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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEPARTMENT 14 HON. TERRY GREEN
LOS ANGELES POLICE PROTECTIVE)
LEAGUE,)
)
PLAINTIFF,)
)
VS.) SUPERIOR COURT
) CASE NO. BC483052
)
CITY OF LOS ANGELES,)
)
)
DEFENDANT.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, AUGUST 12, 2013

APPEARANCES:

FOR THE PLAINTIFF SILVER, HADDEN, SILVER, WEXLER & LEVINE
LAPPL: BY: RICHARD A. LEVINE, ESQUIRE
310.393.1486
FOR PLAINTIFF JUDICIAL WATCH
HAROLD STURGEON: BY: PAUL J. ORFANEDES, ESQ.
202.646.5172
FOR THE DEFENDANT CITY ATTORNEY
CITY OF BY: GERALD MASAHIRO SATO, DEP. CITY ATTY.
LOS ANGELES: 213.473.6875
FOR DEFENDANT AMERICAN CIVIL LIBERTIES UNION
INTERVENORS: BY: MICHAEL KAUFMAN, ESQ.
LUCERO CHAVEZ, ESQ.
PETER BIBRING, ESQ.
213.977.9500 X232

ANITA B. ALDERSON, CSR NO. 11843
OFFICIAL COURT REPORTER PRO TEMPORE

1 CASE NUMBER: BC483052
2 CASE NAME: LAPPL VS. CITY OF LOS ANGELES
3 LOS ANGELES, CALIFORNIA MONDAY, AUGUST 12, 2013
4 DEPARTMENT 14 HON. TERRY GREEN, JUDGE
5 REPORTER: ANITA B. ALDERSON, CSR NO. 11843
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8
9
10
11
12

13 THE COURT: GOOD MORNING.

14 MR. LEVINE: GOOD MORNING YOUR, HONOR, RICHARD
15 LEVINE WITH SILVER, HADDEN, SILVER, WEXLER & LEVINE, FOR
16 PLAINTIFF, LOS ANGELES POLICE PROTECTIVE LEAGUE.

17 MR. ORFANEDES: GOOD MORNING YOUR, HONOR, PAUL
18 ORFANEDES WITH JUDICIAL WATCH FOR PLAINTIFF HAROLD
19 STURGEON.

20 MR. SATO: GOOD MORNING, YOUR HONOR, GERALD SATO,
21 DEPUTY CITY ATTORNEY, FOR THE CITY OF LOS ANGELES, CHIEF
22 BECK AND THE MEMBERS OF THE BOARD OF POLICE COMMISSIONERS.

23 MR. KAUFMAN: GOOD MORNING, YOUR, HONOR, MICHAEL
24 KAUFMAN, ON BEHALF OF DEFENDANT INTERVENORS, CHIRLA AND
25 L. A. VOICE. I'M HERE APPEARING WITH PETER BIBRING AND
26 LUCERO CHAVEZ.

27 THE COURT: WELL, HAVE A SEAT. THE FIRST ITEM OF
28 BUSINESS IS I HAVE A COUPLE OF MEDIA REQUESTS. KCAL 9,

1 CBC 2, ANYBODY OBJECT TO ME SIGNING THESE?

2 MR. LEVINE: NO OBJECTION, YOUR HONOR.

3 MR. KAUFMAN: NO, YOUR HONOR.

4 UNIDENTIFIED PERSON: SIR, I'M WITH KNBC AS WELL,
5 AND MY PEOPLE ARE SCRAMBLING TO FAX YOU PAPERWORK. MAY WE
6 ALSO HAVE PERMISSION TO BRING OUR CAMERAS INTO THE COURT?

7 THE COURT: ANY OBJECTION?

8 UNIDENTIFIED PERSON: NO, OBJECTION.

9 MR. SATO: NO, OBJECTION.

10 THE COURT: DO YOU WANT A MINUTE? THE ANSWER IS
11 YES. DO YOU WANT SOME TIME?

12

13 (BRIEF PAUSE IN PROCEEDING.)

14

15 THE COURT: OKAY. I'VE READ ALL YOUR PAPERS. I
16 NOW KNOW ALL I EVER WANTED TO KNOW ABOUT IMPOUNDING
17 VEHICLES IF YOU HAVE NO LICENSE, WAS AFRAID TO ASK IN THE
18 PAST, BUT NOW I KNOW. SO I CAN BE A WHIZ AT COCKTAIL
19 PARTIES ALONG WITH THE REST OF YOU ENTERTAINING THE GUESTS
20 WITH THE INTRICACIES OF THE IMPOUND, PARDON ME,
21 REMOVAL/IMPOUND/FORFEITURE BECAUSE I'M TOLD THERE IS A
22 DIFFERENCE.

23 OKAY. WHEN I FIRST STARTED READING THIS I WAS
24 WONDERING IF THIS WAS A REAL CONTROVERSY OR WE WERE
25 DEBATING HOW MANY ANGELS CAN DANCE ON THE HEAD OF A PIN.
26 OBVIOUSLY SPECIAL ORDER IS DIFFERENT THAN 14602. AND IN
27 ONE OF THE BRIEFS, I THINK IT WAS PLAINTIFF STURGEON, SAID
28 THAT THERE HAD BEEN A DRAMATIC DECREASE IN THE NUMBER OF

1 IMPOUNDS FOR PEOPLE WHO HAVE NEVER HAD A LICENSE OR DIDN'T
2 HAVE A LICENSE. AND I DIDN'T SEE THAT GOING CHALLENGED, SO
3 APPARENTLY THIS IS A REAL ISSUE AFFECTING MANY THOUSANDS OF
4 PEOPLE ON AN ANNUAL BASIS.

5 DO YOU ALL AGREE WITH THAT BY THE WAY? I THINK
6 YOUR PAPERS HAVE A 26,000 TO 13,000 OR SOMETHING LIKE THAT
7 NUMBER OF IMPOUNDS.

8 MR. LEVINE: YOUR, HONOR, THOSE WERE STATISTICS
9 THAT THE CITY PROVIDED TO US.

10 MR. SATO: IT WAS A REPORT MADE TO THE COMMISSION.
11 IT DID REFLECT DOWNWARD TRENDS STARTING EVEN BEFORE SPECIAL
12 ORDER 7, BUT THE NUMBERS THE PLAINTIFFS PRESENTED ARE
13 CORRECT.

14 THE COURT: THANK YOU. SO THIS IS A REAL LIFE
15 PROBLEM, AND I'M GLAD THAT ALL OF YOU HAVE BRIEFED IT AND
16 BROUGHT IT FOR AT LEAST A RESOLUTION HERE.

17 I'LL TAKE THE POLICE PROTECTIVE LEAGUE MOTION
18 FIRST, AND I WILL GRANT JUDICIAL NOTICE AS REQUESTED. THE
19 FIRST ISSUE WHICH THEY SPENT THE MOST TIME ON, MOVING PARTY
20 SPENT THE MOST TIME ON, WAS WHETHER IT WAS PREEMPTED BY
21 VEHICLE CODE SECTION 21, I'M SORRY --

22
23 (BRIEF INTERRUPTION WITH THE CLERK AT SIDEBAR.)

24
25 THE COURT: OKAY, IS THERE A CHANNEL 22 HERE?

26 UNIDENTIFIED PERSON: CHANNEL 22, YES.

27 THE COURT: ANY OBJECTION TO THEM SETTING UP?

28 MR. LEVINE: NO.

1 MR. SATO: NO, YOUR, HONOR.

2 THE COURT: DO YOU WANT A MINUTE?

3 UNIDENTIFIED PERSON: YES, JUST ONE MINUTE.

4

5 (BRIEF PAUSE IN PROCEEDINGS.)

6

7 THE COURT: SO THE POLICE PROTECTIVE LEAGUE HAD A
8 CONSIDERABLE AMOUNT OF EFFORT SPENT ON THE PREEMPTION UNDER
9 VEHICLE CODE SECTION 21. THE CITY DID NOT DEVELOP MUCH
10 TIME TO THIS ALTHOUGH THE INTERVENORS DID.

11 AND VEHICLE CODE SECTION 21 IS RATHER EXPLICIT. IT
12 SAYS THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED THE
13 PROVISION OF THIS CODE ARE APPLICABLE AND UNIFORM
14 THROUGHOUT THE STATE AND IN ALL COUNTIES AND MUNICIPALITIES
15 THEREIN AND A LOCAL AUTHORITY SHALL NOT ENACT OR ENFORCE
16 ANY ORDINANCE OR RESOLUTION ON THE MATTERS COVERED BY THIS
17 CODE. INCLUDING ORDINANCES OR RESOLUTIONS THAT ESTABLISH
18 REGULATION OR PROCEDURES FOR ACCESS, A FINE, PENALTY OR
19 ASSESSMENT OR FEE FOR A VIOLATION OF MATTERS COVERED, THAT
20 IS THE KEY PHRASE, BY THIS CODE OR UNLESS EXPRESSLY
21 AUTHORIZED.

22 THAT IS OUR STARTING POINT BECAUSE WE ALL KNOW THIS
23 STATE LAW HAS SUPREMACY AND UNIFORMITY AND IN FACT THERE
24 ARE CASES, I THINK IT WAS -- I HAVE THE CITE HERE SOMEPLACE
25 IN MY NOTES ZACK VERSUS -- ZACK VERSUS CITY OF SAUSALITO,
26 2008, 165 CAL.APP. 4TH 1163, ANOTHER MATTER, I READ THE
27 LEGISLATIVE COUNSEL BUREAU'S REPORT. THEY ALSO TALKED
28 ABOUT THE SUPREMACY OF THE STATE VEHICLE CODE SECTION, HOW

1 LOCAL AUTHORITIES CAN'T ESTABLISH THINGS THAT ARE MATTERS
2 COVERED BY THE VEHICLE CODE. THERE WAS A CASE CITED,
3 O'CONNELL VERSUS CITY OF STOCKTON -- THAT WAS A FORFEITURE
4 CASE, PROSTITUTION FORFEITURE CASE, BUT STILL THE BROAD
5 PRINCIPLES WERE ANNOUNCED ABOUT HOW STOCKTON IN THAT CASE
6 COULDN'T HAVE A STATUTE OR A REGULATION OR AN ORDINANCE
7 THAT DIFFERED FROM THE FORFEITURE STATUTES FOR THE STATE
8 THAT IS 41 CAL.4TH 1061.

9 I LOOK THROUGH THIS, AND AS I SAID, MY FIRST
10 REACTION WAS ARE WE REALLY ARGUING OVER SOMETHING THAT IS
11 IMPORTANT. DOES THIS MAKE A DIFFERENCE BECAUSE I DON'T
12 KNOW WHETHER JUST FROM READING THE STATUTES WHETHER OR NOT
13 THEY CONFLICT OR WHETHER OR NOT THEY MODIFY OR WHAT SORT OF
14 REAL WORLD EFFECT THEY HAVE.

15 WHEN I READ THE SURGEON BRIEF, IT OBVIOUSLY HAS A
16 REAL WORLD EFFECT AND AT LEAST SHOWS A CONSIDERABLE
17 DECREASE ON THE IMPOUNDS. SO OBVIOUSLY THIS IS HAVING A
18 REAL WORLD EFFECT. I THINK WE'RE KIDDING OURSELVES IF WE
19 SAY THAT THE SPECIAL ORDER DOES NOT HAVE AN EFFECT JUST
20 COMPLEMENTS, DOESN'T CONTRADICT, DOESN'T MODIFY 14602
21 BECAUSE APPARENTLY IT DOES. APPARENTLY IN THE REAL WORLD
22 IT DOES.

23 NOW ALSO WHEN YOU READ IT, IT DOES. IT BREAKS OFF
24 NO LICENSE FROM REVOKE LICENSE, OR SUSPENDED LICENSE,
25 TREATS THEM NOTICEABLY DIFFERENT UNDER THE OTHER CODE
26 SECTION 22651 OR SOMETHING -- YOU NEED THAT -- WHICH I READ
27 AND I TEND TO AGREE WITH THE D.A.'S OFFICE.

28 I DON'T BELIEVE THAT IS AN IMPOUND STATUTE. IT

1 SAYS ON ITS FACE THAT IT IS A COMMUNITY CARETAKING STATUTE
2 AND DEALS WITH REMOVAL OF CARS AND, IN FACT, EXPRESSLY
3 IMPLIES WHEN THERE IS NOT AN IMPOUND. SO THERE OBVIOUSLY
4 IS A DIFFERENCE. THIS DIFFERENCE IS MEANINGFUL WHEN YOU
5 READ IT. IT'S BEEN WELL ARGUED ABOUT WHAT IT COVERS, HOW
6 IT CHANGES.

7 THE STURGEON BRIEF, AGAIN, WAS VERY INSTRUCTIVE
8 GIVING HYPOTHETICALS OF WHAT WOULD HAPPEN UNDER VARIOUS
9 SCENARIOS. HOW THE 1462 HANDLES THE SITUATION. HOW
10 SPECIAL ORDER 7 HANDLES THE SITUATION, AND IT'S NOTICEABLY
11 DIFFERENT. SO THIS IS A REGULATION IN A QUOTE MATTER
12 COVERED CLOSED QUOTE BY THE VEHICLE CODE THAT DOES
13 CONTRADICT OR MODIFY THE EXISTING STATE LAW.

14 AND I WAS INTERESTED, I READ THE ATTORNEY GENERAL
15 OPINION, I READ THE D.A. OPINION, AND THEY BOTH WERE VERY
16 WELL DONE WHICH IS NOT SURPRISING. ALTHOUGH I TEND TO
17 AGREE WITH THE D.A. OPINION, THERE IS A MEANINGFUL
18 DIFFERENCE AT LEAST IN CRIMINAL LAW BETWEEN REMOVING A
19 VEHICLE AND IMPOUNDING A VEHICLE. IF YOU WANT, OR IF YOU
20 FIND EVIDENCE IN THE VEHICLE AND YOU WANT TO USE IT IN
21 TRIAL AND THERE IS A SUBSEQUENT MOTION TO SUPPRESS, THERE
22 IS A MEANINGFUL DIFFERENCE AND THOSE CASES WERE CITED BY
23 THE D.A.'S OFFICE.

24 THEN THEY CAME UP WITH, AND I ALSO READ WITH GREAT
25 INTEREST, THE DECLARATIONS OF SOME L.A.P.D. PEOPLE,
26 HIGH-RANKING L.A.P.D. PEOPLE, I THINK ONE WAS MOORE AND I
27 READ A COUPLE. AND THEY WERE SAYING, LOOK, WE RECOGNIZED
28 WE HAD A PROBLEM. WE TRIED TO SOLVE THIS PROBLEM BY GIVING

1 GUIDANCE TO OUR OFFICERS IN THE FIELD. AND THIS WAS A
2 RESULT OF TRYING TO GET SOME SORT OF UNIFORM POLICY TO THE
3 CITY OF LOS ANGELES SO WE WOULDN'T HAVE UNEQUAL
4 APPLICATION. THEIR CONCERN WAS 14602 THUS DISCRETION WITH
5 THE OFFICER -- MAY IMPOUND. AND IF THE OFFICER DECIDES TO
6 IMPOUND, WE HAVE THIS MANDATORY 30-DAY IMPOUND PERIOD, BUT
7 THERE ARE SOME SUBSEQUENT SECTIONS THAT TALK ABOUT, WELL,
8 THERE IS AN APPEAL PROCESS, WHATEVER.

9 BUT WE DECIDED THAT THE MAY WAS TOO VAGUE, AND WE
10 WANTED TO HAVE SOME GUIDELINES WHICH IS ALL VERY
11 UNDERSTANDABLE AND VERY LAUDABLE, AND I'M NOT IMPUGNING AT
12 ALL THE MOTIVES OF THE L.A.P.D. IN DOING THIS. IT'S WHAT
13 YOU EXPECT FROM PEOPLE WHO RUN LARGE ORGANIZATIONS IS TO
14 TRY AND GIVE GUIDANCE TO THEIR PEOPLE. BUT THIS SPECIAL
15 ORDER 7 IS MUCH MORE THAN JUST GUIDANCE. IT'S MUCH MORE
16 THAN JUST TRAINING. IT ACTUALLY CHANGES. IT CHANGES THE
17 LAW. IT CHANGES THE OUTCOME. AND FOR THAT MATTER, I CAN'T
18 JUST SAY THIS IS GUIDANCE OR TRAINING AND THEREFORE IT'S
19 NOT AN ORDINANCE OR REGULATION BECAUSE AS THE D.A. POINTED
20 OUT THAT IS JUST SEMANTICS. THIS IS SORT OF A GAME
21 CHANGER. SO IT'S, I BELIEVE FROM WHAT I'VE READ, IS THAT
22 THE VEHICLE CODE DOES PREEMPT SPECIAL ORDER 7. I AM HAPPY
23 TO HEAR ARGUMENT FROM YOU, AND I HAVE READ YOUR BRIEFS THAT
24 ARE VERY INTERESTING. THEY TOOK UP A GOOD PART OF FRIDAY
25 AND A LARGE CHUNK OF SUNDAY, BUT, NO, IT WAS VERY
26 INTERESTING READING. I LOOK FORWARD TO HEARING YOUR ORAL
27 ARGUMENTS ON THIS.

28 I HAVE READ THE MATERIAL YOU GAVE ME. I HAVE READ

1 THE DECLARATIONS. I RULED ON THE OBJECTIONS. MA'AM CLERK,
2 DO YOU HAVE THOSE?

3 THE CLERK: THEY WERE NOT SENT DOWN THIS MORNING.

4 THE COURT: THE OBJECTIONS HAVE BEEN RULED ON.
5 THERE WERE SOME OTHER ISSUES HERE THAT WERE HOPPING AROUND
6 THAT I SAW. I WANTED TO DISCUSS THOSE AND THEN HEAR YOUR
7 THOUGHTS ON THEM. IS THE DISCRETIONARY AUTHORITY OF AN
8 OFFICER TO IMPOUND A VEHICLE UNDER SECTION 14602
9 INTERCHANGEABLE WITH DIVISIONS OF 22651 (E). WELL, NO,
10 THEY ARE DIFFERENT.

11 I BELIEVE THERE IS A MEANINGFUL DIFFERENCE BETWEEN
12 REMOVAL OF A VEHICLE FOR CARETAKING PURPOSES AND IMPOUNDING
13 A VEHICLE. AS I SAID, THERE IS A DIFFERENCE. I BELIEVE
14 THERE IS A DIFFERENCE IN CRIMINAL LAW FOR SEARCH AND
15 SEIZURE PURPOSES, BUT THESE HAVE DIFFERENT MEANINGS.

16 NOW I UNDERSTAND THAT 22651 DOES OVERLAP BY CITING
17 12500 AND 14601 AND OTHER STATUTES. AND IT GIVES THE
18 OFFICER ANOTHER JUSTIFICATION FOR TAKING A VEHICLE OFF THE
19 ROAD, BUT I DON'T BELIEVE THEY ARE THE SAME. NOW THERE WAS
20 A CASE CITED, AND THE CITY ATTORNEY ARGUED VERY VIGOROUSLY,
21 THE CASE, THE CHP CASE, I HAVE IT HERE, ARGUED THAT THIS
22 CASE HELD THE PROPOSITION THAT THEY WERE THE SAME IN
23 CALIFORNIA. CALIFORNIA HIGHWAY PATROL, 162 CAL. 4TH 1144,
24 BUT THAT IS SURE NOT HOW I READ THIS CASE.

25 THIS CASE HAD NOTHING TO DO WITH 22651. IT'S AN
26 INTERESTING CASE, YOU'VE ALL READ IT. BUT THE CHP PULLED
27 THE PERSON OVER FOR DRUNK DRIVING AND RATHER THAN -- HE
28 ALSO HAD A SUSPENDED LICENSE. RATHER THAN USING 14602 HE

1 USED THE 22651, AS A CONSEQUENCE THE CAR WAS RELEASED A FEW
2 HOURS LATER AND SADLY WAS USED THAT DAY TO -- WAS IN A
3 FATAL AUTO ACCIDENT. AND THE DECEDENTS, HIS NEXT OF KIN,
4 SUED THE CHP SAYING IT WAS A VIOLATION OF A MANDATORY DUTY.
5 THE COURT SAID NO BECAUSE 14602 SAYS "MAY" AND I THINK THE
6 COURT IS RIGHT. IT HAD NOTHING TO DO WITH 22651; IT WASN'T
7 EVEN CITED IN THE OPINION. IT JUST SAID THERE WAS A LINE
8 THAT SAID THE DEFENDANT'S VEHICLE WOULD BE STORED RATHER
9 THAN IMPOUNDED OR RELEASED PURSUANT TO 22651 SUBDIVISION H
10 AND THEN IT CITES TO A FOOTNOTE. OTHERWISE, THE CASE IS
11 NOT CITEABLE FOR ANY PROPOSITION THAT THESE WERE SOMEHOW
12 COEXTENSIVE BECAUSE THEY ARE NOT -- ON ITS FACE THEY ARE
13 NOT.

14 I ALSO NOTE THE ARGUMENT THAT 14602 VIOLATES THE
15 FOURTH AMENDMENT. I HAD SOME CASES CITED, NINTH CIRCUIT
16 CASE, JUDGE HENDERSON WROTE AN OPINION. I READ THAT AND
17 AGAIN I DON'T SEE WHERE THERE IS A FOURTH AMENDMENT
18 COMMUNITY CARETAKING ELEMENT IN THE FOURTH AMENDMENT. IN
19 THAT CASE, AS I READ IT, THERE WERE TWO PEOPLE WHO WERE
20 FROM MEXICO ONE WAS NAMED RUIZ I THINK, I FORGET THE NAME.

21 RUIZ PARKED HIS TRUCK OR CAR OR WHATEVER IN A WAY
22 THAT OBSCURED A LICENSE TAB. AND THE OFFICER ARRESTED HIM,
23 IT WAS NOT CLEAR FOR WHAT. AND HE SAID, RUIZ SAID, I HAVE
24 A LICENSE; I HAVE A MEXICAN LICENSE, BUT HE WAS ARRESTED
25 UNDER THE NEVER BEEN ISSUED A LICENSE SECTION AND THE
26 COURT -- THERE WAS A SUBSEQUENT CIVIL RIGHTS LAWSUIT AND
27 THE COURT POINTED OUT THAT HE SHOULD NOT HAVE BEEN POPPED
28 UNDER THE NEVER HAD A LICENSE SECTION BECAUSE HE HAD A

1 LICENSE IN MEXICO.

2 BUT I DIDN'T READ THAT AS READING IN SOME KIND OF
3 FOURTH AMENDMENT LIMITATION HERE, AND I DON'T THINK THE
4 14602 WAS UNCONSTITUTIONAL AS WRITTEN. IT IDENTIFIES A
5 LEGITIMATE STATE PURPOSE. THOSE FINDINGS ARE IN 14607.4
6 MAYBE. IT WAS GETTING LATE LAST NIGHT, I RAN OUT OF
7 COFFEE, AND THAT SET FORTH A LEGITIMATE STATE PURPOSE.

8 I DIDN'T REALIZE THAT UNLICENSED DRIVERS AND
9 DRIVERS THAT NEVER HAD A LICENSE WERE RESPONSIBLE FOR A
10 DISPROPORTIONATE AMOUNT OF AUTO ACCIDENTS. I JUST DIDN'T
11 KNOW THAT AND THOSE WERE THE FINDINGS OF THE LEGISLATURE
12 AND NOBODY SEEMS TO CHALLENGE THAT. THIS IS A STATUTE THAT
13 DIRECTS ATTENTION TO THAT. IT SAYS, WE RECOGNIZE THIS IS A
14 PROBLEM AND FOR THE PROTECTION OF ALL RESIDENTS OF
15 CALIFORNIA, WE ARE GOING TO INCREASE THE POWERS OF THE
16 POLICE TO IMPOUND VEHICLES IN THOSE SITUATIONS AND THE
17 PURPOSE OF THE IMPOUND WAS TO DENY ACCESS TO THE NEVER BEEN
18 LICENSED PERSON OR REVOKED LICENSE PERSON SO THEY WOULDN'T
19 HAVE THE CAR TO DRIVE FOR 30 DAYS AND, THEREFORE, BE LESS
20 APT TO BE INVOLVED IN AN ACCIDENT WITH SOMEBODY ELSE AND
21 HURT SOMEBODY ELSE.

22 THIS IS A FOURTH AMENDMENT; I DON'T SEE THAT
23 VIOLATING THAT. I CAN'T THINK OF ANY LESS ONEROUS
24 ALTERNATIVES THAT ARE MEANINGFUL. SO I DON'T THINK IT
25 VIOLATES THE FOURTH AMENDMENT AS WRITTEN SO THAT WAS ONE OF
26 THE ARGUMENTS THAT WAS RAISED. WHAT WAS THE OTHER ONE. I
27 THINK THAT PRETTY MUCH COVERS IT.

28 SO I WOULD, IN SUMMARY, I WOULD GRANT THE MOTIONS

1 FOR SUMMARY JUDGMENT FROM THE L.A. POLICE PROTECTIVE LEAGUE
2 AND FROM MR. STURGEON AND DENY THE OTHERS.

3 I WILL SAY SOMETHING ELSE. THE INTERVENORS AND
4 OTHERS MADE ARGUMENTS, THE ACLU MADE ARGUMENTS, THAT WERE
5 MORE IN THE LINE OF POLICY ARGUMENTS. AND, YOU KNOW, IT
6 MAY BE GOOD POLICY. I'M NOT HERE TO DISCUSS WHETHER A
7 POLICY IS A GOOD POLICY OR A BAD POLICY. WE DON'T DO
8 PUBLIC POLICY HERE IN THE SUPERIOR COURT. WE JUST EXAM
9 LAWS AND DECIDE DISPUTES.

10 WHEN I WAS READING IT, I SAID THAT MAKES SENSE, I
11 CAN SEE YOUR POINT OF VIEW. BUT ISN'T THAT WHY WE HAVE A
12 LEGISLATURE. ISN'T THAT WHY WE ELECT REPRESENTATIVES,
13 ASSEMBLYMEN OR ASSEMBLY PERSONS OR SENATORS AND ELECT A
14 GOVERNOR THAT IS WHY THEY ARE THERE. YOU CAN MAKE YOUR
15 PITCH TO THESE PEOPLE. I DON'T THINK THE LEGISLATURE AND
16 THE GOVERNOR ARE NECESSARILY HOSTILE TO YOUR POSITION
17 AB INITIO.

18 SO MAYBE YOU CAN CARRY THE DAY IN A PUBLIC DEBATE,
19 BUT I DON'T KNOW THAT IT'S MY PLACE AS A JUDGE TO MAKE
20 THOSE, WELL, I DO KNOW, IT'S NOT MY PLACE AS A JUDGE TO
21 MAKE THOSE POLICY DETERMINATIONS.

22 SO WHO WANTS TO GO FIRST. TELL ME WHERE I'M WRONG.
23 CITY, I ENJOYED YOUR WORK. I ENJOYED YOUR PAPERS. I
24 ALWAYS HATED IT WHEN I WAS IN TRIAL, AND THE JURY CAME BACK
25 AGAINST ME AND THE JURY SAID, WE THOUGHT YOU WERE REALLY
26 GREAT, OF COURSE, THEY VOTED FOR THE OPPONENT.

27 MR. SATO: I'VE HEARD THAT A MORE THAN A FEW TIMES
28 TOO, YOUR, HONOR.

1 THE COURT: I HEARD MORE THAN MY FAIR SHARE I
2 THINK.

3 MR. SATO: YOUR, HONOR, THE CITY DOES APPRECIATE
4 THE TIME THE COURT HAS OBVIOUSLY DEVOTED TO THIS CASE, BUT
5 HERE IS MY CHANCE TO PERSUADE YOU OTHERWISE.

6 THE CITY WOULD PHRASE THE ISSUE A LITTLE MORE
7 NARROWLY THAN I THINK THE COURT HAS. ON THE FACE OF THE
8 SPECIAL ORDER 7, IT HAS AS ITS STATED PURPOSE GUIDELINES
9 FOR APPLICATION OF THE COMMUNITY CARETAKING DOCTRINE. AND
10 THAT DOCTRINE DOESN'T HAVE ITS SOURCE IN THE VEHICLE CODE.
11 THE SOURCE OF THAT DOCTRINE IS IN CASE LAW INTERPRETING THE
12 FOURTH AMENDMENT.

13 THE COURT: I KNOW.

14 MR. SATO: SO I THINK IN PHRASING THE PREEMPTION
15 ISSUE, IT SHOULD BE PHRASED, IS THERE ANYTHING ABOUT THE
16 VEHICLE CODE THAT PROHIBITS A LAW ENFORCEMENT AGENCY FROM
17 ISSUING GUIDELINES AND EVEN DISCIPLINARY RULES OF WHETHER
18 THEY ARE IN WRITING LIKE SPECIAL ORDER 7 OR VERBALLY LIKE
19 IN ROLL CALL TRAINING THAT PROHIBITS THAT AGENCY FROM
20 CREATING THOSE GUIDELINES.

21 THE COURT: BUT WAIT, AS PHRASED THE ANSWER IS
22 NOTHING, NOTHING. IN FACT I EXPECT L.A.P.D. TO HAVE ROLL
23 CALL OR HAVE GUIDELINES ABOUT HOW TO EXERCISE ITS POWER. I
24 WAS A D.A. FOR MANY YEARS. WE HAD THAT IN THE D.A.'S
25 OFFICE. WE HAD GUIDELINES ABOUT HOW TO DO OUR JOB. BUT
26 APPARENTLY, I CAN READ THIS AND I CAN SEE HOW THE STATUTES
27 AND THE ORDER ARE DIFFERENT. APPARENTLY THIS IS A REAL
28 WORLD DIFFERENCE. IT'S A REAL WORLD THING.

1 IF IT'S A REAL WORLD THING, I HAVE TO CONCLUDE THIS
2 IS MORE THAN JUST A GUIDANCE FOR TRAINING, BUT THIS
3 ACTUALLY HAS REAL WORLD EFFECT, WHERE AM I WRONG ON THAT?

4 MR. SATO: WELL, I KNOW IN THOSE REPORTS THAT ARE
5 IN EVIDENCE, CHIEF BECK ATTRIBUTED SOME OF OR A BETTER PART
6 OF THE DECLINE TO ISSUING SPECIAL ORDER 7. BUT I THINK
7 IT'S FAIR TO SAY THAT THE DOWNWARD TREND THAT YOU SEE EVEN
8 FROM BEFORE SPECIAL ORDER 7 REFLECTS THE GROWING CASE LAW
9 IN WHICH THE DIFFERENT COURTS, STATE AND FEDERAL, HAVE
10 APPLIED THE COMMUNITY CARETAKING DOCTRINE TO DECISIONS TO
11 IMPOUND VEHICLES.

12 THE COURT: I'M SORRY, I HATE TO INTERRUPT. I SAY
13 I WANT TO HEAR FROM YOU THEN I INTERRUPT YOU.

14 WHY NOT TAKE THIS TO THE LEGISLATURE? WHY NOT SAY,
15 WE THINK THE BETTER PUBLIC POLICY IS TO MODIFY VEHICLE CODE
16 21, 14602, AND THE OTHER SECTIONS, AND ACTUALLY MAKE THIS
17 PART OF THE LAW. THAT IS THE FRUSTRATION I HAD IN READING
18 THIS. YOU ARE MAKING ARGUMENTS THAT ARE -- YOU'RE SAYING
19 OR OTHERS ARE SAYING THIS DISPROPORTIONATELY NEGATIVELY
20 AFFECTS A GIVEN PORTION OF OUR COMMUNITY AND THEREFORE WE
21 OUGHT TO MODIFY IT A CERTAIN WAY, ISN'T THAT A LEGISLATIVE
22 DETERMINATION?

23 MR. SATO: LET ME TRY TO RESPOND THIS WAY.

24 WE CITED CASE LAW THAT SAYS THAT THE STATUTORY
25 AUTHORITY TO IMPOUND UNDER 14602.6 A-1 DOES NOT -- STILL
26 THE IMPOUND STILL HAS TO COMPLY WITH THE COMMUNITY
27 CARETAKING DOCTRINE OR COMPLIES WITH THE FOURTH AMENDMENT.
28 THESE CASES POSIT POTENTIAL SITUATIONS WHERE FOLLOWING

1 14602.6 A-1 TO THE LETTER STILL MIGHT NOT COMPLY WITH THE
2 COMMUNITY CARETAKING DOCTRINE.

3 WE CITED TWO CASES, I HAVE FORGOTTEN NOW WHICH --

4 THE COURT: CITY OF SAN MATEO --

5 MR. SATO: PEOPLE VERSUS TORRES AND PEOPLE VERSUS
6 WILLIAMS AND THOSE BOTH ADDRESS THE ISSUE OF HOW STATUTORY,
7 HERE STATUTORY AUTHORITY UNDER 14602.61 AND ANOTHER CASE
8 UNDER A DIFFERENT PART OF 22651, WAS NOT AN AUTOMATIC.
9 THERE STILL HAD TO BE COMPLIANCE WITH THE COMMUNITY
10 CARETAKING DOCTRINE AND IN ONE CASE BECAUSE THERE WASN'T
11 THAT COMPLIANCE EVIDENCE THAT WAS TAKEN AT AN IMPOUND
12 SEARCH, OR INVENTORY SEARCH, EXCUSE ME, AFTER THE IMPOUND
13 WAS EXCLUDED AT TRIAL.

14 SO THE TWO ARE NOT COEXTENSIVE AND THE COMMUNITY
15 CARETAKING DOCTRINE I THINK THE CASES HAVE POSITED THERE
16 MAY BE SITUATIONS WHERE IT TRUMPS THE VEHICLE CODE.

17 AND THERE IS NO SUGGESTION AND NOTHING IN THE
18 EVIDENCE THAT THE LOS ANGELES POLICE DEPARTMENT IN SAYING
19 THAT SPECIAL ORDER 7 WAS MEANT TO APPLY TO THE COMMUNITY
20 CARETAKING DOCTRINE THAT SOMEHOW IS A SHAM OR IT WAS MEANT
21 TO ACCOMPLISH SOMETHING ELSE --

22 THE COURT: I APPLAUD THE L.A.P.D. FOR DOING --
23 THEY ARE KNOWN FOR EXCELLENT TRAINING AND GUIDANCE TO THEIR
24 OFFICERS THAT IS NOT WHAT I'M SAYING. I'M SAYING THIS IS
25 MORE THAN JUST TRAINING AND GUIDANCE.

26 MR. SATO: I THINK IT MAY BE MORE INTO THE EXTENT,
27 I GUESS, OF COURSE I DON'T AGREE IT REQUIRES THINGS
28 DIFFERENT FROM THE VEHICLE CODE, BUT TO THE EXTENT IT DOES,

1 I THINK THE QUESTION IS, IS THERE ANYTHING IN SPECIAL
2 ORDER 7 THAT REALLY IS INCONSISTENT WITH THE COMMUNITY
3 CARETAKING DOCTRINE BOTH IN THE IMPOUND DECISION ITSELF OR
4 IN THE DISPOSITION OF THE VEHICLE ONCE IT ACTUALLY IS
5 IMPOUNDED.

6 THERE ISN'T MATERIAL REGARDING WHAT HAPPENS AFTER A
7 CAR IS STORED AND SPECIAL ORDER 7 IS LESS CLEAR. ALTHOUGH
8 I THINK THAT REFLECTS JUST THE FACT THAT THE CASE LAW
9 INVOLVING THAT PART OF THE IMPOUND PROCESS IS LESS
10 DEVELOPED THAN WHAT I THINK IS A UNIFORM BODY OF CASE LAW
11 SAYING THE COMMUNITY CARETAKING DOCTRINE APPLIES IN EVERY
12 WARRANTLESS SEIZURE OF A VEHICLE.

13 AND THE OTHER THING IS, REGARDING THE 30-DAY
14 MANDATORY RULE.

15 THE COURT: RIGHT.

16 MR. SATO: WHEN YOU LOOK AT THE DIFFERENT
17 EXCEPTIONS THAT FOLLOW THAT ARE ALSO IN 14602.6 A-2 AND
18 THEN THE REST OF THAT STATUTE YOU HAVE EXCEPTIONS THAT
19 PRACTICALLY SWALLOW THE RULE. AND IF YOU HAD TO SUMMARIZE
20 ALL OF THAT BASICALLY WHAT IT SAYS, WELL, IF THERE IS A
21 PERSON WHO CAN LAWFULLY TAKE POSSESSION OF THE VEHICLE AND
22 THERE IS INSURANCE, AND IT CAN BE TAKEN IN A WAY THAT IS
23 NOT LAWFUL, FOR EXAMPLE JUST GIVING THE VEHICLE BACK TO
24 SOME UNLICENSED PERSON, WELL, POSSESSION HAS TO BE
25 RESTORED, AND I DON'T THINK THERE IS ANYTHING IN SPECIAL
26 ORDER 7 THAT IS INCONSISTENT WITH THAT.

27 THE COURT: STARTS OFF WITH THE PRESUMPTION, FIRST
28 OF ALL, IT TAKES THE UNLICENSED SITUATION, BREAKS IT INTO

1 TWO, TREATS THEM DIFFERENTLY AND HAS THE PRESUMPTION. IF
2 YOU READ IT, IT DOESN'T SAY PRESUMPTION, BUT IT SAYS,
3 STARTS OFF WITH SHALL NOT IMPOUND. SO IT STARTS OFF WITH
4 SHIFTING THE BURDEN. SHIFTING THE GAME WHICH, AS I SAID,
5 WE SHOULDN'T BE SURPRISED THERE IS A DECREASE IN THE NUMBER
6 OF IMPOUNDS. IT DOESN'T SAY THAT, BUT IT DOES SAY SHALL
7 NOT IMPOUND OR SHALL RELEASE, I THINK IT'S SHALL RELEASE
8 BUT IT'S --

9 MR. SATO: I'M SORRY.

10 THE COURT: NO, PLEASE.

11 MR. SATO: I DON'T WANT TO INTERRUPT.

12 THE COURT: NO, I'M THE ONE. I ASKED FOR YOUR
13 INPUT AND THEN I INTERRUPT YOU.

14 MR. SATO: I WOULD BE WEARY ABOUT BASING STATUTORY
15 INTERPRETATION ON THE STATISTICS BECAUSE THE SUGGESTION IS
16 THAT SAY FOR SOME REASON THE NUMBER OF ACTUAL DECISIONS TO
17 IMPOUND THE VEHICLE INCREASED. I DON'T THINK THAT WOULD
18 HAVE ANY BEARING ON HOW THE COURT SHOULD INTERPRET WHETHER
19 THERE IS AN ACTUAL CONFLICT OR WHETHER THERE IS AN
20 APPLICATION OF THE COMMUNITY CARETAKING DOCTRINE.

21 THE COURT: NO, I'M JUST CITING THIS AS BEING A
22 REAL WORLD ISSUE AND HAVING A REAL WORLD IMPACT THAT IS WHY
23 WE'RE HERE.

24 MR. SATO: I DID WANT TO POINT OUT THAT THOSE
25 STATISTICS REFLECT THE DECISION TO IMPOUND AT ALL. THEY
26 DON'T APPLY TO WHAT HAPPENS TO THE VEHICLE ONCE IT IS
27 IMPOUNDED. SO IT DOESN'T HAVE TO DO WITH THE 30-DAY
28 BUSINESS. I KNOW THERE WAS SOMETHING ELSE I WAS GOING TO

1 ADD.

2 THE COURT: IF YOU THINK ABOUT IT RAISE YOUR HAND.
3 YES, SIR.

4 MR. KAUFMAN: JUST TO FOLLOW UP ON A COUPLE OF
5 POINTS THE CITY ATTORNEY MADE.

6 I THINK YOUR HONOR IS ABSOLUTELY CORRECT, SPECIAL
7 ORDER 7 HAS REAL WORLD EFFECTS IN THE SAME WAY THAT ROLL
8 CALL TRAINING AND OTHER INSTRUCTIONS AND POLICIES THAT
9 L.A.P.D. PUTS OUT, HAS REAL WORLD EFFECTS ON OFFICERS'
10 CONDUCT IN THE FIELD.

11 THE QUESTION THOUGH IS WHETHER THOSE REAL WORLD
12 EFFECTS ARE INCONSISTENT WITH THE TERMS OF THE VEHICLE
13 CODE. THIS IS A PREEMPTION ISSUE IN TERMS OF WHETHER THERE
14 IS CONFLICT BETWEEN THE STATUTES PASSED AT THE STATE LEVEL
15 AND SPECIAL ORDER 7. ALL THE PARTIES ARE IN AGREEMENT THAT
16 THE VEHICLE CODE PROVISIONS AT ISSUE HERE, 22651 AND
17 14602.6 ARE DISCRETIONARY. THEY NEVER MANDATE AN IMPOUND
18 OR SEIZURE UNDER ANY CIRCUMSTANCES. SO ALL THE L.A.P.D.
19 HAS DONE IS TAKEN THAT DISCRETIONARY AUTHORITY AND PROVIDED
20 INSTRUCTIONS TO THEIR OFFICERS ON WHEN THEY SHOULD EMPLOY
21 EITHER PROVISION ACCORDING TO UNIFORM STANDARDS. THEY ARE
22 OPERATING ENTIRELY WITHIN THE DISCRETION GIVEN UNDER THE
23 VEHICLE CODE.

24 PLAINTIFF STURGEON THEMSELVES ADMIT THAT EVERY
25 SINGLE ACTION CALLED FOR BY SPECIAL ORDER 7 COULD BE
26 UNDERTAKEN BY AN INDIVIDUAL OFFICER IN HIS OR HER OWN
27 INDIVIDUAL CAPACITY. THERE IS NOTHING IN THE POLICY ITSELF
28 THE ACTIONS IT CALLS FOR THAT IS A CONFLICT. GIVEN THAT

1 THE DEPARTMENT IS TRYING TO STANDARDIZE THE OFFICERS '
2 CONDUCT ACROSS 10,000 UNIFORMED OFFICERS TO PROVIDE
3 CONSISTENCY TO ENSURE ALL THE CONCERNS THAT ASSISTANT CHIEF
4 MOORE MENTIONED IN HIS DECLARATION ABOUT CONSISTENCY AND
5 CONCERNS FOR THE PUBLIC, VEHICLE CODE VIOLATIONS AND
6 FEDERAL CONSTITUTIONAL VIOLATIONS SIMPLY A WAY FOR THE
7 DEPARTMENT TO STANDARDIZE THAT DISCRETION ACCORDING TO
8 DEPARTMENT STANDARDS.

9 THE COURT: IF THEY ARE THE SAME, THEN WHY NOT JUST
10 LIVE WITH THE VEHICLE CODE SECTIONS AND NOT HAVE THE -- NOT
11 HAVE SPECIAL ORDER 7 THAT IS AN ARGUMENT I ALSO DID NOT
12 UNDERSTAND. IF YOU'RE TRYING TO SHOW THIS DOESN'T
13 CONTRADICT, MODIFY OR CHANGE THE STATE LAW, THEN WHY HAVE
14 IT? WHY NOT JUST STICK WITH THE STATE LAW THEN?

15 MR. KAUFMAN: BECAUSE THE STATE LAW, THE DISCRETION
16 GIVEN UNDER 14602 IS EXTREMELY BROAD AS IS THE DISCRETION
17 GIVEN IN 2261. THE DEPARTMENT'S EXPERIENCE PRIOR TO
18 SPECIAL ORDER 7 WAS THAT WHEN THEY HAD INDIVIDUAL OFFICERS
19 MAKING DECISIONS ON THEIR OWN, THERE WAS INCONSISTENT
20 PRACTICES ACROSS DIFFERENT PRECINCTS. YOU HAD SOME
21 PRECINCTS IMPOUNDING CARS AUTOMATICALLY FOR 30 DAYS EVERY
22 CIRCUMSTANCE WHERE THEY PULLED OVER AN UNLICENSED DRIVER.
23 YOU HAD SOME DOING SOME MIX, BUT THERE WAS NO STANDARD
24 POLICY AND THAT IS A PROBLEM FROM WITH THE DEPARTMENT'S
25 PERSPECTIVE. THEY WANT TO HAVE SOME CONSISTENCY IN THEIR
26 PRACTICES.

27 THE CHOICE HERE IS NOT BETWEEN UNIFORMITY ACROSS
28 THE STATE AND SPECIAL ORDER 7. THE CHOICE IS WHETHER YOU

1 HAVE ONE POLICY WITHIN L.A. OR YOU HAVE 10,000 POLICIES
2 WHERE EACH INDIVIDUAL OFFICER GOES OUT INTO THE FIELD AND
3 APPLIES THE VEHICLE CODE ACCORDING TO THEIR OWN PERSONAL
4 PREFERENCE.

5 THE COURT: IF YOU ARE IN SACRAMENTO, ISN'T THE
6 ISSUE ARE WE GOING TO HAVE ONE POLICY THROUGHOUT THE STATE
7 OR A DIFFERENT POLICY IN LOS ANGELES, VENTURA, SAN DIEGO,
8 SAN BERNARDINO AND EVERY OTHER COUNTY IN CALIFORNIA.

9 MR. KAUFMAN: THAT IS ALREADY THE CASE, YOUR,
10 HONOR, BECAUSE THE VEHICLE PROVISIONS PROVIDE SUCH BROAD
11 DISCRETIONARY AUTHORITY YOU HAVE THAT. WITHOUT SPECIAL
12 ORDER 7 YOU HAVE THAT DISCREPANCY HAPPENING BLOCK TO BLOCK
13 WITHIN YOUR CITY BECAUSE ONE OFFICER MAY IMPOUND A CAR FOR
14 30 DAYS AUTOMATICALLY AND ANOTHER ONE MAY CHOOSE NEVER TO
15 IMPOUND THE CAR AT ALL FOR A LICENSED DRIVING VIOLATION.

16 THE COURT: WHAT WOULD HAPPEN RATHER THAN BEING
17 PULLED OVER -- THE QUESTION I HAVE WHAT WOULD HAPPEN IN
18 MARCH OF 2012 BEFORE THIS WENT INTO EFFECT AS OPPOSED TO
19 MAY OF 2012. ANOTHER QUESTION WOULD BE, WHAT WOULD HAPPEN
20 TODAY IF WE HAD THE SAME SITUATION RATHER THAN BE IN THE
21 CITY OF LOS ANGELES THEY DROVE UP THE COAST AND WERE IN
22 VENTURA.

23 IF UNIFORMITY IS A GOAL THEN SHOULDN'T UNIFORMITY
24 COME FROM THE STATE OF CALIFORNIA. ISN'T THAT WHY THEY SAY
25 IN THE VEHICLE CODE IN THE ZACK CASE THAT THEY DON'T WANT
26 THE LOCAL REGULATIONS THAT ADD TO, VARY, OR MODIFY THE
27 STATE LAW. WHAT THEY WANT IS TO THE EXTENT POSSIBLE IN THE
28 STATE BASIS, NOT JUST PRECINCT BASIS, BUT THE STATE BASIS

1 THEY WANT THE UNIFORMITY. AREN'T WE DEFEATING THAT BY
2 HAVING EACH OF THE 50-SOME COUNTIES IN CALIFORNIA, I DON'T
3 KNOW HOW MANY CITIES THERE ARE IN CALIFORNIA, HAVING THEIR
4 OWN.

5 MR. KAUFMAN: NOT AT ALL, YOUR HONOR. WE ALREADY
6 HAD THAT KIND OF INCONSISTENCY EXISTING BEFORE SPECIAL
7 ORDER 7 WAS ADOPTED WITH DIFFERENT PRACTICES HAPPENING
8 WITHIN THE CITY OF LOS ANGELES ITSELF BETWEEN INDIVIDUAL
9 OFFICERS WHICH MAY DIFFER IN WHAT WAS HAPPENING IN SANTA
10 BARBARA OR ANY OTHER CITY IN CALIFORNIA.

11 THIS AT LEAST ENSURES SOME UNIFORMITY WITHIN THE
12 CITY LOS ANGELES ITSELF. THE LEGISLATURE MADE ITS INTENT
13 CLEAR HERE BY PROVIDING THAT SECTION 14602 IS
14 DISCRETIONARY. IF THEY WANTED CERTAIN ACTIONS TAKEN AS A
15 RULE, THEY WOULD HAVE MADE THAT MANDATORY AS THEY DID IN
16 SECTION 14607.6 THE FORFEITURE PROVISION THAT YOUR, HONOR
17 ALLUDED TO EARLIER. THERE ARE CERTAIN CIRCUMSTANCES WHERE
18 AN IMPOUNDMENT IS MANDATORY.

19 THE LEGISLATURE HERE MADE A DIFFERENT DISTINCTION
20 WHEN IT CAME TO 14602.6. THEY SAID WE'RE GOING TO ALLOW
21 LAW ENFORCEMENT TO DEVELOP THEIR OWN POLICIES, THEIR OWN
22 INDIVIDUAL PRACTICES DEPENDING ON WHATEVER THEY THINK IS
23 APPROPRIATE FOR THEIR JURISDICTION AND THEIR COMMUNITIES IN
24 WHICH THEY WORK.

25 THE COURT: WHY NOT TAKE THIS TO THE LEGISLATURE
26 AND SAY THROUGHOUT THE STATE OF CALIFORNIA, GOD KNOWS HOW
27 MANY CITIES WE HAVE IN THE STATE OF CALIFORNIA, EVERY ONE
28 IS GOING TO HAVE THEIR OWN DIFFERENT POLICIES THAT HAVE

1 REAL WORLD EFFECTS. RATHER THAN DRIVING FROM DOWNTOWN LOS
2 ANGELES TO SAN FRANCISCO AND PASSING THROUGH HOW MANY
3 CITIES, EACH ONE HAS A DIFFERENT RULE, WHY NOT TAKE THESE
4 ARGUMENTS TO SACRAMENTO AND SAY SPECIAL ORDER 7 IS SUCH A
5 GREAT IDEA LET'S JUST MAKE IT PART OF THE VEHICLE CODE AND
6 NOT HAVE THIS PROBLEM AND THEN IT WOULD BE A PUBLIC DEBATE;
7 THEN WE WOULD HAVE A PUBLIC DEBATE ABOUT IT; LEGISLATORS
8 WOULD ARGUE IT; IT WOULD BE IN THE PRESS; THERE WOULD BE
9 EDITORIALS. GROUPS THAT ARE AFFECTED ONE WAY OR THE OTHER
10 WOULD CHIME IN, AND WE COULD GET SOME SORT OF STATE POLICY
11 THAT WOULD BE UNIFORM. WE WOULDN'T HAVE THE PRECINCT BY
12 PRECINCT OR CITY BY CITY OR COUNTY BY COUNTY DIFFERENCE AND
13 IT WOULD BE UNIFORM THROUGHOUT THE STATE AND WE WOULDN'T
14 HAVE THESE ISSUES.

15 MR. KAUFMAN: YOUR, HONOR, THIS IS THE DECISION THE
16 LEGISLATURE HAS ALREADY MADE BY MAKING SECTION --

17 THE COURT: WHY NOT TAKE THIS TO THE LEGISLATURE
18 AND SAY, LOOK YOU HAVE A HOLE IN THIS LAW. IT SAYS MAY AND
19 THAT IS TOO BROAD. WE'RE HAVING TOO MANY DIFFERENT
20 DECISIONS BEING MADE THROUGHOUT THE STATE OF CALIFORNIA.
21 TAKE THIS SPECIAL ORDER 7, THIS IS A TEMPLATE OR A
22 PROPOSAL, AND TAKE IT TO THE LEGISLATURE.

23 I AM A BIG BELIEVER IN DEMOCRACY AND PUBLIC DEBATE.
24 I'M RELUCTANT TO HAVE JUDGES, WHO FOR ALL INTENTS AND
25 PURPOSES, ARE UNELECTED MAKING THESE DECISIONS.

26 MR. KAUFMAN: YOUR, HONOR, WE CERTAINLY UNDERSTAND
27 YOUR HONOR'S CONCERN THAT THIS IS IN SOME WAY POLICY
28 MAKING, BUT IT'S REALLY NO DIFFERENT THAN L.A.P.D.'S

1 APPROACH TO ITS INSTRUCTIONS AND GUIDANCE TO ITS OFFICERS
2 ON NUMEROUS AREAS THAT TOUCH ON THE VEHICLE CODE. WE HAVE
3 PROVIDED A NUMBER OF EXAMPLES, OTHER L.A.P.D. POLICIES THAT
4 WOULD BE NECESSARILY INVALIDATED IF YOUR HONOR ACCEPTS
5 PLAINTIFFS BROAD READING OF SECTION 21. AND WE HAVE
6 PROVIDED A NUMBER OF OTHER JUST HYPOTHETICAL EXAMPLES I
7 THINK THAT WOULD MAKE THIS ABUNDANTLY CLEAR.

8 LET'S SAY ON NEW YEAR'S EVE CHIEF BECK ISSUES A
9 DIRECTIVE SAYING THEY WANT ALL ITS OFFICERS TO FOCUS,
10 PRIORITIZE ON DRUNK DRIVING VIOLATIONS AT THE EXPENSE OF
11 OTHER VIOLATIONS. UNDER PLAINTIFFS VIEW OF SECTION 21 THAT
12 DIRECTIVE WOULD BE UNLAWFUL BECAUSE IT'S PUTTING
13 CONDITIONS. PRIORITIZATION DOESN'T EXIST IN THE VEHICLE
14 CODE ITSELF.

15 ANOTHER EXAMPLE, YOUR, HONOR, SECTION 40303 IN THE
16 VEHICLE CODE PROVIDES LAW ENFORCEMENT THE DISCRETION TO
17 EITHER CITE AND RELEASE A DRIVER FOR CERTAIN ENUMERATED
18 OFFENSES OR TO EFFECT A CUSTODIAL ARREST. ON PLAINTIFFS
19 VIEW OF SECTION 21, CHIEF BECK CAN'T ISSUE A POLICY ON WHEN
20 HE WANTS HIS OFFICERS TO BE MAKING CUSTODIAL ARRESTS FOR
21 CERTAIN AND ANY SORTS OF VIOLATIONS THAT WOULD FALL UNDER
22 4303.

23 THESE ARE BASIC AND FUNDAMENTAL POLICY-MAKING ROLES
24 THAT THE CHIEF FULFILLS AS THE EXECUTIVE OF THE L.A.P.D.
25 AND IF YOUR HONOR ACCEPTS PLAINTIFFS VIEW OF SECTION 21, IT
26 WOULD BE STRIPPED OVER ANY ABILITY TO REGULATE, SUPERVISE,
27 INSTRUCT, DIRECT HIS OFFICERS' CONDUCT ON MATTERS COVERED
28 BY THE VEHICLE CODE.

1 THIS IS A BREATHTAKING BROAD VIEW OF SECTION 21. A
2 REAL REVOLUTION IN HOW TO STRUCTURE LAW ENFORCEMENT IN
3 CALIFORNIA. YOU HAVE UNDER PLAINTIFFS VIEW SECTION 21 ALL
4 THE AUTHORITY, ALL THE POWER UNDER THE VEHICLE CODE RESIDES
5 IN THE INDIVIDUAL OFFICERS, THE LOWEST LEVEL OF INDIVIDUAL
6 OFFICERS, WHO CAN HAUL THEIR BOSSES INTO COURT ANY TIME
7 THEY DISAGREE WITH ANY INSTRUCTIONS THEIR BOSSES GIVE THEM
8 ABOUT HOW THEY WANT THEM TO IMPLEMENT THE DISCRETIONARY
9 PROVISIONS OF THE VEHICLE CODE.

10 THE COURT: FROM THEIR POINT OF VIEW THEY ARE SWORN
11 TO UPHOLD THE LAWS OF THE STATE OF CALIFORNIA AND THE LAW
12 SAYS ONE THING AND SPECIAL ORDER 7 SAYS SOMETHING ELSE.
13 AND THAT PUTS THEM IN THIS QUANDARY ABOUT DO THEY VIOLATE
14 POTENTIALLY THE STATE LAW OR DO THEY VIOLATE THE ORDERS OF
15 THE L.A.P.D. THEY SAY THAT SUBJECTS THEM TO CIVIL
16 LIABILITY. I DON'T KNOW, THE CHP CASE I CITED SAID NO AT
17 LEAST UNDER THOSE FACTS, BUT I CAN SEE POTENTIALLY WHERE
18 THAT CONFLICT COULD COME UP.

19 BUT EVEN IF A CONFLICT DOESN'T COME UP THEY ARE
20 SWORN TO UPHOLD THE LAW IN THE STATE OF CALIFORNIA AND HERE
21 YOU CAN READ SPECIAL ORDER 7 AND IT IS DIFFERENT AND IT HAS
22 REAL WORLD EFFECTS. WHAT DO THEY DO? WHAT DO YOU THEY
23 TELL THE OFFICER TO DO?

24 MR. KAUFMAN: YOUR, HONOR, LET'S SAY L.A.P.D.
25 PASSED A POLICY THAT SAID WE MANDATE YOU USE 14602 EVERY
26 CIRCUMSTANCE; THEY WANT 30-DAY IMPOUNDS AS A RULE. THAT
27 POLICY ALSO WOULD BE UNLAWFUL BECAUSE IT'S INSTRUCTING
28 THEIR OFFICERS ON HOW TO IMPLEMENT DISCRETION WITH 14602.

1 THIS WORKS BOTH WAYS AND IT'S GOING TO ELIMINATE NOT ONLY
2 POLICIES ON SECTION 14602, BUT BROADLY ANY POLICIES UNDER
3 THE VEHICLE CODE THE L.A.P.D. CURRENTLY HAS. AND IF THIS
4 RULE WAS ADOPTED STATEWIDE IT WOULD ELIMINATE LAW
5 ENFORCEMENT AGENCIES' AUTHORITY TO ADOPT ANY POLICIES
6 WHATSOEVER THAT TOUCH ON THE VEHICLE CODE.

7 THE COURT: I DON'T THINK IT'S THAT DRACONIAN.
8 L.A.P.D. IS FAMOUS FOR ITS EXCELLENT TRAINING AS I SAID. I
9 USED TO ACTUALLY DO CIVIL RIGHTS LITIGATION AT ONE POINT IN
10 ONE OF MY PRIOR LIVES. L.A.P.D. IS A TRENDSETTER WHEN IT
11 COMES TO OUTSTANDING EDUCATION AND TRAINING. I DON'T SEE
12 IT AS THAT DRACONIAN. I CAN SEE THEM DRAFTING A SPECIAL
13 ORDER 7 IN A WAY THAT DIDN'T SPLIT OUT DIFFERENT CATEGORIES
14 OF UNLICENSED DRIVERS, FOR EXAMPLE, DIDN'T START OFF WITH
15 THE PRESUMPTION OF DO NOT IMPOUND. I COULD SEE THEM
16 WRITING ONE THAT WOULD COMPORT MORE CLOSELY WITH EXISTING
17 STATE LAW AND, NO, I'M NOT GOING TO DO THAT HERE THAT IS
18 NOT MY EXPERTISE. I DON'T THINK IT'S THAT DRACONIAN.

19 MR. KAUFMAN: YOUR, HONOR, I THINK RESPECTIVELY
20 PLAINTIFFS THEMSELVES WOULD DISAGREE WITH THAT UNLESS THE
21 TERMS OF THE SPECIAL ORDER ARE IDENTICAL TO THE VEHICLE
22 CODE THEMSELVES, L.A.P.D. CANNOT HAVE A POLICY ON IT
23 BECAUSE IT WOULD THEN BE INSTRUCTING OR DIRECTING THEIR
24 OFFICERS IN WHATEVER TINY DIFFERENCES DIFFERENT THAT THE
25 TERMS OF THE VEHICLE CODE ITSELF THAT WOULD BE UNLAWFUL.

26 THE COURT: DEPENDS ON WHAT THE DIFFERENCE IS.
27 OKAY, I'D HAVE TO SEE IT. NOW WE'RE TRULY SPECULATING
28 ABOUT WHAT COULD BE OR WHAT MIGHT BE. BUT I DON'T SEE THIS

1 AS BEING THAT DRACONIAN. IF I RULE FOR THE PLAINTIFFS IN
2 THIS CASE THEN IT'S UPHELD IN THE APPELLATE COURT THAT
3 SOMEHOW THE L.A.P.D. WILL BE HANDCUFFED AND UNABLE TO HAVE
4 TRAINING OF THEIR OFFICERS, I JUST DON'T SEE THAT.

5 MR. KAUFMAN: CERTAINLY IF THE TRAINING IS OFFERED
6 AND THEN THE OFFICERS ARE EXPECTED TO CONFORM THEIR CONDUCT
7 TO MANDATE IN THE WAY THAT SPECIAL ORDER 7 IS WRITTEN THERE
8 IS THE EXPECTATION THAT L.A.P.D. OFFICERS -- YES ALL OF
9 THOSE TRAININGS WILL BE UNLAWFUL TOO.

10 PLAINTIFFS HAVE OFFERED NO LIMITING PRINCIPLE AS TO
11 WHY THEIR INTERPRETATION OF SECTION 21 WOULDN'T APPLY TO
12 ALL L.A.P.D. POLICIES THAT TOUCH ON MATTERS COVERED BY THE
13 VEHICLE CODE; IT IS THAT BREATHTAKING.

14 THE COURT: LET'S ASK. POLICE PROTECTIVE LEAGUE,
15 ARE YOU HANDCUFFING THE L.A.P.D. FROM DOING LEGITIMATE
16 FUNCTIONS AS TO TRAINING AND GIVING GUIDANCE TO THEIR
17 OFFICERS?

18 MR. LEVINE: ABSOLUTELY NOT, YOUR HONOR. THE
19 PROBLEM WITH SPECIAL ORDER NO. 7 IS THAT IT REMOVED THE
20 DISCRETION VESTED TO THE OFFICERS THAT WAS SPECIALLY VESTED
21 UNDER THE VEHICLE CODE AND MANDATED AN OUTCOME AND DEPRIVED
22 THEM OF THE DISCRETIONARY RIGHT.

23 WE'RE NOT SAYING THE LOS ANGELES POLICE DEPARTMENT
24 CANNOT PROMULGATE SPECIAL ORDERS THEY DO THAT ALL THE TIME.
25 THE PROBLEM WITH THIS CASE IS, ON ITS FACE, THE SPECIAL
26 ORDER CONFLICTED WITH THE TERMS AND CONDITIONS OF VEHICLE
27 CODE SECTION 14602.6. ONCE REMOVED THE DISCRETION AND
28 MANDATED THAT THERE SHOULDN'T BE ANY IMPOUNDS WITH RESPECT

1 TO DRIVERS DRIVING ON REVOKED OR SUSPENDED LICENSE OR
2 HAVING NOT EVER BEEN ISSUED A LICENSE, THE SPECIAL ORDER
3 REALLY CONFLICTED WITH THE LEGISLATIVE PURPOSE THAT WAS SET
4 FORTH IN THE REQUEST FOR JUDICIAL NOTICE 14602.6.

5 THE COURT: RIGHT.

6 MR. LEVINE: THE LEGISLATURE EXPANDED, WANTED TO
7 EXPAND, THE AUTHORITY OF POLICE OFFICERS TO IMPOUND
8 UNDER --

9 THE COURT: RIGHT.

10 MR. LEVINE: -- UNDER THAT SECTION BECAUSE THE
11 PRIOR CONDITION WAS THERE BE NO IMPOUNDS IF THERE WAS A
12 LICENSED PASSENGER IN THE CAR. WHAT SPECIAL ORDER 7 WOULD
13 DO IS, EVEN IF THERE WAS A LICENSED DRIVER AVAILABLE YOU
14 STILL CANNOT IMPOUND. AND THAT IS ABSOLUTELY CONTRADICTIONARY
15 WITH WHAT THE EXPRESS LEGISLATIVE PURPOSE WAS WITH 14602.6.

16 AS THE COURT INDICATED IF EVERY JURISDICTION
17 IMPLEMENTED SPECIAL ORDER 7, THERE WOULD BASICALLY BE A
18 REPEAL BY MUNICIPAL FIAT OF THE STATE LEGISLATIVE MANDATES.
19 AND IN CONTRAST TO WHAT THE CITY ATTORNEY INDICATED, I
20 DON'T BELIEVE YOU CAN REASONABLY LOOK AT SPECIAL ORDER 7
21 AND BELIEVE IT'S JUST GUIDANCE, IT'S MANDATORY.

22 THE COURT: IT DOES SAY, SHALL REFER TO 22651.

23 MR. SATO: I THINK IT SAID DISCIPLINARY.

24 MR. LEVINE: SUBSECTIONS II, A AND C WHICH BREAK
25 OFF THE DIFFERENCE BETWEEN REVOKED AND SUSPENDED LICENSE
26 AND DRIVERS WHO HAVE NEVER BEEN ISSUED A LICENSE BOTH COUCH
27 THE LANGUAGE AS SHALL RELEASE IN LIEU OF IMPOUND. WE THINK
28 THAT IS CONTRARY TO THE STATE LEGISLATIVE OBJECTIVE OF

1 14602.6 CONTRARY TO THE STATED LEGISLATIVE PURPOSE SET
2 FORTH IN 14607.4 THAT YOUR HONOR REFERRED TO. AND EVEN IF,
3 EVEN IF, YOU'RE GOING TO APPLY THE COMMUNITY CARETAKING
4 DOCTRINE TO 14602.6, THAT WOULD ELIMINATE DISCRETIONARY
5 ABILITY OF THE OFFICER TO LOOK AT ALL THE CONDITIONS IN THE
6 FIELD AND DECIDE WHETHER OR NOT IMPOUND IS APPROPRIATE. SO
7 THE COMMUNITY CARETAKING DISCRETIONARY ABILITY WOULD EVEN
8 BE UNDERMINED.

9 SO FOR ALL THE REASONS THE COURT SET FORTH IN ITS
10 TENTATIVE RULING, WE BELIEVE THE COURT'S CONCLUSIONS ARE
11 CORRECT AND THIS CERTAINLY IS A CONFLICT. SPECIAL ORDER 7
12 CERTAINLY IS A CONFLICT WITH THE STATE VEHICLE CODE.

13 THANK YOU.

14 THE COURT: DOES THAT SATISFY? I TEND TO AGREE
15 WITH COUNSEL.

16 MR. KAUFMAN: YOUR HONOR, A COUPLE OF POINTS. I
17 THINK THIS IS CLARIFYING ONE THING CLEAR ABOUT PLAINTIFFS
18 POSITION HERE. THEIR ARGUMENT IS PREMISED ON THE PROBLEM
19 AS THEY SEE IT IS THAT SPECIAL ORDER 7 REMOVES THE
20 DISCRETION OF INDIVIDUAL OFFICERS WHICH THEY BELIEVE THE
21 VEHICLE CODE SOLELY VESTED WITHIN IT THE INDIVIDUAL
22 OFFICERS AT THE EXPENSE OF THEIR SUPERIORS.

23 THIS CASE IS FUNDAMENTALLY A QUESTION ABOUT WHO
24 GETS TO DECIDE HOW IMPORTANT DECISIONS ABOUT IMPOUNDING
25 WILL BE MADE IN LOS ANGELES. PLAINTIFFS BELIEVE THAT THE
26 DISCRETION GIVEN IN THE VEHICLE CODE IS VESTED SOLELY WITH
27 INDIVIDUAL OFFICERS WHILE DEFENDANTS BELIEVE THAT LAW
28 ENFORCEMENT AGENCIES RETAIN THEIR TRADITIONAL AND VERY

1 BASIC AUTHORITY TO REGULATE HOW THEIR OFFICERS ARE GOING TO
2 CONDUCT THEMSELVES IN THE FIELD. THIS IS REALLY AN
3 EXTRAORDINARY VIEW OF SPECIAL ORDER 7.

4 THE COURT: SORRY TO INTERRUPT YOU, BUT I DISAGREE
5 WITH THAT. YES, 14602 SAYS, MAY, AND IT'S WHOLLY
6 DISCRETIONARY AND IT DOESN'T LIST ANY CONDITIONS ON HOW TO
7 APPLY THAT. THAT IS WHAT THE COURT SAID IN THE CHP CASE
8 WHICH IS WHY IT WAS NOT A VIOLATION OF A MANDATORY DUTY.

9 I DON'T SEE THIS DRACONIAN SPLIT. I CAN EASILY SEE
10 HOW A GOVERNMENT AGENCY, A D.A.'S OFFICE, CITY ATTORNEY'S
11 OFFICE, OR L.A.P.D. OR OTHER AGENCIES CAN ISSUE TRAINING
12 AND GUIDANCE TO THE OFFICERS THAT DOESN'T MATERIALLY CHANGE
13 THE APPLICATION OF VARIOUS LAWS. I JUST DON'T SEE THIS AS
14 BEING A CHOICE BETWEEN OFFICERS RUNNING RAMPANT IN THE
15 FIELD DOING THEIR OWN THING AND THE TOP BRASS REGULATING
16 WHAT AND HOW AND WHEN THEY DO IT. I JUST DON'T SEE THIS
17 DRACONIAN SPLIT. I CAN EASILY SEE THERE COULD BE, YOU
18 COULD HAVE SOME GUIDANCE AND TRAINING THAT WOULD BE OFFEND
19 THE PREEMPTION DOCUMENT.

20 MR. KAUFMAN: RESPECTFULLY, YOUR, HONOR, I THINK
21 THE DEPARTMENT'S EXPERIENCE PRIOR TO SPECIAL ORDER 7 BEARS
22 OUT PRECISELY THOSE CONCERNS WHERE WE HAVE HAD INDIVIDUAL
23 OFFICERS DISCRETION AND GET WIDELY INCONSISTENT RESULTS
24 AROUND THE DEPARTMENT. WE'VE HAD OFFICERS REPORTING THEY
25 ARE CONFUSED ABOUT WHAT THEIR OBLIGATIONS WERE UNDER THE
26 VEHICLE CODE.

27 THE COURT: ALL THE CITY OF LOS ANGELES HAS DONE
28 HERE IS MADE A PROBLEM THAT YOU'RE SAYING WAS ON A PRECINCT

1 LEVEL NOT MADE ON A STATE LEVEL. NOW EVERY CITY IN THE
2 STATE IS GOING TO HAVE THEIR OWN POLICY. AND I AGREE WITH
3 THE PLAINTIFF, AGAIN, IT'S REPEAL BY FIAT. EVERY EVIL THAT
4 YOU'RE TALKING ABOUT NOW IS GOING TO BE MAGNIFIED ON A
5 STATE BASIS, CITY BY CITY, WHICH IS WHY SACRAMENTO HAS TO
6 DO THIS.

7 MR. KAUFMAN: YOUR, HONOR, THE NOTION THIS IS A
8 REPEAL BY FIAT, YOUR HONOR. AS YOUR, HONOR, MENTIONED
9 THERE IS A DIFFERENCE BETWEEN WHAT IS IN SPECIAL ORDER 7
10 AND THE VEHICLE CODE, BUT THAT DIFFERENCE DOESN'T MEAN
11 THERE IS A CONFLICT. THAT IS THE QUESTION, WHETHER THERE
12 IS A CONFLICT BETWEEN SPECIAL ORDER 7 AND WHAT PROVIDES IN
13 THE VEHICLE CODE.

14 I INVITE PLAINTIFFS TO POINT TO ANYTHING THAT
15 SPECIAL ORDER 7 REQUIRES, ANYTHING IT REQUIRES, THAT IS IN
16 CONFLICT WITH WHAT THE VEHICLE CODE PROVIDES. THAT IS,
17 COULD AN OFFICER IN HIS OR HER OWN INDIVIDUAL DISCRETION
18 DECIDE OUT IN THE FIELD I'M GOING TO DO THIS ACCORDING TO
19 INTERNALLY, I'M GOING TO INTERNALLY DO WHAT SPECIAL ORDER 7
20 DOES AND NOW IT SOMEHOW VIOLATES THE VEHICLE CODE AND THAT
21 IS CERTAINLY NOT THE CASE, YOUR, HONOR.

22 MR. SATO: IF I CAN REPLY --

23 THE COURT: HE ASKED A QUESTION OF THE PLAINTIFF.

24 MR. SATO: OKAY. THIS WON'T TAKE LONG.

25 JUST TO THE POINT, AGAIN, THE FACE OF SPECIAL
26 ORDER 7 SAYS THAT THE COMMUNITY CARETAKING DOCTRINE RESIDES
27 WITH THE OFFICER CONSIDERING THE TOTALITY OF THE
28 CIRCUMSTANCES THAT IS JUST THE CORRECT RESTATEMENT OF WHAT

1 THE COMMUNITY CARETAKING DOCTRINE IS.

2 AND BECAUSE WE'RE TALKING ABOUT AN AREA THIS
3 IMPLICATES A CONSTITUTIONAL RIGHT THAT IS A RIGHT TO
4 POSSESSION OF A VEHICLE, BECAUSE WE'RE TALKING ABOUT A
5 CONSTITUTIONAL RIGHT, THE CITY IS IN A POSITION WHERE IT
6 HAS TO HAVE GUIDELINES. I THINK FIRST AS A BASIC TENET OF
7 LABOR LAW AND PROCEDURAL DUE PROCESS YOU WANT YOUR EMPLOYER
8 TO MAKE AS CLEAR IS IT CAN WHAT IS PROHIBITED AND WHAT IS
9 ALLOWED. SO I THINK GUIDELINES ARE ALLOWED FROM THAT
10 PERSPECTIVE.

11 THE COURT: GENERICALLY I DON'T DISAGREE WITH YOU.

12 MR. SATO: I THINK WE DISCUSSED IN YOUR BELIEFS THE
13 CASE LAW THAT SAYS IF YOU HAVE A MUNICIPALITY THAT DOESN'T
14 HAVE GUIDELINES OR DOESN'T TRAIN OR HAVE THESE KINDS OF
15 RULES REGARDING SITUATIONS WHERE THE CONSTITUTIONAL RIGHTS
16 OF CITIZENS AND THIRD PARTIES ARE GOING TO BE IMPLICATED,
17 THAT MAKES BOTH THE CITY AND THE OFFICER MORE VULNERABLE
18 NOT LESS VULNERABLE TO CIVIL LIABILITY.

19 REGARDING THE LEGISLATURE, THE COMMUNITY CARE
20 DOCTRINE IS A CONSTITUTIONAL, ITS SOURCE IS THE FOURTH
21 AMENDMENT. ITS CREATION IS JUDGE MADE. IT MAY BE THAT THE
22 STATE LEGISLATURE COULD BE PERSUADED TO ADDRESS SOME OTHER
23 STEREOTYPICAL SITUATIONS WHERE A PROCEDURE ISSUE WOULD COME
24 UP. BUT THIS IS STILL SOMETHING THAT I THINK HAS TO BE
25 PLAYED OUT ON A CASE-BY-CASE BASIS. AND THAT IS WHY I
26 THINK THE FACIAL CHALLENGE THAT IS BEING MOUNTED ON SPECIAL
27 ORDER 7 IN THIS CASE IS UNWARRANTED.

28 THE COURT: I DON'T UNDERSTAND YOU WERE TALKING

1 ABOUT A HIGHER STANDARD AND THE CONSTITUTIONAL CHALLENGE
2 THAT IS NOT WHAT I READ. THIS IS A STANDARD PREEMPTION
3 ISSUE. IT'S A STANDARD PREEMPTION EITHER IT IS OR IT
4 ISN'T. I DON'T SEE THIS ANYMORE CONSTITUTIONALLY COMPLEX
5 THAN THAT.

6 MR. SATO: THE WAY WE CONCEPTUALIZE IT BECAUSE
7 WE'RE TALKING ABOUT A CONSTITUTIONAL ISSUE, THE PROHIBITION
8 AGAINST UNREASONABLE SEARCHES OR UNREASONABLE WARRANTLESS
9 SEARCHES. CONCEPTUALLY SPECIAL ORDER 7 IS NOT DIFFERENT
10 THAN OTHER POLICE GUIDELINES, DISCIPLINARY RULES AND SO ON
11 CAN ADDRESS OTHER SITUATIONS WHERE THE CONSTITUTIONAL RIGHT
12 OF PERSONS ARE IMPLICATED AN EXCESSIVE FORCE POLICY FOR
13 EXAMPLE, THOSE KINDS OF THINGS. AND WHETHER THERE IS A
14 CONFLICT WITH THE VEHICLE CODE, THE COMMUNITY CARETAKING
15 DOCTRINE, I THINK THE CASES SAY, I URGE THE COURT TO TAKE
16 ANOTHER LOOK AT THE TORRES AND WILLIAMS CASES THAT WE HAVE
17 CITED COMMUNITY CARETAKING TRUMPS THE VEHICLE CODE.

18 AND ONE OTHER POINT I WANTED TO MAKE, AGAIN
19 REGARDING WHETHER IT'S THE OFFICER WHO IS GOING TO HAVE
20 COMPLETE DISCRETION. ALTHOUGH 14602 A-1 OR I'M GETTING
21 MIXED UP, THE PARTS REGARDING THE DECISION TO IMPOUND,
22 REFERS TO WHAT THE OFFICER CAN DO. ALL THE REST OF IT
23 REGARDING HOW THE VEHICLE -- HOW LONG THE VEHICLE SHOULD BE
24 STORED, WHEN IT SHALL BE RELEASED AND SO ON, DESCRIBES THE
25 DUTIES OF QUOTE ISSUING AGENCY, CLOSED QUOTE. I THINK THE
26 CITY HAS THE RIGHT TO MAKE REGULATIONS HOW ITS OWN DUTIES
27 UNDER THE CODE ARE GOING TO BE PUT INTO EFFECT.

28 THE COURT: JUST AS A BROAD BRUSH, I DON'T

1 DISAGREE, BUT DEPENDS HOW IT'S DONE.

2 STURGEON, YOU WERE CHALLENGED HERE A MINUTE AGO BY
3 INTERVENOR.

4 MR. ORFANEDES: JUST A COUPLE OF POINTS, YOUR,
5 HONOR, I THINK WE HAVE BEATEN SOME OF THE PREEMPTION ISSUES
6 TO DEATH.

7 THE COURT HAS NOT YET RULED ON OUR REQUEST FOR
8 JUDICIAL NOTICE.

9 THE COURT: GRANTED.

10 MR. ORFANEDES: THANK YOU, VERY MUCH, YOUR HONOR.

11 WE HAD ALSO MADE A SUBSIDIARY ARGUMENT THAT SPECIAL
12 ORDER 7 CONFLICTS WITH 14607.6 WHICH IS THE MANDATORY
13 30-DAY IMPOUND PROVISION THAT APPLIES IN VERY LIMITED
14 CIRCUMSTANCES. OUR REVIEW OF THE SPECIAL ORDER IS THAT IT
15 BASICALLY ELIMINATES THAT. IT DOES NOTE THAT CERTAIN
16 IMPOUNDS AFFECTED UNDER 14602 SHOULD INCLUDE AN ANNOTATION
17 THAT A VEHICLE IS ELIGIBLE FOR FORFEITURE UNDER 14627.6,
18 BUT THE IMPOUND IS STILL BEING EFFECTED UNDER THE MORE
19 LENIENT 14602 PROVISION.

20 THE COURT: OF COURSE.

21 MR. ORFANEDES: IN OUR VIEW THAT DOESN'T ANSWER
22 THAT. SPECIAL ORDER 7 PRACTICALLY ELIMINATES 14607, AND WE
23 HAVEN'T TALKED ABOUT THAT.

24 THE COURT: I AGREE. OBVIOUSLY IT DOES --

25 MR. ORFANEDES: JUST A FEW --

26 THE COURT: -- THAT IS ONE OF THE REASONS WHY WE
27 ARE HERE.

28 MR. ORFANEDES: A FEW OTHER THINGS I WANTED TO

1 NOTE. THERE HAS BEEN SOME DISCUSSION ABOUT UNIFORMITY OR
2 LACK OF UNIFORMITY. ONE OF THE THINGS I THINK IS SO
3 IMPORTANT ABOUT THE TWO STATUTES, 14602 AND 14607, IS THEY
4 CREATE A UNIFORMITY OF DETERRENT EFFECT ACROSS THE STATE.
5 IF YOU HAVE MUNICIPALITIES DECIDING THEY ARE GOING ON THEIR
6 OWN WAY ON WHETHER OR NOT THEY ARE GOING TO ENFORCE THE
7 ISSUES, THE STATUTES, YOU'RE GOING TO DESTROY, YOU HAVE
8 DESTROYED THE UNIFORMITY OF THE DETERRENTS THAT THE
9 LEGISLATURE INTENDED TO HAVE. I THINK THAT IS AN IMPORTANT
10 POINT TO NOTE.

11 FINALLY ON THE PREEMPTION FOURTH AMENDMENT ISSUE,
12 WHETHER OR NOT THE STATUTE IS PREEMPTED DOESN'T AFFECT ANY
13 SORT OF FOURTH AMENDMENT CONSIDERATION. IT'S EITHER
14 PREEMPTED OR IT'S NOT. ACLU POINTED TO THE U.S. VERSUS
15 ARIZONA LAWSUIT. IN THAT CASE THE SUPREME COURT FOUND THE
16 ARIZONA STATUTE WAS UNCONSTITUTIONAL. IT WAS PREEMPTED.
17 THE ANALYSIS WASN'T WHETHER OR NOT ARIZONA HAD A GOOD
18 REASON FOR WHY OR A PUBLIC POLICY REASON FOR WHY IT WAS
19 PREEMPTED, IT WAS JUST PREEMPTED.

20 THE COURT: RIGHT.

21 MR. ORFANEDES: FINALLY THE CITY'S COMMUNITY
22 CARETAKING DOCTRINE APPLICATION 14606.6 IS SITUATIONAL
23 DEFENSE. THEY WON A CASE EARLIER THIS YEAR CLAIMING THERE
24 WAS NO FOURTH AMENDMENT VIOLATION AND AN APPLICATION 14602
25 WE CITED THAT IN OUR BRIEFS, MIRANDA VERSUS BONNER. IN
26 THAT SITUATION EARLIER, MARCH OF THIS YEAR, THEY WERE
27 DEFENDING IT SAYING THERE WAS NO COMMUNITY CARETAKING
28 DOCTRINE. THE ISSUE THERE, TODAY THEY ARE SAYING SOMETHING

1 ELSE.

2 THE COURT: OKAY. BRIEFLY I'M IN TRIAL.

3 MR. KAUFMAN: I UNDERSTAND, YOUR HONOR, WE INVITED
4 PLAINTIFFS TO SHOW ANY ACTUAL CONFLICT BETWEEN WHAT SPECIAL
5 ORDER 7 CALLS FOR AND THE VEHICLE CODE AND THEY CANNOT
6 POINT TO A SINGLE EXHIBIT. I THINK THAT IS PRETTY MUCH THE
7 WHOLE CASE, YOUR, HONOR. THERE IS NO CONFLICT WITH WHAT
8 SPECIAL ORDER 7 REQUIRES AND WHAT THE STATE'S --

9 THE COURT: THEN WHY ARE WE HERE? THEN THIS IS AN
10 ACADEMIC EXERCISE. OBVIOUSLY THERE IS A DIFFERENCE THAT IS
11 WHY WE HAVE A LAWSUIT.

12 MR. KAUFMAN: BUT A DIFFERENCE DOESN'T MEAN A
13 CONFLICT, YOUR, HONOR. SIMPLY BECAUSE THERE ARE ADDITIONAL
14 GUIDELINES OR REGULATIONS, WHATEVER TERM WE WANT TO GIVE
15 IT, TO INSTRUCT OFFICERS ON HOW THEY SHOULD EXERCISE THEIR
16 VERY BROAD DISCRETION GIVEN UNDER 14602 DOESN'T MEAN THERE
17 IS A CONFLICT BETWEEN THE PROVISION.

18 THIS IS A VERY COMMON LAW ENFORCEMENT POLICY IN THE
19 SENSE WE HAVE BROAD AUTHORITY GIVEN TO LAW ENFORCEMENT
20 AGENCIES, AND THEY NEED TO INSTRUCT THEIR OFFICERS ON HOW
21 TO EXERCISE THAT ACCORDING TO UNIFORM STANDARDS.

22 THE COURT: AS I SAID, THIS IS A REAL WORLD ISSUE
23 THAT HAS MADE A REAL WORLD DIFFERENCE. AND I'M NOT SAYING
24 I'M NOT SAYING IT'S A BAD DIFFERENCE. IT COULD BE A GOOD
25 DIFFERENCE FROM A PUBLIC POLICY STANDPOINT; IT IS JUST
26 FACT. IT'S A PUBLIC POLICY ISSUE. SO THE APPROPRIATE BODY
27 TO HEAR THIS IS THE LEGISLATURE.

28 I HAVE TO MOVE ON. ONE LAST WORD? YOU ARE

1 WINNING, SO YOU SHOULDN'T HAVE THE LAST WORD.

2 MR. LEVINE: WE'LL SUBMIT.

3 MR. SATO: GOING BACK TO SOMETHING YOUR HONOR SAID
4 AT THE VERY BEGINNING OF OUR MEETING, IT'S NOT THE CITY'S
5 POSITION THAT SOMEHOW 14602 THAT SERIES OF STATUTES IS ON
6 IT'S FACE UNCONSTITUTIONAL THAT IS NOT THE CITY'S ARGUMENT.

7 THE COURT: ALL RIGHT. LOOK. THIS HAS BEEN VERY
8 WELL DONE. I APPLAUD ALL THE PARTIES FOR THE EXCELLENT
9 WORK WRITTEN AND ORAL. BUT I'M GOING TO GRANT BOTH
10 PLAINTIFFS SUMMARY ADJUDICATIONS, SUMMARY JUDGMENTS, AND
11 DENY THE TWO OTHER SUMMARY JUDGMENT MOTIONS.

12 OKAY. SO WE HAVE AN EXCELLENT RECORD HERE. I WISH
13 ALL OF YOU, I ASSUME THERE IS GOING TO BE A NEXT STEP AND I
14 WISH ALL OF YOU GOOD LUCK IN THE NEXT STEP.

15 MR. LEVINE: THANK YOU, YOUR HONOR.

16 MR. SATO: I KNOW YOUR HONOR'S RULING TODAY DOESN'T
17 GO TO REMEDY OR MAYBE IT DOES, BUT I JUST DIDN'T HEAR IT.
18 WE WOULD ASK TO STAY ANY REMEDY THAT YOUR HONOR WAS
19 CONTEMPLATING IF THAT WAS PART OF YOUR HONOR'S RULING.

20 THE COURT: NO. THIS WAS A DECLARATORY RELIEF AND
21 INJUNCTIONS, SUMMARY ADJUDICATION, SUMMARY JUDGMENT. TO
22 THE EXTENT THERE IS AN INJUNCTION, I'M GRANTING THAT. NOW
23 YOU WANT A STAY. I DON'T KNOW, HOW DO YOU FEEL ABOUT THAT,
24 YOU WANT A STAY TO APPEAL, RIGHT?

25 MR. SATO: YES.

26 THE COURT: WHAT IS WRONG WITH THAT?

27 MR. ORFANEDES: FIRST OF ALL, DEFENDANTS HAVE A
28 VERY HEAVY BURDEN ON STAYS PENDING APPEAL. THEY HAVE TO

1 MAKE A SHOWING OF SUBSTANTIAL HARM. THERE HAS BEEN NO
2 SHOWING WHATSOEVER. MAYBE THEY WANT AN OPPORTUNITY TO TRY
3 AND SHOW THAT, BUT WE CERTAINLY HAVEN'T HEARD ANYTHING HERE
4 AS TO WHY THIS IS GOING TO CAUSE SUBSTANTIAL HARM.

5 WHAT WE'RE EFFECTIVELY DOING IS RETURNING TO THE
6 STATUS QUO PRE-APRIL, 2012. I DON'T KNOW WHY THERE IS SOME
7 URGENT NEED TO FIX WHAT WAS BROKEN BACK IN APRIL, 2012, AND
8 NOW THE COURT SHOULD STAY ITS RULING.

9 THE COURT: THEY HAVE A POINT OF VIEW, AND IT'S THE
10 OPINION OF THE LOS ANGELES POLICE DEPARTMENT TOP PEOPLE
11 WITH WHOM I RESPECT, IT'S THEIR OPINION, I DON'T AGREE WITH
12 THEM, BUT THEIR OPINION IS THIS IS NECESSARY AND MEANINGFUL
13 TO THE OPERATION OF THEIR DEPARTMENT. I'M INCLINED TO
14 GRANT THE STAY PENDING APPEAL JUST SO WE CAN HAVE IT HEARD
15 BY AN APPELLATE COURT, AND I'M CONFIDENT I'M RIGHT, BUT
16 JUST AS JURIES HAVE TOLD ME OTHERWISE, SO HAS THE COURT OF
17 APPEAL.

18 MR. LEVINE: YOUR HONOR, MAY I BE HEARD ON THAT.
19 TO THE EXTENT JUDGMENT HASN'T EVEN BEEN ENTERED IN THIS
20 CASE YET.

21 THE COURT: THAT'S ANOTHER POINT, YES.

22 MR. LEVINE: PERHAPS THIS MATTER CAN BE BRIEFED IN
23 TERMS OF THE CITY OR THE INTERVENORS MOTION FOR A STAY.
24 THERE IS GOING TO BE NO CHANGE IN WHAT IS NOW THE STATUS
25 QUO UNTIL JUDGMENT IS ENTERED, AND IT WOULD GIVE OUR
26 CLIENTS AN OPPORTUNITY TO CONSIDER THE STAY REQUEST.

27 THE COURT: I AM NOT HOSTILE TO A STAY AT ALL FOR
28 ALL THE REASONS YOU'RE SAYING. BUT I THINK THE PLAINTIFFS

1 SHOULD HAVE A CHANCE TO BRIEF THIS. AND THERE IS
2 ESSENTIALLY NO CHANGE UNTIL WE HAVE AN ORDER.

3 SO LETS WAIT FOR THE ORDER. IF YOU FOLKS WANT TO
4 BRIEF A STAY OR NOT, I'M TELLING YOU I'M INCLINED TO GRANT
5 A STAY AND UNDER THESE FACTS. A LOT OF TIMES PEOPLE ASK ME
6 FOR A STAY AND I SAY NO, IF THE COURT OF APPEAL WANTS A
7 STAY THEY CAN DO IT. I THINK IN THIS SORT OF A CASE IT
8 MIGHT BE A GOOD IDEA. I'LL ABSOLUTELY WAIT TO HEAR OR READ
9 WHAT THE PARTIES HAVE TO SAY ON THAT ISSUE.

10 MR. LEVINE: THANK YOU, YOUR HONOR.

11 MR. SATO: THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU, GOOD WORK.

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14 (END OF PROCEEDING.)

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