U.S. Supreme Court: Criminal Cases

Throughout the year, the ABA Criminal Justice Section monitors the criminal law opinions of the United States Supreme Court. The Section provides timely summaries of criminal law decisions as well as links to the actual opinions. The following cases are presented in chronological order. Click on the case name to view the actual opinion.

2008 Term Opinions of the Court

MELENDEZ-DIAZ V. MASSACHUSETTS
No. 07-591 (June 25, 2009)

Luis Melendez-Diaz (petitioner) was tried in Massachusetts for distributing cocaine. At trial, the prosecution placed into evidence the bags confiscated during the arrest. It also submitted three "certificates of analysis" showing the results from the forensic analysis. The certificates were sworn to before a notary public by the analysts working on the case. The petitioner objected to this admission, asserting that the Confrontation Clause of the Sixth Amendment requires these analysts to testify in person. The trial court rejected this argument, and Melendez-Diaz was convicted.

Melendez-Diaz appealed, but his appeal was rejected by both the Massachusetts Court of Appeals and the Massachusetts Supreme Court. The U.S. Supreme Court granted certiorari, and reversed the holding of the lower courts.

In his opinion, Justice Scalia asserted that the holding in *Crawford v. Washington*, 541 U.S. 35, required the analysts to testify in person. Under *Crawford*, a witness's testimony against a defendant is inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. *Id.* at 54. Since the affidavits filed by the analyst clearly fall within the "core class of testimonial statements," a strict application of the *Crawford* rule should be applied.

All the arguments advanced by the respondent to avoid this straightforward application of the law were subsequently rejected by the Court. There is nothing to support the respondent's claim that analysts need not testify or be subject to confronting the accused. Furthermore, the strict application of the Confrontation Clause should not be relaxed merely because it makes the prosecution's task more burdensome. Several states have already adopted this rule, with no serious repercussions. The holding of the lower court is reversed and remanded for further proceedings.

Scalia, J., delivered the opinion of the Court, in which Stevens, Souter, Thomas, and Ginsburg, JJ., joined. Thomas, J., filed a concurring opinion. Kennedy, J. filed a dissenting opinion, in which Roberts, C.J., and Breyer and Alito, JJ., joined.

Available at: http://www.law.cornell.edu/supct/html/07-591.ZS.html

YEAGER v. UNITED STATES (No. 08-67)
United States Supreme Court Opinion Decided: June 18, 2009

Petitioner Yeager was charged with insider trading, money laundering, and securities and wire fraud. The jury acquitted him at trial on the fraud counts but failed to reach a verdict on the insider-trading and money-laundering counts. The Government charged him again with insider-trading and money-laundering. Yeager moved to dismiss on the ground that the jury had necessarily decided that he did not possess material, nonpublic information which is an essential element of all the charges. Therefore, he argued that issue preclusion barred a second trial for insider trading and money laundering. The District Court denied the motion, and the Fifth Circuit affirmed, reasoning that the fact that the jury hung on the insider-trading and money-laundering counts cast doubt on whether it had necessarily decided that petitioner did not possess material, nonpublic information and therefore the Government could prosecute petitioner anew for insider trading and money laundering.

The USSC reversed the decision, holding that an apparent inconsistency between a jury's verdict of acquittal on some counts and its failure to return a verdict on other counts with a similar

element does not affect the acquittals' preclusive force under the Double Jeopardy Clause. The jury's inability to reach a verdict on Yeager's insider-trading and money-laundering counts was a nonevent that should be given no weight in the issue-preclusion analysis. To identify what a jury necessarily determined at trial, courts should scrutinize the jury's decisions, not its failures to decide. Thus, if the possession of insider information was a critical issue of ultimate fact in all of the charges against Yeager, a jury verdict that necessarily decided that issue in his favor protects him from prosecution for any charge for which that is an essential element.

The government argued petitioner failed to prove that the jury necessarily found he did not possess material, nonpublic information since his acquittal on the fraud charges could have been the result of the government not proving some other necessary element. The USSC stated that it granted certiorari on the assumption that the Fifth Circuit's ruling that the acquittals meant the jury found that Yeager did not have insider information was correct. If the Court of Appeals chooses, it may revisit its factual analysis to determine if the issue was necessarily decided.

Reversed and Remanded

Stevens, J., delivered the opinion of the Court, in which Roberts, C. J., and Souter, Ginsburg, and Breyer, JJ., joined, and in which Kennedy, J., joined as to Parts I–III and V. Kennedy, J., filed an opinion concurring in part and concurring in the judgment. Scalia, J., filed a dissenting opinion, in which Thomas and Alito, JJ., joined. Alito, J., filed a dissenting opinion, in which Scalia and Thomas, JJ., joined.

District Attorney's Office for the Third Judicial District et al. v. Osborne (No. 08-6)

On March 22, 1993, Mr. William Osborne, along with Dexter Jackson, were found guilty of soliciting sex from a female sex worker. When she demanded payment in advance, the jury found that the State proved beyond a reasonable doubt that Mr. Osborne and Mr. Jackson raped her vaginally and orally and shot her in the head. When police found a gun which matched the shell casing used in the attack inside Mr. Jackson's car, he admitted that he had been the driver during the rape and assault, and told police that Mr. Osborne had also been in the car that night. Police also recovered a condom at the scene of the crime.

The state performed DQ Alpha testing on sperm found in the condom found at the crime scene. DQ Alpha is a relatively inexact form of DNA testing that can sometimes clear wrongly accused individuals, but generally cannot narrow the perpetrator down to less than 5% of the population. The semen was found to have a genotype that matched Mr. Osborne's blood; however, as a black male, he shares that same genotype with 16% of the African American population. Mr. Osborne was convicted by an Alaska jury of kidnapping, assault, and sexual assault, acquitted of an additional count of sexual assault and attempted murder, and sentenced to 26 years in prison, with 5 years suspended. The conviction and sentence were then affirmed on appeal.

Mr. Osborne subsequently sought post-conviction relief in Alaska state court, arguing that his counsel had been ineffective in not seeking out a more accurate and exact form of DNA testing, restriction-fragment-length-polymorphism ('RFLP'), during his trial. The Alaska Court of Appeals rejected Mr. Osborne's claim of ineffective assistance of counsel and denied his additional request for RFLP testing.

Mr. Osborne filed suit against state officials under 42 U.S.C. § 1983 in federal court, claiming that the Due Process Clause, both procedurally and substantively, gave him the right to access the DNA evidence for short-tandem-repeat ('STR') testing at his own expense. STR is more accurate than RFLP or DQ Alpha. The District Court agreed with Mr. Osborne, citing the unavailability of STR testing at his trial, the relatively low cost of STR, and likelihood that the results would be material. The Court of Appeals affirmed, concluding that the Due Process Clause extends to post-conviction proceedings, and noting that Mr. Osborne had a potential claim of actual innocence.

In a 5-4 opinion, authored by Chief Justice Roberts, the Supreme Court reversed the Court of Appeals, holding that they erred in concluding that that the Due Process Clause requires that pre-conviction trial rights are extended to protect Mr. Osborne's post-conviction liberty interests. Justifying its decision by citing to Brady v. Maryland, 373 U.S. 83 (1963), the Court explained that while due process requirements mandate that prosecutors disclose any material exculpatory evidence to defendants before trial, that same obligation does not exist after a defendant is convicted. They further explained that federal courts may only controvert a State's post-conviction

relief procedures if they are fundamentally inadequate to vindicate a defendant's substantive rights. The Court saw nothing inadequate about Alaska's relief procedures, which provide, within applicable time limits, a right to be released on a sufficiently compelling showing of new evidence demonstrating innocence.

Roberts further pointed to a Alaska Court of Appeals indication that the Alaska Constitution may provide an alternate avenue for accessing evidence in the event that a defendant cannot otherwise satisfy general statutory post-conviction proceeding requirements. Mr. Osborne brought his § 1983 claim without attempting to use Alaska's procedures in filing a habeas claim relying on his actual innocence. His only request within Alaska state court was for a type of testing that was available during his trial, which is why the court denied his request. The Court also rejected Mr. Osborne's substantive due process claim.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY, J., joined, and in which THOMAS, J., joined as to Part II. STEVENS, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined, and in which SOUTER, J., joined as to Part I. SOUTER, J., filed a dissenting opinion.

Entire opinion available at: http://www.law.cornell.edu/supct/html/08-6.ZO.html

NIJHAWAN V. HOLDER (No. 09-495)

Manoj Nijhawan, an alien, immigrated to the US in 1985. In 2002, he was convicted of mail fraud, but the jury was not required to stipulate an actual amount of victim loss. At sentencing, however, Nijhawan stipulated that the loss exceed $100 million. Under federal law, any alien “convicted of an aggravated felony any time after admission is immediately deportable.” 8 U.S.C. § 1227. The government subsequently sought to deport Nijhawan, claiming that he had committed an aggravated felony, which is defined as any felony in which the loss exceeds $10,000. 8 U.S.C. § 1101.

The Immigrations Court agreed that the loss in this case exceeded the threshold amount. Nijhawan appealed in a petition against Eric Holder, the Attorney General, and the Board of Immigrations Appeals upheld the ruling, stating that the lower court could inquire into the underlying facts of the conviction to determine the loss. Nijhawan then appealed to the Supreme Court.

The Court, in a unanimous decision, upheld the ruling that the $10,000 threshold refers to the particular circumstances in which an offender committed a fraud or deceit crime on a particular occasion rather than to an element of the fraud or deceit crime. It first outlined that phrases such as “aggravated felony” can be defined according to a categorical interpretation or a circumstance-specific interpretation. The Court held that in this case, the language of the regulation refers to a circumstance-specific interpretation, thus allowing a judge to look into the underlying facts of the offense to determine victim loss. The Court also rejected the petitioner’s alternative theory that a “modified” circumstance-specific interpretation should be used, on the grounds that it would be impractical and difficult to implement. The facts of the case clearly suggest that the amount of loss exceeded $10,000, so the decision of the lower courts is upheld.

Breyer, J., delivered the opinion for a unanimous court.

Available at: http://www.law.cornell.edu/supct/html/08-495.ZS.html

UNITED STATES V. DENEDO
No. 08-267 (June 8, 2009)

Jacob Denedo, a native Nigerian enlisted in the US Navy, was charged in 1998 with conspiracy to commit fraud, in contravention of the Uniform Code of Military Justice (UCMJ). With the assistance of both military and civilian counsel, Denedo made a plea bargain to plead guilty to reduced charges, and he was later subject to court-martial. In 2006, the Department of Homeland Security began deportation proceedings based on his court-martial conviction.

Denedo filed a petition for a writ of *coram nobis* with the Navy-Marine Corps Court of Criminal Appeals (NMCCA), stating that his previous guilty plea must be deemed void because of ineffective assistance of counsel. He claimed his counsel assured him that he should plead guilty, and that he would face no risk of deportation, which was his primary concern. The NMCCA denied the petition, and Denedo appealed to the Court of Appeals for the Armed Forces (CAAF). The CAAF held that it (1) had jurisdiction over the case, and (2) that Denedo's petition satisfied the requirement of *coram nobis* review. It reversed and remanded the decision to the NMCCA. The US appealed to the Supreme Court on the theory that neither court had jurisdiction over Denedo's case.

The Supreme Court first held that it had subject matter jurisdiction over CAAF decisions in which the CAAF granted relief. It further held that Article I military courts (such as the NMCCA and CAAF) also have jurisdiction to entertain *coram nobis* petitions to consider whether an earlier conviction was flawed in a fundamental respect. The NMCCA has jurisdiction to hear the petition under UCMJ Article 66, which grants that the NMCCA may "review court-martial cases." The judgment of the CAAF is affirmed and remanded to the NMCCA for further review of Denedo's petition.

Kennedy, J., delivered the opinion of the Court, in which Stevens, Souter, Ginsburg, and Breyer, JJ., joined. Roberts, C. J., filed an opinion concurring in part and dissenting in part, in which Scalia, Thomas, and Alito, JJ., joined.

Available at: http://www.law.cornell.edu/supct/html/08-267.ZO.html

Boyle v. United States
No. 07–1309. Decided June 8, 2009. Opinion author: Alito, J.

The evidence at petitioner Boyle's trial for violating the Racketeer Influenced and Corrupt Organizations Act (RICO) provision forbidding "any person … associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity," 18 U. S. C. §1962(c), was sufficient to prove that Boyle and others committed a series of bank thefts in several States; that the participants included a core group, along with others recruited from time to time; and that the core group was loosely and informally organized, lacking a leader, hierarchy, or any long-term master plan.

Relying largely on *United States* v. *Turkette*, 452 U. S. 576 , the District Court instructed the jury that to establish a RICO association-in-fact "enterprise," the Government must prove (1) an ongoing organization with a framework, formal or informal, for carrying out its objectives, and (2) that association members functioned as a continuing unit to achieve a common purpose. Boyle was convicted, and the Second Circuit affirmed.

The Supreme Court held that an association-in-fact enterprise under RICO must have a "structure," but the pertinent jury instruction need not be framed in the precise language Boyle proposes, *i.e.,* as having "an ascertainable structure beyond that inherent in the pattern of racketeering activity in which it engages." *Turkette* explained that "enterprise" reaches "a group of persons associated together for a common purpose of engaging in a course of conduct," 452 U. S., at 583, and "is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."

The Court reasoned that an enterprise must have a "structure" that, under RICO's terms, has at least three features: a purpose, relationships among the associates, and longevity sufficient to permit the associates to pursue the enterprise's purpose. Because a jury must find the existence of elements of a crime beyond a reasonable doubt, requiring a jury to find the existence of a structure that is *ascertainable* would be redundant and potentially misleading.

The instructions below were correct and adequate. By explicitly telling jurors they could not convict on the RICO charges unless they found that the Government had proved the existence of an enterprise, the instructions made it clear that this was a separate element from the pattern of racketeering activity. The instructions properly conveyed *Turkette*'s point that proof of a pattern of racketeering activity may be sufficient in a particular case to permit an inference of the enterprise's existence. 283 Fed. Appx. 825, affirmed.

Alito, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, Souter, Thomas, and Ginsburg, JJ., joined. Stevens, J.,filed a dissenting opinion, in which Breyer, J., joined.

The full opinion is available at http://www.law.cornell.edu/supct/html/07-1309.ZS.html.

Bobby v. Bies
(No. 08-598)

Decided: June 1, 2009; Opinion author: Ginsburg

Respondent Bies was tried and convicted in Ohio of the aggravated murder, kidnapping, and attempted rape of a ten-year-old boy. The jury was instructed at sentencing to weigh mitigating circumstances, including Bies' mild to borderline mental retardation, against aggravating factors. The Jury recommended a death sentence, which was imposed by the trial court. Ohio's Court of Appeals and Supreme Court affirmed the decision, concluding that Bies' mental retardation was entitled to "some weight" as a mitigating factor but was not enough to outweigh the aggravating factors of the case.

Bies unsuccessfully filed a petition for relief and contended that the Eighth Amendment prohibits execution of a mentally retarded defendant. Soon after filing, this Court decided Atkins v. Virginia, 536 U. S. 304, holding that the Eighth Amendment bars execution of mentally retarded offenders. The opinion left it to the states to develop appropriate ways for determining when a person claiming mental retardation would fall within Atkins' compass. In State v. Lott, Ohio established the standard to determine which claims to apply to Atkins. Bies' mental retardation had not previously been established under the Atkins-Lott framework, and the state court ordered a full hearing on the Atkins claim.

Bies returned to federal court instead, arguing that the Double Jeopardy Clause barred the State from re-litigating the mental retardation issue. The Court of Appeals determined that all requirements for the issue preclusion component of the Double Jeopardy Clause were met in Bies' case.

The Supreme Court held that the Double Jeopardy Clause does not bar the Ohio courts from conducting a full hearing on Bies' mental capacity. At the time of his sentencing and direct appeal, Penry, not Atkins, was the guiding decision, and the dispositive issue was whether the mitigating factors were outweighed by the aggravating circumstances beyond a reasonable doubt. Bies was not acquitted, and determinations of his mental capacity were not necessary to the ultimate imposition of the death penalty. Even if the core issue preclusion requirements had been met, an exception to the doctrine's application would be warranted due to the intervening Atkins decision. Mental retardation as a mitigator and mental retardation under Atkins and Lott are discrete legal issues.

Because the change in law substantially altered the State's incentive to contest Bies' mental capacity, applying preclusion would not advance the equitable administration of the law. The State acknowledges that Bies is entitled to such recourse, but rightly seeks a full and fair opportunity to contest his plea under the Atkins and Lott precedents.

519 F. 3d 324, reversed and remanded.

Ginsburg, J., delivered the opinion for a unanimous Court.

Available at http://www.law.cornell.edu/supct/html/08-598.ZS.html

MONTEJO v. LOUISIANA (No. 07-1529)

Mr. Montejo was arrested on September 6th, 2002, in connection with the robbery and murder of Mr. Lewis Ferrari. During police questioning of Mr. Montejo, which lasted from late afternoon on the 6th to early morning on the 7th, Mr. Montejo repeatedly changed the account of the crime, ultimately confessing to having shot and killed Mr. Ferrari during a failed burglary. Later, after

being read his Miranda rights for a second time, Mr. Montejo agreed to accompany police in retrieving the alleged murder weapon. During this excursion, Mr. Montejo wrote a letter of apology to Mr. Ferrari's widow. Mr. Montejo did not have access to his court-appointed attorney until his return to jail, who was upset that his client had been interrogated in his absence and subsequently objected to the apology letter's admission as evidence at trial.

The jury convicted Mr. Montejo, who was sentenced to death. The Louisiana Supreme Court affirmed the conviction and sentence, relying on *Montoya v. Collins*, 955 F.2d 279 (1992), explanation of the rule in *Michigan v. Jackson*, 475 U.S. 625, 636 (1986), reasoning that the prophylactic protection of *Jackson* is not triggered unless and until the defendant has actually requested a lawyer or has otherwise asserted his Sixth Amendment right to counsel. At a hearing where a judge ordered the appointment of counsel, Mr. Montejo did not explicitly request a meeting with his counsel, but rather, remained mute.

The USSC held, in deciding whether courts must presume that a waiver of an accused's Miranda rights is invalid under certain circumstances, that when a court appoints counsel for an indigent defendant in the absence of any request on his part, there is no basis for a presumption that any subsequent waiver of the right to counsel will be involuntary. The USSC explains that the rule laid out in *Jackson* was designed to prevent police from badgering defendants into changing their mind about their rights, but a defendant who has never asked for counsel, such as Mr. Montejo, has not yet made up his or her mind.

Scalia, J., delivered the opinion of the Court, in which Roberts, C.J., and Kennedy, Thomas, and Alito, J.J., joined. Alito, J., filed a concurring opinion, in which Kennedy, J., joined. Stevens, J., filed a dissenting opinion, in which Souter and Ginsburg, J.J., joined, and in which Breyer, J., joined, except for n. 5. Breyer, J., filed a dissenting opinion.

Available at: http://www.supremecourtus.gov/opinions/08pdf/07-1529.pdf

ABUELHAWA V. UNITED STATES
No. 08-192 (May 26, 2009)

After tapping the phone of suspected drug dealer Mohammed Said, FBI agents recorded six calls between Said and petitioner Salman Khade Abuelhawa, during which Abuelhawa arranged to buy cocaine in two separate transactions, each time for a single gram. Under §844 of the Controlled Substances Act, Abuelhawa's purchases were misdemeanors, and Said's two sales were felonies. However, the government charged Abuelhawa with six felonies on the theory that each phone call violated §843(b), which makes it a felony "to use any communication facility in… facilitating" felony drug sales.

Abuelhawa moved for acquittal on the grounds that his efforts to commit the misdemeanor could not be treated as facilitating Said's felonies, but the motion was denied and Abuelhawa was convicted on all six counts. Abuelhawa argued the same point before the Court of Appeals for the Fourth Circuit, which upheld the conviction, reasoning that Abuelhawa's use of a phone counted as facilitation because it "undoubtedly made Said's cocaine distribution easier."

The Supreme Court reversed the decision, holding that using a telephone to make a misdemeanor drug purchase does not "facilitate" felony drug sales in violation of §843(b). Where a transaction like a sale necessarily presupposes two parties with specific roles, it would be "odd" to speak of one party as facilitating the other's conduct. The Court relied on holdings in similar cases in which adding to the penalty of the party on one side for facilitating the actions by the other would upend the "legislature's punishment calibration." *See Gebardi v. United States*, 287 U.S. 112, 119.

Furthermore, since the word "facilitate" is generally synonymous with "aid," "abet," or "assist," it is likely that Congress had an equivalent meaning in mind when it enacted §843(b). Any broader reading would for practical purposes destroy the distinction between the possession of drugs and the distribution of drugs. Finally, the fact that Congress had previously downgraded possession from a felony to a misdemeanor shows that Congress meant to treat purchasing drugs for personal use more leniently than felony distribution, and to narrow the scope of the communications provision to cover only those who facilitate a felony. Therefore, Abuelhawa's actions could not be considered "facilitation" of Said's felonies.

Souter, J., delivered the opinion for a unanimous court.

Available at: http://www.law.cornell.edu/supct/html/08-192.ZS.html

Flores-Figueroa v. United States
(No. 08-108)

Decided: May 4, 2009

Petitioner Flores-Figueroa, a Mexican citizen, gave his employer counterfeit Social Security and alien registration cards containing his name but other people's identification numbers, he was arrested and charged with two immigration offenses and aggravated identity theft. Flores moved for acquittal on the latter charge, claiming that the Government could not prove that he knew that the documents' numbers were assigned to other people.

The District Court agreed with the Government that the word "knowingly" in sec.1028A(a)(1) does not modify the statute's last three words, "of another person," and, after trial, found Flores guilty on all counts. The Eighth Circuit affirmed.

The USSC held that Section sec.1028(a)(1) requires the Government to show that the defendant knew that the means of identification at issue belonged to another person. As a matter of ordinary English grammar, "knowingly" is naturally read as applying to all the subsequently listed elements of the crime. Where a transitive verb has an object, listeners in most contexts assume that an adverb (such as "knowingly") that modifies the verb tells the listener how the subject performed the entire action, including the object. The Government does not provide a single example of a sentence that, when used in typical fashion, would lead the hearer to a contrary understanding. And courts ordinarily interpret criminal statutes consistently with the ordinary English usage.

Finally, the Government's arguments based on the statute's purpose and on the practical problems of enforcing it are not sufficient to overcome the ordinary meaning, in English or through ordinary interpretive practice, of Congress' words. Pp. 4-11.

Reversed and remanded.

Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Stevens, Kennedy, Souter, and Ginsburg, JJ., joined. Scalia, J., filed an opinion concurring in part and concurring in the judgment, in which Thomas, J., joined. Alito, J., filed an opinion concurring in part and concurring in the judgment.

Available at: http://www.law.cornell.edu/supct/html/08-108.ZS.html

DEAN v. UNITED STATES (No. 08-5274)

United States Supreme Court Opinion Decided: April 29, 2009

Petitioner Dean was convicted of conspiring to commit a bank robbery and discharging a firearm during an armed robbery. Because the firearm was "discharged" during the robbery, Dean was sentenced to a 10-year mandatory minimum prison term on the firearm count. sec.924(c)(1)(A)(iii).

On appeal, he contended that the discharge was accidental, and that sec.924(c)(1)(A)(iii) requires proof that the defendant intended to discharge the firearm. The Eleventh Circuit affirmed, holding that no proof of intent is required.

The Supreme Court held that Section 924(c)(1)(A)(iii) requires no separate proof of intent. The 10-year mandatory minimum applies if a gun is discharged in the course of a violent or drug trafficking crime, whether on purpose or by accident.

Subsection (iii) provides a minimum 10-year sentence "if the firearm is discharged." It does not require that the discharge be done knowingly or intentionally, or otherwise contain words of limitation.

Mr. Dean argued that subsection (iii) must be limited to intentional discharges in order to give effect to the statute's progression of harsher penalties for increasingly culpable conduct. While it is unusual to impose criminal punishment for the consequences of purely accidental conduct, it is not unusual to punish individuals for the unintended consequences of their unlawful acts. The fact that the discharge may be accidental does not mean that the defendant is blameless.

Because the statutory text and structure demonstrate that the discharge provision does not contain an intent requirement, the rule of lenity is not implicated in this case.

Affirmed.

Roberts, C. J., delivered the opinion of the Court, in which Scalia, Kennedy, Souter, Thomas, Ginsburg, and Alito, JJ., joined. Stevens, J., and Breyer, J., filed dissenting opinions.

Available at: http://www.law.cornell.edu/supct/html/08-5274.ZS.html

KANSAS v. VENTRIS (No. 07-1356)

United States Supreme Court Opinion Decided: April 29, 2009

Respondent Donnie Ray Ventris and Rhonda Theel were charged with murder along with other crimes. Prior to trial, an informant heard Ventris admit to shooting and robbing the victim, but Ventris testified at trial that Theel committed the crimes. When the State sought to call the informant to testify to his contradictory statement, Ventris objected. The State conceded that Ventris's Sixth Amendment right to counsel had likely been violated, but argued that the statement was admissible for impeachment purposes. The trial court allowed the testimony. The jury convicted Ventris of aggravated burglary and aggravated robbery.

The Kansas Supreme Court reversed holding that the informant's statements were not admissible for any reason, including impeachment.

The Supreme Court held that Ventris's statement to the informant, concededly elicited in violation of the Sixth Amendment, was admissible to impeach his inconsistent testimony at trial.

The interests safeguarded by excluding tainted evidence for impeachment purposes are "outweighed by the need to prevent perjury and to assure the integrity of the trial process." Stone v. Powell, 428 U. S. 465. Once the defendant testifies inconsistently, denying the prosecution "the traditional truth-testing devices of the adversary process,"
Harris, supra, at 225, is a high price to pay for vindicating the right to counsel at the prior stage. On the other hand, preventing impeachment use of statements taken in violation of Massiah would add little appreciable deterrence for officers, who have an incentive to comply with the Constitution, since statements lawfully obtained can be used for all purposes, not simply impeachment. In every other context, this Court has held that tainted evidence is admissible for impeachment. See, e.g., Oregon v. Hass, 420 U. S. 714.

Reversed and remanded.

Scalia, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Souter, Thomas, Breyer, and Alito, JJ., joined. Stevens, J., filed a dissenting opinion, in which Ginsburg, J., joined.

Available at: http://www.law.cornell.edu/supct/html/07-1356.ZS.html

CONE v. BELL (No. 07-1114)

United States Supreme Court Decision: April 28, 2009

At trial the State discredited Mr. Cone's defense that he killed two people while suffering from acute psychosis caused by drug addiction, he was then convicted and sentenced to death. The

Tennessee Supreme Court affirmed on direct appeal and the state courts denied post-conviction relief.

Later, in a second petition for post-conviction relief, Cone raised the claim that the State had violated Brady v. Maryland, 373 U. S. 83 , by suppressing witness statements and police reports that would have corroborated his insanity defense and bolstered his case in mitigation of the death penalty. The post-conviction court denied him a hearing on the ground that the Brady claim had been previously determined, either on direct appeal or in earlier collateral proceedings. The State Court of Criminal Appeals affirmed.

Mr. Cone then filed a petition for a writ of habeas corpus in Federal District Court. That Court denied relief, holding the Brady claim procedurally barred because the state courts' disposition rested on adequate and independent state grounds:

The Sixth Circuit agreed with the state court's conclusion, but considered itself barred from reaching the claim's merits because the state courts had ruled the claim previously determined or waived under state law.

The state courts' rejection of Cone's Brady claim does not rest on a ground that bars federal review. The state court's post-conviction denial of the Brady claim on the ground it had been previously determined in state court rested on a false premise: Cone had not presented the claim in earlier proceedings and, consequently, the state courts had not passed on it.

The Sixth Circuit's rejection of the claim as procedurally defaulted because it had been twice presented to the Tennessee courts was thus erroneous. Also unpersuasive is the State's alternative argument that federal review is barred because the Brady claim was properly dismissed by the state post-conviction courts as waived

The lower federal courts failed to adequately consider whether the withheld documents were material to Cone's sentence. Both the quantity and quality of the suppressed evidence lend support to Cone's trial position that he habitually used excessive amounts of drugs, that his addiction affected his behavior during the murders, and that the State's contrary arguments were false and misleading.

Nevertheless, even when viewed in the light most favorable to Cone, the evidence does not sustain his insanity defense. Because the likelihood that the suppressed evidence would have affected the jury's verdict on the insanity issue is remote, the Sixth Circuit did not err by denying habeas relief on the ground that such evidence was immaterial to the jury's guilt finding.

The same cannot be said of that court's summary treatment of Cone's claim that the suppressed evidence would have influenced the jury's sentencing recommendation. Because the suppressed evidence might have been material to the jury's assessment of the proper punishment, a full review of that evidence and its effect on the sentencing verdict is warranted.

vacated and remanded.

Stevens, J., delivered the opinion of the Court, in which Kennedy, Souter, Ginsburg, and Breyer, JJ., joined. Roberts, C. J., filed an opinion concurring in the judgment. Alito, J., filed an opinion concurring in part and dissenting in part. Thomas, J., filed a dissenting opinion, in which Scalia, J., joined.

Available at: http://www.law.cornell.edu/supct/html/07-1114.ZS.html

Arizona v. Gant
No. 07-542

The Court ruled in Arizona v. Gant (No. 07-542) today.

Mr. Gant was arrested for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. The Arizona trial court denied respondents motion to suppress the evidence, and he was convicted of drug offenses.

The State Supreme Court reversed relying on *Chimel v. California, 395 U.S. 752* , which required that a search incident to arrest be justified by either the interest in officer safety or the interest in preserving evidence. The State Supreme Court found that the circumstances of Gant's arrest implicated neither of those interests and therefore the search was unreasonable.

The USSC held that police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense for which the arrest is made.

Mr. Gant was arrested for driving with a suspended license, an offense for which police could not reasonably expect to find evidence in Mr. Gant's car. Cf. *Knowles v. Iowa, 525 U. S. 113*. The search in this case was therefore unreasonable.

Stevens, J., delivered the opinion of the Court, in which Scalia, Souter, Thomas, and Ginsburg, JJ., joined. Scalia, J., filed a concurring opinion. Breyer, J., filed a dissenting opinion. Alito, J., filed a dissenting opinion, in which Roberts, C. J., and Kennedy, J., joined, and in which Breyer, J., joined except as to Part II-E.

The full opinion is available at: http://www.law.cornell.edu/supct/html/07-542.ZS.html.

Harbison v. Bell, Warden
No. 07-8521

In reversing a 6th Circuit opinion, the U.S. Supreme Court has found that a certificate of appealability is not required to appeal a denial of federally appointed counsel, and that federally appointed counsel may represent clients in state clemency proceedings and be compensated for that representation. Following Tennessee state courts' rejection of Petitioner's conviction and death penalty challenges, a federal public defender had been appointed to represent him in a habeas petition. Upon denial of that petition, counsel sought to continue representing Petitioner in state clemency proceedings since Tennessee does not provide counsel for such proceedings. The District Court had denied the motion, and the 6th Circuit had affirmed.

For a copy of the slip opinion, see: http://www.supremecourtus.gov/opinions/08pdf/07-8521.pdf.

Vermont v. Brillon No. 08-88

In a case arising from a felony domestic assault and habitual offender charges, where the defendant had at least six different appointed attorneys between the time of his arrest and his trial, the trial court denied the defendant's motion to dismiss for want of a speedy trial. The Vermont Supreme Court, however, reversed, holding that the conviction must be vacated, and the charges dismissed, because the State did not accord a speedy trial as is required by the Sixth Amendment. The Supreme Court held that The Vermont Supreme Court erred in ranking assigned counsel essentially as state actors in the criminal justice system, stating that assigned counsel, just as retained counsel, act on behalf of their clients, and, in the absence of institutional breakdowns of the public defender system, delays sought by counsel are ordinarily attributable to the defendants they represent.

The full opinion can be accessed at http://topics.law.cornell.edu/supct/cert/08-88

United States v. Hayes (No. 07-608)

The court released an opinion regarding the prohibition on possession of a firearm by convicted felons to include persons convicted of a misdemeanor crime of domestic violence. Police officers discovered a rifle in respondent Hayes's home. Hayes was charged with possessing firearms after having been convicted of a misdemeanor crime of domestic violence. He was previously convicted for battery in 1994 against his then-wife. Hayes moved to dismiss the indictment on the ground that his past conviction did not qualify as a predicate offense because West Virginia's generic battery law did not designate a domestic relationship between aggressor and victim as an element of the offense. When the District Court denied the motion, Hayes entered a conditional guilty plea and appealed. The Fourth Circuit reversed, holding that a §922(g)(9) predicate offense must have as an element a domestic relationship between offender and victim.

By extending the federal firearm prohibition to persons convicted of misdemeanor crimes of domestic violence, §922(g)(9)'s proponents sought to close a loophole: Existing felon-in-possession laws often failed to keep firearms out of the hands of domestic abusers, for such offenders generally were not charged with, or convicted of, felonies. Hayes argues that the measure that became §§922(g)(9) and 921(a)(33)(A), though it initially may have had a broadly remedial purpose, was revised and narrowed during the legislative process, but his argument is not corroborated by the revisions he identifies.

Congress defined "misdemeanor crime of domestic violence" to include an offense "committed by" a person who had a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship as an element of the crime.

Justice Ginsburg delivered the opinion of the Court. Justice Roberts filed a dissenting opinion in which only Justice Scalia joined.

The full opinion can be accessed at http://www.law.cornell.edu/supct/html/07-608.ZS.html.

VAN DE KAMP, JOHN, ET AL. v. GOLDSTEIN, THOMAS L. (No. 07-854.)

AP reporting: The Court threw out a lawsuit by a Los Angeles man wrongfully convicted of murder and gave district attorneys a broad shield against being sued even if their management mistakes send an innocent person to prison.

Thomas L. Goldstein, a former Marine convicted in a 1979 shooting in Long Beach, spent 24 years in prison largely on the word of a heroin addict who had worked as a jailhouse informant for police and prosecutors. Edward F. Fink lied on the witness stand when he denied receiving a benefit for testifying for police, a judge found.

Goldstein was freed in 2004, and he sued former Los Angeles County Dist. Atty. John K. Van de Kamp and top deputy Curt Livesay, contending they allowed prosecutors to regularly use jailhouse informants and did not take steps to make sure they were telling the truth.

In Goldstein's case, the trial prosecutor did not know Fink was lying because other prosecutors in the sprawling district attorney's office did not share information.

The Supreme Court mostly set aside the facts of Goldstein's case and focused on the potential harm of allowing top prosecutors to be sued. District attorneys who are managing teams of prosecutors should not face the fear they might be sued years later by resentful suspects, the justices said.

In the past, the court said trial prosecutors were entitled to absolute immunity for their courtroom work. In Monday's ruling in Van de Kamp vs. Goldstein, the high court extended that shield to cover district attorneys and other chief prosecutors for any actions that involve prosecutions and trials.

Last year, the U.S. 9th Circuit Court of Appeals in San Francisco said top prosecutors could be sued for "administrative" failures. The decision rejected Van de Kamp's claim of immunity and cleared Goldstein's lawsuit to proceed.The Supreme Court rejected the distinction between administrative and management tasks and said management of trial-related information was a prosecution function.

"We conclude that a prosecutor's absolute immunity extends to all these claims" about tracking jailhouse informants because they are "directly connected with the conduct of a trial," Justice Stephen G. Breyer said.

The court also threw out a lawsuit against police in Utah who, based on the word of an informant, burst into a house without a warrant. The justices did not decide whether the search was illegal but concluded that police were immune from being sued.

ARIZONA v. JOHNSON (07-1122)

AP Reporting: The Supreme Court ruled Monday that police officers have leeway to frisk a passenger in a car stopped for a traffic violation even if nothing indicates the passenger has committed a crime or is about to do so. The court on Monday unanimously overruled an Arizona appeals court that threw out evidence found during such an encounter.

The case involved a 2002 pat-down search of an Eloy, Ariz., man by an Oro Valley police officer, who found a gun and marijuana. The justices accepted Arizona's argument that traffic stops are inherently dangerous for police and that pat-downs are permissible when an officer has a reasonable suspicion that the passenger may be armed and dangerous. The pat-down is allowed if the police "harbor reasonable suspicion that a person subjected to the frisk is armed, and therefore dangerous to the safety of the police and public," Justice Ruth Bader Ginsburg said.

NELSON V. UNITED STATES (08-5657)

Per Curiam opinion shortened.

Lawrence Nelson was convicted of one count of conspiracy to distribute and to possess with intent to distribute more than 50 grams of cocaine base. The District Court calculated Nelson's sentencing range under the United States Sentencing Guidelines, and imposed a sentence of 360 months in prison (the bottom of the range).

The United States Court of Appeals for the Fourth Circuit affirmed Nelson's conviction and sentence. United States v. Nelson, 237Fed. Appx. 819 (2007)

Nelson filed a petition for a writ of certiorari. We granted the petition, vacated the judgment, and remanded the case to the Fourth Circuit for further consideration in light of Rita v. United States, 551 U. S. 338 (2007) .

On remand and without further briefing, the Fourth Circuit again affirmed the sentence. 276Fed. Appx. 331 (2008) (per curiam). The court acknowledged that under Rita, while courts of appeals "may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines," 551 U. S., at 347, "the sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply," id., at 351. Instead, the sentencing court must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors, 18 U. S. C. §3553(a), explaining any variance from the former with reference to the latter.

Nelson has again filed a petition for a writ of certiorari, reasserting, inter alia, essentially the same argument he made before us the first time: that the District Court's statements clearly indicate that it impermissibly applied a presumption of reasonableness to his Guidelines range. The United States admits that the Fourth Circuit erred in rejecting that argument following our remand; we agree.

In this case, the Court of Appeals quoted the above language from Rita but affirmed the sentence anyway after finding that the District Judge did not treat the Guidelines as mandatory. That is true, but beside the point. The Guidelines are not only not mandatory on sentencing courts; they are also not to be presumed reasonable. We think it plain from the comments of the sentencing judge that he did apply a presumption of reasonableness to Nelson's Guidelines range. Under our recent precedents, that constitutes error.

CASES ARE AVAILABLE AT: http://www.law.cornell.edu/supct/index.html

Spears v. US, No. 08–5721

The government appealed a sentence for conspiracy to distribute cocaine base and powder cocaine in which the District Court reduced the sentencing range for crack cocaine from the 100 to 1 ratio to a 20 to one ratio based on the U. S. Sentencing Commission guidelines and the Smith and Perry cases. The District Court imposed a sentence based on a 20 to 1 ratio which was its interpretation of the mandatory minimum sentence in the case. The Eighth Circuit Court of Appeals reversed the district Court's interpretation of the minimum sentence in the case and

imposed a tougher sentence based on the 100 to 1 ratio. The Supreme Court remanded for rehearing by the Eighth Circuit which again imposed the tougher sentence. On rehearing the Supreme Court reversed stating, “we now clarify that district courts are entitled to reject and vary categorically from the crack cocaine Guidelines based on a policy disagreement with those Guidelines.”

www.supremecourtus.gov/opinions/08pdf/08-5721.pdf

HERRING V. UNITED SATES

The Court ruled in HERRING v. United Sates (No. 07-513) today.

David G. Savage of the LA times reporting: The Supreme Court limited the use of the so-called "exclusionary rule" today and said that evidence seized by the police need not be thrown out if officers later learn their search warrant was faulty because of a computer mistake.

Chief Justice John G. Roberts Jr. said the exclusionary rule was intended to deter the police from conducting illegal searches of homes and cars. It was not intended to give criminals a free pass if officers search the wrong house or car because of a computer error at police headquarters, he said.

In a 5-4 ruling, the court upheld the drug and gun charges against an Alabama man who was stopped on a highway by an officer who had been told there was an outstanding arrest warrant for his arrest. It turns out that was a mistake.

The officer, Mark Anderson, had called and been told by a clerk in a neighboring county that Bennie Dean Herring had failed to appear on a felony charge. But minutes after Officer Anderson stopped Herring and found methamphetamine and a pistol in his car, the clerk called back to say the arrest warrant had been withdrawn. This fact had not entered into the department's computer.

At issue for the court was whether the exclusionary rule required the evidence to be thrown out.

Roberts said the mistake here was a "negligent bookkeeping error." It did not reflect an officer's deliberate decision to violate the rights of the motorist.

"We conclude that when police mistakes are the result of negligence such as that described here, rather than a systemic error or reckless disregard of constitutional requirements," the evidence need not be thrown out, Roberts said. He also quoted the famous line from Judge Benjamin Cardozo who in 1926 said that the criminal should not "go free because the constable has blundered."

Justices Scalia, Kennedy, Thomas and Alito joined the chief justice.

The dissenters said the court should not retreat from enforcing the exclusionary rule. "The most serious impact of the court's holding will be on innocent persons wrongfully arrested based on erroneous information carefully maintained in a computer data base," said Justice Ruth Bader Ginsburg.

OREGON V. ICE

The Supreme Court also ruled in Oregon v. Ice (07-901) today.

AP reporting: The courts ruling allowed for judges discretion in sentencing criminal defendants convicted of multiple crimes.

In a case from Oregon, the court says in a 5-4 ruling that a judge may order a defendant convicted of multiple crimes to serve sentences one after the other, rather than at the same time.

The case is the latest in a nearly decade-old effort by the court to define where the Sixth Amendment's right to a jury trial limits judicial discretion in sentencing.

An Oregon jury convicted Thomas Eugene Ice of twice breaking into an apartment and sexually

abusing an 11-year-old girl.

A judge sentenced Ice to 80 months for each burglary count and 90 months for each sexual abuse count and ordered that Ice serve all the time in prison. The Oregon Supreme Court, however, ruled that the judge lacked the authority to impose consecutive sentences without specific jury findings.

The Herring v. U.S. (No. 07-513), and Oregon v. Ice (No. 07-901) cases are available at http://www.supremecourtus.gov/opinions/08slipopinion.html

CHAMBERS V. UNITED SATES

The Court ruled in Chambers v. United Sates (No. 06-11206) that a failure to report for prison does not count as a violent crime under a federal law intended to keep repeat criminals in prison longer.

A **unanimous** court on Tuesday threw out a mandatory 15-year prison term given to Deondery Chambers, who pleaded guilty to being a felon in possession of a gun. Chambers had three prior convictions, which prosecutors argued and lower courts agreed brought him under the federal Armed Career Criminal Act.

But one of Chambers' convictions was for his "failure to report" for weekend jail stays. The government contended that not showing up for the weekend confinement was akin to an escape and should be treated as a violent crime.

Justice Stephen Breyer rejected that argument in his opinion for the court. Breyer said a report that examined failures to report to prison found no evidence that defendants were more likely to resist arrest and potentially injure law enforcement officers or others.

In a separate opinion, Justice Samuel Alito said the court is called on too often to interpret the career criminal law and suggested that Congress come up with a list of specific crimes that should trigger application of the law.

JIMINEZ V. QUARTERMAN

In a second criminal case, the court unanimously ruled for a Texas prison inmate seeking federal review of his 43-year prison term. The court interpreted a dead line determining when a judgment is final for purposes of section 28 U.S.C. 2244 (d)(1)(A). The USSC held that a federal appeals court in New Orleans was wrong to find that Carlos Jiminez had missed a deadline for filing his paperwork in federal court. Justice Clarence Thomas delivered the opinion, holding that where a state court grants a criminal defendant the right to file an out-of-time direct appeal during state collateral review, but before the defendant has first sought federal habeas relief, his judgment is not "final" for purposes of section .2244 (d)(1)(A) until the conclusion of the out-of-time direct appeal, or the expiration of the time for seeking certiorari review of the appeal.

The Chambers v. U.S., 06-11206, and Jiminez v. Quarterman, 07-6984 cases are available at http://www.supremecourtus.gov/opinions/08slipopinion.html.

James Eric Moore v. The United States

This week the Supreme Court delivered a short per curium opinion reversing the 8th Circuit opinion in *James Eric Moore v. The United States*. Mr. Moore was convicted of one count of possession of cocaine base with intent to distribute. The U.S. Sentencing Guidelines provide for a sentence range of 151 to 188 months for the quantity of crack cocaine Mr. Moore was convicted of possessing.

In light of the decision in *The United States v. Booker*, Mr. Moore had asked the District Court to impose a sentence below the guideline range. Moore was sentenced to 188 months in prison and six years of supervised release. The District Court denied the request saying that “Congress is the one who looks at the guidelines and decides whether or not they should be put in—in force…It isn’t the judges”. *App. C to Pet for Cert. 55-56.*

Moore appealed and The Eighth Circuit affirmed the conviction concluding that “neither *Booker*

nor *[18 U.S.C.] S 3553 (a)* authorizes district courts to reject' the powder cocaine to crack cocaine quantity ratio mandated by Congress and reflected in the Guidelines." *Id at 770*. While Mr. Moore's petition for certiorari was pending, the Supreme Court issued its opinion in *Kimbrough*, concluding that "a judge may consider the disparity between the Guidelines' treatment of crack and powder cocaine offenses when applying *[18 U.S.C.] s 3553*." After reversing and remanding the case to the Eighth Circuit to have them uphold the conviction a second time, The Supreme Court yesterday reversed and remanded the case for resentencing under *Kimbrough* and expressed no views as to how the District Court should use its discretion in sentencing.

Click for full opinion: http://www.supremecourtus.gov/opinions/08pdf/07-10689.pdf

2007 Term Opinions of the Court

KENNEDY V. LOUISIANA

By a 5-4 vote, the U.S. Supreme Court ruled that sentencing an individual to death for raping a child violates the Constitution's ban on cruel and unusual punishment. The ruling stems from an individual in Louisiana – one of five states that allow the death penalty for child rapists – who was sentenced to death for raping his 8-year-old stepdaughter. "Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule." said Justice Anthony Kennedy, who wrote the majority opinion.

This was the court's first decision in more than 30 years on whether a crime other than murder can be punished by execution. Justice Samuel Alito – who was joined by Justices Thomas, Scalia, and Chief Justice Robert in his dissent – wrote that the harm caused by child rapists to the victims and society is immeasurable; adding that "It is the judgment of the Louisiana lawmakers and those in an increasing number of other states that these harms justify the death penalty."

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. www.supremecourtus.gov/opinions/07pdf/07-343.pdf

GILES V. CALIFORNIA

The Supreme Court barred the use of a victim's prior statements at a murder trial and made clear that criminal defendants have the right to confront witnesses testifying against them – even in situations where the defendant may be responsible for the witness' absence. The 6-2 ruling results from an individual who was on trial for killing his girlfriend. The murder took place a short time after she alerted the police that he had beaten and claimed he was going to kill her.

Prosecutors sought to introduce statements that the girlfriend had made to a police officer responding to a domestic-violence report about three weeks before the shooting. She told the officer that her boyfriend had accused her of having an affair, and that after the two began to argue, he grabbed her by the shirt, lifted her off the floor, and began to choke her. According to her statement, when she broke free and fell to the floor, the boyfriend punched her in the face and head, and after she broke free again, he opened a folding knife, held it about three feet away from her, and threatened to kill her if he found her cheating on him.

Justice Antonin Scalia said in his majority opinion that the use of the police report violated the accused killer's right to confront his accusers in court. "The (Sixth) Amendment contemplates that a witness who makes testimonial statements admitted against a defendant will ordinarily be present at trial for cross-examination, and that if the witness is unavailable, his prior testimony will be introduced only if the defendant had a prior opportunity to cross-examine him." Scalia wrote.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. www.supremecourtus.gov/opinions/07pdf/07-6053.pdf

ROTHGERY v. GILLESPIE COUNTY, TEXAS

In an 8-1 ruling, the Supreme Court made clear that an indigent defendant's right to a lawyer begins when they are brought before a judge, and informed why they are being arrested and jailed. "We merely reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction,

marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel," said Justice David Souter, who delivered the opinion of the court.

The court ruled in favor of Walter Rothgery, whose request for a lawyer was denied by local Texas authorities for six months. Texas police relied on erroneous information that petitioner Walter Rothgery had a previous felony conviction to arrest him as a felon in possession of a firearm. The officers brought Rothgery before a magistrate judge, as required by state law, for a so-called "article 15.17 hearing," at which the Fourth Amendment probable-cause determination was made, bail was set, and Rothgery was formally apprised of the accusation against him. After the hearing, the magistrate judge committed Rothgery to jail, and he was released after posting a surety bond. Rothgery had no money for a lawyer and made several unheeded oral and written requests for appointed counsel. He was subsequently indicted and rearrested, his bail was increased, and he was jailed when he could not post the bail. Subsequently, Rothgery was assigned a lawyer, who assembled the paperwork that prompted the indictment's dismissal.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/07-440.pdf

INDIANA v. EDWARDS

The Supreme Court decided that criminal defendants with a history of mental illness do not always have the right to represent themselves, even if they have been judged competent to stand trial. "We consequently conclude that the Constitution permits judges to take realistic account of the particular defendant's mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so," said Justice Stephen Breyer, who delivered the opinion of the court. The 7-2 decision allows states to give trial judges discretion to prevent an individual from acting as his own lawyer if they are concerned that the trial could turn into a mockery of the justice system.

"The Constitution permits States to insist upon representation by counsel for those competent enough to stand trial," Breyer wrote, "... but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." Justice Antonin Scalia, who along with Justice Clarence Thomas dissented, wrote that "the Constitution does not permit a state to substitute its own perception of fairness for the defendant's right to make his own case before the jury."

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/07-208.pdf

BOUMEDIENE *v.* BUSH, PRESIDENT OF THE UNITED STATES

By a 5 to 4 vote, the US Supreme Court ruled that Guantanamo prisoners have the right to challenge their detention in civilian courts and be given the right to demand to know on what grounds they are being kept in custody. “The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom. Experience taught, however, that the common-law writ all too often had been insufficient to guard against the abuse of monarchial power,” said Justice Anthony M. Kennedy, who delivered the opinion of the court. “That history counseled the necessity for specific language in the Constitution to secure the writ and ensure its place in our legal system.”

The ruling does not spell out the way in which federal judges should handle the detainees’ claims. “It bears repeating that our opinion does not address the content of the law that governs petitioners’ detention. That is a matter yet to be determined,” Kennedy said. “We hold that petitioners may invoke the fundamental procedural protections of habeas corpus. The laws and Constitution are designed to survive, and remain in force, in extraordinary times.” Chief Justice John G. Roberts Jr., Justices Samuel A. Alito Jr., Antonin Scalia and Clarence Thomas were the dissenters.

Click on the following link to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf

American Bar Association President William H. Neukom issued the following statement on the ruling:

“Today’s ruling reaffirms the vision of our founders, and helps restore the credibility of the United States as a leading advocate and model for the rule of law across the globe. It will solidify our relations with other nations, and will protect Americans abroad. The American Bar Association cares deeply about protecting our national security, while preserving the liberties enshrined in our Constitution. Habeas corpus is the cornerstone of the rule of law in the United States. Adhering to this fundamental tenet of our legal system will simply require that we provide a fair process for determining which detainees should continue to be detained. U.S. courts have risen to the challenge of hearing cases involving national security for more than 200 years. They can and will continue to do so.”

UNITED STATES v. SANTOS

In a 5-4 vote, the Supreme Court narrowed the proper scope of the 1986 Money Laundering Control Act's definition of money laundering.

In an illegal lottery run by the respondent Santos, runners took commissions from the bets they gathered, and some of the rest of the money was paid as salary to other collectors and to the winning gamblers. Based on these payments to runners, collectors, and winners, Santos was convicted of violating the federal money-laundering statute, which prohibits the use of the "proceeds" of criminal activities for various purposes, including engaging in, and conspiring to engage in, transactions intended to promote the carrying on of unlawful activity.

The question was whether "proceeds" referred to the total receipts of the activity or only the net profits. The respondent argued that payments were made from his receipts, not profits, and thus could not be prosecuted as money laundering.

Justice Antonin Scalia, in writing the main opinion, said that due to a lack of specific definition by Congress the statue was vague.

"The federal money-laundering statute does not define 'proceeds.' When a term is undefined, we give it its ordinary meaning. 'Proceeds' can mean either 'receipts' or 'profits.' Both meanings are accepted, and have long been accepted, in ordinary usage," Justice Scalia wrote. "Since context gives meaning, we cannot say the money-laundering statute is truly ambiguous until we consider 'proceeds' not in isolation but as it is used in the federal money-laundering statute … The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendants subjected to them."

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-1005.pdf

Regalado Cuellar v. United States

Claiming that a money laundering case cannot be proven merely by showing that funds were concealed while being transported, the Supreme Court put a greater burden on prosecutors to prove international money laundering charges.

The unanimous decision – reversing an earlier judgment by the 5th U.S. Circuit Court of Appeals – comes in the case of an individual arrested after a search of the car he was driving through Texas toward Mexico revealed nearly $81,000 bundled in plastic bags and covered with animal hair in a secret compartment under the rear floorboard.

Writing for the majority, Justice Clarence Thomas made clear that it takes more than showing funds were purposely concealed during transport to justify a money laundering case.

“Although we agree with the Government that the statute does not require proof that the defendant attempted to ‘legitimize’ tainted funds, we agree with petitioner that the Government must demonstrate that the defendant did more than merely hide the money during its transport.” Justice Thomas stated.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-1456.pdf

UNITED STATES V. WILLIAMS

In a 7-2 ruling, the Supreme Court upheld recent efforts by Congress – and provided prosecutors with potent means – to halt the spread of child pornography online. The decision makes clear that individuals who use the computer to offer images of children engaging in sexually-explicit conduct can be sent to prison, even when the purported material does not exist.

The case involves a Florida man caught in a federal sting operation after posting in an internet chat room a suggestive offer of pictures of himself and his 4-year old daughter. It turned out he didn't have those pictures but he was convicted of violating a provision of the 2003 Protect Act that proscribes knowingly promoting -- through the computer or other means -- visual depictions of actual minors engaging in sexually explicit conduct.

The United States Court of Appeals for the 11th Circuit reversed the conviction, finding the law overbroad under the First Amendment and impermissibly vague under the Due Process Clause. The Supreme Court disagreed, both with respect to the law's applicability to the facts of the case before it but also with respect to different facts relating to offers of simulated child obscenity that is also addressed by the Act.

Justice Souter was joined by Justice Ginsberg in filing a dissenting opinion. However, both made clear they did not object to making it a crime to mislead others by offering material that did not in fact exist – Justice Souter wrote that it was simply fraud.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-694.pdf

GONZALEZ V. UNITED STATES

The Supreme Court ruled that as long as the defendant's lawyer permits it, a federal magistrate may preside over the *voir dire* and jury selection in a felony criminal trial.

The 8-1 decision – with a concurring opinion by Justice Antonin Scalia and a dissent by Justice Clarence Thomas – came in a drug-trafficking case where a lawyer allowed a magistrate to oversee the questioning of prospective jurors for his client.

Justice Anthony Kennedy, in delivering the opinion of the court, recognized "instances in federal proceedings where the procedural requisites for consent are specified and a right cannot be waived except with a defendant's own informed consent." However, he concluded that ". . . acceptance of a magistrate judge at the jury selection phase is a tactical decision that is well suited for the attorney's own decision."

Justice Kennedy's opinion cites the ABA Standards for Criminal Justice, Defense Function 4–5.2, Commentary, p. 202 (3d ed. 1993) ("Many of the rights of an accused, including constitutional rights, are such that only trained experts can comprehend their full significance, and an explanation to any but the most sophisticated client would be futile").

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-11612.pdf

VIRGINIA v. MOORE

In a unanimous decision, the U.S. Supreme Court ruled that police have the power to conduct searches and seize evidence, even when done during an arrest that turns out to have violated state law.

The case, Virginia v. Moore, was an appeal by the State of Virginia of a ruling by its Supreme Court. After detaining a man for driving with a suspended license, an ensuing search found a small amount of crack cocaine. In Virginia, driving with a suspended license is not an arrestable offense, thus the state court found the search to be invalid under the Fourth Amendment.

Justice Antonin Scalia, in his opinion overturning the ruling by Virginia Supreme Court, stated that the Fourth Amendment was not intended in the states to be used "as a redundant guarantee of whatever limits on search and seizure legislatures might have enacted."

Justice Ruth Bader Ginsburg, while siding with the ruling but concurring separately, made clear that even though it violated Virginia law, the arrest and search of Moore was constitutional.

Claiming that the use of state laws as guidance to provide the basis for searches would introduce uncertainty into the legal system, attorneys general from 18 states lined up in support of Virginia prosecutors.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-1082.pdf

The American Bar Association through the Criminal Justice Section had submitted an amicus brief in the case.

BAZE V. REES

A six month de facto nationwide moratorium on executions will likely cease due to the 7-2 decision by the U.S. Supreme Court to uphold Kentucky's method of execution by lethal injection. In the case of *Baze v. Rees* two death row inmates contested the means by which Kentucky and 34 other states administered three drugs. They claimed that if the drugs were administered improperly, it would cause excruciating pain before death, thus violating the Eight Amendment ban on "cruel and unusual" punishment.

The ruling will make it very difficult for future challenges to the way lethal injections are administered in other states. Chief Justice John Roberts stated that challengers will have to show not only that a state's method "creates a demonstrated risk of severe pain" but also that the execution method must present a "substantial" or "objectively intolerable" risk of serious harm.

Justice Ginsberg and Souter filed the dissenting opinions.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/07-5439.pdf

MEDELLIN v. TEXAS

By a 6-3 vote, the U.S. Supreme Court held that President Bush overstepped his authority when he ordered a Texas court to reopen the case of Jose Ernesto Medellin, a Mexican citizen whom police prevented from consulting with Mexican diplomats, as provided by international treaty. Medellin was arrested a few days after the killings of Jennifer Ertman, 14, and Elizabeth Pena, 16, in June 1993. He was told he had a right to remain silent and have a lawyer present, but the police did not tell him that he could request assistance from the Mexican consulate. Medellin was convicted of murder in the course of a sexual assault, a capital offense in Texas. A judge sentenced him to death in October 1994.

Texas acknowledged that Medellin was not told he could ask for help from Mexican diplomats, but argued that he forfeited the right because he never raised the issue at trial or sentencing. In any case, the state said, the diplomats' intercession would not have made any difference in the outcome of the case. State and federal courts rejected Medellin's claim when he raised it on appeal.

Then, in 2003, Mexico sued the United States in the International Court of Justice in The Hague on behalf of Medellin and 50 other Mexicans on death row in the U.S. who also had been denied access to their country's diplomats following their arrests. An international court ruled in 2004 that the convictions of Medellin and 50 other Mexicans on death row around the United States violated the 1963 Vienna Convention, which provides that people arrested abroad should have access to their home country's consular officials. The International Court of Justice, also known as the world court, said the Mexican prisoners should have new court hearings to determine whether the violation affected their cases.

Chief Justice John Roberts, writing for the majority, disagreed. Roberts said the international court decision cannot be forced upon the states. The president may not "establish binding rules of decision that pre-empt contrary state law," Roberts said. Neither does the treaty, by itself, require individual states to take action.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-984.pdf

Snyder v. Louisiana

By a 7-2 vote, the U.S. Supreme Court found that prosecutor Jim Williams improperly excluded blacks from the jury that convicted Allen Snyder of killing his estranged wife's companion. Snyder is black and the jurors were white. Justice Alito, writing for the majority, said the trial judge should have blocked Williams from striking a black juror. Justices Thomas and Scalia dissented. Thomas said he would not "second-guess" the judge. In a 4-3 decision, the Louisiana Supreme Court ruled that race had no part in the state's decisions involving black potential jurors.

During jury selection in the trial, Williams disqualified all five blacks in the pool of prospective jurors. The Supreme Court ruled in 1986 that prosecutors may not exclude people from a jury solely because of their race. The court already had sent Snyder's case back to the Louisiana courts following a ruling in 2005 that bolstered the prohibition on race bias in jury selection.

The prosecutor's explanation for striking a prospective black juror was "suspicious," said Alito. The prospective juror's supervisor said he did not think a schedule conflict between the upcoming trial and the prospective juror's work would be a problem. In contrast, the prosecutor accepted white jurors who disclosed conflicting obligations "that appear to have been at least as serious as" the prospective black juror who was excused, Alito wrote.

Stephen Bright, Snyder's Atlanta-based lawyer, said the ruling shows there is broad agreement among the justices that courts must closely examine the reasons given for excusing potential jurors when racial motives might be present but not acknowledged. "The disturbing thing is that courts in Louisiana and elsewhere were just deferring to trial judges, no matter the reasons," Bright said. Snyder will get a new trial as a result of the ruling.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-10119.pdf

Boulware v. U.S.

Today, the U.S. Supreme Court overturned a Ninth Circuit decision upholding a criminal tax evasion prosecution. Petitioner Boulware was charged with criminal tax evasion and filing a false income tax return for diverting funds from a closely held corporation, HIE, of which he was the president, founder, and controlling shareholder. To support his argument that the Government could not establish the tax deficiency required to convict him, Boulware sought to introduce evidence that HIE had no earnings and profits in the relevant taxable years, so he in effect received distributions of property that were returns of capital, up to his basis in his stock, which are not taxable, see 26 U. S. C. sec.sec.301 and 316(a). Under sec.301(a), unless the Internal Revenue Code requires otherwise, a "distribution of property" "made by a corporation to a shareholder with respect to its stock shall be treated in the manner provided in [sec.301(c)]." Section 301(c) provides that the portion of the distribution that is a "dividend," as defined by sec.316(a), must be included in the recipient's gross income; and the portion that is not a dividend is, depending on the shareholder's basis for his stock, either a nontaxable return of capital or a taxable capital gain. Section 316(a) defines "dividend" as a "distribution" out of "earnings and profits." The Ninth Circuit held that Boulware's proffer was properly rejected because he offered no proof that the amounts diverted were intended as a return of capital when they were made.

In an unanimous opinion, the Supreme Court found that Sections 301 and 316(a) of the Internal Revenue Code set the conditions for treating certain corporate distributions as returns of capital, nontaxable to the recipient. The question is whether a distributee accused of criminal tax evasion may claim return-of-capital treatment without producing evidence that either he or the corporation intended a capital return when the distribution occurred. The Court held that no such showing is required.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-1509.pdf

Danforth v. Minnesota

In Danforth, the U.S. Supreme Court ruled 7 to 2 that states may give prisoners the retroactive benefit of Supreme Court decisions that expand criminal procedure rights. That is the case, Justice John Paul Stevens wrote, even if the court does not extend the same

benefit in federal habeas corpus cases.

In this case, a Minnesota prisoner wanted to take advantage of a Supreme Court decision that in some cases barred the admission of out-of-court or pretrial testimony. Stephen Danforth had been convicted of the sexual abuse of a 6-year-old boy, based partly on a taped interview with the boy.

The Minnesota Supreme Court said Danforth was barred from benefiting from the decision because of a separate Supreme Court ruling that said such criminal procedure decisions would not be applied retroactively in federal cases.

But Stevens said that this restriction does not bind state courts, and the justices sent the case back to Minnesota. Chief Justice John G. Roberts Jr. and Justice Anthony M. Kennedy dissented.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-8273.pdf

Wright v. Van Patten

The U.S. Supreme Court ruled unanimously that nothing in its own precedent prevented a lawyer from participating in a plea hearing by speaker phone. However, the unsigned opinion cautioned that the justices weren't ruling on whether such a practice should be allowed.

Joseph Van Patten was charged with first-degree intentional homicide under Wisconsin law, but he pleaded guilty in Shawano County to a reduced count of first-degree reckless homicide. His lawyer wasn't physically in the courtroom for the plea hearing, but participated by speaker phone. The judge imposed the maximum 25 years in prison. Van Patten appealed, arguing that representation by speaker phone was "presumptively ineffective" -- ineffectiveness of counsel is often a key element in reversing a conviction or sentence. A federal appeals court agreed.

The Court reversed the appeals court but kept its ruling narrow. The justices indicated they weren't ruling on whether such a practice deprived a defendant of due process rights. "Our own consideration of the merits of telephone practice ... is for another day," the opinion said, "and this case turns on the recognition that no clearly established law contrary to the state (sentencing) court's conclusion justifies" overturning the sentence.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/07-212.pdf

Watson v. United States

The U.S. Supreme Court unanimously refused to broaden the impact of a law that adds extra prison time to the sentences of drug traffickers who use a gun in carrying out their crimes. The Court overturned the gun-related conviction of Michael A. Watson of Ascension Parish, La., who told a man, who turned out to be a government informant, that he wanted a weapon for self-protection and was willing to trade illegal drugs for it. The issue in the case was whether receiving a gun in exchange for drugs constitutes "use" of the gun under federal law. In a 9-0 decision, the Court said the anti-crime provision does not apply to traffickers who trade drugs for guns. The Court found that a person does not use a firearm under federal law when he receives it in trade for drugs.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser. http://www.law.cornell.edu/supct/pdf/06-571P.ZO

Kimbrough v. United States and Gall v. United States

The U.S. Supreme Court found that judges may impose lighter sentences for crack cocaine, adding its voice to a racially sensitive debate over federal guidelines that call for tougher penalties for crack than for powder cocaine. The crack cocaine decision was one of two yesterday in which the justices, with identical seven-member majorities, reinforced

their view that federal sentencing guidelines are advisory rather than mandatory, and that judges may deviate from them so long as their decisions are reasonable.
In Kimbrough v. U.S., Justice Ruth Bader Ginsburg said it was reasonable for a federal judge in Virginia to impose a lower sentence than one prescribed by the guidelines because of his disagreement with the rule that imposed the same sentence for a crack dealer as for someone selling 100 times as much powder cocaine. The U.S. Court of Appeals for the Fourth Circuit said the law did not allow the judge to make such a determination. The Court found that "the cocaine guidelines, like all other guidelines, are advisory only" and that the "the court of appeals erred in holding the crack/powder disparity effectively mandatory." The disparity has been challenged by civil rights groups because crack is most often used by African Americans, powder cocaine by whites, thus subjecting blacks to the tougher penalties. The court's decision did not touch on that argument.

In Gall v. U.S., the Supreme Court also agreed that a judge was within his rights to impose a light sentence for a man convicted of conspiracy to sell 10,000 pills of the drug ecstasy. The guidelines said that the man, Brian Gall, should be sentenced to at least 30 months in jail. But a federal judge in Iowa said Gall had quit the drug business years before authorities had found evidence of his involvement and had turned his life around. The judge sentenced him to probation. The government appealed the sentence, and the U.S. Court of Appeals for the Eighth Circuit agreed that the sentence was out of line. The Court reversed, finding that the judge had not abused his discretion to decide the proper sentence in an individual case. Writing for the majority, Justice John Paul Stevens stated that the sentence imposed by the district judge was reasonable in this case. He noted that the courts of appeals must review all sentences under a deferential abuse-of-discretion standard.

Click on the links below to access the full opinions. If you cannot click on the link, copy and paste it into your browser. http://www.supremecourtus.gov/opinions/07pdf/06-6330.pdf (Kimbrough v. U.S.)
http://www.supremecourtus.gov/opinions/07pdf/06-7949.pdf (Gall v. U.S.)

Logan v. United States

The U.S. Supreme Court unanimously upheld a stiff prison term for a repeat offender who argued that some earlier convictions shouldn't count in calculating his sentence. The ruling in the case of James Logan of Wisconsin is the latest effort by the court to clarify the Armed Career Criminal Act, most recently amended in 2004. The law allows longer sentences for "career criminals."

Logan pleaded guilty to possessing a gun after having been convicted of a felony. Federal law bars felons from having guns. He received a term of 15 years because he also had three prior misdemeanor convictions in Wisconsin, punishable by up to three years in prison. The Armed Career Criminal Act makes defendants eligible for longer prison terms if they have three prior criminal convictions for crimes that are either violent felonies or serious drug offenses. Misdemeanors also qualify if they have maximum prison terms of more than two years. But Logan argued the misdemeanors should not have been considered because the law also says those convictions shouldn't count when an individual has his civil rights, which normally includes the right to vote, restored. In Wisconsin, misdemeanors do not result in the loss of civil rights, so Logan argued the convictions shouldn't be counted. The court, however, was unpersuaded. Justice Ruth Bader Ginsburg, writing for the majority, stated that the court finds that the words 'civil rights restored' do not cover the case of an offender who lost no civil rights. Affirmed.

Click on this link to access the full opinion: http://www.law.cornell.edu/supct/pdf/06-6911P.ZO

Berry, Earl W. V. Epps, Comm'r, Ms Doc, Et Al.

The Supreme Court halted the execution of Mississippi death row inmate Earl Wesley Berry, the third execution the justices have blocked since agreeing to decide whether lethal injections violate the constitutional ban on cruel and unusual punishment. The justices gave no reason for granting the stay, and Justices Scalia and Alito stated that they would have allowed the execution to go forward.

Berry was to be put to death for the kidnapping and murder of Mary Bounds in rural Mississippi in 1987.

Emmett v. Kelly

The Supreme Court halted the execution of Virginia death row inmate Christopher Scott Emmett, and decided to review the constitutionality of lethal injection, and whether the procedure amounts to cruel and unusual punishment. Granted just hours before Emmett was to be put to death, this was the second time the justices have stopped an execution since agreeing to decide whether lethal injections carry the potential for pain that would violate constitutional standards.

The court, which reviews applications for stays on a case-by-case basis, gave no reason for halting Emmett's execution, declaring only that "the execution of sentence of death is stayed pending final disposition of the appeal by the United States Court of Appeals for the Fourth Circuit or further order of this Court."

Section member and sentencing expert Douglas A. Berman told *The Washington Post* that the he believes the stay granted by the court is a de facto moratorium, and with almost all executions being carried out by lethal injection, a halt "would mean the most profound hiatus in the operation of the death penalty in at least two decades."

The Court's order, with no indication of dissent, can be found here.

2006Term Opinions of the Court

Uttecht, Superintendent, Washington State Penitentiary v. Brown

A Washington jury sentenced respondent Brown to death, and the state appellate courts affirmed. Subsequently, the Federal District Court denied Brown's habeas petition, but the Ninth Circuit reversed finding that the state trial court had violated Brown's Sixth and Fourteenth Amendment Rights by excusing "Juror Z" for cause on the ground that he could not be impartial in deciding whether to impose a death sentence. The Ninth Circuit held for respondent and relied on its application of Witherspoon v. Illinois, 391 U. S. 510 and the cases based on that ruling. The Supreme Court expressed deference to the trial judge's ability to observe a potential juror's demeanor and qualifications. The court went on to cite four relevant principles from Witherspoon and to reverse the ninth circuit's holding that both the state trial court and the State Supreme Court were contrary to or an unreasonable application of clearly established federal law. Held:… "the trial court acted well within its discretion in granting the state's motion to excuse Juror Z."

http://www.supremecourtus.gov/opinions/06pdf/06-413.pdf

Schriro v. Landrigan

In a 5-4 decision, the U.S. Supreme Court ruled against a death row inmate who directed his lawyer not to present evidence that could spare him, then argued on appeal that the attorney was ineffective. The Court reversed a 9th Circuit Court of Appeals decision granting twice-convicted killer Landrigan a hearing on his claim that his lawyer didn't do enough to ward off the death sentence. Writing for the majority, Justice Thomas stated that the appeals court should have deferred to lower court rulings against Landrigan. The Arizona's court determination that Landrigan refused to allow the presentation of any mitigating evidence was a reasonable determination of the facts.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser.
http://www.supremecourtus.gov/opinions/06pdf/05-1575.pdf

Scott v. Harris

Harris sued Scott, a police officer, for damages after Officer Scott bumped Harris' car during a high-speed vehicle chase. The ensuing crash left Harris paralyzed. Harris claims that Scott's use of deadly force (his car) violated Harris's Fourth Amendment rights. In district court, Scott claimed he had qualified immunity from this suit because his actions were reasonable under the Fourth Amendment, and because the law at the time was not sufficiently clear to put Scott on notice that his actions were unlawful.

The district court denied Scott's claim and the Eleventh Circuit Court of Appeals affirmed, holding that Scott did not have qualified immunity because (1) a jury could find that Scott used unreasonable force in "seizing" Harris's car, thereby violating Harris's Fourth Amendment rights, and (2) the law of the circuit was sufficiently clear at the time of the incident to give reasonable law enforcement officers “fair notice” that ramming a vehicle under these circumstances was unlawful.

In an 8- 1 decision, the U.S. Supreme Court reversed. Justice Scalia, writing for the majority, stated that because the car chase Harris initiated posed a substantial and immediate risk of serious physical injury to others, Scott’s attempt to terminate the chase by forcing Harris off the road was reasonable, and Scott was entitled to summary judgment.

Click on the link below to access the full opinions. If you cannot click on the link, copy and paste it into your browser.

http://www.supremecourtus.gov/opinions/06pdf/05-1631.pdf

Abdul-Kabir v. Quarterman
Brewer v. Quarterman
Smith v. Texas

The U.S. Supreme Court threw out death sentences for three Texas defendants because of issues with jury instructions. The jurors were deciding between life in prison and death. The cases all involved jury instructions that Texas had not used since 1991. Under those rules, courts have found that jurors were not allowed to give sufficient consideration to constitutionally relevant mitigating factors that might cause them to impose a life sentence instead of death.

In Smith, the Court set aside the death penalty for the second time, and in Abdul-Kabir and Brewer, the Court reversed both death sentences. The three 5-4 rulings had the same lineup of justices, with Breyer, Bader Ginsburg, Kennedy, Souter and Stevens forming the majority.

Click on the link below to access the full opinions. If you cannot click on the link, copy and paste it into your browser.

Abdul-Kabir v. Quarterman
http://www.supremecourtus.gov/opinions/06pdf/05-11284.pdf

Brewer v. Quarterman
http://www.supremecourtus.gov/opinions/06pdf/05-11287.pdf

Smith v. Texas
http://www.supremecourtus.gov/opinions/06pdf/05-11304.pdf

James v. United States

Pleading guilty to possessing a firearm after a felony conviction in violation of 18 U. S. C. §922(g)(1), Alphonso James admitted to the three prior felony convictions listed in his federal

indictment, including a Florida state-law conviction for attempted burglary. The government argued at sentencing that those convictions subjected James to the 15-year mandatory minimum prison term provided by the Armed Career Criminal Act (ACCA), §924(e), for an armed defendant who has three prior "violent felony" convictions. James objected that his attempted burglary conviction was not for a "violent felony." The District Court held that it was, and the Eleventh Circuit affirmed. In a 5-4 decision, the U.S. Supreme Court held that attempted burglary, as defined by Florida law, is a "violent felony" under ACCA.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser.

http://www.supremecourtus.gov/opinions/06pdf/05-9264.pdf

Rockwell Int'l Corp. v. United States

In a 6-2 ruling, the U.S. Supreme Court held that James Stone, an 81-year-old retired engineer, may not collect anything for his role in exposing fraud at the now-closed Rocky Flats nuclear weapons plant northwest of Denver. Justice Scalia, writing for the majority, stated that Stone was not the original source of the information that resulted in Rockwell International, now part of aerospace giant Boeing Co., being ordered to pay the government nearly 4.2 million for fraud connected with environmental cleanup at the Rocky Flats plant. Rockwell argued that Stone's claim was implausible, since he was laid off the year before it began submitting false claims saying it was meeting goals of treating low-level radioactive wastes at the former atomic weapons plant. The court agreed that Stone did not have direct and independent knowledge of the information upon which his allegations were based.

Click on the link below to access the full opinion. If you cannot click on the link, copy and paste it into your browser.

http://www.supremecourtus.gov/opinions/06pdf/05-1272.pdf

Whorton v. Bockting

The United States Supreme Court unanimously reinstated a Nevada child molester's conviction in a decision that continued the Court's refusal to apply recent rulings on criminal procedure to older cases.

In 1988, Marvin Bockting was convicted of child molestation based on his 6 year-old stepdaughter's statements to police. The child, however, did not testify at trial, so Bockting's attorneys never had the opportunity to questions her.

In 2004, the Supreme Court ruled, in Crawford v. Washington, that defendants have a constitutional right to cross-examine witnesses against them. In Bockting, the 9th U.S. Circuit Court of Appeals ruled that the 2004 decision should apply retroactively and overturned the conviction. Justice Alito, writing for the majority, disagreed. The Court stated that the 2004 ruling would not apply to older cases like Bockting's. The 2004 decision did not effect a change of this magnitude.

Wallace v. Kato

In a 7-2 ruling, the U.S. Supreme Court refused to allow a man wrongly imprisoned for more than eight years to sue the police officers who arrested him. The Court stated that Andre Wallace whose murder conviction was overturned in 2002 waited too long to file his false arrest lawsuit. Wallace had two years in which to file his lawsuit, which he began working on during the year after his release. The issue before the Court was when the two-year clock began to run. Writing for the majority, Justice Scalia stated that the correct starting point is

when a judge reviews the criminal charge against a defendant and bounds him over for trial. In Wallace's case, this hearing occurred in 1994.

Cunningham v. California

In a 6-3 ruling, the U.S. Supreme Court struck down California's determinate sentencing law. The Court held that the sentencing law, by placing sentence-elevating factfinding within the judge's province, violates a defendant's right to trial by jury protected by the Sixth and Fourteenth Amendments.

Petitioner Cunningham was tried and convicted of continuous sexual abuse of a child under 14. Under California's determinate sentencing law, that offense is punishable by one of three precise terms of imprisonment. The law instructs judges to sentence inmates to the middle of three options unless factors exist that justify a shorter or longer prison term.

Ayers v. Belmontes

By a 5-4 vote, the U.S. Supreme Court reinstated the death penalty for Fernando Belmontes, a California man convicted of beating a woman to death 25 years ago. The Court reversed the 9th Circuit Court of Appeals that threw out Belmontes's death sentence because the trial judge confused and misled jurors who were considering whether to give Belmontes the death penalty by not specifically instructing them that they could consider "forward-looking" productive existence mitigating evidence offered at the sentencing phase. Writing for the majority, Justice Kennedy stated that the trial judge's directions were adequate. The 9th Circuit was wrong to conclude that jurors might have failed to take all the evidence into account before settling on a death sentence when Belmontes presented his mitigating evidence in open court.

2005 Term Opinions of the Court

Hamdan v. Rumsfeld (6/29/06)

By a 5-3 vote, the U.S. Supreme Court held that President Bush overstepped his authority in ordering military tribunals for suspected terrorists imprisoned at the U.S. Navy base in Guantanamo Bay, Cuba. Writing for the majority, Justice Stevens stated that the administration will need to come up with a new policy to prosecute at least ten "enemy combatants" (a suspect that can be held without charges in a military prison without the protections of the U.S. criminal justice system, such as the right to counsel) awaiting trial. The justices stated that the proposed trials were illegal under U.S. law and international Geneva conventions. The tribunals must be understood to incorporate at least the barest of those trial protections that have been recognized by customary international law. The decision did not address the government's ability to detain suspects.

Clark v. Arizona (6/29/06)

By a 6-3 vote, the U.S. Supreme Court ruled that Arizona's law on the insanity defense is not too restrictive in limiting evidence defendants can present at trial. The justices affirmed the murder conviction of Eric Clark, who thought he was being pursed by space aliens when he killed an Arizona police officer. Under Arizona's law, defendants may be found guilty except insane if they prove they were so mentally ill that they did not know what they did was wrong. Writing for the majority, Justice Souter stated that Arizona's rule serves to preserve the state's chosen standard for recognizing insanity as a defense and to avoid confusion and misunderstanding on the part of jurors. The state can limit psychiatric testimony to avoid such confusion given the often dueling opinions of experts and inability of anyone to truly know what is in someone else's mind.

Clark was convicted of first-degree murder in an Arizona state court. At trial, the defense tried to present evidence that, due to mental illness, Clark did not “knowingly and intentionally” commit

the murder. The trial court refused to admit the evidence, ruling that it could only be used to establish insanity as an affirmative defense. The trial court then ruled that Clark's evidence of mental illness did not meet the burden of proof required for the insanity defense, which requires proof that the defendant had a qualifying mental illness that prevented him from understanding that the criminal act was wrong. Clark appealed, arguing that the narrowness of the insanity law and the trial court's refusal to permit evidence of mental illness to negate the intent requirement for murder violated Clark's right to Due Process under the Fourteenth Amendment. The court of appeals affirmed the trial court's decision, and the Arizona Supreme Court denied discretionary review.

Sanchez-Llamas v. Oregon (No. 04-10566) (6/28/06)
Bustillo v. Johnson (No. 05-51)

By a 6-to-3 vote, the U.S. Supreme Court ruled against two foreign suspects who argued that an international treaty, the Vienna Convention on Consular Relations, required police to inform them that they had a right to contact their governments when they were arrested. The treaty requires competent authorities to tell a consulate when one of its citizens has been arrested. The justices did not decide whether the treaty requires suspects to be informed of such a right.

Writing for the majority, Chief Justice Roberts stated that the two men, one from Honduras and the other from Mexico, are not entitled to suppression of statements to police or another chance to raise objections based on the treaty after failing to do so at trial. He concluded that such remedies are too harsh for the treaty's requirements - if it exists - that only deals with notification and does not require consulates to provide assistance to suspects.

Kansas v. Marsh (6/26/06)

By a 5-to-4 vote, the United States Supreme Court held that the Kansas Supreme Court incorrectly interpreted the Eighth Amendment's protection against cruel and unusual punishment to strike down the state's death penalty statute. Writing for the majority, Justice Thomas disputed the claim that the law created a general presumption in favor of the death penalty in the state of Kansas. Reversed and remanded.

A Kansas jury, finding three aggravating circumstances that were not outweighed by mitigating circumstances, convicted respondent Marsh of, inter alia, capital murder and sentenced him to death. Marsh claimed on direct appeal that Kan. Stat. Ann. sec. 21-4624(e) establishes an unconstitutional presumption in favor of death by directing imposition of the death penalty when aggravating and mitigating circumstances are in equipoise. Agreeing, the Kansas Supreme Court concluded that sec. 21-4624(e)'s weighing equation violated the Eighth and Fourteenth Amendments and remanded for a new trial.

United States v. Gonzales-Lopez (6/26/06)

By a 5-to-4 vote, the U.S. Supreme Court held that defendants are automatically entitled to a new trial if their choice of a privately retained defense lawyer is wrongly blocked. Writing for the majority, Justice Scalia stated that Gonzales-Lopez has a constitutional right to the attorney of his choice under the Sixth Amendment's guarantee of assistance of counsel. The Court noted, however, that there are limits to a defendant's choice of attorneys. A defendant cannot chose his attorney if counsel is appointed and paid for by the court, or when counsel is not a member of the bar.

Gonzales-Lopez hired attorney Low to represent him on a federal drug charge. The District Court denied Low's application for admission pro hac vice on the ground that he had violated a professional conduct rule and then, with one exception, prevented respondent from meeting or consulting with Low throughout the trial. The jury found Gonzales-Lopez guilty. Reversing, the Eighth Circuit held that the District Court erred in interpreting the disciplinary rule, that the court's refusal to admit Low therefore violated respondent's Sixth Amendment right to paid counsel of his choosing, and that this violation was not subject to harmless-error review.

Washington v. Recuenco (6/26/06)

By a 7-to-2 vote, the U.S. Supreme Court held that prosecutors' failure to submit to a jury a factor used in sentencing is not grounds for automatic reversals of convictions.

Recuenco was charged with second degree assault with a deadly weapon enhancement. At trial, the state presented evidence that the deadly weapon was a handgun and the jury returned a guilty verdict on the assault charge and a special verdict that Recuenco was armed with a deadly weapon. The trial court enhanced Recuenco's sentence based on his being armed with a firearm, which carries a greater enhancement (three years) than being armed with a deadly weapon (one year). Recuenco appealed, arguing that the firearm enhancement violated his Sixth Amendment right to a jury trial because the jury did not find that he was armed with a firearm. The Washington State Court denied his appeal. The Supreme Court of Washington reversed, holding that the imposition of a firearm enhancement without a jury finding that Recuenco was armed with a firearm violated Recuenco's Sixth Amendment right to a jury trial as defined by "Apprendi v. New Jersey."

Woodford v. Ngo (6/22/06)

The Prison Litigation Reform Act of 1995 (PLRA) requires a prisoner to exhaust any available administrative remedies before challenging prison conditions in federal court. 42 U. S. C. §1997e(a). Respondent filed a grievance with California prison officials about his prison conditions, but it was rejected as untimely under state law. He subsequently sued petitioner officials under §1983 in the Federal District Court, which granted petitioners' motion to dismiss on the ground that respondent had not fully exhausted his administrative remedies under §1997e(a). Reversing, the Ninth Circuit held that respondent had exhausted those remedies because none remained available to him.

The United States Supreme Court reversed and remanded. The Court held that the PLRA's exhaustion requirement requires proper exhaustion of administrative remedies.

The ABA filed an amicus brief in support of respondent. The brief, citing the ABA Legal Status of Prisoners Standards and a 1995 ABA resolution affirming prisoners' right to meaningful access to the judicial process, was drafted by Eric Maier of Gibson Dunn and was edited by Prof. Lynn Branham of Thomas M. Cooley Law School.

Dixon v. United States (6/23/06)

Petitioner was charged with receiving a firearm while under indictment in violation of 18 U. S. C. §922(n) and with making false statements in connection with the acquisition of a firearm in violation of §922(a)(6). She admitted at trial that she knew she was under indictment when she purchased the firearms and knew that doing so was a crime, but claimed that she was acting under duress because her boyfriend had threatened to harm her and her daughters if she did not buy the guns for him. Bound by Fifth Circuit precedent, the District Court declined her request for a jury instruction placing upon the Government the burden to disprove, beyond a reasonable doubt, her duress defense. Instead, the jury was instructed that petitioner had the burden to establish her defense by a preponderance of the evidence. She was convicted, and the Fifth Circuit affirmed.

The United States Supreme Court affirmed. The Court held that the jury instructions did not run afoul of the Due Process Clause. The Court also noted that modern common law does not require the Government to bear the burden of disproving petitioner's duress defense beyond a reasonable doubt. The Court found that, in this context, and the long-established common-law rule, petitioner bears the burden of proving the duress defense by a preponderance of the evidence.

Youngblood v. West Virginia (6/19/06) Per Curiam

Denver A. Youngblood was convicted of two counts of sexual assault, three counts of wanton endangerment and one count of indecent exposure. Youngblood moved to set aside the verdict. He claimed that an investigator found new and exculpatory evidence in the form of a note. The note was said to have been shown to a state trooper investigating the allegations against Youngblood. The trooper allegedly read the note and then told the person who produced it to destroy it. Youngblood argued that the suppression of evidence violated the State's federal constitutional obligation to disclose evidence favorable to the defense, and in support of his argument he referred to cases citing and applying "Brady v. Maryland," 373 U.S. 83 (1963). The trial court denied Youngblood a new trial, saying that the note provided only impeachment, but not exculpatory evidence. A bare majority of the Supreme Court of Appeals of West Virginia affirmed, finding no abuse of discretion on the part of the trial court, but without examining the specific constitutional claims associated with the alleged suppression of favorable evidence. Youngblood then filed a petition for a writ of certiorari.

The United States Supreme Court granted the petition for certiorari, vacated the judgment of the State Supreme Court and remanded the case for further proceedings. The Court noted that Youngblood presented a federal constitutional "Brady" claim to the State Supreme Court and that it would be better for this Court to have the benefit of the views of the full Supreme Court of Appeals of West Virginia on the "Brady" issue.

Davis v. Washington (05-5224)
Hammond v. Indiana (05-5705) (6/19/06)

In No. 05–5224, a 911 operator ascertained from Michelle McCottry that she had been assaulted by her former boyfriend, petitioner Davis, who had just fled the scene. McCottry did not testify at Davis's trial for felony violation of a domestic no-contact order, but the court admitted the 911 recording despite Davis's objection, which he based on the Sixth Amendment's Confrontation Clause. He was convicted. The Washington Court of Appeals affirmed, as did the State Supreme Court, which concluded that, inter alia, the portion of the 911 conversation in which McCottry identified Davis as her assailant was not testimonial.

In No. 05–5705, when police responded to a reported domestic disturbance at the home of Amy and Hershel Hammon, Amy told them that nothing was wrong, but gave them permission to enter. Once inside, one officer kept petitioner Hershel in the kitchen while the other interviewed Amy elsewhere and had her complete and sign a battery affidavit. Amy did not appear at Hershel's bench trial for, inter alia, domestic battery, but her affidavit and testimony from the officer who questioned her were admitted over Hershel's objection that he had no opportunity to cross-examine her. Hershel was convicted, and the Indiana Court of Appeals affirmed in relevant part. The State Supreme Court also affirmed, concluding that, although Amy's affidavit was testimonial and wrongly admitted, it was harm-less beyond a reasonable doubt.

The United States Supreme Court affirmed the judgment of the Supreme Court of Washington in No. 05–5224 and reversed and remanded the judgment of the Supreme Court of Indiana in No. 05–5705. The Court held that the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had a prior opportunity for cross examination." "Crawford v. Washington," 541 U.S. 36, 53-54. The Court found that McCottry's statements identifying Davis as her assailant were not testimonial. Amy Hammon's statements, however, were testimonial. The Court noted that the Indiana courts may determine on remand whether a claim of forfeiture by wrongdoing--under which one who obtains a witness's absence by wrongdoing forfeits that constitutional right to confrontation-is properly raised in "Hammon", and if so, whether it is meritorious. Absent such a finding, the Sixth Amendment operates to exclude Amy Hammon's affidavit.

Samson v. California (6/19/06)

Pursuant to a California statute-which requires every prisoner eligible for release on state parole to 'agree in writing to be subject to search or seizure by a parole officer or other peace officer ... , with or without a search warrant and with or without cause'-and based solely on petitioner's

parolee status, an officer searched petitioner and found methamphetamine. The trial court denied his motions to suppress that evidence, and he was convicted of possession. Affirming, the State Court of Appeal held that suspicionless searches of parolees are lawful under California law and that the search in this case was reasonable under the Fourth Amendment because it was not arbitrary, capricious, or harassing.

The United States Supreme Court affirmed. The Court held that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee.

Hudson v. Michigan (6/15/06)

Detroit police executing a search warrant for narcotics and weapons entered petitioner Hudson's home in violation of the Fourth Amendment's "knock-and-announce" rule. The trial court granted Hudson's motion to suppress the evidence seized, but the Michigan Court of Appeals reversed on interlocutory appeal. Hudson was convicted of drug possession. Affirming, the State Court of Appeals rejected Hudson's renewed Fourth Amendment claim.

The United States Supreme Court affirmed. The Court held that violation of the "knock-and-announce" rule does not require suppression of evidence found in a search.

Hill v. McDonough (6/12/06)

Facing execution in Florida, petitioner Hill brought a federal action under 42 U. S. C. sec. 1983 to enjoin the three-drug lethal injection procedure the State likely would use on him. He alleged the procedure could cause him severe pain and thereby violate the Eighth Amendment's prohibition of cruel and unusual punishments. The District Court found that under controlling Eleventh Circuit precedent the sec. 1983 claim was the functional equivalent of a habeas petition. Because Hill had sought federal habeas relief earlier, the court deemed his petition successive and barred under 28 U. S. C. sec. 2244. The Eleventh Circuit agreed and affirmed.

The United States Supreme Court reversed and remanded. The Court held that because Hill's claim is comparable in its essentials to the sec. 1983 action the Court allowed to proceed in "Nelson v. Campbell," 541 U. S. 63, it does not have to be brought in habeas, but may proceed under sec. 1983.

House v. Bell (6/12/06)

A Tennessee jury convicted petitioner Paul Gregory House of Carolyn Muncey's murder and sentenced him to death. The State's case included evidence that FBI testing showed semen consistent (or so it seemed) with House's on Mrs. Muncey's clothing and small bloodstains consistent with her blood but not with House's on his jeans. In the sentencing phase, the jury found, inter alia, the aggravating factor that the murder was committed while House was committing, attempting to commit, or fleeing from the commission of rape or kidnapping. In affirming, the State Supreme Court described the evidence as circumstantial but strong. House was denied state postconviction relief. Subsequently, the Federal District Court denied habeas relief, deeming House's claims procedurally defaulted and granting the State summary judgment on most of his claims. It also found, after an evidentiary hearing at which House attacked the blood and semen evidence and presented other evidence, including a putative confession, suggesting that Mr. Muncey committed the crime, that House did not fall within the 'actual innocence' exception to procedural default recognized in "Schlup v. Delo," 513 U. S. 298, and "Sawyer v. Whitley," 505 U. S. 333. The Sixth Circuit affirmed.

The United States Supreme Court reversed and remanded. The Court held that House's federal habeas action may proceed because he made the stringent showing required by the actual-innocence exception. The Court also found that House has not shown freestanding innocence that would render his imprisonment and planned execution unconstitutional under Herrera v. Collins, 506 U. S. 390, in which the Court assumed without deciding that in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim. The threshold showing for such a right would be extraordinarily high, and House has not satisfied whatever burden a hypothetical freestanding innocence claim would require. He has cast doubt on his guilt sufficient to satisfy Schlup's gateway standard for obtaining federal review, but given the closeness of the Schlup question here, his showing falls short of the threshold implied in Herrera.

The ABA filed an amicus brief in "House v. Bell." The brief pointed out that while the Sixth Circuit unanimously agreed that the defendant had presented a "colorable claim" of actual innocence supported by DNA evidence, expert testimony, and evidence of confessions by the actual murderer, it split 8-7 in ruling that his "colorable claim" nevertheless did not meet the applicable standards for recognition of "actual innocence" claims in a federal habeas corpus action. In advising the Court about the Association's nine "innocence" resolutions, its "biological evidence principles," and its capital habeas corpus litigation policies, the brief argued that these materials support standards for "actual innocence" habeas corpus cases that are sufficiently robust to accommodate the various evidentiary and systemic shortcomings revealed by "actual innocence" cases – systemic shortcomings that were simply not well-appreciated at the time the cases on which the majority relied were decided.

Amicus Committee Co-Chair Rory Little, Hastings Law School, drafted the brief with the assistance of Seth Waxman and Sanket Bulsara.

Zedner v. United States (6/5/06)

In April 1996, Jacob Zedner was indicted on charges arising from his attempt to open accounts using counterfeit United States bonds. The District Court granted two 'ends-of-justice'continuances, see 18 U. S. C. sec. 3161(h)(8).**

When, at a November 8 status conference, Zedner requested another delay to January 1997, the court suggested that he waive the application of the Act 'for all time,' and produced a preprinted waiver form for him to sign. At a January 31, 1997, status conference, the court granted Zedner another continuance so that he could attempt to authenticate the bonds, but made no mention of the Act and no findings to support excluding the 91 days between January 31 and his next court appearance on May 2 (1997 continuance). Four years later, Zedner filed a motion to dismiss the indictment for failure to comply with the Act, which the District Court denied based on the

waiver 'for all time.' In a 2003 trial, Zedner was convicted. The Second Circuit affirmed. Acknowledging that a defendant's waiver of rights under the Act may be ineffective because of the public interest served by compliance with the Act, the court found an exception for situations when the defendant causes or contributes to the delay. It also suggested that the District Court could have properly excluded the 91-day period based on the ends of justice, given the case's complexity and the defense's request for additional time to prepare.

The United State Supreme Court held that because a defendant may not propspectively waive the application of the Act, petitioner's waiver "for all time" was ineffective. Reversed and remanded.

**The Speedy Trial Act of 1974 (Act) generally requires a federal criminal trial to begin within 70 days after a defendant is charged or makes an initial appearance. 18 U. S. C. sec. 3161(c)(1). Recognizing that criminal cases vary widely and that there are valid reasons for greater delay in particular cases, the Act includes a long and detailed list of periods of delay that are excluded in computing the time within which trial must start. Section 3161(h)(8) permits a district court to grant a continuance and exclude the resulting delay if it makes on-the-record findings that the ends of justice served by granting the continuance outweigh the public's and defendant's interests in a speedy trial. To promote compliance without needlessly subverting important criminal prosecutions, the Act provides that, if the trial does not begin on time and the defendant moves, before the trial's start or entry of a guilty plea, to dismiss, the district court must dismiss the charges, though it may choose whether to do so with or without prejudice.

Brigham City, Utah v. Charles Stuart (5/22/06)

Four police officers, responding to a complaint about a loud party, were approaching the house when they saw through the windows that Mr. Stuart and three other adults were restraining a juvenile. The officers opened a screen door, entered the house, and arrested the four adults. The four adults were charged with contributing to the delinquency of a minor, disorderly conduct and intoxication. Stuart and two other defendants filed a motion to suppress evidence obtained in the warrantless entry of the house. Finding that the police officers' entry to the house was not supported by "exigent circumstances," the trial court granted the motion, and the court of appeals affirmed that the warrantless entry violated the Fourth Amendment. The Utah Supreme Court affirmed the court of appeals decision, holding that the evidence should be suppressed.

Recently, the United State Supreme Court reversed the decision of the Utah Supreme Court. The Court held that police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.

Holmes v. South Carolina (5/1/06)

Bobby Lee Holmes was sentenced to death after he was convicted of murder and several other crimes. The prosecution relied heavily on forensic evidence that strongly supported Holmes' guilt. At trial, he was not permitted to introduce evidence suggesting that another person had committed the crimes.

Under South Carolina law, defendants seeking to present evidence of third-party guilt must limit the evidence to such facts as are inconsistent with his own guilt, and to such facts that create a reasonable inference or presumption as to his own innocence. Evidence that merely casts a bare suspicion on another person is not admissible. Using this standard, the South Carolina Supreme Court affirmed the trial court's decision not to allow the evidence.

The United State Supreme Court vacated the judgment of the South Carolina Supreme Court and remanded the case for further proceedings. The Court held that a criminal defendant's federal constitutional rights are violated by an evidence rule under which the defendant may not introduce evidence of third-party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict. The Court noted that state and federal rule makers have broad latitude under the Constitution to establish rules excluding evidence from criminal

trials. This latitude, however, has limits. The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.

Day v. McDonough, Interim Secretary, Florida Department of Corrections (4/25/06)

Petitioner Patrick Day was convicted of second-degree murder and sentenced to 55 years in prison by a Florida trial court. Day unsuccessfully appealed the sentence, which was affirmed on December 21, 1999. His time to seek this Court's review of the final state-court decision expired on March 20, 2000.

Day unsuccessfully sought state postconviction relief 353 days later. The trial court's judgment was affirmed on appeal, effective December 3, 2002. Day petitioned for federal habeas relief 36 days later, on January 8, 2003. Florida's answer asserted that the petition was timely because it was filed after 352 days of untolled time. A Federal Magistrate Judge, however, determined that the State had miscalculated the tolling time: Under the controlling Eleventh Circuit precedent, the untolled time was actually 388 days, rendering the petition untimely.

After affording Day an opportunity to show cause why the petition should not be dismissed for failure to meet the Antiterrorism and Effective Death Penalty Act of 1996's (AEDPA) one-year deadline, the Magistrate Judge found petitioner's responses inadequate and recommended dismissal. AEDPA sets a one-year limitation period for filing a state prisoner's federal habeas corpus petition, running from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review, but stops the one-year clock while the petitioner's properly filed application for state postconviction relief is pending. The District Court adopted the recommendation, and the Eleventh Circuit affirmed, concluding that a State's patently erroneous concession of timeliness does not compromise a district court's authority sua sponte to dismiss a habeas petition as untimely.

The United State Supreme Court held that the District Court had discretion to correct the State's erroneous computation and, accordingly, to dismiss the habeas petition as untimely under AEDPA's one-year limitation.

Georgia v. Randolph (3/22/06)

Scott Randolph, while on trial for possession of cocaine, filed a motion to suppress evidence found when the police searched his home without a warrant. Randolph's wife had consented to the search but Randolph, who was present when the police came to the home, objected to the search. The police, believing that the wife’s consent was adequate, searched and found cocaine in the home. The trial court denied Randolph’s motion, but the appellate court reversed, holding that the evidence should have been suppressed. The Georgia Supreme Court affirmed, holding that because Randolph was present when the police came to his home, the police were required by the Fourth Amendment to heed his objection to the search.

The United States Supreme Court held that in these circumstances, a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him.

U.S. v. Grubbs (3/21/06)

Jeffrey Grubbs was on trial for possessing child pornography, a federal crime. He asked the judge to suppress evidence officers seized from his home. Grubbs said the search violated the Fourth Amendment because the officers showed him an "anticipatory warrant," something valid only after trigger events take place, with no mention of the trigger conditions. The condition set on this warrant was that officers could search Grubbs' house when he received a pornographic video. The judge denied Grubbs' motion because the trigger was set forth in an affidavit that the officers carried during the search and that the warrant referenced. The Ninth Circuit reversed and said officers had to show trigger events for an anticipatory warrant to the person being searched.

The United State Supreme Court held that Anticipatory warrants are not categorically unconstitutional under the Fourth Amendment's provision that “no warrants shall issue, but upon probable cause.” Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” The Court also found that the warrant at issue did not violate the Fourth Amendment's particularity requirement. The Amendment specifies only two matters that the warrant must “particularly describe”: “the place to be searched” and “the persons or things to be seized.” The particularity requirement does not include the conditions precedent to execution of the warrant.

Scheidler v. National Organization for Women, Inc (2/28/06)

In 1986, a class of women who have used or would use the services of an abortion clinic and all such clinics filed suit against defendants, a group of anti-abortion activists, alleging, among other things, that their protest tactics violated the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Hobbs Act, the federal extortion statute. An initial trip from the Seventh Circuit to the Supreme Court resulted in a remand to the District Court for trial of the plaintiffs' RICO claims. A jury found for the plaintiffs and awarded damages to the two named clinics, and the District Court issued a permanent nationwide injunction prohibiting the defendants from conducting blockades, trespassing, damaging property, or committing acts of violence at the class clinics. The Court of Appeals affirmed, holding, among others, (1) that RICO authorizes private plaintiffs to seek injunctive relief and (2) that interfering with intangible property, such as the right to conduct business, violates the Hobbs Act.

The United States Supreme Court held that physical violence unrelated to robbery or extortion falls outside the scope of the Hobbs Act. Because the Court's decision required an entry of judgment in petitioners' favor, it did not address the other questions presented: (1) Whether the Court of Appeals improperly disregarded the Supreme Court's mandate in "Now II" by holding that the injunction issued by the District Court might not need to be vacated; and (2) Whether RICO authorizes a private party to obtain an injunction.

Oregon v. Guzek (2/22/06)

The United States Supreme Court, in *Oregon v. Guzek*, held that defendants in capital murder cases do not have a constitutional right to use alibi evidence when they are sentenced by juries. The Court found that the Oregon Supreme Court was wrong when it extended the Eighth Amendment's prohibition on cruel and unusual punishment to allow defendants to present evidence of "residual doubt" to juries that had already found them guilty. In 1988, Randy Lee Guzek was convicted by an Oregon jury for the June 1987 murders of Rod and Lois Houser, the uncle and aunt of his former high school girlfriend. His murder convictions were upheld by the state's highest court. But changes in Oregon law and mistakes by the trial judge led the Oregon Supreme Court to overturn his death sentence three times. The case returns to Oregon, where Guzek will have another sentencing.

Gonzales v. Oregon (1/17/06)

The United States Supreme Court, in *Gonzales v. Oregon*, held that the Controlled Substance Act (CSA) does not allow the Attorney General to prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide under state law permitting the procedure. In 1991, the State of Oregon, joined by a physician, a pharmacist, and some terminally ill patients, sued the U.S. Attorney General to challenge an interpretive ruling of the CSA. The rule declared that physician-assisted suicide was not a legitimate medical purpose, and that any physician administering federally controlled drugs for that purpose would be in violation of the CSA. This ruling placed the CSA in direct conflict with Oregon's Death with Dignity Act, which allows physicians to prescribe medication to end the life of a terminally ill patient.

Brown v. Sanders (1/11/06)

The United States Supreme Court, in *Brown v. Sanders*, overturned the Ninth Circuit's ruling that a California's jury's consideration of invalided special circumstances rendered Ronald Sander's death sentence unconstitutional. The Court concluded that although two of the four special circumstances were invalidated, the remaining two were sufficient to make Sanders death eligible. The Court established a rule that an invalidated sentencing factor (whether an eligibility factor or note) would only render a sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process if there was no other sentencing factor that enabled the sentencing judge or jury to give aggravating weight to the same facts and circumstances.

2004 Term Opinions of the Court

Bell v. Thompson (6/27/05)

In 1985, Gregory Thompson was convicted of first degree murder and sentenced to death. Thompson appealed the decision arguing that his attorney failed to present evidence of his mental illness. The federal district court denied his habeas petition and Thomas filed a Rule 60(b) motion asking the district court to reconsider its denial in light of expert testimony that had inadvertently been omitted from the record. The district court denied the motion and the Sixth Circuit Court of Appeals affirmed the denial, but six months later, the court issued an opinion reversing its prior denial of habeas relief and remanded the case to the federal district court for consideration of new evidence. The United States Supreme Court held that the Sixth Circuit abused its discretion by withdrawing its opinion affirming the denial of habeas corpus relief six months after Fed. R. App. P. 41(d)(2)(D) made issuance of the mandate mandatory, without notice to the parties or any finding that the court's action was necessary to prevent a miscarriage of justice.

Castle Rock v. Gonzales (6/27/05)

The United States Supreme Court held that law enforcement cannot be sued for how they enforce restraining orders. The Court stated that Jessica Gonzales did not have a constitutional right to police enforcement of the court order against her husband. Ms. Gonzales argued that police did not do enough to stop her estranged husband from taking her three young daughters from the front yard in violation of a restraining order. The bodies of the three girls were found in Mr. Gonzales' truck. Ms. Gonzales contended that she was entitled to sue based on her rights under the 14th Amendment and under Colorado law that states, "officers shall use every reasonable means to enforce a restraining order." She maintained that her restraining order should be considered property under the 14th Amendment and that it was taken from her without due process when police failed to enforce it.

Rompilla v. Beard (6/20/05)

Today, the United States Supreme Court ordered a new trial for Ronald Rompilla. The Court held that the defendant's lawyer did not properly investigate possible evidence of Mr. Rompilla's mental retardation. In 1988, Mr. Rompilla was convicted of stabbing, robbing, and setting on fire a tavern owner in Pennsylvania. The jury sentenced him to death.

The Court cited the *ABA Standards for Criminal Justice, Prosecution Function and Defense Function, 4-4.1* (Duty to Investigate).

Miller-El v. Dretke (6/13/05)

The United States Supreme Court recently overturned the 1986 conviction of Thomas Joe Miller-El who was found guilty of murder and sentenced to death. The Court held that Miller El's trial "was tainted by government racial discrimination." Prosecutors wrongfully kept African-

Americans off the jury that found Miller-El guilty of murder. Miller-El argued that the exclusion of 10 of 11 blacks eligible to serve on the jury violated his constitutional rights, claiming that the jury was selected in a discriminatory process.

Wilkinson v. Austin (6/13/05)

The United States Supreme Court, in *Wilkinson v. Austin*, held that prisoners are entitled to due process before being placed in a "supermax" maximum-security prison, and that Ohio's procedures used for classifying prisoners for supermax placement comply with the Fourteenth Amendment's Due Process Clause. At issue were the guidelines that governed prisoner placement at the Ohio State Penitentiary, the state's supermax prison. The Court ruled that a prisoner's rights are adequately protected by a procedure that includes a hearing at which the prisoner can testify. The state's substantive criteria for supermax placement were not at issue.

Arthur Anderson LLP v. United States (5/31/05)

Yesterday, the United States Supreme Court overturned the 2002 criminal conviction of Arthur Andersen, LLP, Enron Corporation's accounting firm. The unanimous Court held that the presiding federal trial judge gave the jury overly broad instructions. The jury ultimately found Andersen guilty of obstruction of justice. The Court stated that the jury should have been instructed that the government was required to prove that Andersen knew it was breaking the law.