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Arthur Andersen, LLP, et al. v. Wayne Carlisle, et al. (08-146)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (April 9, 2008)
Oral Argument: March 3, 2009

Section 3 of the Federal Arbitration Act (FAA) allows parties who have agreed to arbitrate a dispute to move for a stay of trial proceedings until they have attempted arbitration. Section 16 of the FAA allows an immediate appeal of judgments denying a stay under such circumstances. At issue in this case is whether these sections of the FAA extend to nonsigning parties who are affected by an arbitration agreement. The petitioner, Arthur Andersen, advised the respondent, Wayne Carlisle, on a business transaction. As a result of this transaction, Carlisle eventually signed a contract to which Andersen was a not party and which contained an arbitration agreement. After a dispute developed, Andersen sought a stay in the litigation proceedings in order to arbitrate with Carlisle, even though Andersen was not a party to the arbitration agreement. After Andersen appealed the initial denial of its request for a stay, the U.S. Court of Appeals for the Sixth Circuit held that it did not have jurisdiction to hear Andersen's appeal because §§ 3 and 16 of the FAA apply only to signatories of arbitration agreements. The Supreme Court's decision in this case may clarify the scope of the FAA's application to nonsignatories, including the availability of appellate review of stay denials.

Facts

The Federal Arbitration Act, as part of Congress's pro-arbitration policy, gives power to arbitration agreements that are included in contracts. For example, § 3 allows parties who have agreed to arbitrate to obtain a court order to stay any trial proceedings until the parties have attempted arbitration. Section 16 of the FAA further protects arbitration agreements by allowing the immediate appeal of judgments denying a motion for a stay. At issue in this case is whether these provisions of the act apply to parties that have not signed an arbitration agreement.

Arthur Andersen LLP, the petitioner, is one of several firms that advised the respondents—Wayne Carlisle, James Bushman, and Garry Strassel (Carlisle) on minimizing taxes during sale of their heavy construction equipment business. Those individuals acted on the advice they received from Andersen (an accounting firm); Curtis, Mallet-Prevost, Colt & Mosle LLP (Curtis Mallet, a law firm); and Bricolage Capital LLC (a financial services firm), and each created separate business entities. These new business entities signed investment management contracts with Bricolage that included arbitration agreements. Andersen and Curtis Mallet, however, did not sign the contracts with Carlisle that contained the arbitration agreements. The Internal Revenue Service eventually determined these tax shelters to be "abusive," and Carlisle paid an IRS settlement of more than $25 million. Carlisle sued Andersen, Curtis Mallet, Bricolage, and six other defendants in federal court for negligence and fraud, among other claims. After Bricolage filed for bankruptcy and left the district court proceeding, Andersen and the other defendants moved to stay the lawsuit proceedings under § 3 of the FAA to allow the parties to arbitrate as provided for in the arbitration agreement. The district court denied this motion on substantive grounds; Andersen then immediately appealed the denial of the stay under § 16 of the act.

On appeal, the Sixth Circuit determined that it lacked jurisdiction to hear Andersen's interlocutory appeal, holding that §§ 3 and 16 of the FAA do not apply to nonsigning parties. Citing the plain language of the statute, which reads that a stay of proceedings for arbitration is available to any party to "an agreement in writing for such arbitration," and to the narrow scope upon which interlocutory appeals are granted, the Sixth Circuit explained that § 3 stays applied only to those parties who were signatories to the written agreement. The Sixth Circuit determined that the exception to appealing interlocutory orders provided for by § 16 did not apply to parties that had not signed an arbitration agreement.

Discussion

Does the Federal Arbitration Act provide protections of arbitration agreements to parties who have not signed those agreements? The act allows signatories to arbitration agreements to stay trial proceedings until the parties have gone through arbitration and authorizes the immediate appeal of judgments denying a motion for such a stay. The petitioner, Arthur Anderson LLP, argues that §§ 3 and 16 of the act apply to nonsigning parties, based on legislative intent and through § 2, which applies principles of state contract law to arbitration agreements and would thus give relevant nonsignatories enforcement power. The respondents, Wayne Carlisle and others, counter that, based on the FAA's plain language, the statute sections at issue provide arbitration rights to signatories only. The Supreme Court's decision has implications both for third parties to arbitration agreements and for the scope of arbitration agreements overall.

A decision for Carlisle argues amicus U.S. Chamber of Commerce, would contradict the federal policy of promoting arbitration, which is embodied in the FAA. According to the Chamber of Commerce, the act dictates that arbitration agreements must be treated like all other contracts, and therefore these agreements should be

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enforceable under common principles of contract law. In addition, the Chamber of Commerce maintains that the strict, formalistic restraints on arbitration agreements that Carlisle supports would deny arbitration in cases in which all affected parties did not happen to sign the agreement.

In contrast, Carlisle argues that a decision for Andersen would take the policy of promoting arbitration too far. Carlisle argues that Andersen's interpretation would give any nonsigning party claiming to be covered by an arbitration agreement an automatic right to an interlocutory appeal. Such a decision, Carlisle contends, might create a flood of interlocutory appeals that could incapacitate appellate courts. In addition, Carlisle maintains that a decision for Andersen would contradict federal policy governing interlocutory appeals—that Congress, not the courts, determines the narrow exceptions for allowing interlocutory appeals.

The Supreme Court recently has heard other cases related to arbitration. During its spring 2008 term, the Court held that the FAA trumped state law in determining when arbitration awards can be reversed. In December 2008, the Court heard oral arguments on whether collective bargaining agreements can include mandatory arbitration clauses, barring court litigation. In addition, a circuit court split exists on the issue raised in the current case: the Second Circuit has interpreted §§ 3 and 16 of the act to apply to nonsignatories, whereas the Courts of Appeals for the Tenth and D.C. Circuits have held that these FAA sections do not apply to nonsigning parties. This decision by the Supreme Court may resolve this difference in interpretation among the circuit courts.

Statutory Background

Parties entering a contract can agree that, should any dispute arise between them, the parties will resolve it through arbitration. The Federal Arbitration Act enables private parties to enforce these agreements to arbitrate and gives courts a role in doing so. In the current case, petitioner Andersen and respondent Carlisle are concerned with three provisions of the FAA:

- Section 2, which makes written arbitration agreements enforceable based on principles of state contract law, thereby putting arbitration agreements on equal footing with other types of contracts;
- Section 3, which enables a party to a lawsuit who believes the dispute is subject to an arbitration agreement to request that the court stay the trial, or put the trial on hold, so that the parties can arbitrate; if the court finds that the issue is indeed "referable to arbitration" under a written agreement to arbitrate, it must grant a stay so the parties can carry out their agreement;
- Section 16, which provides that, if a court issues "an order refusing a stay … under section 3," the requesting party may immediately appeal that order; which is an exception to the general rule against appealing interlocutory orders or decisions made in the course of a trial until a case has been fully decided; however, § 16 prohibits the immediate appeal of an interlocutory order granting a § 3 stay, allows immediate appeal of orders that are unfavorable to arbitration in subsection (a), and prohibits immediate appeal of several orders that are favorable to arbitration in subsection (b).

Circuit courts currently disagree about how to apply the FAA when people or organizations seek to enforce an arbitration agreement to which they are not signatories. For instance, a person may seek to enforce an arbitration agreement because the contract containing the agreement affects him or her, and that person believes that the signatories intended the agreement to apply to him or her as well. This case will clarify whether § 3 stays can ever be granted to nonsignatories and whether § 16 permits nonsignatories to appeal the denial of a stay request immediately.

Conclusion

This case invites the Supreme Court to determine whether and to what extent the Federal Arbitration Act entitles parties that have not signed written arbitration agreements to enforce those agreements. The decision may establish whether nonsignatories can request and receive stays of trial under FAA § 3, and whether they can immediately appeal the denial of stay requests under § 16. The petitioners, Arthur Andersen LLP and other, as well as their amici curiae, argue that nonsignatories can request § 3 stays based on principles such as equitable estoppel and may immediately appeal under § 16 if the stay is refused. The respondents, Wayne Carlisle, James Bushman, and Garry Strassel, however, contend that nonsignatories are ineligible for both § 3 stays and § 16 appeals. By further defining nonsignatories' rights to enforce arbitration agreements under the FAA, the Court's decision may clarify the scope of the relevant FAA sections and resolve the differing interpretations of these sections among the federal circuit courts. **TFL**

Prepared by Lara Haddad and Courtney Bennigson. Edited by Courtney Zanocco.

Caperton v. Massey Coal Company (08-22)

Appealed from the Supreme Court of Appeals of West Virginia (July 2, 2008)
Oral Argument: March 3, 2009

The avoidance of bias—apparent or otherwise—has been a matter of concern for the individuals responsible for regulating the courts—chiefly the judges themselves. The U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment requires judges and tribunals to avoid even the appearance of bias. This case concerns an elected justice—a judge sitting on a state's highest court—who remained on the bench to administer a case involving a company whose chief executive officer had contributed substantially to that justice's election campaign. The petitioner, Hugh M. Caperton, argues that this individual, Justice Brent Benjamin, should have recused himself and not administered the case because of the appearance of bias—especially because he was the decid-

ing figure in the case. Conversely, the respondent, A.T. Massey Coal Co., contends that Justice Benjamin was in compliance with due process and that he had nothing to gain from the outcome of the trial. This case offers the Supreme Court the opportunity to set the standards by which judges will be required to recuse themselves from cases involving apparent bias.

Facts

In 1998, Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales Inc. sued A.T. Massey Coal Co. and several affiliated companies to recover damages in the Circuit Court of Boone County, W.V. In 2002, a jury found Massey liable for tortious interference with existing contractual relations, fraudulent misrepresentation, and fraudulent concealment and awarded Caperton and Harman more than $50 million in compensatory and punitive damages. Caperton claims, among other things, that Massey entered into negotiations to purchase the Harman mine, used confidential information to decrease the mine's value and discourage other buyers, and delayed finalizing the agreement in order to undermine Harman's financial position; Caperton also claimed that Massey's chief executive officer and president, Don L. Blankenship, intended to force Harman into bankruptcy.

As the case worked through the appeals process, elections for the state supreme court were taking place. In 2004, Brent Benjamin ran against incumbent Justice Warren McGraw for a seat on the West Virginia Supreme Court of Appeals. Blankenship was opposed to Justice McGraw and spent $500,000 on "literature and advertising to convince the electorate that Justice McGraw was not the right person for the job." In accordance with West Virginia law, Blankenship did this without the cooperation or consent of Benjamin's campaign. Blankenship also gave $2.5 million to an organization that ran ads and held events opposing Justice McGraw. Blankenship contributed $1,000 to Benjamin's campaign, and Massey's Political Action Committee also contributed $1,000; no other contributions were made by Massey and its subsidiaries. Benjamin won the election and began his 12-year term on Jan. 1, 2005.

In anticipation of Massey's 2006 petition in the West Virginia Supreme Court of Appeals seeking review of the $50 million judgment, Caperton filed a motion requesting that Justice Benjamin recuse himself from participation in the appeal. In April 2006, Justice Benjamin declined to recuse himself, stating that there was no objective evidence showing bias on his part. In a 3-2 decision, the West Virginia court reversed the verdict against Massey and dismissed the case with prejudice; Justice Benjamin joined in the majority opinion. In his impassioned dissent, Justice Starcher criticized the reasoning of the majority's opinion, stating, "I am one judge voting on this case who can say that I owe nothing to Mr. Blankenship. …"

Caperton petitioned for a rehearing, and Justice Benjamin denied the two further petitions asking that he recuse himself. During this period, Chief Justice Maynard, who also took part in the decision, chose to recuse himself after photographs surfaced showing him vacationing with Blankenship while Massey's appeal was pending. Justice Benjamin became chief justice and appointed justices to replace Justice Maynard as well as Justice Starcher, who had also recused himself. On rehearing, the West Virginia court again reversed the verdict against Massey in a 3-2 decision, in which Justice Benjamin again joined the majority. The two dissenting justices objected to the court's reasoning and also condemned Justice Benjamin's failure to recuse himself.

Implications

The U.S. Supreme Court's decision in this case will have a significant impact on elected judges who receive contributions from their supporters. Caperton argues that recusal becomes necessary in cases that involve judges' receipt of substantial funding from an individual with an interest in the case, and also maintains that a judge's failure to recuse himself or herself is especially problematic when the justice's decision is not subject to review by any other justice. In support of Caperton, a group of former chief justices and justices argue that campaign contributions to judicial elections present a situation that was unknown in common law, which only required recusal based on pecuniary interest. This case presents a hybrid situation that includes a financial transaction, but the benefit the judge receives is an election rather than a fee. The former justices argue that, even though the benefit in this case is something other than money, the benefit is still important enough to justify recusal.

Massey argues that the gratitude candidates feel for their supporters does not require disqualification. Massey argues that imposing such a standard would have no limiting principle and would lead to "serious administrative problems" for the lower courts. Another group of current and former chief justices and justices argues that allowing such a system of disqualification would allow litigants to "undermine the people's democratically expressed preference for a certain type of judicial philosophy" and would also give litigants the opportunity to selectively attempt to disqualify judges with whose viewpoint they disagree.

The American Bar Association (ABA) argues in support of Caperton that a judge's failure to recuse himself or herself in a case involving substantial financial contributors undermines the public's essential trust in the impartiality of the judicial system. The ABA points out that, even though state judicial elections used to be "low-key affairs," recent years have seen increased spending by political donors who may have their own interests at heart. The ABA also argues that there is a growing perception that "large donors call the tune" and suggests that this case is an opportunity for the Court to articulate considerations that should govern recusal on due process grounds when a campaign contributor is a party to the case.

The "Appearance of Bias" Standard

The petitioner, Hugh M. Caperton, argues that the Due Process Clause of the Fourteenth Amendment requires

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tribunals to avoid the mere appearance of bias; specifically, Caperton contends that the appearance of bias is so substantial in this case as to require Justice Benjamin to recuse himself in order to avoid the mere likelihood of unfairness. This duty extends to judges even though there may not be an actual bias. Caperton argues that the avoidance of even the appearance of impropriety is necessary to allow the courts to perform their function and administer justice. He notes that the Supreme Court has emphasized the importance of avoiding the appearance of bias notwithstanding the argument that the members of the judiciary are likely to perform in character and exercise their power justly and judiciously.

The respondent, Massey Coal Co., argues that "there is no basis in history, precedent, or the practice of the Court for the notion that a judge's 'bias' *in general*—let alone a mere 'probability of bias'—mandates disqualification under the Due Process Clause." The Court has almost never held a judge constitutionally barred from sitting for any other reason than having a pecuniary interest in the outcome of the case, which was the standard in common law.

Caperton continues by arguing that it is rarely—if ever—possible to prove that a judge is indeed subjectively biased either against or in favor of a particular litigant. As such, in order to ensure a fair trial before a fair tribunal, recusal motions typically rely on facts about the judge that are known to the public. It is nonsensical, the respondent argues, to demand that a litigant provide conclusive proof that a judicial bias exists. Moreover, a judge who has received either favorable treatment or has suffered indignation by one of the parties may not even be aware of subconscious bias, thus making recusal all the more important. Caperton contends that public confidence in the judicial system is crucial to its proper functioning and that failing to allow a judge who is likely to have a bias would cause the judiciary irreparable harm.

Massey points out that every lower court but one has justifiably rejected the idea that campaign expenditures require judicial disqualification. Imposing a "probability of bias" standard would quickly extend beyond campaign financing to other types of support a judge receives—including endorsements from newspapers, trade and labor organizations, and civic groups. It could also be applied, Massey contends, to appointed judges, who could arguably be expected to feel grateful for their appointments and to return the favor to those who appointed them to the bench. Massey argues that Caperton's standard is unworkable, because it fails to propose "*any* test for distinguishing what the Constitution prohibits from what it permits." Imposing this "probability of bias" standard would therefore encourage further litigation and waste of judicial resources. Furthermore, Massey argues that a new rule is unnecessary, because many states are already addressing the issue of judicial campaign financing by, for example, imposing contribution limits, providing public financing for judicial elections, and requiring recusal when judges receive contributions over a certain limit from the party involved in the case. In addition to their own efforts, Massey points out, the states can look to the ABA's Model Code for further disqualification provisions.

Conclusion

The U.S. Supreme Court has deemed that judges must avoid not only bias and impropriety but also even the mere appearance thereof. This case involves preserving the court's image as the guardian of justice, which the court must administer blindly and impartially. In this case, the Supreme Court will determine the standards by which a judge must recuse himself or herself in order to avoid sullying not only the judge's personal reputation but also the integrity of the judgment and the very image of the courts themselves. **TFL**

Prepared by Conrad C. Daly and Evan Ennis. Edited by Carrie Evans.

Abuelhawa v. United States (08-192)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (April 25, 2008)
Oral Argument: March 4, 2009

Salman Khade Abuelhawa was convicted on felony drug charges under 21 U.S.C. § 843(b) for facilitating a drug deal. Abuelhawa bought a small amount of cocaine for personal use and set up the transaction with his dealer using his cellular telephone. The Fourth Circuit found that 21 U.S.C. § 843(b) applies to anyone who facilitates a drug offense with any communication device, regardless of whether the person is the dealer or the purchaser. The Supreme Court will now interpret the meaning of this statute to decide whether the use of a cellular telephone or other communication device should be able to elevate a misdemeanor drug possession to a felony charge. Full text is available at topics.law.cornell.edu/supct/cert/08-192. **TFL**

Prepared by Jennelle Menendez and Joe Rancour. Edited by Joe Hashmall.

Atlantic Sounding v. Townsend (08-214)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Aug. 23, 2007)
Oral Argument: March 2, 2009

Edgar L. Townsend, a seaman, was injured while working aboard his ship. In violation of the Jones Act and general maritime law, his employers refused to supply him with maintenance and cure, which covers medical care and wages for injured seamen. Townsend sought punitive damages for this refusal. Townsend's employers sought declaratory relief on the punitive damages claim, arguing that punitive damages are prohibited under general maritime law under *Miles v. Apex Marine Corp.*, are not authorized under the Jones Act, and are nonpecuniary in this case. The Eleventh Circuit ruled that *Miles* did not address punitive damages in a maintenance and cure claim, and therefore held that the

employers were still bound by prior rulings, which allow for the recovery of punitive damages. There is currently a split among circuit courts on this issue. The Supreme Court's holding in this case will settle the circuit split and decide whether courts may award punitive damages in maintenance and cure claims. Full text is available at topics.law.cornell.edu/supct/cert/08-214. **TFL**

Prepared by Michael Selss and Katie Worthington. Edited by Lauren Buechner.

Burlington No. & Santa Fe R. Co. v. United States (07-1601); Shell Oil Co. v. United States (07-1607)

Appealed from: U.S. Court of Appeals for the Ninth Circuit (Sept. 4, 2007)
Oral Argument: Feb. 24, 2009

Throughout the 1960s and 1970s, Brown & Bryant, a company that is no longer in business, stored chemicals manufactured by Shell Oil Company on parcels of land owned by Brown & Bryant and two railroad companies. The chemicals leaked out, and the government eventually launched a cleanup effort. After Brown & Bryant had ceased to exist, the government sued the railways and Shell under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to recover the cost of cleanup. The district court found the railways liable, because they owned the land on which the hazardous materials were stored and processed; the court held Shell liable for arranging the disposal of the materials. The government appealed the decision, and the Ninth Circuit reversed the lower court's apportionment of liability, finding that liability should be joint and several. The Ninth Circuit also upheld Shell's liability as the "arranger" of the disposal of the hazardous substances. In reviewing this case, the Supreme Court will decide whether joint and several liability may be imposed on several parties under CERCLA when a district court finds a reasonable basis for dividing the cost of cleanup. The Supreme Court will also decide what constitutes "arranger" liability under CERCLA. Full text is available at topics.law.cornell.edu/supct/cert/07-1601. **TFL**

Prepared by Lauren Jones and Gary Liao. Edited by Joe Hashmall.

Carlsbad Technology Inc. v. HIF Bio Inc. (07-1437)

Appealed from the U.S. Court of Appeals for the Federal Circuit (Jan. 9, 2007)
Oral Argument: Feb. 24, 2009

The respondents in this case, HIF Bio Inc. and BizBiotech Company Ltd., sued the petitioners, Carlsbad Technology Inc. (CTI) and others, in state court. CTI removed the case to a federal district court, which granted a motion to dismiss a federal claim under the Racketeer-Influenced and Corrupt Organizations Act. The district court then remanded the case back to state court after declining to exercise supplemental jurisdiction over the remaining state law claims. On appeal, the Federal Circuit declined to review the matter, asserting that it lacked jurisdiction to do so. In this case, the Supreme Court considers whether a district court's order to remand a case to state court after declining to exercise supplemental jurisdiction under 28 U.S.C. § 1367 is a remand for lack of subject matter jurisdiction under 28 U.S.C. § 1447(c), thus barring the order from appellate review under 28 U.S.C. § 1447(d). Full text is available at topics.law.cornell.edu/supct/cert/07-1437. **TFL**

Prepared by Bill Kennedy and Sarah Soloveichik. Edited by Courtney Zanocco.

Dean v. United States (08-5274)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Feb. 20, 2008)
Oral Argument: March 4, 2009

Christopher Dean, the petitioner, was convicted for a bank robbery in which he fired a pistol—probably by accident. In addition to his sentence for the bank robbery, Dean was sentenced under 18 U.S.C. § 924(c)(1)(A)(iii), which imposes a 10-year mandatory minimum sentence for the discharge of a firearm during a violent crime. The question presented to the Supreme Court is whether courts can apply the sentence enhancement if the discharge was accidental, or whether prosecutors must prove that the defendant intended to fire the gun. The outcome of this case could affect how often convicted individuals will receive enhanced sentences, based on whether the Supreme Court decides that prosecutors must prove intent for sentence enhancement factors, or whether the Court views sentence enhancement statutes as merely tailoring sentences to the specific facts of the underlying offense. Full text is available at topics.law.cornell.edu/supct/cert/08-5274. **TFL**

Prepared by Kaci White. Edited by Courtney Zanocco.

District Attorney's Office v. Osborne (08-6)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (April 2, 2008)
Oral Argument: March 2, 2009

In 1994, a jury in Alaska convicted William Osborne of kidnapping, first-degree sexual assault, and first-degree assault. After losing his appeal and being denied the opportunity in Alaska state court to retest the evidence, Osborne filed a federal lawsuit under 42 U.S.C. § 1983. Osborne claimed that, under the Due Process Clause of the Fourteenth Amendment, he was entitled to retest the DNA at his own expense, using a new method of testing that had been unavailable at his trial. Osborne filed the federal suit to gain access to the evidence while his state post-conviction proceedings were still pending. His application for post-conviction relief in state court was subsequently denied. The questions before the Supreme Court are (1) whether a § 1983 claim for evidence can be brought without also bringing the substantive claim for which the evidence would be used, and (2) whether due process entitles a prisoner to post-conviction access to evidence for testing

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that was previously unavailable. Full text is available at topics.law.cornell.edu/supct/cert/08-6. **TFL**

Prepared by Kelly Terranova and Isaac Lindbloom. Edited by Hana Bae.

Flores-Figueroa v. United States (08-108)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (April 23, 2008)
Oral Argument: Feb. 25, 2009

Ignacio Flores-Figueroa, a Mexican immigrant, used a false name, Social Security number, and resident alien card to obtain employment. Unbeknownst to him, these documents belonged to another person. When the government discovered that he had used another person's identity information, it charged him with aggravated identity theft under 18 U.S.C. § 1028A(1)(a), and he was found guilty. Flores-Figueroa contends that, under the statute, he committed identity fraud rather than aggravated identity theft, because he did not know that the identity information belonged to a real person. The government argues that the statute should apply to all defendants who use another person's identity information, regardless of their intent. Full text is available at topics.law.cornell.edu/supct/cert/08-108. **TFL**

Prepared by Brian Chung and Rebecca Vernon. Edited by Allison Condon.

Hawaii v. Office of Hawaiian Affairs (07-1372)

Appealed from the Supreme Court of Hawaii (Jan. 31, 2008)
Oral Argument: Feb. 25, 2009

In 1993, the U.S. Congress and the President adopted a resolution—known as the Apology Resolution—in which the United States apologized for its role in the overthrow of the Kingdom of Hawaii in 1893. Shortly thereafter, the Office of Hawaiian Affairs (OHA) sought to enjoin a residential development on the Leiali'i land parcel, whose land was owned by the state but held in trust for Native Hawaiians and the general public. OHA also requested that the state agency in charge of developing the parcel certify that any transfer of the parcel's ownership would not diminish native Hawaiians' claims to the land. The state agency refused and sent OHA a check for the land, which OHA refused to accept. The Hawaii Supreme Court held that the Apology Resolution had changed the legal relationships of the parties involved and enjoined further development of the land until the state of Hawaii reconciled with Native Hawaiians. In this case, the Supreme Court must determine whether the Apology Resolution changes the legal duties and obligations of the parties involved, or whether it is simply a statement of regret. Full text is available at topics.law.cornell.edu/supct/cert/07-1372. **TFL**

Prepared by Joseph Tucci and Zsaleh Harivandi. Edited by Lauren Buechner.

Rivera v. Illinois (07-9995)

Appealed from the Supreme Court of Illinois (Nov. 29, 2007)
Oral Argument: Feb. 23, 2009

This case concerns the effect of an erroneous denial of a criminal defendant's peremptory challenge to seating a prospective juror who was later seated. Rivera exercised a peremptory challenge to exclude Gomez, who worked in a hospital known for treating gunshot victims. The trial judge denied the peremptory challenge, claiming that it violated the *Batson* standard. Gomez was seated on the jury, which then convicted Rivera of first-degree murder in a gang-related shooting. The Supreme Court of Illinois held that the judge committed harmless error in denying this peremptory challenge. Upon appeal before the U.S. Supreme Court, Rivera argues that the erroneous denial of a peremptory challenge necessitates automatic reversal "because it undermines the trial structure for preserving the constitutional right to due process and an impartial jury." Full text is available at topics.law.cornell.edu/supct/cert/07-9995. **TFL**

Prepared by James McConnell and Lucienne Pierre. Edited by Hana Bae.

United States v. Navajo Nation (07-1410)

Appealed from the U.S. Court of Appeals for the Federal Circuit (Sept. 13, 2007)
Oral Argument: Feb. 23, 2009

In 1964, pursuant to the Indian Mineral Leasing Act of 1938, the Navajo Nation entered into an agreement with a third party to lease a substantial portion of Navajo land for coal mining activities. In 1984, the Navajo Nation sought the assistance of the secretary of the interior to renegotiate the royalty rate allotted in the lease. After a series of negotiations in 1987, the Navajo Nation agreed to a series of amendments to the original lease, and the secretary of the interior approved the amendments. In 1993, the Navajo Nation initiated proceedings in the Court of Federal Claims alleging that the secretary of the interior had been improperly influenced by the coal company and, as a result, had breached his fiduciary duty to the Navajo Nation when he approved the 1987 lease amendments. After a series of appeals, in 2003, the Supreme Court held the Indian Mineral Leasing Act of 1938 did not create an actionable claim for breach of fiduciary duty against the United States. On remand, the Federal Circuit read the Supreme Court's decision narrowly and held that the Navajo Nation's claim was nonetheless actionable based on a common law fiduciary duty arising from the network of statutes and regulations defining the relationship between the Navajo Nation and the United States. Full text is available at topics.law.cornell.edu/supct/cert/07-1410. **TFL**

Prepared by Sun Kim and Tom Kurland. Edited by Carrie Evans.