CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

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CJLF PARTNERS WITH FORMER PROSECUTOR TO OPPOSE RAPIST'S EARLY RELEASE

CJLF has joined former Los Angeles Deputy District Attorney Kathleen Cady to represent the victim of a brutal sexual assault and the victims' group Crime Survivors, Inc. to block the unlawful early release of the rapist.

The crime occurred in Los Angeles at 5:30 a.m., on July 26, 2008, while 23-year-old Jessica M. was sitting alone at a bus stop at the corner of Colorado and Eagle Rock boulevards waiting for a bus to take her to work. Repeat felon Sergio Hernandez Linares, an illegal alien armed with a knife, sat down beside her, grabbed her by the neck, and with the knife at her throat ordered her to go with him. He took her to a car, opened the passenger door, and ordered her to get in. He then climbed over her into the driver's seat and drove her to an uninhabited cul-de-sac by Eagle Rock Junior/Senior High School. Linares ordered Jessica to get in the back seat and remove her clothes. Linares then forced her to engage in oral copulation and sodomy before he raped her. He then ordered her to put her clothes on, gave Jessica M. her purse, and told her to give him all her money, which amounted to $110. When Linares got out of the car, Jessica ran. Fortunately, during the time she was kidnapped, she secretly dialed 911 on her cellphone, which allowed the dispatcher to track her location.

When police arrived, Jessica M. described Linares and his car. Officers located the car and Linares in a nearby neighborhood. After his arrest, a DNA test confirmed that he was guilty of the assault. In the hospital, a forensic nurse noted that Jessica M. had suffered acute trauma with lacerations and bleeding.

Due to the overwhelming evidence of his guilt, Linares pled no contest to five forcible sexual offenses and assault with a deadly weapon. He was sentenced under Proposition 83, California's 2006 "Jessica's Law" ballot measure, to 50 years to life in prison. Amending Proposition 83 requires a two-thirds vote of both houses of the state Legislature. In 2008, months before Linares' was convicted, California voters enacted Proposition 9, "Marsy's Law," a constitutional amendment guaranteeing victims' rights, which among other things, provides victims with the right to finality in their criminal cases.

Five years later, California's Democratic legislative supermajority and Governor Jerry Brown began an assault on Proposition 83 and Proposition 9. In 2013, the Legislature passed and Governor Brown signed SB 260, which increased parole eligibility for violent offenders who were under the age of 18 when they committed their crimes. In 2016, the Legislature and the Governor passed SB 261, which raised the age of parole eligibility for violent offenders to 23 years old. In 2017, the Governor

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LA District Attorney Candidate Nathan Hochman Addresses CJLF Annual Meeting

A former federal prosecutor, seeking to replace progressive Los Angeles District Attorney George Gascón in the November election, addressed the CJLF's 42nd annual meeting on June 11. Nathan Hochman, who outpolled eleven other challengers to Gascón in the March primary, is running on the promise to restore law and order to the most populous county in the country and reverse Gascón's pro-criminal policies. In his remarks before a packed luncheon at The California Club, Hochman cited Gascón's refusal to prosecute habitual felons, including those repeatedly arrested for violent crimes. Hochman has also pledged to crack down on the thousands of thieves who, under Gascón, have stolen cars and looted stores with no fear of arrest or punishment. "Angelenos feel less safe today than when Gascon came to office," he said.

Los Angeles District Attorney candidate Nathan Hochman

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VIEWPOINT

Governor Newsom's Fake Crackdown on Retail Theft

While his Department of Corrections & Rehabilitation is accelerating the early release of serious and violent criminals in prison, Governor Gavin Newsom is pretending to get tough on thieves. On September 12, Governor Newsom signed a bill that would increase the sentences of some thieves. The bill, AB 1960 by Assembly Speaker Robert Rivas (D-Hollister), would add a one-year enhancement to the jail sentence of anyone convicted of stealing or damaging property worth $50,000. Stealing $200,000 would add two years to the jail sentence. The same enhancements would be added to the punishment of someone who receives or resells $50,000 or $200,000 worth of stolen property. With the possible exception of luxury jewelry stores, this law will have zero impact on the hundreds of smash-and-grab thieves terrorizing markets, small businesses, and drug and department stores. It does nothing to deter a thief who steals under $950 worth of goods from six different stores in one week. Under Proposition 47, a misleading 2014 initiative that then Lt. Governor Newsom supported, those thefts are misdemeanors and the habitual thief gets no punishment.

Since 2011, no thief in California, even one who steals $200,000, can be sentenced to prison. Under AB 109, signed into law by Governor Brown, all thieves, including car and jewelry thieves, can only be sentenced to one of California's overcrowded county jails. Because most county jails have been filled to capacity since AB 109 became law, when a car thief is locked up, the sheriff has to let another criminal who was locked up the previous month out on probation. Under these circumstances, almost no thief serves even half of their full jail sentence before getting released. This is happening while Governor Newsom is closing down state prisons that AB 109 and Proposition 47 have emptied out. As reported earlier this year, California has 20,000 empty prison beds.

When signing AB 1960 last week, Governor Newsom proclaimed, "California already has some of the strictest retail and property crime laws in the nation—and we have made them even stronger with our recent legislation. We can be tough on crime while also being smart on crime—we don't need to go back to broken policies of the last century. Mass incarceration has been proven ineffective and is not the answer—we need true accountability and strategies that enhance our nation-leading efforts to address crime ...."

I count three lies in that statement. California laws for theft and property crime are among the weakest in the nation. Mass incarceration is a myth pushed by pro-criminal progressives. The tough-on-crime policies adopted at the end of the last century made American cities and neighborhoods the safest they have been in decades.

Since the 1990s, anyone involved with law enforcement has known that being "smart on crime" is code for alternatives to punishment for criminals. Our own studies, and those by the U. S. Department of Justice, indicate that alternatives to punishment don't work.

The only reason AB 1960 even made it to Newsom's desk is because this is an election year, and the public has become fed up with politicians lying about their concern for law and order while they continue to reduce consequences for criminals. To keep her job, even liberal democrat San Francisco Mayor London Breed has endorsed Proposition 36, a ballot measure supported by law enforcement, which, if adopted by voters in November, would override Proposition 47 and allow repeat thieves to be charged with a felony. Proposition 36 also restores consequences for habitual drug abusers.

It is important for the public to look past the tough-on-crime rhetoric that liberal politicians adopt during election years and judge them on their votes for pro-criminal, anti-law enforcement policies in nonelection years.

Michael Rushford
President

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 that have left the issue unsettled are DRAWS.

City of Grants Pass v. Johnson: 6/28/24. U. S. Supreme Court decision upholding the City of Grants Pass, Oregon's challenge to a federal judge's ruling to strike down local ordinances prohibiting camping on public property. In July 2023, a divided panel of the Ninth Circuit upheld the judge's order, citing its 2019 ruling in **Martin v. City of Boise**. That ruling announced that the homeless had an Eighth Amendment right to camp on public property. The ruling covers the nine western states in the Ninth Circuit, which includes Alaska, Washington, Montana, Idaho, Oregon, Nevada, California, Arizona, and Hawaii. On January 12, the high court agreed to hear the Grants Pass appeal. CJLF joined the case to argue that the Eighth Amendment was adopted to bar the cruel and unusual punishment of convicted criminals, which has nothing to do with cities and counties enforcing municipal ordinances to regulate camping on public land. The foundation's brief also noted that no other federal circuit had discovered this right. The decision to overturn the Ninth Circuit has restored local and state authority to remove homeless camps from public property. **WIN**

Smith v. Arizona: 6/21/24. U. S. Supreme Court ruling upholding a drug dealer's claim that his conviction was unconstitutional. In 2011, Jason Smith was convicted of possession of marijuana and methamphetamine for sale. Prior to trial, testing at the state crime lab confirmed that the drugs in Smith's possession were marijuana and methamphetamine. When the trial began, the lab analyst who did the testing no longer worked at the lab, so, relying on the original lab notes, another analyst testified on the testing process and the findings. Smith claimed that this long-established process regarding the introduction of forensic evidence violated his constitutional right to confront the original analyst. The Arizona Court of Appeals upheld the testimony on the theory that the notes were not introduced for their truth. After the U. S. Supreme Court agreed to hear Smith's appeal, CJLF joined the case to argue that the term "witness" as understood when the Confrontation Clause was adopted does not extend so far as to cover the author of the lab notes. The expert who testified was the witness for the purpose of the Sixth Amendment, and Smith's right to confront him was honored. The high court rejected the state appeals court's "for the truth" theory and sent the case back to state court for reconsideration. The question of admissibility on CJLF's theory remains open. **DRAW**

People v. Hardin: 3/4/24. California Supreme Court decision rejecting a murderer's claim that he had a constitutional right to early release from his life without the possibility of parole (LWOP) sentence. The high court utilized CJLF arguments in its decision which held that while several recently enacted state laws do make convicted murderers eligible for parole years earlier than their sentences prescribe, murderers over the age of 18 who are sentenced to LWOP are specifically excluded. The crime at the time of conviction and adult v. juvenile status are sufficient grounds to treat criminals differently. Hardin was convicted in 1990 of the brutal robbery and murder of an elderly woman who had befriended him. Thanks to this decision he and others like him will never see the outside of prison. **WIN**

CJLF v. CDCR: 12/13/23. Sacramento Superior Court decision barring early release of criminals sentenced to indeterminate sentences. The decision came in a CJLF lawsuit on behalf of crime victims to block Governor Newsom's effort to award early release to violent criminals and murderers. In 2017 and again in 2021, the California Department of Corrections and Rehabilitation (CDCR) adopted regulations to award good behavior and program participation credits (called "good time credits") to violent criminals reducing their sentences. CJLF responded by suing CDCR, arguing that the new administrative regulations unlawfully override numerous state laws which specify when and how a prison inmate qualifies for parole or credits. The judge held that, at least with regard to murderers and other criminals serving sentences of 15 or 25 years to life, they must serve the 15 to 25 years before they can be eligible for parole. The Newsom administration has appealed this decision. **WIN**

People v. Rojas: 12/18/23. California Supreme Court ruling upholding a gang murderer's claim that his life-without-parole (LWOP) sentence should be overturned because of a 2021 state law making it harder to prosecute gang criminals. In 2018, Fernando Rojas was convicted of murder along with enhancements for membership and participation in a criminal gang, which qualified him for LWOP. In 2021, the Legislature passed a new law changing the requirements needed to add gang enhancements, and Rojas appealed claiming the law should apply to him. The appeals court held the new law unconstitutional and upheld his murder conviction. CJLF joined the case arguing that Proposition 21, adopted in 2000, defined what was needed to prove a criminal was a gang member and it could only be amended by a two-thirds vote of the Legislature. The new law redefining gang membership did not get the required two-thirds vote in either house, making it unconstitutional. In its ruling, the Supreme Court held that because the definition of gang membership had been changed several times before Proposition 21 was adopted, the voting public understood that it could be changed later without qualifying as an amendment. **LOSS**

TOTAL	3 Wins	1 Loss	1 Draw

NOVEMBER BALLOT MEASURES

Affecting Law Enforcement

An initiative addressing theft and drug abuse has qualified for California's November 5 ballot, along with a separate ballot measure also passed by the Legislature that increases the rights of prison inmates.

Proposition 36 is sponsored by the California District Attorneys Association and is supported by retailers, victims groups, and most state law enforcement professionals. The measure changes several provisions of California's Proposition 47, which converted possession or sale of drugs and thefts of $950 or less to misdemeanors, even if the offender has multiple priors. Proposition 36, if adopted, would strengthen penalties for habitual shoplifters and thieves, allowing for offenders convicted of a third theft valued at less than $950 to be charged with a felony and sentenced for up to three years in state prison, depending on their criminal records.

Under Proposition 36, thieves who swarm stores in groups to shoplift and damage property could be charged with a felony. Drug dealers selling fentanyl, cocaine, heroin, or methamphetamine could be charged with a felony and sentenced to prison, depending on the amount of drugs sold. Drug users arrested for possession of fentanyl, heroin, cocaine, or methamphetamine can be charged with a "treatment-mandated felony." Those completing the treatment would have their records cleared. Those not completing treatment could receive jail or prison time. Proposition 36 also requires courts to warn offenders selling fentanyl, heroin, cocaine, or methamphetamine that they can be charged with murder if they sell these drugs to a person who dies from an overdose.

Proposition 36 is opposed by two George Soros funded pro-criminal groups, Prosecutors Alliance Action and Crime Survivors for Safety and Justice, and also by Re-Entry Providers Association, an organization that advocates on behalf of re-entry organizations.

Proposition 6 is a legislative constitutional amendment sponsored by the California Reparations Task Force as one of a host of measures to redress racial bias against African Americans. It amends a provision of the state Constitution that allows for criminals sentenced to prison to be required

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ANTI-CAMPING ORDINANCES RESTORED

In a June 28, 2024 decision, the U. S. Supreme Court reinstated a city ordinance against camping on public property, reversing decisions that had blocked enforcement of anti-camping ordinances in nine western states. Several states and cities joined the City of Grants Pass, Oregon, in seeking to overturn a 2019 Ninth Circuit Court of Appeals ruling (**Martin v. City of Boise**), which effectively gave the homeless an Eighth Amendment right to camp on public property. In 2019, the U. S. Supreme Court had declined to hear a similar appeal from the City of Boise to review and overturn that ruling.

The Criminal Justice Legal Foundation (CJLF) joined the case to argue that the Ninth Circuit expanded the Eighth Amendment beyond its constitutional limits, prohibiting communities from placing restrictions on homeless encampments.

Justice Neil Gorsuch wrote the opinion for the Court in the case of **City of Grants Pass v. Johnson**. The opinion holds that "[u]nder Martin, judges take from elected representatives the questions whether and when someone who has committed a proscribed act with a requisite mental state should be 'relieved of responsibility' for lack of 'moral culpability.' ... And **Martin** exemplifies much of what can go wrong when courts try to resolve matters like those unmoored from any secure guidance in the Constitution." The vote was 6-3, with Justices Sotomayor, Kagan, and Jackson dissenting.

In 2020, the City of Grants Pass appealed a federal judge's ruling that cited **Martin** as requiring him to strike down local ordinances prohibiting camping on public property. In July 2023, a divided panel of the Ninth Circuit upheld the judge's order.

This case attracted an unusual amount of interest. In addition to the CJLF, 35 other persons and organizations submitted *amicus curiae* (friend of the court) briefs in support of the City of Grants Pass. Among them were a group of 24 states, numerous local governments and organizations of governments, state and federal legislators, and organizations who seek to help people rise out of homelessness and the mental and addictive conditions that contribute to it.

The CJLF brief, authored by Legal Director Kent Scheidegger, noted that the Eighth Amendment was adopted to bar the cruel and unusual punishment of convicted criminals, which has nothing to do with cities and counties enforcing municipal ordinances to regulate camping on public land. The brief also pointed out that the Ninth Circuit's **Martin** ruling conflicts with a 2020 decision by the U. S. Supreme Court that endorsed a contrary interpretation of the main precedent in this case. The Court's decision followed this reasoning.

The current level of homelessness is causing a serious negative impact in virtually every American city. These issues, and how the Ninth Circuit decisions hinder a positive response, were addressed in the briefs of the local governments and service organizations.

"The intractable problems of homelessness and related conditions are not helped by the unrealistic restrictions imposed by the Ninth Circuit on the pretense of enforcing the Eighth Amendment. The Ninth Circuit's absurd misinterpretation in the **Martin** and **City of Grants Pass** decisions has caused catastrophic damage to communities in the West. The Supreme Court's correction is an important step toward restoration of public order," said Scheidegger.

Case Report

A Summary of Foundation Cases Currently Before the Courts

CJLF v. CDCR: Third District Court of Appeals case to review the California Attorney General's appeal of the Sacramento Superior Court decision won by CJLF, which prohibits the early release of violent criminals sentenced to indeterminate sentences. The decision came in a CJLF lawsuit on behalf of crime victims to block Governor Newsom's effort to award early release to violent criminals and murderers. The year following the 2016 passage of Proposition 57 and again in 2021 the California Department of Corrections and Rehabilitation (CDCR) adopted regulations increasing the awarding of good behavior and program participation credits (called "good time credits") to violent criminals, reducing their sentences by up to one-half. The Attorney General is asking the Court of Appeal to overturn the Superior Court decision, arguing that Proposition 57 gives the CDCR unlimited authority to award "good time credits" to any criminal in state prison not serving life without the possibility of parole or who received the death sentence.

Jessica M. v. CDCR: Los Angeles Superior Court lawsuit on behalf of a rape victim and a victims' rights group to block the early release of a brutal rapist and hold a state law that provides for the early release of violent sexual predators unconstitutional. CJLF has partnered with former Los Angeles Deputy District Attorney Kathleen Cady to petition the Los Angeles Superior Court to block the release of illegal alien Sergio Linares, 16 years after he received a 50-year-to-life sentence for kidnapping and sexually assaulting 23-year-old Jessica M. at knifepoint. Proposition 83, adopted by California voters in 2006, requires sexual offenders like Linares to serve their entire base term—in this case 50 years—before being considered for parole. Any amendment to the initiative requires a two-thirds vote of both houses of the state Legislature, but beginning in 2013, the Legislature passed, and Governor Brown signed, five bills into law that amended Proposition 83. None of these laws were passed with a two-thirds vote. The Cady/CJLF petition argues that the failure to meet the vote requirement renders those laws invalid and asks the court to block the early release of Linares and any other sex offender made eligible for release by those unconstitutional laws.

ADDA v. Gascón: California Supreme Court review of a June 2, 2022 appellate court decision which upheld the Association of Deputy District Attorneys for Los Angeles County suit to prohibit District Attorney George Gascón from refusing to enforce the state's Three Strikes sentencing law. CJLF has joined the case to argue that a district attorney's policy decisions regarding which laws to enforce does not override a voter-approved initiative mandating that a criminal's prior convictions shall be presented at trial to increase his sentence. The mandatory nature of the provisions at issue has been recognized by the state Supreme Court and multiple courts of appeal from the first years after enactment.

In re Kowalczyk: California Supreme Court case to review a criminal's claim that the Constitution requires that he receive a bail amount that he can afford. The case involves the bail set for habitual criminal Gerald Kowalczyk, who was charged with multiple felonies for identity theft and vandalism. Due to his record of 64 prior convictions and 100-page rap sheet, the court set Kowalczyk's bail at $75,000. Kowalczyk appealed, but the appellate court held that the state Constitution gives the trial judge the discretion to deny bail or grant bail based upon the crime, the defendant's record, the threat of the public were he released, and the likelihood he would show up for his trial. Before the Supreme Court, CJLF argues that in 2008 state voters enacted Proposition 9, which spelled out the priorities for setting bail: "In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations." Affordability was not mentioned.

Glossip v. Oklahoma: U. S. Supreme Court review of a convicted murderer's claim that "new evidence" invalidates his conviction. CJLF has joined University of Utah Law Professor Paul Cassell, representing the family of a murder-for-hire victim, to urge the U. S. Supreme Court to reject the murderer's claim and uphold his conviction and death sentence. In 1997, Richard Glossip hired a handyman, at the motel he managed, to kill the owner. He was convicted on a mountain of evidence, including the handyman's confession. Glossip's new evidence is that the handyman has mental issues, something that Glossip's defense attorneys knew, but chose not to introduce because it would have supported the fact that Glossip had manipulated the handyman. This evidence was actually included in Glossip's own appeal in 1998. CJLF argues that the state's highest court has already reviewed and dismissed the new evidence as both irrelevant and procedurally barred. We are asking the Court to hold that Glossip has, once again, abused the appeals process to delay his much-deserved execution.

CJLF is the only legal group in California fighting to stop the early release of violent criminals by the Newsom administration, winning two cases so far. In June, we helped win a U. S. Supreme Court decision allowing cities to close down homeless camps, and we are continuing our effort to expose pro-criminal district attorneys like LA's George Gascón and Philly's Larry Krasner. Gascón may be voted out of office this November. Help us to continue our work by making your annual tax-deductible contribution today. Please fill out and return the card on the right with your check, donate at our website www.cjlf.org, or call at (916) 446-0345 to contribute with your credit card. **Many Thanks**.

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"RAPIST'S EARLY RELEASE"

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signed SB 394 giving murderers serving life without parole, who were 18 or younger when they killed their victim(s), parole eligibility after serving 25 years. Finally, in 2019 the Legislature passed and Governor Gavin Newsom signed AB 965, which increased parole eligibility for violent offenders to criminals 25 years old at the time of the crime. All of these new laws effectively amended Proposition 83. As a result, Linares became eligible for parole.

On June 29, 2024, Jessica received an email from the state Board of Parole Hearings announcing that a parole hearing for Linares had been set for October 2, 2024.

In response, on September 10, 2024, Kathleen Cady and CJLF filed a petition in Los Angeles Superior Court seeking a writ of mandate to block Linares's parole hearing and to block similar hearings for all other similarly situated violent criminals who have received expanded parole eligibility from the new laws signed by Governors Brown and Newsom.

The petition in **Jessica M. v. CDCR** presents proof that *none of these laws* passed with the required two-thirds vote of both houses of the state Legislature. As a result their amendments to Proposition 83 are unconstitutional and invalid.

The petition is set for hearing December 6, 2024.

Watch for updates on this case in a future *Advisory*.

"BALLOT MEASURES"

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to work while serving their sentences. Proponents include the Law Enforcement Action Partnership, which advocates for legalization of all drugs and opposes incarceration. While the measure purports to eliminate the "involuntary servitude" of prison inmates, it ignores the reality that the work requirement is a part of the offender's punishment and often contributes to rehabilitation. Many inmates volunteer to join work programs in order to earn "good time credits" to reduce their sentences. Others select programs that train them for employment after release. The inmates that resist the work requirement are likely to be the most incorrigible. Under Proposition 6, this class of inmates would be allowed to do nothing productive while serving a sentence for the conviction of a serious or violent crime.

While CJLF is not a lobbying organization, it does take positions on ballot measures affecting law enforcement. The CJLF SUPPORTS Proposition 36 as a meaningful first step in restoring law and order to California.

The CJLF OPPOSES Proposition 6 because it eliminates a constructive form of punishment that contributes to rehabilitation and equates criminals convicted of violent and serious crimes with African Americans forced into slavery due to skin color.

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