OPLE v. SAUNDERS: Reject-*Tracamonte*, court rules bif-·al not required on prior con.iction allegations. C.A. 2d

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But When Is the Ideo Coming Out?

ue or Not to Sue" and "Super-evisited" are just two of the in-s included on an audio tape ed by McKenna & Cuneo to aintain contact with their clients. r Talk. *Page 2*

Exclusive Policies

ay's commentary, Russell Leib-d Paula LaBrie say a battle is g over whether insurers may liability for the acts of execu-f failed S&Ls through exclusion ons in certain policies. *Page 4*

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nightmare that Bhandari alleges cost him his job, his proprietary technology and his millions because Sonsini never got around to putting an oral agreement into writing. Adding insult to injury, Bhandari claims, Sonsini approved his own client's firing.

The lack of a written contract is the basis of two suits filed by Bhandari, 51, who immigrated to this country from India 30 years ago.

The first suit accuses Sonsini, a partner with Palo Alto's Wilson, Sonsini, Goodrich & Rosati, of legal malpractice. The second action, on the Santa Clara County Superior Court master calendar for today, targets San Jose's Cypress Semiconductor Corp. and its dynamic leader T.J. Rodgers. *Bhandari v. Cypress Semiconductor*, No. 677601, relates to Bhan-

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RUSSELL D. CURTIS

LAWRENCE SONSINI: The Palo Alto lawyer is accused of malpractice for helping to fire his own client. Sonsini says he never represented the man.

Judges Trade Fire in Ruling On INS Kid-Detention Regs

The Recorder 8/12/91 p.1, col 2

By LISA STANSKY

A bitter volley of opinions accompanied Friday's *en banc* Ninth Circuit ruling that struck a government policy of detaining undocumented alien children who are awaiting deportation hearings.

Judges Thomas Tang and William Norris, part of the seven-judge majority, wrote separate opinions blasting Chief Judge J. Clifford Wallace's June 1990 panel decision. That 2-1 ruling upheld the Immigration and Naturalization Service's policy because, Wallace declared, undocumented alien children have no liberty interest that is violated by the policy.

That view "ignores the very substance of the Bill of Rights," Tang asserted.

And Norris warned that Wallace's deference to Congress on immigration matters "should not be the siren song that leads us astray from applying settled due process principles to the facts of this case."

In the majority opinion written by Judge Mary Schroeder, the court ruled that the class of undocumented alien children does have a fundamental liberty interest under the U.S. Constitution.

The ruling, a first nationwide, will affect thousands of children who are picked up by the INS each year, said plaintiffs' co-counsel James Morales, staff attorney with the San Francisco-based National Center for Youth Law.

Wallace, a member of Friday's 11-judge panel, wrote a dissent that took some slaps at the majority and defended his earlier panel decision.

"I find much of the majority's discuss-

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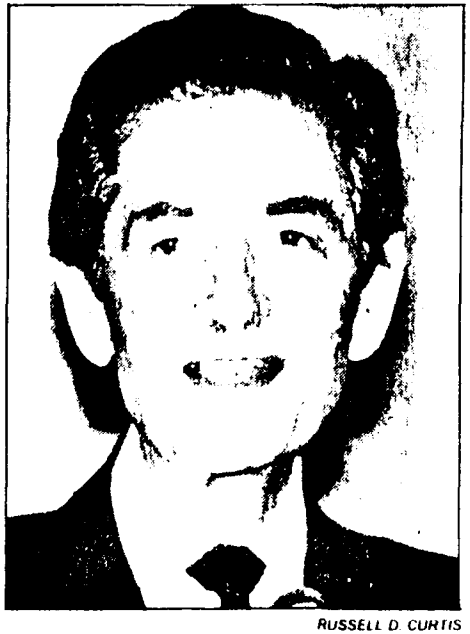

RUSSELL D. CURTIS

JUDGE J. CLIFFORD WALLACE: Ninth Circuit chief whose panel opinion was overturned took the en banc majority to task in a dissent.

IAL NEWSPAPER BY RULES OF COURTS FOR: U.S. DISTRICT COURT, NORTHERN CALIFORNIA; SUPERIOR COURT, CITY AND COUNTY OF SAN FRANCISCO; AND THE MUNICIPAL COURT, SAN FRANCISCO

cisco solo practitioner George Donaldson and Washington, D.C.'s Jonathan Cuneo, claim local court jurisdiction largely on the basis of naming BofA as a defendant and a Bay Area resident alien as class plaintiff. The plaintiff, Shrichand Chawla, deposited $600,000 in an overseas BCCI branch.

The bulk of the class members are also believed to have made their deposits overseas.

But BCCI had tentacles everywhere, with branches from San Francisco — although that one was closed in 1989 — to key operations in England, the Cayman Islands and Luxembourg. Foreign and domestic regulators moved to seize BCCI operations in seven nations July 5. The bank's reach thus leaves Lerach's class action vulnerable to jurisdictional attack, according to lawyers familiar with the case.

formally served.

The racketeering complaint accuses the defendants of engaging in a long-running conspiracy to loot BCCI depositors, allowing the huge international bank to take part in everything from money laundering to terrorism. Virtually all of the allegations have surfaced in press reports, including the alleged role of Washington insider Clifford. Clifford's counsel, Charles Rauh of the Washington branch of Skadden, Arps, Slate, Meagher & Flom, had not seen the suit and declined comment.

Lerach, whose firm has built up perhaps the largest securities fraud practice on the West Coast, has a string of eight-figure triumphs to his credit going into the BCCI litigation. Most recently, he obtained a roughly $100 million verdict in the Apple Securities litigation in San Jose.

though it knew BCCI was going to continue and indeed expand its illegal operations." BofA was a repository for an estimated $175 million in BCCI deposits, the suit also alleges.

Bank of America, a co-founder of BCCI in 1972, held a 25 percent stake in the bank. BofA contends it withdrew from the BCCI partnership in 1980 because of differences over banking practices, but plaintiff lawyers are trying to show that BofA knew when it pulled out of the partnership that BCCI was involved in a host of illegal activities. Further, the suit suggests that BofA, through inaction during the 1980s, aided in BCCI's racketeering enterprise by not revealing what it knew about the bank's illegal activities.

Lerach asserts that parties to a conspiracy can't "absolve themselves by withdrawing their profits and leaving."

The author of RICO, meanwhile, told *The Recorder* that the BCCI case appears tailor-made for the racketeering statute, and that it can be used against foreign officials if they are shown to have engaged in a fraud involving interstate or foreign commerce.

"If RICO doesn't apply to this, what does it apply to?" said Notre Dame Law School professor G. Robert Blakey.

The key to the San Francisco litigation, Blakey said, is whether plaintiff lawyers can prove that each defendant was part of the BCCI conspiracy — even those who have not been named in the New York indictments or who are part of an ongoing Justice Department criminal probe. "If they can't indict them," Blakey said, "then it would seem Lerach will have trouble [pressing a RICO] claim against them."

Judges Trade Shots in Ruling on INS Detaining Kids

Continued from page 1

ion . . . irrelevant to the crucial issues in this case, and other portions of the opinion lacking in support," he wrote.

According to the majority opinion, in 1984 the western region of the INS adopted a policy barring release of detained minors to anyone other than a parent or legal guardian, except "in unusual and extraordinary cases." The policy eventually was adopted nationwide.

Children who could not be placed with parents or guardians were held in detention camps. There they were subjected to strip searches and placed with unrelated adult men and women, according to court papers.

In 1985, a group of detained minors sued the INS in U.S. District Court in Los Angeles, claiming that the agency had violated their rights by refusing to consider turning them over to unrelated but appropriate adults such as social service agencies. The suit later was certified a class action.

U.S. District Judge Robert Kelleher agreed, and ordered the INS to conduct hearings to determine whether and under what conditions the minors could be released. That ruling was reversed by the June 1990 Ninth Circuit panel ruling.

Kelleher's position was affirmed by Friday's split court, which produced five separate opinions. Schroeder wrote for the majority — joined by Judges Dorothy Nelson, David Thompson and William Canby — that English law dating back to 1679 supports the children's right to challenge their detention. She compared the minors' liberty interest to that of a prisoner filing a *habeas corpus* petition.

The INS' rationales for detaining the minors were that it lacked the resources to investigate the individuals who were seeking to take charge of the children, and that the agency could be held liable for placing the children in insecure situations. The INS argued that it was acting in the children's best interest by keeping them in custody.

But Schroeder rejected those arguments, declaring that "[t]he blanket refusal to make individualized determinations in the guise of administrative expediency . . . cannot pass constitutional muster."

Judge Pamela Rymer wrote a separate concurrence and dissent, stating that the court should have simply struck the INS policy as procedurally inadequate, without reaching the question of whether undocumented children have a basic constitutional liberty interest.

Wallace, joined by Judges Charles Wiggins, Melvin Brunetti and Edward Leavy, accused the majority of treading on congressional turf, declaring that his colleagues "[ignore] the fact that any judicial branch intrusion . . . severely undermines congressional power over immigration."

Carole Levitzky, public affairs officer for the U.S. attorney's office in Los Angeles, which handled the INS' case, said she could not comment on whether the government will seek review with the U.S. Supreme Court. "We will be reviewing our options," she said.