

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

*November 2, 2017*

The Honorable Jorge E. Navarrete  
Clerk, California Supreme Court  
Supreme Court of California  
455 Golden Gate Ave., Ground Floor  
San Francisco, CA 94102

Please respond to:  
JOHN T. PHILIPSBORN  
Law Offices of J.T. Philipsborn  
507 Polk Street, #350  
San Francisco, CA 94102

Re: *S.V. v. S.C. (Harris)*, S244192  
(Fourth Appellate District, Case No. G053903; Orange County Superior  
Court No. DL051138-001)

**LETTER BRIEF OF CALIFORNIA ATTORNEYS FOR CRIMINAL  
JUSTICE IN SUPPORT OF PETITION FOR REVIEW FILED BY  
ISAIAH RENE HARRIS, REAL PARTY IN INTEREST AND  
PETITIONER ON REVIEW (CALIFORNIA RULES OF COURT,  
RULE 8.500(g))**

Dear Mr. Navarrete:

This letter, permitted by the California Rules of Court, Rule 8.500(g), is submitted by California Attorneys for Criminal Justice (hereafter ‘CACJ’) in support of the Petition for Review filed by Isaiah Rene Harris (hereafter referred to as ‘Petitioner’, who is Real Party in Interest, below).

**Identification of *Amicus Curiae***

CACJ is a non-profit California corporation, and a statewide organization of criminal defense lawyers. CACJ is the California affiliate of the National Association of Criminal Defense Lawyers, the largest organization of criminal defense lawyers in the United States. CACJ is administered by a Board of Directors, and its by-laws state a series of specific purposes including “to defend

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of California, and other applicable law,” and the improvement of “the quality of the administration of criminal law.” (Article IV, CACJ By Laws). CACJ’s membership consists of approximately 1700 criminal defense lawyers from around the State of California and elsewhere, as well as members of affiliated professions. For more than 35 years, CACJ has appeared before this Court as an *amicus curiae* on matters of importance to the administration of justice, and to its membership.<sup>1</sup>

## **Interest of CACJ in this matter**

This is a case that raises a number of intersecting legal issues that were framed because of the nature of the procedures related to juvenile case proceedings on the one hand, and issues that are raised when an individual, charged with a crime, seeks to obtain files, documents, records, and materials that are subject to statutory regulation in the juvenile courts and that are important for a parallel criminal court proceeding.

CACJ is aware of the letters addressed to the Court by the Offices of the Los Angeles County Public Defender (letter of Albert Menaster dated September 26, 2017), and by the Public Defenders Association of California (letter dated October 12, 2017, authored by Laura Arnold).

CACJ’s members have similar interests to those expressed by the Los Angeles County Public Defender and by the California Public Defenders Association, in that California-based defense counsel, generally, have an interest in ensuring that this Court reviews the ruling below which has implications for the fair administration of justice, and for the due process rights of individuals both in criminal courts and in juvenile courts in the state of California.

---

<sup>1</sup> The undersigned Co-Chairs of the CACJ *Amicus Curiae* Committee certify by their signatures as officers of this Court that no compensation has been paid by any of the parties to this litigation, or by any interested party, other than by CACJ and/or by the undersigned, for any time spent in the research or production of this brief, or for any costs associated with it.

## ARGUMENT ON THE MERITS

CACJ supports the arguments made by Petitioner in his petition and by *amici* who have joined to urge the grant of review. CACJ writes separately to urge that this Court grant review to address the issue of whether the Federal Constitutional rights to Due Process and to Confrontation entitle a defendant in a pending criminal case to disclosure of exculpatory or impeaching material contained in a sealed juvenile court file.

The opinion of the Court of Appeal wrongly suggests that only the Legislature may determine whether such a defendant's constitutional rights may ever outweigh the State's interest in keeping juvenile records confidential. In particular, the opinion of the Fourth District states that, "it is up to the Legislature to determine if, and under what circumstances, a criminal defendant may have access to a minor's sealed juvenile court records for purposes of a criminal trial. And, it would, of course, be up to the Legislature to adopt or amend whatever statutes it deems necessary to achieve its intended purposes." (Slip Opinion, filed July 31, 2017, at p. 11.) A ruling that the lack of a statutory exception means that a juvenile court may never release a minor's sealed delinquency file to a third party criminal defendant cannot be reconciled with that defendant's rights to Due Process and Confrontation.

The United States Supreme Court has addressed the application of State statutes making juvenile records confidential in explaining the rights of a criminal defendant in a pending case. In *Davis v. Alaska* (1974) 415 U.S. 308, the Supreme Court weighed the defendant's rights of confrontation and cross-examination against the State's interest in protecting the anonymity of juvenile offenders. The Supreme Court held that "the right of confrontation is paramount to the State's policy of protecting a juvenile offender. Whatever temporary embarrassment might result to Green or his family by disclosure of his juvenile record—if the prosecution insisted on using him to make its case—is outweighed by petitioner's right to probe into the influence of possible bias in the testimony of a crucial identification witness." (*Id.*, at 319.)

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

In *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, the United States Supreme Court addressed a defendant's claim that he was entitled to records protected by a state statute which provided that all Children and Youth Services (CYS) agency records must be kept confidential, with specified exceptions. Based on Due Process rights analysis, the Supreme Court ruled that the defendant was entitled to have the CYS file reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of his trial. (*Id.*, at 58.)

In this case, the sealing statutes in question, Welfare & Institutions Code §§ 781, subd. (d); 786, subd. (a), do not provide for absolute confidentiality. They contain exceptions. (§ 781, subs. (b) & (c); § 786, subd. (f)(1)(A)-(H).) However, despite these listed exceptions, there is no exception for access by a criminal defendant. CACJ respectfully submits that the Court of Appeal's interpretation of the statutory scheme is too narrow. It fails to consider the implications of the rights of a criminal defendant to particular information that is in a juvenile court file. In analyzing Welfare & Institutions Code § 827, "[c]ase law has recognized that a broader category of persons than those enumerated in section 827 may be permitted access to material in juvenile court files in the appropriate case. As noted above, the cloak of confidentiality must fall to the rights of a criminal defendant to mount a defense." (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 232.)

Labeling the information in the juvenile record as "sealed" rather than "confidential" does not change this calculus. If the sealed information has not yet been destroyed and remains available for disclosure under the statutory exceptions, then it must be accessible to a criminal defendant who has demonstrated that the information is necessary to the preservation of his Fifth and Sixth Amendment rights.

CACJ's concerns are not addressed by the Court of Appeal's claim that any matters regarding a criminal defendant's rights and obligations may possibly be

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

later addressed by the criminal case trial court. A trial court may not have access to confidential or sealed juvenile court records. This Court has interpreted the language contained in subdivision (a) of Welfare & Institutions Code section 827 to vest the juvenile court with exclusive authority to determine when a release of juvenile court records to a third party is appropriate. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778.) Thus, the only way to conduct the weighing analysis mandated by *Davis* and *Ritchie* is to permit *in camera* review by the juvenile court.

The Court now has before it a list of concerns expressed not only by Petitioner, but also by professional organizations and offices that have an ongoing, daily, interest in ensuring that criminal court proceedings throughout California are conducted in compliance with both Federal and State constitutional provisions and protections in mind. CACJ notes that, helpfully, the California Public Defenders Association makes reference to the fact that certain generally similar questions have been placed before the Court as a result of the grant of review in case S230051, *Facebook, Inc. v. Superior Court* (previously published at 240 Cal.App.4th 203). CACJ has also expressed its interest in that litigation, and has appeared as *amicus curiae* in that matter.

## CONCLUSION

CACJ respectfully submits that as of now, given the issues framed here, this Court should grant review in this matter.

///

///

///

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

Respectfully submitted,  
JOHN T. PHILIPSBORN  
STEPHEN K. DUNKLE

/s/ Stephen K. Dunkle  
By STEPHEN K. DUNKLE  
Co-Chair, CACJ *Amicus Curiae* Committee  
State Bar No. 227136

/s/ John T. Philipsborn  
By JOHN T. PHILIPSBORN  
Co-Chair, CACJ *Amicus Curiae* Committee  
State Bar No. 83944

Please respond to:

JOHN T. PHILIPSBORN  
Law Offices of J.T. Philipsborn  
507 Polk Street, #350  
San Francisco, CA 94102

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

## PROOF OF SERVICE

I, Melissa Stern, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within documents entitled:

**LETTER BRIEF OF CALIFORNIA ATTORNEYS FOR  
CRIMINAL JUSTICE IN SUPPORT OF PETITION FOR  
REVIEW FILED BY ISAAH RENE HARRIS, REAL PARTY  
IN INTEREST AND PETITIONER ON REVIEW  
(CALIFORNIA RULES OF COURT, RULE 8.500(g))**

- (X) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, addressed as set forth below;
- ( ) By electronically transmitting a true copy thereof;

Donna P. Chirco  
Law Office of Denise L. Schleicher  
2140 West Chapman Ave, Suite 109  
Orange, CA 92868-2331  
**Counsel for Petitioner S.V.**

Orange County Superior Court  
Hon. Maria Hernandez, Dept L21  
341 The City Drive South  
Orange, CA 92868  
**Respondent**

Robert F. Kohler  
Office of the Public Defender  
14 Civic Center Plaza  
Santa Ana, CA 92701-4014  
**Counsel for Isaiah Rene Harris  
Real Party in Interest**

Daniel L. Varon  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701  
**Real Party in Interest**

# CACJ CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

---

California Court of Appeal  
Fourth District, Division Three  
601 W. Santa Ana Blvd.  
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of November, 2017, at San Francisco, California.

Signed: /s/ *Melissa Stern*  
Melissa Stern