

# DIALOG

INSIGHT & OPINION

The time is now for city leadership to commit to the future of the Chargers in San Diego.

EDITORIAL PAGE B6

## A CALL TO ACTION



Chelsea King

Amber Dubois

# TOUGH ENOUGH

## Defense lawyers argue case for resources over reform

As part of an ongoing series of discussions with key constituencies in the debate over reform of the laws, policies and procedures involving violent sexual criminals in California, the *Union-Tribune* editorial board last week interviewed Rebecca Jones, an appellate lawyer and former board chair for the American Civil Liberties Union of San Diego and Imperial Counties, and veteran defense lawyer Michael L. Crowley. Below is an edited and condensed transcript. For earlier interviews in the series, editorials and other material, please go online to [uniontrib.com/calltoaction](http://uniontrib.com/calltoaction).

**The proposed "Chelsea's Law" has three main components: a one-strike provision of automatic life in prison without parole on a first conviction for certain violent sex offenders who target children, lifetime parole for other offenders released from prison, and improved GPS tracking of sex offenders out on parole. What is your view of it?**

**JONES:** Our position is not that different from a lot of other people's positions. Just because we represent accused and convicted criminals doesn't mean that we're opposed to public safety. But as citizens of this community we want scarce resources to be used in the most effective manner. That means using research to try to figure out who are the folks that are most likely to be dangerous if they're released into the community, and then trying to focus our resources on either treating those folks or, if they're not capable of treatment, incarcerating them for life or other extended periods of time.

California already has extraordinarily tough sex offender laws and we have mechanisms to keep people locked up for very long periods of time. I'm sure you're aware of the Sexually Violent Predator Act, which says if you're convicted of a predatory offense and you have some kind of diagnosable mental disorder, which can include personality disorders – you don't have to be actively schizophrenic and you don't have to have some wild, raging mental illness – that means you are likely to reoffend, the state right now can incarcerate you in a mental hospital for treatment for the rest of your life. There's also the Mentally Disordered Offender Act, which again allows the state to lock up for treatment, with periodic review, people who have mental disorders that render them incapable of basically behaving outside the confines of prison. There are life offenses already. If you look at Penal Code Section 269, you can already get 15 years to life depending on the offense.

The provisions in Chelsea's Law that widen the scope of that actually only bring into it teenage offenders.

I'm not really sure that the problem in this case or in any case is that there's not enough teenagers being prosecuted for sex offenses. The problem is that we still don't have the resources in this state, and this is pointed out in the Sex Offender Management Board report, that we don't have adequate parole supervision, we don't have adequate treatment, either inside the prisons or once people are released. GPS tracking, this report says, is not an effective mechanism for tracking people and making sure that they don't reoffend.

**CROWLEY:** Here we have another act that just lengthens prison times without discussing in any way, shape or form the consequences of that, the costs of that. We have a jail system that is under court order right now to reform itself or release people. ... We have parole officers supervising enormous numbers of people and they can't possibly do it. That, to me, is just common sense. ...

**JONES:** I think the increased parole supervision could certainly be fine. Once you have somebody who's been convicted either through plea or jury trial correctly and you want to increase the parole supervision, which is part of Chelsea's Law, I think that's entirely appropriate.

**The one-strike provision, which the King family cares most about, is based on the premise that sex offenders cannot be cured. Do you agree that?**

**JONES:** No. I think what the research says is that



**"The problem is that we still don't have the resources in this state ... we don't have adequate parole supervision, we don't have adequate treatment, either inside the prisons or once people are released."**

**REBECCA JONES, APPELLATE LAWYER**

pedophiles cannot be cured. But I don't think there's research that says all sex offenders are incapable of being cured. Pedophiles are people who target prepubescent children, which would not have included John Gardner. I'm not saying there's anything right about what Mr. Gardner did or anything like that. I'm saying you have to ask whether there is any possibility of working with a particular sex offender and getting them into a space where they're not going to hurt other people.

**CROWLEY:** Which gets us to Jessica's Law, which says that you can't live with in 2,500 feet of a school or a park. There's never been any serious study done that says that you are more likely to have rehab if you have an unstable family life. So we passed a law that pretty much blows up the fundamental chance for folks to rehab because they don't have a stable family life. I mean, I don't understand how anybody can look at that and think that makes sense. It's a continuum. There's a 100 percent chance that some folks will reoffend, some folks are 50 percent, some folks are 20 percent. You push the percentages down if you have a stable family life, and yet we have a state law that makes it much more difficult for them to have a stable family life because they can't live with family and friends.

**Making them homeless.**

**CROWLEY:** Yes, it has increased almost exponentially the homeless, because there's no place to live. I have clients living in the parking lot of their parole officer because there's no other place for them to live. Perhaps it cannot be cured, but it can be controlled, and especially when we keep track and keep controls on.

**So, where in the Gardner case did the system break down? Or did it?**

**JONES:** I am not 100 percent sure if the system broke down or not because, again, the whole idea that there's some magic crystal ball out there that can tell you who's going to go out and hurt other people and who's not going to go hurt other people when they're released doesn't exist ...

But in Gardner's case there were opportunities for rehabilitative intervention that were lost. If it was a matter of resources or no resources, I don't know.

**What opportunities?**

**JONES:** He had parole violations that there wasn't much follow-up on. There are people on parole who go back to state prison for not giving their correct address, for not calling their parole officer, for things that are considered to be "technical violations," not committing new crimes ...

Parole supervision is supposed to be an opportunity for the state to offer rehabilitative services to people, to monitor them carefully to see if they're engaging in behaviors that put them at high risk of reoffending and to offer them some kind of treatment. In my best understanding is that those opportunities were not used in his case. So to the extent that it fell through the cracks, I really think that's the most likely area.

**What would be your solution? What do you think needs and can be done to the system, either changing the law or changing parole or probation practices, that can be achieved, that would be meaningful, with existing resources.**

**JONES:** We have tough-on-crime DAs, we have mostly pretty hard, tough-on-crime judges. We do not need to change the charging process. We have very, very tough laws. Except for a couple of these provisions, you would be very hard-pressed to find aspects of Chelsea's Law that aren't more or less already in effect. Even without the mandatory life without parole provision, a life sentence in California is essentially life without parole because they are giving so few parole dates to so few people. It's really, really hard to get parole in this state, so just because your sentence technically is 15-to-life does not mean you're going to get a date, or you're going to get a date while you're less than 70 years old.

That said, yes, I think the most effective way to use the resources that we have and to make our best effort to prevent crime is parole and probation supervision and treatment and rehabilitation. For the people who we have decided are capable of getting out and getting back into society, let's give them a chance at being successful citizens. Let's give them an opportunity to live with their families and not be forced to be homeless someplace. ...

Let's give them treatment, confidential treatment, that they can receive from a mental health provider that will help them channel whatever thoughts or issues they may be having that may be allowing them to think about reoffending.

Let's give them drug treatment. Drugs were not necessarily an issue in the Gardner case, but they are an issue for a huge number of our clients. In fact, a lot of the three-strikers are drug addicts. If you're a drug addict and you don't get drug treatment, you're going to go steal stuff out of a store, you're going to get your third strike and you're going to go back for the rest of your life. So give them the resources to be successful once they're released from prison and allow parole to monitor folks by having them report periodically.

**People all over this county believe something went wrong here, we can fix it, and this will help to minimize the chance it will ever happen again. Is this just a case of politicians telling you things you want to hear, but in reality in this particular heinous case it may be that things worked exactly like they were supposed to, and that means that this will happen again.**

**CROWLEY:** You are being sold a bill of goods. There's not one thing in Chelsea's Law ... about how any of this will be funded.

What's the fiscal impact? The impact of creating a great many more life-without-parole cases means that all those cases are going to go to trial.

What is the cost of that? The lifetime parole – there's nothing about the financial impact of that.

We have all these things here, and they can't work unless they're paid for. And they're not.

*Gerald Blank, a San Diego lawyer who has handled many sex-crime cases and is a former Trial Lawyer of the Year for the Criminal Defense Bar Association, was invited to participate in last week's editorial board panel discussion. He declined, but offered this statement, edited for space.*

Laws define crime and punishment. Courts exist to determine if a crime occurred and to punish the offender if it did. Neither laws nor courts exist to prevent crime. But it seems society thinks otherwise and often responds after a particularly heinous crime with the cry, "We'll see to it that it never happens again." In fact, laws can't make that dream come true.

If laws and courts existed to prevent crime, murder, robbery, child molestation, etc., would have disappeared long ago. Crime prevention begins at home and with the individual, and with a good moral compass. Nothing will ever replace that.

Laws with stiffer penalties have not been shown to deter crime. If they did, several crimes would not be known today. The death penalty is an act of retribution, but we should never believe it deters crime. Crimes are most frequently committed by irrational offenders in the heat of the moment. They aren't thinking about the criminal and penal consequences. John Gardner's offenses are examples of this. Does anyone think he would not have done what he admitted doing in both 2000 and 2010 if there had been stronger laws on the books?

So, we will always require a "first offense" that brings an offender into the criminal justice system. That first offense, as in the Gardner case in 2000, will at times be heinous. How the criminal justice system responds is the only thing we can change.

Those who believe effective treatment and monitoring cannot occur are letting their anger blind them from seeing the truth and, as a result, are giving up on the age-old, and correct, idea that a person can offend and pay his or her debt to society and return as one of its productive members.

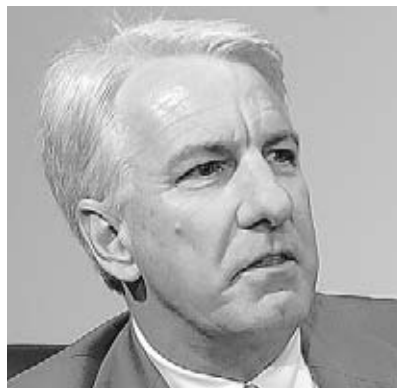
It worked for thousands of years; why can't it work again?

So, with the John Gardner-driven drumbeat, we will probably pass some stiffer laws, and people will be falsely lulled into believing they've done something effective to "make society safer."

In itself, that breeds a dangerous complacency, where we stop making crime prevention a priority at home and in ourselves.

Even were we to completely bankrupt this state and the remaining shreds of its educational system by building prisons to house every first-time offender for life, there will still be crime. You cannot build legislatures, courts or prisons to stop crime, and you cannot build cemeteries to stop death.

We had better look for effective alternatives.



**"You push the percentages down if you have a stable family life, and yet we have a state law that makes it much more difficult for them to have a stable family life because they can't live with family and friends."**

**MICHAEL CROWLEY, DEFENSE LAWYER**