

### **Case 13**

Nearly twenty-five states have enacted a “Three Strikes Law” (TSL). A TSL requires that persons who have been previously convicted of two violent or serious crimes and who are subsequently convicted of a third such crime be convicted as habitual criminals and serve lengthy prison sentences (usually 25 years to life).

Recent California cases have raised moral questions about the TSL. In these cases the first two crimes were serious or violent felonies, but the third crime was relatively trivial (shoplifting). Under the TSL any felony can count as the third strike. California law allows shoplifting (typically a misdemeanor) to be elevated to a felony if the shoplifter has a previous conviction for property crimes.

In one recent case Mr. Leandro Andrade was convicted of stealing nine children's videotapes. Having been convicted (17 years previously) of theft, burglary, and transporting marijuana, Mr. Andrade was eligible for trial under the TSL. He was convicted and sentenced to 50-years-to-life in prison for shoplifting “Snow White.”

The genesis for the TSL was the 1993 kidnapping, rape, torture and murder of twelve-year-old Polly Klaas. Richard Allen Davis, the perpetrator of the crime, was caught and ultimately convicted. Davis had a long criminal history (robbery, burglary, assault, kidnapping) and was on parole when he kidnapped Polly. Had he been imprisoned for life after his third felony, Polly would still be alive.

Supporters of the TSL argue that it is a significant deterrent to felonious crime by habitual criminals and an appropriate punishment for those who jeopardize the welfare of others. Opponents of the TSL argue that its application to third offenses that are not violent or serious crimes violates the Eighth Amendment of the U.S. Constitution, which prohibits “cruel and unusual punishment.” After all, even if previous crimes were serious felonies, shoplifting is still only shoplifting, say the opponents of TSL.

TSL's opponents say that it has had little effect on crime rates, pointing to statistics such as the following to support this contention. Crime in California was declining before the TSL was enacted. Further, San Francisco county, which rarely applies the TSL, has seen a 33% drop in violent crime rates; while Sacramento country, which used the TSL seven times more frequently, saw only a 10% drop. Furthermore, California crime rates have risen in the last two years--when the TSL was in effect. Finally, the opponents of TSL contend that it aggravates racial injustice already present in the prison system. The opponents note, in this regard, that African Americans constitute 7.5% of California's population, but 31.3% of the prison population and 44% of persons sentenced under TSL.

The U.S. Supreme Court has agreed to review the law.