



# NEWS

Judicial Council of California  
ADMINISTRATIVE OFFICE OF THE COURTS  
Public Information Office  
(415) 865-7740

Lynn Holton, Public Information Officer

Release Date: April 16, 2004

Release Number: S.C. 16/04

## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF APRIL 12, 2004**

[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.]

#04-30 *Barrett v. Rosenthal*, S122953. (A096451; 114 Cal.App.4th 1379; Alameda County Superior Court; 833021-5.) Petition for review after the Court of Appeal vacated in part and otherwise affirmed an order granting a special motion to strike. This case includes the following issues: (1) Does the Communications Decency Act (47 U.S.C. § 230) confer absolute immunity on an Internet “provider” or “user” who republishes statements made by third parties, or can liability still be imposed under traditional common law principles where the provider or user knows or has reason to know of the defamatory character of a statement it republished on the Internet? (2) What is the meaning of the term “user” under the Act? (3) For purposes of the issue presented by this case, does it matter whether the “user” engaged in active or passive conduct?

#04-31 *People v. Brendlin*, S123133. (C040754; 115 Cal.App.4th 206; Sutter County Superior Court; CRF012703.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense.

#04-32 *People v. Saunders*, S122744. (H025674; unpublished opinion; Santa Clara County Superior Court; CC246493.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses.

*Brendlin* and *Saunders* include one or more of the following issues: (1) When a

(over)

car is subjected to a traffic stop, is a passenger in the car “seized” or “detained” within the meaning of the Fourth Amendment, so that the passenger may challenge the validity of the traffic stop in contesting the admissibility of evidence obtained from the passenger after the stop? (2) May a car that has expired registration tags but that also has a temporary registration permit be legally stopped to investigate the validity of the temporary permit? (3) Can a parolee subject to a search condition challenge his detention as invalid if police were not aware he was on parole at the time they detained him?

#04-33 *People v. Chi*, S123177. (H024508; unpublished opinion; Santa Clara County Superior Court; CC116539.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense.

#04-34 *People v. Sarik*, S122921. (H024870; unpublished opinion; Santa Clara County Superior Court CC115149.) Petition for review after the Court of Appeal reversed a judgment of conviction of a criminal offense.

The court ordered briefing in *Chi* and *Sarik* deferred pending decision in *People v. Modiri*, S120238 (#03-159), which includes the following issue: Is the so-called “group beating exception” (see *People v. Corona* (1989) 213 Cal.App.3d 589), as embodied in CALJIC No. 17.20, to the requirement of a finding of *personal* infliction of great bodily injury for purposes of imposing an enhancement under Penal Code section 12022.7, inconsistent with *People v. Cole* (1982) 31 Cal.3d 568?

## STATUS

#03-49 *Bronco Wine Co. v. Espinoza*, S113136. The court requested the parties to file supplemental briefs addressing the effect, if any, of the following on this case: (1) General food and beverage statutes enacted in the mid-nineteenth century and early twentieth century by other jurisdictions, including: 1895 Conn. Pub. Acts ch. 235, §§ 1, 2, p. 578; 1899 Ind. Acts ch. 121, § 1, pp. 189–190; 1890 Md. Laws ch. 604, § 1, p. 733; 1882 Mass. Acts ch. 263, §§ 1-3, pp. 206–207; 1895 N.C. Session Laws ch. 122, §§ 1, 2, 5, pp. 176–178; 1905 N.D. Laws ch. 11, §§ 1-2, pp. 19–20; 1903 N.D. Laws ch. 6, §§ 1-2, pp. 9–10; 1905 N.Y. Laws ch. 100, § 1, p. 141; 1903 N.Y. Laws, ch. 524, § 1, p. 1192; 1893 N.Y. Laws, ch. 338; 1890 Ohio Laws § 3, p. 248; 1884 Ohio Laws § 3, p. 67; 1895 Pa. Laws No. 233, § 3, p. 317; 1905 S.D. Laws ch. 114, §§ 6, 8 & 10, pp. 162–163; 1897

Tenn. Pub. Acts ch. 45, §§ 1, 4, pp. 177–178; 1899 Wash. Laws ch. 113, §§ 1-3, pp. 183–184; 1879 Wis. Laws ch. 248, § 3, pp. 501–502. (2) Wine regulation statutes enacted in the mid-nineteenth century and early twentieth century by other jurisdictions, including: 1904 Ark. Acts ch. 103, § 5101; 1899 Ark. Acts act 80, pp. 137–138; 1897 Ark. Acts act 42, § 4, p. 108; 1887 Colo. Session Laws No. 330, §§ 3 & 4, pp. 18–19; 1887 N.Y. Laws ch. 603 §§ 1-4; 1891 Ohio Laws §§ 2-4, pp. 231–233; 1889 Ohio Laws p. 96 et seq. (3) Cal. Dept. of Pub. Health, Rules and Regulations for the Enforcement of the Cal. Pure Foods and Drugs Acts (1933), reg. 13(d) & (e), p. 18. (4) Cal. Dept. of Pub. Health, Bur. of Food and Drug Inspection, Definitions and Standards—Wines (adopted Dec. 31, 1934; as amended Apr. 13, 1935), pp. 1–3. (5) General food and beverage statutes of other jurisdictions extant in August 1935, including: Ark. Code Ann. ch. 69, §§ 4822, 4823 (1919); Colo. Rev. Stats. Ann. ch. 1, §§ 5, 6 (1930); Mass. Gen. Laws Ann. ch. 94, §§ 1, 187 (1932); 1923 N.D. Laws ch. 222, §§ 4, 6, pp. 289–291; N.Y. Agric. & Mkts. Law art. 17, § 2, pars. 2 & 3, § 200, pars. 2 & 3 (Consol. 1930); Wash. Rev. Code tit. 40, ch. 12, §§ 6145, 6147 (1932). (6) California administrative bulletins and reports published in the mid-1930s and early 1940s, including: Cal. Dept. of Pub. Health Weekly Bull. (Feb. 19, 1938) pp. 13–14; Cal. Dept. of Pub. Health, 36th Biennial Rep. (Sept. 1940) p. 177; Cal. Dept. of Pub. Health, 35th Biennial Rep. (Sept. 1938) p. 142; Cal. Dept. of Pub. Health, 34th Biennial Rep. (Sept. 1936) p. 100. (7) Stats. 1939, ch. 1033, §§ 1-4, p. 2838; Cal. Dept. of Pub. Health, Reg. Establishing Standards of Identity, Quality, Purity and Sanitation and Governing the Labeling and Advertising of Wine in the State of Cal. (May 23, 1942) art. I, § 2(aa) & art. III, § 12(1). (8) 16 Tex. Admin. Code §§ 45.45(b) & (c) (1976) & 45.52(1) (1976); Wash. Admin. Code, §§ 314-24-003(5) (1976) & 314-24-040(4). (9) Or. Liquor Control Com. (OLCC) rule 845-10-292(6)(c), eff. Mar. 1, 1977 (currently OLCC rule 845-010-0920(1) & (2)); OLCC rule 845-10-292(6)(e), eff. Mar. 1, 1977 (currently OLCC rule 845-010-0920(f)).

#04-21 *Lewis v. Alfaro*, S122865.

#04-22 *Lockyer v. City and County of San Francisco*, S122923.

In *Lewis* and *Lockyer*, the court requested the parties to file supplemental briefs

addressing the following questions: (1) In addition to determining whether respondents exceeded or acted outside the scope of their authority in refusing to enforce the provisions of Family Code sections 300, 301, 308.5, and 355 in the absence of a judicial determination that such provisions are unconstitutional, may and should the court determine in this proceeding the validity of same-sex marriages that already have been performed and registered by respondents? (2) If the court were to determine that respondents exceeded their authority in issuing marriage licenses to, and registering marriage certificates submitted on behalf of, same-sex couples, would the marriages that have been performed and registered nonetheless be valid, would the marriages be voidable, or would the marriages be void? (3) If the court were to determine that the same-sex marriages that already have been performed and registered are not valid, should the court order the city to refund fees collected from applicants for such marriages, as requested by the Attorney General's petition?

#