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Ashcroft, Former Att'y Gen. v. Iqbal (07-1015)

Appealed from the U.S. Court of Appeals for the Second Circuit (June 14, 2007)
Oral argument: Dec. 10, 2008

In the wake of 9/11, the Federal Bureau of Investigation and the Immigration and Naturalization Service arrested Javaid Iqbal, a Muslim citizen of Pakistan. Following his arrest in New York City, Iqbal was separated from the general prison population and housed in a special detention center known as the Administrative Maximum Special Housing Unit. While detained there, Iqbal pleaded guilty to charges of conspiracy to defraud the United States and identification fraud. Iqbal was released from prison on Jan. 15, 2003, and subsequently removed to Pakistan.

In May 2004, Iqbal filed a civil complaint in the U.S. District Court for the Eastern District of New York. His complaint, which is the subject of this interlocutory appeal, asserted 21 claims based on various federal statutes as well as constitutional tort claims based on *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The complaint named a number of federal officials at various levels of responsibility as defendants, including FBI agents, federal Bureau of Prisons (BOP) employees, and high-ranking officials such as FBI Director Robert Mueller and former Attorney General John Ashcroft.

Iqbal's complaint alleged that, in the months after 9/11, the FBI had arrested and detained thousands of Arab Muslims in conjunction with the FBI's investigation, solely because these Arab Muslims were classified as "of high interest" to the bureau. "High-interest" detainees were all housed in the same high-security detention center, where, Iqbal alleges, he was subjected to a variety of unconstitutional treatments, including beatings, regular strip searches, interference with religious activities, and interference with his right to counsel. Iqbal claims that Ashcroft and Mueller had specifically approved the policy encouraging these treatments, and lower-level supervisory officials in the FBI and BOP adhered to this policy.

In the district court, Ashcroft and Mueller as well as the FBI and BOP defendants filed motions to dismiss the claims against them on a number of grounds, including the claim that they were protected from suit by qualified immunity. The district court agreed to carefully limit the first stage of discovery to the issue of whether or not Ashcroft and Mueller were personally involved in the alleged abuses but denied the motions, and Ashcroft and Mueller filed an interlocutory appeal.

In the Second Circuit Court of Appeals, the parties disputed "the extent to which a plaintiff must plead specific facts to overcome a defense of qualified immunity at the motion-to-dismiss stage." Interpreting *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007) as requiring claims to be *plausible* on their face, as opposed to merely possible, but noting that nothing in *Twombly* required a heightened pleading standard, the Second Circuit held that Iqbal's claim was sufficient to survive a 12(b)(6) motion to dismiss, affirmed the denial of the defendants' motion, and remanded the case for further proceedings.

In its opinion, the Second Circuit observed that, in light of the availability of the qualified immunity defense, the district court could complete discovery against all the low-level public officials before commencing any discovery against the higher-level officials, thereby eliminating nonmeritorious claims from the suit at the earliest possible stage. In addition, the Second Circuit ordered the district court to "provide ample opportunity for the defendants to seek summary judgment." Ashcroft and Mueller then sought an interlocutory appeal to the U.S. Supreme Court through a writ of certiorari, which was granted on June 6, 2008.

Implications of a Heightened Pleading Standard for *Bivens* Cases

A group of five former attorneys general, a former director of the FBI, and a public-interest law firm are concerned that, without a heightened pleading requirement, there would be a dramatic expansion of claims against high-ranking officials. According to these amici, if dismissal is not available to the defendants, high-ranking government officials will "face the prospect of discovery proceedings that are highly likely to distract them from their other responsibilities," and this, in turn, could prevent high-ranking officials from "carry[ing] out their missions effectively." The amici argue that this could have broad implications for public safety, especially when national security interests—such as the effective investigation and prevention of terrorist attacks—hang in the balance.

Conversely, National Civil Rights Organizations and the American Association for Justice filed separate briefs expressing significant concern that requiring a heightened pleading standard for *Bivens* claims would quash meritorious claims, insulate high-ranking government officials from liability, and adversely affect a broad class of civil rights plaintiffs. As amici for the respondents, the rights organizations contend that the heightened pleading standard that Ashcroft and Mueller propose would require plaintiffs to plead facts that they could not possibly know before the discovery phase, especially because supervisory officials who propose unconstitutional policies are likely to keep the details of their policies hidden from the public. The American Association for Justice echoes this argument and stresses that requiring a claim to state facts sufficient to overcome potential defenses at the pleading stage "would threaten the en-

tire federal system of notice pleading."

Finally, this case raises concerns about civil rights claims made by minority groups during national security crises. Several groups dedicated to protecting the constitutional rights of racial, ethnic, and religious minority groups in the United States point to the internment of Japanese-Americans during World War II, the situation of Guantanamo detainees, and the negative backlash against Muslims after 9/11. The groups argue that, because of past mistreatment of minority groups during times of national emergency, it is particularly important for the courts to take civil rights claims seriously and to favor claimants by allowing them to proceed to discovery.

Legal Arguments

Ashcroft and Mueller focus their arguments on the affirmative defense of the qualified immunity doctrine. Although Ashcroft and Mueller do not claim that the Federal Rules of Civil Procedure themselves require a heightened pleading standard, the petitioners do say that courts believe that the Federal Rules should be firmly applied when qualified immunity is involved. Ashcroft and Mueller claim that an overly permissive pleading standard defeats the purpose of qualified immunity, because frivolous lawsuits that could detrimentally affect how decisions are made, particularly during times of heightened national security, would hamper high-ranking public officials and, therefore, should not be permitted. Ashcroft and Mueller strengthen this assertion by saying that claims should "put forward *specific, nonconclusory* factual allegations that establish improper motive causing cognizable injury in order to survive a prediscovery motion for dismissal or summary judgment." They state that the decision reached in *Bell Atlantic Corp. v. Twombly* raised the pleading standards from mere possibility to plausibility, requiring the complaint to be more factual than conclusory and the factual allegations to imply illegal conduct. Ashcroft and Mueller argue that Iqbal's complaint does not pass this test, because he pleaded only conclusory allegations.

In contrast, Iqbal says that Federal Rule 8 requires only a short and plain statement of the claim, showing the need and demand for relief, because the Federal Rules are designed in a way that allows cases to be heard on the merits and not barred on a technicality. Iqbal then examines Federal Rule 9 and states that, although claims of fraud seem to require the heightened pleading standard of making a claim of "particularity," courts have determined that Rule 9 imposes a higher pleading standard only when Congress explicitly authorizes one. Iqbal claims that neither courts nor Congress has interpreted or intended for Federal Rules 8 and 9 to require any specific pleadings that would require a case-by-case evaluation.

Iqbal argues that, because no heightened pleading standard exists within the Federal Rules or case law, Ashcroft and Mueller must assert a new, heightened pleading standard that applies specifically when high-ranking officials, acting out of concerns for national security, invoke a defense of qualified immunity. Iqbal argues that, even though courts acknowledge that qualified immunity is important, needs to be disposed of at the earliest stage of the litigation possible, and is needed to protect officials from intrusive discovery, this does not mean that the courts should support an alteration to or heightening of the pleading requirements.

Finally, the parties argue over the scope of *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 338 (1971), and whether that decision pertains to the high-ranking officials at the heart of this case under a constructive notice theory. The *Bivens* decision created a private right of action for citizens to sue federal agents for civil remedies when citizens believed a federal actor had violated a constitutional right. Ashcroft and Mueller assert that, even though *Bivens* does make civil remedies available, the scope of this grant is extremely narrow. The petitioners state that *Bivens* does not condone liability under an employer-employee context or through other forms of vicarious liability and that liability applies only to an individual official and the wrongs he or she committed. Ashcroft and Mueller say that Iqbal made only conclusory allegations against the highest ranking officials he named—allegations that may imply these officials had constructive knowledge, but certainly not actual knowledge of the acts. Ashcroft and Mueller say *Bivens* does not support this type of claim, which is rife with allegations but devoid of facts linking the officials to the actual acts committed.

In turn, Iqbal asserts that the pleadings meet the *Bivens* standard, which requires the supervisor to contribute to the constitutional violation in some way, such as by acknowledging a subordinate's unconstitutional acts or implementing a facially unconstitutional plan. According to Iqbal, the pleadings give sufficient notice as to the nature of the claims, lay out two separate theories of supervisor liability, and give specific detail as to how the high-ranking officials are responsible. Iqbal therefore denies that the pleadings were just conclusory allegations and asserts that they were sufficient to overcome a motion to dismiss.

Conclusion

This case raises questions about the parameters of civil liability of high-profile figures. Ashcroft and Mueller assert that cases involving the affirmative defense of the qualified immunity of high-ranking officials are subject to—or should be subject to—a heightened pleading standard that a plaintiff must meet in order to defeat the claim of immunity. Iqbal counters that no Federal Rule of Civil Procedure or legal precedent condones such a heightened pleading standard in any context, and that any assertion to the contrary is incorrect. Iqbal asserts that this case is not about debating the necessity, purpose, or strength of the qualified immunity defense but, instead, hinges on the issue of pleading standards and whether certain circumstances do indeed call for heightened requirements. The decision will have are far-reaching implications for high-ranking officials, which will determine whether or not they can be held civilly liable for unconstitutional acts they or their subordinates commit. The potential chilling effect on these officials' behavior, particularly during national security crises, must be weighed against the danger to the public if they are not held accountable for their actions. **TFL**

Prepared by Tom Kurland and Jennelle Menendez. Edited by Allison Condon.

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Pacific Bell Telephone Co. D/B/A AT&T California v. linkLine Communications Inc. (07-512)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Sept. 11, 2007)
Oral argument: Dec. 8, 2008

This case involves claims of price squeezing and whether they are viable under § 2 of the Sherman Antitrust Act. In addition, the Supreme Court is likely to determine if claims of price squeezing must be pleaded and treated in the same way as traditional predatory pricing claims. This claim arose when linkLine, an Internet service provider, sued its wholesale DSL supplier, AT&T, for engaging in anti-competitive practices in order to stifle competition in the California telecommunications market. The Supreme Court's ruling will determine the status of price squeezing claims in antitrust jurisprudence and could also clarify how the costs of retail production of a vertically integrated company with a wholesale monopoly should be measured when considering retail predatory pricing claims.

Facts

AT&T and its affiliates make up a "vertically-integrated" monopoly in the California telecommunications market, which owns both the local telephone network and the "last mile" lines that connect individual customers to the local network. Specifically, AT&T's affiliates provide DSL Internet connections to retail customers through the local telephone network infrastructure that AT&T already owns. The 1934 Telecommunications Act, however, required AT&T to sell wholesale DSL transport services to unaffiliated companies on the same terms and conditions as it sold the services to its affiliated companies. These unaffiliated companies are Internet service providers (ISPs) that buy DSL transport services at a wholesale price from AT&T and, in turn, sell DSL services to individual customers at a higher retail price. This makes AT&T both a wholesale supplier to and a retail competitor of ISPs.

In this case, linkLine and three other ISPs that buy DSL transport services from AT&T filed a complaint against AT&T in district court, alleging that AT&T had engaged in unlawful price squeezing in violation of § 2 of the Sherman Act. A price squeeze occurs when a vertically integrated monopoly (in this case, AT&T) charges its wholesale customers (in this case, ISPs) a price that is so high that the wholesale customers cannot compete with the monopoly in providing services to its own retail customers. The plaintiff, linkLine, alleged that, by charging unaffiliated ISPs high prices at the wholesale level and making retail prices for its own customers too low, AT&T had made it impossible for those ISPs to compete with AT&T at the retail level. Ultimately, linkLine claims that AT&T engaged in such practices "to stifle, impede and exclude competition from independent ISPs such as [linkLine] that are both wholesale customers and retail rivals."

AT&T moved to dismiss for failure to state a claim. Specifically, AT&T contended that the recent Supreme Court decision in *Verizon v. Trinko* barred linkLine from bringing a claim of price squeezing against a vertically integrated monopoly like AT&T when the monopoly had no antitrust duty to sell its services to the competitor absent a statutory duty. In *Trinko*, the Supreme Court emphasized that antitrust law generally does not require any private business to cooperate or deal with its competitors. Such a duty does not arise unless there was already an ongoing, voluntary, and "presumably profitable" relationship between the competitors. Under those circumstances, one competitor's unilateral refusal to deal would be likely to give rise to antitrust liability, because its actions suggested "anti-competitive malice." Ultimately, the Supreme Court held that a monopoly's refusal to deal with a competitor on certain terms when there was no such antitrust duty did not give rise to a claim under § 2 of the Sherman Act.

California's district court denied AT&T's motion to dismiss but granted its motion to certify for interlocutory appeal of that decision. The Ninth Circuit affirmed the district court's denial of AT&T's motion. Ultimately, the Ninth Circuit concluded, *Trinko* itself explained that claims that were part of traditional antitrust standards were still viable claims under § 2 of the Sherman Act. Because theories about price squeezing "formed part of the fabric of traditional antitrust law prior to *Trinko*," the circuit court recognized linkLine's claim as viable under § 2, and the U.S. Supreme Court granted certiorari to decide whether linkLine's claim is indeed viable under § 2.

Who Does the Law Protect: Competitors or Consumers?

The claim brought by linkLine had repercussions on broad policies behind modern Sherman Antitrust Act jurisprudence. Both sides make much of the fact that the Supreme Court's decision may or may not accomplish the original goal of antitrust law—to protect consumers. The U.S. Department of Justice argues that upholding the Ninth Circuit's decision will be contrary to this goal, because "a legal rule that requires a vertically-integrated [monopoly] to charge wholesale and retail prices that ensure its rivals … a 'fair price' or 'living profit' protects competitors, not competition or consumers." According to professors and scholars in law and economics, if such a goal of protecting competitors rather than consumers were to be applied, maximizing consumer welfare would become secondary to advancing the interests of specific firms, leading to a sort of "managed competition." The natural consequence of this development, they continue, is that harm to consumers would become irrelevant when imposing antitrust law.

On the other hand, the Competitive Telecommunications Association (CompTel) argues that there is no basis in antitrust jurisprudence for the concern that recognizing a price squeezing theory as a viable claim under § 2 of the Sherman Act would contradict consumer protection. CompTel argues that in more than 60 years of federal courts' recognition of claims of price squeezing under § 2, no "parade of horribles" resulted, as AT&T and its amici contend. In fact, CompTel continues, claims of price squeezing actually protect consumers by preventing anti-competitive harm. Such protections include keeping retail prices at competi-

tive levels and providing incentives for competitors to improve their services and products.

Does *Trinko* Bar a Claim of Price Squeezing?

The major point of contention between the parties is whether *Verizon v. Trinko* bars linkLine's claim of price squeezing. In *Trinko*, the Supreme Court held that an alleged violation of the Telecommunications Act of 1996 for a failure to provide a competitor with adequate access to "interconnection" telephone services did not state a claim under §2 of the Sherman Act. The Court held that the Telecommunications Act imposed duties on Verizon to offer adequate access to competitors and potential market entrants but did not create a new antitrust duty. The claim in *Trinko* was barred because Verizon's "alleged insufficient assistance in the provision of service to rivals" and refusal to deal with competitors did not violate "pre-existing antitrust standards."

AT&T argues that it is the Federal Communications Commission's regulation that obligates the company to offer wholesale access to DSL infrastructure on the same terms it gives its affiliates, not an affirmative antitrust duty. In addition, AT&T contends that there is no analytical difference between the claims of inadequate wholesale services raised in *Trinko* and the claims of high prices on adequate wholesale inputs alleged in this case. AT&T argues that linkLine's claim is precluded by *Trinko*, because the claim rests on the assumption that wholesale prices are "too high" and is therefore equivalent to the insufficient assistance claims in *Trinko*.

For its part, linkLine contends that *Trinko* does not bar its price squeezing claim under § 2 of the Sherman Act, because the claim incorporates the antitrust theory of predatory pricing. According to linkLine, to be actionable, the claim of price squeezing in this case need only meet the principles of predatory pricing as recognized in *Brooke Group Ltd. v. Brown and Williamson Tobacco Corp.* Under *Brooke Group,* predatory pricing was found to violate § 2 if a company with market power attempts to drive out competition from new market entrants by setting prices below its costs until the new competitor, which has not had an opportunity to build a large market share, is driven out of business. After the competitor is out of the market, the predator company then "recoups" its losses and eventually gains extraordinary profits by charging a higher-than-competitive price. Thus, a plaintiff alleging predatory pricing must show both that the defendant has priced the item or service below cost and is likely to cause competitive injury in the form of higher prices down the road. According to linkLine, decisions made by the Courts of Appeals for the Eleventh Circuit and the D.C. Circuit demonstrate that *Trinko* does not bar a price squeezing claim that meets the *Brooke Group* standards. Even though *Trinko* bars certain antitrust claims relating to pricing and dealing at the "upstream" or wholesale level in which there is no affirmative antitrust duty to deal, linkLine points out, allegations of price predation at the retail level constitute a pre-existing antitrust claim and therefore are not barred by *Trinko*.

Conclusion

This case will determine whether the Supreme Court's holding in *Trinko* bars price squeezing claims under § 2 of the Sherman Antitrust Act. In addition, it is likely that the Court will determine whether claims of price squeezing must be pleaded and treated in the same way as traditional predatory pricing claims are, as recognized in *Brooke Group*. In so doing, the Court could clarify how the costs of retail production of a vertically integrated company with a wholesale monopoly should be measured when considering retail predatory pricing claims. **TFL**

Prepared by Sun Kim and Joe Rancour. Edited by Carrie Evans.

14 Penn Plaza LLC v. Pyett (07-581)

Appealed from the U.S. Court of Appeals for the Second Circuit (Aug. 1, 2007)
Oral argument: Dec. 1, 2008

Three employees claim that their employer, Temco Service Industries Inc., and the company that owns the building in which they worked, 14 Penn Plaza, LLC, discriminated against them on the basis of their age. The employees are members of a union, which negotiated a collective bargaining agreement with the employers. The agreement included a mandatory arbitration clause for all claims of employment discrimination. The issue in this case is whether a union has the power to bargain away its members' rights to litigate employment discrimination claims. The employees argue that the answer should be no, whereas the employers argue the opposite. The outcome of this case will clarify whether a union has the power to waive its members' statutory right to sue their employers in federal court for certain types of discrimination in favor of a mandatory arbitration procedure. Full text is available at www.law.cornell.edu/supct/cert/07-581.html. **TFL**

Prepared by Lucienne Pierre and Bill Kennedy. Edited by Lauren Buechner.

Arizona v. Johnson (07-1122)

Appealed from the Court of Appeals, State of Arizona, Division Two (Sept. 10, 2007)
Oral argument: Dec. 9, 2008

Johnson was a passenger in the back seat of a vehicle stopped for a mandatory insurance suspension. A police officer initiated a conversation with Johnson that was unrelated to the reason for the stop. After asking Johnson to exit the car, the officer conducted a pat-down search of Johnson, because the officer was concerned for her safety upon noticing signs that Johnson may have been affiliated with a gang. During the search, the officer found a gun, which was used to convict Johnson at trial. Johnson argues that this evidence should have been suppressed, because the search violated his Fourth Amendment rights. Johnson claims that the officer had no reasonable suspicion that criminal activity was occurring, and therefore the pat-down search did not meet the standard articulated by *Terry v. Ohio*. The state of Arizona argues that police officers should have the

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right to conduct a pat-down search if there is a reasonable basis to believe the individual is armed and dangerous. Numerous organizations and all lower courts that have considered the issue have adopted this standard to increase officers' safety. Johnson, however, maintains that expanding *Terry* in the way that Arizona proposes is unnecessary and would encourage searches in violation of the Fourth Amendment. Full text is available at www.law.cornell.edu/supct/cert/07-1122.html. **TFL**

Prepared by Brian Chung and Michael Selss. Edited by Courtney Zanocco.

AT&T Corp. v. Hulteen (07-543)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 17, 2007)
Oral argument: Dec. 10, 2008

In 1987, Congress passed the Pregnancy Discrimination Act (PDA). Prior to passage of the PDA, AT&T's seniority system had treated pregnancy leaves as different from disability leaves: women who took time off for pregnancy lost net service credit, which is the principal factor used to calculate pensions. Following passage of the PDA in 1978, AT&T immediately ceased reducing the net service credit of women who had taken pregnancy leaves. However, AT&T did not restore service credits to female employees who had taken pregnancy leaves prior to enactment of the PDA. Hulteen et al., female employees who took pregnancy leaves prior to the passage of the PDA, sued AT&T. The Ninth Circuit held that AT&T violated Title VII's prohibition of sex-based discrimination by failing to restore service credits to female employees who took pregnancy leaves prior to the enactment of the PDA. Petitioners, AT&T, argue that this reading impermissibly gives retroactive effect to the PDA. Full text is available at www.law.cornell.edu/supct/cert/07-543.html. **TFL**

Prepared by Conrad Daly and Lauren Jones. Edited by Joe Hashmall.

Cone v. Bell (07-1114)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (June 19, 2007)
Oral argument: Dec. 9, 2008

Gary Cone was convicted and sentenced to death in the criminal court of Shelby County, Tenn., for the murder of two people. Subsequent to Cone's direct appeal, the state made available documents that both supported Cone's defense and impeached the testimonies of several witnesses. Bell, the respondent, argues for the state that Cone is procedurally barred from raising his grounds for relief in a federal habeas corpus review, because state courts have already rejected his appeal and Cone failed to properly argue it in the state courts. However, Cone, the petitioner, argues that, because he did not receive the new information until his second request for post-conviction review, the courts erroneously found that his claim had been previously decided, and that it is the federal court's duty in federal habeas review to examine grounds for relief based on federal law. The Supreme Court's decision in this case could have an impact on the methods by which individuals convicted in state court can litigate their claims both in state courts and upon federal habeas corpus review. Full text is available at www.law.cornell.edu/supct/cert/07-1114.html. **TFL**

Prepared by Courtney Bennigson and Rebecca Vernon. Edited by Hana Bae.

Entergy Corp. v. EPA (07-588); consolidated with PSEG Fossil LLC v. Riverkeeper Inc. (07-589) and Utility Water Act Group v. Riverkeeper Inc. (07-597)

Appealed from the U.S. Court of Appeals for the Second Circuit (Jan. 25, 2007)
Oral argument: Dec. 2, 2008

Cooling water intake structures divert billions of gallons of water into coolant systems for industrial equipment and power generation. These systems can injure or kill aquatic organisms, resulting in severe environmental impacts. Congress sought to remedy this problem through 33 U.S.C. §1326(b), which requires that "cooling water intake structures reflect the best technology available." In enforcing this statute, the Environmental Protection Agency (EPA) turned to a cost-benefit analysis. Environmental groups sued to require the EPA to employ a cost-only analysis, which requires the use of the best technology a facility can afford, even if the environmental benefit generated is minimal. This case will affect the EPA's method of regulating cooling water intake structures, potentially leading to an increase in costs for power plants and industry. Higher costs may disrupt the energy industry and potentially lead to greater costs for consumers. Full text is available at www.law.cornell.edu/supct/cert/07-588.html. **TFL**

Prepared by James McConnell and Lara Haddad. Edited by Carrie Evans.

Fitzgerald v. Barnstable School Committee (07-1125)

Appealed from the U.S. Court of Appeals for the First Circuit (Oct. 5, 2007)
Oral argument: Dec. 2, 2008

Lisa and Robert Fitzgerald brought suit against the Barnstable School Committee under both 42 U.S.C. § 1983 (1996) and Title IX, claiming the district was deliberately indifferent to their daughter's claims of sexual harassment by an older student. The district court dismissed the Fitzgeralds' Title IX claim on summary judgment. The court also decided that, because Title IX prescribed the remedy for allegations of sexual discrimination in federally funded educational institutions, it foreclosed a separate § 1983 claim alleging a violation of equal protection. The Fitzgeralds claim that there are fundamental differences between the rights of action in § 1983 and Title IX and that a statute intended to expand an individual's rights would never limit a constitutional right of action. Barnstable, however, maintains that Title IX represents an entirely separate standard to govern sexual discrimination in schools. Women's rights groups claim that foreclosing liability under § 1983 will make it more difficult

to bring claims of sexual discrimination in educational institutions; whereas Barnstable claims that maintaining both causes of action would overexpose educational institutions to suits alleging violations committed by individuals. Full text is available at www.law.cornell.edu/supct/cert/07-1125.html. **TFL**

Prepared by Gary Liao and Katie Worthington. Edited by Courtney Zanocco.

Haywood v. Drown (07-10374)

Appealed from the Court of Appeals of New York (Nov. 27, 2007)
Oral argument: Dec. 3, 2008

While Keith Haywood was serving a prison sentence, corrections officers filed two separate misbehavior reports against him. After Haywood was found guilty of both offenses, he sued several corrections officers, including the hearing officers who heard his case, asserting claims under 42 U.S.C. § 1983. The New York Supreme Court dismissed Haywood's claims on the basis of New York Corrections Law § 24, which prohibits suits against state corrections officers rather than against the state itself. The New York Court of Appeals affirmed the decision. Haywood's appeal will determine whether a state has the authority to withdraw jurisdiction over an area of federal law. The U.S. Supreme Court's decision will also affect New York's corrections officers, who are currently immune to suits arising in the course of their jobs. In reaching its decision, the Court will have to balance the efficiency concerns raised by the corrections officers with the fairness concerns raised by Haywood and his supporters. Full text is available at www.law.cornell.edu/supct/cert/07-10374.html. **TFL**

Prepared by Katy Hansen and Zsaleh Harivandi. Edited by Carrie Evans.

Kansas v. Colorado (105 Orig.)

On Exception to the Fifth and Final Report of the Special Master (April 10, 2008)
Oral argument: Dec. 1, 2008

Since 1902, Kansas and Colorado have been disputing the proper use of the Arkansas River. Each time a new issue arises, the U.S. Supreme Court, which has exclusive jurisdiction over this type of case, has called upon a special master to hear the arguments and make a determination. In the most recent case, Kansas claimed that Colorado violated the Arkansas River Compact by depleting water that the compact reserves for Kansas. Extensive expert testimony was required in the case, and the special master ultimately ruled in favor of Kansas. The special master also decided that, in accordance with 28 U.S.C. § 1821(b), expert witnesses' fees would be limited to $40 per day. Kansas disagrees with this determination, arguing that 28 U.S.C. § 1821(b) does not apply to cases in which the Supreme Court has original jurisdiction. The Supreme Court will decide whether it is bound by 28 U.S.C. § 1821(b) when hearing a case under its original jurisdiction or whether it is free to make its own determination regarding fees. Full text is available at www.law.cornell.edu/supct/cert/105ORIG.html. **TFL**

Prepared by Kelly Terranova and Isaac Lindbloom. Edited by Joe Hashmall.

Peake v. Sanders (07-1209)

Appealed from the U.S. Court of Appeals for the Federal Circuit (May 16, 2007)
Oral argument: Dec. 8, 2008

Woodrow Sanders and Patricia Simmons are U.S. military veterans who did not receive notice regarding who was responsible for obtaining evidence for their disability claims, as required by the Veterans Claims Assistance Act. At issue in this case is whether the Department of Veterans Affairs presumptively bears the burden of proving that the error of failing to provide notice error was harmless. The veterans argue that the language of 38 U.S.C. § 7261(b)(2) and the pro-claimant structure of the veterans benefits system create a presumptive burden on the department. The department argues that the Supreme Court should interpret the statute according to the prejudicial error rule of the Administrative Procedure Act. A Supreme Court ruling in favor of the veterans would bolster the pro-claimant system, making it easier for veterans to bring claims successfully. A decision for the veterans, however, could slow down the processing of deserving claims, because the department would have to defend its denial of claims when there was a notice error but the claimant did not suffer any harm from the error. Full text is available at www.law.cornell.edu/supct/cert/07-1209.html. **TFL**

Prepared by Joe Tucci and Kaci White. Edited by Lauren Buechner.

Philip Morris U.S.A. v. Williams (07-1216)

Appealed from the Oregon Supreme Court (Mar. 24, 2008)
Oral argument: Dec. 3, 2008

In 1997, Mayola Williams' husband died from lung cancer as a result of smoking cigarettes manufactured by Philip Morris USA Inc. Mayola Williams sued Philip Morris, alleging negligence, strict product liability, and fraud. At trial, the court rejected Philip Morris' request for a jury instruction on punitive damages that stated that Philip Morris could not be punished for harms suffered by nonparties to the suit. The jury awarded Williams $79.5 million dollars in punitive damages. The U.S. Supreme Court vacated this award and instructed the lower court to apply its standard of prohibiting punishment of a defendant for damage to nonparties. On remand, the Oregon Supreme Court upheld its prior decision, finding that a state procedural law justified the trial judge's denial of the requested instruction. In this case, the U.S. Supreme Court will decide whether a lower court can decline to apply a standard that the Court has articulated and instead uphold its ruling on state procedural grounds. This decision will affect the U.S Supreme Court's institutional supremacy and state courts' treatment of punitive damages awards. Full text is available at www.law.cornell.edu/supct/cert/07-1216.html. **TFL**

Prepared by Evan Ennis and Sarah Soloveichik. Edited by Hana Bae.