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Missouri v. Frye (10-444)

Appealed from the Missouri Court of Appeals, Western District (Sept. 27, 2010)

Oral argument: Oct. 31, 2011

After being charged with a felony for driving with a revoked license, Frye was offered two plea bargain options: (1) a plea of guilty to the felony charge in return for a sentence recommendation of three years in prison, or (2) a plea of guilty to only a misdemeanor charge in return for a sentence recommendation of 90 days in jail. Frye's counsel never informed him of the plea options, however, and Frye subsequently pleaded guilty to the original felony charge. Frye is now appealing his case, arguing that his counsel's failure to inform him of the plea bargain violated his Sixth Amendment right to effective assistance of counsel. Missouri argues that Frye's situation falls outside of Sixth Amendment protections, and, even if he was wronged, there is no available remedy. The Supreme Court's decision will determine whether courts can offer relief to defendants who have been convicted pursuant to constitutionally adequate procedures if their lawyers made errors during plea negotiations.

Background

Missouri charged Frye for driving with a revoked license. Even though the offense is usually a misdemeanor, Missouri charged Frye with a felony because he had three prior convictions for the same offense.

Missouri offered Frye's attorney a plea bargain, giving Frye two options if he agreed to plead guilty: (1) Frye could plead guilty to a felony charge and the prosecutor would recommend three years of imprisonment and defer

to the court on possible probation, as long as Frye served 10 days of "shock time" in jail, or (2) Frye could plead guilty to a misdemeanor and the prosecutor would then recommend that Frye serve 90 days in jail.

Frye's trial counsel never notified him of Missouri's offer. After the offer was made to his attorney, Frye drove again without a license and received a misdemeanor charge. The state's offer had expired by the time Frye's preliminary hearing was held. Unaware of the lapsed offer, Frye pleaded guilty to the original felony charge. Missouri then recommended the same sentence it had offered under the first option of its initial plea offer. The court rejected the prosecutor's recommendation and sentenced Frye to three years in prison.

While in prison, Frye learned about the lapsed plea offer and filed a motion to vacate his conviction, alleging that he had been denied effective assistance of counsel because his attorney had failed to inform him of the plea offer. The trial court denied Frye's motion, holding that Frye did not establish prejudice because he did not allege that he would have gone to trial if his attorney had informed him of Missouri's plea offer.

Frye appealed the decision and the Missouri Court of Appeals reversed the trial court, holding that Frye could establish prejudice if he demonstrated that there was a reasonable probability of a different outcome had he known of Missouri's plea offer. The Missouri Court of Appeals then remanded the case, essentially giving Frye the option to re-enter a guilty plea to the felony charge or stand trial.

Missouri petitioned the U.S. Supreme Court for a writ of certiorari to address the question of whether, in light of *Hill v. Lockhart*, the failure of the defendant's counsel to communicate a plea

offer violated Frye's Sixth Amendment rights. The Supreme Court granted certiorari and directed the parties to also discuss what remedies should be provided to a defendant that successfully prove ineffective assistance of counsel for failure to communicate a plea offer if the defendant later pleaded guilty to less favorable terms.

Implications

Missouri argues that Frye's proposed ruling encourages attorneys to use plea offers strategically as insurance policies against unpredictable trial results. Missouri contends that an attorney could allow a plea offer to lapse without communicating it to the defendant and advise the defendant to stand trial in hopes of an acquittal. If convicted, the defendant can move to vacate the guilty verdict based on ineffective assistance of counsel and request the benefit of the lapsed offer. Missouri asserts that prosecutors' willingness to plea bargain will diminish if the state bears the burden for error or fraud on the part of the defense attorney. Therefore, Missouri suggests that the judicial system might be burdened with supervising plea negotiations.

Frye counters that defense attorneys will not collectively behave unethically. The National Association of Criminal Defense Lawyers contends that attorneys will not use plea offers as insurance policies because doing so creates opportunities for disbarment, malpractice suits, and disciplinary proceedings. However, the Constitution Project warns that underfunding the public defense bar drastically overburdens public defenders, preventing them from performing basic duties and causing them to pressure defendants into guilty pleas as a way to expedite their case loads. Therefore, the Constitution Project claims that indigent defendants suffer disproportionately under Missouri's proposed rule.

Missouri argues that Frye's rule will undermine the finality of convictions and inundate the judicial system with litigation after convictions. Moreover, Missouri contends that creating excep-

tions to the finality of convictions undermines confidence in the integrity of the judiciary. Missouri also notes that maintaining conviction finality is particularly important in the context of guilty pleas because more than 95 percent of Missouri's felony convictions in 2010 were resolved by guilty pleas.

Frye contends that his rule will not undermine conviction finality or inundate the judicial system and asserts that an attorney's failure to communicate a plea offer is a rare occurrence. Frye argues that trial courts use the high threshold requirements set by the *Strickland* test to eliminate hollow claims. Frye also states that courts have been applying the *Strickland* test for more than 27 years, so any flood of post-conviction litigation has already occurred.

Legal Arguments

The Sixth Amendment guarantees a criminal defendant the right to a fair trial. This protection has been extended to the plea bargaining process, during which a criminal defendant is entitled to effective assistance of counsel in order to protect the defendant during "critical confrontations" with the prosecution. Whether or not Frye's Sixth Amendment rights were infringed depends on the interpretation of both *Strickland* and *Hill* as well as whether or not the plea negotiations that occurred constituted a "critical confrontation."

Does *Hill v. Lockhart* Apply?

The Missouri Court of Appeals relied on the two-pronged test used in *Strickland v. Washington* and distinguished it from the test applied in *Hill v. Lockhart*. Under *Strickland*, ineffective assistance of counsel is established when (1) the representation fell below the objective standard of "reasonableness" and (2) but for these errors, the result of the proceeding would have been different. Because Frye would have selected the better plea offer if his attorney had not withheld information, the court determined that the *Strickland* standard had been satisfied. According to Missouri, *Hill* alters the prejudice prong of the *Strickland* test so that ineffective assistance of counsel is established when a party shows

that, but for counsel's ineffectiveness, the individual would not have pleaded guilty. However, the Missouri Court of Appeals held that *Hill* does not modify the *Strickland* test in all cases.

Frye argues that the Missouri Court of Appeals correctly interpreted *Hill* because, but for his counsel's error, Frye would not have chosen to go to trial but, instead, would have selected the better plea offer, creating a situation outside the bounds of *Hill*. Instead, Frye argues that the *Hill* standard's application in "trial-based" situations leaves room for non-"trial-based" situations (such as plea negotiations), and that *Hill* implies that the Supreme Court recognized that certain claims asserting ineffective assistance of counsel would not be covered.

Missouri maintains that both *Strickland* and *Hill* aim to protect a defendant's right to a fair trial. Thus, Missouri argues that losing a favorable plea offer is not a situation covered by *Strickland* and *Hill* because it did not infringe on Frye's right to a fair trial. Furthermore, Missouri argues that *Hill* specifically addressed alleged errors at the pleading stage and must therefore apply to both "trial-based" and "non-trial-based" errors.

What Constitutes a "Critical Confrontation"?

The parties disagree about whether or not the negotiation stage of the plea bargaining process constitutes a "critical confrontation" protected by the Sixth Amendment. Missouri argues that courts have never found constitutional significance in plea bargains. After a plea offer has been made, a prosecutor may revoke it at any time, even after a defendant has accepted the offer. Moreover, even if a defendant does agree to a plea offer, Missouri courts may exercise discretion in deciding whether to abide by the terms of the deal. Thus, Missouri argues that there cannot be a protected right to a plea deal when neither prosecutors nor courts are bound to honor them.

Frye contends that Sixth Amendment protections extend to all critical stages of prosecution, including plea negotiations. Frye argues that the focus should be on the protection necessary during the "plea negotiation process." Frye

cites various Supreme Court cases that noted that pre-trial plea negotiations were "critical" phases of the criminal process because of the expertise and complexity involved. Frye argues that, once negotiations have begun, a defendant has the right to effective assistance of counsel. In the case at issue, counsel engaged in such negotiations and that triggered Frye's Sixth Amendment protections.

What is the Proper Remedy?

Even if the Court finds that Frye's counsel was ineffective, Missouri argues that, because Frye received an otherwise constitutional trial, he has received the appropriate remedy. Missouri contends that the standard remedy for ineffective assistance of counsel is not what might have been had counsel not erred. Missouri also argues that allowing Frye to select the better offer would put Frye in a better position than he would have been in had it not been for counsel's error. Missouri also contends that Frye's guilty plea constituted a "break in the chain of events" and bars claims related to deprivations that occurred before the plea. According to Missouri, Frye understood the consequences of his guilty plea, thereby breaking the chain of events and causing him to be deprived of the option to bring up his current claim.

Frye argues that the proper remedy would be to allow him to select the better plea bargain. According to Frye, an adequate remedy must return the individual to the status he occupied before the violation. Here, Frye argues that allowing him to select the better offer would properly correct counsel's error. Frye further suggests that this remedy would be adequate because it would still allow the ruling court to decide whether or not to accept the terms of the offer. Frye argues that pleading guilty does not vitiate ineffective counsel and that Missouri's argument—that Frye acknowledged the rights he was waiving and the consequences of doing so—would mean that every guilty plea is necessarily valid.

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Conclusion

In this case, the Supreme Court will consider whether the Sixth Amendment's right to effective assistance of counsel protects a criminal defendant whose attorney has not communicated the available plea bargain options. Frye argues that his counsel's failure to inform him of the plea offer passes the Court's interpretation of ineffective assistance of counsel claims under the *Strickland* test: counsel's action was unreasonable and it prejudiced the defendant. Missouri maintains that Frye fails the prejudice prong because, under *Hill*, prejudice requires a showing that, in the absence of error on the part of the attorney, Frye would have pleaded not guilty and gone to trial. Full text is available at topics.law.cornell.edu/supct/cert/10-444. **TFL**

Prepared by Heather Byrne and Judah Druck. Edited by Colin O'Regan.

United States v. Jones (10-1259)

Appealed from the U.S. Court of Appeals for the District of Columbia Circuit (Aug. 6, 2010)

Oral argument: Nov. 8, 2011

After Federal Bureau of Investigation agents installed a Global Positioning System (GPS) tracking device on Antoine Jones' vehicle as part of a drug trafficking investigation, the United States used the locational data from the GPS in a federal trial that resulted in Jones' conviction for conspiracy. The Court of Appeals for the District of Columbia reversed that conviction, holding that the agents needed a warrant before installing the GPS. The United States argues that a warrant was unnecessary because Jones had no reasonable expectation of privacy in his movements in public and was never deprived of the use of his JeepTM. Jones responds that he has a privacy interest in the aggregation of his movements over a prolonged period and that the aggregation of such information interferes with his use of his vehicle. The Supreme Court's decision

will affect how police officers employ new technologies to reduce the human resources and costs required for criminal investigations, while considering how citizens can protect themselves from government officials' possible abuse of new technologies.

Background

In 2004, the FBI launched an investigation of Antoine Jones and Lawrence Maynard for possible drug trafficking. A federal judge in the District of Columbia approved a warrant authorizing the FBI agents to install a GPS tracking device on a Jeep that Jones routinely used. The warrant granted the agents permission to install the GPS device within 10 days and only within the District of Columbia, but the agents did not install the GPS device until 11 days later and they installed it in a public parking lot in Maryland.

The GPS device relayed information to the FBI regarding the Jeep's movements during the entire period the GPS was on the vehicle. Based on the GPS data, FBI agents detected a pattern of repeated trips to a suspected stash house. Combined with visual surveillance, FBI agents confirmed that Jones drove the Jeep during these trips. Agents later obtained and executed search warrants on the Jeep and the stash house, finding approximately \$850,000 in cash, as well as firearms, 97 kilograms of cocaine, and one kilogram of crack, among other items.

In October 2006, the United States prosecuted Jones in the U.S. District Court for the District of Columbia. The jury acquitted Jones on a number of counts and did not reach a verdict on the final count of conspiracy. In March 2007, the United States charged Jones and Maynard with the single conspiracy count. Jones challenged the admissibility of the GPS tracking evidence, arguing that use of the GPS device constituted unreasonable search and seizure. The district court excluded some GPS data gathered from private areas for lack of a warrant, but allowed the rest of the GPS data because it came from public areas. The second trial ended with the jury finding both Maynard and Jones guilty of conspiracy.

Maynard and Jones appealed their convictions to the District of Columbia Court of Appeals, where Jones again challenged the GPS tracking data as violating his Fourth Amendment rights. A three-judge panel on the D.C. Circuit upheld Maynard's conviction but overturned Jones' conviction, holding that the GPS evidence violated Jones' Fourth Amendment rights. The United States appealed the panel's decision, requesting an en banc hearing before the entire D.C. Circuit, which denied the request. The Supreme Court granted the United States petition for certiorari.

Implications

The United States points out that the efficiency of police investigations increases with the availability of advanced technology. The Center on the Administration of Criminal Law stresses the importance of access to these cost-effective devices for police departments because the GPS devices enable investigations that use fewer personnel and less money, allowing law enforcement to allocate resources to other areas of crime control. Furthermore, the United States asserts that the best use of new technologies, like GPS devices, is to collect data to show probable cause necessary to obtain a search warrant and that requiring a warrant to use the technology would defeat its purpose.

Jones responds that requiring a warrant before installing GPS devices does not impede police departments from vigorously investigating suspected crimes. Jones states that the warrant requirement merely ensures that an impartial magistrate has weighed the technology's use against the concerns of possible misuse and determined that the use of the technology is justified. In addition, Jones contends that GPS devices change the character of information related to a person's public location because the device aggregates a vast amount of accurate information about a person's whereabouts, creating a more detailed picture of his or her activities than is available by using ordinary visual surveillance.

The United States asserts that this

case does not involve official abuse or widespread mass surveillance, and that there is no evidence of such activities related to the use of GPS devices. The United States contends that concerns regarding the potential for abuse or misuse of patterns gleaned from GPS data are also present in other police investigation techniques that the Supreme Court has not determined to be searches under the Fourth Amendment, such as extended stakeouts or repeated trash collection. Moreover, the United States argues that the legislative process, not court action, is the best method for alleviating concerns over abuse or misuse of new technologies in police investigations.

Jones fears that allowing the installation of GPS devices without a warrant would lead to widespread collection of personal data unrelated to any crime because of the prevalence of GPS devices and their automated nature after installation. Several organizations that deal with privacy issues contend that government officials can collect and consolidate the GPS devices' location data into massive databases for later analysis of more than just historical travel logs. Jones argues that unconstrained use of GPS data would greatly impede citizens' ability to associate with others for fear that some government official may aggregate their public movements to investigate their private relationships.

Legal Arguments

The Fourth Amendment forbids warrantless or unreasonable government intrusions upon a person's right to privacy. When faced with an alleged Fourth Amendment violation, the Supreme Court must first examine the personal and the societal expectations of privacy associated with the government action in order to determine whether an unreasonable search or seizure has actually occurred. If the Court finds that a search or seizure has taken place, it will then decide whether the specific circumstances allow for an exception to the Fourth Amendment warrant requirement.

GPS Tracking as a Fourth Amendment Search

Relying on the Supreme Court's decision in *Katz v. United States*, the United States asserts that Jones could not have had a reasonable expectation of privacy while driving on public roads. In *Katz*, the Supreme Court found that individuals do not have a reasonable expectation of privacy while engaging in activities in the public sphere. The United States argues that all actions performed in public are subject to scrutiny, even if it is unlikely that any one person would witness all the activities. The United States maintains that, because Jones traveled on public roads to reach his stash house and because any passerby could have observed his actions, he could not have had a reasonable expectation of privacy when going to and from that location. Finally, the United States adds that the use of this technology does not matter because the legal emphasis should be placed on whether or not the target's movements were in a public space.

Jones argues that the United States misconstrued the language in *Katz*, and the missing text explains that, if an individual reasonably wishes to keep private certain actions performed in the public sphere, the privacy of those actions may be constitutionally protected. Jones asserts that the appropriate test examines the reasonableness of the means used to observe public actions. Jones maintains that the uniquely intrusive nature of prolonged GPS tracking gave him a reasonable expectation of privacy against this specific means of observation. In addition, Jones contends that, even though a person's routes on public roads may be observed by the naked eye, continuous GPS tracking allows law enforcement to capture entire patterns of movement—a feat that is not likely to be achieved by a random passerby. Thus, Jones concludes that he reasonably held an expectation of privacy as to the entirety of his movements and that the status of being in public cannot determine what constitutes reasonable and socially acceptable expectations of privacy.

GPS Device Installation and Use as a Fourth Amendment Seizure

Jones first contends that the installation of the GPS device was a seizure because the device materially interfered with his possessory interest in the vehicle, intruding upon his right to exclude others from using his property. Jones distinguishes other tracking methods—such as an “X” marked in chalk on a vehicle—by pointing out that it is not the intrusion itself but its nature that determines when innocent tracking becomes an unconstitutional seizure. Jones further argues that both the recording and storage of GPS data comprise a seizure because those actions memorialize private information.

The United States argues that there was no seizure when law enforcement officers installed the device because the officers did not interfere with Jones' right to possess the vehicle. The United States explains that no privacy barrier shields the exterior of a vehicle because of its public nature. The United States also asserts that the mere attachment of the device did not convey any information that Jones wished to keep secret. The United States contends that the attachment did not meaningfully interfere with Jones' use of his vehicle and therefore did not affect any possessory interest.

Alternatively, the United States argues that, even if the Court finds that a search or seizure occurred, a reasonableness test demonstrates that a warrant exception should apply. The United States contends that, after considering all the circumstances surrounding the GPS installation and use, the need for GPS use greatly exceeded any privacy rights that may have been affected.

Jones disagrees, stating that the Fourth Amendment demands more scrutiny than a simple balancing test does. Jones argues that the warrant requirement checks the power of law enforcement, and that the Court has created special exceptions only for exceptional cases. Jones asserts that, even with a balancing test, the incredibly intrusive and continuous nature of GPS tracking tips the scales in favor of requiring a warrant.

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Conclusion

The Supreme Court will determine how law enforcement agents may use technology to improve investigative work and reduce costs. The decision will affect the use of technology in law enforcement investigations as well as the ways citizens can guard against unwanted government intrusions aided by enhanced technology. Full text is available at topics.law.cornell.edu/supct/cert/10-1259. **TFL**

Prepared by Brandon Bodnar and Milson Yu. Edited by Jacqueline Bendert. The authors would like to thank Professor Sherry Colb for her insights into this case and former Supreme Court Reporter of Decisions Frank Wagner for his assistance in editing this preview.

Gonzalez v. Thaler (10-895)

Appealed from the U.S. Court of Appeals for the Fifth Circuit (Oct. 6, 2010)

Oral argument: Nov. 2, 2011

Rafael Arriaza Gonzalez alleged that his Sixth Amendment right to a speedy trial was violated when he was charged with murder 10 years after an alleged shooting occurred. Although Gonzalez did not appeal his case to the Texas state court of last resort, he later petitioned for federal habeas review. The district court held that his petition was time-barred because it was filed more than one year after the period to appeal to the highest Texas state court expired. The Fifth Circuit granted a certificate of appealability but did not indicate which underlying constitutional claim was at issue. The parties disagree on whether the Fifth Circuit had jurisdiction after issuing the certificate of appealability and which event starts the one-year clock for federal habeas review. The Supreme Court's decision in this case will affect petitioners' ability to seek federal habeas review and the allocation of judicial resources in reviewing federal habeas claims. Full text is available at topics.law.cornell.edu/supct/cert/10-895. **TFL**

Prepared by Cheryl Blake and Jennifer Uren. Edited by Jacqueline Bendert.

Kawashima v. Holder (10-577)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (Aug. 4, 2010)

Oral argument: Nov. 7, 2011

The U.S. Immigration and Naturalization Service alleged that the Kawashimas, permanent residents of the United States, were subject to deportation because they had been convicted of aggravated felonies under 8 U.S.C. § 1101(a)(43)(M)(i). The Kawashimas had pleaded guilty to filing and aiding and abetting the filing of a false tax statement. The Ninth Circuit upheld the determination made by the Board of Immigration Appeals that the Kawashimas were deportable. The Kawashimas argue that their crimes are not aggravated felonies because the crimes do not require fraud or deceit as an element and that deportable tax crimes include only tax evasion. Attorney General Eric Holder argues that the Kawashimas pleaded guilty to fraud by pleading guilty to willfully making a false statement or impression. This case will have an impact on the methods the Internal Revenue Service uses to enforce the tax code and may have a profound impact on immigrants who plead guilty to tax crimes. Full text is available at topics.law.cornell.edu/supct/cert/10-577. **TFL**

Prepared by Curtis Coolidge and Jocelyn Krieger. Edited by Eric Schulman.

Kurns v. Railroad Friction Products Corp. (10-879)

Appealed from the U.S. Court of Appeals for the Third Circuit (Sept. 9, 2010)

Oral argument: Nov. 9, 2011

George Corson, who worked as a machinist in locomotive repair and maintenance facilities, died of malignant mesothelioma caused by exposure to asbestos during his employment. Corson's widow, Freida Jung Corson,

and personal representative, Gloria Kurns, brought state law tort claims against Railroad Friction Products Corporation and Viad Corporation, the entities responsible for the manufacture and distribution of locomotive parts that contain asbestos. The district court dismissed Corson's case, asserting that the Locomotive Inspection Act (LIA) pre-empted the state law claims, and the Third Circuit affirmed the decision. Corson's representatives argue that their state claims are not pre-empted because the LIA regulates only those locomotives that are in use. Respondents contend that the state law claims are precluded because the LIA intends to regulate the entire field of design and construction of locomotives. The Supreme Court's decision will determine the pre-emptive scope of the Locomotive Inspection Act while balancing states' traditional regulatory power over railroad safety as well as Congress' intent to achieve national uniformity in standards related to railroad safety. Full text is available at topics.law.cornell.edu/supct/cert/10-879. **TFL**

Prepared by Amanda Hellenthal and Chuan Liu. Edited by Edan Shertzer.

Lafler v. Cooper (10-209)

Appealed from the U.S. Court of Appeals for the Sixth Circuit (May 11, 2010)

Oral argument: Oct. 31, 2011

In 2003, Anthony Cooper faced trial for assault with intent to murder. Prosecutors offered Cooper two plea deals carrying lesser sentences than he would receive under the sentencing guidelines. Upon the advice of his trial counsel, Cooper rejected both offers and received a sentence demonstrably longer than he would have received if he had accepted either plea offer. Cooper claims that the Sixth Amendment guarantees effective assistance of counsel at all critical stages of a criminal proceeding, including the plea bargaining process. Cooper argues that his trial counsel's ineffective assistance prejudiced his trial and that Cooper is

entitled to reinstatement of the plea offer. Blaine Lafler argues that rejection of a plea bargain is not a critical stage of the criminal proceeding. Lafler contends that Cooper is not entitled to relief because Cooper received a fair trial and no Sixth Amendment violation occurred. This case will determine the availability of habeas relief to a defendant who received constitutionally defective advice from counsel during plea bargaining negotiations. Full text is available at topics.law.cornell.edu/supct/cert/10-209. **TFL**

Prepared by Alison Carrizales and Tom Schultz. Edited by Natanya DeWeese.

Minneeci v. Pollard (10-1104)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (June 7, 2010)

Oral argument: Nov. 1, 2011

While serving time in a privately operated federal prison, Richard Lee Pollard fell and broke his elbows. Pollard insists that the treatment he received from prison employees following the accident amounted to cruel and unusual punishment and therefore violated the Eighth Amendment. Pollard sued the offending employees. The district court dismissed Pollard's claim, finding that the alternative remedies in tort barred the constitutional charge. The Ninth Circuit reversed the decision, finding that, because the private prison and its employees operate under the "color of federal law," Pollard has a valid claim. Margaret Minneeci and other employees appealing the Ninth Circuit's ruling argue that Supreme Court precedent limits extensions of this type of claim to violations for which adequate state law remedies do not exist. However, Pollard maintains that he is among the victims that the Court sought to protect when finding for this type of claim. The Supreme Court's decision in this case could affect what type of liabilities private companies face when the federal government retains their services. Full text is available at topics.law.cornell.edu/supct/cert/10-1104. **TFL**

Prepared by Meredith Carpenter and

Charlotte S. Davis. Edited by Colin O'Regan.

National Meat Association v. Harris (10-224)

Appealed from the U.S. Court of Appeals for the Ninth Circuit (March 31, 2010)

Oral argument: Nov. 9, 2011

In response to the largest recall of beef in U.S. history, California amended its penal code to ban the slaughtering of nonambulatory animals and require that slaughterhouses euthanize any such animals that are on their premises. The National Meat Association filed suit, arguing that the Federal Meat Inspection Act expressly pre-empts California's ban on the slaughter of nonambulatory animals and that the Federal Meat Inspection Act's historical context demonstrates that Congress intended to exercise exclusive authority over the meatpacking industry. Kamala Harris, the attorney general of California, and animal protection organizations, including the Humane Society of the United States, propose a narrow understanding of slaughterhouse "operations" and argue that the California ban does not undermine the purpose of the Federal Meat Inspection Act. The outcome of this case will affect the ability of slaughterhouses to examine the animals for disease before euthanizing them and the ability of states to regulate areas where general federal law already exists. Full text is available at topics.law.cornell.edu/supct/cert/10-224. **TFL**

Prepared by Alicia Lee and William Dong. Edited by Kelly Halford.

Perry v. New Hampshire (10-8974)

Appealed from the New Hampshire Supreme Court (Nov. 18, 2010)

Oral argument: Nov. 2, 2011

Barion Perry was convicted of theft for attempting to take amplifiers from a car. Nubia Blandon, who was standing nearby, identified Perry as the perpetrator. Before trial, Perry

moved to suppress Blandon's identification, arguing that eyewitness testimony should not be admitted into trial when it was obtained under suggestive circumstances. The state of New Hampshire contends that improper state action should be required before eyewitness testimony is barred and that due process does not require preliminary judgments on the reliability of evidence before it is admitted at trial. The Supreme Court of New Hampshire upheld the trial court's decision denying the motion because there was no evidence of improper action by the state. The U.S. Supreme Court's decision could affect the conditions under which parties can use eyewitness testimony at trial. Full text is available at topics.law.cornell.edu/supct/cert/10-8974. **TFL**

Prepared by Jenny Liu and Lisa Schmidt. Edited by Eric Schulman.

Rehberg v. Paulk (10-788)

Appealed from the U.S. Court of Appeals for the 11th Circuit (June 9, 2011)

Oral argument: Nov. 1, 2011

Relying on false testimony, three grand juries indicted Charles Rehberg on a variety of charges. After the indictments were dismissed, Rehberg brought a private suit under 42 U.S.C. § 1983 against several parties, including James Paulk, who had testified before all three grand juries. The 11th Circuit ruled that Paulk, an investigator in the district attorney's office, was entitled to absolute immunity for his testimonies. The Supreme Court granted certiorari in this case to determine whether a government official who acts as a "complaining witness" is entitled to absolute immunity. Rehberg argues that complaining witnesses were never given absolute immunity under the common law and that a lesser grant of qualified immunity is more appropriate under the circumstances. Paulk, on the other hand, contends that withholding absolute immunity from witnesses in his position will discourage public officials

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from giving complete and objective testimony before grand juries for fear of monetary liability. Full text is available at topics.law.cornell.edu/supct/cert/10-788. **TFL**

*Prepared by Amy Hsu and Alison Skaife.
Edited by Edan Shertzer.*

Smith v. Cain (10-8145)

Appealed from the Supreme Court of Louisiana (Sept. 24, 2010)

Oral argument: Nov. 8, 2011

Juan Smith was the sole person convicted of killing five people in a Louisiana home. His conviction was primarily based on the testimony of a witness, a survivor of the shooting, who identified Smith as one of the gunmen responsible for the crime. In subsequent applications for review, Smith contended that his trial was unfair because the prosecution intentionally suppressed material evidence. In this case, Smith argues that the suppression of that evidence constituted a violation

of his constitutional due process rights, as the suppression undermines confidence in the jury's verdict against him. Smith insists that he is entitled to a new trial, whereas Burl Cain, warden of the Louisiana State Penitentiary, insists that the evidence was neither material nor suppressed, thus precluding a new trial. This case may affect the standard to which a prosecutor is held with regard to disclosure of evidence. Full text is available at topics.law.cornell.edu/supct/cert/10-8145. **TFL**

Prepared by Amanda Bradley and Brooks Kaufman. Edited by Edan Shertzer.

Zivotofsky v. Clinton (10-699)

Appealed from the U.S. Court of Appeals for the District of Columbia Circuit (July 10, 2009)

Oral argument: Nov. 7, 2011

The U.S. Embassy refused to record the birthplace of the Zivotofskys' son as Jerusalem, Israel, in order to

refrain from expressing an official view on whether Jerusalem is part of Israel. Zivotofsky filed suit demanding that the State Department comply with § 214 of the Foreign Relations Authorization Act, which requires the birthplace of a U.S. citizen born in Jerusalem to be recorded as Israel upon the legal guardian's request. The district and appellate courts held that the judiciary cannot order the executive branch to change its foreign policy under the political question doctrine. Zivotofsky argues that the political question doctrine does not apply because the case involves statutory interpretation. Secretary of State Clinton contends that § 214 is unconstitutional because Congress has no authority to recognize foreign sovereigns. The Supreme Court's decision will clarify the political question doctrine and may shed light on the issue of separation of powers. Full text is available at topics.law.cornell.edu/supct/cert/10-699. **TFL**

Prepared by Angela Chang and Tian Wang. Edited by Natanya DeWeese.

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