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TRAINING BULLETIN

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PUBLIC EMPLOYEE'S SWORN TESTIMONY IS ENTITLED TO FIRST AMENDMENT PROTECTION

Lane v. Franks decided June 19, 2014 in the Supreme Court of the United States

The United States Supreme Court has unanimously held that a public employee's sworn testimony is entitled to First Amendment protection, **when it is given outside the scope of ordinary job duties**. While an important decision for public employees nationwide, it actually brings the law into line with the existing rule in the Ninth Circuit, which covers California, that sworn testimony by public employees concerning their job duties can be protected. In *Clairmont v. Sound Mental Health* (2011), the Ninth Circuit found protection for trial testimony, and in *Karl v. City of Mountlake Terrace* (2012), the Ninth Circuit found protection for deposition testimony.[1]

In *Lane v. Franks*, the Supreme Court clarified previous rulings in which the court said that public employees had free-speech rights when they were acting as "citizens", but not necessarily when they were testifying about what they learned while doing their jobs and not when they were required to speak because of their specific job duties [*Garcetti v. Ceballos* (2006)] . Public employees who are called to testify are now protected by the First Amendment just as other citizens are, and should not have to choose between "the obligation to testify truthfully and the desire to avoid retaliation and keep their jobs," wrote Justice Sonia Sotomayor. "It

[1]Both the *Clairmont* and *Karl* cases were cited by the Ninth Circuit in *Dahlia v. Rodriguez* (2013), where the firm of Stone Busailah, LLP filed an amicus brief in support of the police officer whose claim of First Amendment protection for his whistleblowing activity, about corruption within his department to an outside law enforcement agency, was allowed to proceed.