

Peters: Constitutional Law - SS 3660 (Spring 2008)

Selected Court Cases for Oral Argument and Case Analysis.

You will be the opportunity to review and argue a case, it will either be a case that is pending before the US Supreme Court or has a high likelihood of being reviewed in the near future. There are many to choose from so I have prepared a list of about 20 significant cases. Once you choose, you will want to look at the material here and at the links for more information about each case.

In each case you will be required to first find the lower court (court of appeals or State Supreme Court) decision that is subject to the appeal. You will turn in a “brief” of that case and a subsequent “Case Analysis” on the pending case – that is a 3-5 page essay describing the case and your view of how it should be resolved. This project will culminate in a series of class debates on each case as well as written opinions from student Justices. Indeed, once the cases have been chosen you will also select an argument to judge.

With respect to research, there should be many resources for information on these cases. I am happy to help you find more information as well. One of the best available resources for this information is the Oyez/ On the Docket site put out by Northwestern University Medill School of Journalism, as well as the

[\[1\]](#)

SCOTUSwiki. Much of the descriptive material here comes straight from one of those sites. You will want to look at the materials they have linked for your case and you will want to complete further research by looking up news articles or other relevant information about your case. In many instances you will need to use Lexis to find the relevant lower court opinion.

Current Case List – as of Feb 27 2008

1&2) Boumediene, Lakhdar, et al. v. Bush, George, et al. / Al Odah, Khaled, et al. v. U.S. Docket: 06-1195 / 06-1196
Appealed From: Court of Appeals for the District of Columbia

” In *Boumediene v. Bush* lawyers raised two questions:

(1) did Congress in the 2006 law, the MCA, validly take away federal courts’ jurisdiction over Guantanamo detainees’ habeas claims and

(2) whether the detainees’ petitions for habeas showed that they were entitled to release or, at least, to a court hearing on the legality of their detention.

(helpful chronology of events in detainee cases here -- <http://www.scotusblog.com/wp/wp-content/uploads/2007/11/detaineechron.pdf>

See http://www.scotuswiki.com/index.php?title=Boumediene/Al-Odah_v._Bush for links as well as Mayer Brown website here
By OTD Staff <http://docket.medill.northwestern.edu/archives/004556.php>

In 2002 Lakhdar Boumediene and five other Algerian natives were seized by Bosnian police when U.S. intelligence officers suspected their involvement in a plot to attack the U.S. embassy there. The U.S. government classified the men as enemy combatants in the war on terror and detained them at the Guantanamo Bay Naval Base, which is located on land that the U.S. leases from Cuba.

3. District of Columbia v. Heller, 07-290

<http://docket.medill.northwestern.edu/archives/004636.php>

The case, District of Columbia v. Heller, No. 07-290, involves three District of Columbia firearms ordinances. The first, D.C. Code Sec. 7-2502.02(a)(4), generally bars the registration of handguns. The second, D.C. Code Sec. 22-4504(a), prohibits carrying a pistol without a license. The third, D.C. Code Sec. 7-2507.02, requires that all lawfully owned firearms be kept unloaded and either disassembled or trigger locked.

A group of plaintiffs brought suit; several alleged that they wanted to keep handguns at home for self-defense, while one wished to keep her legal shotgun assembled and unlocked within her home. Finally, plaintiff Dick Heller, who as a D.C. special police officer is entitled to carry a gun while working as a guard at the Federal Judicial Center (which offices retired Supreme Court justices), was denied the right to register his gun to keep at home. http://www.scotuswiki.com/index.php?title=DC_v._Heller

4) Baze v. Rees, Docket: 07-5439 ,Appealed From: Supreme Court of Kentucky

Oral Argument: Jan. 7, 2008

<http://docket.medill.northwestern.edu/archives/004624.php>

“In the case, Baze v. Rees, No. 07-5439, two inmates are challenging Kentucky's four-drug lethal injection protocol. .. The Kentucky Supreme Court affirmed the constitutionality of lethal injection last year, noting that of the 38 states that permit capital punishment, the majority use the injection method because it is "universally recognized as the most human method of execution and the least apt to cause unnecessary pain." Baze v. Rees, 217 S.W.3d 207, 210 (Ky. 2006).

The lethal injection method calls for the administration of four drugs: Valium, which relaxes the convict, Sodium Pentathol, which knocks the convict unconscious, Pavulon, which stops breathing, and potassium chloride, which essentially puts the convict into cardiac arrest, ultimately causing death.”

See also: SCOTUS – analysis focus on the Mechanics of Execution

<http://www.scotusblog.com/wp/uncategorized/analysis-focus-on-the-mechanics-of-execution/>;Killing me Softly” by Dahlia Lithwick, <http://www.slate.com/id/2181491/>

5) Crawford v. Marion City Election Board (07-21) and Indiana Democratic Party v. Rokita (07-25) (constitutionality of requiring voters to show a photo ID before they may vote)

“The Supreme Court has agreed to review the constitutionality of Indiana's strict voter identification law...The case, Crawford v. Marion County Election Board... is a challenge to the 2005 Indiana law requiring all voters who cast a ballot in person to present a photo ID issued by the United States or the State of Indiana. Until July 2005, voters needed only to sign a poll book to demonstrate that their signature was consistent with the voter registration on file.

Plaintiffs, ... argued that the law constituted an undue burden on the right to vote. They contended that some would-be voters who are either homeless or who do not drive -- and therefore do not need state-issued IDs -- would be prevented from voting. Moreover, they argued in their petition for certiorari, those citizens are unlikely to obtain the required identification either because of the cost or paperwork involved in doing so.

The Seventh Circuit affirmed the district court in approving the law. Crawford v. Marion County Election Board, 472 F.3d 949 (7th Cir. 2007). Judge Richard Posner, joined by Bush appointee Diane Sykes, wrote that the Democrats' inability to find even a single plaintiff who would testify that the law would prevent him from voting demonstrated the slight burden Indiana was imposing. Posner went on to question whether individuals get much personal reward from voting "since elections for political office at the state or federal level are never decided by just one vote." On the other side of the scale, he reasoned, was the state's legitimate interest in preventing voter fraud.

Judge Terrence Evans, an Indiana resident himself, bluntly countered that the law was a "not-too-thinly-veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic." He took the state to task for setting up barriers to the polling place at the same time that voter participation has been declining, in the name of fraud prevention, which he called a "fig leaf."” See Oyez <http://docket.medill.northwestern.edu/archives/004622.php>

Related article: David Savage, "Supreme Court will hear Voter ID case" Jan 7, 2008 LA Times.

<http://www.latimes.com/news/nationworld/nation/la-na-voterid7jan07,1,146371.story?coll=la-headlines-nation>

For more case information see: http://www.scotuswiki.com/index.php?title=Crawford_v._Marion_County_Election_Bd.

6) Kennedy v. Louisiana Docket 07-343

"For three decades, the Supreme Court has permitted the death penalty only for the crime of murder. Kennedy, a Louisiana man under death sentence filed a new appeal asking the Court to maintain that limit, barring his execution for the crime of rape of a child. The Louisiana Supreme Court, however, ruled on May 22 that the Supreme Court's 1977 decision barring capital punishment for rape (*Coker v. Georgia*) does not apply when the victim is a child under age 12."

http://www.scotuswiki.com/index.php?title=Kennedy_v._Louisiana

7) Arizona v. Gant, 07-542 In *Gant* the Court said its review would be limited to the following issue: "Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?" The state of Arizona contended in its appeal that the Arizona Supreme Court had undercut the Supreme Court's 1981 decision in *New York v. Belton*, which the state said laid down a bright-line rule allowing police to search a vehicle without a warrant following an arrest of the occupant. See <http://www.fourthamendment.com/blog/>

8) Davis v. FEC Docket: 07-552

Appealed From: U.S. District Court for the District of Columbia (work on 1A issue only)

"The Supreme Court may pass this term on the constitutionality of the so-called Millionaire's Amendment to the 2002 campaign finance law.

"The case, Davis v Federal Election Commission, No. 07-552, was brought by Jack Davis, the wealthy Democratic candidate for Congress from New York's 26th District. The campaign reform law calls for a three-judge panel of the federal district court in the District of Columbia to preside at the trial level, with a direct appeal to the Supreme Court.

Davis had argued in the district court that the law, which essentially raises the contribution cap for those running against self-financed candidates, on its face violated both the First Amendment and the Fifth Amendment's Equal Protection Clause.

The district court rejected Davis's argument. The court explained that the statute did not violate the First Amendment because it did not impede Davis's right to spend money in support of his political message. The fact that it relaxed the financial strictures on Davis's opponent, the court reasoned, did not impair Davis and led to a higher level of speech in the race overall. The district court compared the relaxation of contribution limits for those facing wealthy opponents to constitutionally valid statutes permitting higher contribution limits for candidates who undertake publicly financed campaigns."

From Oyez at <http://docket.medill.northwestern.edu/archives/004666.php>

9) Wyeth v. Levine , 06-1249, Appealed From: Vermont Supreme Court

Federal Preemption of State law

"The Court has agreed to decide whether a musician who lost her arm after receiving an anti-nausea drug via an off-label injection method may recover under Vermont tort law despite FDA approval of the drug's label.

The case, Wyeth v. Levine, No. 06-1249, arose when Diana Levine went to the hospital suffering from nausea associated with a migraine headache. Physicians initially gave her Phenergan, a drug manufactured by Wyeth, by injecting it into her muscles. When her nausea persisted, they gave her the drug using the so-called "IV push" method, involving injection of the drug into her vein. They bypassed administration via an IV drip. The drug made contact with her arteries, leading to gangrene and forcing doctors to

amputate her arm.

The Phenergan label had been approved by the FDA in 1955, and re-evaluated and approved in the late 1980s. Wyeth knew that if the drug reached the arteries it could cause gangrene. Its approved label cautioned that if the drug were administered by and IV drip, care should be taken to avoid arterial exposure and noted the risk. The label did not mention the IV push method of injection, and evidence suggested that the FDA did not evaluate whether the label should address the risk associated with the IV push method.”

From Oyez site <http://docket.medill.northwestern.edu/archives/004674.php> and http://www.scotuswiki.com/index.php?title=Wyeth_v_Levine

NOT BEFORE THE COURT (yet) –BUT PROMISING....

11) Cert Denied: **Abigail Alliance for Better Access to Developmental Drugs, et al. v. Eschenbach, Docket: 07-444**

Issue: Whether, under the Due Process Clause, the government may prevent terminally ill patients from accessing medication that has passed the first phase of the FDA approval process.

See also LA Times, Jan 18, 2008 “Justices Uphold Ban on Test Drugs for the Dying”

<http://www.latimes.com/business/careers/work/la-na-scotus15jan15,1,7282895.story?coll=la-headlines-business-careers>

12) **Parker v. Hurley, 07-1528** (1st Cir., Jan. 31, 2008)

Massachusetts was a national leader on the issue of gay marriage, and now some elementary schools are apparently following suit. This does not sit well with all of the parents of school-aged children, including the plaintiffs in this suit against Lexington school officials.

The Parkers complain that their kindergarten-age son was sent home with a “Diversity Book Bag,” which included a book that showed same sex couples as parents. Meanwhile, the Wirthings complain about the story *King and King*, which was read in their second-grade son’s classroom. From the opinion:

This picture book tells the story of a prince, ordered by his mother to get married, who first rejects several princesses only to fall in love with another prince. A wedding scene between the two princes is depicted. The last page of the book shows the two princes kissing, but with a red heart superimposed over their mouths.

Both sets of parents wanted the right to opt out of any classroom activities or materials that would expose their children to homosexual conduct. But the school districts refused to give the parents any say in the classroom, or even to give them a heads up about the activities in question. So the parents sued under the First Amendment and the Due Process Clause, claiming that the schools were indoctrinating their kids in the homosexual agenda, in violation of the families’ religious beliefs.

The district court threw out their claims, and the First Circuit affirmed. <http://blogs.enotes.com/decision-blog/2008-02/first-rejects-claims-from-parents-angry-over-homosexuality-in-elementary-schools/>

13) **Redding v. Safford Unified School District #1, 05-15759** (9th Cir., Jan. 31, 2008)

9th Circuit Opn at <http://blogs.enotes.com/decision-blog/2007-09/ninth-upholds-strip-search-of-student-suspected-of-dealing-ibuprofen/>

Thirteen-year-old Savana Redding, an honor roll student with no prior disciplinary problems, was required to strip, exposing her

breasts and pubic area, in a fruitless search for — at worst — prescription strength ibuprofen.

Redding sued the school district for violating her Fourth Amendment, but a divided panel of the Ninth Circuit tossed out her claims. (In January the Ninth Circuit ordered en banc rehearing. This should get interesting.

14) **Amidon v. Student Association of the State University of New York**, [05-6623](#) (2nd Cir., Nov. 20, 2007)

In an interesting First Amendment decision, the Second Circuit has upheld a lower court's ruling that SUNY-Albany's procedures for allocating funds to campus groups are unconstitutional. Every student at SUNY-Albany is required to pay \$80 in activities fees per semester, generating almost \$1.69 million a year. Campus organizations then submit budget proposals to the student government, which evaluates their requests and comes up with a tentative allocation. The student body then gets to vote on the proposed allocations. The vote is considered advisory, and the student government uses the results to determine the final level of funding for each group.

The problem, at least from the perspective of conservative students, is that these procedures heavily favor student groups with a liberal agenda. For example, during the spring 2003 voting cycle, the liberal advocacy group NY-PIRG collected \$5 from every student, while a newly formed conservative group got just pennies, receiving a total allocation of \$1200.

This provoked a law suit from the conservative group (whose mission, ironically, advocates using "the free enterprise system" to solve the world's problems). Today's Second Circuit appeal involves the plaintiffs' claim that the student voting system violates the First Amendment. The district court agreed and granted summary judgment to the plaintiffs. On appeal, the Second Circuit affirms. The Court explains that SUNY's student fee system is a limited public forum, so all decisions regarding allocation need to be viewpoint-neutral. In contrast, allowing students to vote on allocations all but ensures that organizations will be discriminated against based on viewpoint. Accordingly, the current system cannot stand.

Sounds like a major victory for the plaintiffs, right? Well, maybe not. In dicta, the panel notes that it would have no problem with an advisory vote that asks students whether they plan to attend a particular organization's events. Thus, by tailoring the question slightly, the student government can likely achieve the same result without running afoul of the First Amendment. So while the plaintiffs have won this battle, it looks like they may have lost the war.

See [Second Strikes Down Student Government Funding System](#)

Tuesday, November 20th, 2007

<http://blogs.enotes.com/decision-blog/2007-11/second-strikes-down-student-government-funding-system/>

15 **Arizona Life Coalition v. Stanton**, [05-16971](#) (9th Cir., Jan. 28, 2008)

Pro-lifers won a big victory today, courtesy of the Ninth Circuit. A coalition of pro-life and pregnancy support groups asked the Arizona License Plate Commission to start issuing speciality plates with the message, "Choose Life." Even though the request complied with state law, the Commission was concerned about allowing controversial messages and ultimately refused to issue the plates.

The Coalition filed suit, arguing that the denial violated its First Amendment and Equal Protection rights. The circuits are deeply split on how to analyze these claims in the context of a state-issued license plate, but the district court sided with the Commission and granted summary judgment to the defendants.

On appeal, a panel of the Ninth Circuit reverses, drawing heavily on the logic of [a divided Sixth Circuit decision](#). (My coverage [here](#).) Writing for the Court, Judge Tallman explains that Arizona's specialty plate program creates a public forum for private speech. The statute makes specialty plates available to "nonprofit organizations with community driven purposes that do not promote a specific religion, faith or antireligious belief." The Coalition satisfies these criteria, and the Commission's refusal to issue the plates lacks a statutory basis and is not related to the purpose of the forum. Accordingly, the Court concludes that the Coalition is entitled to its plates.

<http://blogs.enotes.com/decision-blog/2008-01/coming-soon-to-arizona-roads-choose-life-license-plates/>

16) **U.S. v. Auster**, [07-30084](#) (5th Cir., Feb. 11, 2008)

Today, the Fifth Circuit broke new ground in a growing circuit split over whether the psychotherapist-patient privilege applies to violent threats. Defendant John Auster is a retired police officer who suffers from paranoia, anger, and depression; the fact that his worker's compensation benefits were about to be terminated did not help matters. Auster told his two therapists that he was prepared for a campaign of violent retribution if his benefits were not reinstated. The therapists had a duty under state law to report these threats, and the government decided to prosecute Auster for extortion.

But the prosecution hit a road bump when the district court tossed out Auster's threatening statements. Following authority from the Sixth and Ninth Circuits, the district court decided that Auster's threats were protected by the psychotherapist-patient privilege and therefore not admissible at trial.

On appeal, the Fifth Circuit reverses. The panel explains that Auster knew that his therapists had to report any violent threats made during their sessions, so Auster had no expectation of confidentiality. Thus, the statements are not privileged as a matter of law. For those who keep score, the division is now 2-2 (or perhaps 2-1-1), as the Tenth Circuit has reached a similar conclusion but on different grounds.

See [Fifth Widens Circuit Split Over Psychotherapist-Patient Privilege](#)

February 11th, 2008 by Robert Loblaw

<http://blogs.enotes.com/decision-blog/2008-02/fifth-widens-circuit-split-over-psychotherapist-patient-privilege/>

17) **Storage Locker as a Home? U.S. v. Murphy**, [06-30582](#) (9th Cir., Feb. 20, 2008)

"Does a meth manufacturer who is squatting in a storage facility have the same Fourth Amendment rights as a person who is living in a house? That's the issue that faces a panel of the Ninth Circuit in this criminal decision. The most interesting question for this appeal is whether the person renting the storage unit could validly consent to a search of the quarters occupied by the defendant, who had refused to allow the police to search. The issue is complicated by the fact that the renter knew that the defendant was living there but had recently tried to kick him out, obviously without success.

The Ninth concluded that search was unlawful under [Georgia v. Randolph](#), in which the Supreme Court held that a wife's consent to allow police officers to search the house did not trump her husband's refusal. "

18) **Privacy and Publication of Online Information: Lambert v. Hartman** (Feb 25, 2008). Sixth Circuit held that an Ohio county's online publication of traffic ticket revealing a woman's personal identifying information, including the woman's Social Security number, did not violate the woman's constitutional right to privacy: You can access the ruling [at this link](#).

<http://www.ca6.uscourts.gov/opinions.pdf/08a0089p-06.pdf>

As a result of the county's online publication of this information, the woman claims that she became the victim of identity theft.

19) **(Newdow IV) Roe v. Rio Linda School**, This case is currently on appeal to the 9th Circuit presents a new challenge to the use of the Words 'under god' in the Pledge of Allegiance. Newdow's prior challenge to the practice was upheld by the Ninth Circuit in ___ and the later dismissed by the Supreme Court on standing grounds (Newdow did not have physical custody of his daughter and so the court said he did not have standing to appeal). (Sup Ct ruling on CQ website, or on findlaw

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-1624>)

Newdow now represents three other parents in the school district, and has presented his case anew. In the most recent iteration of the case (Roe v. Rio Linda Schools) Judge Karlton struck down the school district's practice of reciting the pledge with the words under god in it. Karlton's decision was based on reliance on the 9th Circuit's prior ruling that the pledge violated the establishment clause. There is a great deal of dispute then about whether the prior Ninth Circuit Opinion has precedential value and as to the merits of the case. Students who choose to work on this case should focus on the substance of the challenge, that is

whether or not the use of the phrase ‘under god’ violates the establishment clause. I would not want to you get sidetracked on the question of whether stare decisis applies or other jurisdictional issues. Indeed, view this as you would a review of the Ninth Circuit’s decision in the original case. Elk Grove v. Newdow . See <http://www.undergodprocon.org/pdf/NewdowvUS.pdf> or the Medill website for links to the Ninth Circuit and other documents relating to the case.

<http://docket.medill.northwestern.edu/archives/000890.php>

All documents in the Newdow cases seem to be archived here: <http://www.undergodprocon.org/pop/legal.htm>

Harold Mintz, Pledge Fight to return to SF Courtroom, San Jose Mercury News,12-01-2007

http://www.mercurynews.com/lifestyle/ci_7609191

Marci Hamilton – The Supreme Court and the Pledge of allegiance Case, June 17, 2004, Findlaw Writ

<http://writ.news.findlaw.com/hamilton/20040617.html>

For interesting Podcast of Newdow

[1]

In addition the SCOTUS blog posts reliable commentary and links to cases pending before the Supreme court -- see <http://www.scotusblog.com/wp/> or Scotus WIKI – with links to all cases at http://www.scotuswiki.com/index.php?title=Case_Index. Oyez on the Docket is