

**THE SUPREME COURT OF THE  
UNITED STATES**

**OCTOBER TERM 1993**

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## HIT PARADE

1. *National Organization for Women Inc. v. Scheidler*, 62 LW 4073 (Health Care/Abortion)

Section 1962(c) of Racketeer Influenced and Corrupt Organizations Act, which makes it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt," does not require proof that either racketeering enterprise or predicate acts of racketeering were motivated by economic purpose. Accordingly, abortion clinics alleging that coalition of anti-abortion groups and individuals conspired to shut down clinics through pattern of racketeering activity need not show that defendants had economic motive in order to state a claim under Section 1962(c).

Rehnquist delivered the opinion for a unanimous Court.

2. *Board of Education of Kiryas Joel Village School District v. Grumet*, 62 LW 4665 (Schools and Colleges/Church and State)

New York Statute that creates a public school district coterminous with religious enclave in order to provide handicapped school children with public educational services already available in the surrounding community schools to which parents in enclave refuse to send their children neither guarantees that other religious communities will be treated equally nor constitutes the sole method for both providing educational services and accommodating religious sect's beliefs, and thus violates First Amendment's Establishment Clause.

Souter delivered the opinion of the Court. Scalia filed a dissenting opinion in which Rehnquist and Thomas joined.

3. *Campbell v. Acuff-Rose Music Inc.*, 62 LW 4169 (Copyrights/Fair Use)

Commercial nature of rap group 2 Live Crew's parody of Ray Orbison's copyrighted song, "Oh Pretty Woman", does not render it presumptively unfair use, under Section 107 of 1976 Copyright Act, with respect to either character and purpose of use of copyrighted work or harm caused by that use to potential market for copyrighted work. A parody that uses no more of lyrics and music of original work than necessary to make object of its critical wit recognizable does not copy unreasonable portion of copyrighted work as matter of law, even if part copied is heart of original work.

4. *J.E.B. v. Alabama ex rel. T.B.*, 62 LW 4219 (Courts and Procedure/Juries)

Fourteenth Amendment's Equal Protection Clause prohibits exercise of peremptory jury challenges on basis of gender. Gender, like race, is an unconstitutional proxy for juror competence and impartiality. So long as gender does not serve as a proxy for bias, unacceptable jurors may still be removed, including those who are members of a group or class that is normally

subject to "rational basis" review and those who exhibit characteristics that are disproportionately associated with one gender.

Blackmun delivered the opinion of the Court. Scalia filed a dissenting opinion in which Rehnquist and Thomas joined.

5. *Harris v. Forklift Systems Inc.*, 62 LW 4004 (Employment Discrimination/Sex Discrimination)

Workplace conduct, to be actionable as "abusive work environment" harassment under Title VII of 1964 Civil Rights Act, need not "seriously affect an employee's psychological well being" or lead the victim to "suffer injury", but, rather, need only be so severe or pervasive that a reasonable person would perceive, and victim does perceive, a work environment as hostile or abusive.

O'Connor delivered the opinion of a unanimous Court.

6. *Dolan v. Tigard, Ore.*, 62 LW 4576 (Cities and Counties/Building permits)

Conditions imposed by local government on property owner's development permit bear reasonable relationship to proposed development if they derive from local government's individualized determination concerning specific property and proposed development and are "roughly proportional" in both nature and extent to effect of such development and thus do not take property without just compensation in violation of the Fifth Amendment. Building permit conditions requiring property owner to dedicate portions of property for storm drainage improvement and for pedestrian/bicycle path, although related to county's legitimate concerns for flood control and traffic congestion, lack reasonable relationship to stated objectives and unduly burden property owner's right to exclude others, and therefore constitute uncompensated taking of property in violation of the Fifth Amendment.

Rehnquist delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun and Ginsburg joined. Souter filed a dissenting opinion.

7. *Madsen v. Women's Health Center Inc.*, 62 LW 4686 (Health Care/Abortion)

An injunction that prohibits anti-abortion protesters from demonstrating in certain places and in various ways in areas around an abortion clinic and the residences of clinic staff is directed at the protesters' conduct, not the contents of their message, and thus is not content or viewpoint based for First Amendment purposes. An injunction that imposes content-neutral restriction on speech protected by First Amendment must burden no more speech than necessary to serve significant government interest. Injunction provisions establishing 36-foot speech-free buffer zone around clinic entrances and driveway, and prohibiting demonstrators from making various kinds of noise "within earshot" of patients inside clinic, do not violate First Amendment, however, 36-foot buffer zone as applied to private property adjoining clinic, as well as injunction provisions prohibiting display of "images observable" by patients inside clinic, barring anti-abortion

demonstrators from approaching clinic patients within 300 feet of clinic, and barring picketing or demonstrating around residences of clinic staff violate First Amendment.

Rehnquist delivered the opinion of the Court. Scalia filed an opinion concurring in the judgment in part and dissenting in part, in which Kennedy and Thomas joined.

8. *Ladue, Mo. v. Gilleo*, 62 LW 4477 (Cities and Counties/Signs and Billboards)

Municipal ordinance designed to protect a valid interest in aesthetics by barring homeowners from displaying any signs on their property except identification, for sale, and safety warning signs, while permitting businesses, churches, and non-profit organizations to erect limited signs not allowed at residences, prohibits too much speech by almost completely foreclosing residential signs, which are a unique and an important medium of expression, and, even assuming content- and viewpoint-neutrality of various exceptions, cannot be justified as a reasonable time, place, and manner restriction on speech because it does not leave open adequate alternative means for communication, and therefore violates First Amendment.

Stevens delivered the opinion of a unanimous Court. O'Connor filed a concurring opinion.

9. *Montana Department of Revenue v. Kurth Ranch*, 62 LW 4429 (Criminal Law and Procedure/Double Jeopardy)

A tax imposed by a Montana statute on "possession and storage of dangerous drugs" constitutes punishment for purposes of analysis under Fifth Amendment's Double Jeopardy Clause. The reasons for this ruling when the tax is imposed in a proceeding subsequent to taxpayer's drug prosecution are the following: the statute's purpose is to deter unlawful activity, the tax rate is high, the tax is conditioned upon the commission of a crime and is exacted only after taxpayer's arrest for conduct, and is levied on goods taxpayer no longer owns or possesses. That it is conditioned on the commission of a crime is significant of penal and prohibitory intent rather than the gathering of revenue.

Stevens delivered the opinion of the Court. Scalia filed a dissenting opinion in which Thomas joined.

10. *U.S. v. James Daniel Good Real Property*, 62 LW 4013 (Criminal Law and Procedure/Forfeiture)

Real property may not, consistently with the Fifth Amendment's Due Process Clause, be seized pursuant to civil drug forfeiture statute 21 USC 881(a)(7), until property owner has been given notice and an opportunity to be heard, unless the government is able to demonstrate exigent circumstances establishing need for immediate seizure of property. A civil forfeiture action, filed within the five-year limitation period established by 19 USC 1621, is not subject to dismissal as a sanction for government's failure to comply with internal timing requirements set out in 19 USC 1602-04.

Kennedy delivered the opinion of a unanimous Court. Rehnquist filed an opinion concurring

in part and dissenting part in which Scalia joined. O'Connor filed an opinion concurring in part and dissenting part in which Thomas joined.

11. *National Labor Relations Board v. Health Care & Retirement Corporation of America*, 62 LW 4371 (Labor/Supervisors)

The National Labor Relations Board's determination that a nurse who, in exercise of professional judgment incidental to treatment of nursing home residents, directs less-skilled employees is not a "supervisor" is inconsistent within the meaning of the National Labor Relations Act's provision that in part defines supervisor as employee who exercises authority over other employees "in the interest of the employer".

Kennedy delivered the opinion of the Court. Ginsburg filed a dissenting opinion in which Blackmun, Stevens and Souter joined.

12. *Oregon Department of Revenue v. ACF Industries Inc.*, 62 LW 4097 (Taxation/Railroads)

Provisions of the 1976 Railroad Revitalization and Regulatory Reform Act that forbid states to impose higher property taxes upon railroad property than upon "other commercial and industrial property," and to impose "another tax that discriminates against a rail carrier," 49 USC 11503(b)(1)-(3) and (b)(4), do not limit states' discretion to exempt non-railroad property, but not railroad property, from generally applicable ad valorem property taxes.

Kennedy delivered the opinion of the Court. Stevens filed a dissenting opinion.

## ACCOUNTANTS

### Advertising

*Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy*, 62 LW 4503

Attorney's use in advertising of designations "CPA," referring to her licensure by Florida board of Accountancy, and "CFP," referring to her certification as certified financial planner by a private organization, neither of which status has been revoked by the respective authority, is commercial speech protected by First Amendment that the state may ban only if such use is false, deceptive, or misleading. Therefore, absent showing of noncompliance with board's standards or evidence that use of "CFP" in advertising automatically misleads public to infer state approval of that status, board's censure of attorney for using such designations violates First Amendment.

Ginsburg delivered the opinion of the Court. O'Connor filed an opinion concurring in part and dissenting in part in which Rehnquist joined.

## AERONAUTICS

### Airports

*Northwest Airlines Inc. v. Kent County, Mich.*, 62 LW 4103

User fees collected by Kent county airport from commercial airlines, non-commercial general aviation, and non-aeronautical concessionaires are based on fair approximation of use of facilities and are not excessive in relation to benefits conferred and do not discriminate against interstate commerce and thus do not violate Commerce Clause or federal Anti-Head Tax Act's mandate that airport user fees be "reasonable." The user fees are computed by determining costs of operating the airfield and passenger terminal, allocating costs associated with airfield operations between airlines and general aviation and maintaining a terminal between airline and concessionaire tenants, charging airlines 100 percent of costs allocated to them while charging general aviation carriers at lower rate, and charging concessionaires at market rate in excess of allocated costs.

Ginsburg delivered the opinion of the Court. Thomas filed a dissenting opinion. Blackmun took no part in the decision of this case.

### Employees

*Hawaiian Airlines Inc. v. Norris*, 62 LW 4537

Airline mechanic's state law claims for discharge in violation of public policy and Hawaii's Whistleblower Protection Act are not dependent on interpretation of collective bargaining agreement and thus are not pre-empted by Railway Labor Act's mandatory arbitral mechanism for "minor" disputes.

Blackmun delivered the opinion of a unanimous Court.

## ARMED FORCES

### Military Judges

*Weiss v. U.S.*, 62 LW 4047

Current method of appointing military trial and intermediate appellate judges, under which military officers, who have necessarily been appointed to their current ranks by the president with advice and consent of the Senate, are appointed as judges by appropriate judge advocate general without additional presidential appointment and Senate approval, does not violate Constitution's Appointments Clause or Uniform Code of Military Justice. The Fifth Amendment's Due Process Clause does not require that military judges have fixed terms of office.

Rehnquist delivered the opinion of the Court. Souter and Ginsburg filed separate concurring opinions.

## Judicial Review

*Dalton v. Specter*, 62 LW 4340

The claim that the Secretary of Defense and Defense Base Closure and Realignment Commission did not follow procedural mandates of 1990 Defense Base Closure and Realignment Act in recommending to president which military installations to close is not based on "final agency action" that is judicially reviewable under Administrative Procedure Act. The actions of the Secretary and the Commission are not reviewable "final agency actions" within the meaning of the APA, since their reports recommending base closings carry no direct consequences. The claim that president's acceptance of procedurally flawed recommendations violated terms of 1990 Act, which commits base closure decisions to president's discretion, is not a constitutional claim subject to judicial review outside the framework of the APA.

Rehnquist delivered the opinion of the Court.

## BANKING AND FINANCE

### Practice and Procedure

*O'Melveny & Myers v. Federal Deposit Insurance Corp.*, 62 LW 4487

Tort claim brought by the Federal Deposit Insurance Corp. as the receiver of a failed bank against the bank's attorneys is governed by the state, rather than the federal, rule of decision, and therefore the state law governs whether the bank officers' knowledge of fraud on the bank may be imputed to the FDIC as the receiver.

Scalia delivered the opinion of the Court. Stevens filed a concurring opinion in which Blackmun, O'Connor and Souter joined.

## BANKRUPTCY

### Fraudulent Transfers

*BFP v. Resolution Trust Corp.*, 62 LW 4359

The price actually received at a non-collusive real estate mortgage foreclosure sale conducted in compliance with relevant state law establishes "reasonably equivalent value" for purposes of the fraudulent transfer avoidance provisions of Section 548(a)(2) of the Bankruptcy Code. The relevant state law includes the requirement that the debtor receive "less than a reasonably equivalent value" for the transfer to be considered fraudulent.

Scalia delivered the opinion of the Court. Souter filed a dissenting opinion in which Blackmun, Stevens and Ginsburg joined.

## CITIES AND COUNTIES

### Employees

*Waters v. Churchill*, 62 LW 4397

The judgment that a public employer may be held liable for disciplining an employee on the basis of employee's speech if the jury finds that the employer was not reasonable and failed to conduct an adequate investigation to determine whether the speech was protected by First Amendment is vacated, and case is remanded for further proceedings.

O'Connor delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun joined.

## CIVIL RIGHTS

### Actionable Wrongs

*Albright v. Oliver*, 62 LW 4078

Court affirms judgment upholding dismissal of federal civil rights action that alleged violation of purported substantive due process right to be free of criminal prosecution except upon probable cause. This case presents no substantial burden on liberty beyond what the Fourth Amendment is generally thought to redress already, and petitioner's claim must be judged under the Fourth Amendment, not a general substantive due process violation claim.

Rehnquist delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun joined.

*Heck v. Humphrey*, 62 LW 4594

No cause of action exists under 42 USC 1983 for recovery of damages arising from allegedly unconstitutional conviction or confinement, or for any other harm that would render conviction or sentence invalid, unless plaintiff first establishes that conviction or sentence has been reversed on appeal, expunged, declared invalid by the state tribunal with the power to make such a determination, or called into question by federal court's issuance of writ of habeas corpus.

Scalia delivered the opinion of the Court. Souter filed an opinion concurring in the judgment, in which Blackmun, Stevens, and O'Connor joined.

### Immunity

*Elder v. Holloway*, 62 LW 4149

In reviewing determination about qualified immunity in federal civil rights case, appellate court must consider *de novo* all relevant precedents and not just those that were made part of record below.

Ginsburg delivered the opinion for a unanimous Court.

## Practice and Procedure

*Rivers v. Roadway Express Inc.*, 62 LW 4271

Section 101 of 1991 Civil Rights Act, which defines "make and enforce contracts" phrase in 42 USC 1981 to include "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions, of the contractual relationship," does not apply to cases that arose before its enactment.

Stevens delivered the opinion of the Court. Blackmun filed a dissenting opinion.

## COPYRIGHTS

### Attorneys' Fees

*Fogerty v. Fantasy Inc.*, 62 LW 4153

Attorney's fees provision of 1976 Copyright Act, which provides that "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs," 17 USC 505, authorizes award of attorneys' fees to prevailing parties as a matter of court's discretion, rather than automatically, and requires that prevailing plaintiffs and prevailing defendants be treated alike.

Rehnquist delivered the opinion of the Court.

## COURTS AND PROCEDURE

### Contempt

*United Mine Workers v. Bagwell*, 62 LW 4705

Non-compensatory contempt fines amounting to \$52 million, levied against union pursuant to prospective schedule previously established to coerce union to comply with injunction barring widespread, unlawful, and ongoing strike-related activities, are serious criminal fines that may constitutionally be imposed only through criminal proceedings, including the Sixth Amendment.

Blackmun delivered the opinion of the Court which was unanimous save for separate concurring opinions from Scalia and Ginsburg in which Rehnquist joined with Ginsburg.

### Settlement

*Kokkonen v. Guardian*, 62 LW 4313

Federal district court lacks statutory or ancillary jurisdiction to enforce settlement agreement that prompts stipulated dismissal under Fed.R.Civ.P. 41(a)(1)(ii) when that agreement is not incorporated in dismissal order or referred to in provision of order retaining jurisdiction.

Scalia delivered the opinion for a unanimous Court.

*Digital Equipment Corp. v. Desktop Direct Inc.*, 62 LW 4457

Federal district court order rescinding settlement agreement that allegedly gives party right not to stand trial is not immediately appealable under 28 USC 1291 pursuant to collateral order doctrine. An order vacating a dismissal predicated on the parties' settlement agreement is final as a collateral order even without a district court's resolution of the underlying cause of action. An order denying effect to a settlement agreement does not come within the narrow gambit of collateral orders.

Souter delivered the opinion for a unanimous Court.

## CRIMINAL LAW AND PROCEDURE

### Arrest

*Powell v. Nevada*, 62 LW 4203

Rule of *Riverside County, Calif. v. McLaughlin*, 500 U.S. 44, 59 LW 4413 (1991), that a delay of more than 48 hours between a warrantless arrest and a judicial determination of probable cause is presumptively unreasonable under the Fourth Amendment. This rule applies retroactively to all cases not yet final on date *McLaughlin* was decided. Lower court decision is vacated and remanded.

Ginsburg delivered the opinion of the Court. Thomas filed a dissenting opinion in which Rehnquist joined.

### Capital Punishment

*Romano v. Oklahoma*, 62 LW 4466

The admission of evidence during the penalty phase of a capital trial, which the state reviewing court later declared to be irrelevant, that defendant had already received a death sentence in another case did not violate Eighth and Fourteenth Amendments or so infect the sentencing determination with unfairness as to amount to a denial of due process.

Rehnquist delivered the opinion of the court. Blackmun filed a dissenting opinion. Ginsburg filed a dissenting opinion in which Blackmun, Stevens, and Souter joined.

*Tuilaepa v. California*, 62 LW 4720

Portions of the state capital punishment scheme are not unconstitutionally vague in violation of the Eighth Amendment that command jurors, during penalty phase of capital trial, to consider among other factors "circumstances of the crime of which the defendant was convicted," presence or absence of prior criminal activity involving use or attempted use of force or violence or threats thereof, and defendant's age at time of offense. Capital sentencing factors need not require jurors to return a yes or no answer to a particular proposition in order to satisfy the Eighth Amendment,

but may instead direct consideration of an open ended factor as long as it is relevant to the sentencing. The Eighth Amendment does not require that the sentencing jury be told how to evaluate or weigh any relevant sentencing consideration when it determines whether death is the appropriate punishment for the defendant's crime.

Kennedy delivered the opinion of the Court. Blackmun filed a dissenting opinion.

*McFarland v. Scott*, 62 LW 4713

Condemned prisoner's filing of request for appointment of counsel to prepare petition for federal habeas corpus activates qualified right to counsel that 21 USC 848(q)(4)(B) provides to indigent prisoners in any "post conviction proceeding" under 18 USC 2254 or 2255 seeking relief from death sentence, even though prisoner has not yet filed a formal application for habeas relief. Such filing by state prisoner also qualifies as initiation of "habeas corpus proceeding" for purposes of habeas statute's provision of authority to stay state court proceedings, 28 USC 2251, and thus gives federal court jurisdiction to stay prisoner's execution.

Blackmun delivered the opinion of the Court. Thomas filed a dissenting opinion in which Rehnquist and Scalia joined.

**Confessions**

*U.S. v. Alvarez-Sanchez*, 62 LW 4289

Statute governing admissibility in federal court of statements made by arrestees during "delays" in federal presentment, 18 USC 3501, does not apply to statements made while arrestee is in custody on state charges that are delayed. State officials' alert to federal agents regarding possible federal offenses committed by state arrestee is "routine cooperation" between authorities that does not trigger application of Section 3501 to statements arrestee makes during interrogation by federal agents while arrestee is still in custody on state charges.

Thomas delivered the opinion of the Court.

**Currency Transactions**

*Ratzlaf v. U.S.*, 62 LW 4037

In order to convict defendant of "willfully" structuring currency transaction with financial institution for purpose of avoiding institution's reporting requirement, in violation of 31 USC 5322 (a) and 5324(3), government must prove that defendant acted with knowledge that his or her conduct was unlawful, not knowledge that conduct was "evil" or "inherently bad".

Ginsburg delivered the opinion of the Court. Blackmun filed a dissenting opinion in which Rehnquist, O'Connor and Thomas joined.

**Detainers**

*Reed v. Farley*, 62 LW 4564

State court's violation of the rule, established by Art. IV(c) of Interstate Agreement on

Detainers, limiting state to 120 days in which to try an out-of-state prisoner over whom it has obtained temporary custody, for purpose of trying prisoner on outstanding criminal charges, is not cognizable in federal habeas corpus proceeding under 28 USC 2254 in the case in which the prisoner failed to object to scheduled trial date until after expiration of 120-day time limit and suffered no prejudice as result of error. The principle of *Hill v. U.S.*, 368 U.S. 424 (1962), that technical violations of non-constitutional procedural rules are not cognizable when raised by federal prisoner in post-conviction proceeding under 28 USC 2255, also applies to state prisoners seeking habeas relief under Section 2254.

Ginsburg delivered the opinion of the Court. Blackmun filed a dissenting opinion in which Stevens, Kennedy and Souter joined.

**Drugs**

*Poster 'N' Things Ltd v. U.S.*, 62 LW 4354

Although the scienter requirement is neither expressly contained in Mail Order Drug Paraphernalia Control Act nor derivable from its definitional section, sec. 857(d) of the statute is properly construed as containing an objective scienter element requiring proof that the seller of merchandise was aware that customers in general are likely to use items with illegal drugs, but not requiring specific knowledge that items are "drug paraphernalia". The statute is not unconstitutionally vague as applied to defendants who operated "head shop" that stocked items specifically identified as paraphernalia in statute.

Blackmun delivered the opinion of the Court.

**Double Jeopardy**

*Schiro v. Farley*, 62 LW 4064

Capital sentencing proceeding at which state attempted to prove statutory aggravating factor that defendant committed intentional murder, immediately following guilt-innocence phase in which jury convicted defendant of felony murder but returned no verdict on charge of intentional murder, did not amount to successive prosecution for intentional murder in violation of Fifth Amendment's Double Jeopardy Clause. The question of whether issue resolved by jury during guilt-innocence phase of capital proceeding collaterally estops state from relitigating same issue during sentencing phase will not be reached in this case, in view of defendant's failure to establish that jury actually decided during guilt-innocence phase that he was not guilty of intentional murder. In view of state's failure to assert in its brief in opposition to certiorari argument based on rule of *Teague v. Lane*, 489 U.S. 288, 57 LW 4233 (1989), against announcing or applying "new" constitutional rules in federal habeas corpus actions, court will exercise its discretion not to reach merits of *Teague* question.

O'Connor delivered the opinion of the Court. Blackmun filed a dissenting opinion. Stevens filed a dissenting opinion in which Blackmun joined.

## Evidence

*Williamson v. U.S.*, 62 LW 4639

As applied to an out-of-court statement implicating both declarant and another, hearsay exception for statements against penal interest, Fed.R.Ev. 804(b)(3), allows admission of only those statements within declarant's narrative that are individually self-inculpatory and excludes non-self-inculpatory statement even if it is made within a broader narrative that is generally self-inculpatory.

O'Connor delivered the opinion of the Court.

## Firearms

*Beecham v. U.S.*, 62 LW 4311

If defendant has not had his civil rights restored under federal law, even though defendant has had restoration of rights under state law with respect to state felony convictions, defendant's prior federal felony conviction counts as a qualifying conviction for purposes of federal statute which prohibits possession of firearm by former felon, 18 USC 922(g).

O'Connor delivered the opinion for a unanimous Court.

*Staples v. U.S.*, 62 LW 4379

Although the federal statute making it unlawful to possess an unregistered machinegun, 18 USC 5861(d), is silent on the issue of scienter, the statute is properly construed as requiring proof that defendant knew that the characteristics of the firearm he possessed met the statutory definition of "machinegun," which refers to a weapon capable of firing more than one round with a single trigger pull without reloading.

Thomas delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun joined.

## Habeas Corpus

*Caspari v. Bohlen*, 62 LW 4113

Rule that Fifth Amendment's Double Jeopardy Clause bars state from twice subjecting defendant to non-capital sentence enhancement proceeding, on ground that such proceeding, like capital sentencing proceeding involved in *Bullington v. Missouri*, 451 U.S. 430 (1981), is much like trial, would be a "new" rule that, under *Teague v. Lane*, 489 U.S. 288, 57 LW 4233 (1989), and may not be announced on federal habeas corpus review of state court judgment.

O'Connor delivered the opinion of the Court. Stevens filed a dissenting opinion.

## Insanity

*Shannon v. U.S.*, 62 LW 4621

Neither 1984 Insanity Defense Reform Act, 18 USC 17, 4241-4247, nor general federal practice requires that the jury in a case in which insanity defense is raised be instructed on the consequences of acquittal on ground of insanity.

Thomas delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun joined.

## Interrogation

*Stansbury v. California*, 62 LW 4279

Interrogator's subjective and undisclosed view is irrelevant as to whether person is "in custody" and thus entitled to warnings prescribed by *Miranda v. Arizona*, 384 U.S. 436 (1966). The issue to be resolved in the lower court is whether or not the objective facts in the record would support a finding that the person was "in custody". Per curiam.

*Davis v. U.S.*, 62 LW 4587

The rule of *Edwards v. Arizona*, 451 U.S. 477 (1981), requiring cessation of counselless custodial interrogation once suspect has invoked a right to counsel under *Miranda v. Arizona*, 384 U.S. 436 (1966), does not come into play unless suspect makes a statement that a reasonable interrogator in the circumstances would interpret as a request for counsel. Suspect's statement during custodial interrogation that does not qualify as unambiguous invocation of a right to counsel does not, under *Miranda* and its progeny, require that interrogator either stop questioning or attempt to clarify whether suspect desires counsel.

O'Connor delivered the opinion of the Court.

## Sentencing

*Custic v. U.S.*, 62 LW 4346

Federal defendant has no right to collaterally challenge at the sentencing proceeding under the Armed Career Criminal Act, 18 USC 924(e), the validity of prior convictions used to enhance his sentence pursuant to the act, except for a limited constitutional right to challenge prior convictions on the ground that they were obtained in complete derogation of the Sixth Amendment's right to appointed counsel recognized in *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Rehnquist delivered the opinion of the Court. Souter filed a dissenting opinion in which Blackmun and Stevens joined.

*Nichols v. U.S.*, 62 LW 4421

Uncounseled misdemeanor conviction that, under *Scott v. Illinois*, 440 U.S. 367 (1979), was constitutionally valid when entered, because no term of imprisonment was imposed, may,

consistently with Sixth Amendment's guarantee of assistance of counsel, be considered for purposes of enhancing punishment for subsequent conviction. *Baldasar v. Illinois*, 446 U.S. 222 (1980), which ruled that such prior conviction could not be used to convert misdemeanor into a felony with a prison term, is overruled.

Rehnquist delivered the opinion of the Court. Blackmun filed a dissenting opinion in which Stevens and Ginsburg joined.

## ELECTIONS

### Voting Rights Act

*Holder v. Hall*, 62 LW 4728

Vote dilution challenges based on size of governmental authority are not actionable under Section 2 of Voting Rights Act.

Kennedy announced the opinion of the Court. Blackmun filed a dissenting opinion in which Stevens, Souter and Ginsburg joined.

*Johnson v. DeGrandy*, 62 LW 4755

Proof of three factors identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986), is necessary, but not sufficient, to establish that a series of single-member legislative districts dilutes minority voting strength under "totality of circumstances" in violation of Section 2 of Voting Rights Act. Failure of the state legislature reapportionment plan to maximize the number of potential majority-minority single member districts does not establish vote dilution violation of Section 2. Proportionality between number of majority-minority districts and minority group members' share of relevant population, while probative of minority voters' equal opportunity to elect candidates of their choice, is not a safe-harbor defense in all Section 2 vote dilution cases. Assuming that three *Gingles* factors were established, district court's finding of vote dilution in the Florida House of Representatives reapportionment plan that established nine majority Hispanic districts in 20-district Dade County area improperly equated vote dilution with failure to maximize number of majority-minority districts, and failed to give proper weight to rough proportionality between number of Hispanic majority districts and 47 percent Hispanic share of voting-age population that should provide equal political opportunity, and thus was clearly erroneous.

Souter delivered the opinion of the Court. Thomas filed a dissenting opinion in which Scalia joined.

## EMPLOYMENT DISCRIMINATION

### Practice and Procedure

*Landgraf v. USI Film Products*, 62 LW 4255

Section 102 of 1991 Civil Act, which authorizes recovery of compensatory and punitive damages in actions under Title VII of 1964 Civil Rights Act, and which authorizes jury trials when such damages are claimed, does not apply to cases that arose before its enactment. Federal statutes affecting substantive rights, liabilities, or duties presumptively do not apply to conduct occurring before their enactment absent clear congressional intent to the contrary.

Stevens delivered the opinion of the Court. Blackmun filed a dissenting opinion.

## ENVIRONMENT AND CONSERVATION

### Attorney's Fees

*Key Tronic Corp. v. U.S.*, 62 LW 4441

Attorney's fees for prosecuting a private cost recovery action are not "necessary costs of response" recoverable under Section 107(a)(4)(B) of Comprehensive Environmental Response, Compensation and Liability Act. Legal expenses incurred by potentially responsible party in identifying other PRPs liable under CERCLA for hazardous waste cleanup go beyond cost-shifting to enhance enforcement of expeditious cleanup and thus qualify as response costs compensable under Section 107. Legal expenses incurred in connection with negotiations that led to consent decree concerning site cleanup are not recoverable as necessary response costs.

Stevens delivered the opinion of the Court. Scalia filed a dissenting opinion in which Blackmun and Thomas joined.

### Hazardous Waste

*Chicago, Ill. v. Environmental Defense Fund*, 62 LW 4283

The ash generated by incineration at a resource recovery facility that burns municipal solid waste under the "household waste exclusion" in Section 3001(i) of Resource Conservation and Recovery Act, is not exempt from RCRA regulation. Although the facility "shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes", the plain language of the section establishes that its exemption is limited to the facility itself, not the ash that the facility generates.

Scalia delivered the opinion of the Court. Stevens filed a dissenting opinion in which O'Connor joined.

## **Solid Waste**

*Oregon Waste Systems Inc. v. Oregon Department of Environmental Quality*, 62 LW 4209

Oregon's imposition of a higher fee for in-state disposal of solid waste generated out of state than for solid waste generated in state constitutes facially discriminatory burden on interstate commerce that cannot be justified as a compensatory tax or as an effort to spread costs of in-state disposal of Oregon waste to all Oregon taxpayers and, therefore, the higher fee violates the Commerce Clause.

Thomas delivered the opinion of the Court. Rehnquist filed a dissenting opinion in which Blackmun joined.

*C & A Carbone Inc. v. Clarkstown, N.Y.*, 62 LW 4315

Municipal "flow control" ordinance that requires all solid waste generated or brought into municipality to be processed at designated transfer station before leaving municipality discriminates against interstate commerce in violation of the Commerce Clause by barring import of waste processing services and hoarding waste for benefit of local processing facility.

Kennedy delivered the opinion of the Court. Souter filed a dissenting opinion in which Rehnquist and Blackmun joined.

## **Water**

*PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 62 LW 4408

State's authority under Section 401 of Clean Water Act to issue water quality certification to "any applicant for a Federal license or permit", and to impose "effluent limitations and other conditions . . . necessary to assure that any applicant" will comply with "appropriate" state law requirements, includes authority to condition certification of hydroelectric power project on maintenance of minimum stream flows that state deems necessary to assure protection of designated uses identified in state's water quality standards.

O'Connor delivered the opinion of the Court. Thomas filed a dissenting opinion in which Scalia joined.

## **HEALTH CARE**

### **Medicare**

*Thomas Jefferson University v. Shalala*, 62 LW 4601

Secretary of Health and Human Services' denial of reimbursement to hospital for non-salary-related educational costs borne in prior years by medical school affiliated with hospital and subsequently reallocated to hospital is a reasonable interpretation of Medicare regulation. The regulation, while generally permitting a qualified provider hospital to be reimbursed for costs of patient care, graduate medical education, and administrative services provided by hospital's

affiliated medical school, it bars reimbursement for "increased costs resulting from redistribution of costs from educational institutions . . . to patient care institutions" even if activities that generated costs are of sort "customarily and traditionally carried on by providers in conjunction with their operations."

Kennedy delivered the opinion of the Court. Thomas filed a dissenting opinion in which Stevens, O'Connor and Ginsburg joined.

## **JUDGES**

### **Disqualification**

*Liteky v. U.S.*, 62 LW 4161

Requirement of 28 USC 455(a) that federal judge "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" is limited by "extrajudicial source" factor, however, presence of extrajudicial source for judge's opinion is neither necessary nor sufficient condition for recusal for bias or prejudice. Judicial rulings and admonishments made by district judge in current or prior proceedings against same defendant do not require recusal under Section 455(a) if they do not rely on knowledge acquired outside such proceedings or display deep-seated and unequivocal antagonism that would render fair judgment impossible.

Scalia delivered the opinion of the Court.

## **LABOR**

### **Remedies**

*ABF Freight System Inc. v. National Labor Relations Board*, 62 LW 4092

The National Labor Relations Board did not abuse its discretion under the National Labor Relations Act when it declined to establish a per se rule barring remedies for employers' unfair labor practices to employees who lie during course of administrative proceedings. The NLRB did not abuse its discretion when it ordered reinstatement with back pay to an employee who it determined had been illegally discharged, despite the fact that employee committed perjury during administrative hearing concerning discharge.

Stevens delivered the opinion of the Court.

*Livadas v. Bardshaw*, 62 LW 4495

A California policy states it will not enforce a state law requiring payment of all unpaid wages immediately upon discharge and imposing a penalty for refusal to pay promptly when a discharged employee is covered by a collective bargaining agreement containing an arbitration clause. The policy is pre-empted by the National Labor Relations Act. The discharged employee may seek

redress for state's refusal to enforce such state laws under 42 USC 1983.

Souter delivered the opinion of a unanimous Court.

## MASS MEDIA

### Cable Television

*Turner Broadcasting System v. Federal Communications Commission*, 62 LW 4647

Must-carry provisions of 1992 Cable Television Consumer Protection and Competition Act require cable television systems to devote portion of their channels to the transmission of local commercial and public broadcast television stations. These provisions are content-neutral restrictions on speech that will withstand First Amendment scrutiny if, on remand, it is determined that they further assert important governmental interests in preserving benefits of free broadcast television, promoting widespread dissemination of information from multiplicity of sources, or promoting fair competition in television programming market, and that incidental burden on speech is not greater than essential to further governmental interests.

Kennedy delivered the opinion of the Court. O'Connor and Ginsburg filed separate opinions concurring in part and dissenting in part.

## NATIVE AMERICANS

### Jurisdiction

*Hagen v. Utah*, 62 LW 4118

Uintah Indian Reservation in Utah has been diminished by acts of Congress that opened it to non-Indians, and therefore Utah can exercise criminal jurisdiction over an Indian who committed a crime on opened lands within reservation's original boundaries. The Court used the traditional approach set out in *Solem v. Bartlett*, 465 U.S. 463, to determine whether any given surplus land Act diminished a reservation.

O'Connor delivered the opinion of the Court. Blackmun filed a dissenting opinion in which Souter joined.

### State Taxation

*Department of Taxation and Finance of New York v. Milhelm Attea & Bros. Inc.*, 62 LW 4482

New York cigarette tax regulations that, in effort to prevent tax avoidance by non-Indian purchasers of cigarettes from Indian retailers, impose record-keeping requirements and quantity limitations on wholesalers that sell untaxed cigarettes to reservation Indians do not violate, on their face, federal statutes governing trade with Indians, 25 USC 261-264.

Stevens delivered the opinion for a unanimous Court.

## PENSIONS AND BENEFITS

### Plan Assets

*John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 62 LW 4025

Funds deposited in insurance company's general account pursuant to "participating group annuity" are "plan assets" subject to fiduciary standards of Employee Retirement Income Security Act to the extent that such funds are managed by insurer pursuant to a contract that provides no fixed rate of return or guaranteed amount of retirement benefits.

Ginsburg delivered the opinion of the Court. Thomas filed a dissenting opinion in which O'Connor and Kennedy joined.

## PRISONS AND JAILS

### Conditions

*Farmer v. Brennan*, 62 LW 4446

Whether prison official acted with "deliberate indifference" for denying humane conditions of confinement and may therefore be held liable under the Eighth Amendment, must be evaluated under subjective standard requiring proof, by direct or circumstantial evidence, that official knew inmate faced substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. Failure of transsexual prisoner who was allegedly raped by fellow inmate to notify prison officials of risk of harm attending placement of transsexual in general population of all-male prison, relied upon by lower courts in rejecting Eighth Amendment claim, is not dispositive of prisoner's claim that such placement constituted deliberate indifference, and therefore the remand for further proceedings is required.

Souter delivered the opinion of the Court.

## RAILROADS

### FELA

*Consolidated Rail Corp. v. Gottshall*, 62 LW 4609

Claims for negligent infliction of emotional distress brought by railroad workers against their employers are cognizable under Federal Employers' Liability Act and the zone of danger test governs liability for such claims. This test limits recovery for emotional injury to plaintiffs who sustain physical impact as a result of defendant's negligent conduct or who are placed in immediate risk of physical harm by that conduct.

Thomas delivered the opinion of the Court. Ginsburg filed a dissenting opinion in which Blackmun and Stevens joined.

## SCHOOLS AND COLLEGES

### Disabled Persons

*Florence County School District Four v. Carter*, 62 LW 4001

Parents who unilaterally withdraw their child from a public school that fails to provide appropriate education under Individuals with Disabilities Education Act and place the child in a private school that offers such education are entitled to state reimbursement of education expenses even if the private school provides an education that is otherwise proper under IDEA, but does not meet all of 20 USC 1401(a)(18)'s requirements for "free appropriate public education", which are not relevant to parents' failure to select a state approved program.

O'Connor delivered the opinion for a unanimous Court.

## SECURITIES AND EXCHANGES

### Antifraud Provisions

*Central Bank of Denver N.A. v. First Interstate Bank of Denver N.A.*, 62 LW 4230

Section 10(b) of 1934 Securities Exchange Act, which imposes private civil liability on those who "directly or indirectly, . . . use or employ . . . any manipulative or deceptive device or contrivance" in connection with purchase or sale of securities, does not authorize private right of action for aiding and abetting liability. The "directly or indirectly" phrase does not cover aiding and abetting, because liability for aiding and abetting would extend beyond persons who engage, even indirectly, in a proscribed activity to include those who merely give some degree of aid to violators, and because the "directly or indirectly" language is used in numerous 1934 Act provisions in a way that does not impose aiding and abetting liability.

Kennedy delivered the opinion of the Court. Stevens filed a dissenting opinion in which Blackmun, Souter and Ginsburg joined.

### Limitations

*Morgan Stanley & Co. v. Pacific Mutual Life Insurance Co.*, 62 LW 4396

Judgment of U.S. Court of Appeals for Fifth Circuit upholding constitutionality of Section 27A of 1934 Securities Exchange Act, which provides 60-day period for reinstatement of Section 10(b) claims dismissed as untimely under one-year/three-year limitations period established by *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 59 LW 4688 (1991) is affirmed by equally divided court. Per Curiam. O'Connor took no part in the decision.

## SHIPS AND SHIPPING

### Practice and Procedure

*American Dredging Co. v. Millers*, 62 LW 4130

Federal maritime law does not pre-empt Louisiana's state law that renders the doctrine of *forum non conveniens* unavailable in a state court action filed under Jones Act and "saving to suitors clause," 28 USC 1331(1). In exercising *in personam* jurisdiction over maritime actions under the "saving to suitors clause", a state court may adopt such remedies as it sees fit, so long as those remedies do not "work material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 216. The Court ruled that because *forum non conveniens* did not originate in admiralty, the state court's refusal to apply it does not violate the *Jensen* meaning nor does it require uniformity in application as it vests great discretion in the trial court and acknowledges multifarious facts as being relevant to its application.

Scalia delivered the opinion of the Court. Kennedy filed a dissenting opinion in which Thomas joined.

## TAXATION

### Foreign Commerce

*Barclays Bank PLC v. Franchise Tax Board of California*, 62 LW 4552

California's "worldwide combined reporting" method of determining state corporate franchise tax, which aggregates income of all corporate entities that make up unitary multinational business enterprise and then taxes percentage of that income based on proportion of worldwide payroll, property, and sales located in California, does not violate Foreign Commerce or Due Process Clauses as applied to foreign-based multinational enterprise doing business in California through domestic subsidiary. Executive branch actions, including proposed legislation, legal briefs, and correspondence, opposing states' use of worldwide combined reporting cannot constitute "clear federal directive" whose contravention would prevent federal government from speaking with one voice in international trade in violation of Foreign Commerce Clause, because Constitution expressly grants power to "regulate Commerce with foreign Nations" to Congress, not the president.

Ginsburg delivered the opinion of the Court. O'Connor filed an opinion concurring in the judgment in part and dissenting in part in which Thomas joined.

### Use taxes

*Associated Industries of Missouri v. Lohman*, 62 LW 4391

Compensatory tax doctrine, which is an exception to the non-discrimination rule of the Commerce Clause that permits a state to tax interstate commerce when countervailing burden is imposed on comparable intrastate transactions, imposes strict rule of equality under which comparability of countervailing taxes must be assessed in each political subdivision in which they operate, rather than averaging, on statewide basis, tax burdens imposed by differing local laws. Missouri's "additional use tax" of 1.5 percent imposed on the privilege of storing, using, or consuming within state personal property purchased outside the state impermissibly discriminates against interstate commerce, in violation of Commerce Clause, in localities within state that, pursuant to local option legislation enacted by state, have enacted supplementary sales tax of less than 1.5 percent.

Thomas delivered the opinion of the Court.

## TORTS

### Punitive Damages

*Honda Motor Co. v. Oberg*, 62 LW 4627

An Oregon law barring judicial review of the amount of jury's punitive damages award "unless the court can affirmatively say there is no evidence to support the verdict" abrogates the traditional common law safeguard against arbitrary deprivations of property without providing any adequate substitute or demonstrating that danger or arbitrary awards has subsided over time, and therefore the law violates the Fourteenth Amendment's Due Process Clause.

Stevens delivered the opinion of the Court. Ginsburg filed a dissenting opinion in which Rehnquist joined.

## UNITED STATES

### Constitutional Torts

*Federal Deposit Insurance Corp. v. Meyer*, 62 LW 4138

Holding in *Bivens v. Six Unknown Federal Narcotics Agents*, 402 U.S. 388 (1971), that individuals may bring damages actions against federal agents for violation of their constitutional rights, may not be extended to permit similar suits against federal agencies.

Thomas delivered the opinion for a unanimous Court.

### Employees

*Department of Defense v. Federal Labor Relations Authority*, 62 LW 4143

Disclosure of federal employees' home addresses would constitute "clearly unwarranted invasion of personal privacy" within the meaning of the Freedom of Information Act Exemption 6, and therefore the Privacy Act of 1974. The Privacy Act forbids the disclosure of non-union employee addresses to collective-bargaining representatives pursuant to requests made under the Federal Service Labor-Management Relations Statute and protects the confidentiality of federal agency information that is not subject to mandatory disclosure under FOIA.

Thomas delivered the opinion of the Court.