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Latest Decisions
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tutional Issues

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The black voters of Escambia County, Florida filed an action in district court, claiming that the at-large system for electing members of the Board of County Commissioners violated their constitutional rights. The district court entered judgment for the black voters, concluding that the at-large system violated the Fourteenth and Fifteenth Amendments and the Voting Rights Act. The court of appeals affirmed the judgment, finding that the system violated the Fourteenth Amendment. The appellate court did not review the finding that the system violated the Fifteenth Amendment and the Voting Rights Act, however. The issue presented on appeal was whether the evidence before the district court was adequate to support the conclusion that the system violated the Fourteenth Amendment.

The *U.S. Supreme Court* vacated and remanded. The court held that the court of appeals should decide whether the Voting Rights Act would provide a statutory ground for affirmance of the district court's judgment. The court noted that when a judgment under review can be disposed of on a statutory ground, it will not consider the constitutional questions present in the case.

Escambia County, Florida v. McMillan, U.S. Supreme Court, No.82-1295, March 29, 1984, by the court; Marshall, J., dissenting.

The full text of this case appears in today's Daily Appellate Report on page 1129.

Tort Law

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Mrs. Breaux choked while eating at a Gino's restaurant. The assistant manager called for an ambulance but did not render any first aid. Mrs. Breaux was alive when the ambulance arrived, but died later. Her husband, McNeal Breaux, sued Gino's for wrongful death. Summary judgment was granted in favor of Gino's, from which Breaux appealed.

The *C.A. 1st* affirmed. The court noted that restaurants have a legal duty to come to the assistance of their customers who become ill or need medical attention. Section 28689 of the Health and Safety Code requires restaurants to post first-aid instructions on how to remove food stuck in people's throats. But that same section states that there is no obligation on the part of any person to assist a choking person in removing the obstruction. The court ruled that, as a matter of law, a restaurant meets its legal obligation to a patron in distress when it summons medical assistance within a reasonable time. Hence, since Gino's fulfilled its legal duties towards Mrs. Breaux, summary judgment was properly granted.

Breaux v. Gino's, Inc., C.A. 1st, AO22534, March 21, 1984, by Barry-Deal, J.

The full text of this case appears in today's Daily Appellate Report on page 1125.

Environmental Law

Landowner Must Remove Fill Placed on Land by Others

L.A. District Seeks To Bar New Trial On Busing Issue

Ninth Circuit to Decide

By KATHLEEN F. JACKSON

One day after the Los Angeles school board quietly voted to pay its opponents' legal fees in one school desegregation case, its lawyers were in a federal circuit court Tuesday trying to kill another legal attack on the district's integration policies.

In an unusual en banc hearing in San Francisco, lawyers for the district and the NAACP appeared before an 11-member panel of the Ninth U.S. Circuit Court of Appeals to argue over whether the NAACP should be allowed to continue a desegregation suit in federal court.

Meanwhile, on Monday, the school board voted 5-2 to pay $1.35 million in attorneys fees to the NAACP, the American Civil Liberties Union, and the Los Angeles Center for Law and Justice, the groups which represented plaintiffs in *Crawford v. Board of Education*, the state court case which led to the federal lawsuit.

The circuit court's decision in the federal case is of crucial importance because it could plunge the district into another long and costly lawsuit to defend its efforts to achieve some sort of racial balance in Los Angeles schools.

NAACP lawyers filed the suit in 1981 after Los Angeles Superior Court Judge Robert Lopez issued a ruling that ended protracted and bitter desegregation litigation against the district in the Crawford case.

The ruling, entered after 18 years of political and legal maneuvering on both sides, forced the district into taking voluntary steps to end segregation. But it did not, as the plaintiffs had wanted, require the district to use mandatory busing.

It was the omission of busing as a remedy to end segregation that spurred the NAACP to file a federal court suit on behalf of black students, said Joseph Duff, one of the NAACP attorneys in the case.

The civil rights organization is seeking to prove that school district officials intentionally segregated schools three decades ago and therefore should be forced to employ busing as a remedy.

School district lawyers are contending that the NAACP should not be allowed to bring up issues that already have been litigated in the state courts because the matter has been settled.

Different Plaintiffs

But NAACP lawyers respond that the issue of whether the district intentionally segregated schools was never decided in state court and that the black students represented by the organization are not the same plaintiffs that were represented in *Crawford*.

School district lawyer William Shea and Thomas Atkins, NAACP general counsel, the two lawyers who participated in oral arguments, declined Wednesday to speculate which way the court might be leaning.

But Duff, who observed the arguments, commented, "I would say that oral arguments showed hopeful signs (for the NAACP position)."

The NAACP's discrimination suit seemed all but over when a three-judge panel of the Ninth Circuit ruled last September that the organization could not bring the suit in federal court.

In February, NAACP lawyers got a second chance to convince the Ninth Circuit to allow the case to go to trial when the court decided that 11 judges would reconsider the ruling handed down by the original panel.

During oral arguments Tuesday, Atkins asked the court to either send the case back to the federal district court in Los Angeles for trial or affirm an earlier district court decision "and let us get back to our lawsuit."

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Profile

SANTA BARBARA — Judge Frank Ochoa pays attention to even the smallest details in the operation of the Santa Barbara Municipal Court. When he's not handling preliminary hearings and trials or researching cases, he's supervising the reconstruction of a courtroom and prevailing upon architects not to tear down a woman's bathroom on the second floor of the courthouse.

At Ochoa's suggestion, the court last April instituted a master calendar system.

"There used to be a calendar coordinator who set matters before the judges the day before," explained Ochoa, the acting presiding judge of the court. "The problem was, you could never get two attorneys together on the same case at the same time. And the judges spent a lot of time on the bench figuring out where the attorneys were. It was a system that was fertile ground for chaos."

The judge's concern for organization is evident to his court clerk, who recalls how Ochoa came to work on two judicial holidays to train clerks in handling felony dockets. Ochoa maintains lawyers and defendants will not respect a court system that is improperly administered.

"If you have a sloppy system and it's difficult for people to utilize it, then they go away from court with a bad feeling," said Ochoa.

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"I think that's inimical to what we have to be about. I don't think you can separate the way that you research issues to make sure you're on appropriate ground and the way that you comport yourself in the courtroom and make sure you give all persons who come before you respectful treatment from your concern about the operations of the system itself. ... The system has to be viewed as a whole."

A soft-spoken man, Ochoa is the only Hispanic judge in Santa Barbara. He was a legal aid attorney and administrator in Santa Barbara and Yolo Counties before he was appointed to the bench by former Gov. Edmund G. Brown Jr. in January, 1983.

When he worked for the legal aid program in Davis, Ochoa handled many civil rights cases, becoming an expert in issues pertaining to affirmative action and reverse discrimination in employment and university admissions. He was involved in two celebrated reverse bias cases brought against the University of California, Davis, where Ochoa attended law school.

Bakke Case Brief

Ochoa was among a group of attorneys who prepared a brief urging the U.S. Supreme Court to deny a writ of certiorari in *Bakke v. Regents of the University of California*. The Supreme Court, however, granted a writ and in 1978 considered the suit initiated by Allen Bakke, a white man who claimed he was a victim of reverse discrimination when he was denied admission to the medical school at the University of California, Davis.

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Environmental Law

Landowner Must Remove Fill Placed on Land by Others

The *C.A. 1st* has held that the San Francisco Bay Conservation and Development Commission (BCDC) may order a landowner to remove a landfill placed on its land by others or impose penalties for noncompliance.

Sometime between 1971 and 1976, a fill consisting of several hundred tons of materials was placed on property owned by Leslie Salt Co. Leslie did not license out the property and did not erect gates or fences to control access to the land. Adjacent land not owned by Leslie was licensed to Marshland Development Inc. When the BCDC discovered the fill in 1979, it instituted administrative proceedings against Leslie. At the hearing, no evidence was presented that Leslie actually placed the fill on the land, had knowledge of the fill, or was negligent in failing to prevent the fill. The BCDC found that no permit had been obtained for the fill and issued a cease and desist order requiring Leslie to remove the fill within six months or be subject to a penalty in the sum of $6,000 per day for each day of violation. Leslie petitioned for writ of mandate setting aside the cease and desist order. The trial court issued the peremptory writ, holding that the language of the relevant sections of the McAteer-Petris Act (Act), establishing a scheme for regulating the development of the San Francisco Bay and shoreline, require only that the person who places the fill obtain the permit and that the one who violates the statute suffer the penalties. The BCDC and Save San Francisco Bay Association, an intervenor, appealed.

See Page 16 — RULINGS

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"Our concern is that Los Angeles is the second biggest school district in the country. This will be the largest single (school) district desegregation case ever litigated. The segregation has been longstanding, pervasive and still exists," he said.

Shea argued that the only question the federal court had to decide was whether the issue of segregation could be opened again for litigation in the California court.

In a telephone interview Wednesday, Adkins said the federal lawsuit is necessary because the district has made no progress in desegration since Lopez' ruling. "The district is doing what it has always done, maintaining a segregated school district," said Adkins.

NAACP Claims Disputed

Bill Rivera, assistant to the superintendent, disputed the claims that the district is not making an attempt to follow the "spirit and the letter" of Lopez' ruling.

He said it is difficult to carry out any desegregation program in Los Angeles where 80 percent of the district's more than 550,000 students are minorities and where natural residential patterns have created large enclaves of whites and minorities.

He conceded that the vast majority of students who ride buses are minority students because of a school program that allows students to attend any school where space is available as long as it does not negatively affect the racial balance.

"The fact of life in the Los Angeles district is that a program of this type will have mostly minority students moving because that's (white-dominated schools) where the spaces are," said Rivera.

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"Our basic contention was there wasn't any case for controversy," said Ochoa about the arguments presented in the brief. "We researched the records and found out an admissions officer had suggested to Mr. Bakke that he sue the university. At the same time, I was litigating employment discrimination cases against the university, so I was working with the same attorneys who were handling the *Bakke* case. It was pretty clear to me that they were not approaching the case with the same forceful advocacy that they approached other types of litigation."

Ochoa also represented a coalition of law students and civil rights groups like the National Association for the Advancement of Colored People and La Raza National Lawyers Association, which unsuccessfully attempted to intervene on behalf of the university in another reverse discrimination case, *DeRonde v. Regents*. In that case, the California Supreme Court eventually ruled that the law school at the University of California, Davis, did not discriminate against Glen DeRonde, a white student denied admission under a policy that gave preference to minority applicants.

During the past several years, Ochoa said he has noticed a dramatic change in the issues involving affirmative action employment programs.

"When you had an expanding employment pool, the issue was whom to hire and to what degree should you make room for under-represented persons, be they minorities or women, who were traditionally excluded from some jobs," the judge explained. "Now, with the cutbacks in governmental

See Page 17 — PROFILE

uick Appeal

se why the April 16 hearing should panded to allow the corporation to favor of a permenant injunction d dispose of the case. After listen- se arguments, Real determined it cessary for the FTC to present tes- April 16 and based his decision to injunction on papers he already ved from attorneys for both sides.

tement released to the press after ling was issued, Warner said Real relied on the FTC's Bureau of s report as well as on the testi- ix renowned economists — includ- Greenspan, William Baxter, ead of the antitrust division, and l laureates, Kenneth Arrow and Stigler — who also reveiwed the nd found it to be in compliance rust laws."

nts Question lester' Checks Job Seekers

HINGTON (UPI) — The average lester is a "nice" person working ldren at home or at school — not a d man in a wrinkled raincoat," the a Senate panel Wednesday.
ate Judiciary subcommittee is hold- rings on legislation that would re- vernmental agencies that deal with to conduct background checks for records on all potential employees.
Charles Grassley, R-Iowa, sponsor of slation, said it is estimated that in there are 74,725 reported sexual of- against children — and three to four at number go unreported.
he two FBI agents who testified be- panel seemed to think new laws are ed.
n Mercer Jr. of the identification di- said sufficient laws already are in hat allow the FBI to conduct such routinely at states' requests.
eth Lanning, a special agent who has with sex crimes for the bureau, said of new laws there is a need to make more aware that a child molester is essarily a "dirty old man in wrinkled t with a bag of candy."
edophile is typically a male individual ws his victim, is not dirty or old, and and looks like everyone else."
exual molester will seek employment he will be in contact with children, at are center, a camp or a school, Lan- id. Pedophiles may "simply use their as a 'nice' man in the neighborhood" advantage of children, he said.
er said it is difficult to distinguish be- the "well-meaning nice people that s, and the perverted minority."
although he supported the spirit of the ed laws, he called instead for educa- rograms to teach children they have ght to say no."
dren now "are taught to blindly obey" s of authority, Lanning said, which them vulnerable to attack.

Profile

Continued from Page 1

funding, the issue becomes whom can you retain and why."

Many of the workers being fired, Ochoa added, are the minority and women employees who were the last to be hired. Attorneys who represent these workers argue "if you had a finding of discrimination by the court, and the court ordered a remedial program into effect, and then you allow the seniority system to determine who gets laid-off, then aren't you simply eliminating the redress that the court has deemed appropriate?"

Ochoa was born April 10, 1950, in Long Beach, where his father taught Spanish to high school and junior college students. Ochoa said he admired his father and thought about becoming a teacher, too, but changed his mind because "there were a lot of restrictions imposed upon teachers. I saw the law as being an area where there was as much of an opportunity to impact upon people's lives in a positive fashion without the restrictions, where there was a much greater degree of mobility."

After he attended Long Beach City College for two years, Ochoa enrolled at the University of California, Santa Barbara, where he majored in English and history and received his bachelor's degree in 1972. He enrolled in law school at the University of California, Davis, and graduated in 1975.

Spurred on by the social activism of the period and his desire to help other Mexican-Americans, Ochoa worked for Legal Services of Northern California in Sacramento and Davis from 1976 to 1980, when he became executive director of the Legal Aid Foundation of Santa Barbara County. Unlike traditional legal services programs that are primarily funded by the federal government, the Santa Barbara foundation was established by the local bar association and is financed by voluntary contributions from association members. Ochoa said he set up a pro bono legal services program, and eventually 100 local lawyers signed up to handle cases for clients that did not meet the foundation's criteria for qualification.

Ochoa's background in legal aid programs concerned many Santa Barbara lawyers when he was appointed to the court; they feared he would be too liberal and pro-defendant in his rulings. Ironically, deputy district attorneys, who intially expressed the most skepticism about the new judge, now praise Ochoa for his fairness; a deputy public defender was less impressed.

"He bends over backwards to attempt to compensate for his liberal background," the deputy public defender said. "The prosecutors go out of there and are astounded that they've won a motion."

"When he first came on the bench, the district attorneys were worried he would be ultra-liberal," said a deputy district attorney. "He started out that way and made some decisions that caused us to disqualify him but he changed his attitude and surprised everyone."

"I'm more and more impressed with him as time goes on," said another deputy district attorney. "He takes the job very seriously, is a bright hard-working judge who demands a lot from the lawyers who appear before him."

"He has a strong, careful, legal intellect," the deputy continued. "If a decision in a case comes down to his heart's sympathy as opposed to what the law requires, he will go for what the law requires. He's a quick study who's getting better all the time."

Attention to Detail

While most attorneys agree Ochoa's courtroom is a pleasant place to try a case, some lawyers believe the judge's attention to detail and penchant for legal research sometimes stalls court proceedings. "You can't take time out to discuss every legal point," said an attorney. "Where do you draw the line in a difficult, esoteric issue?"

"This is not a criticism of him," stresses a private criminal defense lawyer, "but he's a little bit too conscious of courtroom protocol. He's formal on the procedural things."

Ochoa maintains it is the role of a judge to engender respect for the legal system. In addition to the general responsibility all judges share, Ochoa said he is especially conscious that he is a representative of the Hispanic community in Santa Barbara.

"I had one case where a Spanish-speaking man had a real high blood alcohol level," Ochoa recalled. "His wife told the police officer that she told her husband he was too drunk and he shouldn't drive. . . There were 100 people in the courtroom and I didn't want to embarrass him by going through the translator. So I just told him in Spanish that the next time his wife tells him that he's had too much to drink, he should hand the keys over to her and let her drive.

"I hope that it made a difference — the fact that I didn't do it (speak to the man) in a derogatory fashion and I switched to Spanish so it wouldn't be translated by all these people. I got the feeling he really was listening and it may have had an impact."

"I don't care what someone's done," the judge continued. "If you treat them disrespectfully, then they have no reason to respect whatever judgment you render, whatever punishment you mete out."

— REBECCA KUZINS