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NEWS RELEASE

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Court of Appeal Holds Special Session at University of Southern California

Los Angeles—Students from the University of Southern California's Gould School of Law will hear oral arguments before the Court of Appeal, Second Appellate District, Division Eight, at 9 a.m. on Wednesday, March 28, 2007, Presiding Justice Candace Cooper announced today.

This special session is designed to introduce first-year law students to the appellate court system. Case summaries, prepared by the court, will be distributed before oral argument. As part of this educational experience, the justices will attend a luncheon with students.

Program arrangements are a collaborative effort of Presiding Justice Cooper and Associate Justices Laurence D. Rubin, Paul Boland, and Madeleine Flier—all from the court's Division Eight—as well Professor Lisa Hinchliffe Link of the Gould School of Law.

Summaries of the 11 cases to be argued are attached.

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CASES TO BE ARGUED

Oral Arguments before the Court of Appeal,
Second Appellate District, Division Eight
University of Southern California, Gould School of Law
9 a.m., Wednesday, March 28, 2007

People v. Derryl Minner, B190129

Bell and Pruitt entered a toy store in an outlet mall, pointed a gun at store employees and customers, stole cash, and ran from the store toward an area adjacent to the mall. Immediately after the robbery, Minner, who knew Bell and Pruitt, was driving suspiciously in the same area adjacent to the mall. He drove with his trunk open and spoke with Bell on his mobile phone.

Bell and Pruitt were apprehended on foot and charged with robbery and assault with a firearm. Minner was charged with the same crimes on an aiding and abetting theory. Minner was convicted of robbery and assault with a firearm, and sentenced to 16 years in state prison. He appeals his conviction on the ground that the evidence was insufficient to establish his criminal liability as an aider and abettor. He argues the evidence does not show that he shared the robbers' intent or that he actually aided and abetted the commission of the crimes through his words or conduct.

People v. Bazik, B188981

Defendant was convicted of possession of heroin for sale based on evidence that he attempted to sell heroin to two undercover police officers. His theory of defense was *entrapment* which, in California, consists of the police doing something that would cause an ordinarily law abiding person to commit a crime. Specifically, defendant maintained that, since the officers first approached him with an offer to buy heroin at a very good price (as opposed to him first approaching the officers and offering to sell them the heroin), he was *entrapped* into committing the crime.

The trial court denied his request (known as a *Pitchess* motion) that the police department turn over all information in the officers' personnel files relating to other people's complaints that the officers were dishonest on some other occasion (e.g., planting evidence, writing false reports, perjury, etc.).

On appeal, he argues that this was error because such complaints would tend to support his claim that the officers engaged in misconduct to entrap him in this case. A second issue on appeal was whether the trial court could use the facts that defendant (1) had increasingly serious prior convictions, (2) was on probation when the charged crime was committed, and (3) performed poorly on probation to select the highest of three possible prison terms for the defendant's sentence.

***Politis v. Medina et al.*, B187386**

A Los Angeles County employee sued the County and a County official, asserting discrimination claims under state and federal law. In her third amended complaint, the employee also asserted a retaliation claim, and sued two other County supervisory employees as additional defendants with respect to that claim. She alleged the two supervisors obstructed her efforts to obtain bilingual bonus pay by conducting a pretextual investigation and preparing a report falsely, concluding she was not entitled to bilingual pay.

The two supervisors filed a special motion to strike the complaint under the anti-SLAPP (strategic lawsuit against public participation) statute, Code of Civil Procedure section 425.16. They contended that the retaliation claim asserted against them arose from protected First Amendment activity, as the investigation was conducted and the report was prepared in response to a request from counsel for the County in connection with the employee's discovery requests in the ongoing litigation. The supervisors further asserted the employee could not prevail on the merits of her retaliation claim because the litigation privilege operated as an absolute bar to her claim. The trial court denied the supervisors' special motion to strike.

On appeal, the supervisors argue the anti-SLAPP motion should have been granted because (1) the statements and conduct upon which the employee bases her claim of retaliation by the supervisors are related directly to ongoing litigation and are therefore covered by the anti-SLAPP statute; (2) other allegations of nonprotected activity are tangential and do not obviate the application of the statute; and (3) the employee cannot establish a probability of prevailing on the merits of her retaliation claim against the supervisors because the litigation privilege bars her claim.

***Matthau et al. v. William Morris Agency*, B194637**

A talent agency, William Morris, represented actor Walter Matthau for 40 years, receiving a commission of ten percent of all compensation received by the actor under motion picture employment contracts negotiated or procured by the agency.

After the actor's death, his son, Charles Matthau, who succeeded to the actor's rights under his motion picture employment contracts, ceased to pay the agency's commission on profit participation payments received under the employment contracts. The talent agency sought to compel arbitration with the actor's son and a "loan out" company through which the actor periodically provided his services. Arbitration was sought under the talent agency's contracts with the deceased actor, and under a collective bargaining agreement between the Screen Actors Guild and the talent agency's trade association.

The trial court granted the talent agency's petition to compel arbitration. The actor's son and the loan out company petitioned this court for a writ of mandate, seeking an order directing the trial court to vacate its order compelling arbitration.

In the petition before this court, the actor's son and the loan out company argue the trial court erred in granting the talent agency's petition to compel arbitration because neither the son nor the loan out company were parties to any of the agreements under which the

talent agency sought arbitration, and none of the legal principles under which a nonsignatory may be bound to another's agreement to arbitrate applies.

People v. DeRoy John Green III, B178945

Over a period of several years, John Green obtained loans of money from numerous "investors" by telling them that various record labels were interested in his music and he needed funds to complete his recordings. Green showed several "investors" letters he had created that purported to be letters from Dreamworks Records to him, discussing a potential or pending purchase of his recordings. He never repaid the loans from any of the "investors." In addition, Green asked one "investor" and another individual to cash checks for him that were drawn on closed accounts or accounts containing insufficient funds. He did not repay any of the funds.

A jury convicted Green of four counts of obtaining money by false pretenses (Pen. Code, § 532, subd. (a)), four counts of grand theft, three counts of forgery, and one count of making, drawing, uttering or delivering a check knowing his account held insufficient funds (Pen. Code, § 476a, subd. (a)). The jury acquitted him of one additional count of forgery and returned a finding that all of the offenses involved fraud or embezzlement and a pattern of related felony conduct, and that the taking exceeded \$150,000. The court sentenced Green to prison for eight years and eight months.

Green challenges his numerous forgery, grand theft, and obtaining money by false pretenses convictions on the grounds of insufficient evidence, lack of jurisdiction, and asserted the trial court erred in failing to conduct an adequate hearing regarding jury misconduct, failing to respond to a question from the jury during deliberations, denying a request to appoint substitute counsel, sentencing him on two counts each with respect to appoint substitute counsel, sentencing him on two counts each with respect to victims Headlee and Hestmark, and imposing consecutive sentences based on facts not found by the jury.

People v. Contreras, B186751

Contreras was convicted of attempted premeditated murder after he stabbed his ex-girlfriend, Sylvia Flores, four times in the throat. He also was convicted of attempted murder of her unborn child after kicking her in the stomach several times when she was eight months pregnant. When the jury rendered its verdict on the count involving Flores, it found him guilty of both attempted premeditated murder and attempted voluntary manslaughter.

The issue on appeal is whether the court adequately probed the jury regarding its multiple verdicts. Contreras argues that the court improperly directed a verdict in favor of the prosecution. If there was an error, the next question is whether the error requires the reversal of Contreras's conviction.

People v. Khodayari, B190275

The defendant was convicted of assault with a deadly weapon, a dog. According to the prosecution's evidence, he used his leashed, snarling German Shepherd to chase an animal control officer off the property of his auto repair shop. He gave a different version of the incident, which the jury did not believe. The chief issue on appeal is whether the dog was a deadly weapon, as there was no evidence that it was trained to attack. The pertinent cases are *People v. Nealis* (1991) 232 Cal.App.3d Supp. 1, and *People v. Henderson* (1999) 76 Cal.App.4th 453.

Gatz v. Laughlin, B190357

Ivan Gatz's father, Eugene Gatz, divorced Marta Laughlin in 2001. Eugene Gatz lived in a mobilehome on a choice site he leased in Malibu. The divorce court awarded Eugene Gatz both the mobilehome and the lease as his separate property. He died before that order could be turned into a judgment. Within days of his death, Laughlin leased the mobilehome site for herself. The mobilehome passed to Ivan Gatz as the heir of Eugene Gatz, leaving the Gatz mobilehome on a site leased by Laughlin.

Over the next few years, she and Ivan Gatz fought two separate court battles over her right to obtain the lease. The first two courts ruled in her favor, and those judgments are final and are not at issue. The appeal before us today arises from new actions filed when Laughlin moved into the mobilehome in 2005. Gatz sued to remove her from the mobilehome and obtain damages. Laughlin, who eventually moved out of the mobilehome, cross complained for damages from the trespass by Gatz's mobilehome on her leased site.

The trial court ruled that the two previous judgments determining that Laughlin was entitled to lease the home site settled that issue. It ordered her to pay money damages for her trespass into the mobilehome, and denied her damages for the mobilehome's trespass on her lease site because she acted unfairly. It also ordered Gatz to remove the mobilehome at his own expense. The only issue on appeal is whether the trial court should have ordered Gatz to do so.

DCFS v. Shelly M., B192139

Two teenage girls were detained when the Department of Children and Family Services (DCFS) learned they had been potentially exposed to their parents' marijuana usage in the family home. The girls' mother claims the girls should not have been removed from the family home because she has a medical prescription for the marijuana use, used it only for medicinal purposes to relieve pain, and never smoked in front of the girls but always in a shed in the yard where the marijuana and drug paraphernalia were found. The shed was always kept locked, and the mother carried the only key.

The mother also cultivated a small quantity of marijuana plants in the backyard. The girls had access to the plants, but did not know their nature until several weeks before their detention. The girls' father was also living in the home. He is a heroin addict, but has been clean for a couple of years. He smoked marijuana for recreational purposes, but did so out

of the girls' presence. A BB gun was found in the home, which was a violation of the father's parole.

The evidence shows the mother was an exemplary parent. Based on the mother's compliance with DCFS requirements, the girls would likely have been returned to her care, but for the father's continued presence in the home.

Both parents argue the evidence was insufficient to support either the jurisdictional or dispositional orders. Indian Child Welfare Act notice issues also exist. DCFS asserts the parents' various arguments are waived for failure to raise them below, have become moot, or lack merit because the court's findings are supported by substantial evidence.

County of Los Angeles v. James, B187770

In 1992, a mother gave birth to a child and named appellant as the child's father on the birth certificate. In 1994, the County filed a complaint against appellant to establish appellant's paternity and his obligation to provide financial support for the child. In 1996, the trial court declared appellant to be the father and entered a default judgment requiring him to pay child support.

In 2001, appellant established through DNA testing that he was not the child's father and moved to set aside the judgment declaring his paternity and obligation to pay child support. Eventually, appellant and the County reached an agreement that relieved him of future child support obligations, forgave him for arrearages in payments owed to the child's mother, but required him to pay arrearages owed to the County.

Appellant later filed a motion seeking to set aside the judgment and receive reimbursement under *County of Los Angeles v. Navarro* (2004) 120 Cal.App.4th 246 (*Navarro*) and Family Code sections 7646-7648, and to renew his prior motion. While the trial court vacated the judgment under the Family Code, it denied appellant's request for reimbursements under *Navarro* and the Family Code and his request to renew his prior motion.

On appeal, this case presents the issue of whether a wrongfully declared father, who makes child support payments under a default judgment, may be reimbursed when DNA evidence later establishes he is not the child's father.

Garber v. Eskandarian, B183966

The law firm of Steven Garber & Associates sued former clients for \$132,038 in unpaid attorney's fees. After the action was commenced, the law firm served discovery requests on the former clients, Alec and Raffle Eskandarian, and three corporations controlled by the Eskandarians. The discovery requests sought information that was important to the action filed by the Garber law firm, and the former clients were required to respond to these requests. They did not file timely responses, which forfeited their right to object to the requests. When they finally served their responses, they objected to many of the requests. The law firm filed motions to compel answers without objections.

The court granted the motions, and ordered the former clients to respond to the discovery requests; in addition, the court ordered each of the former clients to pay \$728 in sanctions for the expenses incurred by the law firm to bring the motions to compel. However, the former clients did not file further responses, and did not pay the sanctions.

The law firm then brought a motion asking the court to strike the answer filed by the former clients, and to enter a default judgment against the former clients; such a motion is referred to as a motion for terminating sanctions. The attorney for the former clients informed the court that her clients had disappeared and that she was unable to contact them. The court granted the motion and eventually entered judgment for the law firm for \$222,428, which included interest, attorney's fees, costs and the unpaid fees of \$132,038. The former clients have appealed from this judgment.