

CJLF

Advisory

Volume 28, No. 1

Winter 2010

SENATE CANDIDATE CARLY FIORINA ADDRESSES CJLF LUNCHEON

The Criminal Justice Legal Foundation held its first Board Meeting of 2010 on February 4 in Los Angeles. At a luncheon hosted by Trustees Gino Roncelli, Founder & CEO of Roncelli Plastics, and Michael Horner, President of Tom Sawyer Camps, former Hewlett Packard Chairman & CEO Carly Fiorina discussed her plans to unseat California Senator Barbara Boxer. In addition to her commitment to cut federal spending, Ms. Fiorina expressed her strong support of the death penalty, improvement of border security, and trials by military commissions, rather than civilian courts, for terrorists. She also promised that as a Senator, she would oppose the appointment of activists to the federal judiciary.



Senate Candidate Carly Fiorina

SUPREME COURT REJECTS MURDERER'S LAWYER COMPETENCY CLAIM

First Decision by Justice Sotomayor Upholds Death Sentence

In a 7 to 2 decision announced on January 20, the United States Supreme Court rejected an Alabama murderer's claim that his three state-appointed lawyers failed to adequately represent him during his sentencing hearing. The defendant in the case of **Wood v. Allen** argued that his death sentence was invalid because his defense attorneys did not thoroughly investigate and produce evidence of his borderline range of intellectual functioning.

At the invitation of the Solicitor General of Alabama, the Criminal Justice Legal Foundation joined the case to introduce a scholarly *amicus curiae* (friend of the court) brief. CJLF argued that Wood's claims and all the related evidence were properly reviewed by the Alabama courts and that federal law requires that a state court decision should stand unless it is unreasonable. A federal court's simple disagreement on a debatable point is not sufficient to overturn a final judgment.

Justice Sonia Sotomayor's majority

opinion followed this reasoning, holding, "It suffices to say, however, that a state court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." This was Justice Sotomayor's first full opinion in a capital case.

The defendant, Holly Wood, was convicted on strong evidence of the shotgun murder of his girlfriend in September 1993. At the time of the murder, Wood was on parole after serving 5 years of a 15-year prison sentence for shooting another former girlfriend in 1985.

Evidence introduced at his trial indicates that shortly after his release on parole, Wood moved in with Ruby Gosha, his new girlfriend and the mother of his child. Within three months, the relationship had soured and, when Wood learned that Gosha was dating another man, he attacked her with a knife. Although Gosha managed to escape, she lost the use of two

fingers when her wrist was slit during the attack.

The following month, Wood and a cousin went to Gosha's house. When her mother answered the door and demanded that he leave, Wood told Ruby, "I will get you some day."

Later that night, Wood sneaked into the Gosha home, placed a shotgun to the head of a sleeping Ruby Gosha, and pulled the trigger. As his cousin drove Wood away from the murder scene, Wood threw the shotgun shells out of the window and later buried the gun behind his father's house. During the getaway, he told his cousin that he had "blowed her (Gosha's) brains out, and all she did was wiggle."

At his trial, Wood was represented by three attorneys. The lead attorney was a former Assistant Attorney General and Deputy District Attorney who, in private practice, had represented "probably a thousand criminal defendants," including

continued on page 7

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, Post Office Box 1199, Sacramento, California 95812, (916) 446-0345.

OFFICERS

Chairman Emeritus Jan J. Erteszek
 Chairman William A. Shaw
 Vice Chairman Rick Richmond
 President & CEO Michael Rushford
 Secretary/Treasurer Mary J. Rudolph

BOARD OF TRUSTEES

JOSEPH F. ALIBRANDI, CEO
 Alibrandi Associates, LLC

STEVE AYERS, CEO
 Armour Steel Company

WILLIAM E. BLOOMFIELD, JR., Chairman
 Web Service Company

PETER P. COPSES, Senior Partner
 Apollo Management, LP

PATRICK A. DOHENY
 Oil and Gas Producer

JERRY B. EPSTEIN, Founder and General Partner
 Del Rey Shores and Marina Harbor

JAMES J. HAWK, President & CEO
 Hoffman Associates, Inc.

MICHAEL H. HORNER, President
 Tom Sawyer Camps, Inc.

SAMUEL J. KAHN, President
 Kent Holdings and Affiliates

FAYE BATTISTE OTTO, President
 American Forensic Nurses

J. KRISTOFFER POPOVICH, Secretary
 Hoffman Associates, Inc.

RICK RICHMOND, Managing Partner
 Jenner & Block

GINO RONCELLI, Founder & CEO
 Roncelli Plastics, Inc.

MARY J. RUDOLPH, Trustee
 The Erteszek Foundation

MICHAEL RUSHFORD, President & CEO
 Criminal Justice Legal Foundation

ROBERT W. TEMPLETON, C.F.A., President
 RWT Investment Advisors, Inc.

WILLIAM A. SHAW, President & CEO
 Roxbury Properties, Inc.

TED G. WESTERMAN
 Gordon West Partners, LLP

HON. PETE WILSON
 36th Governor of California

LEGAL DIRECTOR and GENERAL COUNSEL

KENT S. SCHEIDEGGER

LEGAL ADVISORY COMMITTEE

HON. JOHN A. ARGUELLES
 Justice, California Supreme Court (Ret.)

HON. GEORGE DEUKMEJIAN
 35th Governor of California

HON. MALCOLM M. LUCAS, Chief Justice
 California Supreme Court (Ret.)

HON. EDWIN MEESE III
 Former United States Attorney General

HON. EDWARD PANELLI
 Justice, California Supreme Court (Ret.)

NINTH CIRCUIT RULING VOIDING RAPE CONVICTION OVERTURNED

In a January 11, 2010 decision, the United States Supreme Court overturned a Ninth Circuit ruling which had improperly voided the conviction of a child rapist. The opinion was issued “per curiam,” meaning that it is the product of the Court as a whole with no individual Justice identified as the author. At issue in **McDaniel v. Brown** was the federal court’s decision to brush aside the Nevada Supreme Court affirmation of the conviction. The federal court based its ruling on a re-evaluation of testimonial evidence after *excluding DNA testing* which identified the defendant as the rapist.

The Criminal Justice Legal Foundation had joined the case to encourage a decision to overturn the lower federal courts and reinstate the state court’s judgment on this point.

“The federal court of appeals’ decision was so obviously wrong that not a single Justice agreed with it, and the Court did not even need to hear argument. Yet without the Supreme Court’s intervention that decision would have freed the perpetrator of a horrible crime,” said CJLF Legal Director Kent Scheidegger. “The court of appeals strayed far beyond the rules that Congress established to limit federal court review of state convictions. The Supreme Court’s holding demonstrates why these limits are needed.”

The case involves the conviction of Troy Don Brown for the 1994 sexual assault of a nine-year-old girl. Evidence introduced at trial indicates that on the evening of the crime, the victim’s mother, Pam, was invited to join Troy Brown’s brother, Trent, and sister-in-law, Raquel, for a drink at C.G.’s, a bar near the Carlin, Nevada, trailer court where Pam and her family lived. Because Pam’s husband worked the night shift, her oldest daughter, who was nine, was asked to babysit her four-year-old sister and Trent and Raquel’s two children in their home across the street.

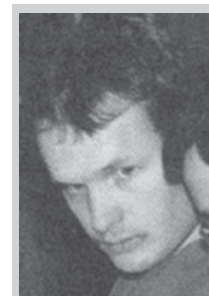
After Trent and Raquel returned from the bar, Raquel walked the victim and her sister to their trailer. When they arrived, the nine-year-old girl tried to telephone her mother at C.G.’s, but the line was busy. She then called the Peacock Bar, and Troy answered the phone. After she told Troy that she was home

alone with her little sister, he agreed to go to C.G.’s and find Pam. By the time he got there, Pam and her daughter had already spoken over the phone. A short time later, Troy and Pam returned to the Peacock Bar and played pool. Pam later stated that the last time she saw Troy at the bar was between 11:00 p.m. and midnight, and that he had been drinking heavily.

Just before 1:00 a.m., Pam received a call at the Peacock Bar from her daughter, who said that a man had hurt her. Pam quickly returned home to find the girl covered in blood from the waist down. Doctors later reported that she had been penetrated both vaginally and anally and had lost 15% of her blood. DNA samples were taken, and the victim talked with a female police officer who specialized in interviewing children. She described her attacker, identifying a black jacket, dark jeans, and cowboy boots, but after noting that the light was out, made conflicting statements regarding his face and hair. She also said he smelled of beer and vomit. Following the interview, the victim was hospitalized for 12 days as she underwent extensive surgery for her injuries.

Later that morning, when questioned by police, Troy denied involvement. A week later, after additional questioning, he was arrested.

At trial, the bartender who was on duty at the Peacock Bar at the time of the assault recalled that Troy left no later than 12:20 a.m. Several witnesses, including Troy, stated that he was wearing a black satin jacket, dark jeans, and a cowboy hat. A couple picking up their children at the trailer court testified that they saw a man staggering near the victim’s trailer shortly after 1:00 a.m. wearing a black satin jacket and dark jeans. Another witness recalled Troy returning to his trailer, which was a short distance from the victim’s trailer, at 1:32 a.m. A forensic expert testified that DNA found on the victim’s



Troy Brown

continued on page 6

Advisory layout design by Irma H. Abella

CJLF PRESENTS ARGUMENT IN TERRORIST'S TRIAL

On January 11, 2010, argument began in New York Federal District Court regarding the case of Ahmed Khalfan Ghailani, a foreign-born enemy combatant and Guantanamo Bay detainee, indicted for assisting in the bombings of two U. S. embassies in East Africa.

Last fall, the district judge presiding in the case of **United States v. Ghailani** invited the Criminal Justice Legal Foundation to submit an *amicus curiae* (friend of the court) brief opposing Ghailani's claim that the charges against him must be dismissed because the government has violated his constitutional right to a speedy trial. This was the first time this issue had been raised in the trial of a suspected terrorist captured in another country and held as an enemy combatant. The court's decision may affect the New York trials of Khalid Sheikh Mohammed and the four other alleged 9/11 conspirators who were also classified as enemy combatants and held for an extended period at "Gitmo."

Ghailani and many others, including Osama bin Laden, were indicted in 1998 by the Clinton Administration for the August 7, 1998 bombing of U. S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania. Those attacks killed 223 people, including 12 Americans, and injured over 4,000. Ghailani is also charged with participation in a larger conspiracy to kill Americans, including bombings in Saudi Arabia in 1995 and 1996 that killed 25 U. S. servicemen, and a 1993 attack on U. S. soldiers in Somalia that left 18 Americans dead.

Following his indictment, Ghailani evaded capture for five and a half years. During this time, the Government alleges he remained active in al Qaeda and learned important information about the terrorist organization. After his capture in Pakistan in 2004, Ghailani was transferred to CIA custody and was interrogated about al Qaeda operations. In 2006, he was taken to Guantanamo Bay and detained as an enemy combatant. At that time, Congress had given President Bush the authority to have enemy combatants tried by military commissions.

According to the Government's brief, Ghailani was advised that he had been indicted, but at no time did he or his per-

sonal representative request a speedy trial. During preparation for trial by a military commission, his lawyer recognized the complexity of the case and consented to delay the proceedings.

On January 20, 2009, a few hours after his inauguration, President Obama directed an immediate halt to the military commission system for prosecuting detainees. On May 21, 2009, Ghailani was transferred to New York for prosecution in federal court under the 1998 indictment. The decision to try Ghailani in a U. S. ci-

The court's decision may affect the New York trials of Khalid Sheikh Mohammed and the four other alleged 9/11 conspirators.



U.S. Embassy in Nairobi

vilian court provided him with legal rights which were not available to enemy combatants facing trial by military commissions. This unprecedented change in the legal status of persons initially captured as prisoners of war has raised fundamental questions about whether the Constitution allows Ghailani, and others like him, to be tried at all.

In a pre-trial motion, Ghailani asserts that one of the rights afforded to U. S. criminal defendants, the right to a speedy trial, was violated by the Government when it kept him in military custody for several years, rather than bringing him to trial in a civilian court directly after he was captured. To assist in resolving this issue, the court invited the Center for Constitutional Rights (CCR), an advocate for detainees, to introduce argument supporting Ghailani's speedy trial claim. Both Ghailani and CCR argue that the required remedy for this violation is to have the charges against Ghailani dismissed with prejudice. In a typical criminal case, such a dismissal requires the defendant's release.

In its brief, CJLF argues that, although he was under indictment at the time of his capture in Pakistan, Ghailani was not in the custody of a U. S. law enforcement

agency until he was transferred to the FBI last May. The Foundation noted that "Ghailani's detention in both the CIA and Department of Defense phases was a proper exercise of executive power pursuant to legislative authorization in a time of war." Although there was a pending indictment, Ghailani's detention was not under the authority of that indictment, and the pending charge did not cause him any prejudice. Because of this, his right to a speedy trial has not been violated under U. S. Supreme Court precedent.

"The delay in the prosecution of this case has been caused by the defendant's own acts of evading capture and by the overriding imperative of gathering intelligence from him to prevent further attacks on Americans," said CJLF Legal Director Kent Scheidegger.

If the Court decides otherwise, and dismisses Ghailani's case, the Foundation argues that the dismissal should be *without prejudice* to trial by military commission, which would allow his trial and sentencing to go forward as originally planned. "To let a conspirator off scot-free for the murder of hundreds of people would be a miscarriage of justice of cataclysmic proportions," said 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.

Maryland v. Shatzer: U. S. Supreme Court case involving a habitual sex offender found guilty of molesting his 3-year-old son. In 2003, while Michael Shatzer was in prison for molesting another child, his son told a social worker about an incident involving oral sex with his father. When a police investigator met with Shatzer in prison to question him, Shatzer invoked his **Miranda** rights and refused to discuss the matter without an attorney present. Because the 3-year-old victim was the only witness, the case was closed. Three years later, when Shatzer's son, then six, was more capable of describing the incident, the case was reopened and another detective visited Shatzer in prison. This time Shatzer waived his **Miranda** rights and admitted that he had molested his child. Following his failure to suppress the confession, Shatzer was convicted. Maryland's highest court overturned the conviction on appeal, citing a Supreme Court holding in **Edwards v. Arizona**, which involved a second interrogation of a suspect the day after he had refused to answer questions. When the Supreme Court agreed to review that ruling, CJLF joined the case to argue that the **Edwards** decision did not apply because Shatzer was already a prison inmate with no expectation of being set free if he cooperated and because 2½ years had lapsed between the two interviews. The high court agreed. WIN

Wood v. Allen: 1/20/10. U. S. Supreme Court decision rejecting an Alabama murderer's claim that his three state-appointed defense attorneys failed to properly represent him in his sentencing hearing. In 1993, habitual criminal Holly Wood killed his ex-girlfriend with a shotgun. At the time, he was on parole for attempting to murder another former girlfriend. Because there was no question regarding Wood's guilt, his defense attorneys considered a mental defense. The evaluation indicated that Wood was slow but not retarded, and it also revealed his inability to control his temper. Because this information could damage the defense, Wood's counsel asked the court to suppress it. Wood was convicted, and, although his counsel argued for mercy, the jury recommended a death sentence. In his appeal, Wood claimed that the psychiatric evidence might have persuaded the jury to sentence him to life. Accepting Alabama's invitation to join the case, CJLF argued that the state court had already decided the claim and reasonably found that the lawyers made a strategic decision to keep out double-edged evidence. The court agreed. WIN

McDaniel v. Brown: 1/11/10. U. S. Supreme Court decision in the case of a Nevada child rapist. Troy Brown was convicted and sentenced to prison for the brutal forcible rape of a nine-year-old girl in Carlin, Nevada. Evidence introduced at trial included testimony of witnesses who saw Brown in the vicinity of the victim's home at the time of the rape, the victim's description of her attacker, and two DNA tests on two separate semen samples that matched Brown's DNA and established odds of 3 million to one and 10 thousand to one against the DNA matching at random. Ten years later, a federal district judge conducted his own evidentiary hearing and, after *deciding to disregard the DNA evidence*, overturned the jury's verdict. Later, the Ninth Circuit upheld that ruling. When the U. S. Supreme Court agreed to consider Nevada's appeal, CJLF joined the case to argue that the lower federal courts ignored precedent and an Act of Congress in order to overturn this child rapist's conviction. The Court's unanimous *per curiam* opinion agreed, overturning the Ninth Circuit ruling. WIN

Beard v. Kindler: 12/08/09. Unanimous U. S. Supreme Court decision *utilizing CJLF arguments* to reinstate the death sentence of a brutal Pennsylvania murderer. Joseph Kindler, and accomplices beat, electric shocked, and finally drowned a witness who identified him in a burglary. The jury convicted him on overwhelming evidence and sentenced him to death. When Kindler escaped from jail, the judge dismissed challenges to the verdict, concluding that by escaping Kindler had waived his ability to challenge the verdict. Years later, after Kindler was recaptured, his attorney petitioned to revive these claims. The trial judge denied the motion, and the Pennsylvania Supreme Court affirmed, citing the state's fugitive forfeiture law. After a federal district judge and appeals court brushed aside the state's forfeiture law and overturned Kindler's death sentence, the Philadelphia District Attorney invited CJLF to join the high court appeal. CJLF argued for a decision reinstating Kindler's sentence and clarifying the standards which state rules must meet to prevent the lower federal courts from ignoring them. In the majority opinion, *Chief Justice John Roberts cited the CJLF brief* for providing a key argument in the case. WIN

Kansas v. Ventris: 4/29/09. U. S. Supreme Court decision to overturn a state court ruling which had announced that the testimony of a jailhouse informant was unconstitutional. The case involved the 2004 conviction of Danny Ventris for a robbery which resulted in the victim's death. At trial, after Ventris took the stand and denied killing the victim, his cellmate testified that Ventris admitted the crime to him. In 2008, the Kansas Supreme Court ruled that the cellmate's testimony could not be admitted "for any reason." CJLF joined the high court appeal of that ruling to argue that the Kansas court had misinterpreted Supreme Court precedent which allows the use of a cellmate's testimony to impeach a defendant's statements at trial, so long as the cellmate had not prompted the defendant into talking. WIN

Cone v. Bell: 4/28/09. U. S. Supreme Court ruling allowing additional delay of the execution of double-murderer Gary Cone. Cone was convicted 27 years ago on overwhelming evidence of beating an elderly Memphis couple to death during a two-day crime spree. His attorney was unable to convince the jury that Cone had suffered a drug-induced mental breakdown at the time of the murders. On appeal, Cone's claim of attorney incompetence was reviewed and denied in the state courts. On federal habeas corpus, Cone made a claim that prosecutors had withheld some evidence of his drug use at the sentencing hearing, which might have encouraged sympathy from the jury. After years of review, the Sixth Circuit Court of Appeals rejected the claim as both defaulted and meritless. CJLF joined the high court appeal to encourage a decision affirming the lower court and Cone's sentence. The Court's 7-2 ruling sent the case back for further review. LOSS

continued on page 5

BOXSCORE *continued from page 4*

Philip Morris USA v. Williams: 3/31/09. U. S. Supreme Court decision to dismiss a case it had accepted. The high court had intended to consider a state court's use of independent state grounds to prevent federal court review of a ruling on a constitutional claim of a litigant. While the case involved a lawsuit against a tobacco company, the Oregon court's decision to throw out a claim on the ground that it had not been properly made in the trial court raised an issue which has caused great mischief in criminal cases, particularly by the Ninth Circuit. Vague Supreme Court decisions on what constitutes a valid state rule has left this area of law so confused that some federal courts regularly ignore state rules in order to overturn convictions and sentences. CJLF joined the case to encourage a decision which clearly defined what constitutes a valid independent state ground. The Court dropped the case without deciding the matter.

DRAW

Rivera v. Illinois: 3/31/09. U. S. Supreme Court decision which preserved the murder conviction of a Chicago street gang member but declined to address the question of whether the trial judge committed an error in denying the defense lawyer's challenge of a juror. The juror in question was a black woman, and the judge originally suspected that the defense challenge was due to her race. Later, after the defense attorney stated that he didn't want another woman on the jury, which is gender bias, the judge seated her. The Illinois Supreme Court held that the judge had erred, because his original suspicion of bias was due to race rather than gender. The court went on to find that the error was harmless and upheld the conviction. CJLF joined the U. S. Supreme Court review of that ruling to argue that the trial judge had committed no error.

DRAW

TOTAL

5 Wins

1 Loss

2 Draws

Case Report

A Summary of Foundation Cases Currently Before the Courts

United States v. Ghailani: Federal District Court trial of Ahmed Khalfan Ghailani, a foreign-born enemy combatant suspected in the bombing of two U. S. embassies in East Africa, which killed 223 people, including 12 Americans. In May 2009, President Obama decided to allow Mr. Ghailani to be tried in a civilian court rather than by the military. Issues that will be raised in the 9/11 terrorist trials will be raised first in Ghailani's case. An initial issue is whether any of the combatants held for years at Gitmo can face a civilian trial at all because they were denied the right to a speedy trial. The Center for Constitutional Rights has joined Ghailani's attorneys to insist that this right was violated, requiring the court to dismiss his case with prejudice and *set him free*. Last fall, the judge presiding over the case selected CJLF to submit argument on why Mr. Ghailani and his colleagues should not be afforded this right. CJLF argues that the right to a speedy trial is not violated when a person is held by the military for national security reasons. Ghailani was captured in Pakistan and held by the military until last May. We also argue that *if* his speedy trial right was violated, national security requires that the case be dismissed without prejudice to trial by military commission.

Berghuis v. Thompkins: U. S. Supreme Court review of a lower court ruling overturning the conviction of a Michigan murderer. Habitual criminal Van Thompkins was found guilty of the gang-style shooting of two men, killing one. Following his arrest, Thompkins was read his **Miranda** rights and was questioned for three hours. While he did not ask for an attorney, he did limit his responses to "yeah," "no," or "I don't know." Finally, the detective asked him if he wanted God to forgive him for the killing. Thompkins answered, "yes." Substantial evidence of guilt, including his admission, resulted in a guilty verdict. Four courts denied Thompkins' claim that his admission of guilt should have been excluded from trial because the questioning violated his right to remain silent. Later, the Sixth Circuit Court of Appeals reversed, announcing that his limited responses to questioning demonstrated that he did not want to talk to the police. CJLF has joined the Supreme Court appeal of that ruling to argue that the Sixth Circuit ignored federal rules requiring it to defer to the state courts' reasonable decision when it overturned Thompkins' conviction.

Berghuis v. Smith: U. S. Supreme Court case involving a murderer who claims that his conviction is invalid because the jury selection process did not maintain a racial quota. Smith was convicted of second-degree murder for the fatal shooting of a man during an argument in a bar in Grand Rapids, Michigan. Several witnesses testified at trial, including a bouncer who was wounded by the same bullet that killed the victim. To address Smith's claim, a hearing was conducted to review the process for summoning citizens to jury duty. Evidence showed that, while the system was colorblind, the percentage of blacks excused for childcare and transportation hardship was greater than for whites. Experts testified that far more blacks than whites in the county were unemployed, single mothers and that fewer black households owned automobiles. Based upon this, the Michigan Supreme Court held that there was no systematic bias in the process. Later, the Federal Sixth Circuit Court of Appeals overturned Smith's conviction, concluding that there was racial bias. CJLF has joined the case to argue that the Constitution's Equal Protection Clause already provides strong protections against biased juror selection, and that while jury pools that mirror the population would not improve the reliability of verdicts, such a requirement would force single mothers and those without transportation to serve.

Holland v. Florida: U. S. Supreme Court case involving a Florida murderer's claim that the time limit for filing his petition for a fifth review of his case should be waived. Albert Holland murdered a police officer who had attempted to arrest him for the brutal sexual assault and attempted murder of a Pompano Beach woman. Holland unsuccessfully claimed a mental defense, and his conviction and sentence were later affirmed on direct appeal by the Florida Supreme Court. Federal law provides defendants with one year after completion of the direct appeal to petition for federal postconviction review. The clock stops while state courts consider any further reviews permitted by state law. Over the next five years, Holland's claims of trial error and ineffective assistance of counsel were reviewed four times by state courts, including two reviews in the Florida Supreme Court, but he failed to meet the deadline for filing a petition for re-review of these claims on federal habeas corpus. In the Supreme Court, Holland and the ACLU claim that the lower federal courts are entitled to waive the time limit to prevent an injustice. At Florida's invitation, CJLF has joined the case to argue that Congress adopted the time limits to prevent unwarranted delay and, because guilt is not an issue in this case, no exception to the limit is justified.

continued on page 6

Graham v. Florida/Sullivan v. Florida: U. S. Supreme Court cases challenging state laws which allow states to sentence repeat juvenile offenders who commit violent crimes before their 18th birthday to life without possibility of parole (LWOP). Joe Sullivan had already been convicted of 17 crimes, including several felonies when, at the age of 13, he robbed and brutally raped an elderly woman. One month prior to his 18th birthday, Terrance Graham, who was on parole for robbery and assault, was convicted of an armed home-invasion robbery. Following his arrest, he admitted to four additional robberies. In the Supreme Court, Graham and Sullivan argue that the LWOP sentences they received constitute cruel and unusual punishment. At least 15 organizations, including the NAACP and Amnesty International, have filed briefs asking the Court to prohibit states from allowing an LWOP sentence for their worst juvenile criminals, at least in nonhomicide cases. CJLF has joined the case to argue that the Constitution has left decisions regarding the sentencing of criminals to the states and that the public has the right to protect itself from violent, repeat offenders regardless of their age.

Valdivia v. Schwarzenegger: Federal Ninth Circuit Court of Appeals case involving the legal challenge to a provision of California's Proposition 9, which changed the state process for revoking the parole of criminals who violate parole conditions or commit new crimes. Proposition 9 adopts procedures required by the U. S. Supreme Court and utilized by other states. Since 2004, California's parole revocation process has been governed by a federal injunction to settle a lawsuit by criminals who claimed that their rights had been violated. The injunction had granted more rights to parolees than required by the Supreme Court, added costs

to the process, and placed additional burdens on crime victims and law enforcement. In March 2009, the same federal judge who ordered the injunction ruled that the parole reforms in Proposition 9 were unconstitutional. CJLF has joined the state's appeal of that ruling to argue that the federal judge has overstepped his authority and ignored precedent in order to prevent enforcement of a constitutional amendment adopted to balance the rights of criminals with those of crime victims and law-abiding Californians.

Barnett v. Superior Court: California Supreme Court case to review a murderer's claim that a state law requires district attorneys to search for and turn over information (discovery) regarding a conviction and death sentence handed down 19 years ago. Max Lee Barnett, a habitual criminal, was convicted on strong evidence of the kidnap, torture, and murder of his one-time mining partner in a remote area of Butte County. In 1998, the state Supreme Court denied his claims of trial and sentencing error, and the U. S. Supreme Court refused his appeal. In 2004, a trial judge granted Barnett's request for discovery even though he did not have a case pending in that court. The judge ruled that he was required to grant the request under a law enacted by a *simple majority* of state legislators in 2002, which expanded the discovery rights of murderers sentenced to death. After an appeals court issued a ruling upholding some of Barnett's requests, the California Supreme Court agreed to review it. CJLF has joined the case to argue that the law which expanded Barnett's rights violates a ballot initiative adopted by the voters in 1990. Prop. 115, the Crime Victims Justice Reform Act, requires that legislation changing the rules of criminal discovery must be passed by a *super majority* of the members of the Legislature. A victory in this case will help prevent the worst murderers from adding years of delay to their cases.

“RULING VOIDING RAPE CONVICTION OVERTURNED”

continued from page 2

underwear matched a sample taken from Troy Brown. The odds against this match happening at random were 3 million to 1. At the time of the assault, the population of the town of Carlin was approximately 2,100.

Troy testified that, after consuming 10 shots of vodka and several beer chasers, he was very intoxicated when he left the Peacock Bar and had vomited several times while walking to his trailer. He also stated that while he could not remember what time he got home, when he did arrive, he immediately washed his jacket and pants because he needed them for a trip the next day.

The jury convicted Brown of the sexual assault. After the verdict, Brown's family convinced the judge to allow a second DNA test on a different sample, performed by an independent lab. That test also matched Brown, with 10,000 to 1 odds against the match happening at random. Noting that this second test confirmed his guilt, the judge told Brown it would make a difference in his sentence if he would ad-

mit to the crime. After Brown refused, the judge sentenced him to life in prison with the possibility of parole, plus 20 years.

Brown made several claims on appeal, including that there was insufficient evidence to support his conviction and that the sentencing judge abused his discretion by punishing him more harshly because he refused to admit his guilt. The Nevada Supreme Court ordered a new sentencing hearing, but rejected the claim of insufficient evidence.

The second sentencing hearing resulted in Brown receiving *two* consecutive life terms, with the possibility of parole in 20 years. Brown then pursued his claim of ineffective assistance of counsel on state habeas corpus without success. In February 2004, Brown filed his petition in the Federal District Court. Two years later, Judge Philip M. Pro accepted a written statement from another DNA analyst hired by Brown. That analyst claimed that the trial expert's responses to questions by the prosecutor were faulty, as was the defense's own post-trial test. Based on that statement, the

judge announced that the DNA evidence could not be considered, leaving only the testimonial evidence, which he found insufficient to support Brown's conviction.

The Ninth Circuit affirmed that holding in a 2008 ruling. The Foundation's *amicus curiae* (friend of the court) brief argued that among the many errors in the Ninth Circuit's opinion were a failure to apply the correct standard in evaluating the Nevada Supreme Court's decision and a failure to limit its review to the evidence introduced at trial.

In its January 11 opinion, the Supreme Court stated, "In sum, the Court of Appeals' analysis failed to preserve 'the factfinder's role as weigher of the evidence' by reviewing '*all of the evidence* . . . in the light most favorable to the prosecution,' . . . and it further erred in finding that the Nevada Supreme Court's resolution of the **Jackson** claim was objectively unreasonable." The decision sent the case back to the Ninth Circuit to consider another issue not decided in its previous ruling.

COP KILLER SEEKS RULING RELAXING LIMITS ON FEDERAL COURT REVIEW

The United States Supreme Court has agreed to consider a condemned Florida murderer's argument that the time limit for submitting claims for review on federal habeas corpus should not apply to his case. The time limit in question is part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) adopted by Congress and signed into law by President Clinton. Provisions of the Act dealing with habeas corpus were adopted specifi-

cally to reduce the time and expense of federal court review of criminals' claims against state conviction and sentence. The Act specifies what exceptions to the time limit will be allowed. At issue in **Holland v. Florida** is whether courts can create additional exceptions.

The Criminal Justice Legal Foundation has joined this case at the invitation of the Florida Attorney General.

Habitual felon Albert Holland has been convicted and sentenced to death twice by different juries for the brutal crimes he committed in Pompano Beach, Florida, on July 29, 1990. Evidence introduced at both trials indicate that on that day, Holland invited a woman to smoke some "crack" cocaine with him in a wooded area near her home. After the pair smoked the crack, Holland threw her to the ground and
continued on last page

"LAWYER COMPETENCY"

continued from front page

three death penalty cases. The second attorney had represented defendants in over 50 felony trials over his 30-year career. The third attorney was a recent law school graduate assisting in his first jury trial.

Faced with overwhelming evidence of guilt, the defense team sought a psychiatric evaluation of Wood. The evaluation revealed that Wood had a low IQ, but that he understood that his criminal behavior was wrong, and he had a "normal thought process." Wood also told the doctor that he had trouble controlling his anger and had wanted to injure others in the past. Recognizing that the evaluation and Wood's own statements about being prone to violent behavior might harm their defense, his lead attorney asked the court to suppress it and all other psychiatric and psychological evidence from the trial and sentencing hearing. Wood's counsel appealed for sympathy from the sentencing jury; however, they recommended a death sentence.

After his conviction and sentence were upheld on direct appeal, Wood challenged his sentence on state postconviction review. Three separate evidentiary hearings were held between 2000 and 2003 to consider Wood's claims that he was mentally retarded and that his defense counsel failed to adequately represent him at the penalty hearing. The conclusion of this review was that neither claim was supported by the evidence. The lawyers' decision not to proceed further with mental evidence was a strategic decision which took into account the significant damaging evidence that such a defense would introduce to jurors. On federal habeas corpus, the district court agreed that Wood was not retarded, but announced that his defense counsel was ineffective for failing to further investigate and introduce evidence of his intellectual functioning. On appeal, the Eleventh Circuit Court of Appeals reversed that holding.

When the Supreme Court agreed to re-

view Wood's appeal of that ruling, the American Civil Liberties Union and the National Association of Criminal Defense Attorneys joined his appointed attorney to encourage a decision to overturn his death sentence. They argued that Wood's defense counsel failed to thoroughly investigate his mental condition, and that the least experienced attorney in Wood's legal team had chosen not to present the evidence of his low IQ to the sentencing jury.

The Court's decision rejected these claims, concluding that the state courts reasonably found that Wood's legal team made a strategic choice not to pursue the mental defense.

"The decision in this case implements the intent of Congress to reduce repeated litigation of close questions and the delay that results from such repetition," said Kent Scheidegger, the Foundation's Legal Director. "In a case such as this, with no genuine question of guilt, one fair review of the facts and the law should be enough."

CJLF could not participate in the cases reported in this newsletter without your annual support. With state politicians approving the early release of criminals from prison to save money, the federal government cutting back on border security, and our President choosing to prosecute foreign-born terrorists as if they were U. S. citizens, law enforcement is reaching out to CJLF for help. In over half of our cases this year, we were asked to participate. Help us stay strong enough to meet the challenges to law and order during these dangerous times by making your 2010, tax-deductible contribution today. And don't forget to clip and mail the card on the right along with your check, or visit www.cjlf.org to use your credit card. *Many Thanks!*

THIS IS MY CONTRIBUTION TO CJLF

Please fill out and mail with your check to:

Criminal Justice Legal Foundation
Post Office Box 1199
Sacramento, CA 95812

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:

Winter 2010

“COP KILLER SEEKS RULING”

continued from page 7

began beating her head with a bottle. He then tore her blouse open and demanded oral sex. When she refused, he continued to beat her with at least two bottles and a rock until she lost consciousness. A woman standing at the door in a nearby home witnessed the attack and called the police. The woman's husband testified that when he yelled for Holland to stop, Holland threw something into the bushes, wiped his hands on the victim's shirt, and left. Other witnesses testified seeing Holland walking away from the crime scene with a substantial amount of blood on his chest. Minutes later, Officer Scott Winters stopped Holland in front of a bait shop. A struggle ensued, and Holland managed to grab the officer's gun. Holland shot him twice before running off. Officer Winters died an hour later from gunshots to his abdomen and groin. Four eyewitnesses testified to seeing Holland shoot the officer.

At trial, Holland's defense counsel presented psychiatric testimony suggesting that he suffered from schizophrenia which, in addition to his alcohol and drug use, prevented him from knowing right from wrong. Holland also testified that he "went crazy" after smoking the "crack" and while he remembered attacking the woman, he did not recall killing Officer Winters.

Based upon the evidence, the jury found Holland guilty of first-degree murder, attempted first-degree murder, attempted sexual battery, and armed robbery and recommended a sentence of death. His first trial was overturned on appeal due to a Supreme Court decision changing the rules governing psychiatric testimony, which rendered statements made at the trial improper. His second trial in 1996 resulted in a conviction on the same charges and a second death sentence.

On direct appeal, the Florida Supreme Court reviewed and denied Holland's 22 error claims and upheld his conviction and sentence without one dissenting vote. The Supreme Court denied Holland's appeal of that holding in 2001. From that point, he had one year to file for federal review of his claims, with the clock stopped during the time state courts were considering additional state reviews of the case. Over the next five years, both a Florida trial court and the state Supreme Court considered and denied Holland's additional claims of trial and sentencing error. The Florida Supreme Court also conducted a separate habeas



Albert Holland

corpus review and denied his claims of ineffective assistance of appellate counsel. At the end of this process, Holland had 35 days left to petition the federal courts to reconsider the claims denied by the state courts. He did not meet that deadline, and his later petition was dismissed as untimely.

When the U. S. Supreme Court agreed to consider Holland's appeal, the ACLU joined his defense

counsel to argue for a ruling creating new exceptions to the time limits enacted by Congress. The ACLU brief asserts that Congress did not intend to prevent the federal courts from waiving the limits when an injustice would result from adhering to them. This process, called equitable tolling, could effectively nullify the time limit, allowing some courts to grant excessive extensions of time to file a petition. That is the abuse the limit was enacted to prevent.

CJLF argues that the AEDPA "was enacted for the specific purpose of reining in courts that Congress believed had given insufficient weight to the State's interest in finality. Congress is unlikely to have intended to grant open-ended authority to evade its limits to the very courts it intended to restrain." The CJLF brief notes that there was no injustice in this case. "A guilty murderer has received a trial, an appeal, a state collateral review, an appeal from the state collateral review," and a review on state habeas corpus.

"At some point, a criminal judgment should be truly final so the sentence can be carried out," said CJLF Legal Director Kent Scheidegger. "In a case such as this, with no doubt as to who committed the crime, four reviews of the case are plenty. The time limit on a fifth review should be strictly enforced."

RETURN SERVICE REQUESTED

Criminal Justice Legal Foundation
Post Office Box 1199
Sacramento, CA 95812

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