



NEWS RELEASE

Release Number: **S.C. 02/05**

Release Date: **January 14, 2005**

Summary of Cases Accepted During the Week of January 10, 2005

JUDICIAL COUNCIL OF
CALIFORNIA
ADMINISTRATIVE OFFICE
OF THE COURTS
Public Information Office
455 Golden Gate Avenue
San Francisco, CA 94102-
3688
www.courtinfo.ca.gov
415-865-7740

Lynn Holton

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#05-01 *Fair v. Bakhtiari*, S129220. (A100240; 122 Cal.App.4th 1457; San Mateo County Superior Court; 417058.) Petition for review after the Court of Appeal reversed an order denying a motion to compel arbitration. This case includes the following issue: If the parties to a settlement agreement prepared in mediation include an arbitration provision, is the agreement then deprived of confidentiality under Evidence Code section 1123, subdivision (b) — which provides that such an agreement is not protected from disclosure if it is signed by the settling parties and “[t]he agreement provides that it is enforceable or binding or words to that effect” — on the theory that by including the arbitration provision, the parties used “words to that effect” and thus impliedly indicated the agreement was to be enforceable or binding?

#05-02 *People v. Vasquez*, S128854. (B159379; 122 Cal.App.4th 1027; Los Angeles County Superior Court; BA200494.) Petition for review after the Court of Appeal affirmed judgments of conviction of a criminal offense. The court limited review to the following issue: Are defendants entitled to reversal on the ground the trial court erred in denying defendant Vasquez’s request to recuse the entire Los Angeles County District Attorney’s Office in light of his allegations that he was being treated more harshly due to his parents’ long-term employment in that office?

#05-03 *People v. Caudillo*, S129212. (H026166; 122 Cal.App.4th 1417, mod. 123 Cal.App.4th 1106a; Santa Clara County Superior Court; CC127061.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Cage*, S127344 (#04-111), which includes the following issue: Are *all* statements made by an ostensible crime victim to a police officer in response to general investigative

questioning “testimonial hearsay” within the meaning of *Crawford v. Washington* (2004) 541 U.S. ___, 124 S.Ct. 1354 and inadmissible in the absence of an opportunity to cross-examine the declarant, or does “testimonial hearsay” include only statements made in response to a formal interview at a police station?

#05-04 *Fair Political Practices Com. v. Santa Rosa Indian Community of the Santa Rosa Rancheria*, S129653. (C044555; 123 Cal.App.4th 672; Sacramento County Superior Court; 02AS04544.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court ordered briefing deferred pending decision in *Agua Caliente Band of Cahuilla Indians v. Superior Court*, S123832 (#04-68), which includes the following issue: Can a California state court exercise jurisdiction over a federally-recognized Indian tribe in an action by the Fair Political Practices Commission to enforce campaign contribution reporting requirements under the Political Reform Act (Gov. Code, § 81000 et seq.) where Congress has not authorized the suit and the tribe has not expressly waived its sovereign immunity?

#05-05 *People v. Leighton*, S129790. (C044502; unpublished opinion; Trinity County Superior Court; 03F033.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-06 *People v. Perez*, S129454. (E034462; unpublished opinion; San Bernardino County Superior Court; FSB038094.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-07 *People v. Soria*, S129800. (A101084; unpublished opinion; Del Norte County Superior Court; 02-9542.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense.

#05-08 *People v. Vasquez*, S129912. (D042623; unpublished opinion; San Diego County Superior Court; SCN140092.) Petition for review after the Court of Appeal reversed the judgment in a criminal action and remanded for resentencing.

#05-09 *People v. Wagener*, S129579. (D042896; 123 Cal.App.4th 424; San Diego County Superior Court; SCD170770.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

The court ordered briefing in *Leighton, Perez, Soria, Vasquez, and Wagener* deferred pending decision in *People v. Black*, S126182 (#04-83) and *People v. Towne*, S125677 (#04-75), which include the following issues: (1) Does *Blakely v. Washington* (2004) 542 U.S. ___, 124 S.Ct. 2531, preclude a trial court from making findings on aggravating factors in support of an upper term sentence? (2) What effect does *Blakely* have on a trial court's imposition of consecutive sentences?

STATUS

#04-12 *Fox v. Ethicon Endo-Surgical, Inc.*, S121173. The court requested the parties to file supplemental letter briefs addressing the following issues: (1) Could plaintiff have protected her interests by employing more skillful Doe pleading under Code of Civil Procedure section 474 by including general Doe allegations in her original complaint? (2) Would such allegations have allowed plaintiff to add Ethicon Endo Surgical, Inc., as a new defendant by "relating back" to the earlier complaint?

#