



Advisory

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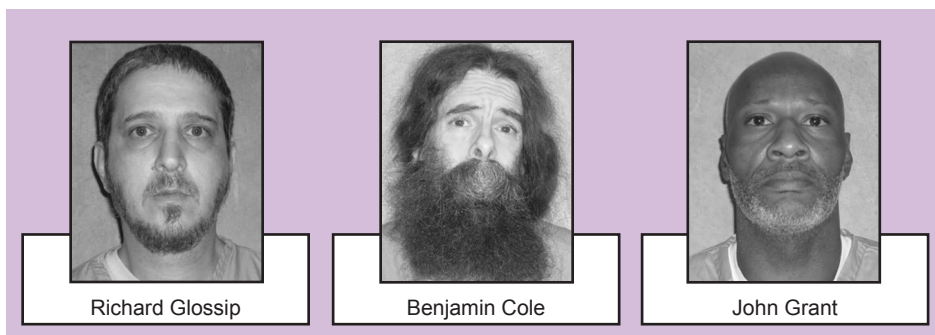
Spring 2015

SUPREME COURT TO DECIDE LETHAL INJECTION CHALLENGE

Three brutal murderers claim lethal injection protocol is unconstitutional

CJLF has filed argument with the U. S. Supreme Court encouraging a decision to reject a claim by three brutal Oklahoma murderers that the state’s lethal injection protocol is unconstitutional. Among the eight organizations which have joined the case of **Glossip v. Gross** in support of the murderers are The Rutherford Institute, the Innocence Project, and The Advocates for Human Rights.

The case involves the State of Oklahoma’s effort to carry out executions of condemned murderers in an environment where death penalty opponents have intimidated the manufacturers of anesthetics into refusing to supply states with the drugs most commonly used for the lethal injection process. As a result, Oklahoma has been forced to switch anesthetics twice in recent years. When this occurs,



condemned murderers and death penalty opponents file lawsuits, claiming that use of the new drug *might* lead to severe pain during the execution, violating a murderer’s constitutional rights. Last year, because the preferred anesthetic, pentobarbital, was no longer available, Oklahoma substituted another anesthetic, midazolam, for its execution protocol.

In their petition to the Supreme Court, the Oklahoma murderers cite the January 15, 2015, execution of Charles Warner for the rape and murder of an 11-month-old baby girl. The state used midazolam, which the murderers claimed caused a painful execution. As evidence, they noted that during the execution process a news reporter quoted Warner saying, “my body is on fire.” Warner made this statement while receiving a saline solution, prior to receiving any execution drugs. When the drugs were administered, the Associated Press reported that Warner became unconscious and stopped breathing seven minutes later with no signs of physical distress.

The three petitioners are Richard Glossip, who hired a co-worker to beat his employer to death with a baseball bat; Benjamin Cole, who murdered his nine-month-old daughter by bending her in half backward because her crying interrupted his video game; and John Grant, who, while serving 130 years for four armed robberies, pulled a female prison food service supervisor into a closet, put his hand over her mouth, and stabbed her 16 times with a “shank,” killing her.

NINTH CIRCUIT REVIEW OF RULING OVERTURNING DEATH SENTENCE

The U. S. Court of Appeals for the Ninth Circuit is reviewing a federal district judge’s 2014 ruling which announced that excessive delay in carrying out a brutal murderer’s execution is grounds for overturning a death sentence.

The question before the court is whether the decades of delay in enforcing California’s death penalty is a violation of the Constitution’s Eighth Amendment prohibition of cruel and unusual punishment, which U. S. District Judge Cormac J. Carney held creates an “arbitrary and unfair capital punishment system.”

CJLF has joined the case of **Jones v. Davis** to encourage a decision overturning Judge Carney’s ruling.

The case involves the 1995 conviction and death sentence of Ernest Jones for the 1992 rape and murder of his girlfriend’s mother. Jones’ past behavior demonstrated a pattern of brutality towards women prior to the murder. In 1984, Jones raped a close friend at knife point, but the victim eventually dropped the charges. Then ten

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PROMISING ACTION ON PROPOSITION 47 REFORM BILLS

CORRECTING UNINTENDED CONSEQUENCES

Proposition 47, a voter-adopted initiative, deceptively named “The Safe Neighborhoods and Schools Act,” reclassified certain felonies, such as possession of dangerous drugs and gun theft, as misdemeanors, dramatically reducing the punishment for these crimes and undermining public safety.

Five CJLF-supported bills to amend Proposition 47, or correct problems it has created, are moving through the California Legislature.

Under Proposition 47, possessing date rape drugs was downgraded from a felony to a simple misdemeanor, punishable by no more than one year in county jail. To address this, AB 46 (Lackey) creates the new felony of possession of date rape drugs *with intent to commit sexual assault*, punishable by a minimum of 16 months in prison. The bill passed unanimously out of the Assembly Public Safety Committee and is now in the Appropriations Committee. A companion bill, SB 333 (Galgiani), introduced in the state Senate, has passed the Senate Public Safety Committee and will be heard in the Senate Appropriations Committee.

AB 150 (Melendez & Gray) restores the theft of a firearm as a felony, punishable by at least 16 months in prison. Proposition 47 downgraded the theft of a firearm valued at less than \$950 from a felony to petty theft punishable as a misdemeanor if the thief is not a registered sex offender and has not been convicted of one or more specified violent felonies. The bill passed out of the Assembly Public Safety Committee on March 24 and is awaiting hearing in the Appropriations Committee. Because this measure would directly amend a ballot initiative, if it passes the Assembly and Senate and is signed by the Governor, it

will appear on California’s 2016 general election ballot for voter approval.

AB 390 (Cooper) would amend state law to address a consequence resulting from the adoption of Proposition 47. By downgrading several felony crimes to misdemeanors, the initiative spared a significant number of habitual criminals from the requirement of providing a DNA sample for the state’s database. AB 390 (Cooper) expands the state’s DNA Act to require that those convicted of crimes downgraded by Proposition 47 provide a DNA sample. The bill passed out of the Senate Public Safety Committee and will be considered in the Appropriations Committee.

- AB 46. Possession of date rape drugs.
- SB 333. Possession of date rape drugs.
- AB 150. Firearm theft.
- AB 390. DNA sampling.
- AB 1104. Search warrants.

AB 1104 (Rodriguez) addresses another unintended consequence of Proposition 47. Prior to its adoption, police could obtain a search warrant upon a showing of probable cause that a suspect had committed a felony. After Proposition 47 downgraded several felonies to misdemeanors, police could no longer obtain search warrants for these criminals. Many serious habitual felons regularly commit the drug possession and theft-related crimes converted to misdemeanors under Proposition 47. AB 1104 would allow the issuance of a search warrant for these downgraded crimes. The bill passed out of the Assembly Public Safety Committee, cleared the Assembly floor in late April, and has been referred to the Senate.



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THE ILLEGAL ALIEN CRIME WAVE

Illegal immigration is not a new problem in America. Various laws to control who could immigrate to the United States have been enacted since the Civil War. The problem became a national issue in the 1980s as the U. S. economy grew and millions of mostly poor, uneducated people crossed America's largely unpoliced borders seeking jobs and benefits, along with a smaller but significant number of foreign criminals trafficking in illegal drugs. In 1986, President Reagan made a bargain with Congress: a one-time amnesty for roughly 3 million illegals in exchange for securing the nation's borders. The President signed the Immigration Reform and Control Act of 1986 (Simpson-Mazzoli Act) into law and granted the amnesty, but Congress failed to authorize the funding necessary for true border security.

At about the same time that the 1986 immigration law was enacted, laws were passed in Congress and many states that increased the sentences for drug dealers, habitual felons, and violent criminals. Federal laws included the Federal Armed Career Criminal Act of 1984, which sentenced serious felons caught with guns to 15 years to life, and the federal Anti-Drug Abuse Act of 1986, which increased sentences for drug users and traffickers. California, which had suffered intolerable crime rates due to its weak sentencing laws, porous southern border, and violent street gangs, adopted the nation's first Victims' Bill of Rights initiative in 1982. Several other states followed suit, adopting similar laws cracking down on habitual felons. In the years after the sentencing laws were enacted, while illegals were still crossing the border, many who came to commit crimes were going to prison, along with thousands of American-born criminals whose careers had flourished during the nation's 15-year flirtation with alternative sentencing.

By 2012, an estimated 11.5 million illegal immigrants were living in the U. S. For years, those in favor of amnesty for illegals have told us that these immigrants are taking the jobs that Americans don't want, paying taxes, and strengthening the economy. An exhaustive 2013 study by The Heritage Foundation found that while America's 3.4 million illegal immigrant households pay an annual average of \$10,334 in state and federal taxes, those households receive an average of \$24,721 in yearly state and federal benefits. U. S. citizens and *legal* immigrants are paying the difference, which totals just under \$49 billion per year.

While illegal immigrants make up roughly 3.5% of the U. S. population, the Bureau of Justice Statistics reports that they make up over 25% of criminals in federal prisons, and another 297,000 are serving time in state prisons, amounting to 21% of state inmates. Annual federal

incarceration costs for illegals are estimated to run \$7.8 billion, while state costs are \$8.7 billion. In Los Angeles, an estimated 60% of Hispanic street gang members are in the U. S. illegally.

These reports indicate that illegal immigrants constitute a major economic drag on the American economy, while committing a disproportionate number of crimes.

While illegal immigration has remained a prominent political issue over the last 25 years, the failure of succeeding presidents and congressional majorities to agree on how to approach the problem has prevented any meaningful action. That is, until the election of Barack Obama.

In 2008, the last year of the Bush Administration, 1,171,000 illegal



Border Patrol and Drug Enforcement agents report that South American drug cartels are now expanding distribution to hundreds of new U. S. cities, with heroin re-emerging due to its low cost and ease of smuggling.

aliens were deported. Beginning in 2009, deportations have dropped every year during the Obama Administration reaching 616,793 in fiscal year 2013. Over that period, U. S. Immigration and Customs Enforcement (ICE) officials have reported to Congress that they have been regularly prohibited by administration appointees from arresting illegals, and have been required to release tens of thousands of illegals from custody. The same officials report that since 2011, deportations of convicted illegal alien criminals have declined by 39%, with 167,000 of them released back into U. S. communities and currently are at large. This has occurred as the Administration reported that it is deporting illegals in record numbers and that it is "going after felons, not families."

Under the President's 2012 Deferred Action for Childhood Arrivals (DACA) initiative, an estimated 1.8 million illegals under the age of 31 qualify to stay in the country legally for two years. Under DACA, immigration officers have been instructed to accept an illegal alien's claim that he or she qualifies and release them from custody. One agent told a congressional committee, "every person we encounter in the jails now claims to qualify for release under DACA." In November 2014, the President announced the expansion of DACA to include illegals who entered the U. S. prior to 2010, waive the age requirement, and

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CJLF legal arguments filed, press releases, publications, and information on the ongoing fight against AB109 are available on our website at:

www.cjlf.org

“LETHAL INJECTION”

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The Criminal Justice Legal Foundation has filed a scholarly *amicus curiae* (friend of the court) brief, arguing that the Eighth Amendment does not require that executions be totally pain free, but prohibits torturous methods. Oklahoma has been forced to select alternative execution drugs because of a restriction on the availability of preferred drugs by European death penalty opponents. Overturning the enforcement of a lawful sentence due to the actions of foreign governments is an assault on the sovereignty of the United States. The CJLF brief also notes that the petitioners' claim that Warner's execution was painful because of his “on fire” statement is further evidence of deception by defense lawyers and death penalty opponents. The Foundation's brief cites a 2014 Associated Press report that prior to his execution, Ohio murderer Dennis McGuire told guards that his defense attorney counseled him to make a show of his death that would, perhaps, lead to abolition of the death penalty.

“The campaign by death penalty opponents to prevent states from acquiring for executions the same drug used to painlessly euthanize thousands of pets every year has forced the use of alternatives. If executions are more painful because of this, the blame falls on them and should not be the basis for overturning a lawful sentence for the worst murderers,” said Foundation Legal Director Kent Scheidegger.

The Court's decision on **Glossip v. Gross** will be announced later this year.

“CRIME WAVE”

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lengthen the grace period to three years. All of this was done without the approval of Congress.

These policies have overwhelmed America's southern border with children and families who believe that the Obama Administration will welcome them, along with thousands of criminals, many previously deported, who are returning to commit more crimes. Border Patrol and Drug Enforcement agents report that South American drug cartels are now expanding distribution to hundreds of new U. S. cities, with heroin re-emerging due to its low cost and ease of smuggling. Border Patrol agents estimate that for every illegal caught three enter the country undetected, with criminals and drug traffickers most adept at avoiding arrest.

The human cost of current policies cannot be ignored. Earlier this year, 25-year-old illegal alien Hermes Rivera was charged with multiple rapes of a 10-year-old girl in the small town of Kenner, Louisiana. In February, 27-year-old Ramiro Ajualip was charged with first-degree rape and sodomy of a 10-year-old girl in Russellville, Alabama. Ajualip had only been in the country four weeks when he attacked the little girl. Last February, illegal alien Emmanuel Jesus Rangel-Hernandez, a known gang member, was charged with four counts of first-degree murder for killing model Mirjana Puhar and three others in Charlotte, North Carolina. In 2013, Hernandez had qualified to stay in the country under the President's DACA initiative. Last New Year's Eve, Spencer Golvach, a popular musician in Harris County, Texas, dropped off his girlfriend and, while waiting at a stoplight on his way home, was shot dead, by illegal immigrant Victor Manuel Reyes. Reyes, who had been linked to another murder that day, had been sentenced to prison for drug dealing in 2010, but was not deported after his release.

Americans have been lied to about the real cost of illegal immigration by elitists representing both political parties in Congress and particularly by President Obama. The narrative about compassion, bringing families together and welcoming workers to strengthen our economy is false. Like the financial cost of illegal immigration, the blood of the victims of illegal immigrant criminals belongs on the steps of the White House.

Michael Rushford
President & CEO

Marissa Cohen
Public Policy Assistant

PAST CHAIRMAN RAY EDWARDS LEAVES BEQUEST TO CJLF

Raymond D. Edwards, a founding member and past Chairman of the CJLF Board passed away last August, ten days before his 96th birthday, leaving the Foundation with a bequest from his estate.

Ray was born in Los Angeles in 1918 and grew up in Glendale, where he graduated from Glendale High School and Glendale College. Following his graduation from U.C. Berkeley, he joined the Navy, received his commission, and commanded a mine sweeper in the South Pacific during WWII. When he returned to Glendale after the war, he met and married Editha Hoeft, whose father headed the local two-office Glendale Federal Savings and Loan.

Starting as a teller, Ray worked his way up the ladder, succeeding his wife's father as Chairman, President and CEO, growing GlenFed into the nation's fifth largest S & L holding company.



Raymond D. Edwards



In spite of his extraordinary success, Ray remained a gracious and genial gentleman, who served his industry in many capacities, including Director of the Federal Home Loan Bank Board and president of both state and federal thrift associations. He was also dedicated to his beloved City of Glendale, serving and contributing to the local community college, symphony, charitable foundations, and service clubs.

In 1982, he joined a group of business leaders to form the Criminal Justice Legal Foundation, serving eight years on the Board and as Chairman in 1987, when he helped the Foundation purchase its headquarters building.

A fine example of America's Greatest Generation, Ray Edwards earned his reputation for honesty, integrity, kindness, and generosity. He was devoted to his family and his country. We at CJLF were fortunate to know him.

Other CJLF Donors

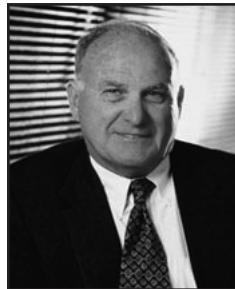
W. Barron Hilton.

Founding member of the CJLF Board who served for 25 years. He helped to purchase the Foundation's headquarters building and was a major contributor to the CJLF Endowment.



John C. Argue.

Joined the Foundation's Board in 1991 and served as Chairman from 1995 to 1999. Under his leadership the CJLF Endowment was created.



Robert S. Wilson.

Joined the Foundation's Board in 1987 and served 19 years. He and his wife Marion helped to purchase the Foundation's headquarters and were major contributors to the CJLF Endowment.



CJLF is the only public interest group in America working full-time against federal and state pro-criminal policies and in the courts to protect the rights and safety of law-abiding Americans. Recently, liberal billionaire George Soros gave the ACLU \$50 million for a national campaign to weaken sentencing laws. At CJLF, we are dedicated to preventing their success. Help us by renewing your annual tax-deductible contribution today. And don't forget to clip and return the card on your right along with your check.

Want to give with your credit card? Just go to our website (www.cjlf.org) or call us (916-446-0345). **Thank you!**

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“DEATH SENTENCE REVIEW”

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months before the murder, Jones was released on parole after serving 5 years of a 12-year sentence for raping the mother of his previous girlfriend.

According to court records, 50-year-old Julia Miller was discovered by her husband lying lifeless at the foot of their bed. She was naked from the waist down, her nightgown pulled over her head. Her arms and ankles were bound, and she was gagged with a rag. She had been stabbed 14 times—2 knives protruded from her neck and pieces of other knives were scattered on and around her body. It was determined through vaginal swab analysis that she had also been raped. Investigators also discovered that some of Miller’s jewelry had been stolen.

After learning that her mother was brutally killed, Pam Miller, Jones’ girlfriend and Miller’s daughter, spoke to a drug dealer who lived near her parents’ home and regularly sold drugs to her and Jones. The drug dealer informed Pam that Jones made several stops at her home to purchase drugs on the day her mother died. She said that Jones paid for the drugs with cash on the first two visits, and then with jewelry on the last two. Pam identified the jewelry exchanged in the drug deal as belonging to her mother and immediately brought it to investigators, who began looking for Jones.

Police later arrested Jones after he led them on a 40-minute high speed chase in Julia Miller’s car. When the car was disabled, Jones attempted suicide with a rifle stolen from the Miller home. DNA tests later confirmed that Jones’ blood sample matched the semen on the vaginal swab taken from Julia Miller.

During the five-week trial, Jones’ attorneys presented an insanity defense, claiming that Jones killed Miller during an argument over his treatment of her daughter. According to Jones’ version of events, Miller charged at him with a kitchen knife and then obtained a rifle from her bedroom after he seized control of the knife. As Miller was lying on the ground in the midst of the scuffle over the rifle, Jones was overcome with visions of his mother having sex with a man other than his father. He then grabbed the knife and stabbed Miller in a blacked-out rage. He

claimed to have no memory of attacking Miller after the first few stabs, but admitted that he must have been responsible for everything that was done to her. After the murder, he said he began hearing voices telling him that someone was coming to kill him. The jury was not convinced, finding him guilty and later sentencing him to death. After his conviction and sentence were upheld on direct appeal, he challenged his sentence in a 2003 state habeas corpus petition, claiming mental imbalance at the time of the crime. This was rejected by the California Supreme Court.

In 2014, on federal habeas corpus, Judge Carney vacated Jones’ sentence, citing the years of delay and the additional delay going forward as unconstitutional.

In a scholarly *amicus curiae* (friend of the court) brief, CJLF argues that Judge Carney’s announcement that delay is a new constitutional basis for overturning a death sentence violates the 1989 U. S. Supreme Court holding in **Teague v. Lane** (won by CJLF), which prohibits federal judges from creating new rules of law on habeas corpus. Much of the delay Judge Carney condemns is from federal court review of capital cases. The brief notes that the federal courts have refused to follow the Antiterrorism and Effective Death Penalty Act adopted in 1996 by Congress specifically to reduce federal court delay. California has no control over this. Finally, the Foundation notes that the death penalty serves a retributive purpose which the public and surviving family members of victims rely on to maintain their confidence in the government and trust in society.

“The district court’s ruling contradicts both Supreme Court precedent and federal statutes to prevent the enforcement of the death penalty for a particularly deserving murderer,” said CJLF Legal Director Kent Scheidegger. “The delays must be fixed because they violate the rights of the victims and society, but they do not violate any rights of the murderers, whose attorneys are largely the cause of them.”

If the Ninth Circuit upholds Judge Carney’s ruling, the Foundation will join the state’s appeal to the U. S. Supreme Court.

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