



# Advisory

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Spring 2018

## CJLF JOINS SANCTUARY STATE LAWSUIT

The Criminal Justice Legal Foundation has filed argument in **United States v. California** on behalf of employers who are prohibited by AB450 from cooperating with federal immigration authorities.

The CJLF brief supports the U. S. Department of Justice lawsuit filed on March 7, naming California Governor Jerry Brown and state Attorney General Xavier Becerra for obstructing federal agencies from enforcing immigration law. The lawsuit, which was filed in the Federal District Court in Sacramento, targets a state law which prohibits employers from cooperating with federal Immigration and Customs Enforcement (ICE) to identify illegal aliens and another which prohibits local governments from cooperating. Both Brown and Becerra have responded to reporters. Brown accused Sessions of divid-

ing and polarizing Americans, and Becerra stated that “We’re in the business of public safety, not deportation.” By providing a sanctuary for illegal aliens, including those who have and continue to commit crimes against Americans, it is difficult to characterize Becerra’s actions as beneficial to public safety.

Also joining the case in support of the Justice Department is the National Sheriffs’ Association (NSA). The NSA, which represents all 58 of California’s elected county sheriffs, filed an *amicus curiae* (friend of the court) brief attacking another sanctuary state law (SB54) with argument that by concealing an alien’s whereabouts from federal agents, the law “coerces local law enforcement to violate the federal anti-harboring statute.”

CJLF is targeting AB450, which was passed by the Legislature and signed

into law by Governor Brown in 2017. The law prohibits employers from allowing federal immigration agents to come on their property or have access to employee records without a search warrant. Employers who violate this prohibition can be fined up to \$5,000 for the first offense and up to \$10,000 for each subsequent offense.

In a scholarly *amicus curiae* brief, CJLF notes that federal law prohibits employers from knowingly hiring an illegal alien, and argues that a California employer, who suspects some employees to be illegally in the United States, faces punishment under AB450 for asking federal immigration authorities to help determine if those employees are illegal aliens and may have provided fraudulent information in order to gain employment.

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## MARIN COURT LIFTS INJUNCTION BLOCKING EXECUTIONS

A March 28 ruling by a Marin County judge has lifted a 2012 injunction issued by the same court, which had blocked executions in California. The ruling by Superior Court Judge Roy O. Chernus answered a January 21, 2018 motion by the Criminal Justice Legal Foundation on behalf of Kermit Alexander. Alexander’s mother, sister, and two nephews were murdered in 1984 by gang member Tiequon Cox, who is on death row awaiting execution. Alexander is also a proponent of Proposition 66, the initiative adopted in 2016 to remove unnecessary delay from the state’s death penalty process.

One of the causes of delay was a court-ordered requirement that execution protocols be adopted under the state’s cumbersome Administrative Procedure Act. The 2012 injunction was issued after condemned murderer Michael Sims claimed that the California Department of Corrections and Rehabilitation (CDCR) had failed to properly meet that requirement. The requirement was eliminated by Proposition 66.

After legal challenges to the initiative were rejected by the California Supreme Court last October, the state could have immediately moved to have the injunction vacated, but failed to do so. In January, CJLF filed the motion to vacate, which was later joined by the CDCR.

A hearing on the motion was set for March 28, but the day before, Judge Chernus issued a tentative ruling granting the motion. When the attorneys for Sims declined to challenge the ruling in oral argument, the hearing was cancelled and the ruling became final.

Responding to the ruling, CJLF Legal Director Kent Scheidegger said, “this is the first of several legal steps necessary to resume executions in California. There is a federal court injunction which also must be lifted, and death penalty opponents have filed new lawsuits to block executions. We will be taking action to address these obstacles in the weeks ahead. The voters have spoken, and we will do what it takes to see that the law they enacted is enforced.”

The Criminal Justice Legal Foundation is a nonprofit, public interest law foundation representing the interests of law-abiding citizens in court. CJLF is an independent corporation supported by tax-deductible contributions from the general public and is qualified under IRC 501(c)(3). CJLF does not engage in any form of political or lobbying activity. The Advisory is published by the Criminal Justice Legal Foundation, Michael Rushford, Editor, 2131 L Street, Sacramento, California 95816, (916) 446-0345.

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**VIEWPOINT**

**THE SOROS' ASSAULT ON LAW ENFORCEMENT**

In 1966, Jessie “Big Daddy” Unruh, the powerful California Democrat king-maker and then Speaker of the state Assembly, was famously quoted for saying, “money is the mother’s milk of politics.” There is no question that candidates and ballot measures that attract the most financial support, enabling more television and radio advertisements, are more likely to win on election day. While big givers from other states have always played a role in local elections, particularly for congressional seats, the influence of out-of-state money on the elections of candidates for state offices and ballot measures has increased significantly since the 1970s. While much of the media and liberal political leaders point to conservative givers such as the Koch brothers, the National Rifle Association, conservative PACS, and large corporations for giving big money to influence local elections, a quick snapshot from the Center for Responsive Politics of out-of-state contributions to congressional candidates in 2018 found that all of the top ten U. S. Senate candidates who received the most out-of-state contributions were Democrats. Seven of the top ten House candidates receiving the most of these funds were also Democrats.

Among the big Democrat/progressive givers, providing “mother’s milk” to local candidates and initiatives, progressive New York hedge fund billionaire George Soros qualifies as a large dairy.

Soros emerged as a major player in national politics in 2003, when he gave \$23 million in a failed attempt to defeat George W. Bush. Although Soros has continued to give to national candidates, such as Barack Obama, in more recent election cycles his giving to local elections, particularly in support of pro-criminal ballot measures and progressive candidates for district attorney, sets him apart from other big money donors from either party.

Since 2015, Soros’ New York-based Open Society Foundations (there are three)



**George Soros**

have funneled millions, through a network of nonprofit “527” groups spread across the country, to encourage the adoption of laws reducing sentences for habitual criminals and to elect district attorneys who refuse to seek the death penalty or aggressively prosecute drug dealers, thieves, and other so-called, low-level criminals.

To date, California has received more Soros funding than any other state, beginning in 2014 with Proposition 47, the so-called “Safe Neighborhoods and Schools Act.” That measure converted the most frequently committed theft and drug felonies to misdemeanors, with a short visit to county jail as the maximum punishment, regardless of the number of times an offender was convicted of these crimes. Virtually every California law enforcement organization and victims’ group opposed Proposition 47, yet with a \$1.4 million contribution from Soros’ Open Society Policy Center and another \$3.9 million funneled through PACs and 527 groups supported by Soros, well-produced advertisements led a majority of state voters to believe that law enforcement supported the measure. Days after Proposition 47 was adopted, Soros gave \$50 million to the American Civil Liberties Union (ACLU) to promote adoption of similar sentence-reduction laws in other states.

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*Advisory layout design by Irma H. Abella*

# B O X S C O R E

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

**City of Hays v. Vogt:** 5/29/18. U. S. Supreme Court dismissal of a case reviewing a federal appeals court ruling which prevents valid evidence from introduction in criminal trials. The case involved a police officer's voluntary admission to the police chief that he took a knife from a crime scene. After an investigation, the officer was charged with two felony counts. His admission and corroborating evidence were introduced at a pretrial hearing to support the charges. The judge dismissed the charges for lack of probable cause. In a lawsuit, the officer claimed that when he admitted taking the knife, he became a witness against himself and that the statement and the related evidence should have been excluded. After a district court rejected the claim, finding that the protection against self-incrimination only applies to a trial, the Tenth Circuit reversed because the evidence was used in a criminal case. CJLF had joined the case to overturn the Tenth Circuit's ruling for expanding the exclusion of evidence. The high court announced that review had been improvidently granted, meaning that the lower court decision stands, but no Supreme Court precedent is set. **DRAW**

**Sims v. CDCR:** 3/28/18. Marin County Superior Court ruling lifting a six-year-old injunction that was blocking executions in California. The injunction had been issued after condemned murderer Michael Sims claimed that the California Department of Corrections and Rehabilitation (CDCR) had failed to comply with the state's cumbersome Administrative Procedure Act (APA) in developing a new lethal injection protocol. In 2016, when California voters adopted Proposition 66, the APA requirement was removed from the law, mooted the injunction. In January, CJLF moved to vacate the injunction on behalf of Kermit Alexander, whose family was murdered by a criminal currently on death row. CDCR later joined in support of the motion. **WIN**

**Trump v. International Refugee Assistance Project, Trump v. Hawai'i:** 10/10/17, 10/24/17. U. S. Supreme Court orders voiding earlier rulings by the Fourth and Ninth Circuit Courts of Appeals, which had blocked enforcement of the President's 90-day travel ban for visitors of six Middle Eastern countries overrun with terrorists. Last June, the high court stayed both rulings and allowed the travel ban to proceed until it could review the cases in October. CJLF had joined these cases to encourage the high court to find both lower court rulings moot, because the temporary travel ban would expire before the October review. On October 10, in **Trump v. IRAP**, and on October 24, in **Trump v. Hawai'i**, the Court mooted both cases and ordered them dismissed, *wiping out both rulings as precedent*. Only Justice Sonia Sotomayor voted to leave either of these misguided rulings on the books. **WIN**

**Briggs v. Brown:** 8/24/17. California Supreme Court decision upholding Proposition 66, an initiative CJLF co-authored to speed enforcement of the death penalty and adopted by voters in November 2016. Death penalty opponents filed a lawsuit attacking the initiative the day after it passed, claiming that it violated the state's single-subject rule and that other provisions were unconstitutional. Concerned that the state would not make a strong argument to uphold the initiative, CJLF won the court's agreement to accept the campaign committee as a party. In its brief, CJLF noted that previous Supreme Court decisions had rejected single-subject challenges to more complex initiatives. The brief also noted that the court would have to clear-cut 40 years of its own precedent to uphold the opponent's claims. In June, CJLF Legal Director Kent Scheidegger presented oral argument at the court hearing on the initiative. The court ruled 7-0 to reject the single-subject challenge and uphold the initiative as a whole. The court also denied, 5-2, claims against two individual provisions. **WIN**

**Davila v. Davis:** 6/26/17. U. S. Supreme Court decision to reject a double murderer's claim that his death sentence should have been overturned because his lawyer for the first appeal failed to challenge a jury instruction given at his sentencing hearing. Erick Davila was convicted of firing into a crowd of children at a birthday party, killing a woman and her five-year-old granddaughter. At the third post-trial review of his case, Davila claimed, for the first time, that his first appeals attorney was incompetent because he failed to challenge the jury instruction. This claim was rejected by a federal district court and the court of appeals as both defaulted (he should have raised it earlier) and without merit (meaning the instruction was allowable). In the Supreme Court appeal, CJLF argued that if the high court set a precedent allowing defendants to raise defaulted claims against their appeals attorneys at a third or fourth round of review it would have created an endless cycle of review effectively blocking enforcement of the death penalty. The Court's 5-4 decision agreed. **WIN**

**Weaver v. Massachusetts:** 6/22/17. U. S. Supreme Court decision upholding the conviction of a murderer who claimed that his rights were violated because the courtroom was too crowded during jury selection for his mother to sit with him. The case involves the 2003 murder of 15-year-old Germaine Rucker by 16-year-old Kentel Weaver. Witnesses and DNA evidence identified Weaver as the shooter. Prior to the trial, the courtroom was so crowded with prospective jurors that Weaver's mother could not sit with him for the jury selection, but she did sit with him for the entire trial. On appeal, Weaver claimed that closing the courtroom during jury selection violated his constitutional right to a public trial, invalidating his conviction. CJLF joined the case to argue that for the error to require overturning his conviction, Weaver must prove that

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the exclusion of his mother during jury selection undermined his ability to prove his innocence at his trial, which it did not. The high court's 7-2 decision adopted that argument.

**Hernández v. Mesa:** 6/26/17. U. S. Supreme Court case which had raised the question of whether a foreign national can sue a U. S. law enforcement officer for an injury occurring in his home country. The case involved a U. S. border guard who, while arresting an illegal alien on the U. S. side of the border, shot and killed a Mexican teenager throwing rocks at him on the Mexico side of the border. The teen's parents, also Mexican citizens, sought to hold the border guard liable for their son's death. CJLF argued that foreign citizens have no right to relief under U. S. law for an incident that occurred outside of the country, citing high court decisions declining to grant such a right. Without deciding the issue, the Supreme Court punted the case back to the federal court of appeals, which had previously denied the claims, for further consideration based on another case decided in the same term.

**DRAW**

**Moore v. Texas:** 3/28/17. U. S. Supreme Court ruling announcing that, while its 2002 holding in **Atkins v. Virginia** prohibiting the execution of mentally retarded murderers had been left to the states to determine what factors should be considered to determine if a defendant is mentally retarded, the state of Texas failed to adopt the correct standards. Bobby Moore was convicted and sentenced to death for shooting an elderly store clerk in the head with a shotgun during a 1980 robbery. After the **Atkins** decision was announced, Moore claimed that he was mentally retarded. When the Texas courts determined that he was not, Moore appealed to the U. S. Supreme Court, attacking the state's evaluation process as outdated. CJLF joined the case to argue that allowing periodic changes in the standard for determining retardation would invite an endless cycle of review.

**LOSS**

**TOTAL**

**5 Wins**

**1 Loss**

**2 Draws**

## Case Report

### *A Summary of Foundation Cases Currently Before the Courts*

**United States v. California:** Federal District Court case where CJLF has joined the United States Attorney General's lawsuit against California's "sanctuary state" laws. The laws in question prohibit state and local police agencies and private individuals from cooperating with federal immigration agencies to identify and arrest illegal aliens. CJLF specifically argues that AB450, a state law that fines employers who reach out for federal help in identifying illegal alien employees, is unconstitutional. A business can be fined up to \$10,000 for giving federal agents access to the employment records of their workers. CJLF cites U. S. Supreme Court precedent (**In re Quarles**) which held, "It is the duty and the right, . . . of every citizen, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States. . . . It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offence against those laws . . . ."

**City and County of San Francisco v. Sessions:** Federal Ninth Circuit Court of Appeals case to review a district judge's ruling announcing that an Executive Order by President Trump, allowing the Justice Department to withhold federal law enforcement grants from "sanctuary" cities and counties, is unconstitutional. The ruling came in a lawsuit filed by the City and County of San Francisco and the County of Santa Clara (both declared as sanctuaries for illegal aliens), protesting the Executive Order's authorization to possibly cut off of federal grants to their communities. Federal District Judge William Orrick proclaimed the Order, "unconstitutional on its face." CJLF has joined the case to argue that the Obama Administration had determined that federal law allowed the withholding of federal grants to cities and counties which refused to share information on immigration status of an employee with anyone affiliated with the federal government. CJLF notes that the President's order to federal agencies to enforce existing law is clearly within his constitutional authority.

**People v. Farwell:** California Supreme Court case to review a habitual felon's claim that his conviction of driving without a license should be overturned because the judge failed to instruct

him that admitting his guilt to that offense would waive some of his constitutional trial rights. Randolph Farwell was convicted of vehicular manslaughter after his reckless driving resulted in his car hitting a tree at high speed, killing a female passenger. At the time of the crash, Farwell's license had been suspended after an earlier reckless driving arrest. Farwell also had a previous conviction for burglary. At trial, Farwell and his attorney agreed to admit guilt on the suspended license charge to prevent jurors from hearing the details of the earlier driving arrest. On appeal, Farwell argues that the law requires his conviction to be overturned because the judge did not instruct him on the consequences of his admission of guilt. CJLF has joined the case to oppose Farwell's claim, arguing that the law actually allows a review of the entire trial court record to determine if he knowingly and intelligently waived his trial rights when he admitted guilt on the driving without a license charge.

**Johnson v. City of Ferguson:** Federal Eighth Circuit Court of Appeals case to review lower court decisions that would allow Dorian Johnson, the 22-year-old companion of Michael Brown, to sue the city and Officer Darren Wilson for violating his rights. In August 2014, Officer Wilson shot and killed 6'4", 290 lbs. Michael Brown. Brown had just robbed a convenience store when Officer Wilson saw the pair walking down the middle of a street in Ferguson, Missouri. Johnson claims that when Officer Wilson ordered them to the sidewalk, he had unlawfully seized him in violation of the Fourth Amendment. Although both federal and grand jury investigations of the incident found that Johnson had lied about the events leading up to the shooting and the shooting itself, motions to dismiss the lawsuit have been rejected by the Federal District Court and a divided Eighth Circuit panel. When the circuit agreed to reconsider the panel's ruling en banc, CJLF joined the case on behalf of the National Police Association, arguing that by Johnson's own admission he was not ordered to stop or prevented from leaving, which he did when he eventually ran. Citing its 1991 U. S. Supreme Court victory in **California v. Hodari D.**, CJLF argues that the facts Johnson describes of his encounter in the middle of the street with Officer Wilson do not constitute a seizure. Because of this, the lawsuit should be dismissed.

# “SOROS’ ASSAULT”

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In 2016, Soros became more active, not only funding another pro-criminal California ballot measure, but also bankrolling campaigns to replace tough-on-crime district attorneys. In Florida, a Soros-controlled PAC called Florida Safety & Justice bought over \$600,000 in television ads for Aramis Ayala’s campaign to unseat incumbent State Attorney Jeff Ashton. This was a huge injection of money for a District Attorney race. Ashton, who had raised just over \$112,000, was defeated by a margin of 56.9% to 43.1%. A year later, State Attorney Ayala refused to seek the death penalty for habitual criminal Markeith Loyd for the murders of his pregnant girlfriend and responding police Lt. Debra Clayton. Ayala told reporters that she considered the death penalty inefficient and ineffective, something she failed to tell voters when she was running for office. Soros’ Safety and Justice PACs also made 2016 contributions to district attorney races in Chicago, St. Louis, Houston, and Albuquerque, as well as smaller cities in Louisiana and Mississippi, winning victories in all but one contest.

That same year, California Governor Jerry Brown introduced a ballot measure called the Public Safety and Rehabilitation Act of 2016 (Proposition 57). The initiative provided the state parole board with the authority to give early releases to repeat felons serving time in state prison, providing their most recent conviction was not for a violent or serious crime. The Parole Board was allowed to ignore a criminal’s prior convictions, even if they were for violent crimes, such as murder, rape, and armed robbery. While Governor Brown contributed over \$4.1 million from his campaign warchest to Proposition 57, Soros-controlled PACs kicked in over \$5.8 million. The proponents spent over \$18 million to gain passage of Proposition 57, while state law enforcement groups cobbled together just over \$1 million to oppose it.

In 2017, after the scandalized District Attorney of Philadelphia resigned, Soros contributed just under \$1.5 million to elect former defense attorney Larry Krasner. Krasner had represented Occupy Philadelphia and Black Lives Matter and had also sued the police department over 75 times. During his first week on the job, Krasner fired 31 deputies from the office, including 1/3 of the prosecutors in the homicide unit.

In October 2017, Soros gave \$18 billion to his Open Society Foundation in New York to carry on this work. A month later, the Soros-funded Democracy Alliance held its fall conference in California to target district attorney races in 2018.

Among the California District Attorneys caught in the crosshairs were Alameda County District Attorney Nancy O’Malley, Sacramento County District Attorney Anne Marie Schubert, Yolo County District Attorney Jeff Reisig, and San Diego County District Attorney Summer Stephan. All of these incumbents are longtime prosecutors with distinguished careers and a record of being tough on crime. The Soros-backed candidates opposing them were liberal/progressives who have vowed not to enforce the death penalty or prosecute misdemeanors, including domestic violence and drunk driving.

The good news on June 5 was that in all the races listed above, voters rejected the Soros-funded candidates and re-elected the tough-on-crime District Attorneys. The bad news is that, with the \$18 billion Soros contributed to it last fall, his Open Society Foundations will be using big money to influence the local elections of law enforcement leaders long after the 87-year-old socialist is gone.

*Michael Rushford  
President & CEO*

# “SANCTUARY STATE”

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The Foundation cites U. S. Supreme Court precedent (**In re Quarles**) noting, “It is the duty and the right, . . . of every citizen, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States. . . . It is likewise his right and his duty to communicate to the executive officers any information which he has of the commission of an offence against those laws . . . .”

“The state of California has made it illegal for an employer to exercise his or her right to aid in the enforcement of federal law,” said Foundation Legal Director Kent Scheidegger. “It is unconstitutional for any state to do this,” he added.

This year CJLF is fighting to end sanctuary city policies, prevent criminals from suing police officers for doing their job, help federal immigration authorities deport criminal illegal aliens, and enforce the death penalty for our nation’s worst murderers. Because we don’t ask for, or receive, any government support, our only source of income is the annual tax-deductible contributions from our loyal supporters. If you haven’t made your 2018 contribution, please do so today by returning the card on the right along with your check, or by visiting [www.cjlf.org](http://www.cjlf.org) to use your credit card. **Your help is very important. Many thanks!**

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Spring 2018

# GEORGE DEUKMEJIAN

## 1928 - 2018

The 35th Governor of California, George Deukmejian, who served from 1983 to 1991, died on June 8 of natural causes at the age of 89. Prior to his election as Governor, Deukmejian served in the California State Assembly, the California Senate, and for two terms as Attorney General. The son of Armenian immigrants who insisted that he and his sister speak only English, Deukmejian was raised old school to value honesty, respect, and hard work, traits almost completely abandoned by the current popular culture, which defined America's greatest generation.

During his service in the state Legislature and as Attorney General, Deukmejian fought policies enacted by Governor Jerry Brown that had led to a dramatic increase in violent crime, adding up to 70,000 new victims per year by 1981. In 1982, when he ran to succeed Brown, Deukmejian supported a landmark criminal justice reform initiative (the Victims' Bill of Rights) to restore consequences for habitual criminals. That year, he won the election and the initiative passed. Both had a national impact on law enforcement, inspiring other states and Congress to follow California's lead and adopt similar measures targeting repeat offenders.

Governor Deukmejian also recognized the damage caused by the hundreds of pro-defendant judges appointed by his predecessor, filling most vacancies with former prosecutors and elevating experienced jurists who exercised judicial restraint, to the appellate courts. In 1987, after California voters made history at the polls,

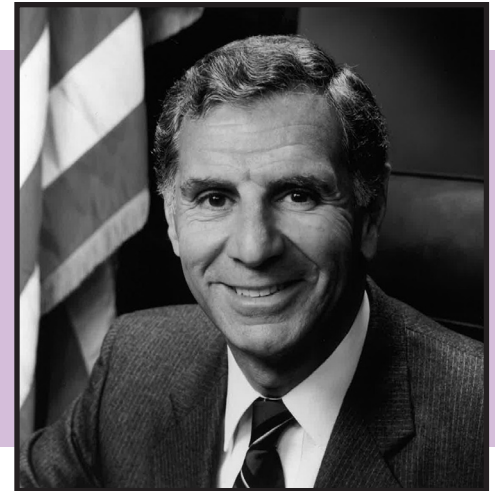


**Governor George Deukmejian**

denying successive terms to three liberal Brown-appointed Supreme Court Justices, including the Chief Justice, Deukmejian appointed three replacements and elevated Associate Justice Malcolm Lucas to Chief Justice to restore order and integrity to the state judiciary.

It took 11 years, the election of another crime-fighting governor (Pete Wilson), and adoption of several additional initiatives to fully repair the state's criminal justice system. These steps resulted in a 21-year drop in violent crime, which saved hundreds of thousands of Californians from becoming victims.

The so called "Iron Duke," who inherited a \$1.5 billion budget deficit from Brown, was just as committed to reducing state spending, engaging in several legendary donnybrooks with the big-spending



Democrats who ran the Legislature. Six years after leaving office, Deukmejian joined the Criminal Justice Legal Foundation board, where he served for 12 years. He then joined our Foundation's Legal Advisory Committee, serving until his death.

He was not a typical politician. He always told the truth and he never sold out. This often infuriated other politicians. Deukmejian was basically a private man who made a choice to sacrifice his privacy to serve the greater good. He did not covet the public spotlight. When he finally retired from politics, he seemed delighted to, as he put it, "be a grandfather." He is survived by his wife of 61 years, two daughters, and a son. Our world would be a better place were there more like him willing to serve today. He will be missed.

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