

Decision Revives Suit On Holocaust Exhibit

By Philip Carrizosa

Daily Journal Staff Reporter

SAN FRANCISCO — The 9th U.S. Circuit Court of Appeals reinstated a suit Tuesday by a Holocaust revisionist who claimed that his exhibit was removed from a 1984 library conference in Los Angeles because of political pressure and physical threats from Jewish groups.

Ruling in *McCalden v. California Library Assn.*, 90 Daily Journal D.A.R. 13075, the federal appeals court revived claims for breach of contract, tortious interference with contract and violation of state and federal civil rights laws.

The plaintiff, David McCalden, died Oct. 15 in his El Segundo home of complications from AIDS. But his attorney said it is possible that McCalden's suit will continue depending on the executor of his estate, who is expected to be McCalden's wife.

In his suit, McCalden claimed that he planned to display an exhibit and put on a program about the Holocaust at the California Library Association conference at the Bonaventure Hotel in December 1984, but his contracts were canceled because of pressure from the American Jewish Committee and Rabbi Marvin Hier. He also claimed that the Simon Wiesenthal Center rented space next to his with the intention of disrupting his exhibit.

McCalden's suit was dismissed by U.S. District Judge Consuelo Marshall in 1987.

In reinstating most of McCalden's claims, the 9th Circuit said Marshall read the suit too narrowly and erred in her interpretation of California law on the contract claims. The court said Marshall erred by ruling that Holocaust revisionists are not a political group protected by the Unruh Civil Rights Act.

"Appellant alleges that he is a member of a group espousing unpopular views. A

John Birch Society or ACLU member could fall in the same kind of class and [California case law] is explicit that those groups would receive the protection of the Unruh Act," wrote Judge William A. Norris for the majority.

Judge Dorothy Nelson joined in Norris' 19-page opinion. Judge Betty Fletcher dissented, arguing that the court should not have reached the merits of the case because McCalden's appeal was not timely.

San Francisco attorney Bruce McKee, who represented McCalden, was pleased with the result. "I took the case initially because I was interested in the free speech claims," McKee said. "What interested me was the ability of organizations in the community to manipulate government to deny people the right to speak."

Los Angeles attorney Jeffrey Mausner of Berman, Blanchard, Mausner & Kindem, who represented Hier and the Wiesenthal Center in the case, said he and his clients were considering asking for a rehearing to win dismissal of the case and appealing to the U.S. Supreme Court.

Even if the case went to trial, Mausner said, "there's no question McCalden will not be able to prove his claims because what he alleges is not true. The truth is that no threats were made and certainly no threats were made by the Wiesenthal Center or Rabbi Hier."

McCalden drew national attention in 1979 and his Institute for Historical Review offered \$50,000 to the first person who could prove that a single Jew was gassed to death during World War II. A Long Beach businessman, who was a prisoner at Auschwitz, won \$90,000 from the institute after producing documentation and claiming that the institute failed to pay him. McCalden was dropped from the suit in exchange for payment.