Boumediene v. Bush (06-1195); Al Odah v. United States (06-1196)

Appealed from the U.S. Court of Appeals for the D.C. Circuit (2007)
Oral argument: Dec. 5, 2007

Imagine that you are an officer in the U.S. military. You have sworn to protect your country, and one of your duties is to prevent another terrorist attack on the United States. You help detain a small group of hostile foreign nationals, all of whom appear to be cooperating with terrorist groups to carry out future attacks on the United States. The detained foreign nationals receive a hearing before a Combatant Status Review Tribunal (CSRT), where they have an opportunity to testify, present relevant and reasonably available evidence, and have a personal representative to assist them. The CSRT determines that the foreign nationals are enemy combatants and potential threats to the United States. They are imprisoned at Guantanamo Bay to prevent them from further participation in terrorist activities.

Now imagine that you are a humanitarian worker in a country that is not at war with the United States. One day, local officials arrest you on suspicion of plotting to attack an embassy. After a lengthy criminal investigation, you are exonerated and released. Before you can go home, however, you are detained by the U.S. military and sent to Guantanamo Bay. Although you want to contest your detention, U.S. legislation explicitly prohibits U.S. courts from hearing your claim. Instead, you protest to a CSRT, a tribunal composed of military officers, that you were not involved in the plot to attack the embassy. You do not have an attorney to assist you in this process. The CSRT determines that you are an enemy combatant, based partially on hearsay and classified evidence. Once the CSRT makes its determination, you remain imprisoned at Guantanamo Bay until the United States ascertains that the terrorist threat has been eliminated.

Both of these fact patterns describe the situation faced by U.S. military officers, who must make decisions to protect national security, as well as the Al Odah and Boumediene detainees. Do the detainees have the right to a habeas corpus hearing in a U.S. court to contest their detention? If not, do CSRTs provide them an adequate alternative remedy? *Boumediene v. Bush* and *Al Odah v. United States* bring these issues to the Supreme Court in what will be one of the most heated battles of the Court's term.

Facts and Procedural History

These consolidated cases involve federal court jurisdiction over petitions for writs of habeas corpus filed by foreign nationals detained at the U.S. Naval Station in Guantanamo Bay. The writ of habeas corpus allows a detained person to challenge the lawfulness of his or her detention in court. The government asserts that all those held at Guantanamo Bay have been legitimately detained in connection with the ongoing conflicts with al Qaeda or the Taliban regime. In addition to maintaining their innocence, the detainees allege that withholding habeas rights from them violates the Suspension Clause of the Constitution, which prohibits the suspension of habeas except in times of rebellion or invasion.

The detainees in these cases consist of three sets of petitioners. The Boumediene detainees include six Bosnian-Algerian natives who were arrested by local Bosnian police in late 2001 on suspicion of plotting to attack the U.S. embassy in Sarajevo. After a three-month international investigation, the detainees were released for lack of evidence. Immediately upon the release of the detainees, however, the U.S. military transported them to Guantanamo. The Boumediene detainees are joined by the Al Odah detainees, who include four Kuwaiti citizens and 12 Yemeni citizens as well as the three El-Banna detainees, some of whom were taken into custody in Afghanistan and Pakistan. Most of the detainees have been under U.S. custody for more than five years.

After the Sept. 11, 2001, terrorist attacks, Congress enacted the Authorization for Use of Military Force, which, together with his authority as commander in chief, President Bush used to issue a military order authorizing the detainment of noncitizens suspected of terrorism.

As a result, in early 2002, the government began imprisoning detainees at Guantanamo, which is a unique location because it is leased to the United States by Cuba. Under this lease agreement, the United States asserts "complete jurisdiction and control over and within" the leased land but also acknowledges the "continuance of the ultimate sovereignty of the Republic of Cuba."

The Al Odah detainees protested their detention by filing habeas actions in the U.S. District Court for the District of Columbia. The district court found that the detainees were aliens held outside U.S. sovereign territory and dismissed the case. In doing so, the court relied on *Johnson v. Eisentrager*, a 1950 case in which the Supreme Court dismissed federal habeas actions filed by Germans detained in U.S.-occupied Germany.

The U.S. Supreme Court overturned the dismissal in *Rasul v. Bush*, holding that the federal habeas statute extends to aliens at Guantanamo, because it is an area "over which the United States exercises exclusive jurisdiction and control," even though it is within Cuba. That same day, the Court also set out due process requirements for U.S. citizens detained at Guantanamo in *Hamdi v. Rumsfeld*. These requirements include the opportunity to rebut accusations before a neutral decision-maker. The Court then remanded the detainees' habeas actions.

On remand, the D.C. district court granted the government's motion to dismiss two cases, one of which included the Boumediene detainees, and held that aliens held outside the sovereign territory of the United States have no constitutional rights. For the 11 other Guantanamo detainee cases, one of which included the Al Odah detainees, the D.C. district court denied the government's motion to dismiss the portion of the claims alleging violations of the

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Fifth Amendment Due Process Clause and the Third Geneva Convention.

Meanwhile, Congress rejected the Supreme Court's decision in *Rasul* by enacting the Detainee Treatment Act of 2005 (DTA), which explicitly states that no U.S. court has jurisdiction over habeas petitions filed by Guantanamo detainees. The act also provides a limited exception for the D.C. circuit court to review decisions made by Combatant Status Review Tribunals.

Created by the U.S. Department of Defense after the *Rasul* and *Hamdi* cases, CSRTs determine whether Guantanamo detainees are enemy combatants and may therefore be detained under the Authorization for Use of Military Force. Each CSRT is composed of "three neutral commissioned officers of the U.S. Armed Forces" who were not involved in the "apprehension, detention, interrogation, or previous determination of status" of the detainee under review. CSRTs provide a detainee with the opportunity to challenge classification as an enemy combatant; a "personal representative," who is not necessarily an attorney; and a review of unclassified evidence related to the detention.

Shortly after the CSRTs were created, detainees with habeas actions pending at the time the DTA was enacted sued to contest the applicability of the CSRT procedures. In *Hamdan v. Rumsfeld*, the Supreme Court held that the DTA did not remove federal courts' jurisdiction over habeas cases pending at the time of DTA's enactment. The Court reasoned that the DTA did not specifically state whether the new section applied to pending cases and that Congress' omission must have been intentional. The Court did not, however, address the issue of whether the Constitution permitted Congress to revoke federal courts' jurisdiction to hear detainees' habeas petitions. Congress responded again by enacting the Military Commissions Act of 2006 (MCA), which specifies that the DTA's preclusion of jurisdiction applies to "all cases, without exception, pending on or after" the DTA's enactment that are related to "any aspect of the detention … of an alien detained by the United States after Sept. 11, 2001."

After this exchange between Congress and the Supreme Court, the U.S. Court of Appeals for the District of Columbia decided the current *Boumediene* cases, holding that the MCA applied to the detainees' habeas petitions. The D.C. circuit court also held that the MCA does not violate the Suspension Clause, because the clause does not apply to the detainees. The court followed *Eisentrager* in reasoning that the writ of habeas as it existed in 1789 was not available to aliens who were "without presence or property within the U.S.," and therefore the writ is unavailable to the detainees as well. The dissent in the 2-1 decision argued that, even if the statutory writ is unavailable to detainees, the common law writ still extends habeas rights to them.

The Supreme Court initially denied the detainees' petition for certiorari in April 2007. In an unusual turn of events, however, the Court granted certiorari to rehear the cases on the last day of its term in June 2007.

The Legal Arguments

The legal dispute in this case centers on three issues. First, the detainees argue that the Military Commissions Act violates the Suspension Clause of the United States Constitution, which states, "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." The detainees argue that, under *INS v. St. Cyr*, the Suspension Clause applies to them, because the common law writ of habeas corpus, as it existed in 1789, would have extended to them. According to the detainees, because there is no rebellion or invasion to justify the suspension of habeas corpus, the MCA violates the Constitution. The government counters that rebellion and invasion both refer to emergencies inside the United States and that the current terrorist threat qualifies as such an emergency. The government also argues that the Suspension Clause's omission of overseas military operations demonstrates that the clause does not apply to aliens detained outside the United States.

Second, the government argues that, even if the detainees do have rights under the Suspension Clause, the CSRTs and DTA review provide an adequate and effective substitute for habeas hearings in a wartime context. The detainees disagree, partially because CSRTs were established by the military. If Congress removes habeas rights, then Congress—not the military—must provide an adequate and effective substitute. In addition, the detainees and those who file amicus briefs argue that CSRTs and DTA review fall short of habeas protections such as access to a neutral tribunal, fair opportunity for detainees to rebut the accusations against them, the availability of a swift and imperative remedy, access to counsel, and an opportunity to test the legal basis of their detention.

The final legal issue in dispute is one that has come to pressing importance in recent years: whether and to what degree international standards apply to the American judicial system. Amici for the detainees argue that international law entitles detainees to certain fundamental rights, even if the Constitution does not apply to them. The two international standards at issue are the Geneva Conventions and Article 9 of the International Covenant on Civil and Political Rights (ICCPR). According to the amici, the failure of the United States to follow the Geneva Conventions "weakens the entire international legal regime and invites other signatories to disregard their own treaty obligations." Furthermore, the U.N. high commissioner for human rights argues that the United States is bound by the ICCPR and that U.S. treatment of detainees violates Article 9. Amici for the government, however, counter that the ICCPR creates no obligations in U.S. federal courts and is not applicable to territories leased by nations.

Impact of the Decision

The Supreme Court's decision in these cases will have an enormous impact on both detainees' rights and limits to the military's wartime powers. If the Court holds for the government, all habeas claims by noncitizen detainees held at Guantanamo will be dismissed. Current and future detainees will have

no opportunity to contest their status as enemy combatants other than an appearance before the CSRT, an entity that detainees argue is inadequate because its independence is questionable, it provides no attorney for them, and allows only a limited opportunity to hear and contest evidence.

A decision in favor of the detainees would certainly continue the ongoing volley between the Court and the other two branches of government on this issue. The government argues that the Court should defer to the determination made by the elected branches in balancing the detainees' freedom with national security concerns during an ongoing military conflict. On the other hand, the petitioners argue that it is important to maintain the system of checks and balances and that the Court must step in when the other branches go beyond the constitutional limits of their authority. In addition, it is not completely clear that the legislative branch will continue to hold the same position that the executive branch holds. In particular, since Democratic majorities were elected to Congress in late 2006, multiple bills have been introduced to provide habeas jurisdiction for Guantanamo detainees.

These cases have already gained historical significance, because they are the first cases in 60 years to be granted a rehearing after the Supreme Court initially denied certiorari. In addition, the cases may emphasize the stark change in the composition of the Court since 2004, when it decided *Rasul v. Bush*, the most recent Supreme Court case concerning habeas rights of Guantanamo detainees. With Justice O'Connor's retirement in 2005, Justice Kennedy will play a decisive role in the outcome of these cases. **TFL**

Prepared by Hana Bae and Courtney Zanocco. Edited by Heidi Guetschow.

Riegel v. Medtronic (06-179)

Appealed from the U.S. Court of Appeals for the Second Circuit (May 16, 2006)
Oral argument: Dec. 4, 2007

Facts and Procedural History

In 1996, an Evergreen Balloon Catheter burst during Charles Riegel's angioplasty. The burst caused a complete heart blockage and required emergency coronary bypass surgery. Riegel and his wife filed a product liability complaint against the catheter's manufacturer, Medtronic Inc., in the U.S. District Court for the Northern District of New York. The court dismissed the complaint, holding that the 1976 Medical Device Amendments (MDA) to the Food, Drug, and Cosmetic Act pre-empted most of the claims.

The U.S. Court of Appeals for the Second Circuit upheld the dismissal. Under federal law, the Evergreen Balloon Catheter is a Class III medical device. If the Food and Drug Administration (FDA) imposes device-specific requirements on a Class III device, a state cannot impose additional or different requirements without prior permission. The court concluded that the FDA had imposed device-specific requirements on the Evergreen Balloon Catheter. It reasoned that if Charles Riegel reached trial and won, the awarded damages would amount to a state "requirement" that differed from or added to FDA requirements. Thus, the court held that federal law pre-empted the lawsuit. After Riegel died in 2004, his wife substituted as plaintiff and appealed to the U.S. Supreme Court, which granted certiorari on June 25, 2007.

Discussion and Analysis

At issue in this case is whether federal pre-market approval by the Food and Drug Administration immunizes manufacturers of medical devices from state law product liability claims. Before the Medical Device Amendments of 1976, the FDA had little control over the sale of medical devices. By passing the MDA, Congress gave the FDA authoritative control and split medical devices into three categories that reflect increasing levels of consumer risk: Class I devices such as bandages, Class II devices such as hearing aids, and Class III devices such as pacemakers and catheters.

Because Class III devices pose the biggest health risks, they must pass the FDA's most thorough review process—pre-market approval—before they may be sold to doctors and patients. To grant PMA, the FDA must find "reasonable assurance" that the device will be safe and effective when designed, manufactured, and labeled as proposed in the application. However, a device that was marketed before the MDA was enacted may stay on the market unless the FDA singles out the device for review. In addition, a Class III device that is substantially equivalent to a device marketed before the MDA was passed may stay on the market once a relatively fast "notification process" confirms the equivalence.

To bolster the FDA's authority over medical devices, Congress included an express pre-emption provision in 21 U.S.C § 360k(a) that prohibits states from imposing requirements on medical devices that are "different from, or in addition to, any requirement" imposed by the FDA. The Supreme Court clarified the scope of this provision in *Medtronic v. Lohr*, 518 U.S. 470 (1996). In *Lohr*, Medtronic argued that the MDA pre-empted a lawsuit over an allegedly defective pacemaker, but the Court disagreed because the pacemaker was subject to the "notification process" exception to PMA review and because the FDA had not imposed device-specific requirements. The *Lohr* decision held that, in the absence of FDA device-specific requirements, states may impose their own safety requirements.

Did the FDA Impose Device-Specific Requirements on the Evergreen Balloon Catheter?

Riegel argues that the FDA never imposed device-specific requirements on the Evergreen Balloon Catheter, because Medtronic designed the catheter without input from the FDA. According to Riegel, "device-specific requirements" are predetermined manufacturing instructions that the FDA provides in the approval process. For example, the FDA provides device-specific requirements for a type of medical laser in the form of performance standards: "Device must emit a laser beam with the following parameters: wavelength = 1064 nanometers; spot size = 50 to 100 microns. …" However, in this case, the FDA never issued specific instructions

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regarding the design of the catheter. Instead, the PMA merely determined that the Evergreen Balloon Catheter met minimal thresholds of safety and effectiveness.

Medtronic argues that the FDA did impose device-specific requirements on the Evergreen Balloon Catheter, because the agency required Medtronic to manufacture the catheter only as specified in the PMA application. Medtronic emphasizes the rigors of the PMA process: "The FDA spends hundreds of hours during the PMA process reviewing … studies to [determine whether the] device would be safe and effective when designed, manufactured, and labeled in conformity with the … PMA application." Medtronic argues that no requirements can be more specific than the FDA approval of the manufacturing specifications for a device.

Riegel responds that such approval of manufacturing specifications does not constitute a device-specific requirement, because manufacturers may obtain permission to change the specifications after the PMA process has concluded. Riegel argues that, by extension, Medtronic's responsibility to patients did not end when it obtained PMA for its catheter. Quoting *Lohr*, Riegel asserts that Medtronic may be liable under principles of "general applicability" for matters not explicitly covered by the PMA.

Medtronic's position is that this logic ignores the distinction between cursory and detailed FDA review as made in the *Lohr* ruling. In *Lohr*, the Supreme Court found that Medtronic's pacemaker did not receive detailed review by the FDA, because it qualified for the "notification process" exception. The pacemaker involved in the *Lohr* case received approval after a 20-hour process that does not involve testing the safety and effectiveness of the device. In contrast, the Evergreen Balloon Catheter received approval after a process that takes hundreds of hours and considers numerous safety and effectiveness tests. According to Medtronic, if the Court fails to find device-specific requirements in this case, it will ignore the distinction between fast-paced review and detailed approval of design specifications that the Court made in the *Lohr* decision.

Is Riegel Trying to Impose Different or Additional State Law Requirements in Violation of the MDA?

The parties also disagree over whether Riegel's lawsuit, with its attendant risk of a damage assessment against Medtronic, constitutes a "requirement" subject to the express pre-emption provision. Riegel argues that a lawsuit does not impose such a requirement. She notes that the literal language of the statute prohibits only requirements that are established by a state or political subdivision of a state and targeted specifically at medical devices. In contrast, a private product liability lawsuit enforces common law duties of care that are generally applicable to all manufacturers. As the Court wrote in *Lohr*, state law negligence doctrines were not developed with medical devices specifically in mind but, instead, arose out of a general duty to prevent foreseeable harm. Therefore in Reigel's view, a common law product liability claim does not raise any requirements expressly pre-empted by the MDA. She urges the Court to consider that a ruling in favor of Medtronic would effectively block all consumers who are injured by PMA-approved devices from asserting defective design claims.

Medtronic, however, maintains that permitting Riegel's claim would impose different or additional state law requirements because, if Riegel wins the right to sue, she will ask a jury to conclude that Medtronic's design and manufacture of the Evergreen Balloon Catheter was defective, despite the FDA's determination that the catheter was reasonably safe and effective. Medtronic argues that, if Riegel ultimately wins damages, the damages will impose different and additional requirements because Medtronic will have to pay for violating requirements that were not present in the PMA.

To bolster its argument equating requirements and damages, Medtronic points to the Court's holdings outside the realm of medical devices, which indicate that state "regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be … a potent method of governing conduct. …" Given this principle, Medtronic urges the Court to avoid making distinctions between private lawsuits and state regulations.

Potential Impacts of the Decision

This case will resolve where the line is drawn between state and federal regulation of medical devices that have obtained pre-market approval by the FDA. Riegel contends that FDA regulation alone may not adequately protect consumer safety, partially because the FDA does not conduct its own studies into device safety. Instead, the PMA process relies on data provided by the manufacturer, which may exclude unfavorable results. In addition, because the FDA has limited funding, it assesses user fees on manufacturers, and this practice could influence FDA approval. Finally, a survey conducted by nonprofit organizations found that 60 percent of FDA scientists knew of cases in which commercial interests had influenced FDA approval, and that one-third of outside scientists enlisted by the FDA to aid in product approval had a financial interest of more than $50,000 in the manufacturer of that product.

Given these attributes of the premarket approval process, patients who believe defective devices caused their injuries take little comfort in knowing that the devices had FDA approval. A decision in favor of Riegel would allow such patients to enforce state regulation of FDA-approved medical devices absent direct conflict with FDA requirements. For example, if the FDA required that a hearing aid have two-inch wires, a court could enforce a state's enhanced packaging requirement but not a state requirement that it have one-inch wires. In this way, states could provide additional protection for patients without conflicting with the federal regulatory scheme.

On the other hand, manufacturers such as Medtronic believe the existing PMA process already ensures the safety of medical devices and that imposing

additional state requirements on federally approved devices would stifle innovation. In addition, the cost of litigation could encourage "defensive labeling," causing some devices to be underutilized. Moreover, manufacturers factor the cost of litigation into the prices of products, potentially placing them out of reach for some consumers and increasing health insurance costs.

A decision for Medtronic would make medical devices that have FDA pre-market approval immune from many state law product liability suits, providing uniformity and predictability critical to the development of such devices. Such a ruling would bar claims that rely on state regulation of medical devices unless those restrictions are identical to corresponding FDA restrictions. This outcome could prevent some consumers injured by devices with unsafe designs from obtaining damages they need to pay for medical care of their injuries. Such a result would not leave consumers entirely without recourse against manufacturers, however, because consumers may pursue other remedies such as negligent manufacture or breach of express warranty. **TFL**

Prepared by Suzanne Cook and Michael Litvin. Edited by Cecelia Sander Cannon.

Knight v. Commissioner of Internal Revenue (06-1286)

Appealed from the U.S. Court of Appeals for the Second Circuit (June 25, 2007)
Oral Argument: Nov. 27, 2007

Michael Knight, trustee of the Rudkin Testamentary Trust, petitioned the U.S. Tax Court to dispute the Internal Revenue Service assessment that the trust owed taxes for expenses related to investment advice that Knight had deducted in full. Knight argued that these expenses should be exempt, because they were necessary for Knight to fulfill his fiduciary duties as a trustee. The court stated that, to be exempt, Knight needed to show that these expenses would not have been incurred if the assets had not been held in trust. The court found that Knight failed to satisfy his burden of showing that the expenses were unique to trusts and decided in favor of the IRS. The U.S. Court of Appeals for the Second Circuit affirmed the Tax Court's holding. The Supreme Court granted certiorari to resolve a circuit split between the Sixth Circuit and the Second, Fourth, and Federal Circuits. Because trustees spend billions of dollars yearly on management advice, this case will have wide-reaching consequences. A decision for the IRS will result in the same level of taxation on expenses for investment management for individuals and trusts and more taxes to the IRS, tempered by decreased use of management services by trustees. A decision for Knight would lower the taxes levied on trustees and encourage trustees to use investment management services. Full text is available at www.law.cornell.edu/supct/cert/06-1286.html. **TFL**

Prepared by Fritz Ernemann and John Busby.

LaRue v. DeWolff, Boberg & Associates Inc. (06-856)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (June 19, 2006)
Oral Argument: Nov. 26, 2007

James LaRue, an employee of the management consulting firm DeWolff, Boberg & Associates Inc., sued his employer for improper management of his 401(k) pension plan. Under DeWolff's pension plan, LaRue could choose among a variety of investment options for his individual retirement account. In his suit, LaRue alleged that DeWolff failed to follow his investment instructions. LaRue sued under §§ 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act (ERISA), which make the manager of a retirement plan liable to the plan itself for losses resulting from a breach of fiduciary duty. The Fourth Circuit held that neither section authorized LaRue's claim, because it was an individual claim and because he sought compensatory damages—neither of which are permitted claims under ERISA. LaRue argues that his claim benefits the plan as a whole rather than himself individually and that he seeks equitable relief rather than compensatory damages, both of which are permitted claims under the statute. The outcome of this case will determine whether an individual can use these provisions to sue an employer for improper management of a pension fund. Full text is available at www.law.cornell.edu/supct/cert/06-856.html. **TFL**

Prepared by Victoria Bourke and Allison Condon.

New Jersey v. Delaware (134 Orig.)

Original Jurisdiction
Oral Argument: Nov. 27, 2007

In 2004, British Petroleum America (BP) requested approval to build a liquefied natural gas facility on the New Jersey shore of the Delaware River in an area referred to as the 12-mile circle. New Jersey approved the project, but Delaware's Department of Natural Resources and Environmental Control said that the facility, known as Crown Landing, was prohibited under Delaware's coastal zone regulations. BP sought Delaware's approval because, even though New Jersey owns the river bank on which BP planned to build the facility, Delaware owns the subaqueous lands beyond the New Jersey low-water mark. Delaware's veto of Crown Landing reopened a long-standing dispute between New Jersey and Del-aware concerning authority over land on the New Jersey side of the Delaware River in the 12-mile circle. In 1934, the Supreme Court decided the boundary in Delaware's favor, but this decree was subject to a 1905 compact that New Jersey claimed gave it authority over riparian (that is, riverbank) improvements extending from its shore. In 2005, New Jersey filed a complaint with the Supreme Court, asking it to declare that New Jersey had exclusive authority over such riparian improvements and to enjoin Delaware's interference with Crown Landing. The Court-appointed special master recommended finding for Delaware. New Jersey filed objections to those recommendations. The Court must decide what authority New Jersey and Del-aware will have over riparian improvements extending from New Jersey into Delaware's subaqueous territory. Full text is available at www.law.cornell.edu/supct/cert/134-orig.html. **TFL**

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Prepared by Ellen Loeb and Valerie Robart.

Rowe v. New Hampshire Motor Transport Association (06-457)

Appealed from the U.S. Court of Appeals for the First Circuit (May 19, 2006)
Oral Argument: Nov. 28, 2007

Under Maine law, retailers of mail-order tobacco products must require their delivery service to verify that the purchaser is not a minor. Delivery services are deemed to know that a package contains tobacco products under certain circumstances. The New Hampshire Motor Transport Association, together with other trade associations representing air and motor carriers of property, have challenged these provisions, arguing that they impinge on exclusive federal authority over carriers under the Federal Aviation Administration Authorization Act of 1994. The attorney general of Maine, G. Steven Rowe, responds that Congress did not intend the act to limit state public health regulations such as tobacco controls. The Court of Appeals for the First Circuit agreed with the associations and invalidated Maine's law. The Supreme Court's holding in this case is likely to clarify the line between federal authority over carriers and state authority over public health matters. If the attorney general prevails, Maine will be able to continue its strategy of controlling mail-order sales of tobacco products by regulating their transportation. On the other hand, a victory for the associations would protect carriers from the potentially costly threat of inconsistent state laws. The health of the economically crucial package carrier industry and the health of minors exposed to tobacco products lie in the balance. Full text is available at www.law.cornell.edu/supct/cert/06-457.html. **TFL**

Prepared by Bryan Hall.

Snyder v. Louisiana (06-10119)

Appealed from the Supreme Court of Louisiana (Sept. 6, 2006)
Oral Argument: Dec. 4, 2007

An all-white Louisiana jury found Allen Snyder, an African-American man, guilty of murder and sentenced him to death. At trial, the prosecution used peremptory strikes to exclude all African-American prospective jurors. To both the jury and the press, the prosecution compared the case to the O.J. Simpson case. On appeal, the Supreme Court ordered the Louisiana Supreme Court to reconsider its finding that there had not been any discrimination during jury selection in light of *Miller-El v. Dretke*, 545 U.S. 231 (2005). On remand, a narrow majority of the Louisiana Supreme Court reaffirmed its initial ruling. Snyder argues that the court misapplied *Miller-El* by failing to consider "all relevant circumstances" of the prosecution's discriminatory intent at trial and by according the trial court's findings an excessive degree of deference. The state of Louisiana contends that the court properly considered the case according to *Miller-El*'s principles and rightfully excluded evidence that was not on the trial court's record from its analysis. The Supreme Court's decision will influence how future courts and litigants identify and prevent unlawful racial discrimination in jury selection. Full text is available at www.law.cornell.edu/supct/cert/06-0119.html. **TFL**

Prepared by William Grimshaw and Stephen Markus.

Sprint/United Management v. Mendelsohn (06-1221)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (Nov. 1, 2006)
Oral Argument: Dec. 3, 2007

In her Age Discrimination in Employment Act (ADEA) suit against Sprint, Ellen Mendelsohn sought to use the testimony of other Sprint employees who claim to have experienced age discrimination at Sprint. This evidence falls into the category sometimes called "me too" testimony, because the employees did not share a supervisor with Mendelsohn and were not parties in Mendelsohn's litigation. The district court rejected the "me too" testimony, interpreting a previous Tenth Circuit ruling to mean that other employees' testimony was admissible only if the other employees worked under the same supervisor and were fired around the time that Sprint fired Mendelsohn. The Tenth Circuit reversed the district court's ruling, holding that the requirement to have the same supervisor applied only in discriminatory discipline actions, not in cases like Mendelsohn's, which involved allegations of company-wide discrimination. Currently, four circuits have held that "me too" evidence is irrelevant and thus inadmissible, whereas five circuits have ruled that such evidence is excludable at the discretion of the court. The Tenth Circuit's holding departs from both of these views. The Supreme Court's decision in this case will resolve this circuit split regarding "me too" evidence. The Court's decision will affect the ability of employees to prove companywide discrimination. The ruling will be particularly important, because it will apply not only to suits filed for violations of the ADEA but also to suits brought under a range of federal antidiscrimination statutes. Full text is available at www.law.cornell.edu/supct/cert/06-1221.html. **TFL**

Prepared by Deepa Sarkar and Joe Hashmall.