



**SUPREME COURT OF CALIFORNIA
ORAL ARGUMENT CALENDAR CASE DESCRIPTIONS
SPECIAL SESSION — UNIVERSITY OF CALIFORNIA
BERKELEY SCHOOL OF LAW
OCTOBER 9, 2013**

The following cases have been placed upon the calendar of the Supreme Court for hearing at its Special Session at the University of California Berkeley School of Law, 215 Boalt Hall, Berkeley, California, on October 9, 2013. (After this Special Session the court will hold oral argument in a number of other cases in its San Francisco courtroom on October 10, 2013. The full calendar for both days will be available at <http://www.courts.ca.gov/supremecourt.htm>.)

Set out below are brief descriptions of the cases to be argued at the October 9 Special Session. These descriptions are provided for the convenience of those attending the Special Session, and do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.

WEDNESDAY, OCTOBER 9, 2013, 10:00 A.M.

- (1) S194951 Sander (Richard) et al. v. State Bar of California et al.

This case addresses whether records contained in the State Bar's database of information on bar applicants are subject to public disclosure. The State Bar, as a judicial branch entity, is exempt from the California Public Records Act, which provides a right of public access (with specified exceptions) to the records of most public entities. (Gov. Code, § 6252, subd. (e).)

Sander requested that the State Bar provide him with applicants' ethnicities, LSAT scores, law school grade point averages, and bar examination scores, in an "anonymized" form — that is, with any identifying information (including applicants' names) redacted. Sander requested the information for use in his research regarding law school admissions policies. The State Bar refused to disclose the requested records, citing concerns about applicants' privacy.

Sander sued to compel disclosure. The trial court ruled in favor of the State Bar, concluding that no law required the State Bar to disclose records in the database. The Court of Appeal reversed, concluding that the common law right of access to public records created a presumption that the records in the State Bar's database must be

disclosed. The Court of Appeal remanded the case to the trial court to determine whether any privacy concerns or other countervailing interests outweighed the public's interest in disclosure.

The California Supreme Court will consider whether any law creates a presumptive public right of access to the records at issue. The relevant law in this respect includes (a) the "common law" — that is, court-developed law, contrasted with law enacted by the Legislature — and (b) article I, section 3 of the California Constitution, which was amended in 2004 to provide that "[t]he people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public agencies and officials shall be open to public scrutiny."

1:00 P.M.

- (2) S203124 Jerry Beeman and Pharmacy Services, Inc., et al. v. Anthem Prescription Management, LLC, et al.; and *consolidated case*

Civil Code section 2527 requires prescription drug claims processors to compile and summarize information concerning pharmacy fees and to transmit the information to their clients. In a federal class action suit pending before the United States Court of Appeals for the Ninth Circuit (the federal appellate court), plaintiffs allege that defendants failed to comply with section 2527. For the purposes of this litigation, defendants concede that they are prescription drug claims processors subject to section 2527. They argue, however, that the statute cannot be applied to them because, they assert, it violates the "free speech/liberty of speech" clause of the California Constitution.

Article I, section 2, of the state Constitution provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

In the litigation now pending before the Ninth Circuit federal appellate court, that court will need to decide whether Civil Code section 2527 violates this state free speech/liberty of speech clause.

Under California Rules of Court, rule 8.548, a federal appellate court may ask the California Supreme Court to "decide a question of California law." The Ninth Circuit court made such a request in this case, and the California Supreme Court agreed to accept and decide the matter in order to address the question of state constitutional law.

Defendants argue that section 2527 is a content-based speech requirement that cannot satisfy either "strict scrutiny" or "intermediate scrutiny" (the two most stringent standards of judicial review) under the California Constitution's free speech/liberty of speech guarantee. Plaintiffs counter that the statute requires only the transmission of "objective, statistical data" and therefore does not even implicate the state free speech/liberty of speech clause. Moreover, plaintiffs contend, if the statute does

implicate the clause, it constitutes mere ordinary economic regulation that is subject to the most deferential standard of judicial scrutiny — called “rational basis review.” Further, plaintiffs assert, even if the statute is found to restrict “commercial speech” and the intermediate scrutiny test applies, the statute should be upheld under that test as well.

(3) S058019 People v. Contreras (George Lopez) [Automatic Appeal]

A jury sentenced defendant to death for a robbery and murder that occurred in 1994. The victim, Saleh Bin Hassan, was killed with a shotgun in the mini-mart he and his family owned. His wallet and handgun were gone.

Because the case involves the death penalty, this appeal comes directly from the trial court to the California Supreme Court. In all other civil and criminal cases, appeals are first heard by the California Court of Appeal. After those decisions, the Supreme Court decides whether to intervene, generally agreeing to hear only important cases of broad statewide concern. But in death penalty cases, the appeal to the Supreme Court is “automatic” and bypasses the intermediate appellate court.

In this case the evidence indicated that defendant was the killer, and was helped by three other men — Jose, Santos, and Louis. A key witness was a teenage boy named Lupe, who knew Jose. Lupe testified that he went with the foursome to the crime scene and waited in the car. Louis drove, and Santos acted as a scout. Defendant and Jose entered the store wearing masks and carrying long guns. Later that night, Jose showed Hassan’s wallet to Lupe. Defendant displayed Hassan’s handgun and said he shot Hassan as that man fought back. At trial, Lupe’s testimony was corroborated by a motorist who saw two masked men flee the scene in Louis’s car. Another witness was Artero Vallejo. He was a petty criminal who helped defendant and his accomplices celebrate the crime. Vallejo testified that defendant admitted he shot Hassan with a shotgun and took his handgun. Shortly before the murder, defendant had borrowed a shotgun and a rifle from a friend.

One issue on appeal is whether the court properly limited defendant’s attempt to “impeach” — that is, challenge — Lupe’s credibility at trial. As background, defendant reportedly threatened Lupe shortly after the crime, and Lupe said nothing until the police questioned him several months later. When cross-examined by the defense, Lupe testified that his high school grades initially fell after the crime, but that his mood and study habits improved over time, especially after he told the police what he knew. The defense then tried to use Lupe’s report cards to show that the opposite was true. The prosecution objected on the ground that Lupe’s actual grades were irrelevant to his honesty in court or to defendant’s guilt. The trial court agreed, and did not let the jury hear about the grade reports. When cross-examination resumed, Lupe denied he was lying about his presence at the crime scene or about the effects of cooperating with the police.

Defendant argues now, as before, that he needed to share with the jury the evidence of the report cards in order to prove that Lupe testified falsely about his feelings concerning both the capital crime and his role in the investigation. Defendant's theory is that Lupe's grades first rose (not fell) because he never saw or was upset by the crime, and that his grades later declined (not improved) because he allegedly was worried about having lied to the police. The Attorney General, representing the prosecution, responds that even if Lupe's grades contradicted his testimony about his school performance, that discrepancy had no bearing on *why* Lupe felt or performed as he did, or on whether he testified truthfully at trial. Thus, in the Attorney General's view, the trial court did not err by excluding the evidence and the jury verdict should be upheld.

###