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Maryland v. Shatzer (08-680)

Appealed from the Court of Appeals of Maryland (Aug. 26, 2008)

Oral argument: Oct. 5, 2009

In *Edwards v. Arizona*, 451 U.S. 477 (1981) the Supreme Court held that when a suspect in custody invokes the right to counsel, the suspect cannot thereafter be interrogated until he either obtains counsel or independently “initiates communications” with the police. The Court will now decide whether *Edwards* applies when there has been a break in police custody and a passage of more than two and a half years between a defendant’s initial request for counsel and subsequent interrogation carried out pursuant to the suspect’s written waiver of *Miranda* rights.

Facts

In 2003, police officers began investigating Michael Shatzer for alleged sexual abuse of his three-year-old son. Detective Shane Blankenship visited Shatzer at the Maryland Correctional Institution, where Shatzer was incarcerated for an unrelated offense. At the meeting, Blankenship advised Shatzer of his *Miranda* rights to remain silent and to have counsel present. Shatzer refused to speak about the allegations without counsel present. Blankenship immediately ended the interview, and the investigation was subsequently closed.

In February 2006, police reopened the investigation of Shatzer. In March 2006, Detective Paul Hoover interviewed Shatzer, who had remained incarcerated throughout the interim period. Hoover advised Shatzer of his *Miranda* rights, and Shatzer signed a form waiving them. Shatzer admitted to masturbating in front of his son but denied allegations of sexual contact. Later, Shatzer submitted to and failed a

polygraph test. During the ensuing interrogation, Shatzer broke down crying and stated, “I didn’t force him. I didn’t force him.” After making this statement, Shatzer requested counsel, and the detectives ended the interview.

In June 2006, Shatzer was charged with sexual child abuse. Shatzer moved to suppress his 2006 statements on the basis that they were obtained in violation of *Edwards v. Arizona*. The trial court denied Shatzer’s motion to suppress the statements, found Shatzer guilty of sexual abuse, and sentenced him to 15 years imprisonment. On appeal, the Court of Appeals of Maryland reversed, holding that Shatzer’s statements should have been suppressed under *Edwards*. The Supreme Court granted Maryland’s petition for certiorari to determine whether the lapse in time and the break in custody renders *Edwards* inapplicable in this case.

Presumption of Coercion Under *Edwards*

The Fifth Amendment prohibits compelling a criminal defendant “to be a witness against himself.” In *Miranda v. Arizona*, 384 U.S. 439 (1966), the Supreme Court established that the police must inform a suspect in custody of the right to remain silent and the right to counsel before initiating interrogation. In *Edwards v. Arizona*, the Court added a second layer of protection, holding that once a suspect in custody requests counsel, “a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.” 451 U.S. at 484. The suspect cannot be subjected to further custodial interrogation unless or until he or she obtains counsel or voluntarily initiates further communication with police. *Id.* at 484–485. The *Edwards* rule creates a presumption that statements made after a suspect’s unful-

filled request for counsel are products of coercion. See *Arizona v. Roberson*, 486 U.S. 675, 681 (1988). The Supreme Court will decide whether a break in physical custody or a significant lapse of time terminates the presumption of coercion found in *Edwards*.

Policy Implications

A decision for Shatzer is likely to have an impact on the way investigators approach and interview suspects. A decision for Maryland will limit the scope of protection under *Edwards*. Maryland argues that the *Edwards* Court intended to protect suspects against the inherently coercive pressure of interrogation in a police-dominated setting and, therefore, *Edwards*’ presumption of coercion should not apply when no reasonable possibility of police “badgering” exists. Shatzer counters that *Edwards* created a bright-line rule that remains applicable, even when there is a lengthy interval between instances of custodial interrogation.

Attorneys general of 37 states, writing in support of Maryland, argue that a ruling for Shatzer would create an unending extension of *Edwards* that fails to take into account the interests of states’ law enforcement agencies when they are investigating new leads in cold cases, and the ruling could discourage the police from investigating such new leads. The attorneys general claim that a decision for Shatzer would create class of suspects that is perpetually immune to consensual questioning, even when investigators are ignorant of previous interrogation attempts. The Criminal Justice Legal Foundation advocates a bright-line 30-day time limit for the *Edwards* presumption, arguing that a time limit would preserve the underlying rationale of adopting the presumption, prevent the overprotection of suspects who are not actually subject to coercion, and “reduce the cost of excessive inquiry into factually similar cases.”

Conversely, the National Association of Criminal Defense Lawyers (NACDL) argues that finding an exception for a break in custody would undermine *Edwards*’ goal of ensuring that statements made while a suspect is in custody are

not obtained through coercion. The NACDL points to several reasons why the Court should not carve out an exception to *Edwards*: an attorney may moderate an officer's potentially overbearing conduct, advise the suspect of his or her rights, assist in creating a dependable record of the interrogation, and counsel a suspect regarding the advantages of a potential plea bargain to aid law enforcement in solving past or ongoing crimes. Shatzer points out that law enforcement officers may re-interrogate any suspect by ensuring that counsel is present during questioning. Shatzer also argues that the presence of defense counsel benefits the prosecution, because it is very difficult for a suspect to argue that an incriminating statement made in counsel's presence was involuntary.

Legal Effect of a Break in Custody

Maryland argues that the presumption of coercion should not apply when its application does not further *Edwards*' goal of preventing police from badgering a suspect into waiving his or her rights. Maryland claims that a break in custody creates a fundamental change in environment that indicates an absence of such badgering. Maryland reasons that Shatzer's release back into the prison population terminated his custody for *Miranda* purposes and therefore precludes a presumption of coercion. Maryland argues that the coercive pressure of custodial interrogation is largely due to an unspoken understanding between a suspect and an interrogator that the questioning will continue until that suspect confesses. Once interrogators release a suspect, Maryland contends, the suspect is no longer subject to "inherently compelling pressures." According to Maryland, the fact that Shatzer was released into a confined prison environment is irrelevant, because inmates grow accustomed to normal prison confinement and, therefore, this environment does not perpetually threaten a suspect's will to resist questioning.

Shatzer argues that *Edwards*' bright-line rule dictates that, if a suspect requests counsel, interrogation must cease until counsel is present. Shatzer argues that a break in custody should not limit the *Edwards* presumption, because a suspect's request for counsel is effectively a request for assistance

in his or her interaction with police. A suspect's intermittent release from custody does not alter or revoke this request for assistance, especially when subsequent interrogations are related to the same crime. Shatzer contends that recognizing the limitation that comes from a break in custody would effectively nullify *Edwards*' protection for most defendants, because many cases involve multiple interrogations that have breaks in custody.

In addition, Shatzer argues that he did not experience an actual break in custody, because the factors that tend to establish a compulsive environment under *Miranda*—including "isolation from familiar surroundings," confrontation with "antagonistic forces," and lack of control over one's self—are ever-present in the prison environment. Shatzer points out that prisons are designed to foster submission and that a prisoner may "fear that failing to cooperate will lead to more onerous conditions or even adversely affect his or her release."

Legal Effect of a Time Lapse

Maryland argues that *Edwards*' presumption of coercion ends when police honor a suspect's *Miranda* invocation for a substantial length of time. According to Maryland, a court should not presume that coercion exists when re-interrogation is so far removed in time from a suspect's initial request for counsel; rather, a court should assess each case separately to determine if the police overreached. Maryland contrasts Shatzer's case to others in which the Court applied the *Edwards* presumption against attempts to re-interrogate suspects within three days of invoking the right to counsel. According to Maryland, the presumption of coercion is inapplicable if a long lapse of time occurs because, as the Court acknowledged in *Mississippi v. Minnick*, 498 U.S. 146, 153 (1990), *Edwards*' purpose is to protect against "persistent attempts by officials to persuade [a suspect] to waive his rights." Maryland urges that the lapse of two and a half year in this cold case renders the *Edwards* presumption inapplicable.

Shatzer counters that a lapse of time should not terminate *Edwards*' presumption, because it would be impossible to identify a nonarbitrary temporal

cutoff. Furthermore, even if the Court were to draw a line, Shatzer points out that he had no right to—and never received—appointed counsel between the instances of interrogation, because there were no charges pending against him. Thus, Shatzer claims that many defendants would not be able to afford lawyers to advise them that, after any such cutoff, suspects should re-invoke the right to counsel to protect themselves against the future efforts of investigators. Shatzer contends that in his own case, the lapse of time actually added to the pressure he felt during the re-interrogation to waive his rights, because, having never received appointed counsel for two and a half years after invoking *Miranda*, the best he could hope for was "another temporary reprieve from interrogation."

Conclusion

The Supreme Court will decide if a break in custody or a significant lapse of time terminates *Edwards v. Arizona*'s presumption that statements made by a criminal defendant after invoking the right to counsel are the product of coercion. The Court's decision will balance defendants' interest in avoiding the recurring pressure to waive their Fifth Amendment rights with law enforcement's interest in investigating suspects. Full text is available at topics.law.cornell.edu/supct/cert/08-680. **TFL**

Prepared by Lilian Balasanian and Tamilia Chiu. Edited by Lauren Jones.

Salazar v. Buono (08-472)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (May 14, 2008)

Oral argument: Oct. 7, 2009

Frank Buono sued the secretary of the interior, arguing that a Latin cross memorial sitting on federal preserve land violated the Establishment Clause of the First Amendment. Buono won the case. Pending an appeal, Congress transferred the land on which the cross sat to a private party. The Supreme Court will determine whether Buono actually had standing to bring his challenge to the placement of the

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cross and subsequent enforcement action against the government, and if he did, whether the transfer of land to a private party cures the violation of the Establishment Clause.

Background

In 1934, the Veterans of Foreign Wars (VFW) erected a Latin cross atop Sunrise Rock in southeastern California. Although the Latin cross is “the preeminent symbol of Christianity,” signs accompanying the cross informed onlookers that it memorialized soldiers who died in World War I. Since the cross was erected, the memorial underwent four notable changes. First, private parties repeatedly reconstructed the cross. Second, the site now lacks the memorial signage commemorating veterans of World War I. Third, in 1994, Congress designated Sunrise Rock a federal preserve. Finally, the National Park Service (NPS) refused to allow construction of “other free-standing permanent displays, religious or otherwise” in the same area. In 1999, the NPS denied a third party’s request to build a Buddhist shrine near the cross. The NPS stated that it intended to remove the cross, but Congress thereafter passed a law prohibiting the use of federal funds to remove the cross.

In 2001, Frank Buono, a retired NPS employee, sued the NPS in federal court, seeking removal of the cross (“*Buono I*”). While the case was pending, Congress passed a bill designating the cross a national memorial and provided funds for a memorial plaque. Nevertheless, the district court found that the cross violated the Establishment Clause and granted an injunction against the maintenance of the cross. In 2003, the government appealed this injunction in the U.S. Court of Appeals for the Ninth Circuit, which affirmed the injunction in 2004, finding that the cross violated the Establishment Clause, because “a reasonable observer, even without knowing whether Sunrise Rock is federally owned, *would believe—or at least suspect*—that the cross rests on public land.” *Buono v. Kempthorne*, 527 F.3d 758, 772 (9th Cir. 2008) (dismissing the 2004 holding).

While the appeal had been pending in the Ninth Circuit, Congress enacted

a statute by which the small portion of land containing the cross was transferred to the VFW in exchange for a parcel of equal value. This transfer retained the status of the cross as a national memorial and provided that the cross would revert back to the government should it no longer be maintained as a war memorial.

Arguing that the land transfer had violated the terms of the injunction and also violated the Establishment Clause itself, Buono brought suit again in the Central District to enforce its injunction against NPS (“*Buono II*”). The district court sided with Buono, holding that the transfer was “an attempt by the government to evade the permanent injunction enjoining the display of the Latin Cross atop Sunrise Rock.” *Buono v. Norton*, 364 F. Supp. 2d 1175, 1182 (C.D. Cal. 2005). Once again, the Ninth Circuit affirmed the district court’s ruling. The Supreme Court granted certiorari to consider whether Buono actually has standing to maintain his current enforcement action and, if so, whether the land transfer fixes the Establishment Clause violation.

Implications of Maintaining or Removing the Cross

Many state attorneys general worry about the impact this decision could have “on the continued viability of monuments that have become fixtures of public venues around the country.” They claim that “A decision against the United States may even put some states and localities in the untenable position of having to destroy substantial longstanding monuments that bear religious symbols.” Such an outcome would create costs to taxpayers and generate “hostility to the role of religion in our Nation’s history and in the inspiration of its people.” The American Legion is concerned that the “unpredictability of Establishment Clause cases in general makes it impossible for government officials and veterans organizations to know when a particular memorial is unconstitutional.”

Amici supporting Buono are concerned about the negative consequences of approving the land transfer. The Center for Inquiry fears that a decision finding that the land transfer cures the violation of the Establishment Clause

would encourage the government to sponsor religion while operating under the mere appearance of constitutional compliance. The Muslim Armed Forces and Veterans Affairs Counsel and the Jewish War Veterans of the United States of America opine that maintaining a Christian symbol as a national memorial to World War I veterans demeans the memory and service of World War I veterans who were not Christians. In addition, a group of former military officials raise the concern that perceived government endorsement of Christianity will create divisions in a religiously diverse military and hamper efforts to recruit members of other faiths. Taking a different tack, various religious groups express their concern that an attempt to pass the Latin cross off as a nonreligious symbol degrades the Latin cross and what it represents to Christians.

Does Buono Have Standing?

The Supreme Court will determine whether Buono has standing to maintain his action against the National Park Service. Citing to *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), Secretary of the Interior Ken Salazar argues that, because Buono suffered no “injury in fact,” he never had standing to challenge the placement of the cross. Salazar contends that Buono, a Roman Catholic, suffered no cognizable personal injury, because his objection to the cross was only that other viewpoints were being excluded, not that the cross itself offends him or causes him to feel excluded. Salazar argues that Buono is simply trying to advance his personal “views about the appropriate scope of the Establishment Clause,” which the Supreme Court held is not a basis for standing in *Valley Forge Christian Coll. v. Americans United for Separation of Church & State Inc.*, 454 U.S. 464 (1982).

Buono counters that standing was proper in *Buono I* because “he is directly and personally affected by the religious symbol to which he objects.” Buono contends that, whereas he may not find the cross itself offensive, his “objection to governmental favoritism towards a particular religious sect” seeks to redress an injury, not simply

secure an abstract constitutional view. Buono also argues that Salazar cannot now challenge the standing because the government failed to seek review of the standing following the initial decision and appeal in *Buono I*. Buono argues that *res judicata* bars Salazar from collaterally attacking Buono's standing to bring the original action within the proceeding of the current enforcement action because, in *Buono I*, the district court found that Buono had standing to bring the Establishment Clause claim, and the Ninth Circuit affirmed the district court's entire decision. Buono insists that the final and unappealed judgment the Ninth Circuit rendered in 2004 forecloses the issue of standing, and, therefore, he has the right to have the injunction enforced.

Salazar disputes the apparent division of the case into two actions, pointing out that both actions were in the same court under the same docket number, and that Congress' corrective land transfer made further appeals of *Buono I* unnecessary from the government's perspective. Salazar contends that, even if the cases were treated as separate actions, the issue of standing is relevant, because the case is not really an enforcement proceeding but, rather, a new case focused on the constitutional implications of the land transfer.

Does the Land Transfer Cure the Establishment Clause Violation?

The Establishment Clause of the First Amendment mandates that "Congress shall make no law respecting an establishment of religion." Even though the Ninth Circuit determined that placing the cross on federally owned land had violated the Establishment Clause, the parties in the case diverge over whether Congress' land transfer to a private organization corrected the violation.

Salazar argues that land transfers to private parties should effectively terminate claims that the Establishment Clause has been violated. Salazar analogizes to the distinction between government speech and private speech that the Supreme Court addressed last term in *Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009). Salazar reasons that, if government ownership creates the perception of endorsement, then "when a private party commissions or

finances a memorial, and displays that memorial on its own land, observers will not attribute the display to the government." According to Salazar, the transfer is at least "a presumptively permissible way to cure the Establishment Clause violation." According to this view, courts must ascertain only whether the transfer is genuine, as opposed to pretext or a sham.

Buono argues that the land transfer cannot cure the violation for four reasons:

1. Buono claims that the designation of the cross as a national memorial constitutes continued endorsement of Christianity. Pointing out that the United States has only 46 national memorials, Buono claims the memorial designation of the Latin cross "reflect[s] continued association with the preeminent symbol of Christianity."
2. Buono argues that the transfer does not truly end government ownership and oversight, because the government retains the right to take back the land if it is not used as a memorial, and federal law grants the NPS some authority to supervise national memorials.
3. Buono claims that the no-bid transfer demonstrates favoritism toward a Christian symbol because, even though ordinary statutory provisions exist for federal land exchanges, Congress adopted specific legislation designating the VFW as the new owners of the land on which the cross sits.
4. Buono contends that the government conceded that a primary purpose of the land transfer was to allow the cross the stand. According to Buono, the government's actions here are akin to "a cross unconstitutionally placed on city hall steps ... remedied by selling a few of the stairs to private parties."

Salazar maintains that the transfer had the secular purpose of preserving a long-standing memorial to World War I veterans and points out that Congress has recognized a number of memorials that are located on nonfederal land. Similarly, Salazar claims that the government's right to take back the land

has the secular purpose of maintaining the site as a war memorial and that it is the VFW—not the government—that controls whether or not the cross will remain as part of the memorial.

Conclusion

This case involves the ability of an individual to challenge Establishment Clause violations as well as the legitimacy of government land transfers designed to cure such violations. The Court's ruling could provide clarification on what constitutes an "injury" in the context of the Establishment Clause as well as the constitutional implications of land transfers that are designed to cure Establishment Clause violations. Full text is available at topics.law.cornell.edu/supct/cert/08-472. **TFL**

Prepared by Will Rosenzweig and Daniel Shatz. Edited by James McConnell.

Alvarez v. Smith (08-351)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (May 2, 2008)

Oral argument: Oct. 14, 2009

Civil forfeiture statutes allow law enforcement agencies to seize personal property without a warrant if the property is connected to illegal drug activity. A group of Chicago residents whose vehicles were seized organized a class action challenging Illinois' civil forfeiture statute on constitutional grounds. Specifically, the group alleged that civil forfeiture improperly deprived them of due process because of the extensive delay the statute allowed before requiring actual civil forfeiture proceedings. After the trial court dismissed the group's complaint, the Seventh Circuit held the statute unconstitutional. The Supreme Court granted certiorari and now has an opportunity to clarify exactly what process is due to property owners facing statutory civil forfeiture proceedings. Full text is available at topics.law.cornell.edu/supct/cert/08-351. **TFL**

Prepared by Tom Kurland. Edited by James McConnell.

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Bloate v. United States (08-728)

Appealed from the U.S. Court of Appeals for the Eighth Circuit (July 25, 2008)

Oral argument: Oct. 6, 2009

The Speedy Trial Act of 1974 (STA) requires that a criminal defendant be brought to trial within 70 days of his or her indictment or first appearance in court. During the lead-up to Taylor Bloate's trial, the district court granted his request for extra time to prepare motions. At issue in this case is whether the time requested by a defendant to prepare pretrial motions is automatically excluded from the STA's 70-day period. If this time is included, the period between Bloate's indictment and trial would exceed 70 days, and Bloate's indictment would not stand. The Court's decision in this case will resolve a circuit split and clarify the contours of the Speedy Trial Act. Full text is available at topics.law.cornell.edu/supct/cert/08-728. **TFL**

Prepared by Kevin Jackson and Eric Johnson. Edited by Lara Haddad.

Johnson v. United States (08-6925)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (May 30, 2008)

Oral argument: Oct. 6, 2009

Curtis Johnson was convicted of possession of ammunition by a convicted felon. Because he had been previously convicted of three felonies, including a battery, the prosecution sought to sentence him under the Armed Career Criminal Act (ACCA). The ACCA imposes a minimum sentence of 15 years in prison on criminals who have at least three violent felony convictions. Johnson appealed his sentence, claiming that the battery offense was not a "violent felony" under the ACCA. The Court will decide whether a battery offense that may consist of simply touching another person meets the physical force requirement of the ACCA. This decision will affect the application of the ACCA and possibly other laws involving physical force requirements. Full

text is available at topics.law.cornell.edu/supct/cert/08-6925. **TFL**

Prepared by Mathew Benner and Oliver Reimers. Edited by Lara Haddad.

Mohawk Industries Inc. v. Carpenter (08-678)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (Aug. 26, 2008)

Oral argument: Oct. 5, 2009

Norman Carpenter sued his former employer, Mohawk Industries Inc., alleging that he had been terminated for refusing to recant a report he had filed regarding Mohawk's hiring of illegal aliens. Carpenter sought discovery of information about an interview he had had with Mohawk's legal counsel. Mohawk claimed that the interview was protected by the attorney-client privilege, but the trial court found that Mohawk had waived the privilege. Mohawk attempted to appeal this ruling immediately, invoking the collateral order doctrine, which provides for the interlocutory appeal of certain issues. The Eleventh Circuit dismissed the appeal, holding that the collateral order doctrine did not apply. The Court's decision will resolve a circuit split on whether the parties may immediately appeal a discovery order finding waiver of the attorney-client privilege. Full text is available at topics.law.cornell.edu/supct/cert/08-678. **TFL**

Prepared by Sarah Chon and Frederick Wu. Edited by Joe Rancour.

Padilla v. Kentucky (08-651)

Appealed from the Supreme Court of Kentucky (Jan. 24, 2008)

Oral argument: Oct. 6, 2009

In 2002, Jose Padilla, a legal permanent resident of the United States, pleaded guilty to drug trafficking—a deportable offense—in Kentucky, allegedly relying on defense counsel's advice that he would not be deported as a consequence of his plea. Padilla claims he was denied his Sixth Amendment right

to effective assistance of counsel, because his attorney had failed to advise him of the possible consequences the plea would have on his immigration status. Kentucky contends that the Sixth Amendment does not require defense counsel to advise clients of such collateral consequences of guilty pleas. This case may have an impact on a defense counsel's duty to a client who is not a U.S. citizen regarding guilty pleas. Full text is available at topics.law.cornell.edu/supct/cert/08-651. **TFL**

Prepared by Kelly Vaughan and Samuel Farina Henry. Edited by Lucienne Pierre.

Reed Elsevier Inc. v. Muchnick (08-103)

Appealed from the U.S. Court of Appeals for the Second Circuit (Nov. 29, 2007)

Oral argument: Oct. 7, 2009

A group of freelance writers, led by Letty Cotton Pogrebin, brought a class action lawsuit in federal court against publishers, led by Reed Elsevier Inc., for copyright infringement, claiming that the publishers had electronically reproduced their works without authorization. Most of the claims were related to infringements of unregistered copyrights. With the approval of the district court, the parties settled the lawsuit. On appeal, the Second Circuit held, pursuant to 17 U.S.C. § 411(a), that the district court lacked subject matter jurisdiction to certify a class or to approve a settlement with respect to claims arising from unregistered copyrights. The Supreme Court's interpretation of § 411(a) will determine whether claims relating to unregistered copyrights can be settled in class actions along with claims arising from works that are registered. Full text is available at topics.law.cornell.edu/supct/cert/08-103. **TFL**

Prepared by Barbara Bispham and Kate Haijar. Edited by Lucienne Pierre.

Smith v. Spisak (08-724)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (Jan. 11, 2008)

Oral argument: Oct. 13, 2009

Frank Spisak was convicted of aggravated murder following a shooting spree in 1982, and he was sentenced to death. After the state courts denied Spisak's appeals, the Sixth Circuit ordered a new penalty phase of the trial, holding that defense counsel's deficient performance during the sentencing phase denied Spisak his Sixth Amendment right to effective assistance of counsel. The Sixth Circuit further held that the jury instructions regarding sentencing had violated the Eighth Amendment, because the jury may have misunderstood them, believing that a unanimous rejection of the death penalty was required before a sentence of imprisonment for life could be considered. The Supreme Court will decide whether the Antiterrorism and Effective Death Penalty Act of 1996 requires the federal courts to defer to the Ohio Supreme Court's denial of Spisak's Sixth and Eighth Amendment claims. Full text is available at topics.law.cornell.edu/supct/cert/08-724. **TFL**

Prepared by Rob Trichinelli and Kevin Sbolette. Edited by Katie Worthington.

Sonny Perdue v. Kenny A. (08-970)

Appealed from the U.S. Court of Appeals for the Eleventh Circuit (July 3, 2008)

Oral argument: Oct. 14, 2009

Kenny A. and eight other named plaintiffs settled a federal civil rights class action lawsuit against the Georgia Department of Human Resources, et al. The settlement provided that "the Plaintiff Class is entitled to recover its expenses of litigation, including reasonable attorneys fees... ." The district court approved a fee enhancement that was attributable to the extraordinary performance of Kenny A.'s counsel, and the Eleventh Circuit affirmed the decision. The Supreme Court will determine if, under 42 U.S.C. § 1988, courts may approve fee enhancements for plaintiffs in civil

rights cases based on the quality of their counsels' performance. Full text is available at topics.law.cornell.edu/supct/cert/08-970. **TFL**

Prepared by Lara Haddad, Lauren Jones, Joe Rancour, and Katie Worthington. Edited by Katie Worthington.

South Carolina v. North Carolina (138, Original)

Original Jurisdiction: U.S. Supreme Court

Oral argument: Oct. 5, 2009

The Supreme Court will hear this case under 28 U.S.C. § 1251, which gives the Court original and exclusive jurisdiction over disputes between states. The Court will determine whether certain nonstate parties have the right to intervene in an equitable apportionment action between South Carolina and North Carolina. In *New Jersey v. New York*, 345 U.S. 369 (1953), the Court held that, in an equitable apportionment action between two states, intervention by a nonstate party is proper only when the putative intervenor demonstrates that it has a compelling interest that is separate from the interests of the states that are parties to the case. The Court's ruling will clarify the rule set forth in *New Jersey v. New York*. Full text is available at topics.law.cornell.edu/supct/cert/138orig. **TFL**

Prepared by Rebecca Vernon. Edited by Lucienne Pierre.

Union Pacific Railroad Co. v. Brotherhood of Locomotive Engineers and Trainmen (08-604)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Apr. 9, 2008)

Oral argument: Oct. 7, 2009

Railroad employees filed claims through their union, the Brotherhood of Locomotive Engineers and Trainmen, contesting disciplinary charges imposed by the Union Pacific Railroad. The National Railroad Adjustment Board dismissed the case for lack of jurisdiction, because the Brotherhood did not submit written evidence as part of its "on-property record" that

the parties had met in conference. The district court affirmed the board's decision, and the Seventh Circuit reversed the ruling, finding that the Brotherhood was denied due process, because the written evidence requirement was not clearly established in the statutes, regulations, or agreements governing railway arbitrations. The Supreme Court will determine whether federal courts may review final orders of the National Railroad Adjustment Board for due process violations. Full text is available at topics.law.cornell.edu/supct/cert/08-604. **TFL**

Prepared by Catherine Sub and Andrew Kaplan. Edited by Katie Worthington.

United States v. Stevens (08-769)

Appealed from the U.S. Court of Appeals for the Third Circuit (July 18, 2008)

Oral argument: Oct. 6, 2009

The United States prosecuted Robert J. Stevens for violating 18 U.S.C. § 48, which states: "Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain shall be fined under this title or imprisoned not more than 5 years, or both." Stevens was prosecuted for selling videos depicting dogfights. Stevens claims that § 48 violates his First Amendment right to free speech and is facially invalid. The Third Circuit held that § 48 reached a form of protected speech and that the government's interest in preventing animal cruelty is not a sufficiently compelling interest to justify a ban imposed by § 48. How the Court decides this case will reflect its view on the scope of the First Amendment's right to free speech and the power of Congress to identify new categories of unprotected speech. Full text is available at topics.law.cornell.edu/supct/cert/08-769. **TFL**

Prepared by Joanna Chen and Mian Wang. Edited by Joe Rancour.