

Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET



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2009 – 2010 TERM
U.S. SUPREME COURT
CASE SUMMARIES



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Commissioner





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NOTE:

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United States Supreme Court 2009-2010 Term

Michigan v. Fisher, 130 S.Ct. 546 (2009)

Decided December 7, 2009

FACTS: On the day in question, Brownstown, Michigan police officers “responded to a complaint of a disturbance.” They were directed to a residence “where a man was ‘going crazy.’” When they arrived, they “found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside.”

The officers also saw ‘blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house.’ (There was some dispute as to exactly when they saw the blood, but it was not disputed that they noticed it before they entered the house.) Looking through the window, they saw Fisher “inside the house, screaming and throwing things.” The back door was locked and the front door was blocked by a couch. The officers knocked, but Fisher refused to answer or open the door. They could see that he had cut his hand and asked if he needed medical care. “Fisher ignored these questions and demanded, with accompanying profanity, that the officer go to get a search warrant.” Officer Goolsby attempted to enter through the front door, but when he saw Fisher “pointing a long gun at him,” he retreated.

Fisher was eventually apprehended and charged under state law with assault with a dangerous weapon and possession of a firearm during the commission of a felony. The trial court “concluded that Officer Goolsby violated the Fourth Amendment when he entered Fisher’s house” and agreed to suppress the evidence of Fisher’s possession of the weapon. The case wended its way through the state courts, which upheld the suppression. Michigan appealed.

ISSUE: May officers make a warrantless entry into a residence when there is an objective reason to believe that an occupant needs medical assistance or may be putting someone else in harm’s way?

HOLDING: Yes

DISCUSSION: The Court began its opinion, stating “[t]he ultimate touchstone of the Fourth Amendment ... is reasonableness.” Although “searches and seizures inside a home without a warrant are presumptively unreasonable, that presumption can be overcome.” “For example, ‘the exigencies of the situation [may] make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.’”¹ Brigham City v. Stuart² “identified one such exigency,” the need to assist with injured persons inside a home. “This ‘emergency aid exception’ does not depend on the officers’ subjective intent or the

¹ Mincey v. Arizona, 437 U.S. 385 (1978).

² 547 U.S. 398 (2006).

seriousness of any crime they are investigating when the emergency arises.’ It requires only ‘an objectively reasonable basis for believing,’ that a person within [the house] is in need of immediate aid.”

The court found that a “straightforward application of the emergency aid exception, as in Brigham City, dictates that the officer’s entry was reasonable.” When the officers arrived, they “encountered a tumultuous situation in the house - and ... found signs of a recent injury, perhaps from a car accident, outside.” It was reasonable to believe that Fisher’s actions in throwing projectiles might harm someone else inside the house, or that he might hurt himself in the “course of his rage.”

Specifically, and in contravention to the opinion of the Michigan state courts, The Supreme Court noted that “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception.” In Brigham City, the only injury noted was a cut lip. The Court also dismissed Fisher’s assertion that the officers could not have believed he needed medical help since they never summoned medical assistance, stating that the test was not the officer’s subjective belief, but whether they had an objective basis for believing that either he needed medical help, or that other persons were in danger.

The Court concluded:

It was error for the Michigan Court of Appeals to replace that objective inquiry into appearances with its hindsight determination that there was in fact no emergency. It does not meet the needs of law enforcement or the demands of public safety to require officers to walk away from a situation like the one they encountered here. Only when an apparent threat has become an actual harm can officers rule out innocuous explanations for ominous circumstances. But, “[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.”³ It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else. The Michigan Court of Appeals required more than what the Fourth Amendment demands.”

The Court reversed the decision to suppress the evidence and remanded the case to Michigan for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09pdf/09-91.pdf>

Presley v. Georgia, 130 S.Ct. 721 (2010)

Decided January 19, 2010

FACTS: Presley was scheduled to stand trial in DeKalb County, Georgia. During jury selection the judge “noticed a lone courtroom observer.” The judge “explained the prospective juror were about to enter and instructed the man that he was not allowed in the courtroom, and had to leave that floor of the courthouse entirely.” The Court discovered that he was Presley’s uncle. Upon objection by Presley’s attorney, the judge explained that the courtroom would be fully occupied by jurors, and that the “uncle cannot sit and intermingle with members of the jury panel.” The judge did state that the uncle could return when the trial actually started.

³ Id.

Presley was convicted, and moved for a new trial “based on the exclusion of the public from the juror *voir dire*.” He presented evidence that there would have been plenty of space for observers. The trial court denied it, and Presley appealed. The Georgia Court of Appeals upheld the trial court’s decision, as did the Georgia Supreme Court.

Presley appealed to the U.S. Supreme Court, which accepted the case.

ISSUE: May a judge exclude observers from jury selection?

HOLDING: No (but see discussion)

DISCUSSION: The Court first noted that the question before it is “whether the right to a public trial in criminal cases extends to the jury selection phase of trial, and in particular the *voir dire* of prospective jurors.” The Court noted that question was addressed in the affirmative, in the First Amendment context, by Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.⁴ A later case, in the same term, ruled that the “Sixth Amendment right to a public trial extends beyond the actual proof at trial, and included a “pretrial hearing on a motion to suppress certain evidence.”⁵

The Court concluded the point of whether the public is entitled to observe *voir dire* was “well settled” and that the defendant had a constitutional right to insist upon it. The Court agreed that there might be, on occasion, an exception to that rule, but that “such circumstances will be rare ... and the balance of interests must be struck with special care.” Further, the Court noted, it had held that “the trial court must consider reasonable alternatives to closing the proceeding,” and emphasized that it is not the responsibility of the parties to offer up such alternatives. The Court noted that the “public has a right to be present whether or not any party has asserted the right.”

Specifically, the Court stated, “[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.” The record indicated that the trial court could have easily accommodated observers, and that the jury could have been instructed “not to engage or interact with audience members.”

The decision of the Georgia Supreme Court was reversed and the case remanded.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09p>

Wilkins v. Gaddy, 130 S.Ct. 1175 (2010)
Decided February 22, 2010

FACTS: In March, 2008, Wilkins, a North Carolina prison inmate, sued, claiming that the year before, he had been “‘maliciously and sadistically’ assaulted ‘[w]ithout any provocation’ by a corrections officer,” Gaddy. Gaddy was “apparently angered by Wilkins’ request for a grievance form” and allegedly “snatched [Wilkins] off the ground and slammed him onto the concrete floor” and then “proceeded to punch, kick, knee and choke [Wilkins] until another officer had to physically remove him from [Wilkins].” He

⁴ 464 U.S. 501 (1984)

⁵ Waller v. Georgia, 467 U.S. 39 (1984).

claimed a number of physical and psychological complaints as a result of the assault, but later review by the trial court suggested that some of his physical complaints, such as high blood pressure and mental health issues, were as a result of pre-existing conditions. The lower court did state that he had been X-rayed for a bruised heel, but 'note[d] that bruising is generally considered a *de minimus*⁶ [*sic*] injury." His complaints of back pain and headaches were also considered *de minimis*. His case was dismissed by the U.S. District Court and he was also denied leave to amend his complaint, and the Fourth Circuit Court of Appeals upheld the dismissal. Wilkins then petitioned the U.S. Supreme Court for certiorari, which it granted.

ISSUE: May a prisoner sue under the Eighth Amendment for a minor injury when the use of force is allegedly done for improper reasons?

HOLDING: Yes

DISCUSSION: The Court began by noting that the appellate courts have "strayed from the clear holding of [the U.S. Supreme Court]" in Hudson v. McMillian.⁷ In that case, the Court had stated that "requiring what amounts to a showing of significant injury in order to state an excessive force claim" is improper in an Eighth Amendment case. Instead, the Court had ruled that the primary question is "not whether a certain quantum of injury was sustained, but rather 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.'"⁸

However, the Court agreed that the "absence of serious injury" is still relevant to an "Eighth Amendment inquiry," as the "extent of injury may also provide some indication of the amount of force applied." As an example, "an inmate who complains of a 'push or shove' that causes no discernible injury almost certainly fails to state a valid excessive force claim."

But, the Court continued:

Injury and force, however, are only imperfectly correlated, and it is the latter that ultimately counts. An inmate who is gratuitously beaten by guards does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury.

The Court, in Hudson, had "aimed to shift the 'core judicial injury' from the extent of the injury to the nature of the force - specifically, whether it was non-trivial and 'was applied ... maliciously and sadistically to cause harm.'"

The Court found it improper to have dismissed Wilkins' complaint for this reason and reversed that decision. The Court however, "express[ed] no view on the underlying merits of his excessive force claim" and noted that was still for Wilkins to prove.

⁶ Minor.

⁷ 503 U.S. 1 (1992)

⁸ Whitley v. Albers, 475 U.S. 412 (1986).

NOTE: Although most use of force cases involving law enforcement officers are pre-custody cases and tried under the Fourth Amendment, officers who handle prisoners might also be subject to the Eighth Amendment's prohibition against "cruel and unusual punishment."

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09pdf/08-10914.pdf>

Florida v. Powell, 130 S.Ct. 1195 (2010)

Decided February 23, 2010

FACTS: On August 10, 2004 Tampa, Florida, police officers were in search of Powell. They entered his girlfriend's apartment and found him coming from a bedroom. They searched the room and found a loaded handgun under the bed. Powell was arrested and transported. "Once there, and before asking Powell any questions, the officers read Powell the standard Tampa Police Department Consent and Release Form 310."

The form read as follows:

You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview.

Powell acknowledged the rights, agreed to talk and signed the form. He admitted he owned the gun and that he knew he was prohibited from gun possession, since he was a convicted felon. He was charged in Florida for the offense. At the trial court level, he moved for suppression of "his inculpatory statements," arguing that "the Miranda⁹ warnings were deficient because they did not adequately convey his right to the presence of an attorney during question. The trial court denied the motion and he was subsequently convicted.

The Florida state appellate court, however, reversed the conviction, finding that the Miranda warnings were inadequate and that the statements should have been suppressed. The Florida Supreme Court agreed, finding that "advice Powell received was misleading because it suggested that Powell could 'only consult with an attorney before questioning; and did not convey Powell's entitlement to counsel's presence throughout the interrogation."

Florida requested certiorari, and the U.S. Supreme Court agreed to review the case.

ISSUE: Must a suspect be expressly advised of his right to counsel *during* custodial interrogation?

HOLDING: No (but see discussion)

DISCUSSION: The Court first addressed whether it had jurisdiction to hear the case, as Powell argued that it was based upon Florida law, not federal law. The Court, however, noted that "the Florida Supreme Court treated state and federal law as interchangeable and interwoven; the court at no point expressly

⁹ Miranda v. Arizona, 384 U.S. 436 (1966)

asserted that state-law sources gave Powell rights distinct from, or broader than, those delineated in Miranda.¹⁰

The Court moved to the certified question - “whether the advice Tampa police gave to Powell ‘vitiat[ed] Miranda.” The Court reviewed the principles of Miranda, which established “certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation.”¹¹

The Court continued:

Miranda prescribed the following four now-familiar warnings:

[A suspect] must be warned prior to any questioning [1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

In this case, the third warning was the only one at issue. The Court agreed that although the “four warnings Miranda requires are invariable, .. the Court has not dictated the words in which the essential information must be conveyed.”¹² The Court had agreed that “reviewing courts are not required to examine the words employed ‘as if construing a will or defining the terms of an easement.’ The inquiry is simply whether the warnings reasonably ‘conve[y] to [a suspect] his rights as required by Miranda.”¹³

The Court looked to Duckworth and Prysock for guidance, and concluded that the warnings given in this case, in their totality, satisfied Miranda. Read in combination, the “first statement communicated that Powell could consult with a lawyer before answering any particular question, and the second statement confirmed that he could exercise that right while the interrogation was underway.” As such, Powell’s right to have an attorney present at all times was “reasonably conveyed.” Powell argued that most jurisdictions, both in Florida and across the United States, did “expressly advise suspects of the right to have counsel present both before and during interrogation.” The Court lauded the “standard warnings” used by the FBI, describing them as “exemplary,” but declined “to declare its precise formulation necessary to meet Miranda’s requirements.”

The Court concluded:

Different words were used in the advice Powell received, but they communicated the same essential message.

The Florida Supreme Court decision was reversed, and the case remanded for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09pdf/08-1175.pdf>

¹⁰ See Michigan v. Long, 463 U.S. 1032 (1983).

¹¹ Duckworth v. Eagan, 492 U.S. 195 (1989).

¹² California v. Prysock, 453 U.S. 355 (1981).

¹³ Duckworth, supra.

Maryland v. Shatzer, 130 S.Ct. 1213 (2010)
Decided February 24, 2010

NOTE: Please read this summary in detail. In short, Shatzer states that if a suspect being questioned invokes his right to counsel and is then released from custody, officers may re-approach the suspect after 14 days. Provided the suspect is again given Miranda warnings and does not re-invoke his right to counsel, he has effectively waived his rights. The suspect may again be questioned and his statements may be used against him in court.

FACTS: In August, 2003, a social worker for the Hagerstown Police Department learned of allegations that Shatzer has sexually abused his 3-year-old son. At the time, he was incarcerated for an unrelated child sexual abuse offense. Det. Blankenship interviewed Shatzer at the prison, after reviewing Shatzer's Miranda rights with him. Shatzer gave him a written waiver of those rights. However, when Blankenship explained why he was there, "Shatzer expressed confusion - he had thought Blankenship was an attorney there to discuss the prior crime for which he was incarcerated." At that time, Shatzer refused to talk to him without an attorney. Blankenship ended the session and returned Shatzer "back into the general prison population." Blankenship then closed the investigation.

Two and a half years later, the same social worker provided more specific allegations to the department. Det. Hoover was assigned, and they interviewed the victim, who was by that time eight years old. The victim provided more detailed information. They went to the prison where Shatzer had been transferred to interview him. Shatzer was again surprised, as "he thought the investigation had been closed, but Hoover explained they had opened a new file." He was again given Miranda. Once again, he gave a written waiver.

Hoover interrogated Shatzer for a half-hour, during which Shatzer admitted non-contact sexual actions in front of the child. He agreed to take a polygraph, and at no time did "Shatzer request to speak with an attorney or refer to his prior refusal to answer questions without one."

Shatzer took the polygraph five days later, after again giving a written waiver to his Miranda rights. When he was judged to have failed, he "became upset, started to cry and incriminated himself by saying ' I didn't force him. I didn't force him.'" He then requested an attorney. "Hoover promptly ended the interrogation."

Shatzer was charged with several offenses relating to the incident and he moved for suppression. The trial court denied the motion. Shatzer was tried and convicted. He appealed and the Maryland Court of Appeals reversed the conviction. Maryland appealed to the U.S. Supreme Court, which granted certiorari.

ISSUE: Is the Edwards v. Arizona¹⁴ prohibition against interrogation of a suspect who has invoked the Fifth Amendment right to counsel inapplicable if, after the suspect asks for counsel, there is a break in custody or a substantial lapse in time (more than two years and six months) before commencing reinterrogation pursuant to Miranda?

¹⁴ 451 U.S. 477 (1981)

HOLDING: Yes

DISCUSSION: The Court reviewed the history of both the decision in Miranda v. Arizona¹⁵ and Edwards v. Arizona. Miranda had instructed that officers “must warn a suspect prior to questioning that he has a right to remain silent, and a right to the presence of an attorney” in order to counteract the “coercive pressure” inherent in a custodial interrogation. If the suspect then indicates that he wishes to remain silent, or would like an attorney, the interrogation must then cease. “Critically, however, a suspect can waive these rights.” A valid waiver request a showing that the “waiver was knowing, intelligent, and voluntary” under a high standard of proof laid out by Johnson v. Zerbst¹⁶ for constitutional rights.

In the Edwards case, the Court had determined that “Zerbst’s traditional standard for waiver was not sufficient to project a suspect’s right to have counsel present at a subsequent interrogation if he had previously requested counsel,” concluding that instead, “‘additional safeguards’ were necessary.” In McNeil v. Wisconsin, the Court had found it insufficient that the suspect had simply “responded to further police-initiated custodial interrogation.”¹⁷ Specifically, although a general waiver might be sufficient to an initial Miranda warning, it was “not sufficient at the time of subsequent attempts if the suspect initially requested the presence of counsel.” The Court had noted in other cases that there was a risk of increasing pressure to talk as the custody is prolonged.¹⁸ In effect, earlier Courts were concerned about the possibility of a suspect being “badgered in submission” by repeated attempts at interrogation after invocation of the right to counsel.¹⁹

However, in this case, unlike the earlier cases on the issue, Shatzer was not held in continuous custody by the interrogating officers, but had instead been released back to serve his initial incarceration. There, he stayed for two and a half years before further interrogation was attempted.

The Court continued:

When, unlike what happened in these three cases, a suspect has been released from his pretrial custody and has returned to his normal life for some time before the later attempted interrogation, there is little reason to think that his change of heart regarding interrogation without counsel has been coerced. He has no longer been isolated. He has likely been able to seek advice from an attorney, family members, and friends. And he knows from his earlier experience that he need only demand counsel to bring the interrogation to a halt; and that investigative custody does not last indefinitely. In these circumstances, it is far fetched to think that a police officer’s asking the suspect whether he would like to waive his Miranda rights will any more “wear down the accused,”²⁰ than did the first such request at the original attempted interrogation—which is of course not deemed coercive.

The Court noted that without some time limit, the disability caused by Edwards would be eternal. It would apply, under Roberson, “when the subsequent interrogation pertains to a different crime,” under Minnick

¹⁵ 384 U.S. 436 (1966)

¹⁶ 304 U.S. 458 (1938)

¹⁷ 501 U.S. 171 (1991)

¹⁸ See Minnick v. Mississippi, 498 U.S. 146 (1990).

¹⁹ See Arizona v. Roberson, 486 U.S. 675 (1988).

²⁰ Smith v. Illinois, 469 U. S. 91, 98 (1984)

“when it is conducted by a different law enforcement officer” and even after the subject has met with an attorney. It would also “render invalid ... confessions invited and obtained from suspect who (unbeknownst to the interrogators) have acquired Edwards immunity previously in connection with any offense in any jurisdiction.” The Court noted that “[i]n a country that harbors a large number of repeat offenders, this consequence is disastrous.”

The Court concluded that the protections offered by the Miranda warnings, which of course will be given at the second attempt at interrogation under custodial circumstances, will suffice when the subject “is reinterrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.”

The Court further agreed that although Shatzer was still incarcerated, that his return to the general prison population was, in fact, a break in custody. The issue remained, however, that if two and one half year was a sufficient break in custody, how much less would still meet that requirement. The Court found it “impractical to leave the answer to that question for clarification in future case-by-case adjudication; law enforcement officers need to know, with certainty and beforehand, when renewed interrogation is lawful.” Although it was “certainly unusual” for at Court to “set forth precise time limits governing police action,” there was precedent for doing so. The Court ruled that a period of fourteen days was “plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.”

The Court briefly addressed the concern that Shatzer remained incarcerated during that break in custody - by differentiating between “Miranda custody and incarceration pursuant to conviction.” The Court noted that “the inherently compelling pressures’ of custodial interrogation ended when he returned to his normal life” albeit in prison.

The Court concluded that “because Shatzer experienced a break in Miranda custody lasting more than two weeks between the first and second attempts at interrogation, Edwards does not mandate suppression of his March 2006 statements. The Court reversed the Maryland Court of Appeals and remanded the case for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09pdf/08-680.pdf>

Johnson v. U.S., 130 S.Ct. 1265 (2010)

Decided March 2, 2010

FACTS: Johnson pled guilty in Florida to the federal charge of “knowingly possessing ammunition after having been convicted of a felony.” Because he was a repeat offender, the prosecution sought an enhanced penalty, claiming that he had 3 prior convictions for a violent felony. He agreed that 2 of the 3 previous offenses were violent felonies, but argued that the third, for simple battery, would have normally been a misdemeanor, but for the fact he had been previously convicted of a misdemeanor battery. Simple battery under Florida law could be proved “in one of three ways,” and it was unclear from the record under which provision Johnson had actually been convicted. The trial court and ultimately the Eleventh Circuit affirmed his conviction. Johnson requested and was granted certiorari by the U.S. Supreme Court.

ISSUE: Is a simple battery (in Kentucky, an Assault in the Fourth Degree), that has been escalated to a felony by virtue of being a second offense, a “violent felony” for federal repeat offender sentencing?

HOLDING: No

DISCUSSION: The Court reviewed both the federal mandatory-minimum sentencing provisions, as well as the similar provisions under Florida law. The Court noted the “physical force” under federal law was not bound by its definition under Florida law. The Court further stated that physical force under Florida’s battery law involved “any intentional physical contact, no matter how slight.” The Court expounded at length on the multiple possible definitions of the word “force.” In this situation, since what was at issue was whether what had occurred was a “violent felony” - it was clear that in that context, “the phrase ‘physical force’ means *violent* force - that is, force capable of causing pain or injury to another person.” Although the penalties available for battery have shifted over the years, simple battery “whether of the mere-touching or bodily-injury variety,” has generally been classified as a misdemeanor. Further, statutory construction finds it questionable that Congress intended that “intentional, unwanted touching” without injury be considered a violent felony for purposes of the enhancement.

The court agreed, as the Government contended, “that in many cases state and local records from battery convictions will be incomplete.” However, such “absence of records will often frustrate application of the modified categorical approach - not just to battery but to many other crimes as well.”

The U.S. Supreme Court reversed the decision of the Eleventh Circuit decision and set aside Johnson’s sentence.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/09pdf/08-6925.pdf>

Bloate v. U.S., 130 S.Ct. 1345 (2010)
Decided March 8, 2010

FACTS: On August 24, 2006, Bloate was indicted in federal court on firearms and drug charges. (The details of his criminal case are immaterial to this summary.) That indictment started the 70-day clock under the Speedy Trial Act. Various pretrial motions were made, and the deadline to file such motions was extended until September 25. At that time, Bloate indicated he did not wish to file any additional pretrial motions. On October 4, the judge held a hearing to consider Bloate’s waiver, and concluded it was voluntary and intelligent.

Over the ensuing three months, Bloate’s trial was delayed for several reasons, some at his own instigation. In one instance, he fired his attorney and obtained new counsel. Finally, on February 19, 2007, 179 days after the indictment, Bloate moved to dismiss the case, arguing that the speedy trial provision required it. At that time, the judge considered that approximately 30 days did not count, and apparently dismissed the motion. In late February, due to the rescheduling of another case, Bloate’s trial was moved to March 5. At that time, he was tried, and convicted, following a two day trial.

Bloate appealed to the Eight Circuit Court of Appeals, which affirmed the denial of his motion to dismissal. The appellate court ruled that “pretrial motion preparation time” is “automatically excludable.” This put the Eighth Circuit in agreement with seven other Courts of Appeal that interpreted that relevant portion of the Speedy Trial Act the same way. (Notably, the Sixth Circuit, however, was on the opposite side.)

Bloate requested certiorari, and the U.S. Supreme Court agreed to hear the appeal.

ISSUE: May delays due to pretrial motions be automatically excluded from the 70-day Speedy Trial provisions?

HOLDING: No (but see discussion)

DISCUSSION: The Speedy Trial Act requires that trial be held within 70 days of indictment, but excludes from the calculation “days lost to certain types of delay” as indicated in the statute. The subsection in question “any period of delay resulting from other proceedings concerning the defendant” - a list of eight subcategories. In this case, the delay at issue was granted to allow Bloate to file pretrial motions - a period of approximately 30 days. The Court noted that the subparagraph in question “does not subject all pretrial motion-related delay to automatic exclusion.” The only period that was automatically excludable was the period from the filing of the motion to the conclusion of the hearing. The Court discussed at length the procedural issues involved in this case, and required that a trial judge make specific and detailed findings when a case would go beyond the 70-day rule.

In this case, Bloate “instigated all of the pretrial delays except for the final continuance from February 26 to March 5. The trial judge “diligently endeavored to accommodate” Bloate’s requests. Despite the concern that limiting automatic exclusions would “trap” judges who had to balance the desires of the defendant against the ticking clock, the Court noted that “trial judges always have to devote time to assessing whether the reasons for the delay are justified, given both the statutory and constitutional requirement of speedy trials.” The Court did not find that “placing these reasons in the record” did not “add an appreciable burden on these judges.” Further, the Court noted, even if the case was dismissed, it could be dismissed without prejudice, allowing the prosecution to refile the charges.

The Court ruled that the 28-day period was not automatically excludable, but noted that the appellate court did not address whether any other subsection of the Speedy Trial Act would have justified the exclusion. The Court remanded the case to the Eighth Circuit for further proceedings on the matter.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-728.pdf>

NOTE: *Although this case does not directly involve law enforcement, it is summarized to illustrate the need for the Court to move in an expeditious manner once an indictment is returned on a criminal defendant in federal court.*

Padilla v. Kentucky, 130 S.Ct. 1473 (2010)
Decided March 31, 2010

FACTS: Padilla, a citizen of Honduras but a lawful permanent resident of the U.S. for over 40 years, pled guilty in Kentucky to transporting a large amount of marijuana. Following his plea, however, he learned that under federal law, his deportation to Honduras was “virtually mandatory.” He alleged, in a post-conviction appeal, that he would have insisted on a trial had his attorney advised him of this fact.

The Supreme Court of Kentucky denied his case, and he further appealed to the U.S. Supreme Court, which accepted certiorari.

ISSUE: Is a noncitizen criminal defendant entitled to advice concerning the risk of deportation?

HOLDING Yes

DISCUSSION: The Court reviewed the evolution of federal immigration law, noting that “while once there was only a narrow class of deportable offenses” and judges had broad discretionary authority over the process. Now, however, the classes of deportable offenses have broadened tremendously, and the sentencing judge has been stripped of the authority to give a “judicial recommendation against deportation” - a JRAD - which was almost always respected by the federal decisionmaking authority. In 1990, however, the ability to issue a JRAD was eliminated, and in 1996, congress almost eliminated the ability of the Attorney General to grant discretionary relief from deportation.

These changes have “dramatically raised the stakes of a noncitizen’s criminal conviction” and has increased the importance of complete and accurate legal advice. The possibility of deportation is an integral part of the penalty, and is often the most important part.

As previous decisions have stated, criminal defendants are entitled to effective representation and advice by competent counsel.²¹ Although matters collateral consequences to conviction have been held not to require advice, the Court noted that it had never actually “applied a distinction between direct and collateral consequences” in a Strickland evaluation.²² Further, it agreed that “deportation as a consequence of a criminal conviction is, because of its close connection to the criminal process, uniquely difficult to classify as either a direct or collateral consequence.” The Court concluded that Strickland does apply to Padilla’s claim.

The Court agreed that trial counsel must inform a noncitizen client whether their plea carries a risk that they will be deported. The Court further agreed that Padilla had “sufficiently alleged that his counsel was constitutionally deficient” by not doing so. The Court reversed Padilla’s plea and remanded the case back to Kentucky for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-651.pdf>

Berghuis (Warden) v. Smith, 130 S.Ct. 1382 (2010)
Decided March 30, 2010

FACTS: Smith was tried for a murder in Grand Rapids, Michigan. Jury selection (voir dire) took place in September, 1993 and included a panel of up to 100 individuals. Only three, however, were African-American. Smith objected unsuccessfully at that time to the composition of the venire panel. However, his case proceeded to trial and he was convicted of second-degree murder.

Smith appealed. The Michigan appellate court ordered the trial court to “conduct an evidentiary hearing on Smith’s fair-cross-section claim.” Smith’s evidence showed that Grand Rapids had approximately an 85% population of African-American. Evidence was presented as to how potential jury members were selected and notified. Specifically, the district court misdemeanor panels were filled first, and remaining potential jurors were made available for felony trial juries. Following Smith’s trial, the court administrator reversed the process, as he believed that the district court “essentially swallowed up most of the minority jurors” - leaving the Circuit (felony) Court with a jury pool that was not representative of the entire county. The trial

²¹ See McMann v. Richardson, 397 U.S. 759 (1970).

²² Strickland v. Washington, 466 U.S. 668 (1984).

court considered the ways the measurements of underrepresentation could be done, and the resulting statistics convinced the trial court that “African-Americans were underrepresented in Circuit Court venires. The trial court, however, found that Smith did not successfully prove that the process itself “had systematically excluded African-Americans.” Upon further action, the Court of Appeals, however, reversed the trial court decision and ordered a new trial, with jurors selected in the way implemented after Smith’s first trial. The prosecution appealed, and the Michigan Supreme Court reversed the Court of Appeals decision, finding that Smith had not met his burden of establishing a “prima facie violation of the Sixth Amendment fair-cross-section requirement.”

Smith then filed for habeas relief in the U.S. District Court, reasserting his claim. The District Court dismissed that claim, and he then appealed the Sixth Circuit. The Sixth Circuit found that the “juror-assignment order in effect when Smith’s jury was empaneled significantly reduced the number of African-Americans available for Circuit Court venires.” In addition, the Sixth Circuit found that Michigan’s high court “ had unreasonably applied Duren v. Missouri²³ when it declared that social and economic factors could not establish systematic exclusion.” As a result, Michigan petitioned for certiorari, which was granted.

ISSUE: May statistical underrepresentation of a minority in a jury pool result in challenge to the ultimate verdict?

HOLDING: Yes (but see discussion)

DISCUSSION: The state argued that there was no “systematic exclusion of African Americans from juries in Kent County, Michigan.”

The Court reviewed its prior decisions, particularly Duren, and noted that “a defendant must prove that: (1) a group qualifying as ‘distinctive’ (2) is not fairly and reasonably represented in jury venires, and (3) ‘systematic exclusion’ in the jury-selection process accounts for the underrepresentation.”

The Court began by stating:

Each test is imperfect. Absolute disparity and comparative disparity measurements, courts have recognized, can be misleading when, as here, “members of the distinctive group comp[ose] [only] a small percentage of those eligible for jury service.

The Michigan Court had concluded that since no single method was in itself appropriate, it was necessary to consider the results of all three possible ways to look at the evidence. The Sixth Circuit, in contrast, had declared that only the “comparative disparity test” is appropriate to “measure underrepresentation.”

The Court continued:

Evidence that African-Americans were underrepresented on the Circuit Court’s venires in significantly higher percentages than on the Grand Rapids District Court’s could have indicated that the assignment order made a critical difference. But, as the Michigan Supreme Court noted, Smith adduced no evidence to that effect.

²³ 439 U. S. 357 (1979)

Smith made no effort to compare, for example, how the representation in Kent County differed for the federal court jury venues for the same area. “Smith’s best evidence of systematic exclusion was offered by his statistics expert, who reported a decline in comparative underrepresentation, from 18 to 15.1%, after Kent County reversed the assignment order.” That evidence was not such a “big change” such as sufficient to support Smith’s claim that the prior method had resulted in the underrepresentation.

Smith provided to the Court a “laundry list” of practices that contributed to the underrepresentation, including “the County’s practice of excusing people who merely alleged hardship or simply failed to show up for jury service, its reliance on mail notices, its failure to follow up on nonresponses, its use of residential addresses at least 15 months old, and the refusal of Kent County police to enforce court orders for the appearance of prospective jurors.” The Court, however, found no precedent to support that simply “pointing to a host of factors that, individually or in combination, *might* contribute to a group’s underrepresentation.”

The Court concluded that the Michigan Supreme Court decision was correct and rejected Smith’s claim. The case was then remanded to Michigan for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-1402.pdf>

U.S. v. Stevens, 130 S.Ct. 1577 (2010)
Decided April 20, 2010

FACTS: Congress enacted 18 U.S.C. §48 to criminalize the “commercial creation, sale, or possession of certain depictions of animal cruelty.” The law does not criminalize the actual underlying acts, but only the portrayal of such activities. It was initially enacted to target “crush videos” - described as videos that showed women walking over animals, barefooted or in heels, while the animals squealed in pain. These videos purportedly appeal to individuals with a specific sexual fetish. The “acts depicted in crush videos are typically prohibited by the animal cruelty laws enacted by all 50 States and the District of Columbia.” However, Stevens was a purveyor of old videos of dogfighting and dogs attacking other animals, and which included footage taken when dogfighting was not prohibited, allegedly. He was indicted. He moved for dismissal, arguing that his actions were protected by the First Amendment. His motion was denied. He was convicted at trial. He then appealed to the Third Circuit, which found §48 facially invalid and reversed his conviction, stating that it potentially covers a great deal of constitutionally protected speech.

The Government appealed, and the U.S. Supreme Court granted certiorari.

ISSUE: Is 18 U.S.C. §48 impermissibly overbroad and a violation of the First Amendment?

HOLDING: Yes

DISCUSSION: The Government argued that “the banned depictions of animal cruelty, as a class, are categorically unprotected by the First Amendment.” The Court, however, noted that through the present, it had held restrictions on the content of speech in only a “few limited areas.” The Court declined to “carve out from the First Amendment any novel exception to §48.”

The Court stated that it reads the challenged law “to create a criminal prohibition of alarming breadth.” Nothing in the law, for example, requires the depicted conduct to actually cruel, as it applies to any depiction in which “a living animal is intentionally maimed, mutilated, tortured, wounded or killed.” It noted that the words wounded or killed do not carry any particular “cruel” connotation when given their ordinary meaning. The text makes no distinction between lawful and unlawful killing of an animal. Its plain meaning also suggests that a video depicting lawful conduct in one State may run afoul of the law if it “finds its way into another State where the same conduct is unlawful.”

The Government encouraged the Court to look to the exceptions listed in the statute to allow much of the material that would otherwise be prohibited under its interpretation of §48. The Court noted that much speech does not fall into one of the listed categories. “Most hunting videos, for example, are not obviously instructional in nature, except in the sense that all life is a lesson.” Instead, they are primarily entertainment or recreational.

The Government argued that it only prosecuted such cases when “extreme cruelty” is shown, but the Court noted that “the First Amendment protects against the Government: it does not leave us at the mercy of *noblesse oblige*.” It declined to “uphold an unconstitutional statute merely because the Government promised to use it responsibly.” In fact, the Justice Department announced, following the enactment of the legislation, that it would interpret (and prosecute) only depictions of “wanton cruelty to animals designed to appeal to a prurient interest in sex.” The videos sold by Stevens do not fit that description.

The Court concluded that §49 was “substantially overbroad, and therefore invalid under the First Amendment.” It affirmed the decision of the Third Circuit in favor of Stevens.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-769.pdf>

Perdue (Governor of Georgia) v. Kenny A. (by his next friend Winn), 130 S.Ct. 1662 (2010)
Decided April 21, 2010

FACTS: The original plaintiffs in the case are over 3,000 children in foster care in Georgia. The action was a class-action lawsuit against the state of Georgia and various named state officials, including the Governor. The case went to mediation and the parties entered into a consent decree, which resolved all issues except that fees to which the plaintiffs’ attorneys were entitled to collect under 42 U.S.C. §1988 (also known as the Attorneys’ Fees Act).²⁴ The attorneys requested more than \$14 million in fees, which included about \$7 million for what is called the lodestar - a calculation of the attorney’s usual fee times the hours expended on the case. The remainder was a “fee enhancement for superior work and results” - with the argument that the lodestar “would be generally insufficient to induce lawyers of comparable skill, judgment, professional representation and experience” to take on such a case. Georgia objected, contending that the hourly fees used to calculate the lodestar were excessive and that the “enhancement would duplicate factors that were reflected in the lodestar amount.”

The District Court reduced the fee award to \$10.5 million, after making certain adjustments. The lodestar was reduced to \$6 million and then enhancing the award by 75% because of certain factors, including the

²⁴ Although the case never specifically mentions it, presumably this case was brought under 42 U.S.C. §1983, since the opinion notes that the case was brought under both “federal and state constitutional” claims.

extraordinary results and high degree of skill, professionalism and dedication shown by counsel. The Eleventh Circuit affirmed the decision. Georgia appealed and the U.S. Supreme Court granted certiorari.

ISSUE: May a reasonable attorneys' fee in a §1988 case be enhanced for factors already included in the lodestar calculation?

HOLDING: No (but see discussion)

DISCUSSION: The Court discussed the background of the Attorneys' Fees Act, a "fee-shifting statute." The default rule is that each party pays their own attorney's fees, but §1988 was enacted to "ensure that federal rights are adequately enforced." However, the statute provided no guidance as to how to determine a "reasonable" fee in such cases, leaving the decision to the "unlimited discretion" of the trial judge. The "lodestar approach" was first pioneered in Lindy, Bros. Builders, Inc. of Philadelphia v. American Radiator & Standard Sanitary Corp.²⁵ and "achieved dominance" in Hensley, Gisbrecht v. Barnart.²⁶

The Court noted the lodestar approach has "several important virtues," in that it "*roughly* approximates the fee that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour in a comparable case." It is "readily administrable" and objective and "produces reasonably predictable results." The Court defined "six important rules" that guided its decision.

First, the Court noted that a "'reasonable' fee is a fee that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil rights case," which is the goal of the Act. Second, the "lodestar method yields a fee that is presumptively sufficient to achieve this objective." Third, although the Court had "never sustained an enhancement of a lodestar amount for performance," it had "repeatedly said that enhancements may be awarded in 'rare' and 'exceptional' circumstances." Fourth, however, the "novelty and complexity of a case" is not grounds for an enhancement because that should be reflected in the lodestar - as part of the usual billable hours. In addition, the quality of a particular attorney's work should also not be a factor, as such attorneys would normally also charge a higher billable rate. Fifth, the burden on proving a fee enhancement is to the fee applicant. Finally, sixth, the "fee applicant seeking an enhancement must produce 'specific evidence' that supports the award."

In the case at bar, the Court defined the issue as "whether either the quality of an attorney's performance or the results obtained are factors that may properly provide a basis for an enhancement." The Court noted that a superior result may not necessarily be "attributable to superior performance and commitment of resource by plaintiff's counsel," but instead may be the result of any number of other factors. An enhancement may be appropriate if the method used to determine the lodestar "does not adequately measure the attorney's true market value," but in such a situation, the trial judge could adjust the hourly rate to an appropriate prevailing market rate. An enhancement may also be appropriate if the attorney takes on an "extraordinary outlay of expenses and the litigation is exceptionally protracted." The Court noted that attorneys who take on civil rights cases understand that they will not be reimbursed until the termination of the case, and noted that an enhancement could provide a "standard rate of interest to the qualifying outlays of expenses." The Court also agreed that an enhancement might be provided if there is an "exceptional delay in the payment of fees."

²⁵ 487 F.2d 161 (1973).

²⁶ 535 U.S. 789 (2002).

The Court concluded that the trial court did not “provide proper justification for the large enhancement that it awarded.” The Court found that amount to be “essentially arbitrary,” and seemingly unconnected to anything in the record that would justify the amount. Of note, the Court stated that although the plaintiffs’ counsel did not receive fees while the case was pending, there was no indication this was “outside the normal range expected by attorneys who rely on §1988 for the payment of their fees or quantify the disparity.” The Court considered it “essential that the [trial] judge provide a reasonably specific explanation for all aspects of a fee determination, including any aware of an enhancement.” Without that, “adequate appellate review is not feasible,” and awards may be, or have the appearance of, being the result of a judge’s “subjective opinion regarding particular attorneys or the importance of the case.” Notably, the Court added, “in future cases, defendants will have no way to estimate the likelihood of having to pay a potentially huge enhancement.”²⁷

The Court concluded:

Section 1988 serves an important public purpose by making it possible for persons without means to bring suit to vindicate their rights. But unjustified enhancements that serve only to enrich attorneys are not consistent with the statute’s aim.⁸ In many cases, attorney’s fees awarded under §1988 are not paid by the individuals responsible for the constitutional or statutory violations on which the judgment is based. Instead, the fees are paid in effect by state and local taxpayers, and because state and local governments have limited budgets, money that is used to pay attorney’s fees is money that cannot be used for programs that provide vital public services.

The Court reversed the lower court’s decision and remanded the case for further proceedings.

NOTE: *Although this case does not involve law enforcement, the process for paying attorneys’ fees in a §1988 case is exactly the same in a §1983 case involving law enforcement defendants.*

Renico (Warden) v. Lett, 130 S.Ct. 1855 (2010)
Decided May 3, 2010

FACTS: Lett was charged with first degree murder and related charges, in Michigan, in 1996. His trial spanned six days, but only took a total of 9 hours, excluding deliberations. Deliberations began on June 12, 1997 and over two days, the jury sent out several notes, including a question as to what would occur if they could not agree. Shortly after noon on the second day, the judge brought the jury back into the courtroom to address the matter. The jury agreed that it was deadlocked, after being pressured for an answer by the judge. The judge declared a mistrial, dismissed the jury and set a new trial date. Neither the prosecution nor the defense objected. At the second trial, in November, 1997, Lett was convicted after under 4 hours of jury deliberation, of second-degree murder.

Lett appealed to the Michigan appellate courts, arguing that the mistrial was unnecessary and as such, he was entitled to the Double Jeopardy bar. The Michigan Court of Appeals agreed and reversed his conviction. The Michigan Supreme Court reversed the lower court and reinstated the conviction. Lett

²⁷ Marek v. Chesny, 473 U.S. 1 (1985).

petitioned for habeas corpus in the federal court, which the District Court granted. The Sixth Circuit affirmed that decision. Michigan petitioned for review, and the U.S. Supreme Court granted certiorari.

ISSUE: May a trial court judge declare a mistrial, when they find there is a manifest necessity to do so, without triggering Double Jeopardy?

HOLDING: Yes

DISCUSSION: The Court framed the question, and noted that the “clearly established Federal law” was “largely undisputed.” In U.S. v. Perez, the Court agreed that “when a judge discharges a jury on the grounds that the jury cannot reach a verdict, the Double Jeopardy Clause does not bar a new trial for the defendant before a new jury.”²⁸ The trial judge has the discretion to declare a mistrial whenever they find there is a “manifest necessity” to do so. Perez cautioned, however, that this power was to be exercised “with the greatest caution, under urgent circumstances, and for very plain and obvious causes.” Later cases, however, have modified that ruling to some extent,²⁹ giving more latitude to the trial judge. Great deference is given to the judge’s decision, in particular, when it comes to concluding a jury is deadlocked, and noted that to find otherwise might cause a judge to put undue pressure on a jury to reach a decision, to the detriment of the defendant.

Further, the Court had never required a trial judge to make an explicit, written finding or to put on the record the factors that led to the decision to declare a mistrial. Prior decisions had not required that the jury deliberate a minimum amount of time, that the jurors be questioned individually, or the judge to consult with, or obtain consent from, either the prosecutor or defense attorney, or to “consider any other means of breaking the impasse.” To this date, the Court noted, the Court had never overturned a judge’s decision to declare a mistrial on the basis of manifest necessity.

However, in this matter, the federal court could only intervene if the Michigan Supreme Court’s decision was unreasonable. The Court noted that the Michigan court’s decision “involved a straightforward application of ... longstanding precedent to the facts of Lett’s case.” Michigan had found no abuse of discretion by the trial judge. The Sixth Circuit had speculated on the judge’s interpretations of the jury’s actions, which the Court found to be improper.

The Court ruled that federal law prevented defendants from using federal habeas review to “second-guess the reasonable decisions of state courts.” The Court found the Michigan Supreme Court’s ruling, which reinstated Lett’s conviction, to be not unreasonable. The Sixth Circuit’s decision was reversed and the case remanded.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/09-338.pdf>

Lewis v. City of Chicago, 130 S.Ct. 2191JUS (2010)
Decided May 24, 2010

²⁸ 9 Wheat. 579, 22 U.S. 579 (1824)

²⁹ See Arizona v. Washington, 434 U.S. 497 (1978); Illinois v. Somerville, 410 U.S. 458 (1973); Gori v. U.S., 367 U.S. 364 (1961).

FACTS: In July, 1995, Chicago gave a written examination for the Chicago Fire Department, to over 26,000 applicants. In 1996, it announced that it would begin a random draw from the top tier, those who scored 89 and above - calling them “well qualified.” Those who scored under 65 were taken out of consideration. Those in the middle, classified as “qualified,” were told that although they passed the test, it was not anticipated that they would be called for further processing, but that their names would be held on an eligibility list in case an insufficient number of those well-qualified failed to make the further cut.

Starting on May 16, 1996, and over the following 6 years, Chicago made a total of 10 draws. In the final round it exhausted the pool of “well qualified” applicants and began to draw from the “qualified” pool.

On March 31, 1997, Smith, an African-American applicant who had scored in the “qualified” range filed a charge of discrimination with the EEOC, and was quickly joined by five others who were similarly situated. The EEOC granted them “right-to-sue” letters and the six filed an action against Chicago. Class-action status was sought, and eventually, 6,000 similarly situated individuals were identified as potentially members of the class - “African-Americans who scored in the ‘qualified’ range on the 1995 examination but had not been hired.”

The City demanded summary judgment - arguing that the class members had failed to file their EEOC claims within 300 days after their claims accrued, but the trial court found that the “continuing reliance” on the test results was a “continuing violation” of Title VII, the relevant law. The City stipulated that the 89-point cutoff had a disparate effect on African-American applicants, but argued that it needed the cutoff for business necessity.

Following a bench trial, the District Court ruled in favor of the class members and ordered the City to hire 132 random members of the class. It awarded back pay to the remaining class members. The City appealed and the Seventh Circuit reversed, finding the filing to have been untimely. It identified the discriminatory act (which was the point at which the 300 days would begin) to have been the initial sorting of the scores. The class members appealed and the U.S. Supreme Court granted certiorari.

ISSUE: Does a disparate impact claim require a showing of a discriminatory intent?

HOLDING: No

DISCUSSION: The Court noted that there was no dispute that everything occurred within the time period except for the initial selection. As such, the “real question, then, is not whether a claim predicated on that conduct is timely, but whether the practice thus defined can be the basis for a disparate-impact claim *at all*.” The Court looked to the history of Title VII and noted that it initially did not cover “disparate impact” cases. In *Griggs v. Duke Power Co.*, however, the Court had ruled that it could be interpreted to extend to such cases.³⁰ Eventually, the *Griggs* decision was codified by statute. The matter was most recently discussed in *Ricci v. DeStefano*³¹ - and a “plaintiff [who] establishes a prima facie disparate-impact claim by showing that the employer ‘uses a particular employment practice that causes a disparate impact’ may be successful.

³⁰ 401 U.S. 424 (1971).

³¹ 557 U.S. --- (2009).

The Court agreed that the process described is, in fact, an “employment practice” and that each time a new class was filled, it made use of the practice. The Court stated that although disparate-treatment claims require a discriminatory intent and a deliberate discriminatory intent within the required time frame, but “for claims that do not require discriminatory intent, no such demonstration is needed.” Disparate impact claims do not require that discriminatory intent.

Although the Court agreed that the result in this case might present practical problems for employers who have used this method for years, it left it for Congress to repair the problem. The Court reversed the decision of the Seventh Circuit and remanded the case back for further proceedings as indicated by the opinion.

Berghuis (Warden) v. Thompkins, 130 S.Ct. 2250 (2010)
Decided June 1, 2010

FACTS: A shooting occurred in Southfield (Michigan) on January 10, 2000. Morris died from multiple gunshot wounds; France survived and later testified. Thompkins, the suspect, fled, but was apprehended a year later in Ohio.

Southfield officers traveled to Ohio to question Thompkins, who was “awaiting transfer to Michigan.” At the beginning of the interrogation, Officer Helgert provided Thompkins with his Miranda³² rights in writing. The officer had Thompkins read the last provision of the warnings out loud to ensure that Thompkins could read and presumably understand English. Helgert read the other four warnings to Thompkins and he signed the form. There was conflict in the record as to whether Thompkins was asked, or verbally confirmed, that he understood his rights.

During the ensuing 3 hour interrogation, “at no point ... did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney.” He was “largely silent,” but did occasionally give a limited verbal response, such as yes, no or a comment such as “I don’t know.” He also refused a peppermint and mentioned that the chair he was sitting on was hard. Toward the end of the interrogation, one of the officers asked Thompkins if he believed in God and Thompkins’s eyes “welled up with tears.” Thompkins agreed he prayed to God. Officer Helgert then asked him, “Do you pray to God to forgive you for shooting that boy down?” Thompkins responded “yes” and looked away. He refused to give a written confession and the interrogation ended some 15 minutes later.

Thompkins was charged with murder, assault and related firearms offenses. He moved for suppression of his statements, arguing that he had invoked his Fifth Amendment rights and that interrogation should have then ended.³³ The trial court denied the motion.

Thompkins was convicted and appealed. The Michigan appellate courts denied his argument that the statements should have been suppressed, holding that he had “not invoked his right to remain silent.” Thompkins filed a petition for habeas corpus in the U.S. District Court, which also rejected his claim, stating that the state court’s decision was not “contrary to, or involved an unreasonable application of clearly

³² Miranda v. Arizona, 384 U.S. 436 (1966).

³³ Michigan v. Mosley, 423 U.S. 96 (1975).

established federal law.”³⁴ “The District Court reasoned that Thompkins did not invoke his right to remain silent and was not coerced into making statements during the interrogation.”

Thompkins appealed to the U.S. Court of Appeals for the Sixth Circuit, which reversed. The Sixth Circuit “acknowledged that a waiver of the right to remain silent need not be express, as it can be ‘inferred from the actions and words of the person interrogated.’”³⁵ However, its recitation of the facts indicated that it believed that “Thompkins was silent for two hours and forty-five minutes” and that silence offered a “clear and unequivocal message to the officers: Thompkins did not wish to waive his rights.” (The Court also ruled in his favor on an unrelated assistance-of-counsel issue.) The Warden (as the respondent in a habeas petition) requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Must a subject unambiguously and unequivocally invoke the right to silence?

HOLDING: Yes

DISCUSSION: The Court reviewed the history of the Miranda ruling and noted that all of the parties conceded “that the warning given in this case was in full compliance with these requirements.” Instead, the dispute in this case “centers on the response – or nonresponse – from the suspect” following the warnings being given. Thompkins argued that he remained silent “for a sufficient period of time so the interrogation should have ‘ceas[d]’ before he made his inculpatory statement.”³⁶ However, the Court noted, in Davis v. U.S., it had “held that a suspect must do so ‘unambiguously.’”³⁷

The Court continued:

The court has not yet stated whether an invocation of the right to remain silent can be ambiguous or equivocal, but there is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel at issue in Davis.

Further, it ruled that “there is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously.” Such a requirement avoids forcing law enforcement officers “to make difficult decisions about an accused’s unclear intent and face the consequences of suppression ‘if they guess wrong.’”³⁸

The Court then considered whether, in fact, Thompkins waived his right to remain silent.

The Court continued:

The waiver inquiry “has two distinct dimensions”: waiver must be “voluntary in the sense that it was the produce of a free and deliberate choice rather than intimidation, coercion, or

³⁴ 28 U.S.C. §2254(d)(1).

³⁵ North Carolina v. Butler, 441 U.S. 369 (1979).

³⁶ Mosley, *supra*.

³⁷ 512 U.S. 452 (1994).

³⁸ See Moran v. Burbine, 475 U.S. 412 (1986).

deception,” and “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.”³⁹

Decisions since Miranda demonstrate “that waivers can be established even absent formal or express statements of waiver that would be expected in, say, a judicial hearing to determine if a guilty plea has been properly entered.” The prosecution, as such, “does not need to show that a waiver of Miranda rights was express.” Instead, an “implicit waiver” is “sufficient to admit a suspect’s statement into evidence.”⁴⁰ It is to the prosecution to make an adequate showing that the accused understood Miranda rights, as given. Once that is done, however, “an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.”

Further:

Although Miranda imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a Miranda warning, it does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights.

Miranda rights can be waived through more informal means than a “typical waiver on the record,” which generally requires a verbal invocation. The Court found no “contention” on the record that Thompkins did not understand his rights, but instead, found “more than enough evidence in the record” that he did. His response to the officer’s final question was a “course of conduct indicating waiver” of the right to remain silent – he could have remained silent or invoked his Miranda rights at that time, or any time earlier, ending the interrogation. The fact that would have been three hours after the warning was given was immaterial and “police are not required to rewarn suspects from time to time.” This is further confirmed in that he gave “sporadic answers to questions throughout the interrogation.” The Court found no evidence of coercion or threat, as neither, the length of time nor the conditions of the interrogation were not such as would put him in physical or mental distress. Appealing to his religious beliefs (moral and psychological pressures) did not make the interrogation improper.⁴¹

Thompkins also contended that the police could not question him until they obtained a waiver, but again, the Court noted that Butler foreclosed this line of argument.

The Court stated:

Interrogation provides the suspect with additional information that can put his or her decision to waive, or not to invoke, into perspective. As questioning commences and then continues, the suspect has the opportunity to consider the choices he or she faces and to make a more informed decision, either to insist on silence or to cooperate. When the suspect knows that Miranda rights can be invoked at any time, he or she has the opportunity to reassess his or her immediate and long-term interests. Cooperation with the police may result in more favorable treatment for the suspect; the apprehension of accomplices; the prevention of continuing injury and fear; beginning steps towards relief or

³⁹ Id.

⁴⁰ Butler, supra.

⁴¹ Oregon v. Elstad, 470 U.S. 298 (1985).

solace for the victims; and the beginning of the suspect's own return to the law and the social order it seeks to protect.

The Court affirmed that in order for a statement (under interrogation) to be admissible, the accused must have been properly given, and understood, the Miranda warnings. The Court would then look for an express or implied waiver but the Court agreed that officers need not obtain a waiver before commencing an interrogation.

The Court agreed that the statements were admissible and reversed the decision of the Sixth Circuit on the issue. The Court also ruled on an unrelated question with respect to jury instructions, and found no prejudice to Thompkins. The Court remanded the case to the lower court to deny the habeas petition.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-1470.pdf>

Carr v. U.S., 130 S.Ct. 2229 (2010)
Decided June 1, 2010

FACTS: Carr became a sex offender subject to registration in 2004, in Alabama. In late 2004/early 2005, he relocated from Alabama to Indiana, prior to the enactment of the federal Sex Offender Registration and Notification Act (SORNA), which made it a violation of federal law to fail to register in a new state when a sex offender relocates. He did not register with Indiana, and was indicted in 2006 for that failure. He moved to dismiss, arguing that his travel occurred before SORNA made it a requirement to register following relocation. His motion to dismiss was denied by the trial court, and he took a conditional guilty plea. He then appealed, and the Seventh Circuit upheld the trial court's position.

Carr requested review and the U.S. Supreme Court granted certiorari.

ISSUE: Does SORNA apply to a sex offender's interstate travel that occurred *prior* to its enactment?

HOLDING: No

DISCUSSION: The Court reviewed the language and history of SORNA. The Government's position was that so long as the travel occurred after the date SORNA became effective, registration was required, while Carr argued that the travel had to post-date the enactment date. The Court concluded that "Carr's interpretation better accords with the statutory text."

The Court reversed the decision of the Seventh Circuit and remanded the matter to the lower court for further proceedings.

Holder, Attorney General v. Humanitarian Law Project, 130 S.Ct. --- (2010)
Decided June 21, 2010

FACTS: The plaintiffs in the case are several individuals who wish to "provide support for the humanitarian and political activities" of the Partiya Karkeran Kurdistan (PKK) - an organization with an aim of establishing an independent Kurdish state in Turkey and the Liberation Tigers of Tamil Eelam (LTTE), which has the goal of "creating an independent Tamil state in Sri Lanka." The United States had identified

both as having “committed numerous terrorist attacks, some of which have harmed American citizens.” The LTTE’s status as a “foreign terrorist organization” had been upheld by the D.C. federal circuit, the PKK did not challenge its designation. The Court noted that the decision to so designate a group falls to the Secretary of State, and that the two groups in question were among 30 named in 1997.

The plaintiffs, however, filed suit, arguing that the federal law prohibiting the provision of material support to foreign terrorist organizations, 18 U.S.C. §2339B, was unconstitutional, and that they wished to support the “lawful, nonviolent activities” of the two groups. After a lengthy litigation history, the case has focused on a challenge to the “prohibition on providing four types of material support—“training,” “expert advice or assistance,” “service,” and “personnel”—asserting violations of the Fifth Amendment’s Due Process Clause on the ground that the statutory terms are impermissibly vague, and violations of their First Amendment rights to freedom of speech and association.”

The District Court ruled that they plaintiffs were unlikely to be successful in their First Amendment speech and association claims, but that certain terms in the statute were “impermissibly vague.” The Court of Appeals agreed, further stating that it was “easy to imagine protected expression that falls with the bounds” of certain terms in the statute. During the pendency of the action, following the events of 9/11/2001, the PATRIOT Act added “expert advice or assistance” to the definition of “material support or resources.” The plaintiffs filed a second action challenging the constitutional of that term, as well. The District Court denied a motion to dismiss the case, finding that there was sufficient reason for the plaintiffs to find their protected expression chilled, and that the term was also impermissibly vague. The Court rejected their First Amendment claims, however, on the added term.

During the ensuing years, both actions moved forward, and further legislation clarified certain points related to the statute. Eventually the two actions were consolidated. The 9th Circuit ruled that the First Amendment issues were dismissed, but that the terms were facially vague. The Government petitioned for certiorari, and the plaintiffs filed a cross-petition. Both were granted.

ISSUE: Is the prohibition in 18 U.S.C. §2339B against material support, including training and expert advice or assistance unconstitutionally vague?

HOLDING: No

DISCUSSION: First, the Court clarified the actual issue - whether the terms in question, in the statute, were unconstitutionally vague. The plaintiffs argued that they violated the Due Process Clause of the Fifth Amendment, as well as their First Amendment right to freedom of speech and association. Specifically, they argue that the statute “prohibits them from engaging in certain specified activities” which are listed in the opinion.

Because the plaintiffs were acting for “preenforcement review of a criminal statute” - the Court first had to decide if it was in fact ripe for such review. The Court concluded that it did, because there was a credible threat of prosecution.

The Court then noted that since its initial enactment, Congress had added “narrowing definitions to the material support statute over time” which “increased the clarity of the statute’s terms.” Specifically, the terms were “clear in their application to the plaintiffs’ proposed conduct.” As for the Free Speech issue, the Court noted that the “plaintiffs may say anything they wish on any topic.” They may also become members

of said organizations. The Court stated that the question is whether the “Government may prohibit what plaintiffs want to do—provide material support to the PKK and LTTE in the form of speech.”

The Court, however, agreed that “any contribution” to the activities of a terrorist act is not limited to monetary support only - as the plaintiffs argued. The removal, by Congress, of an exception for humanitarian aid, demonstrated that it “considered and rejected the view that ostensibly peaceful aid would have no harmful effects.” The court noted that both are “deadly groups” that have engaged in extensive terrorist activities. Providing support for peaceful activities simply “frees up other resources within the organization that may be put to violent ends” and lends legitimacy to the organization that makes it easier to recruit both for members and additional funding, which leads in turn to more terrorist attacks. Many “conceal their activities behind charitable, social, and political fronts.” They do not have firewalls to segregate their financial resources.

Following a lengthy and detailed discussion, the Court found in favor of the Government’s position on all three issues, and remanded the case for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-1498.pdf>

**McDonald v. City of Chicago, 130 S.Ct. ---
Decided June 28, 2010**

FACTS: McDonald, along with other citizens of Chicago and Oak Park (a suburb of Chicago) challenged local ordinances that effectively banned the private possession of handguns, even in the home. The District Court upheld the ordinance and the 7th Circuit Court of Appeals affirmed.

McDonald requested review and the U.S. Supreme Court granted certiorari.

ISSUE: Is the Second Amendment right to keep and bear arms incorporated in the States by the Fourteenth Amendment?

HOLDING: Yes

DISCUSSION: The Court engaged in a lengthy review of the history of the right to bear arms in the United States, as well as the history of the Fourteenth Amendment, ratified following the Civil War. The Court acknowledged the confusion concerning the central issue of whether the Bill of Rights (specifically the first eight) became mandatory in the states following the enactment of the Fourteenth Amendment, but recognized that it was unnecessary to decide that issue - that the only issue at hand was whether the Second Amendment was incorporated.

The Court noted that the decisions⁴² upon which the Seventh Circuit relied “all preceded the era in which the court began the process of ‘selective incorporation’ under the Due Process Clause” [of the Fourteenth Amendment]. Through that process, gradually, most of the provisions of the Bill of Rights have been individually applied to the states, one notable exception, however, is the Sixth Amendment clause that requires a unanimous verdict in a criminal trial. That remains a decision for individual states.

⁴² See U.S. v. Cruikshank, 92 U.S. 542 (1876); Presser v. Illinois, 116 U.S. 252 (1886); Miller v. Texas, 153 U.S. 535 (1894).

The Court stated that its decision in [District of Columbia v.] Heller⁴³“points unmistakably to the answer” in this case. In Heller, it emphasized:

Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in Heller, we held that individual self-defense is ‘*the central component*’ of the Second Amendment right.”

Heller also made it quite clear that handguns were often the first choice to defend one’s home, and that this right was “deeply rooted in [the] Nation’s history and tradition.” The Court noted that “the right to keep and bear arms was also widely protected by state constitutions at the time when the Fourteenth Amendment was ratified, immediately following the Civil War. For example, in Kentucky, Article XII, §23, of the First Constitution, ratified in 1792, reads as follows:

The rights of the citizens to bear arms in defense of themselves and the State shall not be questioned.

Similar provisions have remained a part of the Kentucky Constitution to the present day.

The Court discounted the many arguments put forth by Chicago (and amici parties), refusing to hold that the Second Amendment should not be considered a fundamental right. It did, however, agree that its holdings, both in Heller and the case at bar, “did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or law imposing conditions and qualifications on the commercial sale of arms.’” The Court emphatically stated that despite Chicago’s “doomsday proclamations, incorporation does not imperil every law regulating firearms.”

The Court concluded that the right to bear arms is a fundamental right and that the Second Amendment is incorporated to the states by the Fourteenth Amendment. The decision of the 7th Circuit Court of Appeals was reversed and the case remanded for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-1521.pdf>

⁴³ 554 U.S. --- (2008).