

RULINGS

*Latest Decisions
From the U.S. Supreme Court,
9th U.S. Circuit Court of Appeals,
9th U.S. Circuit
Bankruptcy Appellate Panel,
U.S. District Courts in California,
California Supreme Court
and state Courts of Appeal*

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Civil Rights

Warrantless Arrest for Auto Tampering Is Not Basis for Section 1983 Action

The U.S.C.A. 9th has upheld a direct-verdict in favor of a police officer where the plaintiff's claim of an illegal misdemeanor arrest under California law was not grounded on Fourth Amendment principles and the police officer had probable cause to arrest the plaintiff.

Patricia Barry, an attorney, called the California Highway Patrol to report that a car was illegally parked on her parent's property. When Officer Gary Fowler arrived, he and Barry argued. Barry admitted to Fowler that she had told a friend's son to paste a "no trespassing" sign on the car's windshield. Fowler arrested Barry for vehicle tampering and public drunkenness. Barry was convicted by a jury of vehicle tampering and the drunkenness charge was dropped. Following extensive litigation between the parties, Barry brought a 42 U.S.C. Section 1983 action against Fowler, claiming that he violated her Fourth Amendment rights by falsely arresting her. Barry contended that her misdemeanor arrest for auto tampering was illegal because the tampering was not done in Fowler's presence. After Barry presented her

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Prosecutors Try To Anticipate Prop. 115 Effect

The 'Holy Cow!' Memo

By Martin Berg

Daily Journal Staff Reporter

Key provisions of Proposition 115 remain unclear and will have to be settled by appellate courts if the measure passes, according to an internal memo issued by the Los Angeles District Attorney's Office.

The 23-page memo, obtained by The Daily Journal, along with another memo from Kern County District Attorney Ed Jagels, provides a first glimpse at how prosecutors plan to implement the provisions of Proposition 115 if it passes June 5.

The Kern County memo apparently

Provisions of the proposition appear on Page 8.

has been circulated to prosecutors around the state. It is subtitled: "Holy Cow! What do we do if this thing passes?"

Criminal defense lawyers who oppose the measure say the memos reveal that Proposition 115 is poorly drafted and will be selectively enforced when it suits prosecutors' interests.

Prosecutors insist that legal questions over how the measure would be applied are routine byproducts of any complex new law and do not reflect problems in the way the measure is written.

The initiative has been dubbed the Crime Victims Justice Reform Act, the Speedy Trial Act and the Wilson Initiative, for Sen. Pete Wilson, the Republican gubernatorial candidate who has strongly backed it.

A 'Working Draft'

The Los Angeles memo was sent to all head deputies and deputies in charge from Richard Hecht, director of branch and area operations. Other copies were apparently sent to all deputy district attorneys last week.

A spokeswoman for the District Attorney's Office refused to release the document, saying it was a confidential "working draft." In subsequent comments on the memo, Special Assistant District Attorney Clifford Klein stressed that it didn't represent the final position that the District Attorney's Office would take on implementing the initiative.

The initiative, which recent polls have indicated is widely supported, will impose a broad range of changes on the state's criminal justice system. Proponents, including prosecutors, law enforcement, insurance companies and victims' rights groups, say it will speed the court process, make it more fair, and benefit victims of crime and witnesses.

Opponents contend that the initiative

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PROFILE

SAN FRANCISCO — Susan Brandt-Hawley finds herself being called one of the finest environmental lawyers in Northern California, and, by consensus, the best in Sonoma County. She had planned to be a criminal attorney.

By a circuitous route, the 1977 graduate of the University of California, Davis School of Law is now in heavy demand as a sole practitioner representing community and environmental groups in battles with logging companies, developers and local government agencies.

Her practice directly results from a change in public consciousness over the

Susan Brandt-Hawley



Position: Environmental lawyer
Law Degree: UC Davis, '77
Age: 38

impact of population growth and development, Brandt-Hawley said, a change she welcomes.

"We're running out of space; air and water quality are poor and these issues are ripe for resolution," she said. "The pressure is on and it's in everyone's neighborhood. There will be more and more work as these problems need to be addressed. It's fun and makes me feel I'm doing something worthwhile."

As a mother who, with vintner and poet husband Bill Hawley, helped build a home atop a remote summit in the Mayacamas Mountains, Brandt-Hawley said she thinks her fate is as tied to the cases as her clients'. That concern translates into commitment and success.

"She's an outstanding attorney," said Anne Magnie, a former mayor of Sebastopol and now a city councilwoman. "She's regarded as the specialist in environmental law in Sonoma County."

Yet the prestige comes more from happenstance than ambition. Even before she graduated from law school, the 38-year-old Brandt-Hawley was focusing on a criminal defense career by interning with Federal Defenders of San Diego Inc.

After being admitted to practice in December 1977, she worked as a lawyer at the San Quentin prison law office for seven months before leaving to give birth to the first of two children.

Practice in Glen Ellen

In 1979 she opened her own practice in Glen Ellen, a quaint town of 3,000 people and once the home of author Jack London. She supported the practice in its lean beginning by accepting almost anything that came through the door.

One of her first cases was representing a group trying to stop a shopping cen-

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Pressure Mounts Over Television In U.S. Courts

By Terry Carter

Daily Journal Staff Reporter

WASHINGTON — The most influential member of Congress when it comes to how the federal courts are run has sent a strong message to the federal judiciary, which for 20 years has considered him a friend: The time has come for cameras in the federal courts and if the courts themselves aren't up to the task, Congress might be.

The message was in a letter last week to U.S. District Judge Robert F. Peckham of the Northern District of California, who chairs the ad hoc committee on

Excerpts from the letter appear on Page 9.

the issue for the Judicial Conference of the U.S. Courts. It came from Rep. Robert W. Kastenmeier, D-Wis., chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Administration of Justice.

And, like a zoom lens goosing the long-stymied movement to get cameras into federal courtrooms, it comes at a time when several new initiatives on different fronts have suddenly quickened what has been an incremental process spanning decades.

Tentative Report

The so-called Peckham Committee already has issued a tentative report recommending that the Judicial Conference once again deny the bid. But it agreed to hear this week from a newcomer to the issue, the creator of a proposed 24-hour cable television law channel who intends to televise lengthy portions of state court trials and wants access to the federal courts.

Kastenmeier's four-page letter was sent shortly before Judge Peckham left for Baltimore for his committee's meeting this week to hear additional comments on the issue. In a news release announcing his missive to Judge Peckham, Kastenmeier mentioned the Baltimore meeting and apparently timed it for release for the eve of that event.

Kastenmeier, chairman of the subcommittee since 1969, is not considered a loose cannon on court oversight, according to many familiar with his legislative work. Within the Judicial Conference, says a former member, he is considered "the most influential member of Congress on our issues and he has the respect of the judges."

The subcommittee does not control the courts' purse strings but it does have considerable sway in oversight and authorization concerning policy matters, the substantive rules, regulations and administration of the courts. And that could include legislating cameras in the courts.

Copy to Rehnquist

In his letter, a copy of which was sent to Chief Justice William Rehnquist, Kastenmeier pointed out that he believed cameras should be allowed in federal courts at the trial and appellate levels and that he wants "a report from you on your committee's progress. That will enable me to delineate a course for my Subcommittee on this important issue."

Kastenmeier pointed out to Judge Peckham that Congress long ago changed its own rules that had prevented public access to its workings.

"I was the first chair of a congressional subcommittee to open legislative proceedings (mark-ups) to the press and the public," he wrote in the letter. "That of-

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Task Force Targets Environmental Crime

By Daniel A. Shaw

Daily Journal Staff Reporter

The Los Angeles U.S. Attorney's Office Thursday used the first federal indictments for across-the-border dumping of toxic waste as occasion to announce the creation of a Task Force on Environmental Prosecutions.

cal companies that generated the material, concealed the drums aboard small trucks and transported the waste into Mexico without that country's permission, where they dumped it on land in Tijuana owned by one of the men, David Torres.

Reiner did not know how much waste is being dumped across the border, but



SUSAN BRANDT-HAWLEY — *"We're running out of space; air and water quality are poor and these issues are ripe for resolution. The pressure is on."*

CRISTINA TACCONE / The Daily Journal

PROFILE

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ter from being built across the street from her office. She won.

"We stopped the development at the board of supervisors level," Brandt-Hawley recalled. "It was a great learning experience in environmental law."

The real turn toward an environmental focus came in 1981 when she represented a community organization trying to stop Hewlett-Packard from developing a 15-building, computer-assembly complex on 300 acres in Rohnert Park, just south of Santa Rosa.

Brandt-Hawley challenged Hewlett-Packard's state-mandated environmental impact report, which asserted the local community wouldn't be affected by the project.

She lost after a month-long trial, but appealed and settled with Hewlett-Packard in 1984. The company reduced the project to a fifth of its original size.

"There was so much press from the trial that environmental work has kept coming in," she said. "For the past two years I've only handled environmental matters."

Among those was stopping the construction of a wood-burning power plant in Cloverdale, halting logging in spotted owl territory in Mendocino County and blocking demolition of a historic bridge in Guerneville. Now she is representing a citizens group opposed to expanded jet service at the Santa Rosa Airport.

Brandt-Hawley said much of the work is simply providing administrative coun-

sel to clients in dealing with government agencies.

"It's important to get involved on that level," she said, rather than face costly litigation over problems that could have been addressed early in the planning process.

But when litigation is necessary, her trial prowess impresses clients.

City Councilwoman Magnie explains that Brandt-Hawley sued Sebastopol for approving a development near a wetlands area and won. "It was an error on the city's part and I'm glad Susan won," said Magnie. "Anybody you speak with up here feels she's the best."

Betty Ball agrees. The coordinator of the Mendocino Environmental Center in Ukiah said Brandt-Hawley has handled suits against timber harvest practices

and private developments for them.

"She's very competent and qualified," said Ball. "She's willing to help in any way she can, and keeps her fees low and cooperates with us. She's a delight to work with."

Said Brandt-Hawley about her work: "The groups I represent are bright and have positive goals compared to most litigation, where people are angry and are only trying to get something for themselves.

"It's a complex and intellectually challenging area of the law, and allows for creative solutions and community involvement. That makes it more interesting."

— JAMES EVANS