

THE PRECEDENT

America Bar Association News Update

By Kathy Castro , ABA Student Representative

Did you know the ABA presents over 100 awards and distributes over \$100,000 in awards and grants each year? Over 20 of these awards and grants have been specifically designed for ABA Law Student Division members and ABA-approved law schools, including writing competitions and fellowships. As a benefit of membership, each month the Division will send you an eNewsletter to highlight upcoming law student member benefits, products, services, programs and initiatives offered throughout the ABA. Keep an eye out for the insider's scoop on internships, clerkships, writing competitions, local networking opportunities, and much more.



Some of these benefits include: Subscriptions to the *ABA Journal*, eJournal, *Student Lawyer* magazine and the Division monthly eNewsletter; Specialized publications and programs in 30+ specialty practice groups – 21 of which are free to law students; Career guidance, including job search information, trends, daily tips, advice and on-going access to career resources; Affordable student sickness/injury, auto and renters/home insurance; and Discounts on hotels, rental cars, computers, cell phones, and other products from ABA Member Advantage.

Enter the ABA haiku contest for law students that are members of the ABA law student division. The theme of the haiku contest is “Recent U.S. Supreme Court Decisions and the U.S. Constitution”. A haiku is an unrhymed Japanese poem, and consists of three lines and a total of seventeen syllables. The first line has five syllables, the second seven, and the third five. The grand prize is a \$300 Apple store gift card, and the two runner-up prizes are \$100 Apple store gift cards. The deadline is November 15, 2014 by midnight.

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THE PRECEDENT
welcomes contributions from the WSCL
student body, administration, faculty,
staff, and alumni.

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Farewell, Kelley Jones-Horwood

After 16 years at Western State, Kelley Jones-Horwood, Faculty Support Manager/DSS Coordinator, had moved on to new ventures.

We want to thank you for everything you had done for us throughout the years and wish you all the best with your future endeavors!



Western State Law Review & Western State Immigration Clinic
PRESENT:

Unaccompanied Immigrant Children from Central America at Our Borders

THE LAW, THE POLITICS, AND THE CHOICES WE HAVE MADE



WEDNESDAY, OCTOBER 22 5-6 pm – ROOM 110

Join us as a panel of legal experts explore the surge of child migrants from Central America and the Government's response

JENNIFER KOH, *Associate Professor & Director*, WSCL Immigration Clinic
KRISTEN JACKSON, *Senior Staff Attorney*, Public Counsel Law Center
CYNTHIA LUCAS, *Partner*, Lucas and Barba & Past President, American Immigration Lawyers Association Southern California Chapter
DANIEL SHARP, *Legal Director*, Central American Resource Center

Co-sponsored by: WSCL Public Interest Law Foundation; Latino Student Bar Association; American Immigration Lawyers Association (Southern California Chapter); Orange County Bar Association (Immigration Law Section) Continuing Legal Education

Pizza Provided at Event; Reception to Follow

Gay Community Reacts to Hobby Lobby Decision

NEWS

By Cheryl Bigos



On June 30, the Supreme Court ruled that requiring closely held for-profit corporations to provide certain types of birth control methods and services at no cost for their employees violates the Religious Freedom of Restoration Act. *Burwell v. Hobby Lobby*, 573 U.S. _____ 2014

Prior to this decision, gay rights groups including American Civil Liberties Union (ACLU), Gay & Lesbian Advocates & Defenders (GLAD), Lambda Legal, National Center for Lesbian Rights, and Transgender Law Center supported the Employment Non-Discrimination Act. This bill, passed by the Senate in November, would make it illegal to discriminate in the workplace based on sexual orientation and gender identity. Closely modeled to the Civil Rights Act of 1964 and the Americans with Disabilities Act, the Employment Non-Discrimination Act prohibits preferential treatment and quotas. It also exempts small businesses, religious organizations and the military.

In response to the Hobby Lobby decision, the gay rights groups changed their position and withdrew support for the Employment Non-Discrimination Act because of the religious exemption that had already been a “source of significant concern” to them. A statement released by the gay rights groups said: “Given the types of workplace discrimination we see increasingly against LGBT people, together with calls for greater permission to discriminate on religious grounds that followed immediately upon the Supreme Court’s decision last week in *Burwell v. Hobby Lobby*, it has become clear that the inclusion of this provision is no longer tenable.”

As Federal Anti-Discrimination Law does not yet cover the LGBT population, such legislation is left to the states to decide on a state-by-state basis. Since only 21 states and Washington D.C. ban

discrimination against workers based on their sexual orientation, this new bill—if it becomes federal law—would require all states to implement Anti-Discrimination measure for LGBT persons. However, this federal law will likely pre-empt existing state laws by allowing broad religious exemptions where they may have not previously existed under state laws and thus scale back existing protections for LGBT workers.

The gay rights groups are concerned the bill would “leave too many jobs, and too many LGBT workers without protection.” They added the new bill might also create “confusion rather than clarity in the federal law,” and it could lessen the protections afforded to them under Title VII of the Civil Rights Act of 1964.

The section at issue makes the bill “inapplicable to corporations, associations, educational institutions or institutions of learning, or societies exempt from the religious discrimination provisions of the Civil Rights Act of 1964.”

With such a broad allowance for religious exemptions, what seems like a victory for the LGBT community and their access to employment opportunities could be cut short by any employer who disguises prejudice against LGBT persons as a religious belief. The precedent set by *Hobby Lobby* could inspire companies to claim that gay, lesbian, bisexual, and transgender persons are condemned by the company’s religious beliefs, and therefore, employers should not be forced to hire such persons in the name of religious exemption under the law.

Although the bill was passed by the Senate, it has not yet been voted on by the House of Representatives. The bill was sent to a committee in January and appears to have little chance of passing through the House. This is just one of what could be many fallouts to Obamacare regulations and the Hobby Lobby decision.

SOURCE: Lyle Denniston, *New Fallout from Hobby Lobby*, (Online blog).

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STUDENT ORG NEWS

Criminal Law Association: Speaker Event with Gina L. Kershaw



From left to right: Steve Bell, Larissa Parker, Attorney Gina Kershaw, Prof. Elizabeth Jones, Janely Mendoza, Nick Maranesi, Justin Wynn

On September 18, Criminal Law Association welcomed Attorney Gina L. Kershaw to speak to students about her work in Criminal Defense as well as victims’ rights advocacy. Ms. Kershaw, Founding Attorney for O.C. Women Defense Group gave anecdotes of her past work as Deputy District Attorney for San Bernadino County. Ms. Kershaw now focuses on female criminal defendants and victims and Marsy’s Law. Marsy’s law has allowed victims of crime and their family members to have the right to be involved in the prosecution, plea bargaining, and release of those accused or convicted of perpetrating a crime against them or their loved ones.

Gina L. Kershaw is the author of “Mormon Mom Among Murderers: 10 Simple Life Truths Learned from Defending Murderers”. Ms. Kershaw was recently awarded as one of the Top 100 Criminal Trial Lawyers by National Trial Lawyers in 2014 and graduated *Magna Cum Laude* at University of La Verne Law School.

Environmental Law Society: Fundraiser Update

Did you get a golden ticket? In August and September, the Environmental Law Society raised funds with an “immunity ticket” which allowed students of participating professors to get a free pass from in-class case briefing when called on. Environmental Law Society raised over \$300 and the proceeds will go to help fund the org’s upcoming networking event next semester.



Latino Student Bar Association Fruta Sale!

On September 17, the Latino Student Bar Association held a Fruta Sale, selling fresh fruit to students in our school cafeteria to raise funds for future Latino Student Bar Association events and a Book Scholarship to be made available to an org member next semester. The sale raised over \$100 which exceeded the org’s anticipated profit by 60%! There will be another Fruta Sale during Wellness Week November 3-7. The Latino Student Bar Association thanks everyone who supported them at the Fruta Sale and looks forward to bringing the student body more events and activities throughout the year.

SCHOLARSHIP OPPORTUNITIES

Mark T. Banner Scholarship - Due Date: November 12, 2014

This scholarship is part of The Richard Linn American Inn of Court's commitment to fostering the development of intellectual property lawyers of high ethics, civility and professionalism, and especially those from diverse backgrounds. **Eligibility:** Law students who have entered into a JD program at an ABA-accredited law school in the United States and who will continue in that program through the Fall semester 2015.

Visit <http://www.linninn.org/Pages/scholarship.shtml> for Scholarship Information and Application

OC Hispanic Bar Association Wally R. Davis Scholarship- Due Date: October 31, 2014

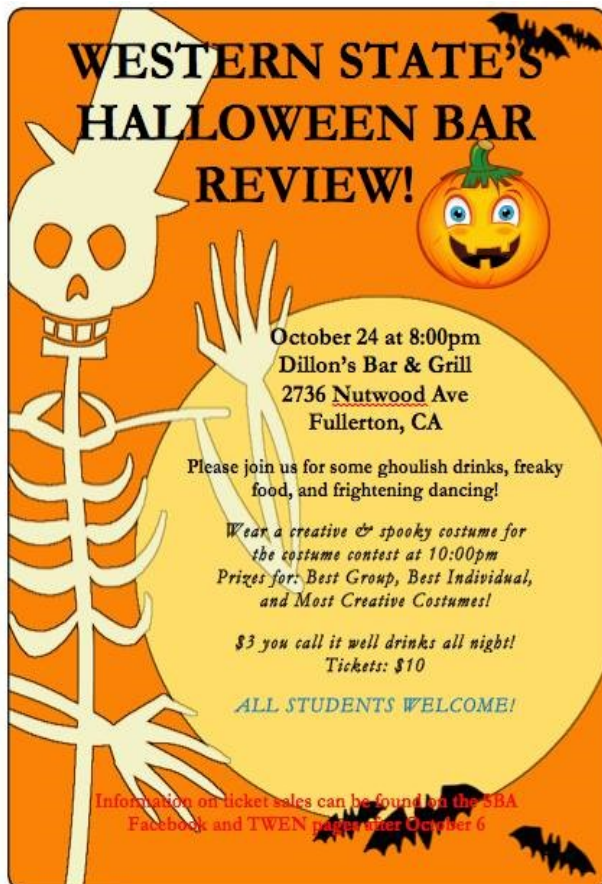
Eligibility: Law students of Latino origin involved with the Latino community. Priority will be given to students with significant ties to Orange County.

Visit <http://www.ochba.org> for Scholarship Information and Application

John M. Langston Scholarship - Due Date: October 24, 2014

Scholarship for outstanding and deserving law students based on both their merit and need. Recipients are chosen through a review process that includes an application and interview. **Eligibility:** Scholarships are limited to law students enrolled in an accredited law school. Scholarship recipients MUST attend the John M. Langston Annual Installation & Awards Gala which will be held on January 31, 2015.

Visit <http://www.langstonbar.org> for Scholarship Information and Application



Dear WSCL Administration, Faculty, Staff Members, Alumni and Fellow Students:

The Precedent invites you to email us the followings for publication (in our "News In Brief" section):

- Your recent or past accomplishments, recognition, awards
- Your recent or future publications, or special projects (that relate to the school or the law)
 - Personal announcements, such as: wedding, anniversary, graduation, engagement, birth/adoption, etc.
 - A story or any article on any topic
 - Photos of you, your work or family
 - Job opportunities or referrals
 - Housing/roommate referrals or tips
- Any other announcements or communications

We look forward to receiving your submissions and publishing them. This way, the WSCL family can strengthen our relationship, know each other better, and provide more help for each other.

Please email your submissions to WSCLPrecedent@gmail.com. Thank you.

SCOTUS Broadens Police Officers' Qualified Immunity

By Emma Popiolkowski



The Supreme Court recently decided the issue of whether qualified immunity should shield an officer from liability when using deadly force to stop a car chase. In *Plumhoff v. Rickard*, Justice Alito delivered the opinion of the Court that resolved this issue and held that qualified immunity does shield an officer from liability in such a situation.

qualified immunity. The court stated that even if the officers violated the Fourth Amendment, summary judgment would be appropriate because they enjoyed qualified immunity absent a showing that the officers violated a clearly established law. Since shooting at Rickart's vehicle to stop the chase was not a violation of a clearly established law, qualified immunity was available to the officers.

The facts of this case seemed rather clear. However, in the age of the ubiquitous smartphone, snippets of police interaction with the public are often recorded. When the interactions turn violent,

The facts of the case started innocently enough. Donald Rickert was traveling with a passenger, Kelly Allen, when they were pulled over for having a taillight out. When the officer noticed the windshield was damaged, he asked Rickart if he had been drinking any alcohol. Rickart stated that he had not, but the officer was still suspicious. He asked Rickart to get out of the car. Instead of getting out of the car, Rickart drove off. A dangerous chase ensued which ended with officers shooting at Rickart and Allen fifteen times. This caused Rickart to crash the car which killed both Rickart and Allen.

“...even if the police violate Constitutional rights, that does not preclude them from immunity.”

those recordings are often shared on the Internet, gaining national attention. Naturally, the public is left wondering whether these viral videos are just choice seconds taken out

of context, or a valid representation of the interaction as a whole. The court of public opinion is harsh on officers when a question of excessive force or a violation of Constitutional rights is raised. However, as the Supreme Court has stated in this case, even if the police violate Constitutional rights, that does not preclude them from immunity.

The families of Rickart and Allen claimed the officers violated their Fourth Amendment rights by using excessive force. Part of the officers' defense was that the force was reasonable and necessary to stop the threat to the public, and they were entitled to summary judgment based on qualified immunity from liability in their capacity as police officers.

In exploring the officers' arguments, the court first decided that the officers did not violate Rickart and Allen's Fourth Amendment rights, because stopping the chase was reasonable and paramount to ensuring the public's safety. Then, the court weighed in on the issue of

aaava PRESENTS
 ASIAN AND PACIFIC ISLANDER AMERICANS
 POLITICS
THE FINAL FRONTIER?
 PLEASE JOIN OUR DISTINGUISHED PANEL FOR AN EXPLORATION OF THIS TOPIC,
 IN WHAT PROMISES TO BE A LIVELY EVENING OF CONVERSATION AND DEBATE.

John Chiang
 As Controller Mr. Chiang is the highest ranking Asian-American office holder in the continental United States.

James Toma
 Mr. Toma is a council member in the City of West Covina and a supervising deputy attorney general in the California Office of the Attorney General.

Ron Wong
 Mr. Wong is a recognized expert on political strategy and public affairs, particularly dealing with the Asian Pacific American community with over two decades of professional experience.

OCTOBER 20th / 7:00 PM
 ASIAN AMERICANS ADVANCING JUSTICE CENTER,
 COMMUNITY ROOM - 1145 WILSHIRE BLVD.,
 LOS ANGELES, CA 90017

Tickets \$10, RSVP and Purchase Tickets at

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<http://advancingjustice-la.org/> <http://goo.gl/rG2ieE>

Is Capital Punishment On Its Way Out the Door in California?

By Neda Mohammadzadeh

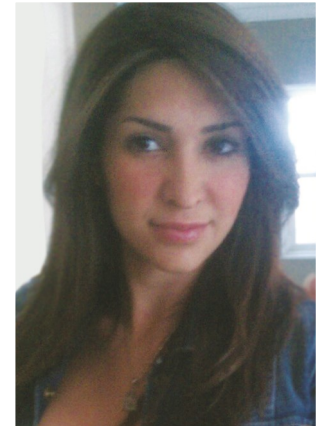
California Federal Judge Cormac Carney struck down California's death penalty, finding that the state's current system violates the Constitution. Judge Carney stated that the sense of uncertainty and delay with California's current system of capital punishment "violates the Eighth Amendment's prohibition on cruel and unusual punishment." (Erik Eckholm & John Schwartz, *California Death Penalty System Is Unconstitutional, Federal Judge Rules*, New York Times, July 16, 2014).

In his 29-page ruling that overturned the death sentence of Ernest Dewayne Jones, who was accused of murdering his girlfriend's mother in 1992, Judge Carney stated, "California's death penalty system is so arbitrary and plagued with delay that it is unconstitutional." Judge Carney has this position because Jones is among more than 900 inmates that have been sentenced to death in California since 1978, only 13 of whom have actually been executed to this date. Furthermore, Judge Carney explained that inmates who have been sentenced to death spend so much time litigating the merits of their death sentence that before they face the actual punishment, it may be more than 25 years from the date to which they were sentenced to death. Perhaps the best argument advanced by Judge Carney in support of his decision is simply that "for the random few for whom execution does become a reality, they will have languished for so long on death row that their execution will serve no retributive or deterrent purpose and will be arbitrary."

According to ABC 10 News, Dean Erwin Chemerinsky of UC Irvine School of Law was one of many who supported Judge Carney's decision stating, Chemerinsky said: "I think it's a very courageous ruling based on the facts and the reality. It's a very important and well-reasoned decision. I think Judge Carney is right that the way the death penalty is administered in California is so arbitrary and capricious as to be unconstitutional."

There is, nevertheless, a vast majority of Americans who argue that the uncertainty and delays associated with the death penalty do not indicate that the punishment is unconstitutional; rather, it's indicative

of the state's attempt to protect the constitutional rights of the inmates to appeal their convictions and sentences, which consequently result in the uncertainties and delays prevalent in the current system of capital punishment. Yet, this does not provide and answer the second problem with the current system of capital punishment, which cruelty associated with the suffering that inmates experience when they are being put to death by the current drugs administered.



On April 29, Clayton Lockett, an Oklahoma inmate, died from a massive heart attack forty-three minutes after one of the three protocol injections were administered to him. Described as though Lockett was having a seizure, he was witnessed groaning and writhing on the gurney and had multiple ruptured veins. The botched execution quickly made headlines and promoted the state to review their execution procedures. The problem with the current execution procedures is simply that for quite some time now, active death-penalty states have found it difficult to obtain the lethal-injection drugs needed to carry out death sentences amid boycotts from European drug manufactures and reluctance from licensed physicians. Therefore, botched executions, undeniably in violation of the Eighth Amendment, are left as the only result.

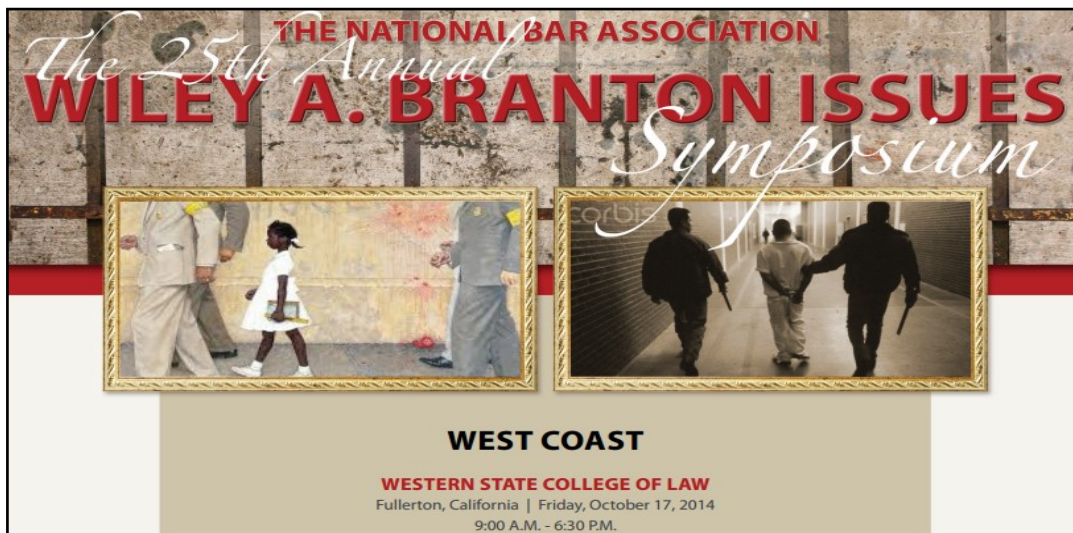
Judge Carney's decision couldn't have come at a better time. Where the system of administering the death penalty is already undergoing scrutiny due to the botched Oklahoma execution, Judge Carney adds fuel to fire by indicating that even if there was no fault in the current procedures, the capital punishment system is neither an effective way to seek retribution nor does it serve as a means to deter criminal activity. Furthermore, where the argument

(Continued on Page 8)

Capital Punishment *(Continued from Page 7)*

is made that prisons are overcrowded and costly for the taxpayers, appeals by inmates and the death sentences itself doesn't come with a cheaper price tag. Perhaps articulated best by Michael Laurence,

executive director of the Habeas Corpus Resource Center, "there is no rational explanation, much less any moral or societal justification, for which people are ultimately executed," and I couldn't agree more. (CNN report by Steve Almasy & Ann O'Neil, September 8, 2014).



RSVP is required for this event. Please check your emails for instructions to RSVP.



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