

THE SUPREME COURT: SEXUAL ABUSE; Court Limits the Prosecution Of Sexual Abusers of Children

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The Supreme Court dealt a serious defeat today to prosecutors who pursue people accused of molesting children, ruling 5 to 4 that the government cannot erase statutes of limitations retroactively.

The decision struck down that part of a California law that allowed prosecutions of people accused of committing sex crimes many years ago, after old statutes of limitations had expired. The ruling is also expected to call into question a law permitting prosecutions for terrorist crimes for which the statute of limitations has expired.

Until 1993, sex crimes could not be prosecuted in California after three years had elapsed after the offense. But the Legislature changed the law that year, making it possible to prosecute people accused of committing such crimes against children years and even decades earlier. Under the new law, an adult could at any time give evidence of having been the victim of a sexual offense before the age of 18, and prosecutors had a year in which to act.

"Do these features of the law, taken together, produce the kind of retroactivity that the Constitution forbids?" Justice Stephen G. Breyer wrote. "We conclude that they do." Justices John Paul Stevens, Sandra Day O'Connor, David H. Souter and Ruth Bader Ginsburg agreed with him.

The ruling today does not affect prosecutions for offenses committed after the law expanding the time limits took effect. So it would be possible, for instance, for a person to be prosecuted 20 years from now for an offense in 1993 or after.

The case, *Stogner v. California*, No. 01-1757, involves Marion R. Stogner, who was charged in 1998 with having molested his children almost a half-century before. The case has been closely watched because of its implications in prosecuting priests accused of molesting children many years ago, as well as its potential repercussions for other crimes.

Statutes of limitations vary from state to state and crime to crime, depending on their seriousness, with murder having no statute of limitations. Justice Breyer noted that courts had often supported extensions of those statutes before they expired, but not revival of them after they expired.

"Memories fade, and witnesses can die or disappear," Justice Breyer wrote. "Such problems can plague child-abuse cases, where recollection after so many years may be uncertain, and 'recovered' memories faulty, but may nonetheless lead to prosecutions that destroy families."

Justice Anthony M. Kennedy dissented in an opinion joined by Chief Justice William H. Rehnquist and Justices Antonin Scalia and Clarence Thomas.

Justice Kennedy said the California law did pass constitutional muster.

"We should consider whether it is warranted to presume that criminals keep calendars so they can mark the day to discard their records or to place a gloating phone call to the

victim," Justice Kennedy wrote.

Mr. Stogner's two adult daughters have said he molested them from 1955 to 1973. They made the accusations to police officers who were investigating accusations of child abuse elsewhere in the extended family.

The California Supreme Court upheld the state law in 1999. Mr. Stogner's lawyers attacked his prosecution on constitutional grounds, and he has not gone to trial. The high court's ruling today may have made it impossible for prosecutors to try him.

Christopher D. Man, a Washington lawyer who filed a brief on behalf of children's advocacy groups in support of the law, said that more than 500 defendants might escape prosecution because of the ruling.

The Constitution bars Congress and the states from enacting laws that make an act criminal in retrospect, or ex post facto. A 1798 ruling by the Supreme Court interpreted that prohibition in a way still regarded as definitive.

The court declared in that ruling, *Calder v. Bull*, that legislators could not criminalize an act that was not a crime when it was committed; could not "aggravate" a crime, or make it more serious than it was when committed; could not make the punishment greater than it was when the crime was committed; and could not alter the rules of evidence to make it easier for the government to obtain a conviction.