

Monday, August 22, 2011

Constitutional Law**Teacher can't be sued for anti-religion statements**

A high school teacher who made anti-religion statements in class cannot be sued for allegedly violating the First Amendment rights of a devout Christian student, the 9th U.S. Circuit Court of Appeals ruled Friday in a closely watched case.

Intellectual Property**Pharmaceutical companies dip toes in patent pool**

Pharmaceutical companies are following in the footsteps of the technology industry by pooling patents.

Government**San Francisco court urged to spend reserves**

Pressure is building on San Francisco County Superior Court to spend down its reserves to stave off massive cuts that include the closure of 25 courtrooms.

Entertainment & Sports**Revised opinion in Betty Boop trademark case**

The 9th U.S. Circuit Court of Appeals has filed a modified opinion in a case pitting the heirs of Betty Boop creator Max Fleischer against a group of licensing companies that used the cartoon character's image on merchandise.

U.S. Court of Appeals for the 9th Circuit Attorney-spouse can collect fees in case on behalf of wife

A Malibu attorney who won a civil rights action on behalf of her wife won the right to collect attorney fees Friday at the 9th U.S. Circuit Court of Appeals.

Criminal**San Jose lawyer wins new trial on money laundering charges**

San Jose criminal defense attorney Jamie L. Harley, who was convicted of money laundering last summer, has won a new trial.

Law Practice**On the Move**

Stroock & Stroock & Lavan LLP snagged Ray LaSoya from Hughes Hubbard & Reed LLP, adding him as a partner in the firm's Los Angeles office.

Teacher can't be sued for anti-religion statements

By Don J. DeBenedictis

A high school teacher who made anti-religion statements in class cannot be sued for allegedly violating the First Amendment rights of a devout Christian student, the 9th U.S. Circuit Court of Appeals ruled Friday in a closely watched case.

The court said several times that the case is unprecedented - which is exactly why the teacher won.

"There has never been any reported case holding that a teacher violated the Establishment Clause by making statements in the classroom that were allegedly hostile to religion," Judge Raymond C. Fisher wrote.

'This was the perfect opportunity for the court to address the issue one way or the other.' - Robert H. Tyler

Because there was no "clearly established law" against such classroom statements, Fisher held, "the teacher is entitled to qualified immunity." *C.F. v. Capistrano Unified School District*, 09-56689 (9th Cir., op'n filed Aug. 19, 2011)

Constitutional scholar Erwin Chemerinsky, who argued at the 9th Circuit for teacher James Corbett, said it is "a very difficult question [to determine] when a teacher is so hostile to religion to violate the Establishment Clause," which prohibits government from endorsing or opposing religion.

But this was "an easy case on qualified immunity," he said, because it was unprecedented.

One of the student's attorneys, Robert H. Tyler of Advocates for Faith and Freedom in Murietta, told the Associated Press he would ask the circuit court to reconsider its decision. "This was the perfect opportunity for the court to address the issue one way or the other," Tyler said. "Instead, it failed to give guidance on the constitutional question."

Chad Farnan attended Corbett's advanced-placement class in European history at Capistrano Valley High School in 2007. Those lectures often touched on the role of religion, according to the 9th Circuit.

But Farnan was so offended by some things Corbett said that he began making audio recordings of the classes, and he quoted many of the teacher's comments in his 2007 lawsuit, including, "When you put on your Jesus glasses, you can't see the truth."

In their lawsuit, he and his parents asked for an injunction barring Corbett from making such statements and for nominal damages. The injunction request became moot when Farnan graduated from high school.

U.S. District Judge James V. Selna ruled that most of the statements had

educational purposes, such as stimulating discussion and examining historical religious tensions. But a statement that creationism is "superstitious nonsense," amounted to "a message of disapproval of religion or creationism" and violated Farnan's rights, Selna held in May 2009.

At the time of his ruling, the case made headlines around the world.

Selna later ruled that Corbett was protected by qualified immunity, and both sides appealed.

Fisher, joined by 9th Circuit Senior Judge A. Wallace Tashima and District Judge Mark L. Wolf of Massachusetts, sitting by designation, vacated Selna's ruling on the constitutional issue and refused to decide whether any of Corbett's statements violated the Establishment Clause.

The panel agreed with Selna on qualified immunity, holding that "nothing put Corbett on notice that his statements might violate the Establishment Clause."

Farnan's attorneys argued that other cases about government hostility to religion, plus cases about teachers' classroom comments in favor of religion, did provide enough warning.

But Fisher called that argument "just the sort of sweeping statement of the law that is inappropriate for assessing whether qualified immunity applies."

In addition, the panel commented, courts must protect "the robust exchange of ideas" in education and must allow teachers the academic freedom to "challenge students to foster critical thinking skills and develop their analytical abilities."

Previous





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Criminal

Some charges against developer tossed

In a major blow to prosecutors, a San Bernardino County judge Friday tossed several charges against an Inland Empire developer and several former county officials accused in a corruption case involving a \$102 million settlement.

Litigation

Judge gives Wal-Mart plaintiffs more time to file claims

A Northern District judge gave former class members in a massive gender discrimination lawsuit against Wal-Mart Stores Inc. new deadlines Friday for filing claims.

Civil Rights

New allegations against Fullerton police

The Fullerton Police Department, already under heavy scrutiny for the beating death of a homeless man last month, was sued Friday for arresting a man who claims he was videotaping a separate altercation with officers in October.

Discipline

Disciplinary Actions

Here are summaries of lawyer disciplinary actions taken recently by the state Supreme Court or the Bar Court, listing attorney by name, age, city of residence and date of the court's action.

Government

Redevelopment agency under investigation

The city of Hercules and its redevelopment agency are under investigation by the state controller's office due to questions over annual financial reports.

Litigation

CVS settles lawsuit over prices

CVS Pharmacy Inc. agreed to pay \$2 million to settle a consumer lawsuit alleging price-scanning violations.

Judges and Judiciary

Still looking to US courts for justice

For victims of international human rights violations, U.S. courts remain their best hope for compensation. By **Robert Knowles** of Thomas Jefferson School of Law

Perspective

State Bar discipline: Public reprovals can hurt you

Don't be fooled - a public reproval for attorney misconduct can tarnish your image and hurt your business. By **Stephen J. Strauss** and **Diane L. Karpman** of Karpman & Associates

International