

Baze v. Rees (07-5439)

Appealed from the Supreme Court of Kentucky (April 19, 2007)

Oral Argument: Jan. 7, 2008

Despite the potentially far-reaching political and moral implications of this case, the relevant factual background is remarkably simple: In January 1992, Ralph Baze shot and killed two police officers who were attempting to serve him with felony warrants. *Baze v. Rees*, 217 S.W.3d 207 (Ky. 2006). In April 1990, Thomas K. Bowling shot and killed a husband and wife and wounded their two-year-old son after Bowling had hit their car with his car in a parking lot. Both Baze and Bowling were convicted of murder and are awaiting the death penalty, although neither has an imminent execution date. Both exhausted all state and federal means for challenging their convictions and death sentences, and both have refused to select a method of execution, as they are entitled to do under Kentucky law. Therefore, Kentucky will execute both using its default method—lethal injection.

Baze and Bowling filed a civil action claiming that the chemicals used in Kentucky's lethal injection "create an unnecessary risk of pain and suffering." The trial judge found Kentucky's lethal injection method constitutional, holding that Baze and Bowling had not shown by a preponderance of the evidence that the method of execution by lethal injection in Kentucky met the test established by the U.S. Supreme Court. Baze and Bowling appealed to the Supreme Court of Kentucky, which affirmed the trial court's decision, finding that, even though the prisoner being executed may feel some pain, previous U.S. Supreme Court rulings do not require a completely painless execution. Baze and Bowling petitioned for a writ of certiorari to the U.S. Supreme Court, which the Court granted on Sept. 25, 2007.

According to the *New York Times*, 37 states use the lethal injection as means of carrying out the death penalty. See Linda Greenhouse, *Justices to Enter*

the Debate over Lethal Injection, N.Y. TIMES (Sept. 25, 2007). Because of this widespread use, this case has attracted considerable attention; many organizations—such as the American Civil Liberties Union, the American Society of Anesthesiologists, and even a group of veterinarians—have filed amicus briefs because the Court might modify the permissible procedures for carrying out the lethal injection.

The Quest to Find a More Humane Means of Killing

The evolution of the death penalty in the United States shows a definite trend toward finding a method of execution that causes the least amount of pain and suffering to the inmate. See Alex Kingsbury, *The Court Puts Death on Hold*, U.S. NEWS AND WORLD REPORT (Nov. 3, 2007). Indeed, the Eighth Amendment implicitly requires minimizing pain and suffering. Hanging was the most widely used method of execution during the 19th century, but because it was thought that hanging produced an "unnecessarily painful and prolonged death," that method eventually gave way to electrocution and lethal gas. However, after some electrocutions also produced horrific results—such as people catching fire or bleeding excessively—eventually concern increased about the constitutionality of those methods as well. Today, only Nebraska relies on electrocution as its primary method of execution. Lethal gas, also believed to be a more humane method than hanging or a firing squad, was also abandoned after inmates appeared to experience extreme pain and agony while undergoing the execution.

In an attempt to find a more humane method of execution, many states, including Kentucky, adopted a method of lethal injection that researchers in Oklahoma developed in 1977. According to Baze and Bowling, however, the group that devised the Oklahoma process did not consult with any other doctors about the way to administer the drugs. Nonetheless, the first execution using the Oklahoma protocol was performed in Texas in 1982. Kentucky

adopted lethal injection as its default method of execution in 1998.

Kentucky uses the following process of lethal injection: If requested, a therapeutic dose of diazepam, more commonly known as Valium®, is administered in order to relieve anxiety, nervousness, and tension. Within one hour of the administration of Valium, medical personnel insert needles into the inmate's arm, hand, leg or foot. The state then administers three grams of sodium thiopental, a "fast-acting barbiturate," which renders the inmate unconscious. Then the administering physician injects 50 milligrams of pancuronium bromide, which causes paralysis and stops muscular movement and breathing. Finally, the state administers 240 milligrams of potassium chloride, causing cardiac arrest. Once an electrocardiogram shows no heartbeat, a doctor and coroner verify the cause of death.

Of the executions carried out in the United States since 1986, 85 percent have used lethal injection; the remaining executions used electrocution (14 percent), lethal gas (1 percent), hanging (3 inmates), and a firing squad (2 inmates). See Rob Hotakainen, *Death-Penalty Cases on Hold Pending Supreme Court Review*, McCLATCHY NEWSPAPERS (Nov. 13, 2007). For decades, opponents of the death penalty have been raising concerns about the use of lethal injection for execution, which are similar to these groups' earlier concerns about hanging, electrocution, and lethal gas because of questions about whether or not the inmate can feel pain during the lethal injection process.

The Prisoners' Arguments

Baze and Bowling argue that the Supreme Court should apply a test of "unnecessary risk of excruciating pain" to their Eighth Amendment claim, grounding their argument in *Gregg v. Georgia*, which requires that the death penalty be viewed in the light of America's "evolving standards of decency." The standard suggested by Baze and Bowling conflicts with the standard applied by the lower courts and promoted by the state of Kentucky: a requirement

that the risk of unnecessary pain be “substantial” before a method of execution is considered a violation of the Eighth Amendment. Baze and Bowling argue that it is undisputed that an inmate will suffer agonizing pain during the lethal injection process prescribed by Kentucky law if the inmate is not properly anesthetized. They further argue that this risk would be easily eliminated with a different lethal injection procedure. In addition to discussing the specific drugs and the procedure itself, Baze and Bowling also point out that the personnel carrying out the execution do not have proper training and are not stationed in a position that would enable them to see if something is going wrong during the process. The lower courts did not focus on these facts, which Baze and Bowling argue are relevant. The petitioners maintain that the correct question for the Supreme Court to ask in deciding this case is whether Kentucky’s lethal injection procedure “produces torturous deaths in at least some cases.”

The State’s Response

The state of Kentucky argues that the Supreme Court should apply a test of “substantial risk” of excruciating pain and suffering to Baze and Bowling’s Eighth Amendment claim. See Brief of Respondent at 19. Under that test, a method of execution amounts to cruel and unusual punishment if it creates a substantial risk of unnecessary pain. By adopting this test, Kentucky argues, the Supreme Court will permit lower courts to dismiss claims of insubstantial pain while still permitting claims based on more serious harm. Applying this test to the facts of Baze and Bowling’s case, Kentucky argues that the evidence it presented at trial “convincingly establishes” that its three-drug lethal injection protocol does not create a substantial risk of unnecessary pain. Specifically, the drugs used for lethal injection are designed to render the patient unconscious once the drugs enter the blood stream. The state also argues that it employs further safeguards to prevent unnecessary pain, including training programs for its staff and ongoing monitoring of the convict during the execution.

Responding to Baze and Bowling,

Kentucky argues that the inmates’ proposed “unnecessary pain” test is too broad and would divert the state’s resources away from developing less painful procedures for executions. Moreover, even under the “unnecessary pain” test, Kentucky contends that Baze and Bowling’s argument that less painful alternatives exist is “factually incorrect.”

Conclusion

This case could represent the next chapter in the nation’s quest to find a more humane means of executing convicted criminals. The last time the Supreme Court considered the constitutionality of a method of execution was in 1878, when the Court upheld the use of a firing squad. Most recently, in the absence of explicit Supreme Court guidance, lower federal and state courts have struggled to develop a uniform constitutional test to apply to Eighth Amendment challenges to lethal injection. Baze and Bowling argue that the Eighth Amendment prohibits methods of execution that create an “unnecessary” risk of pain and suffering. The state of Kentucky, on the other hand, contends that a method of execution violates the Eighth Amendment only if it creates a “substantial” risk of unnecessary pain and suffering. Although the decision in this case almost certainly will not affect the validity of death sentences that have already been imposed, the ruling may affect the way in which the states carry out those sentences. Regardless of how the Court rules, the stakes are high; inmates, medical professionals, and concerned citizens alike are closely watching this case. **TFL**

Prepared by Eric Finkelstein and Michael Zuckerman. Edited by Richard Beaulieu.

Crawford v. Marion County Election Board (07-21); Indiana Democratic Party v. Rokita (07-25)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Jan. 4, 2007)

Oral Argument: Jan. 9, 2008

As the 2008 presidential election approaches, Indiana and several other states find their voting procedures under unusual legal scrutiny. This scrutiny may reflect a lack of public confidence in the fairness and legitimacy of the electoral system that developed in the aftermath of the contentious 2000 presidential election. Some commentators argue that voter fraud in the past has contributed to this lack of confidence. For example, during both the 2000 and 2004 presidential elections, the number of people registered to vote exceeded the eligible voting age population in several states. Other commentators contend that the lack of public confidence reflects the increasing disenfranchisement of minority and low-income groups. In his opinion in this case, Judge Posner of the Seventh Circuit suggested that Indiana’s solution to voter fraud may have a disproportionate impact on Democratic voters, neatly framing the political dimension that voting procedures possess.

Facts

Indiana passed a law that, beginning July 1, 2005, requires voters to present government-issued photo identification that conforms with the voter’s name on the voter registration list in order to vote. Voters who do not present acceptable identification may cast provisional ballots but must appear in person within 10 days of the election and either provide the proper government-issued identification or sign affidavits confirming that they were the individuals who used the provisional ballots and that they are indigent or have a religious objection to being photographed. Absentee voters, voters with religious objections, and voters who live and vote in state-licensed care facilities, such as nursing homes, do not need to present identification to vote. An Indiana resident may obtain a free government-issued photo identification form by presenting a document that contains the person’s name and current address, such as a utility bill, and a birth certificate, or certificate of naturalization.

Before 2005, Indiana required voters to sign the poll book and have

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their signature compared to the signature on file with the election board. If an election official challenged a voter's identity, the challenger would sign an affidavit stating the challenge, and the voter would sign a counter-affidavit stating his or her identity before casting a provisional ballot. The County Election Board later determined whether or not to count the provisional ballot.

Before the law went into effect, two groups of plaintiffs challenged it in the U.S. District Court for the Southern District of Indiana. The plaintiffs included William Crawford and Joseph Simpson, local elected officials; several organizations that advocate for minorities, senior citizens, and homeless and low-income people (collectively, "Crawford"); and the Indiana Democratic Party. Crawford and the Indiana Democratic Party argued that the law severely burdened the people's right to vote and thus violated the implicit right to vote contained in the First and Fourteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Help America Vote Act of 2002. The district court upheld the law on summary judgment. The plaintiffs appealed to the Seventh Circuit Court of Appeals, which upheld the law on the basis that it did not severely burden an individual's right to vote and therefore was within the state's reasonable regulatory powers. The Supreme Court agreed to hear the case on Sept. 25, 2007.

Discussion and Analysis

These consolidated cases put squarely before the Court the constitutionality of a law requiring voters to present photo identification in order to vote. If the Court finds that the Indiana law imposes a severe burden on a person's right to vote, the resulting strict scrutiny standard of review will make it difficult for the law to pass constitutional muster. However, if the Court agrees with the Seventh Circuit that a more deferential standard is appropriate, it is likely that the state will be able to justify the law requiring voters to present government-issued identification as a reasonable regulatory measure to prevent voter fraud, despite any incidental

burden on the right to vote.

Standing

As an initial matter, the state argues that the plaintiffs lack standing because they have failed to identify a specific person who will be disenfranchised by the new voter identification law. However, the Seventh Circuit found that the Indiana Democratic Party provided sufficient standing, because the party would have to expend funds to encourage its members who might otherwise be discouraged from voting to go to the polls. Under Supreme Court precedent, when several associated plaintiffs seek only injunctive relief, it is only necessary for one plaintiff to have standing. In response, the state emphasizes that the doctrine of associational standing requires voluntary association, and that the plaintiffs have not identified any voters who have volunteered to have their interests represented in this suit.

How Severe is the Burden?

Crawford and the Indiana Democratic Party believe that the law requiring voter identification imposes a severe burden on the right to vote of a significant minority of the population, whereas the state characterizes the burden as an incidental and necessary effect of a valid regulation with minimal quantitative effect and no disparate impact on particular populations. In *Anderson v. Celebrezze* the Supreme Court emphasized the need to consider the "character and magnitude" of the asserted injury in determining the burden imposed on voting rights. On the question of magnitude, Crawford and the Indiana Democratic Party argue that assessment must occur at the level of the individual voter. Under *Dunn v. Blumstein*, the right to vote is "intensely personal"; therefore, Crawford argues that the disenfranchisement of even a small number of voters may qualify as a "severe" burden.

The state replies that the magnitude of the burden and the number of votes affected are "overlapping and related inquiries." Because Crawford and the Indiana Democratic Party have not identified a single voter who has been disenfranchised by the law, the state argues that the *Anderson* "magnitude"

requirement cannot be satisfied.

Crawford and the Indiana Democratic Party emphasize that the burden does not need to involve complete disenfranchisement and that difficulties encountered in obtaining the required identification suffice; for example, as many as 52 percent of women of voting age in the United States do not have a birth certificate that bears their legal name. Both the cost and time required to make numerous trips to government agencies to obtain a government-issued identification card are prohibitive.

The state acknowledges that the time and money involved in obtaining a government-issued identification might be a problem for certain poor or elderly voters but maintains that these difficulties are no more cumbersome than registering to vote is, and they fall far short of infringing the Constitution. The state points to the small number of voters likely to be affected by the law—Crawford's own data show that an estimated 99 percent of the voting-age population already has a government-issued identification card.

Crawford and the Indiana Democratic Party argue that the lower courts underestimated the disproportionate burden the law places on certain segments of the population as well as the law's total quantitative effect. For example, in addition to racial minorities and low-income people, the homeless and the elderly frequently lack the documentation needed to obtain government-issued identification. Moreover, the law's requirement that the name on the identification "conform" to the name on the list of registered voters could present an inappropriate obstacle to voting if misspellings or women's married names are deemed not to conform. Finally, Crawford points out that 43,000 voting-age Indiana residents who do not currently have government-issued identification cards are likely to be affected by the law.

The state emphasizes that Crawford's expert was unable to point to a statistically significant disparate racial, economic, or gender impact of the voter identification law, and that voter turnout among the elderly, poor, and minority voters actually increased af-

ter the law was passed. Furthermore, according to the state, the law accommodates seniors, because residents of state licensed-care facilities may vote in their residences without providing identification.

How Strong Is the State's Justification?

If the Court agrees with Crawford that the law imposes a severe burden, strict scrutiny will be triggered, and the state must show that it has a compelling interest in the law and that the law is narrowly tailored to address that interest. If, however, the Court finds a lesser burden, then, under *Burdick v. Takusbi*, a more flexible balancing test applies, and the state's regulatory interest will probably be sufficient to justify the state's application of the law.

Indiana's primary justification for requiring voters to present government-issued photo identification is to prevent voter fraud, which decreases the value of each legitimate vote. In addition, even a minor level of fraud can change the outcome of close elections. Some voter advocacy groups claim that citizens who perceive voter fraud do not vote, because they do not wish to participate in elections they consider farces, undermining public confidence in elected officials. In an effort to prevent voter fraud and to restore public confidence in the electoral system, 26 states currently require voters to provide proper identification; Indiana, Florida, and Georgia have strict photo identification requirements, and 15 other states are considering them.

Crawford argues that the state's interest in preventing voter fraud does not justify the burden imposed by the law requiring voters to present government-issued identification, because there is no evidence that in-person fraud actually occurs. For example, data provided by the Marion County Election Board contain no record of in-person fraud. According to the Indiana Democratic Commission, most fraud occurs through absentee rather than in-person ballots. For example, an Indiana court invalidated East Chicago's mayoral primary election in 2003 because of absentee ballot fraud. Yet the Indiana law exempts absentee ballots from the photo identification require-

ment.

Nevertheless, the state maintains that in-person voter fraud remains problematic in Indiana, citing the state's inflated registered voter lists. Crawford responds that voter list inflation can be mitigated by purging the lists of ineligible voters, in compliance with the National Voter Registration Act of 1993. However, the state argues that purging the registration list may disenfranchise the same voters who have no government-issued identification, and that removing the names of ineligible voters is an ineffective way to reduce voter fraud.

Other Objections

The Cyber Privacy Project, the Rutherford Institute, and the Electronic Privacy Information Center all urge the Court to reject Indiana's law because of privacy concerns. Many voters will use drivers' licenses as their photo identification and, in doing so, will have to relinquish control over personal information, including home addresses, height and weight, and, on older licenses, Social Security numbers.

Furthermore, Indiana is moving toward requiring that the photo identification be a "Real ID"—that is, state identification forms that comply with standards set by the federal REAL ID Act of 2005. Although the issue of what information will be encoded on Real IDs remains unsettled, the cards will be machine-readable—a feature that may increase the risk of identity theft.

Conclusion

In deciding whether a law that requires voters to produce government-issued photo identification in order to vote passes constitutional muster, the Supreme Court must decide whether the law places a severe burden on an individual's right to vote. Crawford and the Indiana Democratic Party argue that the law does so, because it effectively denies many minorities the ability to vote. The state of Indiana justifies the law based on its potential to decrease voter fraud. Regardless of the Court's decision, this case will have an impact on the procedures used in the 2008 presidential election and beyond.

TFL

Prepared by Allison Condon and Victoria Bourke. Edited by Cecelia Sander-Cannon.

Begay v. United States (06-11543)

Appealed from the U.S. Court of Appeals for the Tenth Circuit (Dec. 12, 2006)

Oral Argument: Jan. 15, 2008

Federal law prohibits convicted felons from possessing firearms, and the Armed Career Criminal Act (ACCA) mandates increased prison sentences for violators of this provision who have three or more prior "violent felony" convictions. Petitioner Larry Begay had at least three prior felony convictions for driving while intoxicated (DWI) when he pleaded guilty to federal firearms possession charges. The trial court held that felony DWI is a "violent felony," and therefore sentenced Begay to a lengthy prison term under the ACCA. In deciding Begay's appeal of this sentence, the Court will consider whether the ACCA's definition of violent felony encompasses felony DWI. A decision favoring Begay is likely to limit the scope of the definition to felonies similar to those specifically listed in the ACCA: burglary, arson, extortion, and crimes using explosives. On the other hand, a decision in favor of the United States is likely to extend the reach of the definition to all dangerous felonies. Full text is available at www.law.cornell.edu/supct/cert/06-11543.html. **TFL**

Prepared by Bryan Hall.

Boulware v. United States (06-1509)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Dec. 13, 2006)

Oral Argument: Jan. 8, 2008

Michael Boulware was convicted of filing false tax returns, tax evasion, and conspiracy to make false statements in Hawaii District Court in 2001. He has appealed his conviction to the Ninth Circuit on various grounds multiple times. In his current appeal, he argues that the funds he diverted from

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his closely held corporation, Hawaiian Isles Enterprises, qualified as a non-taxable return of capital. If this is true, he argues, the government failed to meet its burden of proof in showing a tax deficiency because it did not establish that the funds Boulware diverted were taxable as income. However, the Ninth Circuit upheld his conviction based on its decision in *United States v. Miller*, which established that in a criminal tax evasion case, a defendant must show not only that the diverted funds meet the requirements to be a non-taxable return of capital, but also that the corporation intended it to be one at the time the diversion was made. Boulware has challenged his conviction and argues that the *Miller* “contemporaneous intent” requirement has no basis in the statutory text of the Tax Code and creates a disparity in treatment of defendants in civil and criminal tax cases. The Supreme Court will resolve a circuit split on the issue between the Second and the Ninth Circuits. Full text is available at www.law.cornell.edu/supct/cert/06-1509.html. **TFL**

Prepared by Carrie Evans.

Dada v. Mukasey (06-1181)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Nov. 28, 2006)

Oral Argument: Jan. 7, 2008

Samson Taiwo Dada, a citizen of Nigeria, overstayed his temporary visitor's visa. After removal proceedings, Dada was granted voluntary departure in lieu of immediate deportation. Dada failed to leave the United States within the voluntary departure period and instead moved before the Board of Immigration Appeals to reopen his removal proceedings. Dada argued that the voluntary departure period should be tolled pending the outcome of his motion. Dada contended that otherwise, he and similarly situated aliens would be forced either to abandon their motions to reopen or illegally remain in the United States beyond the voluntary departure period. The board denied Dada's motion and the Fifth Circuit affirmed. The outcome of this case will

settle a circuit split concerning the legal effect of motions to reopen and will influence aliens' decisions to seek to reopen removal proceedings. Full text is available at www.law.cornell.edu/supct/cert/06-1181.html. **TFL**

Prepared by Tiffany Sepulveda.

Gonzalez v. United States (06-11612)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (March 30, 2007)

Oral Argument: Jan. 8, 2008

A federal court convicted Homero Gonzalez of drug charges after a trial in which a magistrate judge presided over jury selection. Although counsel for the defendant consented to having voir dire (the questioning and evaluation of potential jurors) conducted by a magistrate judge in lieu of an Article III judge, Gonzalez neither consented nor objected to this decision personally. Gonzalez argues that the right to personally choose whether an Article III judge will or will not preside over voir dire is an important constitutional right. The government responds that the rule in *Peretz v. United States* does not require personal consent, that the consent of counsel was adequate, and that conducting voir dire was within the scope of duties that may be delegated to magistrate judges. Gonzalez counters that the government misconstrues the language in *Peretz*. The Supreme Court's decision will not only define the extent to which a defendant's right to have an Article III judge conduct voir dire is essential to the wider reaching right to a jury in criminal cases; it will also clarify the extent of the Court's willingness to allow the delegation of important elements of a trial to magistrate judges. Full text is available at www.law.cornell.edu/supct/cert/06-11612.html. **TFL**

Prepared by Fritz Ernemann and John Busby.

Kentucky Retirement Systems et al v. EEOC (06-1037)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (June 5, 2007)

Oral Argument: Jan. 9, 2008

After finding that older individuals faced discrimination in the workplace, Congress passed the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq, which prohibits employers from arbitrarily discriminating against older employees. The Equal Employment Opportunity Commission (EEOC) brought suit against the Jefferson County Sheriff's Department, the Commonwealth of Kentucky, and Kentucky Retirement Services, which administers the state's retirement program, because the retirement program distinguishes among recipients, at least in part, on the basis of age. The U.S. Court of Appeals for the Sixth Circuit, sitting en banc, held that the retirement scheme in question violated the ADEA. In this case, the U.S. Supreme Court will determine whether an employer may deny disability benefits to an employee because of his or her eligibility to receive normal retirement benefits under the ADEA. Full text is available at www.law.cornell.edu/supct/cert/06-1037.html. **TFL**

Prepared by Carrie Payne.

MeadWestvaco v. Ill. Dept. of Revenue (06-1413)

Appealed from the Appellate Court of Illinois, First District, Sixth Division (Jan. 12, 2007)

Oral Argument: Jan. 16, 2008

In 1968, MeadWestvaco (Mead) bought Data Corporation, because Data Corporation owned printing technology that Mead wanted. Data Corporation's business also included an information technology component, which, during the time Mead owned Data Corporation, developed into Lexis/Nexis. In 1994, Mead sold Lexis/Nexis for a profit of a little more than \$1 bil-

lion. The question in this case is which state or states have the legal authority to tax the gain that Mead realized on that sale. The Illinois Department of Revenue argues that Lexis/Nexis and Mead were a unitary business, or alternatively, that Lexis/Nexis was an operational asset of Mead, and that the power to tax the gain should be apportioned between the states in which Mead and Lexis/Nexis did business. Mead argues that Lexis/Nexis was only a passive investment, therefore Illinois should have no power to tax its sale. The Appellate Court of Illinois ruled in favor of the Illinois Department of Revenue, and the Illinois Supreme Court declined to hear the case. This case could have important implications for the apportionment among the states of the right to tax the gains realized by the sale of a business. Full text is available at www.law.cornell.edu/supct/cert/06-1413.html. **TFL**

Prepared by Deepa Sarkar and Joe Hashmall.

Virginia v. Moore (06-1082)

Appealed from the Supreme Court of Virginia (Nov. 3, 2006)

Oral Argument: Jan. 14, 2008

In 2003, Virginia police stopped David Moore for driving on a suspended license. The officers then violated Virginia law by arresting Moore instead of issuing a summons. A follow-up search revealed cash and cocaine in Moore's pockets. Moore moved to suppress this evidence on grounds that the illegal arrest made the search unreasonable under the Fourth Amendment. Virginia responded that, even though Moore's arrest violated state law, the search was reasonable under the U.S. Constitution because it was incidental to an arrest based on probable cause that he had committed a crime. The trial court found the search constitutional and convicted Moore of drug possession. The Virginia Court of Appeals initially reversed the decision but reinstated the conviction after hearing the case en banc. The Supreme Court of Virginia reversed the conviction, and Virginia appealed the decision to the U.S. Supreme Court. This

case could affect many state laws concerning civil liberties and the way police view illegal arrests. Full text is available at www.law.cornell.edu/supct/cert/06-1082.html. **TFL**

Prepared by Michael Litvin and Suzanne Cook.

Preston v. Ferrer (06-1463)

Appealed from the California Court of Appeal, Second District, Division I (Nov. 30, 2006)

Oral Argument: Jan. 14, 2008

In 2002, Arnold Preston, a lawyer, and Judge Alex Ferrer entered into a contract in which Preston agreed to act as Ferrer's personal manager in exchange for a portion of the earnings from a potential television deal. The contract contained a clause that required arbitration of any disputes over the validity of the contract. Several years later, Preston filed an action with the American Arbitration Association against Ferrer, seeking earnings that Preston claims were owed to him under that contract. Ferrer claims that, under the California Talent Agencies Act, the parties must exhaust their administrative remedies by submitting the dispute to California's labor commissioner before an arbitrator or a court can hear the case. The California Court of Appeals agreed with Ferrer. Preston challenges this holding, claiming that the Federal Arbitration Act requires this dispute to be first submitted to arbitration. Arbitration agreements are found in many contracts, and this decision could have a significant impact on the enforceability of such clauses and on the states' ability to regulate certain industries and agreements. Full text is available at www.law.cornell.edu/supct/cert/06-1463.html. **TFL**

Prepared by Lauren Buechner.

Quanta Computer Inc. v. LG Electronics Inc. (06-937)

Appealed from the U.S. Court of Appeals for the Federal Circuit (July 7, 2006)

Oral Argument: Jan. 16, 2008

In the latest Supreme Court case on patent law, LG Electronics Inc. (LGE) sued Quanta Computers Inc. (Quanta) for patent infringement. A patent license agreement between LGE and Intel allowed Intel to use LGE's patents but required Intel to notify its customers, including Quanta, that its license did not extend to third-party purchasers' combinations of Intel and non-Intel components. LGE alleges that Quanta infringed LGE's patents by combining Intel and non-Intel components. LGE argues that Intel's sale to Quanta did not exhaust LGE's rights as a patent holder, allowing LGE to sue Quanta. Quanta, however, argues that Intel's authorized sale to Quanta exhausted LGE's patent rights. The Federal Circuit agreed with LGE, holding that the exhaustion doctrine did not apply, because the notice provided by Intel to Quanta created a conditional sale, and also held that sales of patented devices do not exhaust a patent holder's methods claims. The Supreme Court will determine whether a patent holder can sue customers who use patented components purchased from licensees. The outcome of this case will help define the scope of patent holders' rights, including their ability to collect royalties from downstream users of their patents. Full text is available at www.law.cornell.edu/supct/cert/06-937.html. **TFL**

Prepared by Hana Bae and Courtney Zanicco