

**Bar Association of the Fifth Federal Circuit
2015 Appellate Advocacy Seminar**

Summary of Issues to be argued Tuesday, October 6, 2015

East Courtroom

United States v. Spears (No. 14-11267)

Defendant asks the Court to decide whether the District Court erred in denying his motion to suppress based on an unlawful detention and illegal warrantless search of his vehicle? Also before the Court is whether the District Court erred in admitting evidence obtained as a result of a warrantless search of defendant's cell phone and in denying his Motion for New Trial based upon said illegal search?

Macy's Inc. v. NLRB (No. 15-60022)

Macy's petition for review presents the question whether a unit consisting only of the cosmetics-and-fragrances sales employees at a single Macy's store constitutes a "unit appropriate for the purposes of collective bargaining" under the National Labor Relations Act?

Robert Namer, Etc. v. Broadcasting Board of Governors, Et Al. (No. 14-31353)

This case involves a challenge to the Government's seizure of an Internet domain name of a private citizen. Plaintiff's appeal questions whether the Lanham Act was construed too broadly by the District Court, thereby infringing his First Amendment rights under the *Rogers* test? Under *Rogers v. Grimaldi*, the balance between First Amendment concerns and concerns against flagrant deception will normally not support application of the Act to the titles of expressive works unless 1) the title has no artistic relevance to the underlying work whatsoever, or, 2) if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of the work. 875 F.2d 994, 997 (2d Cir. 1988).

En Banc Courtroom

William Scott v. Brad Livingston, Etc. (Nos. 12-20379 & 14-20626)

Plaintiff, a Texas Department of Criminal Justice (“TDCJ”) inmate, challenged TDCJ’s requirement that inmate religious gatherings must be supervised by a staffer or outside volunteer. The District Court ruled in plaintiff’s favor and entered an expansive injunction. The questions presented by the Department’s appeal are: 1) whether the District Court should have dismissed the case, either because it became moot or because the parties signed a valid settlement agreement; and 2) whether the District Court erred by holding, contrary to Fifth Circuit precedent, that the direct-supervision requirement violates the First Amendment and Religious Land Use and Institutionalized Persons Act?

Seth B., Etc., Et Al. v. Orleans Parish School Board (No. 15-30164)

This appeal presents a question of first impression in the Fifth Circuit regarding the enforceability and interpretation of a U.S. Department of Education (USDOE) regulation, 34 C.F.R. § 300.502, promulgated under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1419, that guarantees parents a publicly-funded independent educational evaluation under appropriate circumstances when they disagree with the school district’s evaluation of their child. Plaintiff’s appeal argues that the District Court erred in holding that the Orleans Parish School Board did not waive its objections to providing an Independent Educational Evaluation (IEE) at the public expense when it failed to file for a due process hearing or provide the IEE at public expense in a timely manner following its receipt of plaintiff’s initial request for an IEE at public expense and again following its assertion that the IEE did not comply with agency criteria.

West Courtroom

United States v. Lomas (No. 14-20259)

Defendant's appeal questions whether the written judgment conflicts with the oral pronouncement of his sentence because the written judgment includes a special condition of supervised release requiring participation in an educational program even though the District Court's oral pronouncement of sentence did not reference that condition. Defendant also challenges the District Court's imposition of a special condition of supervised release requiring that he to participate in a mental health program "as deemed necessary and approved by the probation officer" as an impermissible delegation of authority to the probation officer and, therefore, an abuse of discretion.

United States v. Molina-Juarez, Etc. (No. 13-50721)

Defendant puts forward as the basis of his appeal that his counsel provided ineffective assistance by failing to challenge a two-level "importation" enhancement to his sentence under U.S.S.G. § 2D1.1(b)(4) as inapplicable in conjunction with a mitigating role adjustment.

Cheryl Slade v. Progressive Insurance Co. (No. 15-30010)

Progressive's appeal asks the Fifth Circuit to review the District Court's certification of a class of 15,000 insureds who contend that Progressive undervalued their total-loss vehicle claims without identifying a valid and workable way to adjust plaintiff's preferred "clean retail" values on a classwide basis to account for the actual condition of each class member's total-loss vehicle.