocate Kermit Alexander.

At an earlier closed session, the Foundation's Board of Trustees voted unanimously to oppose Governor Brown's initiative.

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HIGH COURT TO REVIEW UTAH RULING TO SUPPRESS EVIDENCE

The U. S. Supreme Court has agreed to review a Utah Supreme Court ruling, which held that evidence obtained in a police search must be suppressed under the federal exclusionary rule. At issue in the case of **Utah v. Strieff** is whether the Fourth Amendment requires that valid evidence discovered during a valid arrest with a warrant must be suppressed because a preceding investigatory stop was made with slightly less than the amount of reasonable suspicion required for a stop.

The Criminal Justice Legal Foundation has joined the case to argue that, as written, there is no Fourth Amendment requirement that probative evidence be excluded because a police officer made an honest mistake leading up to the search.

In December 2006, Salt Lake City narcotics Detective Doug Fackrell, an 18-year law enforcement veteran with specialized drug enforcement training, responded to an anonymous tip reporting narcotics activity at a house in South Salt Lake. During surveillance of the house, Detective Fackrell observed numerous short-term visitors consistent with drug activity.

On December 21, 2006, while watching the house, Detective Fackrell observed Strieff visit and leave the house over a short period. He followed Strieff, who was on foot, for about a block before stopping him. After checking Strieff's identification, Detective Fackrell learned there was a warrant for his arrest. In a search incident to the arrest, he found methamphetamine, a glass pipe used to smoke the drug, and a small plastic scale with white residue in Strieff's possession.

At trial, Strieff was charged with possession of methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that it was the fruit of an unlawful investigatory stop. The prosecutor argued that the facts available to Detective Fackrell at the time of the stop did not "quite meet the level of reasonable suspicion under" **Terry v. Ohio**, but under existing precedent the evidence should be admitted because the arrest and search were based on the warrant, not on the suspicion leading to the initial stop.

The state trial court agreed, concluding that Fackrell's initial stop "was not a flagrant violation of the Fourth Amendment" nor did he exploit "the initial unlawful detention to search" Strieff since he had no prior knowledge of the arrest warrant. With his motion to suppress denied, Strieff pleaded guilty to possession of drug paraphernalia and attempted possession of a controlled substance.

On appeal, Strieff lost a 2-1 decision in the state appellate court which held that the stop was not "in knowing or obvious disregard of constitutional limitation." The court agreed that the pre-existing warrant was an intervening circumstance that "sufficiently attenuated" the taint of the stop.

The Utah Supreme Court reversed that decision in a ruling which acknowledged that Strieff was lawfully arrested and lawfully searched incident to arrest, but because the stop was unlawful, the evidence should have been excluded.

The state high court held that the attenuation exception does not apply when the intervening event is based on a warrant, applying only when the event involves "a defendant's independent acts of free will," such as a confession.

In a scholarly *amicus curiae* (friend of the court) brief, the Foundation argues that in this case the question of "reasonable suspicion" was a close one, and Detective Fackrell reasonably believed he had met the requirement. There is no violation of the Fourth Amendment in this case that rises to the level that warrants the extreme remedy of suppressing evidence.

The Foundation suggests that rather than making good-faith exceptions to a general rule of exclusion the court should instead require a clear violation of law as an element of the exclusionary rule, such as when an officer knew or should have known that detaining and searching a suspect was unlawful but went ahead and did it anyway.

"Freeing known criminals despite clear, valid proof of guilt is a dirty business. It should be engaged in, if at all, only in circumstances that most clearly demand it," said Foundation Legal Director Kent Scheidegger.

B O X S C O R E

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.

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**

Kansas v. Jonathan Carr/Kansas v. Reginald Carr, Jr./Kansas v 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 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. Also, the judge's ruling created a new rule of law on habeas corpus, which violates U. S. Supreme Court precedent (won by CJLF). **WIN**

Connecticut v. Santiago: 8/25/15. Divided Connecticut Supreme Court ruling announcing that an April 2012 law, which prospectively abolished the death penalty but allowed the execution of murderers currently on the state's death row, violates the state constitution. The court's four-judge majority accepted condemned murderer Eduardo Santiago's claim that by abolishing future executions, the Legislature affirmed that capital punishment serves no penological interest and should therefore apply retroactively. CJLF was asked to join the case by Dr. William Petit, who survived a brutal 2007 home invasion robbery that resulted in the sexual assault and murder of his wife and two daughters. The two habitual felons convicted of these crimes were sentenced to death prior to the law's enactment. CJLF argued that applying a law retroactively would violate the Legislature's constitutional authority to determine the scope of the laws it enacts. **LOSS**

Glossip v. Gross: 6/29/15. A 5-4 U. S. Supreme Court decision rejecting the claim of three condemned murderers that Oklahoma's execution process is unconstitutional because it might cause pain. One of the murderers in this case hired a contract killer to beat a man to death with a baseball bat. Another bent his 9-month-old daughter backwards, killing her because her crying interrupted his video game. The third stabbed a female food service supervisor to death while he was serving a 130-year prison sentence for multiple armed robberies. CJLF joined the case to argue that the Constitution does not guarantee a pain-free execution, but lethal injection only requires a level of anesthesia to prevent extreme pain. The Foundation also argued that when murderers challenge an execution method as unconstitutional they are required to present an alternative method that does comply with the Constitution. The Court's decision adopted both of these points. **WIN**

Ohio v. Clark: 6/18/15. Unanimous U. S. Supreme Court decision reinstating an Ohio child abuser's conviction. The Ohio Supreme Court had held that allowing the teachers who discovered the victim's injuries to testify about what the child told them violated the criminal's constitutional right to confront the witnesses against him. The case involved the 2010 conviction of Darius Clark for the beating of his girlfriend's three-year-old son and two-year-old daughter. When preschool teachers noticed bruises on the little boy's face, they asked him who hurt him. When he responded that Clark had hit him, they reported the incident to child protective services who located the boy and his sister and took them to a hospital where other injuries to both children were discovered. On appeal, Clark won a decision announcing that the testimony of the teachers at his trial was unconstitutional. When the state appealed that ruling, CJLF joined the case to argue that a statement made to a first responder, whether a policeman or someone else, is not the same as a statement taken by an investigator building a case against a known suspect. The statement to the investigator is "testimonial" as that term is used by the Supreme Court, and the statement to the first responder, or in this case, a teacher, is not. The Supreme Court's decision agreed. **WIN**

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CONGRESSIONAL SUPPORTERS OF SENTENCING REFORM NEED TO LOOK AT CALIFORNIA

Since it was introduced in the Senate Judiciary Committee last Fall, there has been lively debate about “The Sentencing Reform and Corrections Act” (S2123), a bi-partisan bill that would reduce federal sentences for so-called non-violent drug offenders, including some with gun allegations, and allow early release for thousands of offenders convicted under previous law. The bill is supported by several of the same anti-incarceration advocates who supported California’s “Public Safety Realignment Act” (AB109, adopted in 2011), “The Three Strikes Reform Act” (Proposition 36, passed in 2012), and “The Safe Neighborhoods and Schools Act” (Proposition 47, passed in 2014). Together, those measures reclassified most property and drug crimes as low-level, non-violent offenses, restricted the sentences of criminals convicted of those crimes to county jail, eliminated the third strike 25-to-life sentence for habitual criminals whose third conviction was not a violent felony, and allowed for the early release of thousands of criminals sentenced under previous law.

S2123, while not as extensive as the California reforms, would do many of the same things. In addition to reducing the sentences for most federal drug crimes, the Congressional act would allow life-tenured, unaccountable federal judges to use “safety valves” to lower the sentences for more serious offenders. It would also allow for the early release of thousands of drug offenders and other federal criminals sentenced under previous law, again relying on federal judges.

Like the California reforms, advocates for the Congressional measure are promising that the new law will make the criminal justice system more fair and less expensive, and that through expanded treatment and rehabilitation programs crime rates will decline.

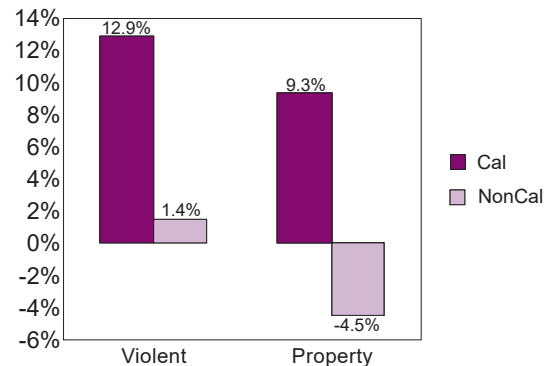
With a five-year head start on the possible federal reforms, it is reasonable to expect that California would be enjoying some of these benefits by now: Not so much.

A June 2014 investigative report in the Los Angeles Times found that while California had reduced its prison population by roughly 30,000 inmates, it was spending nearly \$2 billion more on prison costs per year than before Realignment was enacted. A January 6, 2016 Reuters report came to the same conclusion: the state is spending billions more on corrections, but has fewer prison inmates.

But far worse than the false promise of saving tax dollars is the lie about protecting public safety. According to the FBI Preliminary Uniform Crime Report, which counts crimes in cities with populations of 100,000 or more, in the first six months of 2015, violent crime increased by 1.4% nationally excluding California, while property crime actually declined by 4.5%. But, in California, violent crime spiked by 12.9% and property crime increased by 9.2% in its largest cities. In

UCR Crime Index Changes Jan-Jun, 2014 v. 2015

Cities over 100,000 Population



Data from FBI, Preliminary Uniform Crime Report, January-June, 2015

“ . . . far worse than the false promise of saving tax dollars is the lie about protecting public safety.”

most cities, violent crimes like robbery and aggravated assault were up, sometimes way up. There were 600 more robberies and 1,300 more aggravated assaults in Los Angeles. There were nearly 400 more robberies in San Francisco and murders increased by 71%. Seventy-three percent of California’s largest cities had increases in violent crime, 71% had increases in property crime, and 89% saw increases in stolen vehicles. Let us not forget that, just as proposed in the federal reform, California was only supposed to reduce sentences for so-called non-serious, non-violent offenders.

In the face of this, advocates of California’s sentencing reforms are either not saying anything or claiming it’s too soon to declare them a failure. Governor Brown, on the other hand, wants even more criminals released, announcing his support of a ballot measure which would gut the three strikes sentencing law, allowing the release of *serious felons with violent priors* after they serve no more than half of their sentences required under current law.

Members of Congress who like these results can join Senators Dick Durbin, Patrick Leahy, Charles Schumer, and Al Franken to bring ACLU-backed, California-style sentencing reform to your state.

Michael Rushford
President & CEO

HCRC v. Department of Justice: U. S. Ninth Circuit Court of Appeals case to review an order by a district judge in Oakland, blocking the fast-track process for federal appeals of state death penalty cases enacted by Congress and signed into law by President Clinton in 1996. On appeal, CJLF is arguing to have the judge's order on the fast-track process overturned. The Foundation's brief notes that the congressional act creating the process specifies that legal challenges are to be heard exclusively by the federal court of appeals for the D.C. Circuit, which means that the federal judge in Oakland had no authority to hear the case. CJLF also points out that federal law requires that states which might be affected by the case be included as parties. Both Arizona and Texas have applied with the U. S. Attorney General for fast-track status, but neither was included as a party.

Utah v. Strieff: U. S. Supreme Court case to review a Utah high court ruling, which overturned a conviction for possession of methamphetamine, finding that a police officer's discovery of the drugs during what he thought was a lawful stop violated the federal exclusionary rule. CJLF has joined the case to argue that the Fourth Amendment protection against unlawful searches does not require that valid evidence be excluded because a police officer makes an honest mistake leading up to the search. In this case, it is undisputed that the officer believed he had complied with the law. CJLF suggests that the standard for excluding evidence be that the officer knew or should have known that his detention of a suspect was unlawful and yet searched him anyway.

BOXSCORE *continued from page 3*

Winchell & Alexander v. Beard: 6/3/15. CJLF lawsuit filed in Sacramento Superior Court on behalf of two families to end the nine-year delay in the executions of the murderers of five of their loved ones. Initially, the California Attorney General responded with a brief asking to have the case dismissed. Representing the California Department of Corrections and Rehabilitation, Attorney General Kamala Harris argued that the agency had limitless discretion to take as long as it chooses to come up with an execution protocol for the murderers on California's death row. The Attorney General also argued that the families of murder victims did not have a legal right (standing) to compel the government to carry out the sentences for the murderers of their loved ones. On February 9, 2015, Superior Court Judge Shellyanne Chang *rejected* the state's petition in a decision finding that the state is obligated to adopt an execution protocol in a reasonable period of time and that victims' families have standing to seek a court order to force compliance. The Attorney General's petition to have the judge's decision overturned was *denied* by the Court of Appeal in early March 2015. In May, to *avoid a public trial* on what CJLF would demonstrate was intentional delay, the Attorney General requested a settlement. In June 2015, the state agreed to develop and announce a new, single-drug protocol within *four* months. The new protocol was announced in November 2015.

WIN

Elonis v. United States: 6/1/15. U. S. Supreme Court ruling overturning the conviction of a Pennsylvania man who posted threats on Facebook to brutally murder his estranged wife and a female FBI agent. In 2010, Anthony Elonis's wife left him. Later, he was fired from his job for sexually harassing a female employee. Elonis then began posting threats to murder his wife on his Facebook page, including a statement that he would not stop until "your body is a mess, soaked in blood and dying from all the little cuts." After Elonis refused an interview with a female FBI agent, he posted about slitting her throat. Following his conviction in 2011 for transmitting threats, Elonis appealed, arguing that his conviction was unconstitutional because it was not proven that he specifically intended to threaten his victims. CJLF joined the Supreme Court review of the case to argue that, while there was no high court precedent on this issue, nine of the eleven federal circuit courts have held that the transmission of threats is a general intent crime, requiring only that a reasonable person would recognize his statements as threats. The Court's ruling held that the criminal transmission of threats requires a state of mind somewhere above negligence. The Court did not address whether recklessness would be sufficient, either under the statute or the First Amendment. If it is, the law would be largely unchanged, as a practical matter. Because the key issues remain undecided, we count this as a draw.

DRAW

TOTAL

5 Wins

2 Losses

1 Draw

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



CJLF ENCOURAGES REVIEW OF NINTH CIRCUIT RULING

CJLF has filed argument in the U. S. Supreme Court to support the California Attorney General's appeal of a damaging 2015 Ninth Circuit ruling that overturned the conviction of a brutal murderer. The basis of the Ninth Circuit's ruling in **Johnson v. Lee** is a California rule that prohibits defendants who fail to raise claims against their conviction or sentence at the initial state appeal from raising them years later on federal habeas corpus. This is called a *procedural default* rule. States have these rules to prevent sandbagging, where defendants hold back claims from review in the state courts in order to introduce them later on habeas corpus review in the sometimes more sympathetic federal courts. At the very least, when these rules are not respected by the federal courts, the result is additional years of review and often the overturning of a valid conviction or sentence.

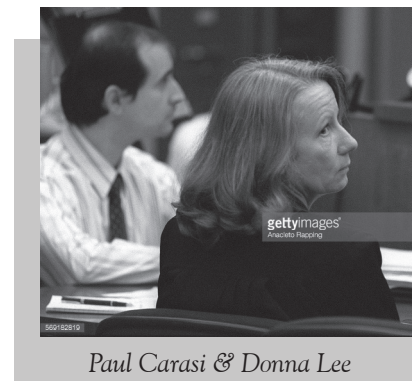
Activist federal judges, in particular, look for flaws in procedural default rules in order to reconsider cases when they disagree with the state court's decision.

In **Lee**, the Ninth Circuit held that California's procedural default rule was "inadequate" because the California Supreme Court, when rejecting frivolous claims filed too late, often reject the claims because they are meritless rather than because they were not raised in the initial appeal. Dismissing such claims on either ground is well within a reviewing court's authority.

The case involves the 1995 stabbing murders of two women by Paul Carasi and his girlfriend Donna Lee. The victims were Doris Carasi (Paul Carasi's mother) and Sonia Salinas (Paul Carasi's ex-girlfriend and mother of his child). In the months leading up to the murders, Carasi's ex-girlfriend had left him, he lost custody of his child, and he was ordered to pay child support. He found a new girlfriend, Lee, who divorced her husband to move in with Carasi, and sought a restraining order against his mother because she fought with Lee and was friends with his ex-girlfriend. On more than one occasion, Carasi's co-workers overheard him say he wished his ex-girlfriend were

dead. Three days before the murders, Lee's co-workers heard her say she was going to do something stupid and would be going to prison for it.

On Mother's Day, May 14, 1995, Carasi took his mother, ex-girlfriend, and infant child to dinner at a restaurant at the Universal



Paul Carasi & Donna Lee

“. . . when these rules are not respected by the federal courts, the result is additional years of review and often the overturning of a valid conviction or sentence.”

Studios City Walk in Los Angeles. Later that night, Carasi reported that he had been attacked in the City Walk parking lot by an unidentified assailant who stabbed his mother and ex-girlfriend to death. Carasi was covered in the victims' blood. A short time later, Lee called police from a freeway call box five miles away to report that she had been robbed and stabbed. A parking ticket stub from the City Walk parking lot, along with items taken from the victims, and a knife stained with one of the victim's blood, were found in Lee's car. Investigators found Lee's blood at the murder scene and took statements from witnesses who saw Lee in the vicinity of the parking lot at the time of the murders. The day after her arrest, Lee changed her story, telling police she did not know how she had been stabbed. Expert evidence introduced at trial indicated that there had been more than one assailant, and the coroner's report noted that there had been a vigorous fight between the victims and their attackers.

Juries convicted Carasi and Lee on overwhelming evidence, and later recommended the death penalty for Carasi and life without parole for Lee.

Five years later, Lee presented five claims challenging her conviction in state court on direct appeal, all of which were rejected. A year later, she filed a habeas corpus petition in both state and Federal District Court, raising several new frivolous claims which could have been raised on direct appeal. Eventually both the state court and the Federal District Court held that the claims were barred under California's procedural default rule. In 2007, Lee filed an amended petition in federal court, adding even more claims which were also held defaulted under the rule. On appeal, the Ninth Circuit reversed

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“GOVERNOR ANNOUNCES”

continued from front page

“The only thing that has changed over the past year is that FBI statistics show that in 2015 violent crime in California's largest cities has increased by 13%. Many in law enforcement blame earlier Brown-supported policies which released roughly 30,000 repeat felons into communities as a contributor to these increases,” said CJLF President Michael Rushford. “It is difficult to imagine stronger evidence that the Governor is completely detached from the reality facing the law-abiding citizens that he is obligated to protect,” he added.

The measure was recently released for signature gathering.

SUPREME COURT UPHOLDS DEATH SENTENCES OF KANSAS MURDERERS

In an 8-1 decision announced on January 20, 2016, the United States Supreme Court overturned a 2014 Kansas Supreme Court ruling and reinstated the death sentences of three murderers. At issue in the three cases of **Kansas v. Jonathan Carr**, **Kansas v. Reginald Carr, Jr.**, and **Kansas v. Sidney Gleason**, was whether the Kansas court's finding that the state's standard instruction for sentencing juries in death penalty cases violates the United States Constitution. Because similar instructions are used in several other states, a decision to uphold the Kansas court's ruling could have affected many death penalty cases across the country.

In order for a murderer to be eligible for a death sentence in Kansas, the sentencing jury must find one or more of a specified list of aggravating circumstances connected with the murder. For example, the rape and murder of the same victim or the murder of a witness to a crime. Kansas law requires that sentencing juries in capital cases be instructed that they must find that the aggravating circumstances be proved beyond a reasonable doubt. The jury is also instructed that they can consider any mitigating circumstances which may support a sentence other than death, but they are not told these circumstances must meet the "reasonable doubt" standard because that standard is not required for mitigating evidence.

In its ruling, the Kansas court announced that the Constitution requires that the jury receive an instruction specifying that mitigating circumstances need not be proved beyond a reasonable doubt. When the U. S. Supreme Court agreed to hear the Kansas Attorney General's appeal of that ruling, CJLF was invited to join the case. The National District Attorneys Association and the California District Attorneys Association agreed to sign on to the CJLF *amicus curiae* (friend of the court) brief.



In its brief, the Foundation argued that the Constitution does not require the jury instruction announced by the Kansas Supreme Court, and it is unreasonable to assume that a sentencing jury would be confused by the existing instruction.

In the Court's majority opinion, Associate Justice Antonin Scalia wrote, "In any event, our case law does not require capital sentencing courts 'to affirmatively inform the jury that mitigating circumstances need not be proved beyond a reasonable doubt.' . . . Jurors would not have misunderstood these (existing) instructions to prevent their consideration of constitutionally relevant evidence."

The cases involved brutal multiple murders by hardened criminals.

On December 8, 2000, habitual felon brothers Reginald and Jonathan Carr began what would later be known as the "Wichita Massacre," with the robbery, kidnapping, and aggravated assault of 23-year-old Andrew Schreiber. Three days later, they shot Linda Walenta during an attempted robbery. Walenta, a cellist with the Wichita Symphony, was paralyzed by her injury, but able to describe her attackers to police before dying a few days later. At 11:00 p.m. on a snowy December 14 night, the brothers invaded the home

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Crime rose sharply in California cities last year due to laws that have reduced sentences for most criminals and left them in communities for attempts at rehabilitation. Thousands of law-abiding citizens have become crime victims under these laws. CJLF is fighting to raise public awareness about this and put pressure on legislators to repeal these laws. We have also won recent court decisions to uphold the death penalty and help convict child abusers, but we cannot continue our work without your help. If you have not given to CJLF this year, please do so today. Just clip and mail the card on the right along with your check, or visit www.cjlf.org to use your credit card. *Thank you very much!*

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Winter 2016

“CJLF ENCOURAGES”

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the lower courts and ordered the Federal District Court to determine the adequacy of the state rule. After the lower court responded, finding the rule was applied fairly, the Ninth Circuit reversed that finding, deciding that the rule was not adequate and ordered the lower court to review all of Lee’s claims.

The California Attorney General decided to appeal the Ninth Circuit’s ruling to the U. S. Supreme Court and asked CJLF to file a brief in support to encourage the Court to accept the case for review. In the Foundation’s brief, Legal Director Kent Scheidegger argues that the ruling violates Supreme Court precedent upholding California’s procedural

default rule in **Walker v. Martin** (won by CJLF) and that the **Lee** ruling is ripe for review because of a split between the Fifth Circuit and the Ninth Circuit regarding such rules. The Foundation also suggests that the Supreme Court could avoid a hearing on such an obviously flawed ruling by issuing a summary reversal.

“California has a perfectly proper rule, similar to the one federal courts follow for federal prosecutions. Federal judges have brushed it aside to expand their own authority over state cases, in violation of limits on that authority. This power grab for the benefit of criminals must be reversed,” said Scheidegger.

“DEATH SENTENCES”

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of three men and two female guests, all in their twenties. After ransacking the house, the Carrs forced their victims to undress and made them perform sex acts on each other, then raped the women. They then took the five naked victims to a snow-covered soccer field, forced them to kneel, shot them in the back of the head, and then drove their truck over the bodies. Miraculously, one of the young women survived to identify her attackers and testify at trial.

On February 12, 2004, Sidney Gleason, who was on parole for an attempted murder conviction, and accomplices Damien Thompson, Ricky Galindo, Brittany Fulton, and Mikiala Martinez, robbed a man at his home in Great Bend at knifepoint. After Gleason and Thompson learned that their two female accomplices, Fulton and Martinez, had talked to the police about the robbery, they went to Martinez’s home, shot and killed her boyfriend, and wounded her. They then took her to a rural area where they strangled and shot her to death.

The Carr brothers and Gleason were convicted on overwhelming evidence and sentencing juries unanimously agreed they should receive death sentences.

On direct appeal, the Kansas Supreme Court upheld the guilt of all three murderers, but overturned their death sentences. The state court announced that the state’s standard instructions to capital sentencing juries was unconstitutional and might confuse jurors into voting for a death sentence that they did not believe was warranted.

A decision upholding that ruling would have resulted in challenges to death sentences in several other states which use a similar instruction, including California.

“Today’s decision does not change the law,” said Foundation Legal Director Kent Scheidegger. “It confirms what those who properly understand the law—definitely not including a majority of the Kansas Supreme Court—have known all along. Confirmation is important, though, in fighting bogus arguments in the state courts and lower federal courts, and today’s decision is a very important victory for the cause of justice,” he added.

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