

# SCOTUS**blog** StatPack – OT07, Edition 11

## Included in this StatPack:

1. Justice Agreement
2. Decisions by Final Vote
3. Frequency in the Majority
4. Grant Rates by Conference
5. Circuit Scorecard
6. Opinion Authors by Sitting
7. The Court's Workload
8. Outstanding Cases

## Key Upcoming Dates:

With no more oral arguments to hear, the Court is scheduled to sit on the following days between now and the Summer Recess. At all public sessions listed below (which begin at 10 am eastern), opinions may be issued.

- June 12 (just added)
- June 16
- June 23

Based on past practice, additional opinion days are likely to be added during the weeks of June 16 and June 23 as well. The exact dates have not yet been announced.

### SCOTUSblog Agreement Stats for OT07 - PRELIMINARY (6/9/08)

	Stevens	Scalia	Ken	Sout	Thom	Gins	Breyer	Alito	Total Cases
CJ Rob	62%	62%	87%	66%	60%	64%	73%	81%	47
	77%	81%	91%	72%	72%	72%	82%	85%	
	79%	89%	91%	72%	79%	72%	84%	87%	
	21%	11%	9%	28%	21%	28%	16%	13%	
Stevens		43%	62%	77%	38%	72%	73%	57%	47
		62%	77%	89%	55%	91%	84%	70%	
		72%	79%	89%	64%	91%	84%	74%	
		28%	21%	11%	36%	9%	16%	26%	
Scalia			60%	51%	74%	45%	58%	62%	47
			74%	64%	85%	62%	67%	74%	
			83%	68%	87%	68%	73%	81%	
			17%	32%	13%	32%	27%	19%	
Ken				66%	53%	57%	76%	77%	47
				70%	64%	66%	84%	85%	
				70%	68%	66%	87%	87%	
				30%	32%	34%	13%	13%	
Sout					53%	81%	80%	68%	47
					60%	87%	82%	72%	
					64%	87%	82%	72%	
					36%	13%	18%	28%	
Thom						45%	53%	64%	47
						55%	60%	74%	
						60%	64%	83%	
						40%	36%	17%	
Gins							69%	60%	47
							78%	68%	
							78%	68%	
							22%	32%	
Breyer								73%	45
								78%	
								80%	
								20%	
Alito									47

**Key**

Full
Part + All
Judg + Part + All
Disagree

### SCOTUSblog Agreement Stats for OT07 - PRELIMINARY (6/9/08)

	Stevens	Scalia	Ken	Sout	Thom	Gins	Breyer	Alito	Total Cases
CJ Rob	29	29	41	31	28	30	33	38	47
	36	38	43	34	34	34	37	40	
	37	42	43	34	37	34	38	41	
	10	5	4	13	10	13	7	6	
Stevens	20	29	36	18	34	33	27	47	
	29	36	42	26	43	38	33		
	34	37	42	30	43	38	35		
Scalia	28	24	35	21	26	29	29	47	
	35	30	40	29	30	35	38		
	39	32	41	32	33	38	9		
Ken	31	25	27	34	36	47			
	33	30	31	38	40				
	33	32	31	39	41				
Sout	25	38	36	32	47				
	28	41	37	34					
	30	41	37	34					
Thom	17	6	8	13	47				
	21	24	30	35					
	26	27	35	39					
Gins	19	16	8	47					
	31	28	32						
	35	32	32						
Breyer	10	15	45						
	33	35							
	36	9							
Alito	47								

**Key**

Full
Part + All
Judg + Part + All
Disagree

OT07 - Decisions by Final Vote

9-0 (or unan.) 19 (39%)	8-1 (or 7-1) 4 (8%)	7-2 (or 6-2) 14 (29%)	6-3 7 (14%)	5-4 5 (10%)
<i>Sprint/United</i>	<i>Riegel</i>	<i>Danforth</i>	<i>Medellin</i>	<i>Ali v. BoP</i>
<i>Rowe</i>	<i>Preston</i>	<i>Siebert (PC)</i>	<i>Hall Street</i>	<i>Tom F. (4-4)</i>
<i>LaRue</i>	<i>Gonzalez</i>	<i>Gall</i>	<i>Begay</i>	<i>Stoneridge (5-3)</i>
<i>CSX v. Ga. Bd.</i>	<i>Ressam</i>	<i>Kimbrough</i>	<i>Crawford</i>	<i>W-Lambert (4-4)</i>
<i>Logan</i>		<i>John Sand</i>	<i>Rodriquez</i>	<i>Santos</i>
<i>Watson</i>		<i>FedEx</i>	<i>Gomez-Perez</i>	
<i>Wright v. VP (PC)</i>		<i>Snyder</i>	<i>Engquist</i>	
<i>NY Bd. Of Elections</i>		<i>Wash. Grange</i>		
<i>Knight v. CIR</i>		<i>NJ v. Delaware</i>		
<i>Boulware</i>		<i>Baze</i>		
<i>Clintwood Elkhorn</i>		<i>Williams</i>		
<i>MeadWestvaco</i>		<i>Davis</i>		
<i>Burgess</i>		<i>Riley</i>		
<i>Moore</i>		<i>CBOCS West</i>		
<i>Cuellar</i>				
<i>Richlin</i>				
<i>Phoenix Bond</i>				
<i>Quanta</i>				
<i>Allison Engine</i>				

**Dismissed**  
*Arave v. Hoffman* (not argued)  
*Ali v. Achim* (not argued)  
*Huber v. Wal-Mart* (not argued)  
*Klein & Co. v. Bd. Of Trade*

<i>Final OT05</i>				
45 (52%)	5 (6%)	12 (14%)	13 (15%)	11 (13%)

<i>Final OT06</i>				
28 (38%)	9 (12%)	9 (12%)	3 (4%)	24 (33%)

# Frequency in the Majority

(Through June 9, 2008)

The charts below measure how frequently each Justice has voted with the majority in cases decided on the merits thus far. It does not include opinions where the vote was not disclosed (*Board of Ed. of City School Dist. of New York v. Tom F.*) or where the case was dismissed as moot (*Arave v. Hoffman*).

The first chart examines the results for all cases, the second only for divided cases. In each, we list the number of times each Justice has voted with the majority, the number of times each Justice has voted overall, the frequency with which each Justice has voted with the majority in OT07, and the corresponding figure for OT06.

## All cases

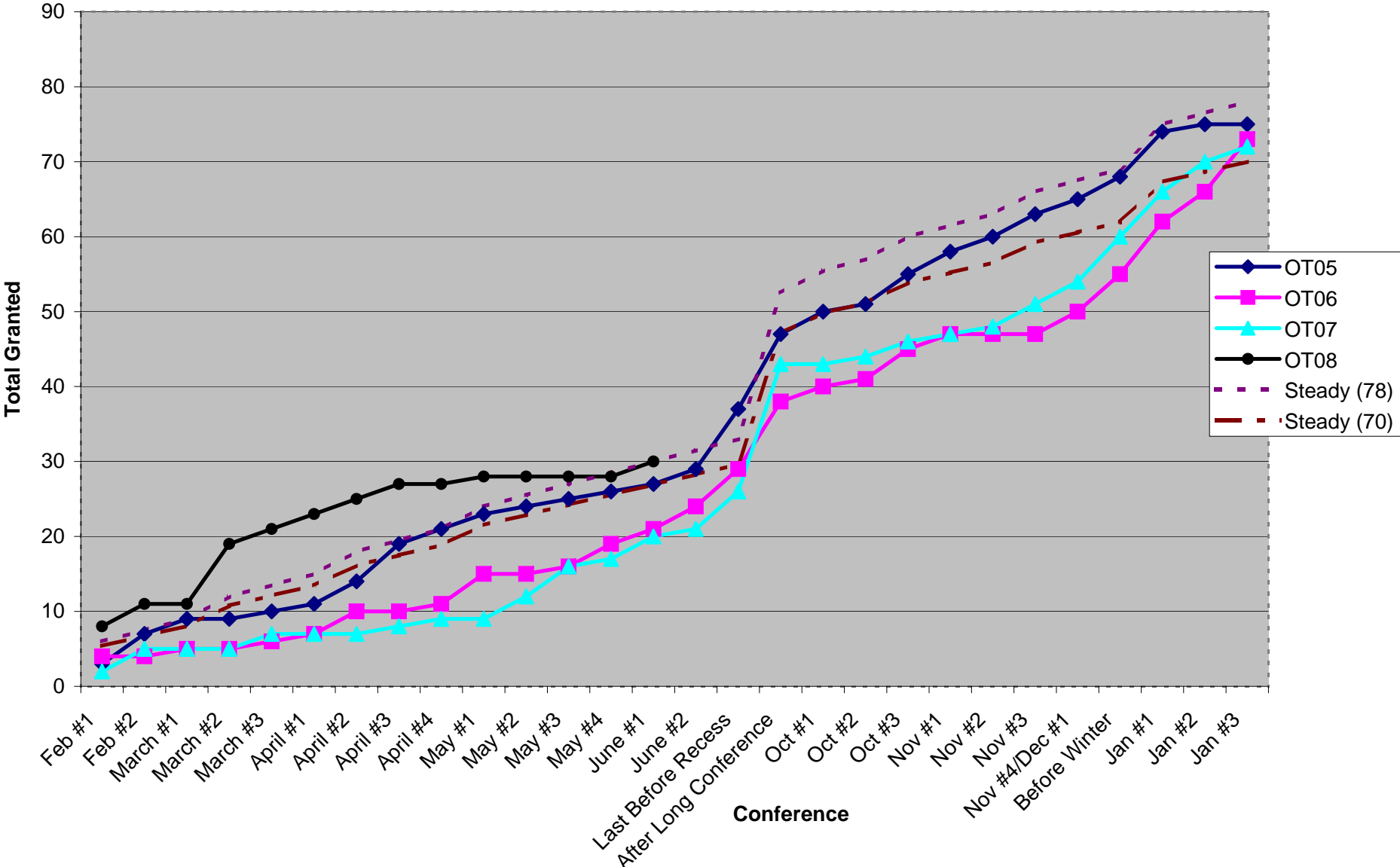
Justice	Majority votes	Total votes	% in majority	% in OT06
Roberts	44	47	93.6%	88.4%
Alito	41	47	87.2%	86.1%
Kennedy	41	47	87.2%	97.2%
Scalia	41	47	87.2%	79.2%
Breyer	39	45	86.7%	75.7%
Stevens	39	47	83.0%	63.9%
Thomas	38	47	80.9%	77.5%
Souter	37	47	78.7%	76.4%
Ginsburg	37	47	78.7%	72.2%

## Divided cases only\*

Justice	Majority votes	Total votes	% in majority	% in OT06
Roberts	25	28	89.3%	82.2%
Alito	22	28	78.6%	77.3%
Kennedy	22	28	78.6%	95.3%
Scalia	22	28	78.6%	65.9%
Breyer	20	26	76.9%	61.4%
Stevens	20	28	71.4%	36.6%
Thomas	19	28	67.9%	62.8%
Souter	18	28	64.3%	61.4%
Ginsburg	18	28	64.3%	54.5%

\* This category consists of cases that attract at least one dissenting vote.

### Granted Cases by Conference



*Notes: In OT04, the Court added an additional Conference at the end of June, on the last Monday of the Term, to consider relists. Thus, the jump of 8 cases reflects the grant of 5 cases in Conference on June 23, 2005 and an additional 3 on June 27, 2005.*

## Circuit Scorecard - OT07

Court	Decided	Outstanding	# Aff'd	% Aff'd	# Rev'd	% Rev'd	# Aff'd in Part	% Aff'd in Part	% of SCOTUS Caseload
CA1	2	0	1	50.0%	1	50.0%	0	0.0%	2.8%
CA2*	6	1	5	83.3%	1	16.7%	0	0.0%	9.7%
CA3	0	0	0	0.0%	0	0.0%	0	0.0%	0.0%
CA4	3	0	1	33.3%	2	66.7%	0	0.0%	4.2%
CA5	3	2	1	33.3%	2	66.7%	0	0.0%	6.9%
CA6	1	2	0	0.0%	1	100.0%	0	0.0%	4.2%
CA7	6	0	5	83.3%	1	16.7%	0	0.0%	8.3%
CA8	2	2	1	50.0%	1	50.0%	0	0.0%	5.6%
CA9	6	4	1	16.7%	5	83.3%	0	0.0%	13.9%
CA10	2	0	0	0.0%	2	100.0%	0	0.0%	2.8%
CA11	4	3	1	25.0%	3	75.0%	0	0.0%	9.7%
CADC	0	5	0	0.0%	0	0.0%	0	0.0%	6.9%
CAFC	4	0	1	25.0%	3	75.0%	0	0.0%	5.6%
Dist. Courts	1	1	0	0.0%	1	100.0%	0	0.0%	2.8%
State Courts	8	3	2	25.0%	6	75.0%	0	0.0%	15.3%
Original	1	0	N/A	N/A	N/A	N/A	N/A	N/A	1.4%
<b>Total†</b>	<b>49</b>	<b>23</b>	<b>19</b>	<b>38.8%</b>	<b>29</b>	<b>59.2%</b>	<b>0</b>	<b>0.0%</b>	

Consolidated cases are now counted together. Substantive summary reversals or affirmances are also counted.

\* The Court affirmed the Second Circuit in both *Tom F.* and *Warner-Lambert* by a vote of 4-4 and wrote no opinion.

† This list does not include *Arave*, *Wal-Mart*, *Achim*, or *Klein & Co.*, which were dismissed.

## Opinion Authors by Sitting

<b>OCT</b>	<i>Author</i>	<u>Count</u>	
Wash Grange	CT	JGR	1
Tom F.	PC	JPS	1
Gall	JPS	AS	2
Kimbrough	RBG	AMK	1
Lopez-Torres	AS	DHS	1
Santos	AS	CT	1
Watson	DHS	RBG	1
Stonerige	AMK	SB	0
Medellin	JGR	SAA	0

<b>NOV</b>	<i>Author</i>	<u>Count</u>	
Klein & Co.	dismiss	JGR	1
Ali v. BoP	CT	JPS	1
US v. Williams	AS	AS	1
Logan	RBG	AMK	1
Danforth	JPS	DHS	2
CSX v. Ga. Bd.	JGR	CT	1
Ky. v. Davis	DHS	RBG	1
John R. Sand	SB	SB	1
Holowiecki	AMK	SAA	0
Hall Street	DHS		

<b>DEC</b>	<i>Author</i>	<u>Count</u>	
LaRue	JPS	JGR	1
NJ v. Del.	RBG	JPS	1
Knight v. CIR	JGR	AS	1
Rowe	SB	AMK	0
Sprint/United	CT	DHS	0
Riegel	AS	CT	1
Snyder	SAA	RBG	1
<b>Boumediene</b>		SB	1
		SAA	1

<b>JAN</b>	<i>Author</i>	<u>Count</u>	
Baze	JGR	JGR	1
Dada		JPS	1
Gonzalez	AMK	AS	1
Boulware	DHS	AMK	1
Crawford	JPS	DHS	1
Ky. Retire		CT	1
Moore	AS	RBG	1
Preston	RBG	SB	1
Rodriquez	SAA	SAA	2
Begay	SB		
Quanta	CT		
Meadwestvaco	SAA		

<b>FEB</b>	<i>Author</i>	<u>Count</u>	
Gomez-Perez	SAA	JGR	0
Morgan-Stanley		JPS	0
CBOCS	SB	AS	0
Cuellar	CT	AMK	0
Warner-Lambert	PC	DHS	0
Allison Engine	SAA	CT	1
<b>Exxon</b>		RBG	0
		SB	1
		SAA	2

<b>MAR</b>	<i>Author</i>	<u>Count</u>	
Phillippines		JGR	1
Rothgery		JPS	1
<b>Heller (Guns)</b>		AS	0
Richlin	SAA	AMK	0
Cham. Of Comm.		DHS	0
Burgess	RBG	CT	0
Clintwood	JGR	RBG	2
Riley	RBG	SB	0
<b>Munaf</b>		SAA	1
Ressam	JPS		
Edwards			
Piccadilly			

<b>APR</b>	<i>Author</i>	<u>Count</u>	
Plains Commerce		JGR	1
Phoenix Bond	CT	JPS	0
Greenlaw		AS	0
Irizarry		AMK	0
<b>Kennedy v. La</b>		DHS	0
Sturgell		CT	1
APCC Svcs.		RBG	0
Enquist	JGR	SB	0
Davis v. FEC		SAA	0
Giles			
MetLife			
Meacham			

<b>Total</b>			
JGR	6	DHS	4
JPS	5	CT	6
AS	5	RBG	6
AMK	3	SB	4
		SAA	6

Cases in **red** are highest profile outstanding cases



The Court's Workload in OT07

Cases Granted or Probable Jurisdiction Noted:		72*
Dismissed Before Argument:	-	3
Original Cases Argued:	+	1
Number of Arguments:		70

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Argued Merits Cases Disposed of:		48
Signed Opinions:		45
Dismissals After Argument:		1
Affirmed by Equally Divided Vote:		2
Projected Remaining Merits Opinions:		21

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Expected Merits Opinions in OT07 After Argument:		67
Summary Opinions from Non-Argued Cases:	+	2
Total Merits Decisions:		69

\* Does not include the four (out of six) cases granted on 1/22/08 that will be argued in OT08.

## Outstanding Cases

As of 6/9/2008

[\*Boumediene v. Bush\*](#) (06-1195) Argued 12/5/2007

[\*Al-Odah v. United States\*](#) (06-1196)

Whether the Military Commissions Act of 2006 validly stripped federal court jurisdiction over habeas corpus petitions filed by foreign citizens imprisoned indefinitely at Guantanamo Bay.

[\*Dada v. Mukasey\*](#) (06-1181) Argued 1/7/2008

Whether the filing of a motion to reopen removal proceedings automatically tolls the period within which an alien must depart the U.S. under an order granting voluntary departure.

[\*Kentucky Retirement Systems v. EEOC\*](#) (06-1037) Argued 1/9/2008

Whether the relevance of age as a potential factor in the distribution of retirement benefits to disabled workers establishes a prima facie case of arbitrary discrimination, in violation of the ADEA.

[\*Morgan-Stanley v. Public Utility District #1\*](#) (06-1457) Argued 2/19/2008

Whether the 9<sup>th</sup> Circuit erred by failing to abide by *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* and *Federal Power Commission v. Sierra Pacific Power Co.*, which preclude the Commission from undoing a valid, bilaterally negotiated, arms-length wholesale energy contract that has, at most, a minimal impact on retail rates.

[\*Exxon v. Baker\*](#) (07-219) Argued 2/26/2008

Whether maritime law allows any punitive damages against a ship owner/operator for an oil spill and, if so, how high such a damage award may legally go.

[\*Republic of Philippines v. Pimentel\*](#) (06-1204) Argued 3/17/2008

Whether the Republic had the right to appeal the district court's determination that it is not an "indispensable" party under Fed. R. Civ. P. 19(b); and whether it has the right to seek the Supreme Court's review of the court of appeals' opinion affirming the district court.

[\*Rothgery v. Gillespie County\*](#) (07-440) Argued 3/17/2008

Whether adversary judicial proceedings commence, thus attaching 6<sup>th</sup> Amendment rights, when no prosecutor is involved in an individual's arrest or appearance before a magistrate.

[\*District of Columbia v. Heller\*](#) (07-290) Argued 3/18/2008

Whether D.C. code violates the Second Amendment right of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes.

## Outstanding Cases

As of 6/9/2008

*Chamber of Commerce v. Brown* (06-939) Argued 3/19/2008  
Whether California's regulation of noncoercive employer speech about union organizing is preempted by federal labor law.

*Munaf v. Geren* (06-1666) Argued 3/25/2008  
Whether U.S. Courts have jurisdiction to entertain a habeas corpus petition filed on behalf of an individual challenging his detention by a multinational force.

*Indiana v. Edwards* (07-208) Argued 3/26/2008  
Whether States may adopt a higher standard for measuring competency to represent oneself at trial than for measuring competency to stand trial.

*Florida Dept. of Revenue v. Piccadilly Cafeterias* (07-312) Argued 3/26/2008  
Whether the Bankruptcy Code, which exempts from stamp or similar taxes any asset transfer "under a plan confirmed under section 1129 of the Code," applies to transfers of assets occurring prior to the actual confirmation of such a plan.

*Plains Commerce v. Long Family Land and Cattle* (07-411) Argued 4/14/2008  
Whether Indian tribal courts have subject-matter jurisdiction to adjudicate civil tort claims as an "other means" of regulating the conduct of a non-member bank owning fee-land on a reservation that entered into a private commercial agreement with a member-owned corporation.

*Greenlaw v. United States* (07-330) Argued 4/15/2008  
Whether a federal court of appeals may increase a criminal defendant's sentence *sua sponte* and in the absence of a cross-appeal by the Government.

*Irizarry v. United States* (06-7517) Argued 4/15/2008  
Whether a district court must provide a criminal defendant notice of the contemplated grounds for a sentence above the range recommended by the Sentencing Guidelines.

*Kennedy v. Louisiana* (07-343) Argued 4/16/2008  
Whether the 8<sup>th</sup> Amendment's Cruel and Unusual Punishment Clause permits a State to punish the crime of rape of a child with the death penalty and, if so, whether Louisiana's statute violates this clause insofar as it fails to genuinely narrow the class of offenders eligible for the death penalty.

*Taylor v. Sturgell* (07-371) Argued 4/16/2008  
Whether a non-party can be bound by the judgment in a case under the theory that he was "virtually represented" by a party to the case when the non-party had no legal relationship with the party and did not receive notice of the litigation.

## Outstanding Cases

As of 6/9/2008

[\*Sprint Communications v. APCC Services\*](#) (07-552) Argued 4/16/2008

Whether the assignment of a claim “for purposes of collection” confers standing on an assignee that has no personal stake in the case and that avowedly litigates only “on behalf of” the assignors.

[\*Davis v. FEC\*](#) (07-320) Argued 4/22/2008

Whether BCRA’s so-called “Millionaire’s Amendment,” which relaxes campaign finance limits of congressional candidates spending more than \$350,000 of their own money, violates either the 1<sup>st</sup> or 5<sup>th</sup> Amendments.

[\*Giles v. California\*](#) (07-6053) Argued 4/22/2008

Whether a criminal defendant “forfeits” Sixth Amendment Confrontation Clause claims upon a mere showing that the defendant has caused the unavailability of a witness, or whether there must also be an additional showing that his actions were undertaken for the purpose of preventing the witness from testifying.

[\*MetLife v. Glenn\*](#) (06-923) Argued 4/23/2008

Whether the fact that a claim administrator of an ERISA plan also funds the plan benefits, without more, constitutes a “conflict of interest” that must be weighed in a judicial review of the administrator’s benefit determination.

[\*Meacham v. Knolls Atomic Power Laboratory\*](#) (06-1505) Argued 4/23/2008

Whether an employee alleging disparate impact under the ADEA bears the burden of persuasion on the, “reasonable factors other than age” defense.