



The Public Lawyer

Public Lawyers
Section

December 2007

Public Safety Employer-Employee Relations Act (S. 2123) Federalizes Collective Bargaining for Public Safety Personnel

December 12, 2007
RE: S.AMDT.3615
to the Farm Bill
(H.R. 2419) – the
Public Employer-
Employee
Cooperation Act of
2007 (S. 2123)

Dear Senator:
On behalf of the na-
tion’s 3,006 coun-
ties, 19,000 cities
and towns, their
county
and city elected and
appointed officials,

elected and ap-
pointed sheriffs, and
state and
local personnel pro-
fessionals, we
strongly urge you to
oppose S.2123, the

(Continued on page 13)

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Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. Adv. Op. No. 55 (December 13, 2007). “In this appeal, involving a deficient record, we reiterate our oft-stated rule that appellant bears the responsibility of ensuring an accurate and complete record on

appeal and that missing portions of the record are presumed to support the district court’s decision. As appellants have failed to provide, in the record, their opposition to the summary judgment motion, we necessarily affirm the district court’s order granting summary judg-

ment. In doing so, we clarify the burdens of proof and production that pertain to summary judgment.

Additionally, as appellants did not include, in the record, their opposition to respondents’ attorney fees motion, we necessarily affirm



Seasons Greetings

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the district court's order granting attorney fees. Although not necessary to our disposition, in order to provide guidance to the district courts when considering an attorney fees award under 42 U.S.C. § 1988, we explain the appropriate standard to be used in determining whether to award such fees to civil rights defendants and the proper method for determining a reasonable amount of fees."

Allstate Ins. Co. v. Thorpe, 123 Nev. Adv. Op. No. 52 (November 21, 2007) "Nevada's so-called 'prompt-pay' statute, NRS 690B.012, requires casualty insurers to approve and pay, or deny, casualty claims, including claims for medical payment benefits, within a limited time frame. Under the statute, an insurer must pay interest on any untimely claims payments.

In this appeal, we consider whether NRS 690B.012 grants private rights of action to medical services providers who administer care to persons insured under contracts of 'casualty insurance,' so that the medical services providers may sue the person's insurer, if that insurer fails to promptly pay claims.

NRS 690B.012 does not expressly create a private right of action in favor of an insured's medical provider to sue an insurer who fails to make prompt payments to the insured or the insured's medical providers. Instead, the statutory scheme contemplates an exclusive administrative procedure for resolving claims concerning alleged violations of NRS 690B.012, under which those persons with a direct and immediate pecuniary interest in prompt payment may proceed. We therefore conclude that (1) there is no private right of action in the district court under the statute, but (2) medical providers, as persons with a direct and immediate pecuniary interest in the prompt payment of medical payment benefits, may seek administrative remedies before the Nevada Department of Insurance (NDOI), subject to judicial review under the Nevada Administrative Procedure Act."

Horgan v. Felton, 123 Nev. Adv. Op. No. 53 (November 21, 2007) "In this case, we primarily reexamine our decision in *Sandy Valley Associates v. Sky Ranch Estates*, which states that attorney fees as damages are available in cases clarifying or removing a cloud on title to

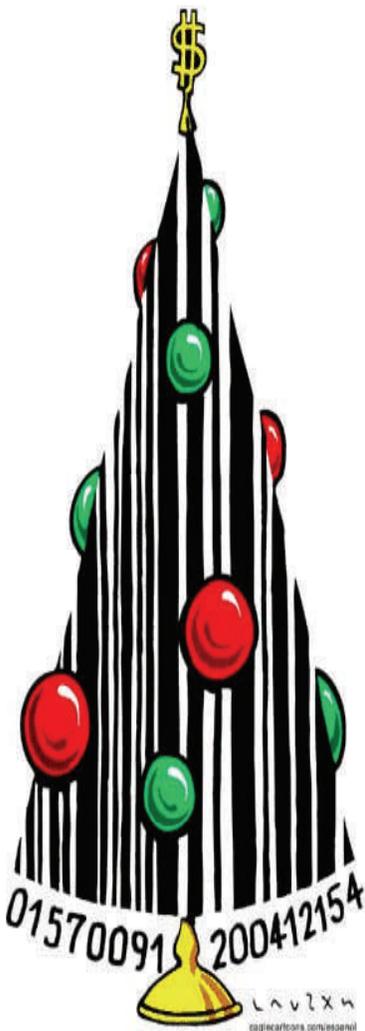
property. We now retreat from that statement and hold that in cases concerning title to real property, attorney fees are only allowable as special damages in slander of title actions, not merely when a cloud on the title to real property exists."

Wilson v. State, 123 Nev. Adv. Op. No. 54 (November 21, 2007) "In this appeal, we consider whether Nevada's double jeopardy protections prohibit increasing a defendant's sentence after the defendant's conviction has been partially vacated on appeal. We first considered a similar issue in *Dolby v. State*, where we held: 'When a court is forced to vacate an unlawful sentence on one count, the court may not increase a lawful sentence on a separate count.' We now conclude that the double jeopardy protections articulated in *Dolby* apply with equal force regardless of the procedural posture in which the resentencing occurs—whether in the context of error correction in the district courts or in remanded proceedings.

Accordingly, we conclude that the sentencing procedure employed by the district court violated appellant's constitutional right against double jeopardy. We therefore vacate the

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amended judgment of conviction and remand to the district court with instructions to reinstate the portions of Wilson's original sentence that we previously affirmed on direct appeal."



CODE WORD BULLYING

Categorizing Workplace Harassment That Is Not Legally Prohibited

Most Workplace Bullying is Worker to Worker, Early Findings From NIOSH Study Suggest

Most incidents of bullying in the workplace appear to be perpetuated by employees against one another, early findings from a study by the National Institute for Occupational Safety and Health (NIOSH) suggest.

The findings suggest that efforts to make changes at the organizational level to prevent bullying in the workplace should include steps to improve relationships among co-workers, and should not strictly focus on improving supervisor-employee and customer-employee relationships, the researchers said in reporting the preliminary results.

The study points to further research that would be needed before researchers could offer definitive recommendations for preventing bullying as a potential factor for work-related

stress. The findings were reported at the annual meeting of the American Psychological Association, held July 28-Aug. 1, as a progress report on the study.

Since the results are based on a survey of a representative but small sample of respondents, other studies involving larger numbers of respondents would be needed to confirm the findings. In addition, other research would be needed in greater depth to identify the reasons for acts of bullying in the workplace, the circumstances in which bullying is most likely to occur, and specific measures for improving interpersonal relationships in the workplace.

Data reported from the survey indicate the following:

- 24.5 percent of the companies surveyed reported that some degree of bullying had occurred there during the preceding year.
- In the most recent incident that had occurred, 39.2 percent involved an employee as the aggressor, 24.5 percent involved a customer, and 14.7 per-

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cent involved a supervisor.

- In the most recent incident, 55.2 percent involved the employee as the "victim," 10.5 percent the customer, and 7.7 percent the supervisor.

Information was collected from key respondents at 516 private and public organizations; the respondents were human resources professionals or other individuals who were knowledgeable about their organization. The organizations ranged in size from five employees to 20,000 employees each. Bullying was defined as repeated intimidation, slandering, social isolation, or humiliation by one or more persons against another.

www.bullyfreeworkplace.org

Targets of bullying are often horrified when they attempt to hire legal representation for their work abuse situations and learn that, at this time in our history, present law is grossly inadequate throughout the United States, including California. This is precisely why Healthy Workplace Advocates and the Workplace Bullying and

Trauma Institute, among others, have been trying for several years to find sponsorship for Healthy Workplace legislation.

Targets are rightfully certain they have suffered from immoral treatment that is neither fair nor just.



Their bullies have usually dished up mounds of conspicuously bad and offensive (*egregious*) work abuse. Targets are often assigned inhumane amounts of work (*arduous workload*) without the tools necessary to do the job properly. Most often targets are people who work very hard and care very much about their jobs. This is usually why they become targets: bullies feel threatened by them. Often targets have inadvertently attracted bullying behaviors because they

know too much and are in the position of, even when they are not so inclined to expose anything. Targets are usually held to different standards than are their co-workers. All too often, targets leave their jobs, not because they are fired, but because they can no longer withstand the psychological violence of the abuse (*constructive discharge*).

Thinking, "Surely this inhumane treatment must be against the law," targets seek legal representation. Targets believe they have cause to sue their bullies and/or their employers in a civil lawsuit (*tort action*). They seek out employment lawyers only to find the few attorneys specializing in this law are working for the employers and are not for hire to individuals. Attorneys who do consult with work abuse targets usually look for some reason to justify filing a lawsuit (*actionable cause*) **under Title VII of the Civil Rights Amendment** or the **Americans with Disabilities Act** or the **False Claims Act**.

Title VII prohibits harassment/discrimination (*disparate treatment* or being treated differently from co-workers) due to a target's race, religious creed, color, national origin, ancestry, marital status, sex, age,

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or sexual orientation. Proving this means targets must prove they were targeted **because** of their membership in a group (*protected class*) which is **different from their bully's or bullies' class**. Seldom is this the case. Usually bullies bully for the sake of bullying, like a drug addict getting a fix or an alcoholic taking a drink. Most workplace bullying is and does not qualify as discrimination under Title VII.

The **Americans with Disabilities Act** (ADA) protects workers from discrimination due to a target's physical or mental impairment or learning disability that substantially limits one or more of the major life activities. Physical impairments are those that affect one or more bodily systems, including neurologic, immunities, muscles and bones, the senses, breathing, speech, heart, digestion, reproduction, blood and lymph system, skin, urinary and endocrine systems. Mental impairments include most any diagnosed mental disorder except compulsive gambling, kleptomania, and current illegal drug abuse. The ADA requires employers to make a *reasonable* for disabled employees that is not an undue hardship for the employer.

The **False Claims Act** is commonly called the Whistleblower act. It protects everyday heroes who dare tell the truth about companies and institutions who are making false monetary claims against the federal and state governments, charging them for goods or services not rightfully rendered. Whistleblowers might also be exposing or in position to expose criminal activity such as money laundering, embezzlement, bribery, kickbacks, drug trafficking, and income tax evasion.

All three of the above - Title VII, ADA, & False Claims - are written into US and state laws. All three are very hard to find attorneys for representation. All three are extremely difficult to prove and require a minimum of three examples of concrete evidence and even more witnesses. Quite often, witnesses are reluctant to support targets for fear the perpetrators will turn on them. Amazingly, witnesses disappear into clouds of forgetfulness when called upon to do the right thing and tell the truth. Witnesses don't want the bullies to turn on them in retribution. Few witnesses or bullies are ever charged for lying in attorney meetings (*deposition*) or lying in a courtroom. Employers usually threaten targets with le-

gal costs should the targets lose their cause of action; few threats materialize, though a few do, depending on judges' decisions. Many such cases are dismissed for lack of evidence. Bullies are slick and know to cover their tracks. It is a lifelong habit.

Unscrupulous lawyers will take injured targets' money (of several thousands of dollars) but they will later tell targets that they are dropping the cases due to lack of evidence to support the actions. If targets do have strong cases, attorneys will accept the cases on **because they feel the targets have suffered discrimination under one of the above three mentioned laws AND they believe the targets have sustained significant pain, suffering, and financial losses**.

Most employment attorneys will advise targets physically or mentally injured on the job to file for workers' compensation. If the injury is stress-related, employers' workers' comp insurance carriers will attempt to argue that the stress was caused by the worker's personal life and not by the job. They will also argue in California that the stress resulted from the employer's good faith attempt to manage properly. Targets need

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be prepared to be denied workers' compensation and to find attorneys who specialize in fighting for the target's rightful benefits.

Attorneys also should, but not always do, inform targets of possible and available to them. To be eligible for unemployment, a target must prove s/he is out of work though no fault of his/her own. Targets who do qualify for unemployment benefits are also availed of if s/he is deemed able to be rehabilitated. Disability benefits are available to medically diagnosed targets through their pension systems or through the the Federal Social Security System, if the worker qualifies due to length of time working for one of these systems.

As for the average bully who simply targets individuals for the common sport of picking on somebody all of the time: As long as the target is not of another class, is not physically or mentally disabled, and is not whistleblowing....

That's why Healthy Workplace Advocates are here!

Because existing law is inadequate . . .

because it's the right thing to do . . .

and because bullying breaks hearts!

For more detail information about workplace litigation and your particular case, Healthy Workplace Advocates suggest:

See a lawyer! If a target cannot hire an attorney for representation, join us in an attempt to try to 'let it go' by helping to pass Healthy Workplace Legislation and giving our State a better, more humane workplace for all.



NINTH CIRCUIT CASES

United States v. Crampton, No. 06-302 (December 20, 2007) “Gregg Crampton was driving his niece and her three-year old daughter around as he made a methamphetamine delivery. He realized his probation officer had seen him, so he sped away and told his niece to throw the methamphetamine and needles they had out of the window. She refused, so he pointed his gun at her, threatened her, and told her to get out of the car. She pointed out that the car was going too fast, so he slowed down and pushed her and her three-year-old out of the car. The trooper chasing Crampton could not catch him, but later that day, the police found the car on a forest service road, with an empty gun case and a box of twenty-four .357 cartridges.

The next day Crampton called his niece and threatened her. Fearing that he might visit, she called the police. The police got a warrant and arrested him at his house the day after that, and found another sixteen rounds of .357 ammunition in his pants pocket.

Crampton was indicted for two counts of being a felon in possession of firearms, one for the day of the high speed chase and one for the day he was arrested.

The indictment stated four prior felonies that would make Crampton eligible for enhanced punishment under the Armed Career Criminal Act. Three were drug crimes, and one was possession of a sawed-off shotgun. He made unsuccessful pre-trial motions, which preserved the issues we discuss below, pleaded guilty to both counts, and was sentenced to serve fifteen years in prison.”

United States v. Berber-Tinoco, No. 06-50684 (December 19, 2007) “We consider the challenge brought by David Berber-Tinoco to the district court’s denial of his motion to suppress. Berber sought to suppress his statements and fingerprints which were taken pursuant to an arrest by Border Patrol officers. Berber argues that the officers lacked reasonable suspicion to stop him, and also argues that we must reverse the district court’s ruling due to misconduct by the district court judge during the suppression hearing. We hold that there was reasonable suspicion for the stop and that the judge’s violation of Rule 605 of the Federal Rules of Evidence was harmless. Therefore, we affirm.”

United States v. Zimmerman,

No. 06-50506 (December 18, 2007) “We consider whether compelling a criminal defendant to give a blood sample for DNA testing could violate his rights under the Religious Freedom Restoration Act (RFRA).

Defendant may only invoke RFRA if his beliefs are both ‘sincerely held’ and ‘rooted in religious belief, not in “purely secular” philosophical concerns.’ *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981). To prevail under RFRA, defendant must first (1) articulate the scope of his beliefs, (2) show that his beliefs are religious, (3)

“he can’t provide a blood sample because the ‘human body is a temple,’ “

prove that his beliefs are sincerely held and (4) establish that the exercise of his sincerely held religious beliefs is substantially burdened. If defendant successfully demonstrates all this, the government must then prove that the burden on defendant’s exercise of religion is nonetheless permissible because (1) it furthers a compelling govern-

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mental interest (2) through the least restrictive means.”

“Zimmerman professes the belief that he can’t provide a blood sample because the ‘human body is a temple,’ and ‘only God, our Creator, can call for my blood to spill.’ He bases this belief on his Catholic upbringing, his time spent studying other religions such as Buddhism and a passage from the Bible. *See* Genesis 9:6 (‘Whosoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man.’). While this may not be a mainstream religious belief or common interpretation of the Bible, Zimmerman’s belief that he can’t give a blood sample is based on his connection with God, not purely on secular philosophical concerns. *See Callahan*, 658 F.2d at 683. As a result, the district court erred in holding that Zimmerman’s refusal to give a blood sample wasn’t based on a religious belief.

We remand for the district court to reconsider Zimmerman’s RFRA claim. First, the district court must determine the precise scope of Zimmerman’s beliefs. While Zimmerman’s beliefs clearly prohibit blood samples, it’s unclear whether providing a

tissue sample, hair sample or a cheek swab would also violate his beliefs. Zimmerman’s counsel at oral argument suggested some of these may not, but Zimmerman’s declaration refers to ‘tissue’—in addition to ‘body fluids’ and ‘blood’—as ‘sacred.’“

PAE Gov’t Servs., Inc v. MPRI, Inc., No. 06-56438 (December 18, 2007) “We consider whether a district court may strike allegations from an amended complaint because they contradict an earlier iteration of the same pleading.



Which brings us to the meat of the coconut: Does the fact that an amended complaint (or answer) contains an allegation that is apparently contrary to an earlier iteration of the same pleading render the later pleading a sham? The answer is: not necessarily.”

United States v. Biagon, No. 06-10479 (December 17, 2007) “In this appeal, we consider whether the district court violated the defendant’s right of allocution when it denied a motion to close the courtroom for sentencing. We conclude that the defendant’s rights were not violated, and affirm the judgment of the district court.

In this case, the record clearly shows that the district court asked Biagon whether there was anything he wished to say before sentence was imposed, and Biagon made a brief statement to the district court. Biagon actually exercised his right of allocution. He was not deprived of any constitutional right.

All of this is conceded by Biagon on appeal. However, he contends that because the district court did not grant defense counsel’s motion to close the proceedings at the onset of the sentencing hearing, his right of allocution was infringed because he could not allocute fully.”

United States v. Betts, No. 06-50205 (December 14, 2007) “Marcus Betts worked for TransUnion LLC, one of the three major credit reporting agencies.

B

He was the leader of the unit that decided disputes, where people claimed that some black mark on their credit score was inaccurate. He took bribes to conspire with his codefendants to falsely improve people's credit scores. His coconspirators would take money from people who wanted to improve their credit, and send letters that Betts would put in TransUnion's database in such a way as to delete negative entries. It was a kind of private sector ticket fixing scheme, with the outside people calling themselves 'Second Chance Financial Services,' designed to make it easier for people with bad credit records to borrow money. Betts did not create or direct the conspiracy, but was the essential inside man at TransUnion and helped his coconspirators compose an effective form letter. Betts falsified 654 credit histories, generating around a million dollars in losses to lenders who got stuck with the bad risks. He pleaded guilty to conspiracy under 18 U.S.C. § 371, and raises no issues on appeal except with regard to sentencing. He claims that some of the conditions of supervised release are too restrictive. The judgment applies these conditions to the entire three-year period of supervised release."

Pyramid Lake Paiute Tribe v. Nevada State Eng'r, No. 06-17375 (December 7, 2007) "Pyramid Lake Paiute Tribe of Indians (Pyramid) appeals the district court's order affirming the decision of the Nevada State Engineer which granted the transfer of water rights from the parcels of property to which they were then appurtenant to new parcels. All of the water rights are within the boundaries of the Newlands Reclamation Project. Pyramid asserts that the rights could not be transferred because they had already been abandoned or forfeited within

"We appreciate that the State Engineer and some of the applicants are becoming mighty tired of their trips to and from the federal court system. "

the meaning of the law of the State of Nevada. We affirm in part, reverse in part, and remand in part."

"We have, once again, been called upon to revisit water rights issues arising out of the Newlands Reclamation Project and the Orr Ditch Decree. We appreciate that the State Engi-

neer and some of the applicants are becoming mighty tired of their trips to and from the federal court system. Thus, we have tried to sharpen our statement of the rules that must be applied. Alas, we cannot bring this process to a close, but must let parts of it continue on their torturous path."

United States v. Corona-Verbera, No. 06-10538 (December 7, 2007) "We must decide (1) whether a nearly five-year delay between events giving rise to the indictment and the return of the indictment constituted a due process violation; (2) whether, in spite of a nearly eight-year delay between the indictment and arrest, our government was diligent in searching for Corona-Verbera and bringing him to trial; (3) whether there was sufficient evidence to convict Corona-Verbera on all four counts; and (4) whether four concurrent eighteen-year sentences were unreasonable. We have jurisdiction under 28 U.S.C. § 1291, and we affirm."

Pittman v. State of Oregon, No. 05-35 (December 5, 2007) "Helen Pittman appeals from dismissal of an employment discrimination claim brought under

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§ 1981 against the Employment Department of the State of Oregon. The district court dismissed the § 1981 action, holding that the statute does not provide a cause of action against states. We affirm.

Under this circuit's case law, § 1981 contains a right of action against municipalities. *Fed'n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204 (9th Cir. 1996). The plaintiff maintains that *Federation* should be extended to permit a § 1981 cause of action against a state, while the State contends otherwise. After surveying the statutory language and history in light of governing case law, we must agree."

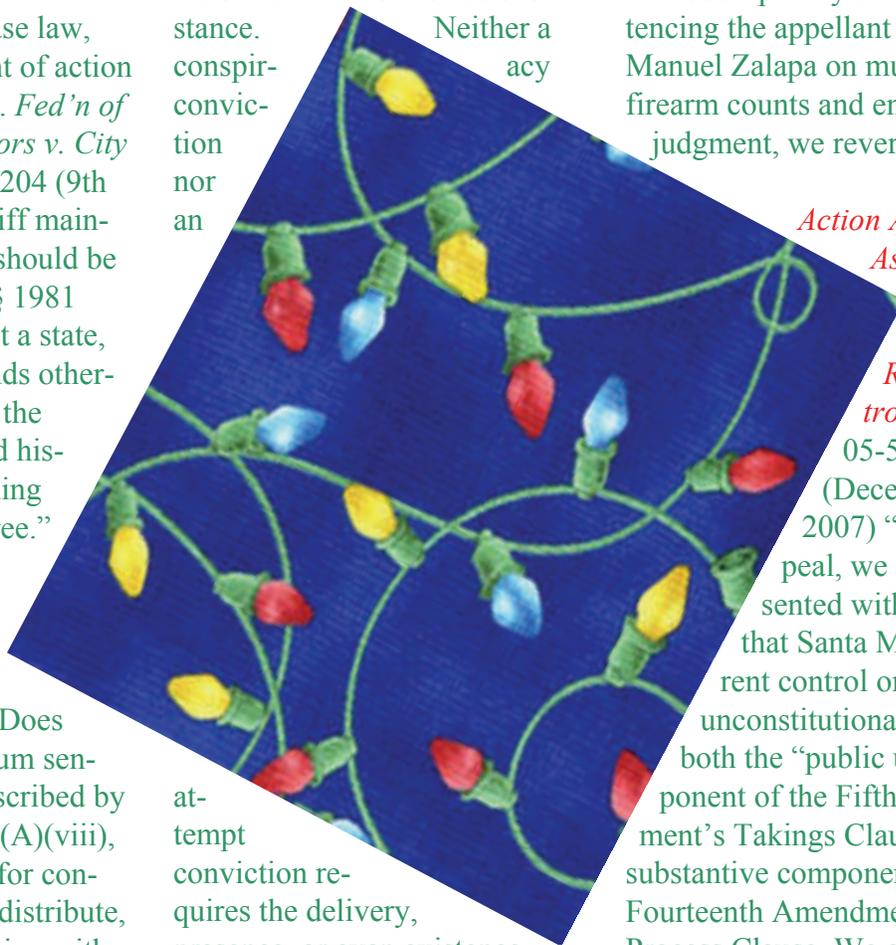
United States v. Macias-Valencia, No. 06-10711 (December 5, 2007) "Does the mandatory minimum sentence of 10 years, prescribed by 21 U.S.C. § 841(b)(1)(A)(viii), apply to a conviction for conspiracy with intent to distribute, and attempted possession with intent to distribute, 50 grams or more of methamphetamine, even when no actual contraband was involved in the commission of the offense? Joining the Sixth Circuit, we answer 'yes.'

In summary, Congress has dictated that a conviction for a conspiracy to distribute or an attempt to distribute a controlled substance carries the same penalty as a conviction for the distribution of the same controlled substance. Neither a conspiracy conviction nor an attempt conviction requires the delivery, presence, or even existence of actual contraband. It follows that the district court properly imposed the mandatory minimum sentence here."

United States v. Zalapa, No. 06-50487 (December 5, 2007) "We

hold that a defendant who fails to object in the district court to multiplicitous convictions and sentences does not waive his or her right to raise a double jeopardy challenge on appeal. Because we conclude that the district court plainly erred by sentencing the appellant Joseph Manuel Zalapa on multiplicitous firearm counts and entering judgment, we reverse."

Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd., No. 05-56533 (December 3, 2007) "In this appeal, we are presented with a claim that Santa Monica's rent control ordinance is unconstitutional under both the "public use" component of the Fifth Amendment's Takings Clause and the substantive component of the Fourteenth Amendment's Due Process Clause. We conclude that the Fifth Amendment claims are not viable, that the facial Fourteenth Amendment claim is time-barred, and that the as applied Fourteenth Amendment claim is unripe. We therefore affirm the judgment of



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the district court, dismissing the complaint

United States v. Kreisel, No. 06-30110 (November 29, 2007) “In 2004 we held that the DNA Analysis Backlog Elimination Act of 2000 ‘satisfies the requirements of the Fourth Amendment’ with respect to individuals on supervised release. *United States v. Kincaide*, 379 F.3d 813, 839 (9th Cir. 2004) (en banc). The 2000 Act required collection of DNA samples from individuals in custody and on probation, parole, or supervised release who had been convicted of ‘qualifying Federal offenses,’ then defined as certain violent crimes. 42 U.S.C. § 14135a (2000). Congress amended the Act in 2004 to expand the qualifying offenses to all felonies. Joining every other circuit to consider the 2004 Act, we hold that the amended statute passes constitutional muster with respect to a convicted felon on supervised release.”

Bias v. Moynihan, No. 05-1675 (November 29, 2007) “Alice Bias appeals from the order of the district court granting summary judgment in favor of Officer Frank Moynihan, Police Chief Joseph Kitchen, and the City of San Leandro. She con-

tends that the district court erred in concluding that she failed to demonstrate that there were genuine issues of facts in dispute regarding whether the Appellees detained her for psychiatric evaluation without probable cause in violation of her federal and state law rights. Ms. Bias also claims that the district court abused its discretion in its evidentiary and procedural rulings. We affirm because we conclude that probable cause existed to justify detaining her on two occasions, and the district court’s evidentiary and procedural rulings do not compel a reversal of the judgment.”

Beatty v. Schirro, No. 05-99013 (November 28, 2007) “We previously remanded this capital habeas appeal to the district court with instructions to conduct an evidentiary hearing on whether Petitioner’s inculpatory statements to a prison psychologist were voluntary within the meaning of the Fifth Amendment. We must now decide whether the district court erred in subsequently concluding that such statements were constitutionally voluntary and therefore properly admitted at Petitioner’s trial.”

“For the foregoing reasons, we

hold that Beatty’s inculpatory statements were voluntary within the meaning of the Fifth Amendment. The decision of the district court is therefore **AFFIRMED.**”



Fisher v. City of San Jose, No. 04-16095 (November 20, 2007) “Steven Fisher claims constitutional violations stemming from a twelve-hour standoff at his apartment between him and a large number of San Jose police officers, at the end of which he came out of the apartment and submitted to arrest. He sued the city of San Jose and several officers under 42 U.S.C. § 1983, contending, among other things, that the arrest was invalid because the police never obtained or attempted to obtain a warrant. A jury found for the defendants on all claims, including a claim for warrantless arrest. Fisher thereupon filed a renewed motion under Federal Rule of Civil Procedure 50(b) for judgment as a matter of law on the warrantless arrest claim. Granting the motion against the City, the

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district court ordered the City to pay nominal damages of one dollar and issued an injunction regarding future training of police officers. We uphold the district court's ruling on appeal, as we agree that the failure to obtain a warrant under the circumstances of this case constituted a constitutional violation as a matter of law."

"The warrant requirement's purpose is to permit a third party to evaluate whether the police should intervene in a situation at all. If not, police retreat can prevent a potentially dangerous situation from escalating into a tragic one. Here, it may well be that a timely application to a magistrate would have resulted in issuance of a warrant for Fisher's arrest and events would then have proceeded pretty much as they did. But that is not certain, and is in any event beside the point. The criminal jury hung on the felony count presented to it, so it is at least possible that a magistrate would have thought the police lacked probable cause on the charge for which he was arrested. More importantly, it is precisely to require the officers involved to articulate the grounds for arrest and to obtain the views of a dispassionate magistrate on the adequacy of those grounds that

a warrant is required.

Here, there were plenty of police officers involved and there was plenty of time to obtain such a warrant. It was unconstitutional to fail to do so.

CALLAHAN, Circuit Judge, dissenting:

I respectfully dissent.

What we have here is a very dangerous situation that was resolved safely for all concerned — Fisher, the public, and the police — because of good police work. Nevertheless, the majority penalizes the police by announcing a new warrant requirement and imposing liability upon them for failing to obtain a telephonic arrest warrant in the midst of a police standoff that could have turned deadly at any moment. After reviewing all the facts and receiving proper instructions on the law, twelve jurors unanimously found that the police had handled the situation lawfully. We should accept the wisdom of the jurors' decision."

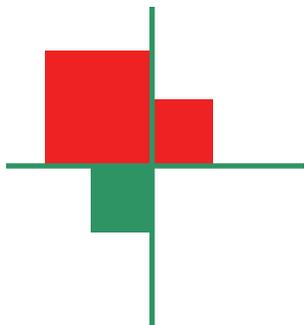
Scheehle v. Justices of the Supreme Court of Arizona, No. 05-17063 (November 15, 2007) "Mark V. Scheehle, an Arizona tax lawyer, challenges as an un-

constitutional taking the Arbitrator Appointment System of the Maricopa County Superior Court, which requires that an experienced attorney serve as an arbitrator for up to two days a year with minimal compensation. Following a decision by the Arizona Supreme Court that the Appointment System was permissible under Arizona law, the district court reaffirmed its grant of defendants' motion for summary judgment. We now affirm. We hold that Scheehle's constitutional challenge to the Appointment System is properly considered under the regulatory takings test set forth in *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978), and applying that test, we conclude that the impact of the Appointment System on Scheehle does not amount to a taking for which Scheehle is entitled to compensation under the Fifth Amendment."

Center for Biological Diversity v. National Highway Traffic Safety Admin. No. 06-71891 (November 15, 2007) "We have jurisdiction under 49 U.S.C. § 32909(a) to review the Final Rule issued by NHTSA. We hold that the Final Rule is arbitrary and capricious, contrary to

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the EPCA in its failure to monetize the value of carbon emissions, failure to set a backstop, failure to close the SUV loophole, and failure to set fuel economy standards for all vehicles in the 8,500 to 10,000 gross vehicle weight rating class. We also hold that the Environmental Assessment was inadequate and that Petitioners have raised a substantial question as to whether the Final Rule may have a significant impact on the environment. Therefore, we remand to NHTSA to promulgate new standards as expeditiously as possible and to prepare a full Environmental Impact Statement.”



(Continued from page 1)

“Public Safety

Employer-Employee Cooperation Act of 2007,” which will be offered as S.AMDT.3615 to the Farm Bill (H.R. 2419)

The Public Safety Employer-Employee Cooperation Act of 2007 would severely damage the historic relationships that exist between state and local elected officials, their employees, and the constituents they represent. State, county, and municipal officials provide workers with excellent salaries, benefits and working conditions that are responsive to the fiscal needs and limitations of state, county and city governments, and reflect the priorities of the communities that elected officials represent.

This legislation would force states and localities to adopt federal collective bargaining standards, disregard existing state laws and ordinances that were developed to create an effective and efficient public sector workforce, and place the needs of a select group of workers – public safety officers – in front of the larger needs of the community or other public sector employees. It would, quite simply, undermine state, county and municipal autonomy with

respect to making fundamental employment decisions by mandating specific working conditions, including collective bargaining.

Even states that already have comprehensive collective bargaining laws are likely to be impacted by S. 2123. The bill gives the Federal Labor Relations Authority (FLRA) the power to draft regulations defining the scope of collective bargaining and then to decide whether or not states are in compliance with those regulations. Currently, more than 35 states have granted their state and local government employees the right to enter into collective bargaining arrangements of some type. These states have done so within the framework of their constitutions and state laws. S. 2123 would mandate collective bargaining rights for all police, fire and emergency medical workers without regard to state laws or constitutions and establish a precedent for federal interference in all employee-employer relationships between state, county and municipal governments and their employees.

In light of the labor protections provided by state laws, labor agreements, state, county and

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city government civil service systems and personnel procedures, we believe that this law is unnecessary at best and potentially very damaging at worst. States, counties, cities and towns have always been committed to providing their public safety workers with excellent working conditions, competitive salaries, excellent health and pension benefits, and a working environment that is safe and appropriate. At the same time, state, county, city and town elected officials must balance the needs of public safety workers and the needs of the citizens they represent. S. 2123 would alter that balance permanently and irrevocably.

On behalf of America's 3,006 counties, 19,000 cities and towns, their county and city elected and appointed officials, elected and appointed sheriffs, and state, county and city personnel professionals, we urge you to respect the long-standing principal of noninterference in employer-employee relations that has existed among the federal, state and local governments, and reject this legislation.

Sincerely yours,

