

THE PUBLIC LAWYER

November 5, 2003

NEVADA CASES

<http://www.leg.state.nv.us/scd/OpinionListPage.cfm>

State v. Gamos-Perez, 119 Nev. Adv. Op. 58 (November 3, 2003). “We therefore restate the options under NRS 179.045 as follows. First, it is unnecessary for police authorities and judicial officers to recite a statement of probable cause on the face of search warrants issued pursuant to NRS 179.045(3), upon sealed affidavits and warrants issued pursuant to NRS 179.045(2). Under subsection 3, statements of probable cause in sealed affidavits must be incorporated by reference without being attached to the warrant, but remain sealed until some future time. Statements of probable cause in support of warrants issued under subsection 2 may be later accessed via the court clerk. Second, warrants issued upon unsealed affidavits must either state the probable cause for issuance and the names of persons whose affidavits support the application for the warrant on the face thereof, or the affidavit must be incorporated into the warrant by reference, physically attached to the warrant and left at the premises where the warrant is served. We reiterate that *Allen I* correctly affirmed a district court order suppressing evidence seized pursuant to a search warrant with no facial statement of probable cause, and based upon an unsealed, unincorporated and unattached affidavit.”

“Here, however, the district court applied the ruling of *Allen I* to a warrant issued telephonically under NRS 179.045(2), a warrant process to which *Allen I* and subsequent clarifications of it do not govern. Accordingly, any examination of probable cause in aid of the warrant in this case must be undertaken in connection with the transcribed sworn statement upon which the warrant was issued.”

Liebowitz v. Eighth Judicial Dist. Court, 119 Nev. Adv. Op. 57 (November 3, 2003).

“First, petitioners contend the district court misapplied this court’s decision in *Ciaffone*. They assert that *Ciaffone* does not automatically require disqualification of lawyers whenever they hire a nonlawyer who had access to an adverse party’s privileged or confidential information during previous employment. Petitioners argue that *Ciaffone* stands for the proposition that the disqualification remedy is only available if the district court first determines that a lawyer’s employee gained privileged and confidential information about an adverse party as a result of former employment. Petitioners contend that mere access to the adverse party’s file during the former employment is insufficient to warrant disqualification. We agree.”

Daniel v. State, 119 Nev. Adv. Op. 56 (November 3, 2003). “A number of trial errors occurred in this case. The district court erred in meeting privately with a State witness without making a record of the



meeting, in answering questions from the jury without notifying counsel and without making a record of the answers given, in allowing questioning regarding appellant's prior arrests, in limiting appellant's presentation of evidence regarding the violent character of the victims, and in not allowing questioning of a juror about possible prejudice against appellant. Due to the quantity and character of this cumulative error and the gravity of the crime charged and the penalty sought, we reverse appellant's judgment of conviction and remand for further proceedings consistent with this opinion."

Shelton v. Shelton, 119 Nev. Adv. Op. 55 (October 29, 2003). "The principal issue in this appeal is whether relief is available to a former spouse when a veteran unilaterally waives his military pension in order to receive disability benefits, resulting in the former spouse's loss of her community share in the pension. We conclude that, although courts are prohibited by federal law from determining veterans' disability pay to be community property, state law of contracts is not preempted by federal law. Thus, respondent must satisfy his contractual obligations to his former spouse, and the district court erred in denying former spouse's motion solely on the basis that federal law does not permit disability pay to be divided as community property."

Houston v. Bank of America Fed. Savs. Bank, 119 Nev. Adv. Op. 54 (October 29, 2003). "This appeal raises the issue of whether a lender who pays off a prior note is equitably subrogated to the former lender's priority lien position. We conclude that the subsequent lender succeeds to the prior lender's priority lien position as long as an intervening lien holder is not prejudiced. Therefore, we affirm the district court's

order granting summary judgment to Bank of America."

Hodges v. State, 119 Nev. Adv. Op. 53 (October 15, 2003). "The primary issue in these appeals is whether appellant Steven Bradley Hodges stipulated to prior convictions that provided the basis for his adjudication as a habitual criminal. We conclude that he did."

"You may now lie to the jury."

**CANDOR TO THE TRIBUNAL:
Wisconsin Appellate Court Defines When
Lawyer "Knows" Client Will Lie on
Stand**

Wisconsin's version of Rule 3.3, like the ABA Model Rule and the rule in most every state, says that a lawyer may not offer testimony that the lawyer "knows" to be false. Thus, in Wisconsin, when a lawyer knows that a criminal defendant is going to offer false testimony, the preferred procedure is for the lawyer to permit the defendant to testify in the narrative. The problem for the defendant with that procedure is that the defendant's testimony will be less effective than it would be if the testimony were prompted by well-crafted, well-timed questions by a lawyer. In *State v. McDowell*, 2003 WI App 168 (Wis. Ct. App. July 22, 2003), the court set out what the lawyer's obligation is when the lawyer merely believes the witness will testify falsely, but the witness does not admit to the lawyer that he will testify falsely. This defendant did not tell his lawyer that he would testify falsely. Nevertheless, the lawyer, believing that he would, and without warning to the defendant, requested that the defendant testify in narrative form. The defendant was convicted, and after the trial court denied post-conviction motions, the defendant appealed. The appellate court held that the lawyer's conduct deprived the



defendant of his Sixth Amendment right to effective counsel. Nevertheless, the court affirmed the conviction, because of the overwhelming nature of the prosecution's evidence. The court used the case as an opportunity to lay out in detail how defense lawyers are to proceed in the face of anticipated perjury. First, the lawyer may not resort to the narrative technique unless the defendant expressly tells the lawyer that he intends to lie. Then, the lawyer must attempt to talk the defendant out of lying. Failing that, the lawyer must also tell the client that, if the client insists that he will lie, then the lawyer will allow the defendant to testify only in narrative form and the consequences of doing so. The lawyer must then inform the court and the prosecution of the defendant's intent. Only then may the lawyer resort to narrative testimony. (Side note: Wisconsin still has the older version of current Model Rule 3.3(a)(3), which permits a lawyer to refuse to offer evidence that he "reasonably believes" to be false. In effect, the court held that the lawyer would have no such permission in criminal cases where the defendant declared an intention to lie. The ABA adopted Ethics 2000's recommendation to provide specifically that the lawyer has no such latitude to decline to offer the testimony of a criminal defendant.)

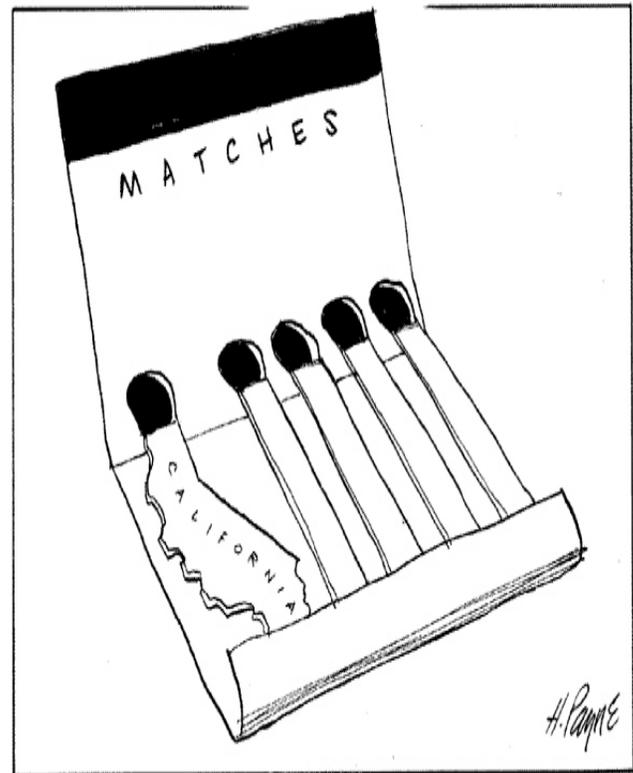
State v. McDowell, 2003 WI App 168 (Wis. Ct. App. July 22, 2003).

<http://www.ethicsandlawyering.com>

My Sure-Fire Holiday Tips

By Joe Brancantelli

October 30, 2003 -- I'm *almost* old enough to remember when holiday travel was a more intimate affair, a matter of going over the river and through the woods to grandmother's house.



unitedmedia.com EMAIL: hpayne@detnews.com © 2003 DETROIT NEWS

Not anymore. Now we all drive to airports on traffic-jammed roads and fly around the world on packed planes to see our friends and families for the holidays. And the rush starts right about now, when business travelers begin ceding control of the air-travel system to those jolly holiday travelers who often can't tell an airport from an air balloon.

So how will we all survive and co-exist until the end of the first week of January, the traditional end of the end-of-the-year holiday rush? Here are a baker's dozen of my best suggestions. The more you fly, the more you know this stuff. But it never hurts to read over this list and check it twice.

<http://www.zyworld.com/brancantelli/branc.htm>



IRS INCREASES RETIREMENT ACCOUNT DEFERRAL LIMITS FOR '04

As employees revise their benefit selections for next year, be sure to encourage them to revisit their retirement plan contributions as well, as the IRS has issued new deferral limits for 2004.

Annual elective deferral thresholds will increase next year to \$13,000 from \$12,000 for 401(k) and 457 plans. In addition, the dollar limitation for catch-up contributions for participants age 50 or over will go from \$1,000 to \$1,500. IRS also issued cost-of-living adjustments for annual benefits, increasing benefit caps to \$165,000 from \$160,000 for defined benefit plans and to \$41,000 from \$40,000 for defined contribution plans.

Plan sponsors that have received favorable determination letters need not request new letters based solely on yearly amendments to adjust for the new deferral limits, IRS advises.

www.benefitnews.com

NINTH CIRCUIT CASES

(Cases without hyperlinks can be found at <http://www.ca9.uscourts.gov/ca9/newopinions.nsf>)

Holz v. Nenana Pub. School Dist., No. 02-35179 (9th Cir. October 30, 2003). “Plaintiff/Appellant Susan Holz, an Alaskan Native, filed suit against Defendants/Appellees Nenana City Public School District (School District”) and School District officials. Holz alleged that the defendants violated federal and state civil rights laws by failing to hire her for various positions with the School District. The district court concluded that the School District is an ‘arm of the

state’ and thereby immune from suit under the Eleventh Amendment. The district court granted summary judgment in favor of the defendants. Holz now appeals the district court’s ruling. Holz contends that the School District is *not* an ‘arm of the state’ entitled to Eleventh Amendment immunity. Holz argues that the School District is *not* a state agency, but rather is akin to a local or county agency, most importantly because Alaska is not legally required to satisfy any possible judgment against the School District. And thus Holz argues the district court erred in its ruling. We agree and reverse.”

Mahone v. Lehman, No. 02-35622 (9th Cir. October 30, 2003). “In this civil rights action, filed pursuant to 42 U.S.C. § 1983, Sylvester James Mahone seeks reversal of the judgment entered in favor of each of the Appellees following a trial by jury. In his pro se complaint, Mr. Mahone alleged that, while an inmate at Washington State’s Clallam Bay Correctional Center prison, he was placed in solitary confinement in a bare strip cell, without clothing, property, or regular access to running water in violation of the Eighth Amendment. Mr. Mahone contends that the district court committed prejudicial error in admitting hearsay evidence, and in failing to correct defense counsel’s misstatements in her closing argument regarding the proof required to demonstrate deliberate indifference to an inmate’s health and safety. We reverse because we conclude that admission of hearsay testimony was prejudicial. We also hold that defense counsel misstated the standard for deliberate indifference.”



County of Okanogan v. National Marine Fisheries Serv., No. 02-35512 (9th Cir. October 29, 2003). “Appellants, plaintiffs below, challenge a decision by the United States Forest Service requiring reduced use of water from ditches in time of low flow, intended to protect certain endangered species of fish. The plaintiffs include Okanogan County, the Early Winters Ditch Company, and several other plaintiffs. The district court granted summary judgment in favor of the federal defendants. We affirm.”

Weber v. Shelley, No. 02-56726 (9th Cir. October 28, 2003). “This appeal challenges the computerized touchscreen voting system that Riverside County, California, adopted to replace traditional paper ballots after the system was certified for accuracy, reliability, and feasibility by the Secretary of State of California. Susan Marie Weber, a resident and registered voter of Riverside County, brought an action under 42 U.S.C. § 1983 claiming that the lack of a voter-verified paper trail in the Sequoia Voting Systems AVC Edge Touchscreen Voting System that the county installed violates her rights to equal protection and due process. The district court found no evidence that use of Riverside County’s touchscreen system constitutes differential treatment of voters, and concluded that use of the system does not impair Weber’s right to vote because the AVC Edge System is a reasonable choice, protects against fraud, and advances a number of important state interests. Accordingly, the court entered summary judgment for the county and state. We agree that Weber has raised at most a hypothetical concern about the ability to audit and verify election results, and that the impact on her right to vote is minimal. Therefore, we affirm.”

United States v. Brown, No. 01-30158 (9th Cir. October 28, 2003). “Defendant Lamont Andre Brown appeals his conviction and sentence on two counts of possessing with the intent to distribute more than five grams of crack cocaine in violation of 21 U.S.C. §§ 841(a) and 841(b)(1)(B). Brown contends that his conviction must be reversed because a government witness testified falsely to the grand jury, and because the trial judge quashed a subpoena and excluded evidence concerning the immigration status of the government’s informant. Brown also contends that the district court erred in basing his sentence on possession of cocaine alleged in a count of which the jury found him not guilty. We reject these contentions and affirm these rulings of the district court.”

Lord v. Lambert, No. 02-35124 (9th Cir. October 27, 2003). “Aaron Lord appeals the district court’s denial of his petition for a writ of habeas corpus. Lord contends he is entitled to habeas relief under 28 U.S.C. § 2254 because during his trial the state court erred in admitting the testimony of Todd Rogers. Lord argues that Rogers’ testimony should have been excluded because it derived from the interception of a cordless telephone conversation in violation of Title III of the Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510 *et seq.*” “We conclude that even if Rogers’ trial testimony was the product of a Title III violation and should have been excluded, Lord’s habeas claim fails because the admission of that testimony did not deprive Lord of due process or result in a miscarriage of justice. Accordingly, we affirm.”

Cogswell v. City of Seattle, No. 01-36162 (9th Cir. October 27, 2003). “The City of Seattle and the City of Seattle Ethics and Elections Commission appeal the district



court's grant of summary judgment in favor of plaintiff Grant T. Cogswell. Evaluating Seattle Municipal Code 2.14.060(C), which prohibits references to political opponents in candidate statements included in Seattle voters' pamphlets, under the reasonableness standard applied to limited public fora, the district court held that the restriction, although reasonable, was unconstitutionally viewpoint discriminatory. We have jurisdiction over Seattle's timely appeal under 28 U.S.C. § 1291, and we reverse."

United States v. Ramirez, No. 02-50018 (9th Cir. October 24, 2003). "This appeal presents the issue of whether a temporary detention ordered by the California Youth Authority Youth Offender Parole Board may be treated as either a prior sentence or a constructive parole revocation for the purpose of calculating criminal history points under the Sentencing Guidelines. Appellee Giovanni Ramirez pleaded guilty to a Class A felony with a statutory minimum sentence of 10 years. The District Court found that Ramirez's two prior temporary detentions, which were ordered by the Youth Offender Parole Board as a result of alleged parole violations, were neither prior sentences under U.S. SENTENCING GUIDELINES MANUAL § 4A1.1(c) (2002), nor terms of imprisonment imposed as a result of a revocation of parole that could be aggregated with Ramirez's juvenile sentence under U.S.S.G. § 4A1.2(k) (2002). As a result, the District Court determined that Ramirez had no criminal history points and was eligible for a 'safety-valve' departure from the mandatory minimum under U.S.S.G. § 5C1.2 (2002). We have jurisdiction pursuant to 18 U.S.C. § 3742(b) (2002) and 28 U.S.C. § 1291 (2002). Because we conclude that the temporary detentions neither resulted from 'adjudications of guilt' beyond a reasonable

doubt nor constituted returns to the original term of imprisonment such that they could be treated as constructive revocations of parole, we affirm."

United States v. Mendoza-Morales, No. 02-10659 (9th Cir. October 21, 2003). "The question presented in this appeal is whether, in calculating a convicted defendant's criminal history under Section 4A1.1 of the Guidelines Manual of the United States Sentencing Commission, the court must classify a prior state criminal sentence in the same manner that the state court did. In computing Appellant Hector Mendoza-Morales's criminal history, the district court construed two California 'jail-as-a-condition-of-probation' sentences as 'sentences of imprisonment,' notwithstanding that California law deems them to be rehabilitative, rather than punitive. We hold that the court did not err and that for the purpose of assigning criminal history points under Section 4A1.1 of the Guidelines, state judicial characterizations of the purpose or nature of a sentence are irrelevant in determining whether the sentence was a sentence of imprisonment. The court must apply federal law because two of the fundamental objectives of the Guidelines — uniformity and the elimination of divergent approaches to determining punishment — require the court to do so."

Foster v. Carson, No. 03-35457 (9th Cir. October 17, 2003). "These consolidated appeals challenge the constitutionality of an Oregon judicial-budget austerity plan known as the 'Budget Reduction Plan'. Under the BRP, for four months indigent defendants who were charged with certain listed crimes had their criminal proceedings suspended and were not afforded counsel. Plaintiffs include indigent criminal defendants,



indigent defenders, and the Lane County District Attorney. They appeal the district court's dismissal, on grounds of *Younger* abstention, of those actions alleging that their constitutional rights were violated by various Oregon officials who formulated or implemented the BRP. The BRP has now expired, and all indigent defendants are once again being afforded counsel and are facing renewed criminal proceedings. Because we cannot undo the alleged harm to Plaintiffs, and because we cannot provide any relief for that harm, we must dismiss these cases as moot."

Lynn v. Farmon, No. 03-15221 (9th Cir. October 17, 2003). "Respondent Warden Teena Farmon appeals the district court's judgment granting petitioner Megan Van Lynn's petition for writ of habeas corpus on the ground that Van Lynn was denied her Sixth Amendment right to represent herself at trial and received ineffective assistance of appellate counsel because her counsel failed to raise this issue on direct appeal. We conclude that where a state court reasons that a defendant is not competent to represent herself simply because she will be unable to present her defense in an informed, reasonable, or intelligent manner, that decision is contrary to clearly established Supreme Court case law. We cannot avoid granting the writ pursuant to 28 U.S.C. § 2254(d)(1) by positing an alternative reason for the state court's denial of the motion for self-representation that is entirely distinct from the reason given by the state court, even if such different reason might have justified the state court's action. We therefore affirm."

United States v. Soriano, No. 01-50461 (9th Cir. October 15, 2003). "Herman Patayan Soriano appeals his convictions for possession of stolen mail and receipt of a

stolen United States Treasury check, and also the sentence that resulted. Soriano challenges his convictions on the ground that the district court erred in denying his motion to suppress evidence found during a search of a motel room where he and his girlfriend resided. Soriano's girlfriend signed a consent form allowing the warrantless search. The issue on appeal is whether the district court clearly erred in finding that her consent was voluntary, notwithstanding a threat made to her by one of the police officers on the scene that her children could be taken away if she did not sign the form. If the conviction stands, Soriano challenges the sentence he was given on the ground that the district court erred in calculating the appropriate loss amount for sentencing purposes. We reject both challenges and affirm."

Hatton v. Bonner, No. 02-15586 (9th Cir. October 8, 2003). "We are called on to decide whether the state court's decision, upholding the application of California's sex-offender registration statute to Petitioner David Hatton, involved an unreasonable application of clearly established federal law or was based on an unreasonable determination of the facts. Because we answer that question 'no,' we must affirm the district court's denial of habeas corpus relief. "

United States v. Hurt, No. 02-30297 (9th Cir. October 8, 2003). "Appellant Clarence Hurt, III, appeals a district court order revoking his supervised release and sentencing him to twelve months of imprisonment, followed by an additional twenty four months of supervised release. The district court denied Hurt's motion to amend his sentence to impose the maximum statutory penalty of twenty-four months' incarceration with no supervised release, despite the acquiescence



in Hurt’s motion by the U.S. Attorney and the U.S. Probation Officer. We conclude that the district court was not required to impose the maximum penalty that both parties sought and that the court did not abuse its discretion by sentencing Hurt to an additional term of supervised release.”

Cordova v. Baca, No. 02-55713 (9th Cir. October 6, 2003). “In sum, we conclude that if a criminal defendant is put on trial without counsel, and his right to counsel has not been effectively waived, he is entitled to an automatic reversal of the conviction. The reason for the denial—whether it be an oversight on the part of the court, a failure to give proper warning or some other reason—is irrelevant. What matters is that the defendant was put on trial without a lawyer though the Constitution guarantees him that right. That is the kind of defect in the trial process the Supreme Court has told us time and again cannot be unscrambled. The Appellate Division’s effort to analyze the evidence and determine what would have happened, had Cordova been represented by counsel, is precisely the kind of inquiry the Supreme Court has said cannot be made. Automatic reversal of the conviction is the only lawful remedy.”

Spitsyn v. Moore, No. 02-35543 (9th Cir. October 3, 2003). “Sergey Spitsyn appeals from the district court’s dismissal of his petition for habeas corpus relief under 28 U.S.C. § 2254 as untimely. He argues that the deadline for filing his petition should be subject to equitable tolling because the delay in filing resulted from an ‘extraordinary circumstance’ beyond his control, specifically his attorney’s misconduct. Based upon the unique facts of this case, where an attorney was retained to prepare and file a petition, failed to do so, and disregarded requests to return the files pertaining to

petitioner’s case until well after the date the petition was due, we agree that equitable tolling of the deadline is appropriate. We vacate the dismissal and remand the matter to the district court for further proceedings.”

Gasusvik v. Perez, No. 02-35902 (9th Cir. October 3, 2003). “Ralph Gausvik brought suit against Detective Robert Perez, alleging Perez violated his civil rights during a sex abuse investigation. The district court denied Perez’s motion for summary judgment based on qualified immunity. Perez appeals, and we reverse.”

Sorrano v. Clark County, No. 02-16199 (9th Cir. October 3, 2003). “Because the County’s amendment to the ordinance in November 2001 mooted Soranno’s claim for relief, we vacate the judgment below and order the district court to dismiss Soranno’s complaint.” “We express no opinion on the merits of any claims Soranno may have against the County or private landowners in the event that a landowner or the County bars Soranno from placing newsracks on, or removes such newsracks from, privately owned sidewalks.”

Cunningham v. Perez, No. 02-35792 (9th Cir. October 3, 2003). “Henry Cunningham brought suit in federal district court alleging Robert Perez, a police officer with the City of Wenatchee, Washington, and other government officials, violated his civil rights during a sex abuse investigation. The district court denied Perez’s motion for summary judgment based on qualified immunity. This appeal followed, and we reverse.”

United States v. Kincade, No. 02-50380 (9th Cir. October 2, 2003). “Each leap forward in forensic science promises ever more efficient and swift resolution of criminal investigations. At the same time,



technological advances frequently raise new constitutional concerns and threaten our basic liberties. Here, we confront the challenge compulsory DNA collection poses to one of the most fundamental and traditional preserves of individual privacy, the human body.”

“First, we must consider whether, under general Fourth Amendment principles, blood may be extracted from parolees without their consent, simply because of their status as parolees. We conclude that, as a matter of general Fourth Amendment law, forced blood extraction from parolees requires individualized suspicion. Second, we must determine whether forced blood extraction under the DNA Act falls within the exception of the Supreme Court’s ‘special needs’ doctrine. We hold that, because the DNA Act primarily serves a law enforcement purpose, the compulsory collection of blood samples pursuant to the Act does not fall within the special needs exception. Accordingly, we reverse the judgment of the district court (1) upholding the Probation Department’s order requiring Thomas Kincade to submit to the extraction of blood for the purpose of providing a DNA sample, and (2) sentencing him to a term of imprisonment and increasing the period of his supervised release for his refusal to comply.”

PROTECTIONS AVAILABLE FOR EMPLOYEES AGAINST IDENTITY THEFT

Identity theft insurance is increasing in popularity, giving employers a new voluntary benefit to offer to help shield employees.

Identity theft is one of the fastest-growing crimes, impacting some 10 million consumers last year and resulting in losses

of \$5 billion, the Federal Trade Commission reports. The average victim spends up to \$1,200 clearing their name and repairing their credit history.

Insurance "gives employees peace of mind and prevents the significant loss in productivity that can accompany such a frightening crime," says Richard Kam, president of Portland, Ore.-based Identity Safeguards, one insurance provider. The Identity Safeguards program offers immediate support to employees who fall victim to identity theft, including legal, credit repair, and law enforcement assistance. Also, most identity theft insurance policies reimburse workers for lost income and expenses incurred during the recovery process.

www.benefitnews.com

OTHER CASES

Pruitt v. Jones, No. 0216853 (11th Cir. October 31, 2003). District court's denial of writ affirmed where the court did not err in concluding that petitioner failed to exhaust his state remedies by not petitioning the Alabama Supreme Court for discretionary review of the denial of his state habeas petition.

<http://caselaw.lp.findlaw.com/data2/circs/11th/0216853p.pdf>

Swipies v. Kofka, No. 03-1274 (8th Cir. November 03, 2003). Denial of summary judgment to defendant affirmed where the court properly denied the motion based on qualified immunity since it should have been clear to a reasonable police officer that removing plaintiff's child from his custody would have violated plaintiff's parental liberty interest.

<http://caselaw.lp.findlaw.com/data2/circs/8th/031274p.pdf>



United States v. Hussein, No. 03-1310 (1st Cir. October 30, 2003). Defendant's conviction for knowingly possessing and intending to distribute khat, a plant naturally containing the chemical stimulant cathinone in violation of section 841(a)(1) of the Controlled Substances Act (CSA), is affirmed where the evidence suffices to show that defendant knew that he was dealing with a controlled substance.
<http://laws.lp.findlaw.com/1st/031310.html>

Gauger v. Hendle, No. 02-3841 (7th Cir. October 30, 2003). Summary judgment to defendants is reversed where plaintiff's false-arrest claim did not accrue until his conviction was reversed, and because the Fourth Amendment is aimed at deterring unreasonable searches and seizures, not malicious prosecutions, damages will be limited to the harm incurred from the false arrest before plaintiff was charged.
<http://caselaw.lp.findlaw.com/data2/circs/7th/023841p.pdf>

United States v. Klecker, No. 02-4961 (4th Cir. October 27, 2003). Conviction for the distribution of FOXY in violation of the Controlled Substance Analogue Enforcement Act is affirmed where the Act is not unconstitutionally vague as applied, and the district court properly found that FOXY is an analogue of DET.
<http://caselaw.lp.findlaw.com/data2/circs/4th/024961p.pdf>

Castillo v. Matesanz, No. 01-2166 (1st Cir. October 27, 2003). Denial of a habeas petition seeking relief from the denial of a motion for a new trial in the state court is

affirmed where the trial court's denial of defense counsel's motion for a continuance at the beginning of the trial did not violate petitioner's due process or Sixth Amendment right to counsel.
<http://laws.lp.findlaw.com/1st/012166.html>

Yarborough v. Gentry, No. 02-1587 (U.S.S.C October 20, 2003). Trial counsel's closing argument did not deprive petitioner of his right to effective assistance of counsel, as the strategic summation made several key points in spite of confessing some of petitioner's shortcomings.
<http://laws.lp.findlaw.com/us/000/021597.html>

Today's Word:

Tmesis (Noun)

Pronunciation: [tê-'mee-sis]

Definition 1: The insertion of words between the constituents of words, e.g. "abso-bloody-lutely" or "abso-bloomin'-lutely."

Today's Word:

Carfuffle (Noun)

Pronunciation: [kah(r)- or kê(r)-'fê-fêl]

Definition 1: Uproar, agitation, commotion, brouhaha, fuss.