

**SUPREME COURT CASES PENDING DURING OCTOBER TERM 2009 WORKED ON BY
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP**

March 1, 2010

Granted Cases

No.	Caption and Status	Attorneys	Description
09-479	<p><i>Kevin Abbott v. United States</i></p> <p>Cert. granted January 25, 2010</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott, which the Court granted on January 25, 2010. We argue that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless “a greater minimum sentence is * * * provided * * * by any other provision of law” – includes as an “other provision of law” either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott’s sentence did not need to be enhanced by an additional five years under Section 924(c). In granting cert., the Court consolidated <i>Abbott</i> with <i>Gould v. United States</i>, No. 09-7073.</p>

No.	Caption and Status	Attorneys	Description
08-876	<p><i>Conrad M. Black et al. v. United States</i></p> <p>Cert. granted May 18, 2009</p> <p>Amicus brief filed August 6, 2009</p> <p>Argued December 8, 2009</p>	<p>L. Robbins D. Walfish</p>	<p>We have filed an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners' position that 18 U.S.C. § 1346 does not apply to the conduct of a private individual whose alleged "scheme to defraud" did not contemplate economic or other property harm to the private party to whom honest services were owed. Specifically, we have argued that § 1346 is unconstitutionally vague.</p>
08-728	<p><i>Taylor James Bloate v. United States</i></p> <p>Cert. granted April 20, 2009</p> <p>Opening merits brief filed June 18, 2009</p> <p>Reply brief filed September 11, 2009</p> <p>Argued October 6, 2009</p>	<p>M. Stancil B. Pérez-Daple</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we represent Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which has divided the Circuits, is whether time spent preparing pretrial motions is excludable under the Speedy Trial Act. Mark Stancil argued the case on October 6, 2009.</p>
09-475	<p><i>Monsanto Co. et al. v. Geertson Seed Farms et al.</i></p> <p>Cert. granted January 15, 2010</p> <p>Respondents' merits brief due March 25, 2010</p> <p>To be argued April 27, 2010</p>	<p>L. Robbins D. Russell A. Untereiner E. Temkin L. Helvin</p>	<p>We represent respondents. Petitioners are challenging a nationwide injunction that restricts the further planting of genetically engineered alfalfa, until such time as the government issues an Environmental Impact Statement regarding the proposed deregulation of that crop. We will prepare the respondents' brief, and Larry Robbins will argue the case in April 2010.</p>

No.	Caption and Status	Attorneys	Description
08-1394	<p><i>Jeffrey K. Skilling v. United States</i></p> <p>Cert. granted October 13, 2009</p> <p>Amicus brief filed December 9, 2009</p> <p>Argued March 1, 2010</p>	<p>L. Robbins D. Walfish</p>	<p>We have been retained to file an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners' position that 18 U.S.C. § 1346 either requires the government to prove that the defendant's conduct was intended to achieve "private gain" (rather than to advance the employer's interests), or is unconstitutionally vague. We argue that § 1346 is unconstitutionally vague.</p>
08-724	<p><i>Keith Smith, Warden v. Frank G. Spisak, Jr.</i></p> <p>Cert. granted February 23, 2009</p> <p>Amicus brief filed August 14, 2009</p> <p>Argued October 13, 2009</p> <p>Reversed January 12, 2010</p>	<p>R. Englert E. Temkin</p>	<p>We represented the authors of manuals and treatises on trial advocacy, and other leading authorities on trial advocacy, as amici curiae supporting respondent. We argued that respondent's counsel's argument at the penalty phase of his capital trial – in which counsel presented graphic detail concerning what he called the "aggravating circumstances" of his client's multiple murders, disclaimed the existence of many "mitigating circumstances," and offered only a vague discussion of his client's evidence of diminished capacity to appreciate the wrongfulness of his actions – fell below minimum standards of professional competence. On January 12, 2010, the Court unanimously reversed the judgment below, but it did not reach our argument that counsel's performance was deficient, instead determining that any deficient performance did not prejudice respondent.</p>

Cert. Petitions, Appeals, And Miscellaneous Matters

No.	Caption and Status	Attorneys	Description
09-479	<p><i>Kevin Abbott v. United States</i></p> <p>Cert. petition filed October 19, 2009, docketed October 22, 2009</p> <p>Reply brief filed December 31, 2009</p> <p>Cert. granted January 25, 2010</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott. We argue that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless “a greater minimum sentence is * * * provided * * * by any other provision of law” – includes as an “other provision of law” either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott’s sentence did not need to be enhanced by an additional five years under Section 924(c).</p>
09-117	<p><i>Apotex, Inc., and Apotex Corp. v. Sanofi-Synthelabo, et al.</i></p> <p>Cert. petition filed July 24, 2009, docketed July 28, 2009</p> <p>Reply brief filed October 13, 2009</p> <p>Cert. denied November 2, 2009</p>	R. Englert A. Untereiner D. Walfish	<p>We have filed a petition for a writ of certiorari arguing that the Federal Circuit should have declared invalid as obvious a patent used to enforce a monopoly on clopidogrel bisulfate, an anti-blood-clotting drug that is used to treat or prevent heart attacks and strokes.</p>

No.	Caption and Status	Attorneys	Description
09-893	<p><i>AT&T Mobility LLC v. Vincent Concepcion and Liza Concepcion</i></p> <p>Cert. petition filed January 25, 2010, docketed January 26, 2010</p> <p>Amicus brief filed February 25, 2010</p>	<p>R. Englert B. Pérez-Daple</p>	<p>On behalf of the Chamber of Commerce of the United States of America, we have filed an amicus brief in support of the cert. petition in this case. The question presented is whether the Federal Arbitration Act pre-empts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures – here, class-wide arbitration – when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.</p>
08-728	<p><i>Taylor James Bloate v. United States</i></p> <p>Cert. petition filed and docketed December 4, 2008</p> <p>Reply brief filed February 18, 2009</p> <p>Record requested February 23, 2009</p> <p>Cert. granted April 20, 2009</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which has divided the Circuits, is whether time spent preparing pretrial motions is excludable under the Speedy Trial Act.</p>

No.	Caption and Status	Attorneys	Description
09-980	<p><i>British American Tobacco (Investments) Ltd. v. United States</i></p> <p>Cert. petition filed February 19, 2010, docketed February 22, 2010</p>	<p>A. Untereiner R. Englert M. Stancil E. Temkin</p>	<p>We represent petitioner BATCo, which is one of the defendants in the government’s RICO case against the tobacco companies. BATCo’s petition argues that the D.C. Circuit incorrectly held that the traditional presumption against extraterritoriality is completely irrelevant to determining whether Congress intends a statute to reach the wholly foreign conduct of a foreign corporation, if such foreign conduct is alleged to have had a direct and substantial effect within the United States. The petition also argues that the D.C. Circuit, in concluding that RICO regulates BATCo’s wholly foreign conduct, improperly (a) ignored the presumption against extraterritoriality and affirmative evidence that Congress never intended RICO to apply extraterritorially; (b) borrowed from federal securities and antitrust cases the ill-suited “effects” test as a measure of RICO’s extraterritorial reach; (c) approved a watered-down version of that test that conflicts with the test used by other circuits; and (d) relied on the U.S. “effects” of the U.S. conduct of other co-defendants and of the “overall” alleged RICO scheme.</p>

No.	Caption and Status	Attorneys	Description
08-1375	<p><i>Cassens Transport Co., et al. v. Paul Brown, et al.</i></p> <p>Cert. petition filed May 6, 2009, docketed May 7, 2009</p> <p>Motion for leave to file amicus brief (with accompanying brief) filed June 8, 2009</p> <p>Response requested September 2, 2009, filed November 2, 2009</p> <p>Motion for leave to file granted and cert. denied December 7, 2009</p>	A. Untereiner	<p>We were retained by the American Trucking Associations, Inc. to file an amicus brief in support of the petition in this case, which raised questions concerning the effect of the McCarran-Ferguson Act's anti-preemption provision on RICO actions that challenge the denial of worker's compensation claims under state law.</p>

No.	Caption and Status	Attorneys	Description
08-1283	<p><i>Choose Life Illinois, Inc., et al. v. Jesse White, Secretary of State of the State of Illinois</i></p> <p>Cert. petition filed April 16, 2009, docketed April 17, 2009</p> <p>Brief in opposition filed July 31, 2009</p> <p>Reply brief filed August 13, 2009</p> <p>Cert. denied October 5, 2009</p>	<p>A. Untereiner R. Englert D. Taaffe J. Windom</p>	<p>We represented 15 individuals and a non-profit organization in this lawsuit against the State of Illinois arising out of the State's refusal to issue a "Choose Life" speciality license plate. The district court held that the refusal was viewpoint discrimination in violation of the First Amendment and granted summary judgment in our favor. The Seventh Circuit reversed. The cert. petition raised issues concerning the Seventh Circuit's determinations that the denial of the plate was content rather than viewpoint discrimination, that speciality plates are a nonpublic forum rather than a limited public forum, and that Illinois's denial of the plate passed muster under the rules governing non-public fora. The petition also raised an issue relating to the Seventh Circuit's rejection of our clients' facial challenge to the licensing scheme as completely standardless.</p>
09-314	<p><i>City of Virginia Beach v. Tanner</i></p> <p>Brief in opposition filed December 14, 2009</p> <p>Cert. denied January 19, 2010</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a brief in opposition to this certiorari petition. The petition sought review of a decision of the Supreme Court of Virginia striking down a city anti-noise ordinance as unconstitutionally vague.</p>

No.	Caption and Status	Attorneys	Description
08-1423	<p><i>Costco Wholesale Corp. v. Omega, S.A.</i></p> <p>Cert. petition filed and docketed May 18, 2009</p> <p>Brief in opposition filed July 17, 2009</p> <p>Reply brief filed July 28, 2009</p> <p>Supplemental brief filed September 28, 2009</p> <p>Views of Solicitor General invited October 5, 2009</p>	<p>R. Englert A. Lavinbuk</p>	<p>We have filed a petition for a writ of certiorari urging the Court to review, and overturn, a Ninth Circuit decision. Reversing the district court, the Ninth Circuit held that Omega may block Costco from selling its “copyrighted” goods (watches with a small globe on the back, added for the sole purpose of being able to use copyright law to restrict distribution) even though Omega sold the watches in Switzerland and Costco bought them lawfully in the United States. We argue that the first-sale doctrine applies, that Omega exhausted its copyright rights when it sold the watches, and that plain statutory language as well as <i>Quality King Distributors, Inc. v. L’anza Research Int’l, Inc.</i>, 523 U.S. 135 (1998), precludes the result the Ninth Circuit reached.</p>
09-631	<p><i>Elisa Encarnacion on behalf of Arlene George, et al. v. Michael J. Astrue, Commissioner of Social Security</i></p> <p>Cert. petition filed November 24, 2009, docketed December 2, 2009</p>	<p>R. Englert D. Walfish</p>	<p>Along with lead counsel at Kramer Levin and disability-rights organizations, we represent the parents of poor children who, we contend, would be considered disabled and eligible for Social Security benefits but for an illegal policy of the Social Security Administration. We contend that the Second Circuit’s decision below, upholding the policy, is contrary to a prior decision of the same court and to <i>Sullivan v. Zebley</i>, 493 U.S. 521 (1990).</p>

No.	Caption and Status	Attorneys	Description
09-5844	<p><i>Tarry Cordell London v. United States</i></p> <p>Cert. petition filed and docketed August 11, 2009</p> <p>Reply brief filed November 24, 2009</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a reply brief on behalf of Mr. London, who petitioned for certiorari <i>pro se</i>. The <i>London</i> case raises the same issues as the <i>Abbott</i> case discussed above, and presumably is now being held pending disposition of <i>Abbott</i>, which was granted January 25, 2010.</p>
09-490	<p><i>Mayo Collaborative Services (d/b/a Mayo Medical Laboratories) and Mayo Clinic Rochester v. Prometheus Laboratories, Inc.</i></p> <p>Cert. petition filed October 22, 2009, docketed October 26, 2009</p> <p>Amicus brief filed November 25, 2009</p>	R. Englert D. Walfish	<p>We represent clinical laboratories that have filed an amicus brief supporting petitioners. The question presented is whether 35 U.S.C. § 101 is satisfied by a patent claim that covers observed correlations between patient test results and patient health, so that the claim effectively preempts all uses of those naturally occurring correlations. The Court considered the case at its conference of January 22, 2010, but did not act on it on January 25, which presumably means the Court is holding the case pending its disposition of <i>Bilski v. Kappos</i>, No. 08-964, which was argued November 9, 2009.</p>

No.	Caption and Status	Attorneys	Description
08-1482	<p><i>Tommy Zeke Mincey v. United States</i></p> <p>Cert. petition filed May 21, 2009, docketed June 2, 2009</p> <p>Brief in opposition filed September 2, 2009</p> <p>Reply brief filed September 15, 2009</p> <p>Cert. denied October 13, 2009</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Mincey raising the question whether Mincey had a reasonable expectation of privacy in his girlfriend's rental car, which he was driving with her permission but in alleged violation of the rental agreement. Our co-counsel on the case was Matthew R. Segal, Assistant Federal Defender in the Western District of North Carolina.</p>
08-1172	<p><i>Joseph P. Nacchio v. United States</i></p> <p>Cert. petition filed March 20, 2009, docketed March 23, 2009</p> <p>Amicus brief filed April 22, 2009</p> <p>Cert. denied October 5, 2009</p>	<p>L. Robbins G. Orseck M. Stancil</p>	<p>On behalf of the Chamber of Commerce of the United States of America, we filed an amicus brief in support of this cert. petition, which challenged the criminal insider-trading convictions of the former CEO of Qwest Communications. We argue that the en banc Tenth Circuit misapplied materiality standards to forward-looking internal corporate risk assessments when it upheld Nacchio's convictions.</p>

No.	Caption and Status	Attorneys	Description
08-1453	<p><i>Tommy Ray Rollins, Jr. v. United States</i></p> <p>Cert. petition filed May 21, 2009, docketed May 26, 2009</p> <p>Waiver of right to respond filed June 2, 2009</p> <p>Response requested by Court June 16, 2009</p> <p>Brief in opposition filed September 16, 2009</p> <p>Reply brief filed September 29, 2009</p> <p>Cert. denied October 20, 2009</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Rollins. The question presented was whether a federal district court may order a federal sentence to be served consecutively to a not-yet-imposed state sentence arising from common events.</p>
09-978 and 09-994	<p><i>United States v. Philip Morris USA, Inc., et al.</i></p> <p>Cert. petition filed and docketed February 19, 2010</p> <p><i>Tobacco-Free Kids Action Fund, et al. v. Philip Morris USA, Inc., et al.</i></p> <p>Cert. petition filed February 19, 2010, docketed February 23, 2010</p>	A. Untereiner R. Englert M. Stancil E. Temkin	<p>We represent respondent BATCo. The government argues that RICO provides for the remedy of disgorgement and seeks some \$280 billion from respondent tobacco companies. The government's previous petition for certiorari on this issue was denied in 2005, but the government apparently contends that the denial of cert. when the case was in an interlocutory posture does not preclude another attempt. A private petition also raises additional issues concerning other remedies the D.C. Circuit did not order, and (as noted in part above) our client BATCo and the other defendants have also petitioned on liability issues.</p>

No.	Caption and Status	Attorneys	Description
09-196	<p><i>Joseph P. Ward v. International Union of Operating Engineers, Local 150, AFL-CIO</i></p> <p>Petition for a writ of certiorari filed and docketed August 14, 2009</p> <p>Brief in opposition filed September 4, 2009</p> <p>Reply brief filed September 15, 2009</p> <p>Cert. denied October 13, 2009</p>	<p>L. Robbins M. Madden</p>	<p>We represented Mr. Ward, a union official sued by his union in federal court for an alleged breach of fiduciary duty under the Labor-Management Reporting and Disclosure Act (LMRDA). The question presented was whether Section 501 of the LMRDA provides an implied cause of action for labor organizations in addition to the express cause of action it provides union members. The Seventh Circuit reversed the district court and held that it does, contrary to the Ninth Circuit's position but in agreement with the Eleventh Circuit's.</p>

No.	Caption and Status	Attorneys	Description
08-7757	<p><i>Darian Antwan Watts v. United States</i></p> <p>Cert. petition filed February 13, 2008, docketed December 15, 2008</p> <p>Reply brief filed May 19, 2009</p> <p>Supplemental brief of petitioner filed (in response to supplemental brief of the United States) December 8, 2009</p> <p>Petition granted, judgment vacated, and case remanded for further consideration “in light of the position asserted by the Solicitor General” January 19, 2010.</p>	<p>G. Poe R. Li Wai Suen M. Madden</p>	<p>Mr. Watts filed a <i>pro se</i> cert. petition, but we represent him for purposes of filing a reply to the government’s brief in opposition and expect to handle the case on the merits if cert. is granted. Mr. Watts was convicted in a gun case and sentenced to a 15-year mandatory minimum sentence under the Armed Career Criminal Act (ACCA). ACCA provides for a mandatory minimum sentence in certain cases if the defendant has three qualifying prior convictions. One of Mr. Watts’s prior convictions is for carrying a concealed weapon. The questions presented are (1) whether such a conviction is a qualifying “violent felony” within the meaning of ACCA (the Eleventh Circuit having said yes, the Sixth and Eighth Circuits say no) and, (2) given the Government’s confession of error on the ACCA question, does a sentence greater than the statutory maximum amounts to a denial of due process sufficient to allow a certificate of appealability to issue (the Eleventh Circuit has recently held that it does not).</p>