CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

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HIGH COURT TO HEAR CHILD ABUSER'S BID TO SUPPRESS EVIDENCE

The U. S. Supreme Court has agreed to review a divided Ohio Supreme Court ruling which overturned a child abuser's conviction because the trial judge allowed testimony of two teachers who reported the victim's injuries.

At issue in the case of **Ohio v. Clark** is whether the testimony of the teachers, about what the victim told them, should be allowed if the victim (a three-year-old child) is considered incompetent to testify. The Ohio Supreme Court held that allowing the teachers to give that testimony violates the Constitution's Confrontation Clause.

CJLF has joined this case to argue that when someone other than a police officer believes a crime has occurred and asks the victim "what happened," the statements made by the victim should be considered "non-testimonial," *i.e.*, not made for the purpose of being used as evidence at a trial. In this case, the teachers wanted to know if someone was abusing the child in order to protect him from further injury. Such testimony does not violate the confrontation clause because the teachers are legitimate witnesses who can be confronted by the defense.

The case involves the 2010 conviction of Darius Clark on multiple counts of felony assault, child endangerment and domestic violence stemming from the physical abuse of his girlfriend's 3-year-old son and 2-year-old daughter. Facts introduced at trial indicate that on March 16, 2010, the children's mother, who was a prostitute, took a bus to Washington to meet with friends, leaving her two children with Clark, who was her pimp. She testified later that when she left, her children were unharmed.

The next day, Clark dropped off the son at his preschool. One of the child's teachers, Ramona Whitley, noticed that one of his eyes was bloodshot and that there were red marks and welts on his face. After Whitley pointed this out to lead teacher Debra Jones, Jones asked the child "who did this" to which he answered "Dee-Dee." Dee was the child's nickname for Darius Clark. To determine whether Dee was an adult or another child, Jones asked "is he big or little," to which the child answered, "Dee is big." Jones took the child to her supervisor's office, where they removed his shirt and found more injuries. The injuries were reported to the county child services agency, which conducted an investigation. The next day both children were taken from the home of Clark's mother to a hospital where serious injuries were found on the 2-year-old child including two black eyes and a burn on her cheek.

Darius Clark

Following his conviction, Clark won an appellate court ruling, which found

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FOUNDATION BOARD HOLDS FALL MEETING

The Criminal Justice Legal Foundation Board of Trustees held a November 7 meeting in Pasadena, which featured a fascinating luncheon presentation by former Los Angeles prosecutor Alan Jackson. In 2009, Jackson won the conviction of music producer Phil Spector for the murder of actress Lana Clarkson. Using crime scene photos and forensic evidence introduced at trial, Jackson outlined how he convinced the jury to find Spector guilty of murdering Clarkson in his home a few hours after they first met.

The meeting, which was held at the historic Valley Hunt Club, was hosted by CJLF Vice Chairman Michael Horner, President of Tom Sawyer Camps, and Foundation Trustee Gino Roncelli, Founder and CEO of Roncelli Plastics.

Alan Jackson
Former LA Prosecutor

CJLF SUES STATE ON BEHALF OF MURDER VICTIMS' FAMILIES

On behalf of family members representing five murder victims, the Criminal Justice Legal Foundation has filed a lawsuit against the Secretary of the California Department of Corrections and Rehabilitation (CDCR) seeking a writ of mandate ordering the Department to establish a single-drug execution protocol. The purpose of such a writ would be to end the eight-year delay in executions caused by the CDCR's failure to comply with a 2006 Federal District Court ruling in the case of **Morales v. Hickman**. In that ruling, the District Court held that CDCR would be allowed to execute murderer/rapist Michael Morales if it abandoned the state's three-drug execution protocol and adopted a barbituate-only, one-drug protocol. This ruling was later upheld by the Ninth Circuit Court of Appeals. In May 2007, the CDCR announced that it would continue with the three-drug protocol which, at that time, was blocked by court rulings that still remain in effect and prohibit executions today.

In 1981, Michael Morales brutally raped and murdered 17-year-old Terri Winchell. Following his conviction and death sentence in 1983, the evidence against him, the quality of his defense attorney, and the conduct of his trial were reviewed by multiple courts over two decades. All of Morales's available appeals were exhausted by 2005. He has been eligible for execution for more than nine years.

In 1984, Tiequon Cox, a parolee and member of the notorious Rollin' 60 street gang, burst into the Los Angeles home of Ebora Alexander (aged 59), Dietra Alexander (aged 25), and two boys Damani Garner-Alexander (aged 12) and Damon Bonner (aged 6), and shot them dead in cold blood. At trial, jurors learned that these were intended to be gang-related revenge killings, but that Cox had gone to the wrong address. In 1986, Cox was convicted and sentenced to death. By 2011, all of his appeals had been completed and he was eligible for execution.

In mid-September, Kermit Alexander, whose mother, sister, and two nephews were murdered by Cox, and Bradley Winchell, whose sister was murdered by Morales, filed petitions with CDCR Secretary Jeffrey Beard, insisting that he exercise his clear legal authority under state law to establish the one-drug execution protocol recommended by the Federal District Court. On October 16, CDCR responded, refusing to adopt the single drug protocol, but failing to give the reasons why, which is required by law.

On November 6, 2014, on the petitioner's behalf, the Foundation filed suit in Sacramento Superior Court seeking a writ to force the CDCR to comply with state law and the 2006 Federal District Court ruling in order to end the delay in executing the final judgments in these two cases.

"No state agency has the option of refusing to perform its duties as required by

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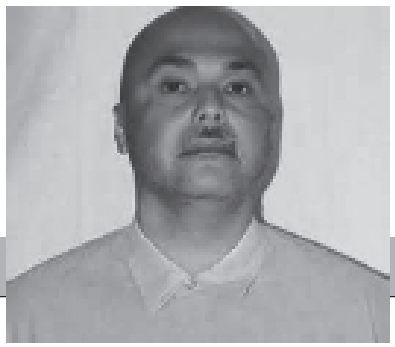

Michael Morales

Tiequon Cox

"SUPPRESS EVIDENCE"

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that the statements the child made to the teachers were "testimonial," meaning that the teachers were questioning the child to develop evidence for the prosecution. Based upon this holding, the Court concluded that their testimony was unconstitutional because the defense was unable to cross-examine the child. The Ohio Supreme Court later upheld that ruling, finding that when the teachers questioned the child about possible abuse, they were acting as agents of state law enforcement because of the state's mandatory abuse reporting law.

When the U. S. Supreme Court agreed to consider the state's appeal, CJLF joined the case to encourage a decision reinstating Clark's conviction. In a scholarly *amicus curiae* (friend of the court) brief, the Foundation argues that the answers the child gave to the teachers were not testimonial because the teachers sought to determine if that child or other children were in danger, not to gather evidence for the prosecution of a, yet unknown, defendant for a, yet unknown, crime. The teachers, who observed the child's injuries and asked the initial questions, should be considered legitimate witnesses under federal law. As such, the defense was able to confront them at trial as the Constitution allows.

The CJLF argument noted that Supreme Court precedent in this area is confused and that more clarity is needed. A statement made to a first responder, whether a policeman or someone else, is not the same as a statement taken by an investigator building a case against a known suspect. The statement to the investigator is "testimonial," as that term is used by the Supreme Court, and the statement to the first responder is not.

For statements that are not "testimonial," the question of whether they are admissible is one to be decided by state courts and legislatures under the state's hearsay evidence rules. It is not a question for the federal courts.

A decision favoring the Foundation's position would prevent the suppression of important evidence that a jury should be allowed to consider.

"MURDER VICTIMS' FAMILIES"

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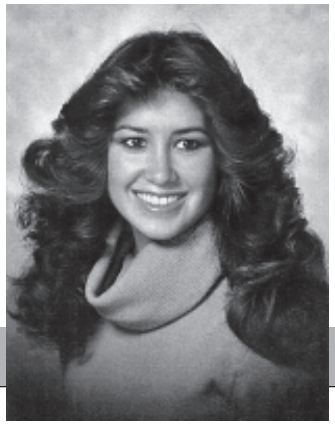
the law. There are currently 17 murderers on California's death row, including Morales and Cox, whose executions have been delayed for no better reason than because CDCR won't do its job," said Foundation Legal Director Kent Scheidegger. "While it is true that CDCR answers to the Governor, both that agency and the Governor answer to the people of California and the law," he added.

While any decision in **Winchell/ Alexander v. Beard** will likely be appealed, the effort to bring an end to what appears to be the intentional delay of lawful executions has begun.

Watch for updates on this important case in future issues of the *Advisory*.



Terri Winchell

Ebora Alexander

Dietra Alexander

Damon Bonner

Damani Garner-Alexander

THE PERFECT STORM

Most of us who watched the movie "The Perfect Storm" back in 2000 remember the scene when weather forecasters realized that rare atmospheric conditions off the U. S. Atlantic coast were converging to create a powerful cyclone from which the movie took its name. The Oscar-winning film depicted an actual weather event which devastated parts of the East Coast in 1991. The plot of the film focused upon the captain of a swordfishing boat who ignored multiple warnings and tried to run through the storm and a yacht captain who also ignored the warnings and tried to ride it out.

It seems clear that this type of rare convergence is occurring right now with America's approach to crime, promising devastating results. The legacy of U. S. Attorney General Eric Holder along with changes in federal policy regarding the prosecution of drug dealers and the deportation of illegal immigrants coupled with a national movement to adopt "smart sentencing" laws in many large states are creating conditions that guarantee a devastating wave of crime and violence in most parts of the country.

Attorney General Holder's relentless injection of race into every aspect of the Department of Justice has been extremely damaging to our nation's rule of law. In several instances, his office has actually abandoned prosecutions as an apparent response to the racism he insists corrupts virtually every decision to prosecute and sentence criminals. Last Fall, noting that most of the drug criminals sentenced to federal prisons are black, the Attorney General announced federal prosecutors would be backing off the aggressive prosecution of drug dealers. This was a signal to every U. S. Attorney in the nation to under-charge or plead down drug cases to shorten sentences for dealers. In April, the Attorney General proposed significant reductions in federal sentences for drug dealers and recommended retroactive reduction of sentences to facilitate early release of dealers convicted before the reductions were announced.

The Attorney General is certainly complicit in the President's unwillingness to secure the U. S. border. His legal attacks on Texas and Arizona to prevent them from actually enforcing immigration laws currently on the books and his stonewall of the "fast and furious" gun running operation, which provided cartels with guns that killed two U. S. agents and an unknown number of Mexicans, demonstrate that public safety has not been his priority. U. S. Border Patrol agents have reported that under current policies, three illegals are crossing the border for every one they catch.

While the President has repeatedly told us that illegals who commit crimes are being deported, recent news stories of border agents, police officers, and innocent Americans being murdered by illegal felons who were deported and re-crossed the border on multiple occasions, make it clear that this is a hollow promise. The day after his speech granting legal status to roughly 5 million illegals and promising to deport criminals and provide more resources for border security, the President's Department of Homeland Security announced new priorities for deportation. The top priority will be terrorists, felons, and new border crossers. Illegals convicted of drunk driving, sexual assault, drug dealing and gun crimes will be a lower priority. Under the Obama Administration, it is safe to say that illegals who commit these crimes will not be deported.

But the President was just catching up with California. Cities such as San Francisco have already become sanctuaries where illegals are protected from arrest. And, more recently, Governor Jerry Brown signed laws to provide driver's licenses and more tax-funded benefits for illegals.

As I mentioned earlier, several states have adopted "smart sentencing" policies which promise to rehabilitate "low level" criminals and save millions in state prison costs. "Smart sentencing" is the politically correct synonym for lower sentences. It enjoys the support of the ACLU, the Sentencing Project, and other pro-criminal groups, along with Newt Gingrich and some other naive conservatives and libertarians. Among the states following the "smart sentencing" path to some degree are: Washington, Ohio, Michigan, New York, Connecticut, New Jersey, Georgia, Louisiana, North Dakota, and Texas. The reforms in most of these states have reduced penalties and required rehabilitation programs for drug possession and some juvenile crimes.

Not surprisingly, California went a bit further. Starting with non-revocable parole in 2010, then adopting a massive reform called "Public Safety Realignment" in 2011, the state legislature eliminated prison sentences for roughly 500 felonies, abolished the tight supervision of parole for most felons and created a structure that forced counties to release thieves, drug dealers, wife beaters, and child molesters with no punishment at all.

Then in 2012, millions in out-of-state contributions financed a thoroughly deceptive media campaign which led to the adoption of Proposition 36, which abolished the third strike penalty for serious habitual criminals whose third felony was not a violent crime.

As if that were not enough, this year, additional millions in out-of-state contributions funded a media campaign of outright lies which convinced voters to adopt Proposition 47, which transformed crimes such as gun theft, identity theft, and possession of "date rape" drugs from felonies to misdemeanors. This opened the door to releasing roughly 10,000 inmates serving time for these crimes in prison.

The experts have told us that these "low level" offenders can be rehabilitated. They say that under these policies, the state inmate population will go down, reducing tax dollars spent on prisons. They are wrong.

A June 21, 2014 Los Angeles Times investigation revealed that after an initial drop in inmate population after Realignment took effect, the *trend has reversed* and is now nearly 20,000 inmates higher than projected. State prison costs did *not go down* as promised, but increased by $2 billion in 2013 and may increase by $3 billion in 2015.

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Advisory layout design by Wendy M. Kelly

"PERFECT STORM"

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What about rehabilitation?

Reports from across the state indicate that counties dealing with the 30,000 prison inmates released under Realignment and thousands of new felons now ineligible for prison under that law, do not have adequate funding for the rehabilitation programs which were supposed to reduce crime. Many of the offenders assigned to programs simply don't show up. Probation officials in Los Angeles, for example, have reported that several thousand potentially high-risk probationers set free in Los Angeles County under Realignment have disappeared, and their whereabouts are unknown.

The laws and policies which have decriminalized illegal immigration and reduced the consequences for thousands of crimes that politicians and "experts" have decided are no longer serious are already having a profound human impact.

On December 2, 2012, former prisoner Ka Pasasouk, who was on community supervision under Realignment, shot and killed four people in Los Angeles. Prosecutors are seeking the death penalty, while relatives of the victims have filed suit against the Los Angeles County District Attorney's Office and Probation Department, claiming county officials failed to properly supervise Pasasouk after he was released from prison.

In June 2013, a few months after Dustin James Kinnear, 26, was released from prison and placed on community supervision under Realignment, he stabbed to death a 23-year-old woman on the Hollywood Walk of Fame because she refused to give him a dollar. Kinnear, who has mental health problems, would have been incarcerated at the time were it not for Realignment. Apparently, there was no program to rehabilitate him.

In August 2014, two illegal immigrants were arrested for murdering a Border Patrol agent in front of his family in Texas. One suspect has been arrested no fewer than four times for entering the U. S. illegally, according to federal court records. The other has been deported twice after entering the U. S. illegally.

On September 10, 2014, illegal immigrant Baldomero Velasco-Lopez was arrested for the brutal stabbing attack of a Chambersburg, PA, woman. Velasco-Lopez stabbed the woman three times in the back with a large kitchen knife and left her on the sidewalk in front of her home while her children were asleep inside.

On October 24, 2014, Sacramento County Sheriff's Deputy Danny Oliver and Placer County Detective Michael Davis, Jr. were murdered by an illegal immigrant and habitual felon who had re-entered the country after being deported twice. Luis Enrique Monroy-Bracamonte, armed with at least two pistols and an AR-15 rifle, shot Deputy Oliver in a Motel 6 parking lot, carjacked two other vehicles, shot a motorist who resisted in the face, then fled to Auburn in a carjacked pickup. When Placer County deputies confronted the triggerman and his wife along a roadway, Monroy-Bracamonte shot them both, killing Detective Davis.

On November 12, 2014, Elk Grove police reported that habitual felon Moses Valdez was still at large. Valdez is the prime suspect in the murder of Marissa Pineda de Almanza, a 37-year-old married mother of two. Valdez had a violent criminal history, including voluntary manslaughter and was serving his third strike for leading police on a high-speed chase which, under Proposition 36, allowed for his release from prison.

On November 16, 2014, Guillermo Lomeli Ceniceros was arrested for trying to kidnap and rape a 13-year-old girl in Santa Clarita. Just one day prior to the incident, Ceniceros was arrested for commercial burglary. He would have had to make bail or remain in jail before Proposition 47, but thanks to the recently passed initiative, Ceniceros was set free.

The innocent victims of these crimes were murdered or injured because of policies that set the criminals who attacked them free.

Our Foundation has been accused of fear-mongering for issuing regular reports to the media about the victims of "smart sentencing" and the failure to enforce immigration law or secure our borders.

A little fear might be a healthy thing right now.

Michael Rushford
President & CEO

There has never been a more important time to support CJLF. With the President refusing to secure our border from criminals and drug traffickers, his Attorney General choosing not to prosecute drug dealers, and California releasing tens of thousands of habitual criminals into communities, crime will soon become the most serious problem in America. Our Foundation is fighting against these policies in our courts and in the media but we cannot continue without your help. Please make your tax-deductible contribution today. To use a credit card, visit our website, www.cjlf.org, or call (916) 446-0345. Or, send us your check along with the card on the right. ***Thanks so much for your help.***

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Fall 2014

PATRICK A. DOHENY

1923-2014

Longtime CJLF Board Member and past Chairman Patrick Doheny passed away at the age of 91 on September 18. Born in 1923, Pat grew up in Los Angeles with three brothers and a sister. He attended Stanford University before joining the Navy with his brothers in 1942, where he saw action in the Pacific and suffered a partial loss of hearing while spotting for Naval artillery. After the war, Pat returned to Los Angeles where he attended UCLA before entering the Oil and Gas business. He was a devoted husband and father and an avid sportsman and naturalist who loved spending time at his ranch in the Simi Valley or deep sea fishing on his boat. He was nominated to the Foundation's Board in 1987 by his longtime friend Lee Paul, partner in the Los Angeles law firm of Paul, Hastings, Janofsky & Walker. In 1990 he was elected Chairman of the CJLF Board. He retired from the board in 2013, having served for 26 years.

Pat Doheny was a patriot who cared deeply about his country. Like many other members of the greatest generation, he was concerned about the breakdown of basic values that had held America together through the depression and two world wars. His service with CJLF was one way he tried to restore some of those values. A kind, generous, and modest man with a wonderful sense of humor—Pat Doheny will be sorely missed.

One of the real joys of the Holiday Season
is the opportunity to say
Thank You
and to wish you the very best for the
New Year.
~Criminal Justice Legal Foundation staff

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