



# **U.S. Supreme Court Update**

**A Review of October Term 2007**

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**Austin, Texas**

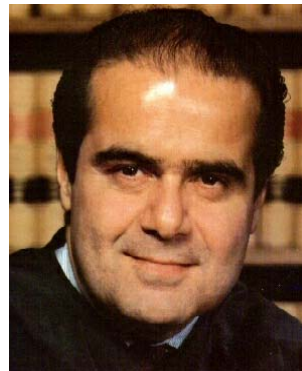
# The Justices



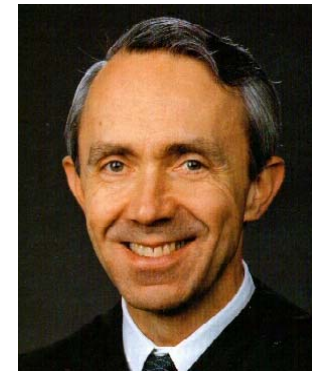
**CJR**



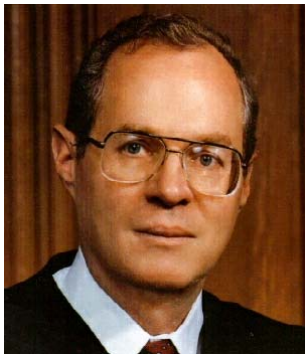
**JPS**



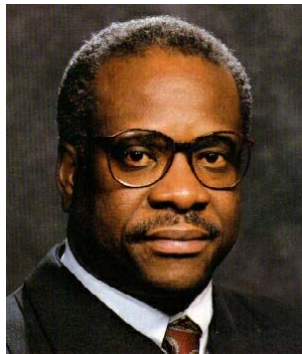
**AS**



**DHS**



**AMK**



**CT**



**SGB**



**RBG**

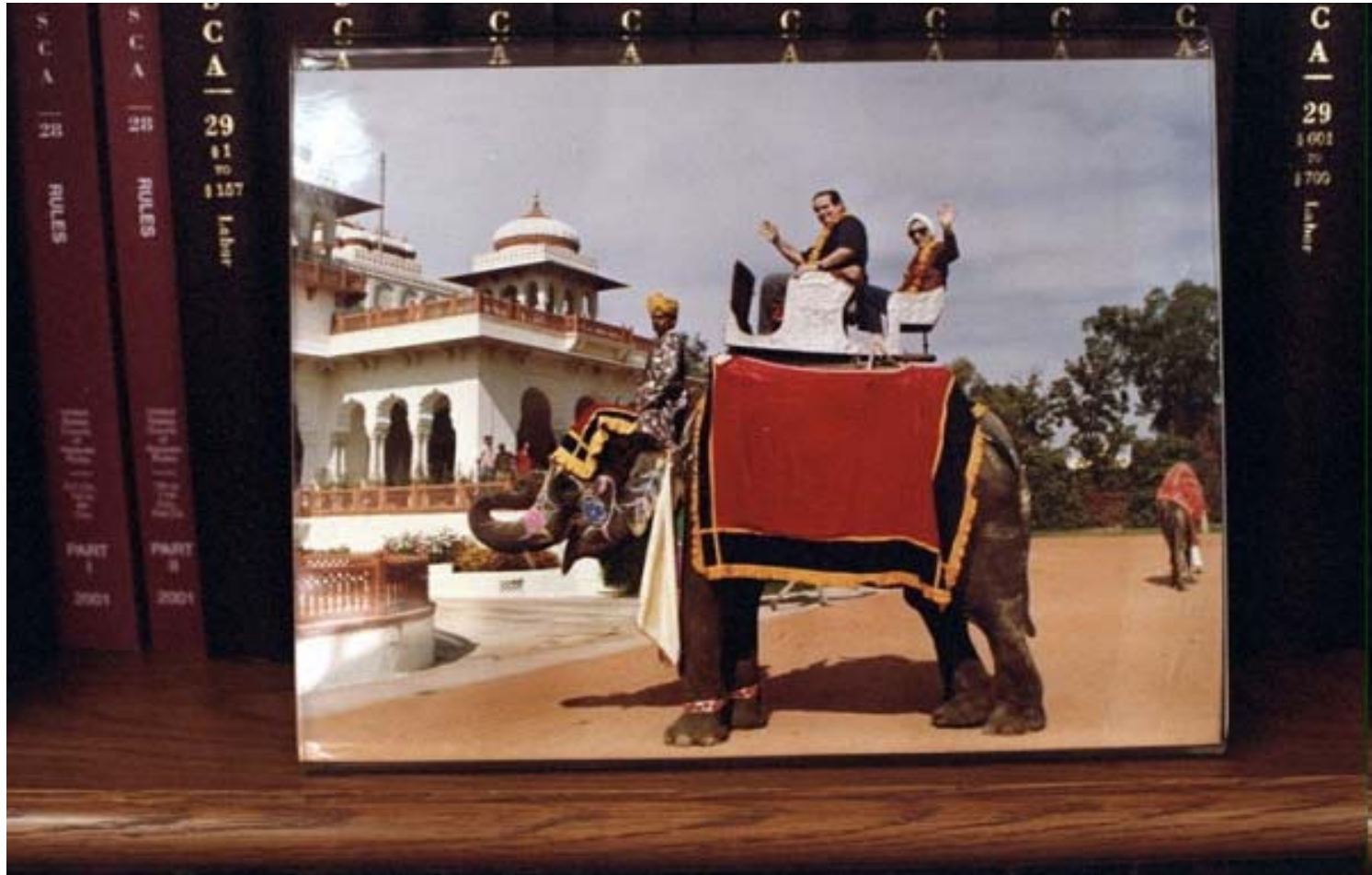


**SAA**

# General Trends and Themes

- Increasing or decreasing division on the court? Chief Justice's Roberts's "minimalist" project.
- Justice Kennedy as the sole swing vote?
- Light docket trend continues this term, may be reversing next term.

# General Trends and Themes



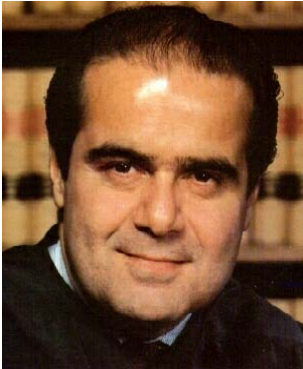
Attribution: The Oyez Project ([www.oyez.org](http://www.oyez.org))

# General Trends and Themes

- “Pro-business” court?
- Fewer constitutional law “blockbusters.”
- Busy areas: employment, sentencing, election law.



# Constitutional Law



## *District of Columbia v. Heller*

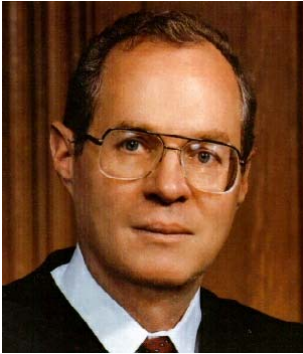
- Vote: 5-4. Opinion by AS + CJR, AMK, CT, SAA; Dissent by JPS + DHS, RBG, SGB; Dissent by SGB + JPS, DHS, RBG.
- Issues: Does the Second Amendment protect an individual right to own firearms? Does D.C.'s handgun ban violate that right?
- Held: there is an individual right and D.C.'s ban violates that right.

# *District of Columbia v. Heller*



# Trivia Question

- Q: Which is the only federal circuit to substantively consider a claim under the *Third* Amendment?
- A: The Second Circuit, in *Engblom v. Carey* (CA2 1982).



## *Boumediene v. Bush;* *Al Odah v. United States*

- Vote 5-4. Opinion by AMK + JPS, DHS, SGB, RBG; Dissent by CJR + AS, CT, SAA; Dissent by AS + CJR, CT, SAA.
- Issue: Does the Military Commissions Act of 2006 validly strip federal courts of jurisdiction over *habeas corpus* petitions filed by foreign citizens imprisoned in Guantanamo Bay?
- Held: Suspension Clause applies to petitioners' claims, and the Act violates the Suspension Clause.



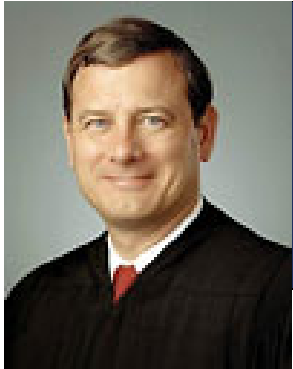
## *Medellin v. Texas*

- Vote: 6-3. Opinion by CJR + JPS, AS, AMK, CT, SAA; Dissent by SGB + DHS, RGB.
- Issue: Did the President have the authority to order Texas to comply with the United States's treaty obligation to give effect to a judgment of the Int'l Court of Justice, by ordering Texas to disregard its procedural *habeas corpus* rules?
- Held: No, the President lacks that power.



## *Kennedy v. Louisiana*

- Vote 5-4. Opinion by AMK + JPS, DHS, SGB, RBG; Dissent by SAA + CJR, AS, CT.
- Issue: Does a Louisiana law imposing the death penalty for child rape constitute cruel and unusual punishment in violation of the Eighth Amendment?
- Held: Yes, the death penalty is unconstitutional for non-fatal crimes against individuals.



## *Baze v. Rees*

- Vote: 7-2. Opinion: CJR + AMK, SAA; JPS, AS, CT, SGB each separately concurring in judgment; Dissent: RBG
- Issue: Whether capital punishment by lethal injection employing the three-drug combination used in 35 states violates the Eighth Amendment's prohibition on cruel and unusual punishment?
- Held: No.

# Intermission . . .



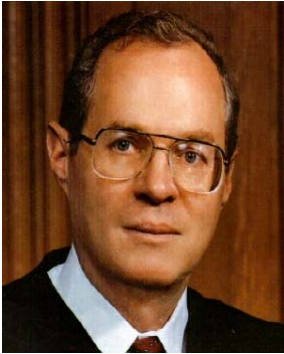


# Commercial Law



## *Exxon Shipping Co. v. Baker*

- Vote: 5-3. Opinion by DHS + CJR, AS, AMK, CT; Partial Dissents by JPS, SGB, RGB (SAA recused).
- Issues:
  - When can a shipowner be held liable for punitive damages under general maritime law?
  - Can punitive damages be awarded under general maritime law when the Clean Water Act's remedial provisions do not authorize punitive damages?
- Held: Punitive award reduced from \$2.5 billion to \$500 million. 4-4 split as to whether Exxon could be liable (nonprecedentially affirmed).



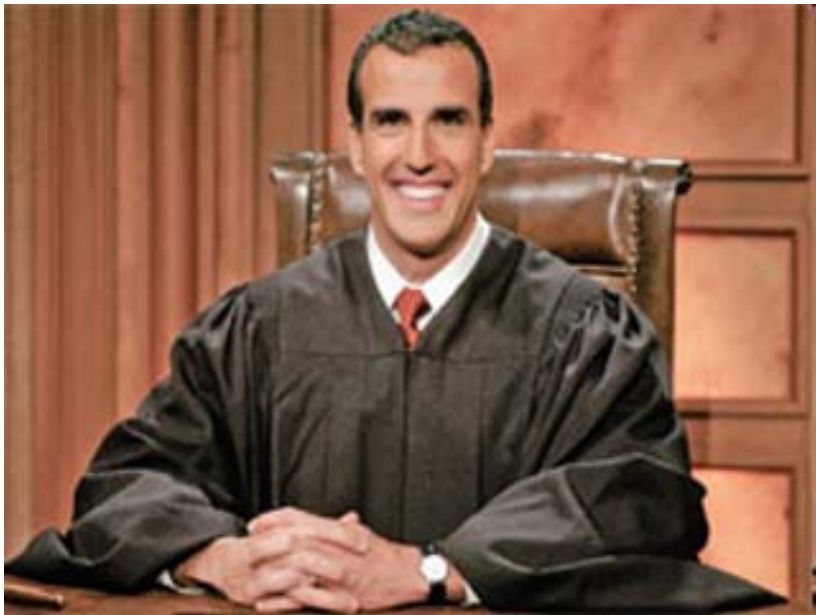
## *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*

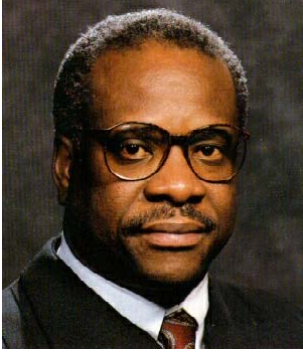
- Vote: 5-3. Opinion by AMK + CJR, AS, CT, SAA; Dissents by JPS + DHS, RBG (SGB recused).
- Issue: Can a person be held for aiding and abetting a violation of Rule 10(b)(5) if that person does not make any public statements regarding the transaction at issue?
- Held: No “scheme liability” for third parties who engaged in fraudulent transactions with public company but made no public statements.

# Arbitration

- *Hall St. Assoc. v. Mattel, Inc.* (Vote: 6-3. Opinion: DHS + CJR, AS, CT, RGB, SAA; Dissents: JPS + AMK; SGB.)
  - Federal Arbitration Act prohibits enforcement of a contractual agreement that provides broader judicial review of an arbitration award than is provided by the FAA.
- *Preston v. Ferrer* (Vote: RBG + 7, Dissent: CT)
  - When parties have agreed to arbitrate, FAA preempts state laws lodging authority to decide dispute in a state administrative agency.

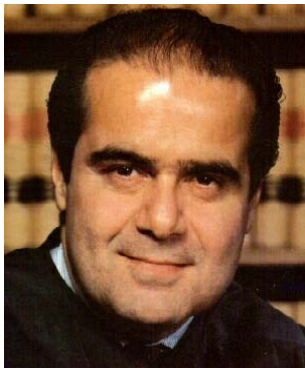
# “Judge Alex”?





## *Quanta Computer, Inc. v. LG Electronics, Inc.*

- Vote: 9-0. Opinion by CT + all.
- Issue: What is the scope of patent-exhaustion doctrine and to what extent can patentees avoid the effects of the first-sale rule?
- Held: Patent exhaustion doctrine applies, first sale exhausted the patent.



## *Riegel v. Medtronic*

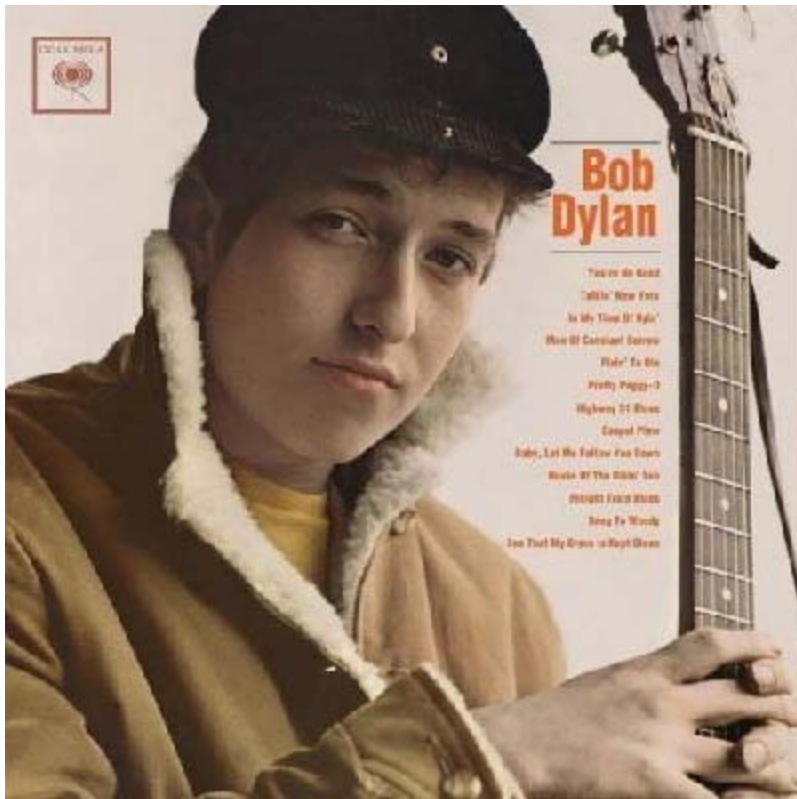
- Vote: Opinion by AS + 7; Dissent by RBG.
- Issue: Does the preemption clause of the Medical Device Amendments of 1976 preempt state common law claims for defective design, labeling, and manufacture?
- Held: Yes. FDA “premarket approval” preempts state-law claims.



## *Sprint Communications v. APCC Services, Inc.*

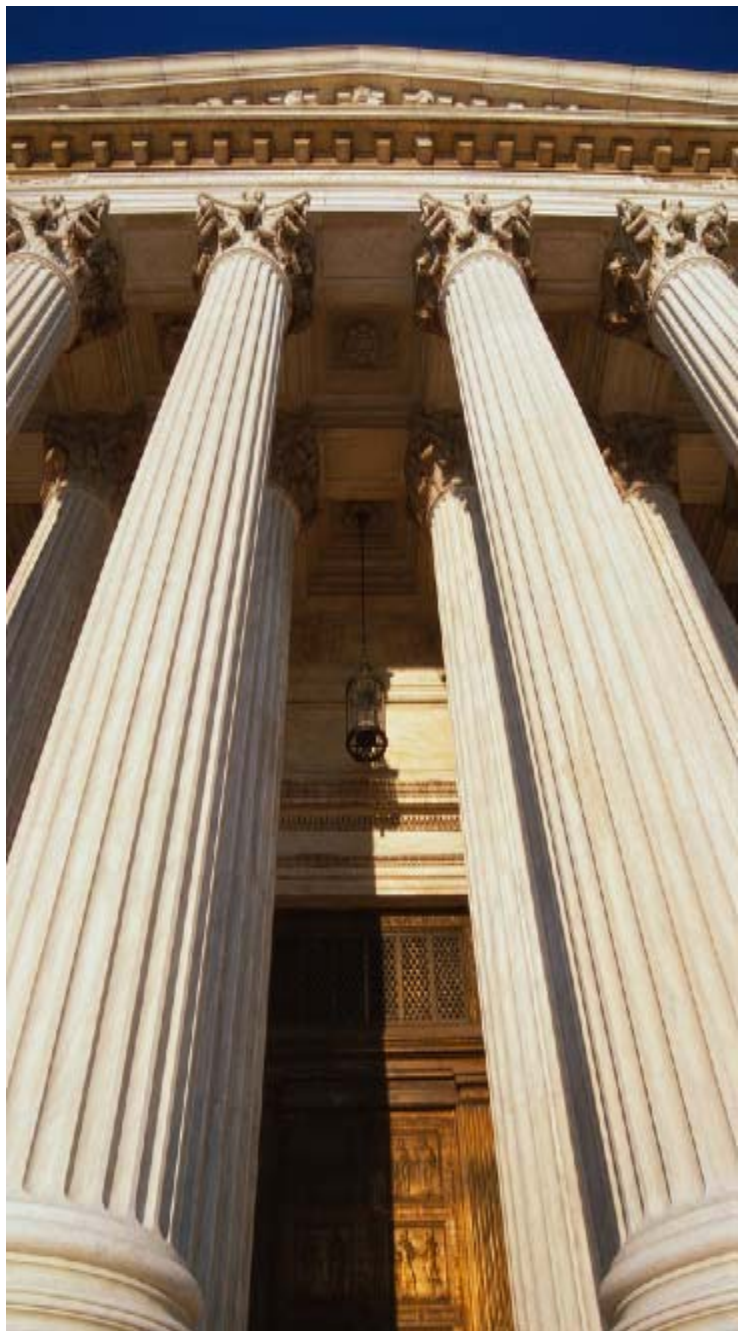
- Vote: 5-4; Opinion by SGB + JPS, AMK, DHS, RBG; Dissent by CJR + AS, CT, SAA.
- Issue: Do third-party companies hired by pay-phone operators to collect compensation for coinless long distance calls, have standing to sue telecommunication companies over the amount of the fees, even though they have no stake in the recovery?
- Held: Yes, the assignees have standing.

# *Sprint Communications v. APCC Services, Inc.*



*Sprint Communications v.  
APCC Services, Inc.*

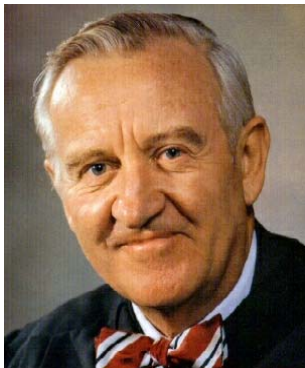




# Voting and Election Law

# Election-Year Trivia

- Four Presidents did not seat any justices on the Supreme Court. Jimmy Carter was the only one in the 20<sup>th</sup> Century. Who was one other?
- Andrew Johnson, William Henry Harrison, Zachary Taylor.



## *Crawford v. Marion County Election Bd.*

- Vote: 6-3. Opinion: JPS + CJR, AMK; Concur in Judgment: SAA + AS, CT; Dissent: DHS +RBG, SGB.
- Issue: Whether an Indiana statute requiring voters to produce government-issued ID violates the 1<sup>st</sup> and 14<sup>th</sup> Amendments, by unduly burdening the right to vote.
- Held: Indiana's law does not unduly burden the right to vote.



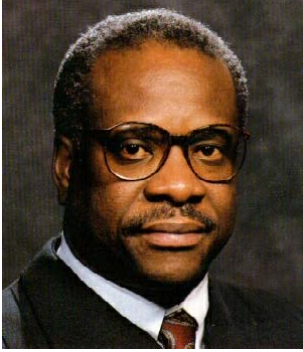
## *Davis v. Federal Election Commission*

- Vote: 5-4. Opinion: SAA + CJR, AS, AMK, CT; Partial Dissents: JPS + DHS, RGB, SGB, RGB +SGB.
- Issue: Does Congress's power to regulate campaign finance extend to remedying imbalance between congressional candidates by raising contribution limits for candidates facing self-financed opponents?
- Held: No. The "Millionaire's Amendment" violates the First Amendment.



## *Riley v. Kennedy*

- Vote: Opinion by RBG + CJR, AS, AMK, CT, SGB; Dissent by JPS + DHS.
- Issue: In a state subject to Section 5 of the Voting Rights Act, when a state's highest court relies on the state constitution to invalidate a precleared state election law, is that a ruling a "change" that triggers Section 5's preclearance requirements?
- Held: No, preclearance is not required.



## *Washington State Grange & Washington v. Washington State Republican Party, et al.*

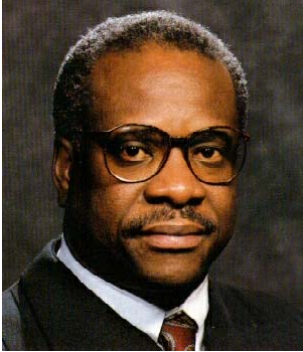
- Vote: 7-2, Opinion: CT + 6; Dissent: AS + AMK.
- Issue: Does the First Amendment prohibit top-two election systems that allow a candidate to disclose on the ballot the name of the party he or she personally prefers, because such systems violate political parties' associational rights?
- Held: No.



# Employment Law

# *Retaliation Cases*

- *CBOCS West v. Humphries* (Majority by SGB + 6; Dissent by CT+AS)
  - Retaliation claims are allowed under 18 U.S.C. 1981.
- *Gomez-Perez v. Potter* (Majority by SAA +5, Dissents by CJR +2, CT +AS)
  - Retaliation claims are allowed for federal employees under the Age Discrimination in Employment Act.

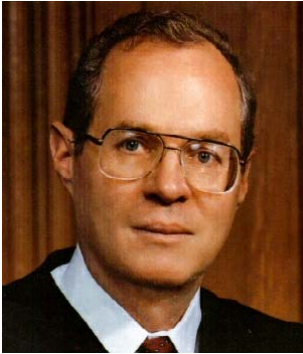


## *Sprint/United Mgmt. Co. v. Mendelsohn*

- Vote: 9-0, Opinion: CT + all.
- Issue: Is “me, too” evidence—evidence of discrimination against nonparties by persons who were not involved in the adverse employment decision challenged by the plaintiff—admissible in employment-discrimination cases?
- Held: Admissibility of evidence should be governed by case-by-case approach.

# *Disparate Treatment/ Disparate Impact*

- *Kentucky Retirement Systems v. EEOC* (Majority by SGB + JPS, AS, DHS, CT; Dissent by AMK +AS, RBG, SAA)
  - Not discriminatory to not give disability benefits to worker who becomes disabled after reaching retirement age.
- *Meacham v. Knolls Atomic Power Lab.* (Majority by DHS +6; Partial Dissent by CT; SGB recused)
  - Employer defending a disparate-impact claim under the ADEA bears both the burden of production and the burden of persuasion for the “reasonable factors other than age” (RFOA) affirmative defense.



# *Federal Express Corp. v. Holowecki*

- Vote: 7-2, Opinion: AMK + 6, Dissent: CT + AS.
- Issue: Does an “intake questionnaire” submitted to the EEOC satisfy the ADEA’s requirement of filing a “charge of discrimination” prior to filing suit?
- Held: Yes.



# Criminal Law



## *Rothgery v. Gillespie County, TX*

- Vote: 8-1. Opinion: DHS + 7; Concurrence: SAA + CJR, AS; Dissent: CT.
- Issue: Does an arrestee have a Sixth Amendment right to counsel once he has been arrested and appeared before a magistrate.
- Held: The right attaches at that point; whether there is a right to appointment of counsel remains to be determined.



# Civil Procedure



## *Taylor v. Sturgell*

- Vote: 9-0. Opinion: RBG + all.
- Issue: Can a party's FOIA request be barred by res judicata on the grounds that the petitioner was "virtually represented" by a close associate who previously sought disclosure of the same documents?
- Held: No, there's no such thing as "virtual representation."