

INSIDE FSRL



INSIDE THIS ISSUE

FSRL Successful In U.S. Supreme Court With Decision In Favor Of Client County of Los AngelesPg. 1

Firm Wins Class Action Trial For Orange County And Ends 27 Year InjunctionPg. 1

...And A Merry Christmas To You TooPg. 2

Firm Prevails After 2 Hour Jury DeliberationsPg. 2

Officer's Use Of Trained Police Dog Found Not To Constitute Deadly ForcePg. 2

New Shareholder ProfilesPg. 3

SPECIAL ANNOUNCEMENT!

Please join us in congratulating the two newest shareholders of Franscell, Strickland, Roberts & Lawrence, PC

- ◆ Mr. Jin S. Choi
- ◆ Mr. Michael D. Allen

SAVE THE DATES ~ FSRL HOLIDAY PARTIES:

LOS ANGELES COUNTY:
Chevy Chase Country Club
3067 East Chevy Chase Drive
Glendale, CA 91206
December 7, 2006

ORANGE COUNTY:
The Catch Restaurant
1929 South State College Blvd
Anaheim, CA 92806
December 14, 2006

More information to follow

FIRM SUCCESSFUL IN U.S. SUPREME COURT IN MAJOR EMPLOYMENT DECISION

In May of 2006, FSRL successfully convinced the U.S. Supreme Court to rule in favor of the County of Los Angeles, and reverse Ninth Circuit Court of Appeals in the case of Ceballos v. Garcetti.

Ceballos, an employee of the Los Angeles County District Attorney's office, brought suit under 42 U.S.C. § 1983, alleging that County employees had retaliated against him for exercising his First Amendment rights. Specifically, Ceballos alleged that he was retaliated against for a memorandum he drafted arguing that an affidavit police used to obtain a critical search warrant was inaccurate.

FSRL and the County prevailed in the preliminary stages of the case after the District Court granted the County's summary judgment motion, finding no protected First Amendment speech interest in the memorandum because Ceballos wrote it in a purely job-related capacity, pursuant to his employment duties. The Ninth Circuit Court of Appeals reversed, holding that the memorandum was entitled to First Amendment protection because it was on a matter of public concern, and found that Ceballos' speech interests outweighed the government's interests in promoting workplace efficiency and avoiding workplace disruption.

FSRL filed a petition for certiorari with the U.S. Supreme Court which was granted. The case was argued twice before the Supreme Court, first while former Justice Sandra Day O'Connor was on the bench and again in March after Justice Samuel Alito Jr. took her place.

Ultimately, the U.S. Supreme Court reversed the Ninth Circuit's decision, holding that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes and thus the Constitution does not insulate their communications from employer discipline. Garcetti v. Ceballos, 126 S. Ct. 1951 (2006). This Supreme Court victory has positive and far-reaching implications for all of FSRL's clients!

FIRM WINS CLASS ACTION TRIAL FOR ORANGE COUNTY AND ENDS 27 YEAR INJUNCTION

In November and December of 2004, David Lawrence and Christina Sprenger represented the County of Orange in a trial before the Honorable Gary L. Taylor in the consolidated actions entitled Pierce v. County of Orange, Case No. SACV 01-981 GLT (MLGx) and Stewart v. Gates, 450 F. Supp. 583 (C.D. Cal. 1978). The case was a class action suit brought on behalf of all pre-trial detainees at the Orange County jail, alleging violations of the Americans with Disabilities Act (ADA), Title 15, and the 1978 Stewart injunction which imposed inmate population limits on the jail and a variety of restrictions relating to outdoor exercise, seating in holding cells, time allotted to finish meals, visitation, access to legal materials, day room access, access to telephones, unsupervised visitation with minors, receipt of mail, minimum sleep times before and after going to court, access to blankets, and the right to a bed within 24 hours of arrival at the jail.

At one point in the protracted litigation, the court certified a damages class in addition to an injunctive relief class. The firm was successful in decertifying the damages aspect of the class action before trial.

Following a bench trial, the Court issued its April 27, 2005 Findings of Fact and Conclusions of Law in the Pierce matter, finding that the plaintiffs had failed to prove any pervasive violations. In a separate 23-page order, Judge Taylor vacated the 1978 Stewart injunctions and dismissed the case, noting that "the minimum standard Stewart orders have outlived their time, and are unnecessary and no longer appropriate."

Plaintiffs have appealed Judge Taylor's ruling and the case has been fully briefed before the Ninth Circuit Court of Appeals. Oral argument before the Court of Appeals is expected to take place sometime in 2007.

...AND A MERRY CHRISTMAS TO YOU TOO

Shortly before Christmas in 2001, an Orange County Deputy Sheriff initiated a traffic stop in San Juan Capistrano, California. The driver's reply to the Deputy after being handed a traffic citation for speeding was, "I hope you have a Merry Christmas." That much happened, everyone involved agrees.

From there on, the accounts of the events diverge. Ultimately, the Deputy used pepper spray and called for backup to subdue a resisting suspect; the driver claimed that he yelled at the Deputy to warn him of oncoming traffic, and thereafter sat obediently at the curb. The driver was arrested, arraigned, and

subsequently acquitted of the misdemeanor charges filed against him by the District Attorney's Office.

After his acquittal, the driver filed a lawsuit for malicious prosecution against the County and the involved Deputies. The lawsuit was short-lived. The District Court granted summary judgment in favor of the Deputies, finding that the driver was unable to overcome the presumption that the District Attorney had exercised independent judgment.

The driver appealed to the Ninth Circuit, who did not find the driver's rationale persuasive. In a published opinion, the Ninth Circuit concluded:

"In the context of a civil rights case alleging malicious prosecution, the fact that a plaintiff's version of an incident conflicts with that

of the law enforcement officers involved is not enough to defeat the presumption that a prosecutor exercises independent judgment in choosing to file charges. A plaintiff who presents only such evidence cannot survive summary judgment on a malicious prosecution claim." Newman v. County of Orange, et al., No. 04-56103, D.C. No CV-02-01152-GLT (2006).

The August 7, 2006 decision has far-reaching implications in all cases involving he-said-she-said-type allegations against the police. It further establishes that the presumption of independent prosecutorial judgment is very much alive and well.

Attorneys David D. Lawrence and Christina M. Sprenger represented the County of Orange as well as the individual defendants in this matter.

CITY PREVAILS IN PROTRACTED FAIR HOUSING CASE

After years of litigation, the jury took no more than two hours to return a defense verdict after ten days of trial. Such was the outcome of Inland Mediation Board v. City of Pomona.

The lawsuit stemmed from the City of Pomona's efforts to respond to the con-

cerns of a private group of Pomona residents, who formed the group in order to address common problems facing their community. The group known as K-KAPS, an acronym for the streets on which they lived and worked, petitioned the City to assist the members in their efforts to improve their neighborhood. The City responded in kind.

Thereafter, Plaintiffs Grace Cross and the Inland Mediation Board sued K-KAPS for housing discrimination based on race, color, national origin and disability, among other

claims. They additionally sued the City of Pomona, claiming that the City encouraged K-KAPS members in their endeavors and violated plaintiffs civil rights.

The jury decided that these charges against the City were unfounded; plaintiffs were awarded nothing.

Attorneys David D. Lawrence and Raymond W. Sakai represented the City of Pomona in this matter.

A VICTORY FOR POLICE OFFICERS & THEIR CANINE FRIENDS:

OFFICER'S USE OF TRAINED POLICE DOG FOUND NOT TO CONSTITUTE DEADLY FORCE

In a published decision dated on August 22, 2006, the California Court of Appeal put an end to a decade-long legal battle, declaring a complete victory for FSRL and its client, the Los Angeles County Sheriff's Department Thompson v. County of Los Angeles, B174594 (2006). In February 1991 Los Angeles County Sheriff's Deputies responded to an

attempted robbery and car theft at a 7-Eleven store in Downey, California. Among the Sheriff's Deputies who responded to the scene was a police dog handler. With the help of a search dog, the unlucky suspect was eventually found hiding under a car in a carport. As the suspect was coming out from under the car, he was injured by the police dog and by officers trying to stop him from fighting with the dog.

A year later, after being convicted of grand theft and attempted robbery, Brett Thompson filed a complaint against the County and numerous individuals, alleging violations of both federal and state law.

After a long battle, including two successful defense motions for summary judgment and

two appeals, which kept the case alive for over 10 years, the matter was finally set for trial in December 2003.

The plaintiff proceeded on a supervisory liability theory. Attorney David D. Lawrence of FSRL represented Los Angeles County and the former Undersheriff, a retired Captain, a retired Lieutenant and a retired Sergeant. After a two month trial, the jury found in favor of all defendants, i.e., that Thompson had not been subjected to unreasonable force.

(continued on page 3)

NEW SHAREHOLDER PROFILES

JIN CHOI

Jin Choi received his Juris Doctorate from the UCLA School of Law in 1995, where he served as the Chief Comments Editor for the Asian Pacific American Law Journal. In 1992, he graduated with Distinction from the University of California at Berkeley, earning his Bachelor of Arts degree in political science.

Since joining Franscell, Strickland, Roberts & Lawrence in 1998, Jin has represented public entities and their employees in cases involving a broad array of federal and state law claims, such as wrongful termination, excessive force, and 42 U.S.C. § 1983 municipal liability. Jin also has extensive appellate experience, having successfully argued before both the Ninth Circuit Court of Appeals and the California Court of Appeal on numerous occasions, and is well-versed in both federal and state appellate procedures. Furthermore, Mr. Choi's appellate cases have yielded important published opinions by the United States Supreme Court, California Supreme Court, Ninth Circuit Court of Appeals, and the California Court of Appeal—including a landmark United States Supreme Court case clarifying the scope of First Amendment protection in the public employment setting.

Mr. Choi recently authored an article regarding this case for the California

Labor & Employment Law Review, entitled "Garcetti v. Ceballos: Clarifying the Constitutional Dimensions of Public Employee Speech."

Prior to joining Franscell, Strickland, Roberts & Lawrence, Jin clerked with the California Attorney General's Office where he focused primarily on appellate litigation. Immediately out of law school, he practiced in the area of criminal defense, at both the trial and appellate levels. As a part of this experience, he drafted a death penalty appeal heard by the California Supreme Court.

Bar Admissions and Memberships

- California State Bar, 1995
- United States Supreme Court
- United States Court of Appeals, Ninth Circuit
- United States District Courts of California
- Los Angeles County Bar Association

MIKE ALLEN

Mike Allen received his Juris Doctorate from the UCLA School of Law in 1998. While in law school, he was active in the UCLA Moot Court Honors Program, receiving an award of Distinguished Advocate, Honorable Mention, in the Moot Court Competition. In addition, Mike was a member of the UCLA Journal of International Law and Foreign Affairs serving as a Lead Editor from 1996-1997. In 1994, he graduated from the University of California at Los Angeles, earning his Bachelor of Arts degree in psychology with a specialization in business

administration.

In 1997, Mike began working as a law clerk at Franscell, Strickland, Roberts & Lawrence. As a law clerk, he worked on a successful Petition for Writ of Certiorari to the United States Supreme Court in City of West Covina v. Perkins, 523 U.S. 1105 (1998).

Since 1998, as an attorney at Franscell Strickland, Roberts & Lawrence, Mike has handled cases in both state and federal court at the trial and appellate level. His cases have covered a wide variety of issues including, but not limited to, the scope of public entity and public employee liability under 42 U.S.C. § 1983 and 18 U.S.C. § 1961, et seq., the Racketeer Influenced and Corrupt Organizations Act, as well as the impact of 42 U.S.C. § 1997e, the Prison Litigation Reform Act, on prison litigation. Mike has had success on numerous dispositive motions, including motions for summary judgment. In 2006, his efforts led to the granting of summary judgment on a \$20 million breach of contract lawsuit against the City of Compton. He has also successfully argued cases before the California Courts of Appeal and the Ninth Circuit Court of Appeals. Mike has also been a guest lecturer on law enforcement use of force.

Bar Admissions and Memberships

- California State Bar, 1998
- United States Court of Appeals, Ninth Circuit
- United States District Courts of California
- American Bar Association
- Los Angeles County Bar Association

AVICTORY ...

(continued from page 2)

Thompson appealed claiming that the trial court erred when it refused to instruct the jury with a definition of deadly force that included force creating a substantial risk of death or serious bodily

injury. In a published decision, the California Court of Appeal affirmed the trial court's decision. In upholding the verdict, the Court found that the law did not support the claim that use of a trained police dog constituted deadly force. The trial court properly instructed the jury that the standard was whether the force used was unreasonable.

This long-awaited and well-deserved victory brings good news for police and sheriff's departments and their canine units in Los Angeles and other counties across the state.

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