The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. This department includes an in-depth look at two cases plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

Coeur Alaska Inc. v. Southeast Alaska Conservation Council (07-984); Alaska v. Southeast Alaska Conservation Council (07-990)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 22, 2007)
Oral argument: Jan. 12, 2009

In 2005, the Army Corps of Engineers issued a permit under the federal Clean Water Act (CWA), authorizing Coeur Alaska Inc. to discharge wastewater from the Kensington Gold Mine in navigable waters in Alaska. Environmental groups claimed that this permit violated the CWA because the discharge from the mine did not comply with the Environmental Protection Agency's (EPA) pollution standards under the CWA. Coeur Alaska, however, argued that the Army Corps of Engineers governed the discharge under a different section of the CWA and that the issuance of the permit therefore did not violate the CWA. In this case, the Supreme Court's decision will determine whether the permit issued for the Kensington Mine is valid and potentially resolve the conflicting authority of the EPA and the Army Corps of Engineers under the CWA. In addition, the outcome of this case will have an impact on environmentalists and industry representatives in determining the extent to which certain pollutants can be discharged into U.S. waters.

Background

In 2004, Coeur Alaska sought a permit from the Army Corps of Engineers to open the Kensington Gold Mine in southeastern Alaska. Coeur Alaska planned to use a froth-flotation process to process the gold ore from the mine, whereby crushed rock from the mine would be mixed with water and various chemicals to separate out the gold. Upon completion of the process, residual ground rock, called tailings, would remain. The company would put some of the tailings back into the mine itself but would have to dispose of the rest—approximately 1,140 tons each day. To dispose of the tailings, the waste would be discharged directly into nearby Lower Slate Lake. The bottom of Lower Slate Lake, which supports native fish and other aquatic life, would be raised 50 feet to its current high-water mark and the lake's surface area would be tripled. In addition, Coeur Alaska would be required to take steps to reduce the environmental impact after mining operations. The U.S. Forest Service approved the proposal on December 9, 2004, and, on June 17, 2005, the Army Corps of Engineers issued a permit to discharge the waste tailings into Lower Slate Lake.

In 1972, Congress passed the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. Among other things, the CWA prohibits the discharge of pollutants into navigable waters except as permitted by certain sections of the act. According to §§ 301(e) and 306(e), the EPA must establish national standards—known as effluent limitation guidelines— limiting the discharge of polluted wastewater to the greatest extent possible from both new and existing point sources. To ensure compliance with these national standards, the CWA established two permit programs: (1) § 402 permits, which are issued by the EPA and are required for any discharge that falls under the CWA's effluent limitations required in § 301(e) and § 306(e); (2) § 404 permits, which are issued by the Army Corps of Engineers and are specifically directed at the discharge of "dredged" or "fill material." Army Corps issued a § 404 permit to Coeur Alaska in 2004 under this second standard, because the Army Corps found Coeur Alaska's discharge to constitute "fill material."

In September 2005, the Southeast Alaska Conservation Council, the Sierra Club, and Lynn Canal Conservation filed a lawsuit in federal court challenging the Forest Service's decision and the Army Corps' issuance of the permit, claiming that the permit was issued in violation of the CWA. The Army Corps of Engineers suspended the permit and re-examined its decision but subsequently reinstated the permit and issued a revised Record of Decision explaining its reasoning. Coeur Alaska, Goldbelt Inc., and the state of Alaska intervened as defendants, and the district court granted the defendants' motion for summary judgment, reasoning that the permit was properly issued under § 404 of the CWA for the disposal of fill material. The Ninth Circuit Court of Appeals reversed the district court's decision, and Coeur Alaska and the state of Alaska filed separate writs of certiorari to the U.S. Supreme Court. The Supreme Court granted the writs on June 27, 2008, and consolidated the two cases into one.

Environmental Concerns Versus Industry's Concerns

Because the Supreme Court's decision in this case greatly affects the interests of environmental groups, mining industries, and native Americans, all these parties are following the case closely.

Environmental groups, scientists, and native Alaskans raise concerns about the possible permanent impact of allowing the discharge of waste into Lower Slate Lake. Environmental groups point out that the mine's waste has a pH of 10 and will kill almost all aquatic life in the lake, including all fish. Advocates for the environment contend that the lake may never again be able to support its current ecosystem. In addition, native Alaskans claim that the impact of a favorable interpretation for Coeur Alaska will affect other mining projects and bodies of water as well, pointing specifically to the proposed Pebble Mine in the Bristol Bay region of Alaska, which is rich with salmon,

whitefish, trout, and other aquatic species. Native Alaskans argue that Bristol Bay has been one of the state's most important commercial fisheries, and native Alaskans have relied on the bay for thousands of years.

On the other hand, Alaska's mining industry argues that a ruling for the Southeastern Alaska Conservation Council would have dramatically negative effects on the mining industry in the state. Because mining is a huge part of Alaska's economy, these organizations contend that the environmental groups' interpretation of the CWA would impose a great burden on the whole state. In addition, the Resource Development Council for Alaska contends that mining is a "critical part" of the development of native Alaskans, because mining allows them to reap great economic benefits from their land.

Legal Questions

The outcome of this case depends on how the Supreme Court interprets the scope of § 402 and § 404 of the Clean Water Act. The petitioners, Coeur Alaska and the state of Alaska, argue that discharges permitted under § 404 are not subject to the EPA's effluent limitations, which are established in § 301(e) and § 306(e). In contrast, the respondents—the Southeast Alaska Conservation Council, the Sierra Club, and Lynn Canal Conservation (together abbreviated as SEACC)—argue that the Environmental Protection Agency's effluent limitations apply to all applicable discharges, whether or not they are permitted under § 402 or § 404.

To resolve the question of statutory interpretation, courts first look to the plain text of the statute to determine whether Congress has addressed the "precise question" before the court. *See Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842–843 (1984). "If a court ... ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." *Id.* at 843 n.9.

According to SEACC, the plain language of § 306(e) prohibits the Army Corps of Engineers from issuing § 404 permits for wastewater discharges that do not comply with the EPA's effluent limitations. The environmentalists argue that this is clear in the text of § 306(e), which makes it "unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source." According to the environmentalists, there are no exceptions in § 306(e). Furthermore, SEACC points out that the EPA has adopted no-discharge performance standards for mills that use the froth-flotation process to process gold and its remains—the discharge at issue in this case. SEACC also looks to the language in § 404 as evidence that § 404 must comply with applicable effluent limitations. Specifically, the environmentalists point to § 404(b), which states that, "because other laws may apply to particular discharges ... a discharge complying with the requirement of these Guidelines will not automatically receive a permit."

The Ninth Circuit agreed with SEACC and held that the plain language of the CWA prohibits the Army Corps of Engineers from issuing § 404 permits unless the discharges comply with applicable EPA effluent limitations. Specifically, the court read § 301 and § 306 as "absolute prohibitions" on the discharge of wastewater that did not comply with applicable performance standards and did not provide for an exception for the discharge of "fill material" covered by § 404. *SEACC v. Army Corps*, 486 F.3d 638, 645 (9th Cir. 2007) (quoting *E.I. de Pont de NeMours & Co. v. Train*, 430 U.S. 112, 138 (1977)).

Coeur Alaska and the state of Alaska, in turn, also support their position by using the plain language of the CWA, but the petitioners reach a different result. Specifically, Coeur Alaska argues that the statute clearly establishes § 402 and § 404 as mutually exclusive permitting programs, with § 402 applying only to those discharges not covered by § 404. According to Coeur Alaska, the Supreme Court already endorsed this reading of the statute in *Rapanos v. United States*, 547 U.S. 715 (2006). The state of Alaska points to the fact that, whereas § 402 specifically requires that discharges comply with the effluent limitations in § 301 and § 306, § 404 includes no such requirement. Coeur Alaska argues that, based on proper rules of statutory interpretation, "if Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Brief for Petitioner Coeur Alaska at 25, quoting S.D. *Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 384 (2006). The Ninth Circuit rejected this argument based on "negative inference," arguing that such inferences are "generally disfavored." *See SEACC v. Army Corps*, 486 F.3d at 646.

Conclusion

The Supreme Court's decision in this case will further define the scope of the Clean Water Act as it relates to the discharge of fill material. The ruling will also help resolve the conflict between the authority of the Environmental Protection Agency and the Army Corps of Engineers with respect to their issuance of permits for discharging pollutants. The Supreme Court's decision in this case will have an impact on both industry and environmental groups in determining the extent to which certain pollutants can be discharged into U.S. waters. **TFL**

Prepared by Katy Hansen and Rebecca Vernon. Edited by Hana Bae.

Kansas v. Ventris (07-1356)

Appealed from the Supreme Court of Kansas (Apr. 28, 2008)
Oral argument: Jan. 21, 2009

Around January 2004, Donnie Ray Ventris was arrested and charged with the murder, burglary, and robbery of Ernest Hicks. At Ventris' trial, the prosecution offered the testimony of his cellmate, whom the prosecution had recruited to uncover incriminating information from Ventris. This testimony was obtained in violation of Ventris' Sixth Amendment right to counsel, because his counsel had not been present at the time, nor had the defendant waived his right to counsel beforehand. The trial court therefore did not allow the prosecution to use the testimony in its case in chief. The court did, however, let the prosecution use the testimony for impeachment purposes. Eventually, Ventris was ac-

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quitted of felony murder but convicted of robbery and burglary. The Kansas Court of Appeals affirmed the decision, but the Kansas Supreme Court reversed it, because the higher court held that Ventris' statements to his cellmate should not have been admitted for any purpose, including impeachment. The U.S. Supreme Court will now decide whether voluntary statements obtained in the absence of a waiver of a defendant's Sixth Amendment right to counsel can be used for impeachment purposes. The Supreme Courts decision will have an impact on the procedural fairness and truth-finding function of criminal trials.

Implications

The U.S. Supreme Court's decision in this case will have significant implications for the reliability of criminal trials. The petitioner—the state of Kansas—argues that a defendant's incriminating statements to an informant, made in violation of the defendant's Sixth Amendment right to counsel, should be admitted at trial for impeachment purposes, because the statements will increase the reliability of the proceeding. In support of Kansas, the United States contends that, if the statements are admitted, the jury can balance and weigh them against the defendant's inconsistent testimony and also argues that, if the defendant's statements are not admitted into evidence, the jury will be unable to determine the defendant's credibility properly.

On the other hand, the respondent, Donnie Ray Ventris, argues that impeachment testimony by undercover informants that is obtained through the violation of the defendant's Sixth Amendment rights should not be admitted. The National Association of Criminal Defense Lawyers (NACDL) explains that informants' testimony is untrustworthy and could lead to unreliable criminal trials, particularly when the informants are "jailhouse informants," as in this case. The NACDL cites evidence indicating that jailhouse informants often lie at trial and fabricate a defendant's confession, because these witnesses generally receive benefits from the police— such as better prison conditions or reduced sentences—in exchange for testifying. Therefore, the NACDL argues that jailhouse informants' testimony is untrustworthy and could result in the conviction of innocent defendants.

The NACDL also argues that a decision allowing the use of jailhouse informants for impeachment purposes might prevent a defendant from testifying when he or she otherwise would have done so. Because the prosecution can use an informant's impeachment testimony only if the defendant actually testifies, the defendant might choose not to testify in order to avoid having the jury hear the informant's fabricated testimony. The NACDL argues that the uncertainty over whether an informant plans to testify will hinder the defense counsel's strategic planning, especially as to whether or not the defendant should testify.

In support of Kansas, however, the United States counters that jailhouse informants should be allowed to impeach a defendant's testimony at trial, because the use of impeachment testimony will deter defendants from testifying falsely and committing perjury. Similarly, 25 states argue that defendants might easily lie on the stand if not for impeachment testimony. According to the states, "This would erode the confidence of ordinary citizens in their judicial system."

Legal Arguments

The Sixth Amendment

The Sixth Amendment guarantees criminal defendants the right to counsel. A defendant's Sixth Amendment right to counsel attaches upon the initiation of formal charges against the accused. Once formal criminal proceedings begin, the Sixth Amendment does not allow prosecutors to use statements that have been "deliberately elicited" from a defendant in his or her case in chief without an express waiver of the right to counsel. A defendant whose right to counsel has attached, however, may execute a knowing and intelligent waiver of that right.

In *Massiah v. United States*, the U.S. Supreme Court held that the use of a defendant's incriminating statements that have been obtained without his or her knowledge by a co-defendant upon the police's request and after the defendant had been indicted and retained counsel, violates the defendant's Sixth Amendment rights. 377 U.S. 201 (1964). This rule also applies to statements obtained through confidential jailhouse informants. *United States v. Henry*, 447 U.S. 264 (1980).

In *Michigan v. Harvey*, the Court addressed whether statements obtained in violation of a defendant's Sixth Amendment rights could be used to impeach his or her false or inconsistent trial testimony. 494 U.S. 344, (1990). In the *Harvey* case, the police had initiated a conversation with the defendant after he had invoked his Sixth Amendment right to counsel, and the defendant had subsequently waived his right and made an incriminating statement. The Court held that the statement could be used to impeach the defendant's trial testimony, even though the police had violated the prophylactic rule that such a waiver is presumed to be invalid if it was secured pursuant to a conversation that had been initiated by the police. However, the Court reserved its decision on whether such statements would be admissible for impeachment purposes if the police engage in conduct—such as the use of jailhouse informants—that prevents the police from obtaining a valid waiver.

The state of Kansas argues that evidence should be excluded only if doing so will deter future misconduct that would not otherwise be deterred. The benefits of excluding the evidence must be weighed against the costs to the truth-seeking function of the criminal justice system of excluding relevant evidence. Kansas points out that the Court has held that evidence obtained in violation of the Fourth Amendment, the *Miranda* protections, and the Sixth Amendment may be used for impeachment purposes. Kansas argues that, in all those cases, as in this case, the additional deterrent effects of precluding the evidence for the purpose of impeachment do not outweigh the costs of allowing a defendant to commit perjury. In addition, Kansas argues, the Court has also recognized that making

such evidence inadmissible would pervert the right to testify into a right to falsify facts without facing the possibility of contradiction.

The respondent argues that exclusion of evidence operates differently depending on whether one is talking about violation of the Fourth Amendment, *Miranda* rights, or the Sixth Amendment. Ventris points out that the Court has allowed tainted evidence to be used to impeach a defendant's trial testimony only when the use of such evidence does not violate the accused's constitutional right at trial. The Sixth Amendment right at issue here, Ventris explains, is a trial right designed to preserve the integrity of the adversarial process. Ventris argues that the logic used to justify impeachment in other situations does not apply to this case, and the logical implication is that the text of the Sixth Amendment makes it inadmissible to include statements that were obtained in the absence of counsel, even if they are used for impeaching a witness' testimony.

Kansas argues that, to the extent that allowing impeachment with voluntary statements discourages defendants from testifying, such conduct only prevents them from offering false and inconsistent testimony. Kansas emphasizes that the Sixth Amendment does not include the right to have counsel assist a defendant in committing perjury. In addition, Kansas points out that the Supreme Court has recognized a fundamental interest in preventing perjury for more than 50 years. Therefore, Kansas argues, stopping the government from introducing such evidence as impeachment allows defendants to use the government's illegal conduct to shield themselves from their own fabrications.

Ventris, however, argues that the right to counsel constructed by the framers of the Constitution is intended to provide criminal defendants with a champion to test the prosecution's evidence. The right to assistance of counsel represents the Court's belief that even the educated layperson is unable to navigate the complexities of the criminal process without legal assistance. Ventris argues that "trials should focus on whether the accused actually committed the conduct charged and not whether he could be fooled or forced in a private interrogation into saying he did." Ventris contends that counsel's absence from such interrogations makes it impossible for counsel to attack the evidence effectively, and without access to counsel during questioning the defendant cannot make an informed decision about whether or not to make a statement. Ventris also argues that total exclusion does not create a right to commit perjury as human frailty, rather than a desire to lie, may lead a defendant to make an inconsistent statement.

Deterring Unconstitutional Conduct

The state of Kansas also argues that excluding unconstitutionally obtained voluntary statements from the prosecution's case in chief already provides sufficient deterrence of misconduct on the part of the police. Kansas contends that total exclusion would have a highly speculative and probably marginal effect on police conduct and that the ability to use all statements gained within constitutional limits provides police with more than adequate incentives to abide by the Constitution. In addition, Kansas argues, it is highly speculative that any particular defendant will testify at trial, and a significant number choose not to do so, even in serious cases. Kansas also points to the fact that individual law enforcement officers and police departments that engage in conduct that violates the Sixth Amendment already face the possibility of civil liability, which acts as a significant deterrent of unconstitutional conduct. As a result, Kansas argues, as long as the prosecution is prevented from using involuntary or compelled statements at trial, then the defendant's rights are adequately protected.

On the other hand, Ventris argues that the injury placed in the balance here is far greater than Kansas recognizes. Allowing the prosecution to use statements obtained without the benefit of counsel at trial—even for impeachment purposes—undermines the Sixth Amendment guarantee of an effective advocate. Ventris contends that use of such statements for impeachment ties counsel's hands in regard to his or her client's testimony even before trial and may prevent defendants from making the informed decision to choose to stay silent at trial on the advice of counsel. In addition, Ventris argues that the prospect of civil liability does not deter prosecutors or police from committing such violations. Ventris points out that prosecutors and police normally enjoy qualified immunity while conducting investigations, which shields them from civil suit.

Conclusion

In this case, the U.S. Supreme Court will determine whether a statement obtained from an informant without the defendant's knowledge and in violation of the defendant's Sixth Amendment rights may be used to impeach his or her trial testimony. If the Supreme Court finds in favor of Kansas, defendants may be deterred from testifying in their own defense at trial. A decision in favor of Ventris, on the other hand, may prevent the government from being able to impeach a defendant's false or inconsistent statements at trial. **TFL**

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

Boyle v. United States (07-1309)

Appealed from the U.S. Court of Appeals for the Second Circuit (Nov. 19, 2007)
Oral argument: Jan. 14, 2009

A jury convicted Edmund Boyle of racketeering and racketeering conspiracy under the Racketeer Influenced and Corrupt Organizations (RICO) Act and sentenced him to 151 months in prison for his participation in a string of bank robberies. Boyle appealed his conviction to the Court of Appeals for the Second Circuit, arguing that the United States misinterpreted the scope of an "enterprise" under the RICO Act, arguing that it did not apply to his case, because the United States could not prove that the group of bank robbers was an enterprise if it could not prove the group had a formal, ascertainable structure. The United States argued that it did not need to prove a formal structure existed under the RICO statute. The Second Circuit affirmed the conviction. The U.S. Supreme Court granted Boyle's petition to determine a three-way circuit

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split over what constitutes an enterprise under the RICO statute. The outcome of this case will affect the scope of the RICO Act and will have an impact on the ability of law enforcement to prosecute individuals under the RICO Act. Full text is available at topics.law.cornell.edu/supct/cert/07-1309. **TFL**

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

Corley v. United States (07-10441)

Appealed from the U.S. Court of Appeals for the Third Circuit (Aug. 31, 2007)
Oral argument: Jan. 21, 2009

When Johnnie Corley was arrested for assaulting an officer and interrogated about the robbery of a credit union, he did not confess to his role in the robbery until more than six hours after his arrest. Moreover, Corley did not appear before a magistrate judge until the next day. After the district court found Corley guilty, the Court of Appeals for the Third Circuit affirmed the decision. Corley is now appealing to the U.S. Supreme Court. His case will determine whether or not the suspect's confession is still valid in light of the unreasonable delay in bringing a suspect before a magistrate judge. The Supreme Court's decision will affect suspects' rights as well as the procedure that police must follow when obtaining a confession. Full text is available at topics.law.cornell.edu/supct/cert/07-10441. **TFL**

Prepared by Courtney Bennigson and Zsaleh Harivandi. Edited by Lauren Buechner.

Harbison v. Bell (07-8521)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Sept. 27, 2007)
Oral argument: Jan. 12, 2009

The Terrorist Death Penalty Enhancement Act of 2005, codified at 18 U.S.C. § 3599, provides indigent defendants in death penalty cases the assistance of federally funded lawyers. Edward Harbison was convicted of first-degree murder by a Tennessee jury and sentenced to death. Harbison asked to retain his federally provided lawyer for his state clemency proceedings, and his request was denied, because the U.S. Court of Appeals for the Sixth Circuit found that § 3599 does not apply to strictly state proceedings. Harbison appealed this ruling, arguing that the language of § 3599 indicates that it applies to all death penalty proceedings, including state clemency proceedings. The United States argues that Congress intended § 3599 to apply exclusively to federal proceedings and that the legislative history supports this interpretation. With its decision in this case, the Supreme Court may resolve a split of opinion among the federal circuit courts regarding the scope of § 3599. Full text is available at topics.law.cornell.edu/supct/cert/07-8521. **TFL**

Prepared by Michael Selss and Katie Worthington. Edited by Courtney Zanocco.

Knowles v. Mirzayance (07-1315)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Nov. 6, 2007)
Oral argument: Jan. 13, 2009

During his trial for first-degree murder. Alexandre Mirzayance's attorney advised him to withdraw his insanity plea on the morning the insanity phase of the trial was to begin. After he was sentenced, Mirzayance initiated a habeas petition, claiming that his attorney's advice constituted ineffective assistance of counsel. The California Court of Appeals and the California Supreme Court both summarily dismissed the petition, and Mirzayance appealed the decision in federal court. Under the Antiterrorism and Effective Death Penalty Act (AEDPA), a federal court is barred from granting habeas relief unless the state proceeding "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law." After a remand from the Ninth Circuit to conduct a factual hearing, the district court granted the petition. The Ninth Circuit applied the facts surrounding the withdrawal of the defense and found that Mirzayance had suffered from ineffective assistance of counsel under the Strickland test. The government argues that the Ninth Circuit failed to adhere to AEDPA's rule requiring deference to state courts. The government also argues that the court should have reviewed the state court's decision to see if there was any way that the state court could have ruled the way it did. Mirzayance argues that, when a state court has no published reasoning for its decision, a federal court is entitled to conduct its own fact-finding on review. Full text is available at topics.law.cornell.edu/supct/cert/07-1315. **TFL**

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

Ministry of Defense and Support for the Armed Forces of the Islamic Republic of Iran v. Elahi (07-615)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 30, 2007)
Oral argument: Jan. 12, 2009

Under the Victims of Trafficking and Violence Protection Act (VTVPA), victims of state-sponsored acts of terrorism conducted by Iran may receive compensation from the U.S. Treasury Department toward the satisfaction of judgments against Iran. Under the Terrorism Risk Insurance Act, plaintiffs who secure judgments against a party that has been named a terrorist may seek attachments of certain assets of the terrorist party to satisfy the judgments. VTVPA claimants relinquish rights to attachment against Iranian assets if such property interests are "at issue" in claims against the United States in an international tribunal. The respondent, Dariush Elahi, received compensation from the United States for a wrongful death judgment against Iran under the VTVPA. Elahi now seeks attachment of a judgment entered in favor of Iran for a breach of contract. The United States and the petitioner, the Iranian Ministry of Defense, argue that, because the breach of contract judgment is "at issue" in the Iran-United States Claims

Tribunal, Elahi has waived any right to attachment against the judgment under the Terrorism Risk Insurance Act. Full text is available at topics.law.cornell.edu/supct/cert/07-615. **TFL**

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

Montejo v. Louisiana (07-1529)

Appealed from the Louisiana Supreme Court (Jan. 16, 2008)
Oral argument: Jan. 13, 2009

Does the sound of silence answer in the affirmative, in the negative, or not at all? The question at hand is whether Sixth Amendment rights attached to a defendant who has been appointed counsel but has not actively expressed or asserted his or her right to have such counsel. In this case, Jesse Jay Montejo admitted during initial questioning to shooting Lewis Ferrari, and because Montejo was indigent, he was appointed counsel. However, within hours after appointment, police returned to Montejo's cell to continue interrogation, which is strictly barred once counsel has been assigned. During that interrogation, Montejo wrote a confession letter, which was later admitted as evidence. At issue in this case is whether that letter should have been suppressed, because it was obtained in violation of Montejo's Sixth Amendment right to counsel. Louisiana argues that Sixth Amendment rights may not be passively applied but that a defendant must assert his choice to have counsel appointed. Montejo argues that presence at an appointment proceeding is enough. Full text is available at topics.law.cornell.edu/supct/cert/07-1529. **TFL**

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

Nken v. Mukasey (Docket No. 08-681)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (April 9, 2008)
Oral argument: Jan. 21, 2009

Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 partly with the intention of making it more difficult for aliens to remain in the United States when a government agency had deemed that they must be removed; the IIRIRA thus contained stricter standards for judicial courts to follow when overruling an agency and allowing such aliens to remain in the country. At issue is how far Congress went in creating stricter standards. The petitioner, Jean Nken, an alien who applied for asylum in the United States, was ordered to leave the country and filed a motion for a stay of removal pending appeal of his case. Instead of applying a traditional test to determine whether to grant the stay, Court of Appeals for the Fourth Circuit applied § 1252(f)(2) of IIRIRA, which bars judges from enjoining the removal of aliens unless the alien can clearly show that the removal is prohibited by law. The petitioner appealed the ruling, contending that IIRIRA was not intended to apply to motions for stays. How the Supreme Court rules on this case will determine the proper way to interpret IIRIRA and how much power courts have over federal agencies once they have made decisions in aliens' cases. Full text is available at topics.law.cornell.edu/supct/cert/08-681. **TFL**

Prepared by Lara Haddad and Allison Condon. Edited by Allison Condon.

Puckett v. United States (07-9712)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Oct. 23. 2007)
Oral argument: Jan. 14, 2009

James Puckett was charged in federal court with armed bank robbery and use of a firearm during the commission of the crime. Puckett agreed to plead guilty to both charges in exchange for the prosecutor's promise to recommend a reduction in his sentence. After the agreement but before the sentencing, Puckett engaged in acts to defraud the U.S. Postal Service, and the prosecutor refused to recommend the sentencing reduction. Puckett's counsel did not object to the prosecutor's refusal to file the recommendation, thus creating a forfeited error. When the court sentenced Puckett, he received no reduction in his sentence. On appeal to the Fifth Circuit Court of Appeals, Puckett requested that he be allowed to revoke his guilty plea. The Fifth Circuit denied Puckett's request and upheld the sentence, finding that Puckett had not met his burden under Rule 52(b), under which the party challenging a forfeited error must prove that the error was significant enough to warrant reversal even though the party forfeited his or her right to have the court consider the error by not objecting when it occurred. Full text is available at topics.law.cornell.edu/supct/cert/07-9712. **TFL**

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

State of Vermont v. Brillon (Docket No. 08-88)

Appealed from the Supreme Court of Vermont (March 14, 2008)
Oral argument: Jan. 13, 2009

The Sixth Amendment of the U.S. Constitution provides defendants with the right to a speedy trial. In July 2001, Michael Brillon was charged with aggravated domestic violence and was ultimately sentenced to confinement for 12 to 20 years. However, as a result of excessive delays of his trial caused solely by his public defenders, the Supreme Court of Vermont vacated Brillon's conviction and dismissed the charges with prejudice. The U.S. Supreme Court will have to decide whether delays caused by the lack of preparedness by an indigent person's public defenders can be the basis for a violation of a person's Sixth Amendment right to a speedy trial on the theory that the state is responsible for providing adequate public defenders to indigents. If the Court determines that a public defender's lack of preparedness violates this right, does this give greater rights to indigent defendants than the rights that defendants with private attorneys have? Full text is available at topics.law.cornell.edu/supct/cert/08-88. **TFL**

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