



U.S. Department of Justice  
Office of the Attorney General

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25 July 1985

AG:

Attached is the 24 July SG's weekly report. New items of interest include the projected 18 August filing of a cert. petition in US v. Dion (p. 4), involving Indian treaty hunting rights as a defense to an Endangered Species prosecution, and the planned 31 August filing of the merits brief in Mechanik (p. 5), which raises the issue whether technical defects in grand jury proceedings can force dismissal of an indictment and voiding of an otherwise valid criminal trial and conviction.

JH  
John Harrison



U.S. Department of Justice  
Office of the Solicitor General

Washington, D.C. 20530

July 24, 1985

MEMORANDUM TO: D. Lowell Jensen  
Deputy Attorney General

FROM: Charles Fried  
Acting Solicitor General

SUBJECT: Weekly Report *(initials)*

<u>PROJECTED DATE</u>	<u>PERSONS</u>	<u>EVENT DESCRIPTION</u>
7/29/85	GELLER LARKIN	Filing of cert. petition in <u>Brock v. Cuyahoga Valley R.R. Co.</u> The issue is whether an employee may challenge and the Occupational Safety and Health Review Commission may review a decision by the Secretary of Labor to withdraw a citation issued for an alleged OSHA violation.
8/1/85	FRIED KNEEDLER	Filing of merits brief in <u>Heckler v. American Hospital Association, et al.</u> The issue is whether Section 504 of the Rehabilitation Act of 1973 prohibits a hospital from withholding nourishment or medically indicated treatment from a handicapped child, solely because of his handicap.

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<u>PROJECTED DATE</u>	<u>PERSONS</u>	<u>EVENT DESCRIPTION</u>
8/2/85	FREY ALITO	Filing of merits brief in <u>United States v. Inadi</u> . The issue is whether the government, in order to secure the admission at a conspiracy trial of the statements of a co-conspirator, must either show that the declarant is unavailable or produce him at trial.
*8/5/85	FREY HOROWITZ	Filing of brief amicus curiae in <u>Texas v. McCulloch</u> . The issues are (1) whether a presumption of vindictive sentencing under <u>North Carolina v. Pearce</u> , 395 U.S. 711 (1969), attaches when the trial judge grants the defendant's motion for a new trial, the defendant is reconvicted, he elects to be sentenced by the judge, and the judge imposes a higher sentence than a jury imposed in the first trial; and (2) whether the presumption of vindictive sentencing is dispelled if the judge states that he relied on new, objective information not known at the time of the first sentencing as a basis for the increased sentence.
8/7/85	GELLER KUHLIK	Filing of cert. petition in <u>United States v. Molsenbergen</u> . The issue is whether the <u>Feres</u> doctrine bars a former serviceman's FTCA claim alleging negligent post-discharge failure to warn of future health effects from exposure to radiation.
8/8/85	GELLER MINEAR	Filing of merits brief in <u>EEOC v. Federal Labor Relations Authority</u> . The issue is whether a proposal by a federal employees' union that an agency comply with an OMB circular governing agency contracting-out decisions is a mandatory subject of bargaining.

<u>PROJECTED DATE</u>	<u>PERSONS</u>	<u>EVENT DESCRIPTION</u>
8/15/85	GELLER PINCUS	Filing of merits brief in <u>United States v. City of Fulton</u> . The issue is whether the Secretary of Energy may impose an interim increase in the rates charged for electricity generated by federal hydroelectric projects pending confirmation of the rate increase by the Federal Energy Regulatory Commission.
8/15/85	WALLACE LAUBER	Filing of merits brief in <u>United States v. American College of Physicians</u> . The issue is whether commercial advertising income received by a tax-exempt organization that publishes a medical journal is "unrelated trade or business income" taxable to the organization under Sections 511 to 513 of the Internal Revenue Code.
*8/15/85	GELLER MINEAR	Filing of a jurisdictional statement in <u>Castillo v. Block</u> . The issue is whether Section 3(i) of the Food Stamp Act, 7 U.S.C. 2012(1), violates the Fifth Amendment by prohibiting family members who live together from claiming separate household status for food stamp entitlement purposes.
*8/16/85	WALLACE GANZFRIED	Filing of a cert. petition in <u>St. James Hospital v. Heckler</u> . The issue is whether it was erroneous for a court of appeals to invalidate a regulation of the Secretary of Health and Human Services that established a formula for reimbursing hospitals for the portion of malpractice insurance costs attributable to Medicare patients and to require the Secretary to reimburse hospitals according to a prior regulation.

<u>PROJECTED DATE</u>	<u>PERSONS</u>	<u>EVENT DESCRIPTION</u>
8/16/85	FRIED LARKIN	Filing of cert. petition in <u>Orr v. Turner</u> . The issue is whether Title VII of the Civil Rights Act or the Due Process Clause forbids a court, when construing a consent decree, from awarding a preference in promotion on the basis of race to a public employee who was not a victim of discrimination.
8/17/85	GELLER STRAUSS	Filing of brief amicus curiae in support of respondents in <u>Davidson v. Cannon, et al.</u> The issues are: (1) whether a state prisoner injured in an attack by another prisoner due to the failure of state prison authorities to protect him has been "deprived" of "liberty" under the Due Process Clause of the Fourteenth Amendment; and (2) if so, whether a reasonably comprehensive state tort claims statute which nevertheless bars actions arising out of injuries to one prisoner by another can constitute adequate "process."
*8/18/85	CLAIBORNE SHAPIRO	Filing of a cert. petition in <u>United States v. Dion</u> . The issue is whether an Indian may assert treaty-based hunting rights as a defense to criminal prosecution under the Eagle Protection Act and the Endangered Species Act.
8/22/85	GELLER OBERLY	Filing of merits brief in <u>Heckler v. Roy</u> . The issue is whether federal statutes requiring applicants for food stamps and AFDC to provide their state welfare agencies with their social security numbers violate the Free Exercise Clause as applied to persons who hold a sincere religious belief that SSNs are part of a "great evil."

<u>PROJECTED DATE</u>	<u>PERSONS</u>	<u>EVENT DESCRIPTION</u>
8/22/85	CLAIBORNE HOROWITZ	Filing of a merits brief in <u>Dow Chemical Co. v. United States</u> . The issue is whether EPA's aerial surveillance of a chemical plant violated the Fourth Amendment or exceeded EPA's statutory authority.
8/28/85	GELLER KNEEDLER	Filing of a cert. petition in <u>Michigan Academy of Family Physicians v. Blue Cross and Blue Shield of Michigan</u> . The issue is whether Congress has foreclosed judicial review of a regulation governing classification of physicians for purposes of Part B of the Medicare Program.
*8/31/85	FREY LEVY	Filing of a merits brief in <u>United States v. Mechanik</u> and <u>Lill v. United States</u> . The central issue is whether a technical defect in a grand jury proceeding (in this case the fact that two federal law enforcement officers testified before the grand jury at the same time in violation of Fed. R. Crim. P. 6(d)) can serve as a basis for dismissing the indictment and reversing the defendants' otherwise valid convictions by a petit jury, particularly when there is no evidence that the technical violation was actually prejudicial to the defendants.
*8/31/85	CLAIBORNE KNEEDLER	Filing of a jurisdictional statement in <u>Irving v. Hodel</u> . The question presented is whether 25 U.S.C. 2206, which provides that certain de minimis fractional interests in Indian allotments shall not descend by intestacy or devise, but instead shall escheat to the tribe, is constitutional.

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*8/31/85	<u>WALLACE LAUBER</u>	Filing of a merits brief in <u>Sorenson v. Secretary of the Treasury</u> . The issue is whether a tax refund attributable to an earned income credit constitutes an "overpayment" such that it may be intercepted by the IRS and applied toward the individual's past due child support obligations.

\* New Entries

cc: Terry H. Eastland  
Director of Public Affairs

Mark T. Sheehan  
Assistant Director  
Office of Public Affairs

Stephen Galebach  
Senior Special Assistant  
to the Attorney General