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.

Bruesewitz v. Wyeth Inc. (09-152)

Appealed from the U.S. Court of Appeals for the Third Circuit (March 8, 2010)
Oral argument: Oct. 6, 2010

After their daughter suffered severe health problems following a routine vaccination for diphtheria-tetanus-pertussis (DTP), Russell and Robalee Bruesewitz sued Wyeth Inc., the manufacturer of the vaccine, alleging that Wyeth's DTP vaccine was outmoded and inadequately designed. In response, Wyeth argued that § 22(b)(1) of the National Childhood Vaccine Injury Act (NCVIA) exempted vaccine manufacturers from all claims of design defects, including the claim asserted by the Bruesewitz family. The Supreme Court must now determine whether to sustain the categorical preclusion of all design-defect claims advanced against vaccine manufacturers or whether to expose vaccine manufacturers to potential design-based litigation.

Background

Hannah Bruesewitz, the daughter of the Bruesewitzes, was six months old when she received her third scheduled injection of TRI-IMMUNOL (DTP). Shortly after the injection, Hannah began experiencing seizures, which left her lethargic, developmentally stunted, and displaying autistic-like symptoms. In 2003, doctors diagnosed Hannah with a residual seizure disorder and encephalopathy.

Despite the success of DTP in reducing pertussis (or whooping cough) infections, the Bruesewitzes contend that Hannah's injuries could have been avoided had Wyeth used an alternative design called ACEL-IMUNE (DTaP). However, even though the Food and Drug Administration (FDA) approved DTaP in 1991, the approval extended to only the fourth and fifth injections following three scheduled injections of the DTP formula. It was not until 1996 that the FDA licensed DTaP for all five injections. Wyeth ceased distribution of DTP in 1998.

The Bruesewitzes submitted their case before the Vaccine Court, an Office of Special Masters created by Congress to adjudicate vaccine-related claims. Following a hearing, the Vaccine Court found that the Bruesewitzes did not prove that Wyeth had caused Hannah's injuries. The Bruesewitzes then brought their case to state court, and Wyeth removed the case to federal court. Wyeth subsequently moved for summary judgment and was granted judgment on all counts. On appeal, the Third Circuit's ruling affirmed that Congress intended to pre-empt all design-defect claims when it passed § 22(b)(1) of the NCVIA. The Bruesewitzes subsequently appealed to the Supreme Court, which granted certiorari.

Implications

The American Academy of Pediatrics (AAP) describes the threat vaccine manufacturers faced when Congress enacted the NCVIA. The AAP points out that litigation had substantially impacted manufacturers' malpractice coverage, causing vaccine prices to balloon in some cases by as much as 900 percent. Hence, Congress was concerned about vaccine shortages as some manufacturers chose to exit the market rather than bear the costs of litigation.

Marguerite Willner, a former representative for the Advisory Commission on Childhood Vaccines, contends that the government is not equipped to protect children from vaccine-design injuries adequately and that tort litigation provides a necessary incentive for manufacturers to focus on safety. Specifically, Willner asserts that, prior to FDA approval, the testing population for vaccines is too small to assess the risk of injury adequately. However, three vaccine manufacturers—Glaxosmithkline LLC, Merck Sharp & Dohme Corp., and Sanofi Pasteur Inc.—argue that, because the FDA controls the licensing of vaccines and because the Centers for Disease Control (CDC) purchase and distribute the largest amount of vaccines, the government is in the best position to control, monitor, and respond to risk.

The Vaccine Injured Petitioners Bar Association (VIPB) contends that the Vaccine Court's efficiency measures—such as the lack of discovery—prevent some cases from being litigated fully and fairly. Willner concurs that the lack of discovery impedes an applicant's ability to prove causation. However, the vaccine manufacturers warn that significant vaccine-related litigation may follow from the Supreme Court's decision. They believe that allowing state courts to reconsider the design of FDA-approved vaccines will interrupt the current system such that various courts throughout the country could decide that vaccine manufacturers are responsible for offering possible alternatives that the FDA did not license.

Legal Arguments

Section 22(b)(1) of the National Childhood Vaccine Injury Act of 1986 exempts vaccine manufacturers from civil liability for "unavoidable" vaccine-related injuries or death as long as the vaccine was properly prepared and adequately labeled. 42 U.S.C. § 300aa-22(b)(1). The Supreme Court must now determine whether § 22(b)(1) categorically precludes all design-defect claims asserted against vaccine manufacturers.

Textual and Structural Interpretation of ∫ 22(b)(1)

According to the Bruesewitzes, § 22(b)(1) shields manufacturers against design-defect claims only when a vaccine's harmful side effects could not have been prevented through a safer design. The Bruesewitzes focus on the

word "unavoidable"—commonly defined as "not avoidable" or "incapable of being prevented"—to support their view that § 22(b)(1) protects manufacturers only when a vaccine's harmful side effects are "incapable of being prevented." The Bruesewitzes also note that "unavoidable" is a term of art that entails a specialized legal meaning relating directly to the existence of a safer alternative design.

The Bruesewitzes further note that the NCVIA contains no language explicitly stating that all vaccines give rise to unavoidable side effects. The Bruesewitzes also find it telling that § 22(b)(1) is phrased in the conditional mood, suggesting that Congress did not intend to impose a sweeping categorical exemption of all design-defect claims against vaccine manufacturers. Had Congress wished to eliminate design-defect claims altogether, the Bruesewitzes assert that it could have done so directly by striking out the part of § 22(b)(1) that refers to "side effects that were unavoidable."

On the other hand, Wyeth argues that the Bruesewitzes' textual interpretation leads to a dangerous expansion of manufacturers' liability, exposing manufacturers to design-defect claims in states whose own law forbids such claims. Furthermore, Wyeth argues that, had Congress truly intended to preserve design-defect claims, it could have ended § 22(b)(1) after the word "unavoidable."

Wyeth also counters the Bruesewitzes' textual interpretation with its own close reading of the section. First, Wyeth argues that the Bruesewitzes' interpretation relies on an erroneous treatment of "unavoidable" as a freestanding term. Second, Wyeth emphasizes the use of the definite article in the reference to "*the* vaccine" in § 22(b)(1). According to Wyeth, the reference to a specifically administered vaccine signifies that § 22(b)(1) aims to hold manufacturers liable for the defective manufacturing or labeling of a vaccine, acts that are solely within the manufacturers' control, but not for the negligent design of a vaccine, an act that is outside the manufacturers' control and heavily dependent on federal regulation.

Finally, the Bruesewitzes attack Wyeth's interpretation of § 22(b)(1) on the ground that this interpretation subverts the Supreme Court's long-standing presumption against pre-emption of state law claims. According to the Bruesewitzes, given a choice between competing interpretations of a statute, the Court should always abide by the interpretation that preserves state law claims rather than prevents them. However, Wyeth counters that, regardless of the interpretation adopted by the Court in this case, some state law pre-emption will inevitably occur.

Legislative History of the NCVIA

The Bruesewitzes assert that the NCVIA's legislative history suggests that § 22(b)(1) relieved vaccine manufacturers of civil liability only when their vaccines had no alternative design that was superior to the one in question. The Bruesewitzes point out that, after the NCVIA was passed, Congress refused to adopt an amendment proposed by representatives of the vaccine industry that would have explicitly exempted vaccine manufacturers from design-based claims. Furthermore, the Bruesewitzes note that, even though Congress made several substantive modifications to the NCVIA in 1987, it did not alter the exemptions contained in § 22(b)(1). Finally, the Bruesewitzes cite to a section of the 1987 Congressional Budget Committee Report that declares that the NCVIA does not encroach on the right of state courts to resolve questions of safe vaccine design for themselves.

In response, Wyeth argues that NCVIA was enacted not only to compensate vaccine victims for their injuries in a fair and timely manner but also to reduce the costly burden of litigation on vaccine manufacturers. Wyeth argues that the Bruesewitzes underplay the language in the 1986 Congressional House Report that established the Vaccine Court as a complete alternative to the civil court system. Wyeth also argues that the Bruesewitzes are mistaken in resorting to the legislative record from 1987, which, postdating the 1986 enactment of the NCVIA, provides little more than speculation and hearsay with regard to Congress' intent in passing the act. Moreover, Wyeth criticizes the Bruesewitzes for basing part of their argument on isolated and casually spoken comments on the floor of Congress, none of which, in Wyeth's view, reliably capture the multilayered intent of the legislative body that enacted the NCVIA.

Policy Considerations Surrounding the NCVIA

The Bruesewitzes argue that giving vaccine victims an opportunity to litigate design-defect claims gives vaccine manufacturers an incentive to conduct careful research and to produce the safest possible vaccines. The Bruesewitzes reason that, because the FDA only passively supervises vaccine manufacturers and promulgated minimum safety requirements, the threat of civil litigation encourages manufacturers to generate vaccines that exceed the FDA's low standards. The Bruesewitzes also argue that the Vaccine Court established by the NCVIA does not provide victims of defective vaccines the same opportunity to pursue a fair hearing of their grievances because of the expedited review process as a civil court provides.

Wyeth argues that the liability repercussions from § 22(b)(1) already provide vaccine manufacturers with sufficient incentive to take their manufacturing, labeling, and design duties seriously. In addition, Wyeth disputes the Bruesewitzes' claim that vaccine manufacturers have better access to vaccine-related information than the FDA has. Wyeth argues that vaccine safety surveillance programs, such as the Vaccine Adverse Event Reporting System and the Vaccine Safety Datalink, enable federal regulators to accumulate just as much information on vaccine side effects as the manufacturers of these vaccines can gather. Also, according to Wyeth, the compensation scheme set up by the NCVIA provides victims with a just and generous opportunity to pursue remuneration for injuries. Finally, Wyeth asserts that there is real reason to fear that the continuing threat of design-based litigation will drive the few remaining manufacturers out of the vaccine market.

Conclusion

The U.S. Supreme Court's decision in this case will affect whether victims

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of design defects in vaccines can seek recovery for these defects by vaccine manufacturers. Russell and Robalee Bruesewitz argue that the National Childhood Vaccine Injury Act does not protect vaccine manufacturers against all design-defect claims. Wyeth, however, argues that the motivating force behind § 22(b)(1) of the NCVIA was Congress' desire to shield vaccine manufacturers against costly design-based litigation that threatened to drive those manufacturers out of the vaccine market. Full text is available at topics.law.cornell.edu/supct/cert/09-152. **TFL**

Prepared by Colin O'Regan and Edan Shertzer. Edited by Joanna Chen.

Connick v. Thompson (09-571)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Aug. 10, 2009)
Oral argument: Oct. 6, 2010

John Thompson was wrongfully imprisoned following a trial during which the prosecutor withheld exculpatory evidence in violation of *Brady v. Maryland*. Thompson brought suit pursuant to 42 U.S.C. § 1983 alleging that the district attorney's office is liable for failing to properly train its employees on the requirements of *Brady*. The Supreme Court will determine whether the prosecutors' lack of training amounted to a deliberate indifference to preserving constitutional rights and that liability may properly attach to the district attorney's office, which does not have a past history of violations.

Background

In April 1985, a Louisiana state court convicted the respondent, John Thompson, of attempted armed robbery. In May 1985, the same court convicted Thompson of first-degree murder and sentenced him to death.

In 1999, an investigator discovered that prosecutors had failed to present an important crime lab report in the attempted armed robbery case. The lab report suggested that the perpetrator of the attempted armed robbery had type-B blood; Thompson has type-O blood. Based on the new evidence, a Louisiana court vacated the attempted robbery conviction. Subsequently, a Louisiana appellate court reversed Thompson's murder conviction on the grounds that the improper attempted armed robbery conviction had deprived Thompson of his constitutional right to testify in his own defense at his murder trial.

After his release, Thompson sued the district attorney's office that had withheld the crucial evidence as well as several officials—including the petitioner District Attorney Harry Connick—in their official and individual capacity. Only Thompson's 42 U.S.C. § 1983 civil rights claim for wrongful suppression of exculpatory evidence in violation of *Brady v. Maryland* proceeded to trial. At trial, it was revealed that an assistant district attorney had intentionally suppressed the blood evidence that would have helped Thompson. Under the theory that Connick's deliberate indifference to an obvious need to train, monitor, or supervise his prosecutors had caused the *Brady* violation, the jury awarded Thompson $14 million in damages.

The U.S. Supreme Court granted certiorari to determine whether a single *Brady* violation is sufficient to establish failure-to-train liability against a district attorney's office.

Implications

The petitioners in this case, Harry Connick and the other prosecutors (collectively referred to as Connick), claim that a district attorney generally cannot be deliberately indifferent for failing to train prosecutors, because a district attorney reasonably relies on his prosecutors' education and ethics to assess *Brady* obligations. The National League of Cities and other groups agree, arguing that holding the city liable for a failure to train based on a single *Brady* act violation requires cities to presume that their employees will intentionally break the law. These groups assert that, without notice to the contrary, Connick was entitled to presume that the attorneys would behave ethically, and it would be unfair to hold him liable for failing to train his employees on what they should already have known.

The respondent, John Thompson, counters that district attorneys should not receive immunity for the actions of their employees just because attorneys graduate from law school. The National Association of Criminal Defense Lawyers (NACDL) and the American Civil Liberties Union agree with Thompson, describing *Brady* rules as "complex" and "hardly intuitive." According to the NACDL, criminal prosecutors are specialists who must receive special training to comply with their constitutional, statutory, and ethical requirements beyond their law school classes.

In support of Connick, the National District Attorneys Association and the California District Attorneys Association (collectively referred to as Attorneys Associations) caution that lowering the standards of fault and causation required to prove municipal liability in failure-to-train cases to an essentially "de facto respondeat superior" liability will create a slippery slope that leads to exposing municipalities to a flood of litigation. The Attorneys Associations warn that relaxing the standards would permit liability against a prosecutor's office for almost any reversal of a conviction based on prosecutorial error, no matter how slight, if better training or supervision might have prevented the error.

Thompson argues that relieving Connick of failure-to-train liability for a single *Brady* violation would set a dangerous precedent, because the only way a municipality could face liability would be after the district attorney's employees injured multiple individuals. According to the NACDL and Former Federal Civil Rights Officials and Prosecutors (collectively referred to as Former Officials), this problem of limited municipal liability is compounded by the fact that *Brady* violations occur in secret and are rarely discovered. As a result, the Former Officials believe that allowing "one free *Brady* violation" before holding a municipality liable would, in reality, permit prosecutors to get away with an indefinite number of undiscovered violations.

Legal Arguments

This case raises the issue of whether or not a municipality may be liable under 42 U.S.C. § 1983 for failing to train its employees in the requirements set forth in *Brady v. Maryland* even if there was not a pattern of similar violations in the office. In *Brady v. Maryland,* the Supreme Court held that, to satisfy the Due Process Clause of the 14th Amendment, a prosecutor must turn over evidence that is favorable to an accused person.

Can a Single Incident Establish Municipal Liability Under Section § 1983?

The petitioners, including District Attorney Harry Connick (collectively "Connick"), maintain that, under § 1983, a municipality may be held liable for failing to train its employees only when that failure amounts to a deliberate indifference on the part of the municipality. Connick argues that, even though the Supreme Court has stated that a single violation may sometimes be enough to show deliberate indifference, that is an exception to the general rule that deliberate indifference is shown by refusing to address a pattern of constitutional violations. Connick claims that liability should attach after a single incident only when it is an extreme scenario, citing the Supreme Court's example of a city arming its police officers but failing to train them in the use of deadly force.

Connick further argues that, even if his office's training program was not adequate, this is not the type of situation in which liability should attach after a single violation. Connick argues that, because attorneys are professionals, they are expected to adhere to professional and ethical standards, and a district attorney ought to be able to rely on his office's attorneys' adherence to their professional standards. Furthermore, Connick contends that it would be impossible for the district attorney's office to ignore a flaw in *Brady* training without first having seen a pattern of *Brady* violations. Connick also maintains that the only instance in which the Supreme Court alluded that a single violation would be enough to establish liability presents a very different scenario from the case at issue. Connick argues that training police officers and prosecutors is very different because it is the municipality's duty to train its police officers, whereas a prosecutor begins work after receiving training in law school.

John Thompson, the respondent, insists that the facts of this case satisfy the requirement for deliberate indifference on the part of the municipality. Thompson maintains that, in finding deliberate indifference, the focus is on the obviousness of the need for training and the likelihood that a failure to train will result in constitutional violations, and both requirements are met in this case. Thompson further points out that, in fact, this case involves not only a "single" *Brady* violation but also a pattern. Thompson emphasizes the "culture of indifference" to the *Brady* requirements and claims that four prosecutors knew of the exculpatory evidence but deliberately did not produce it.

Thompson further argues that the facts of this case are similar to those in which the Court has previously held that a single violation was enough to establish liability. Thompson claims that Connick knew that training regarding *Brady* standards was required and that a lack of training regarding *Brady* standards was likely to lead to a violation of constitutional rights. Thompson also claims that the differences between prosecutors and police officers that Connick highlights are ephemeral. Although the attorneys in Connick's office attended law school, Thompson points out that there is no guaranty that they ever encountered *Brady v. Maryland* in their classes. Thompson maintains that, although the attorneys may be subject to external ethical and professional standards, it does not mean that they do not need training on certain aspects of their profession.

Should Municipal Liability Attach for Willful Violations?

Connick argues that this *Brady* violation did not stem from a lack of training on the requirements of *Brady* but, rather, from the deliberate actions of one attorney. Connick asserts that allowing liability to attach to the district attorney's office because of the actions of a prosecutor in this case would change municipal liability into vicarious liability. Connick contends that municipal liability is meant to attach only when the municipality's policy causes a person's constitutional rights to be violated.

Thompson, in contrast, argues that vicarious liability is not created in this case, because Connick's lack of training on *Brady* issues meant that his prosecutors did not know the requirements set forth in *Brady*, and this is what led to the violation of constitutional rights. Similarly, Thompson points out that no fewer than four prosecutors knew about the potentially exculpatory evidence and failed to turn it over. Thompson argues that this conduct demonstrates that the constitutional violations were not caused by one errant prosecutor but by Connick's policies, or lack thereof, regarding *Brady* material.

Connick contends that the training programs he implemented in the office were more than adequate. Connick states that the programs he instituted—including weekly trial meetings in which all aspects of trials were scrutinized, including *Brady* material; the introduction of periodic memoranda describing developments in prosecutors' professional obligations; and advance sheets, outlining new developments in law—show that he thoroughly trained his office on *Brady's* standards.

Thompson counters that, in the Court's previous case dealing with this deliberate indifference, the Court did not require a proof of a pattern of violations. Thompson maintains that awareness is the key to determining whether liability should attach to the district attorney's office. Thompson argues that, if Connick was aware of the need for training and the likelihood that a lack of training would result in constitutional violations, his office should be held liable.

Conclusion

In *Connick v. Thompson*, the Supreme Court will decide whether a single failure by prosecutors to provide

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exculpatory evidence to a defendant is sufficient to establish failure-to-train liability against a district attorney's office. Connick argues that a finding of liability would hold him vicariously liable despite the strict fault and causation requirements of 42 U.S.C. § 1983. Thompson, however, argues that the need for training was so obvious because of the complexity of *Brady* requirements that the lack of a pre-existing pattern of violations should not immunize Connick from failure-to-train liability. Full text is available at topics.law.cornell.edu/supct/cert/09-571. **TFL**

Prepared by Kelly Halford and Eric Schulman. Edited by Joanna Chen

Abbott v. United States (09-479) and Gould v. United States (09-7073)

Appealed from U.S. Court of Appeals for the Third Circuit (March 3, 2009) and U.S. Court of Appeals for the Fifth Circuit (July 29, 2009)
Oral argument: Oct. 4, 2010

In two separate cases, Kevin Abbott and Carlos Rashad Gould, the petitioners, were convicted for violating 18 U.S.C. § 924(c) by possessing weapons in furtherance of a violent crime or crime involving drug trafficking. Abbott and Gould were also sentenced for their underlying crimes, both of which required a minimum sentence of more than five years in prison. Abbott's and Gould's respective sentencing judges both included an additional five-year sentence for violation of 18 U.S.C. § 924(c), on the grounds that this was a mandatory minimum sentence. Abbott and Gould appealed, arguing that they qualified for an exception to 18 U.S.C. § 924(c) because the minimum sentences for their underlying offenses were greater than five years. The appeals courts affirmed the lower courts' decisions. Certiorari was granted to determine which federal criminal statutes carrying a minimum sentence of greater than five years, if any, trigger the "except" clause in 18 U.S.C. § 924(c). Full text is available at topics.law.cornell.edu/supct/cert/09-479. **TFL**

Prepared by James McHale and Alexander Malahoff. Edited by Sarah Chon.

Harrington v. Richter (09-587)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 10, 2009)
Oral argument: Oct. 12, 2010

Joshua Richter, who was convicted of murder, alleged that he received inadequate assistance from his attorney at trial. Richter argued that his attorney should have presented expert testimony concerning a blood splatter at the crime scene, which could have corroborated Richter's version of the events. The U.S. Court of Appeals for the Ninth Circuit agreed with Richter and granted his request for habeas corpus relief. Kelly Harrington, the prison warden, claimed that Richter did not receive inadequate counsel and that the California Supreme Court's earlier summary disposition denying habeas corpus relief should be upheld. The Supreme Court's decision in this case will determine the level of deference that should be granted to lower courts' orders, such as summary dispositions, which could discourage lower courts from issuing such orders in the future. Full text is available at topics.law.cornell.edu/supct/cert/09-587. **TFL**

Prepared by Sojung Choo and Eli Kirschner. Edited by Catherine Suh.

Kasten v. Saint-Gobain Performance Plastics Corp. (09-834)

Appealed from the U.S. Court of Appeals for the Seventh Circuit (Oct. 15, 2009)
Oral argument: Oct. 13, 2010

The petitioner, Kevin Kasten, sued his employer, Saint-Gobain Performance Plastics Corp., alleging that Saint-Gobain terminated his employment in retaliation for his oral complaints regarding the location of the company's time clocks. Kasten alleges that § 215(a)(3) of the Fair Labor Standards Act protects employees who make oral complaints from employer retaliation. However, Saint-Gobain asserts that § 215(a)(3) protects employees only when written complaints are made to governmental authorities. The Seventh Circuit held that § 215(a)(3) protects only written complaints made by employees. The Supreme Court's decision will affect several aspects of the employer-employee relationship, including informal dispute resolution procedures in the workplace and employees' abilities to raise their grievances without fear of retaliation. Full text is available at topics.law.cornell.edu/supct/cert/09-834. **TFL**

Prepared by Natanya DeWeese and James Rumpf. Edited by Eric Johnson.

Los Angeles County, Calif. v. Humphries (09-350)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Nov. 5, 2008)
Oral argument: Oct. 5, 2010

In 2001, Craig and Wendy Humphries were arrested on child abuse charges and listed in California's Child Abuse Central Index (CACI), which is organized under the Child Abuse and Neglect Reporting Act (CANRA). All charges against the Humphries were dismissed, and the Humphries obtained an order declaring them factually innocent. However, they were unable to contest their listing in the CACI. The Humphries sued Los Angeles County under 42 U.S.C. § 1983, seeking a declaratory judgment establishing CANRA and CACI policies as unconstitutional because of the lack of procedures to challenge an individual's inclusion based on a substantiated claim. Los Angeles County argued that, as a local government, it had no control over CACI procedures because the state government created these policies. The Ninth Circuit sided with the Humphries and held that Los Angeles County's liability should be determined according the requirements established in *Monell v. Department of Social Services*. The Supreme Court must now decide whether claims for declaratory relief against a public entity

are subject to the requirements of *Monell*. Full text is available at topics.law.cornell.edu/supct/cert/09-350. **TFL**

Prepared by Kristen Barnes and Jessica Meneses. Edited by Kate Hajjar.

Michigan v. Bryant (09-150)

Appealed from the Michigan Supreme Court (June 10, 2009)
Oral argument: Oct. 5, 2010

As Anthony Covington lay on the ground injured from a gunshot wound, he provided police officers on the scene with a description of his alleged shooter, then died a few hours later. The police arrested the suspected shooter, Richard Bryant, based on Covington's statements, and Bryant was subsequently convicted of second-degree murder after the Michigan trial court admitted Covington's statements into evidence. Bryant claims that the admission of Covington's statements violated his right to cross-examine an opposing witness, as guaranteed by the Sixth Amendment's Confrontation Clause. The state of Michigan argues that Covington's statements were obtained during the police's response to an "ongoing emergency" and that its admission did not violate the Confrontation Clause. The Supreme Court's decision in this case is likely to offer further guidance on what statements are "nontestimonial" under the Court's landmark decisions in *Crawford v. Washington* and *Davis v. Washington*, which redefined the ambit of the Confrontation Clause. Full text is available at topics.law.cornell.edu/supct/cert/09-150. **TFL**

Prepared by Teresa Lewi and Benjamin Rhode. Edited by Chris Maier.

NASA v. Nelson (09-530)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (June 20, 2008)
Oral argument: Oct. 5, 2010

Twenty-eight federal contractors working at the Jet Propulsion Laboratory at the California Institute of Technology sued the National Aeronautics and Space Administration (NASA), alleging that NASA's requirement that contract employees undergo a National Agency Check with Inquiries investigation violated their right to informational privacy. The contractors specifically alleged that the information sought was overly broad and unrelated to their abilities as employees. The government claimed that the information requested was relevant to the government's security concerns and that safeguards helped ensure that the information collected was not susceptible to public disclosure. The Ninth Circuit issued a preliminary injunction, finding that the government's inquiries were not sufficiently tailored to a legitimate government interest. The Supreme Court's decision will reflect its view on the correct balance between the interest of the government, as an employer, in claiming security risks and the interest of individuals in withholding personal information that may raise informational privacy rights. Full text is available at topics.law.cornell.edu/supct/cert/09-530. **TFL**

Prepared by Melissa Koven and Sarah Pruett. Edited by Eric Johnson.

Premo v. Moore (09-658)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (July 28, 2009)
Oral argument: Oct. 12, 2010

The police brought in Randy Moore, the respondent, for questioning in connection with the kidnapping and murder of Kenneth Rogers. Moore requested legal counsel and was told that he was not entitled to counsel unless he could afford it. Moore ultimately confessed to accidentally killing Rogers and was then appointed legal counsel. On counsel's advice, Moore pleaded no contest to felony murder. After Oregon's state courts denied Moore's petition for post-conviction relief, Moore petitioned for federal habeas corpus relief, asserting that he had been denied effective assistance of counsel, because his attorney had failed to move to suppress his confession. The Ninth Circuit granted Moore's petition, reasoning that the failure of Moore's counsel to seek suppression of Moore's confession was unreasonable and highly prejudicial. On appeal to the Supreme Court, Oregon argues that the Ninth Circuit failed to apply the correct standard in granting habeas relief and that Moore did not show that he was prejudiced by his counsel's failure to seek suppression of his confession. This decision will ultimately have an impact on the implementation of plea agreements, the finality of those agreements once made, and the deference federal courts accord to decisions made by state criminal courts. Full text is available at topics.law.cornell.edu/supct/cert/09-658. **TFL**

Prepared by Jacqueline Bendert and Rachel Sparks Bradley. Edited by Joanna Chen.

Ransom v. MBNA America Bank, N.A. (09-907)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 14, 2009)
Oral argument: Oct. 4, 2010

This case reflects a lack of certainty in the bankruptcy code regarding the proper treatment of the deduction for vehicle ownership when calculating an above-median, Chapter 13 debtor's disposable income. Courts are split on whether the deduction can be taken when the debtor owns a vehicle in full and is not responsible for monthly payments on the vehicle. Jason Ransom filed for bankruptcy under Chapter 13 and claimed a vehicle ownership deduction based on his ownership of an automobile that he owned free and clear. The Ninth Circuit found that the deduction was not permitted if there was no existing obligation on the vehicle. Ransom argues that the court misinterpreted the statute and failed to recognize that a plain reading of the statute supports the deduction. The Supreme Court's decision will clarify the availability of the vehicle ownership deduction to Chapter 13 debtors who own their vehicles outright. Full text is available at topics.law.cornell.edu/supct/cert/09-907. **TFL**

Prepared by L. Sheldon Clark and Omair Khan. Edited by Eric Johnson.

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the dependent variable and several of the independent variables (*Partisan Seat Share, Presidential Distance,* and *Congressional Ideology*).

Farhang is at his best in the chapters of *The Litigation State* that address private enforcement of the civil rights laws. In his final chapter, he concludes on a note echoing the uniqueness of American democracy:

As distinguished from the centralized bureaucratic European model of state strength, a great deal of American regulatory state control has taken the form of radically decentralized intervention by an army of litigants and lawyers licensed by the state and paid bounty by defendants at the state's command. Because of the distinct structure of American political institutions, America's regulatory state has taken a distinct form—one importantly dependent upon private litigation. **TFL**

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Skinner v. Switzer (09-9000)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Jan. 28, 2010)
Oral argument: Oct. 13, 2010

Florida convicted the petitioner, Henry Skinner, of capital murder and sentenced him to death. Although Skinner admits that he was present at the scene of the murders, he maintains his innocence. Skinner now seeks access to biological evidence for DNA testing, which he claims will prove that he is innocent of the murders. After unsuccessfully filing two habeas corpus claims, Skinner filed a 42 U.S.C. § 1983 claim to attempt to gain access to the evidence. The Fifth Circuit denied Skinner's motion to stay his execution, but Skinner appealed that decision and the Supreme Court agreed to hear Skinner's case. The Court must now decide whether a demand for access to biological evidence may be brought under 42 U.S.C. § 1983, or whether the claim falls within the realm of habeas corpus law and was thus improperly filed. The Supreme Court's decision will not only decide Skinner's fate but also clarify the scope and procedure of habeas corpus claims. Full text is available at topics.law.cornell.edu/supct/cert/09-9000. **TFL**

Prepared by Sara Myers and John Sun. Edited by Kate Hajjar.

Snyder v. Phelps (09-751)

Appealed from the U.S. Court of Appeals for the Fourth Circuit (Sept. 24, 2009)
Oral argument: Oct. 6, 2010

Fred W. Phelps, Shirley L. Phelps-Roper, and Rebekah A. Phelps-Davis, the respondents, protested at the military funeral of the son of Albert Snyder, the petitioner, holding signs saying "God Hates the USA," "Thank God for 9/11," and other phrases. Snyder successfully sued the Phelpses for intentional infliction of emotional distress, invasion of privacy by intrusion upon seclusion, and conspiracy, and the jury awarded Snyder $2.9 million in compensatory damages and $8 million in punitive damages. On appeal, the Fourth Circuit Court of Appeals overturned the jury verdict, holding that the Phelpses' statements were protected under the First Amendment and thus could not be subject to a civil lawsuit. The Fourth Circuit reasoned that the statements should be protected because they are rhetorical hyperbole, as opposed to verifiable fact, and because the statements address matters of public concern. Snyder has appealed the decision to the Supreme Court. The Court's decision in this case will implicate individuals' free speech and privacy interests and the states' interest in protecting their citizens through tort law. Full text is available at topics.law.cornell.edu/supct/cert/09-751. **TFL**

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