



# NEWS RELEASE

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415-865-7740

Lynn Holton  
Public Information Officer

## Supreme Court to Hold Special Outreach Session at UC Berkeley Law School

*Live TV Broadcast of Oral Arguments on Nov. 3 in Cases  
Involving Medical Marijuana, DNA Evidence, and Sex Offender Law*

San Francisco—For the ninth year in a row, the California Supreme Court will reach out to hundreds of students at a special oral argument session from 9:00 a.m. to 5:00 p.m. on Tuesday, November 3, 2009, at the University of California, Berkeley, School of Law, at Booth Auditorium, 2778 Bancroft Way, Berkeley.

The educational program is designed to improve public understanding of state courts and is being held in collaboration with the School of Law. Law students, university faculty and staff, and dozens of high school and middle school students are expected to attend.

California Chief Justice Ronald M. George and Berkeley Law Dean Christopher Edley, Jr., will make opening remarks, followed by a question-and-answer session between law students and the justices.

### LIVE TELEVISION BROADCAST

California Channel, a public affairs cable network, will broadcast oral arguments in all five cases to be argued before the court. The network reaches 6.5 million viewers across the state and will offer a satellite link to facilitate coverage by other stations. Local viewing information is available at [www.calchannel.com/channel/carriage/](http://www.calchannel.com/channel/carriage/).

The five cases follow:

**10:00 a.m.:** *People v. Robinson (Paul Eugene), S158528* involves the use of DNA profile evidence to identify an unnamed defendant in a felony complaint and arrest warrant.

**11:00 a.m.:** *People v. Kelly (Patrick K.) (and related habeas corpus matter), S164830* concerns the Legislature’s authority to impose quantity limitations on users of “medical marijuana.”

**1:30 p.m.** *In re J. (E.) on Habeas Corpus, S156933* and other consolidated cases involve residential restrictions imposed on persons required to register as sex offenders.

**2:30 p.m.:** *People v. McKee (Richard), S162823* concerns the validity of amendments to the Sexually Violent Predator Act, making commitments indeterminate, instead of for a term of two years.

**3:30 p.m.:** *People v. Lessie (Tony), S163453* involves the legal effect of a minor’s request to speak to a parent during a police interrogation.

### EDUCATIONAL WEB SITE

The Supreme Court has launched an educational Web site for the special session, which includes detailed summaries and briefs for each case to be argued, at [www.courtinfo.ca.gov/courts/supreme/oralarg-briefs.htm](http://www.courtinfo.ca.gov/courts/supreme/oralarg-briefs.htm).

Detailed case summaries, with information on the background and legal issues involved in each case, are attached to this news release and can be found at [www.courtinfo.ca.gov/courts/supreme/briefs/berkeley-case-synopsis.doc](http://www.courtinfo.ca.gov/courts/supreme/briefs/berkeley-case-synopsis.doc) .

These materials may be used by students, teachers, and members of the public to learn more about the five cases that will be argued before the Supreme Court on November 3, 2009.

The Supreme Court also will hear oral arguments on Wednesday, November 4, 2009, in its courtroom in the Earl Warren Building, Fourth Floor, 350 McAllister Street. Those arguments will not be televised, but they are open to the public. The court’s calendar for both days is at [www.courtinfo.ca.gov/courts/calendars/documents/SNOVC09.PDF](http://www.courtinfo.ca.gov/courts/calendars/documents/SNOVC09.PDF) .

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**Editor’s Note:** News media may request reserved seats through Lynn Holton at [lynn.holton@jud.ca.gov](mailto:lynn.holton@jud.ca.gov) or Susan Gluss at [sgluss@law.berkeley.edu](mailto:sgluss@law.berkeley.edu) .

*Pooling for TV and radio stations will be available near Booth Auditorium on November 3, 2009.*



## **SUPREME COURT OF CALIFORNIA**

### **ORAL ARGUMENT CALENDAR SPECIAL SESSION — BERKELEY NOVEMBER 3, 2009**

The following cases are placed upon the calendar of the Supreme Court for oral argument at its Special Session at the University of California, Berkeley, School of Law, Boalt Hall, Booth Auditorium, Berkeley, California, on November 3, 2009. (The court also will hold oral argument in its San Francisco courtroom on November 4, 2009.)

#### **BERKELEY SPECIAL SESSION TUESDAY, NOVEMBER 3, 2009—9:00 A.M.**

##### *Opening Remarks: Historic Special Session*

#### **1. *People v. Robinson (Paul Eugene)* (S158528)**

A jury found defendant guilty of five felony sexual offenses, all perpetrated against the same woman on August 25, 1994. At the time these sexual crimes were committed, each was punishable for a maximum term of eight years in state prison. According to the applicable California statute of limitations law at the time, the prosecution had to commence within six years after the commission of the offenses or it would be time-barred forever.

In this case, four days before the statute of limitations would have expired, the district attorney filed a felony complaint against “John Doe, unknown male,” describing this unknown male by his unique 13-loci deoxyribonucleic acid (DNA) profile. An arrest warrant issued the next day incorporating that DNA profile. Approximately three weeks later, defendant was arrested on an amended warrant that included his name. It later was learned that defendant’s DNA profile in California’s DNA database that linked defendant to the five sexual offenses had been generated from blood mistakenly collected from defendant by local and state agencies during their administration of California’s DNA and Forensic Identification Data Base and Data Bank Act of 1998 (the Act). The following issues are likely to be discussed at oral argument.

a. The parties agree that defendant’s blood was collected in violation of the Act but disagree as to the remedy, if any, for the unlawful collection of defendant’s genetic material. The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures. The parties dispute whether the improper collection of defendant’s blood under the Act constitutes a Fourth Amendment violation and, if so, whether suppression of the evidence so obtained is required. Alternatively, the parties dispute whether a state statutory violation, namely, the collection of defendant’s blood in violation of the Act, would require suppression of the evidence regardless of whether the Fourth Amendment is implicated here. Oral argument may address

whether mistaken collection of defendant's blood was negligent, as opposed to deliberate, reckless, or systemic, and how that distinction could affect the required remedy.

b. Charging and arrest provisions permit the use of a fictitious name. A prosecution for an offense commences when an issued arrest warrant names or describes the defendant with the same degree of particularity required for a complaint. If a fictitious name is used, the warrant should contain sufficient descriptive material to indicate with reasonable particularity the identification of the person whose arrest is ordered. The Supreme Court must decide whether an unknown suspect's DNA profile satisfies the "particularity" requirement for an arrest warrant and whether the issuance of a "John Doe" complaint or arrest warrant may timely commence a criminal action and thereby satisfy the statute of limitations period.

## **2. *People v. Kelly (Patrick K.) (and related habeas corpus matter)* (S164830)**

In 1996, the California electorate approved Proposition 215 and adopted the Compassionate Use Act (CUA), which provides an affirmative defense to the crimes of possession and cultivation of "medical marijuana." The CUA does not specify an amount of marijuana that a patient may possess or cultivate; it states instead that the marijuana possessed or cultivated must be for the patient's "personal medical purposes." (Health & Saf. Code, § 11362.5, subd. (d).) This has been construed as establishing "that the *quantity possessed* by the patient or primary caregiver, and the form and manner in which it is possessed, *should be reasonably related to the patient's current medical needs.*" (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549, italics added.)

Under California Constitution, article II, section 10, subdivision (c), a statute enacted by voter initiative cannot be "amended" by the Legislature unless the voter initiative expressly gives the Legislature the right to do so. Proposition 215 did not give the Legislature the right to amend the measure.

In 2003, the Legislature found that "reports from across the state have revealed problems and uncertainties in the [CUA]." (Stats. 2003, ch. 875, § 1, subd. (a)(2).) In response, it enacted the Medical Marijuana Program (MMP) (§ 11362.7 et seq.) to "[c]larify the scope of the application of the [CUA] and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers." (Stats. 2003, ch. 875, § 1, subd. (b)(1), italics added.)

Although the MMP did not literally amend the statute that established the CUA (§ 11362.5), the MMP did add numerous new code sections that address the general subject matter covered by the CUA. At the heart of the MMP is a voluntary "identification card" scheme that, unlike the CUA, *provides protection against arrest* for marijuana possession and cultivation, and related crimes. Under the MMP, persons who suffer from a "serious medical condition" may register and receive an annually renewable identification card that, in turn, can be shown to a law enforcement officer who otherwise might arrest the program participant for possession or cultivation, or other related crimes. An officer must honor the card, and not arrest the person, unless there is reason to believe the card is fraudulent.

Section 11362.77 of the MMP — the statute at issue in this case — provides that a "qualified patient" or "primary caregiver" may "*possess* no more than eight ounces of dried

marijuana,” and may, “[i]n addition, *maintain* no more than six mature or 12 immature marijuana plants.” (*Id.*, subd. (a), italics added.) The next two subdivisions of the same section provide qualified exceptions for greater amounts. Subdivision (b) specifies that a patient may “possess an amount of marijuana consistent with the patient’s needs,” on condition that the patient “has a doctor’s recommendation that” the quantity set out in subdivision (a) is insufficient for the patient’s medical needs. Subdivision (c) specifies that cities or counties may retain or enact guidelines allowing greater quantities than those set out in subdivision (a).

Section 11362.77 does not confine its quantity limitations to those persons who voluntarily register with the program and obtain identification cards that may protect them against arrest. Instead, the section covers individuals who are *entitled*, under the CUA, to possess or cultivate any quantity of marijuana reasonably necessary for their current medical needs. Moreover, although subdivision (b) of section 11362.77 allows *possession* of a quantity “consistent with the patient’s needs” that is greater than the amount set out in subdivision (a), it affords this protection only if a physician so recommends — a qualification not found in the CUA.

The Court of Appeal held: (1) Section 11362.77 is invalid under California Constitution, article II, section 10, subdivision (c), insofar as it amends, without approval of the electorate, the CUA, adopted by the voters as Proposition 215; and (2) section 11362.77 (and, by extension, the MMP’s identification card scheme) is thereby rendered wholly unenforceable. The Supreme Court granted review to address both of these issues.

### **1:30 P.M.**

### ***3. In re J. (E.) on Habeas Corpus (S156933); In re P. (S.) on Habeas Corpus (S157631); In re S. (J.) on Habeas Corpus (S157633); and In re T. (K) on Habeas Corpus (S157634) (consolidated cases)***

Individuals who have been convicted of certain sexual offenses are required to register as sex offenders under Penal Code section 290. In 2006, the voters enacted Proposition 83, the “Sexual Predator Punishment and Control Act: Jessica’s Law.” Among its other provisions, Proposition 83 added subdivision (b) to Penal Code section 3003.5 as follows: “Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.”

In August 2007, the Department of Corrections notified all registered sex offenders who were paroled for any crime after November 8, 2006 — the effective date of Proposition 83 — that they had to find housing that complied with the 2000 foot residency restriction or face revocation of parole and reincarceration. The four petitioners in this case were served with that notice. Each of them had been convicted of a registerable sex offense long before Proposition 83 was passed and, although each of them was on parole November 8, 2006, none was on parole for a sex crime.

Each of the four petitioners claims he will be forced to leave his home (three of them from homes currently shared with family members) in order to comply with the residency restriction. Each asserts that there is virtually no area in his city where he can live in compliance with the law. Therefore, the petitioners have brought a petition for writ of habeas corpus seeking permanent injunction of the law.

The petitioners challenge the residency restriction on a number of grounds. They contend that enforcement of the statute as to them constitutes impermissible retroactive application and, if enforced retroactively, violates the ex post facto clause. Each also contends that section 3003.5(b) constitutes an unreasonable condition of parole that also infringes various federal and state constitutional rights, including the right to privacy and to travel.

#### **4. *People v. McKee (Richard)* (S162823)**

Under the Sexually Violent Predator Act (SVP Act), a person who has committed a qualifying sexual offense, such as rape or child molestation, may be subject to involuntary civil commitment in a psychiatric institution after serving a prison sentence if he or she is found to have a diagnosed mental disorder that makes it likely he or she will engage in sexually violent criminal behavior. In order to be committed, the District Attorney has the burden of proving beyond a reasonable doubt before a jury that the individual qualifies as an SVP. Under the former version of the statute, the commitment term was for two years and could be renewed for another two years only if the DA again proved beyond a reasonable doubt that the individual qualified as an SVP.

In 2006, Proposition 83, also known as “Jessica’s Law,” made a number of changes in how sexual offenders are treated. This case focuses on one of those changes, that an SVP commitment is now indefinite. Under the new law, someone initially committed as an SVP who seeks release generally must petition the court to end the commitment and has the burden of proving by a preponderance of the evidence that he or she no longer meets the definition of an SVP.

In this case, the petitioner McKee is an SVP who challenges the new law on several constitutional grounds. First, he claims that because he has a strong liberty interest in not being involuntarily committed, the due process clause of the Fourteenth Amendment is violated by making his commitment indefinite and by effectively shifting the burden to him to prove he is no longer an SVP (instead of forcing the People to prove his SVP status every two years). Both McKee and the People rely on several United States Supreme Court cases that have addressed the due process protections the Constitution requires for those who are civilly committed.

Second, McKee claims the new law violates the constitutional prohibition against ex post facto laws. Ex post facto laws are generally defined as laws that retroactively alter the definition of a crime or increase punishment for a criminal act. Here, the argument turns on whether the change in the law at issue here constitutes increased punishment.

Third, McKee claims the new law violates the equal protection clause of the Fourteenth Amendment. He argues that other persons similarly situated who are involuntarily committed under other laws are committed, as was the case with the former SVP Act, for only a year or two, and the People must again prove beyond a reasonable doubt that those individuals should be involuntarily committed for another term. On the other hand, the People argue that SVP’s are not really similarly situated to other involuntarily committed persons, and that the government should be given latitude to address the particular dangers posed by SVP’s.

#### **5. *People v. Lessie (Tony)* (S163453)**

In its landmark decision in *Miranda v. Arizona* (1966) 384 U.S. 436, the United States Supreme Court adopted a set of rules to help ensure that confessions made by suspects in police custody are voluntary. Among other things, the police must advise the accused that he or she has the right to remain silent and to have the assistance of counsel. If the accused invokes these rights interrogation must cease, and any statement the accused thereafter makes must be excluded from evidence in the prosecution's case-in-chief.

The case now before the court raises a question about how *Miranda* applies to minors. In 1971, the California Supreme Court held that a minor who asks, during a custodial interrogation, to speak with a parent must be assumed to have invoked his or her *Miranda* rights. This was the holding of *People v. Burton* (1971) 6 Cal.3d 375. Since 1971, however, the United States Supreme Court has cast doubt on the *Burton* decision (see *Fare v. Michael C.* (1979) 442 U.S. 707), and the voters of California have amended the state Constitution to bar courts from excluding relevant evidence, such as confessions, except as required by federal law (see Cal. Const., art. I, § 28, subd. (f)(2), added by Prop. 8, approved by voters, Primary Elec. (June 8, 1982)). The question before the court is whether *Burton* remains valid despite these intervening changes in the law.

Defendant Tony Lessie has been convicted of second degree murder. Defendant, who at the time was 16 years old, shot a man during a street confrontation. Defendant admitted the shooting during an interrogation at the Oceanside police station. Defendant had asked to be allowed to call his father, but the police did not permit him to call until after he had confessed. Defendant's confession was admitted at trial. If *Burton* is still valid, the confession should have been excluded; if not, it was properly admitted.