

# Monthly Review

The Federal Public Defender for the  
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## I. The Supreme Court Decides *Wilson v. Corcoran*



On November 8, 2010, the Supreme Court issued a per curiam decision in *Wilson v. Corcoran*,<sup>1</sup> No. 10-91, holding that a federal court may not issue a writ of habeas corpus without first determining that a state prisoner's confinement violated federal law.

In 1997, Joseph Corcoran was found guilty of four counts of murder by an Indiana jury. The jury recommended capital punishment based on aggravating circumstances, which were governed by an Indiana statute. The state trial court agreed with the jury's recommendation and sentenced Corcoran to death. During the sentencing hearing, however, the trial court referenced the innocence of Corcoran's victims, the heinousness of his offense, and his future dangerousness, none of

which are aggravating circumstances under Indiana law.

The Indiana Supreme Court vacated Corcoran's sentence on the basis that the trial court may have weighed the discussed factors as aggravating circumstances. Upon remand, the trial court wrote that "it only relied upon those proven statutory aggravators" in its sentencing decision. The Indiana Supreme Court then affirmed the sentence. Corcoran then applied for a writ of habeas corpus in the Northern District of Indiana, which granted the writ on another ground but was reversed by the Seventh Circuit with instructions to deny the writ. The Supreme Court granted certiorari, explaining that the Seventh Circuit should have allowed the District Court to consider other grounds for habeas corpus or explained why such consideration was unnecessary. Upon remand from the Supreme Court, the Seventh Circuit reversed its position and granted habeas relief, holding that the Indiana Supreme Court had made an "unreasonable determination of the facts" when it accepted the trial court's explanation. The Seventh Circuit directed that the trial court should reconsider its sentencing determination to "prevent non-compliance with Indiana law."

The Supreme Court reversed the Seventh Circuit's decision. It explained that "it is only noncompliance with federal law that renders a State's criminal judgment susceptible to collateral attack in the federal courts." Because the alleged error involved contravention of the state's aggravating circumstances statute, habeas corpus relief was unavailable.

The decision was per curiam.

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<sup>1</sup> Cite as 562 U.S. \_\_\_\_ (2010)

## A. Upcoming Petitions To Be Watching For:

*Los Angeles County v. Humphries*, No. 09-350

**Issue:** (1) To obtain a declaration that his rights were violated by a local government, must the plaintiff show that the violation was the result of a government policy? (2) Can such a plaintiff obtain attorney's fees from the local government, even if he does not show an illegal government policy? (3) Can a plaintiff obtain attorney's fees for prevailing on an appeal when the appeal does not finally resolve the case and the defendant may yet win the case in the end?

*Abbott v. United States; Gould v. United States*, No. 09-479

**Issue:** A federal statute requires an additional five-year sentence for using a gun during certain drug trafficking crimes or crimes of violence, unless another statute provides a higher minimum sentence. (1) Does the five-year addition apply when the underlying drug trafficking offense or crime of violence carries a mandatory minimum sentence of more than five years? (2) Does it apply when the defendant was convicted for a separate offense, arising from the same incident, that carries a minimum sentence of more than five years?

Note: Today (October 15, 2010) at 10:01 AM, Justice Ginsburg delivered the opinion of the Court. It was a unanimous decision, with Justice Kagan recused.

**Holding:** A defendant is subject to the highest mandatory minimum specified for his conduct in 18 U.S.C. 924(c) unless another provision of law directed to conduct proscribed by Section 924(c) specifically imposes an even greater mandatory minimum sentence.

*Michigan v. Bryant*, No. 09-150

**Issue:** The Sixth Amendment generally requires prosecutors to present testimonial evidence through live testimony at trial. Do statements made by a wounded crime victim to police officers about the perpetrator constitute such testimonial evidence, or can the police officer testify at trial about what the victim said?

*Connick v. Thompson*, 09-571

**Issue:** Can a prosecutor's office be held liable for the illegal conduct of one of its prosecutors, on the theory that the office failed to adequately train its employees, when there has been only one violation resulting from that deficient training?

*Premo v. Moore*, No. 09-658

**Issue:** When a defendant has pleaded guilty, but later challenges his conviction on the ground that his lawyer should have moved to suppress his confession, is he entitled to habeas relief upon showing that his confession was coerced?

*Harrington v. Richter*, 09-587

**Issue:** (1) Did the Ninth Circuit err in finding that a lawyer provided ineffective assistance to a criminal defendant by declining to investigate or introduce expert testimony regarding certain blood stains? (2) Is a state court decision upholding a criminal conviction entitled to deference when challenged in a federal habeas proceeding if the state court issued a summary decision with no reasoning?

*Skinner v. Switzer*, No. 09-9000

**Issue:** When a convicted prisoner wishes to sue a state to obtain access to biological evidence for DNA testing, is he required to file a habeas petition or can he file a civil rights suit instead?

## II. First Circuit - Opinion Summaries



*United States v. Figueroa-Gonzalez*, No. 07-2225 (1<sup>st</sup> Cir. Oct. 7, 2010)

Conviction of defendant for carjacking and firearm used during and in relation to a crime of violence is affirmed as there was no error, clear or otherwise, as the district court was presented with conflicting evidence and chose to conclude that the evidence was stronger in favor of competency to plead guilty. Affirmed.

*Tevlin v. Spencer*, No. 09-1894 (1<sup>st</sup> Cir. Oct. 8, 2010)

District court's denial of defendant's request for habeas relief from his convictions for first-degree murder, armed robbery, and assault and battery by means of a dangerous weapon, is affirmed where: 1) defendant has failed to demonstrate the existence of ineffective assistance of counsel in any of his theories; and 2) the Massachusetts discovery procedures are not on their face unconstitutional and defendant has not established that their application here violated due process.

*United States v. Brown*, No. 09-1803 (1<sup>st</sup> Cir. Oct. 8, 2010)

Defendant's conviction for possession of cocaine base with intent to distribute is affirmed where: 1) although the district court's factual findings and the inferences made from those findings, which formed the basis of its conclusion that reasonable suspicion existed to stop a car, are not compelled by the record or by the facts, both are nonetheless reasonable and therefore pass constitutional muster; 2) the affirmance of the district court's finding that the officers had reasonable suspicion to stop the car forecloses the need to address defendant's challenge to the district court's alternate conclusion that the car was not seized when the officers first approached; and 3) there was no abuse of discretion in the district court's denial of defendant's motion to suppress evidence without an evidentiary hearing.

*United States v. Kinsella*, No. 09-2485 (1<sup>st</sup> Cir. Oct. 13, 2010)

The defendant was sentenced to 97 months in prison after being convicted of drug offenses. The convictions and sentence was affirmed, as no reversible error was committed by the prosecutor, and the judge below did not miscalculate the amount of drugs involved. "Using standard investigative techniques - including informants, controlled drug buys, and tape-recorded conversations - law enforcement agents uncovered an OxyContin-selling conspiracy centered in Maine. A morphine-like narcotic, OxyContin is an oxycodone-based product often prescribed to treat chronic pain. Putting the operation out of business, agents arrested Arthur Michael Kinsella, a Canadian-based dealer who had smuggled OxyContin into Maine. Later released on bail, Kinsella skipped a re-arraignment hearing and so became a fugitive from justice. He was shipped back to Maine by Canadian authorities, and faced charges of conspiring to possess and distribute oxycodone, possessing oxycodone with intent to

distribute, and willfully failing to appear in court as required ...” Acting on Kinsella’s motion, Judge (now Chief Judge) Woodcock severed the oxycodone counts from the bail-jumping count for trial purposes. After separate juries convicted Kinsella across the board, Judge Woodcock sentenced him to 97 months in prison and 36 months of supervised release. Kinsella challenged his convictions and sentence on several fronts. For openers, he argued that multiple instances of prosecutorial misconduct deprived him of his fair-trial rights. The first incident revolved around the prosecutor’s unobjected-to questioning of a cooperating witness, Christopher Hitchcock. Caught pushing OxyContin for Kinsella, Hitchcock cut a deal with the government, concluded his case on favorable terms - Judge Woodcock sentenced him to 24 months, well short of the 20-year statutory maximum - and testified against Kinsella at the drug trial. Kinsella’s lawyer aggressively confronted Hitchcock on cross-examination, using the plea agreement and light sentence to attack his credibility. During the government’s redirect, however, Hitchcock revealed that Judge Woodcock had sentenced him. Speculating that jurors hearing this must have concluded that Judge Woodcock had already found Hitchcock credible - why else would he have imposed such a ‘lenient’ sentence? - Kinsella insisted that justice demanded that he get a new trial on the drug counts. He also asserted that certain unobjected-to comments by prosecutors during closing arguments warranted reversal on plain-error review. Turning to sentencing, Kinsella contended that Judge Woodcock erred in his drug-quantity calculation. After a studied review of the briefs and the record, the Court affirmed Kinsella’s convictions and sentence.

*Statchen v. Palmer*, No. 09-2418 (1<sup>st</sup> Cir. Oct. 15, 2010)

In plaintiff’s 42 U.S.C. section 1983 suit against police officers, claiming that they used excessive force in arresting him for public

intoxication and in transporting him from a station house to jail, district court’s grant of summary judgment in favor of defendants on the basis of qualified immunity is affirmed as the district court had no basis for sending the case to a jury because plaintiff’s own deposition provided no evidence to indicate that the force exerted was unnecessary, or that a reasonable police officer would have thought otherwise.

*Raiche v. Pietroski*, No. 09-1910 (1<sup>st</sup> Cir. Oct. 25, 2010)

In plaintiff’s civil rights suit against a police officer for injuries sustained as a result of excessive force during arrest, district court’s denial of the officer’s motion for judgment as a matter of law and a motion for a new trial are affirmed where: 1) the officer is not entitled to qualified immunity as to plaintiff’s excessive force claim under section 1983, as an objectively reasonable officer would have believed that tackling plaintiff from his motorcycle and slamming him into the pavement would violate his constitutional right to be free from excessive force; 2) the officer is not entitled to qualified immunity as to plaintiff’s excessive force claims made under state law for precisely the same reasons that he is not entitled to qualified immunity with respect to plaintiff’s excessive force claim made under section 1983; and 3) because the jury’s verdict against the officer on the excessive force claims was supported by sufficient and ample evidence in the record, a new trial is not warranted.

### III. In the District Court

#### A. Training

The Sentencing Advocacy Workshop will take place on November 17 and 18, 2010 at the College of Engineers and Surveyors of Puerto Rico (CIAPR). Remember that, apart from the preparation material you were required to complete, you need to take one of your cases and have a summary of the facts for the small group brainstorming sessions. For more information visit, [http://fd.org/odstb\\_sentencingresourcesmaterials.htm](http://fd.org/odstb_sentencingresourcesmaterials.htm).

#### B. Article

### Judge Juan Torruella Supports Marijuana Legalization

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It's not every day that marijuana legalization gets this type of endorsement!

United States Federal Appeals Court Judge Juan Torruella told a law school audience last Tuesday, November 9, that "the only realistic alternative" to America's failed war on drugs is to experiment with legalization, "beginning with marijuana."

Torruella made his comments at the University of Puerto Rico's law school, where he was a guest speaker for an audience of about 70 people, including the law school's dean and Puerto Rico's secretary of health.

Among several of his comments regarding the issue, according to El Nuevo Dia, the judge questioned whether the United States goal was "a Drug-Free America by 1998, or 'drug free America for 1998'?", prompting many laughs from the audience.

"The only realistic alternative to the policy (drug) is currently experimenting with the legalization of at least some of these substances, beginning with marijuana," said Torruella.

"I do not see how we can avoid the conclusion that the war on drugs [has] not only [wasted] time, but for some time that loss has had a high human and material costs," said the veteran judge who cited as an example the increase in deaths associated with drug trafficking in Mexico when the United States authorities allegedly managed to reduce the traffic routes in the Caribbean.

In support of his theory he gave the example that New Zealanders and Americans are the number one marijuana smokers (42%) in the world, by far, and noted that in Holland, where consumption is legal, only 20% consume marijuana.

The United States remains "the source of insatiable appetite that drives this industry," Torruella expressed. On concluding, he cited a recent study by the Cato Institute, as well as British studies showing marijuana is less harmful than alcohol "and therefore should be legalized."

Judge Torruella sits on the Boston-based First Circuit Court of Appeals. He was first nominated to be a federal judge by President Ford, and was elevated to the Court of Appeals by President Reagan in 1984.

Note: This was the second time in less than a week that commonsense marijuana policy had been endorsed outside of the United States. On Thursday, November 4th, a bill to legalize, tax, and regulate marijuana for medicinal and recreational

purposes was approved by the House of Representatives for the Commonwealth of the Northern Mariana Islands, a United States territory. Commentators say that the bill is not expected to pass through the Commonwealth's Senate, where five out of nine senators plan to vote against it.

**THE END**