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[Wednesday round-up](#)

Erin Miller | Wednesday, April 21st, 2010 9:50 am | Tags: [round-up](#)

The biggest news out of the Court yesterday was the opinion in [United States v. Stevens](#), in which the Court struck down a federal statute banning the creation or sale of depictions of animal cruelty. We collected most of the early news coverage in a [special-edition round-up](#) yesterday. The [WSJ Law Blog](#) reports that Representative Elton Gallegly, the author of the original statute, is planning to introduce new legislation targeted specifically at “crush videos.” Most of the subsequent coverage is commentary on, or analysis of, the opinion. [Disclosure: Akin Gump represented the respondent in the case.]

There are several posts analyzing the opinion on the Volokh Conspiracy: [Eugene Volokh](#) highlights the Court’s choice to restrict classes of speech that are categorically unprotected to those that have been historically recognized as such; in [another post](#), he predicts that, after *Stevens*, Congress may not be able restrict speech by merely exempting examples of serious scientific, literary, artistic, or political value; [John Elwood](#) focuses on the opinion’s quotation of former President Clinton’s signing statement — narrowing the reach of the bill — when he signed the statute the Court struck down; [David Kopel](#) characterizes the decision as a “big First Amendment win”; and Volokh provides a general outline of the opinion’s reasoning [here](#).

[Josh Blackman](#)’s blog and Ilya Shapiro at [Cato@Liberty](#) also discuss the Court’s rejection of a balancing test to determine whether speech is categorically unprotected. And at his [Dorf on Law](#) blog, Michael Dorf argues that the opinion is contradictory insofar as it characterizes child pornography as a categorically unprotected class because the depiction is “intrinsicly related” to the conduct but nonetheless rejecting such a functional argument for banning depictions of animal cruelty; he concludes that the Court is “substantially more libertarian on free speech issues than prior Courts.” In an opinion piece in the [L.A. Times](#), Patt Morrison echoes Dorf’s theme; she criticizes the ruling, drawing parallels between depictions of animal cruelty and depictions of child pornography and arguing that the purchase and sale of both should be criminalized.

At [Crime and Consequences](#), Kent Scheidegger reviews the committee report on the statute at issue in the case. In his view, the report demonstrates that Congress intended to ban a narrower class of depictions than those actually described in the text of the bill.

Other news coverage focuses on this week’s oral arguments. [Courthouse News Service](#) has a summary of yesterday’s oral argument in [Dolan v. United States](#), a case involving time limits for restitution orders. [Disclosure: Akin Gump and Howe & Russell represent the petitioner in the case.] A second analysis of the justices struggling to grasp certain new technologies at Monday’s [City of Ontario v. Quon](#) argument appeared on [Above the Law](#) yesterday, responding to an earlier [DC Dicta](#) post. Erica Goldberg at the blog of the [Foundation for Individual Rights in Education](#) (who arrived at the Court at 3:45 a.m. on Monday, too late to obtain a public seat for the argument) analyzes the oral argument in [Christian Legal Society v. Martinez](#).

Other news was more festive, relating to Justice Stevens’ ninetieth birthday yesterday. The [WSJ Law Blog](#) has coverage of the birthday congratulations sent to the Justice by President Obama and Senator Patrick Leahy, chairman of the Senate Judiciary Committee. And [ACSBlog](#) posts a piece by Bill Barnhart, co-author of a forthcoming biography on Justice Stevens.

Bill Jamieson at the [Wall Street Journal](#) discusses the possible implications of the Court’s ruling in [Morrison v.](#)

[National Australia Bank](#) (argued last month), particularly in the context of the recent allegations against Goldman Sachs.

Following the Court's decision earlier this year in *Wellons v. Hall*, a challenge to a death sentence based on sexually explicit gifts given by the jurors to the trial judge and bailiff, the Eleventh Circuit has ordered the district court to investigate the gifts, as the AP (via the [New York Times](#)) reports.

David Lat at [Above the Law](#) examines the lists of Supreme Court clerks for next Term, stressing that Justice Thomas has hired more clerks from elite law schools than normal.

In nomination news:

Nomination coverage focuses on President Obama's meeting today with Senate leaders from both parties.

According to the [Associated Press](#) (via NPR) and Laura Meckler of the [Wall Street Journal](#), the president has already begun interviewing potential nominees. After the meeting, the president will make calls to a "broader circle" of senators seeking input about the nomination. Bill Mears at [CNN](#) reports that administration officials expect a nomination by early May, while [The Hill](#) reports that, at the very latest, the nomination will come by May 26 – the date on which Justice Sotomayor was nominated last year.

At Newsweek's [The Gaggle](#) blog, Jonathan Alter provides a status update on the nomination, reporting that the short list contains just four candidates and suggesting that "dark horses are still possible." Also at [The Gaggle](#), Daniel Stone evaluates the Chicago connections of three front runners (Garland, Kagan, and Wood). Peter Slevin at the [Washington Post](#) discusses the likely objections by anti-abortion activists to Seventh Circuit Judge Diane Wood's opinions on abortion. Simon Lazarus at the [Huffington Post](#) observes that, whomever the nominee, the Democratic leadership and the president are preparing to rally behind a common "Don't-twist-the-law-to-favor-the-big-guy" message in the confirmation process.

Two new names were suggested as potential nominees at the Huffington Post: a Harvard Law School student argues that [Elizabeth Warren](#) could match Justice Stevens' "intellectual firepower, natural abilities as an impassioned leader of great minds, and persuasive skill in defense of America's most cherished legal ideals."

Frank Chi makes a case for [Harold Koh](#) as "someone that progressives would be proud to fight for." [Indian Country Today](#) discusses arguments by American Indian legal advocates for John Echohawk, or another American Indian nominee, to replace Stevens — whose record, one contends, was a "mixed bag" on Indian issues. Caren Bohan at Reuters (via the [New York Times](#)) reports that Bill Clinton and Senator Leahy (like others before them) have urged the President not to limit his search to judges and to instead consider politicians or candidates with policy experience.

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19 10:00 am - Oral Arguments and Likely Orders	20 10:00 am - Oral Argument and Likely Opinions, Event	21 10:00 am - Oral Argument	22	23 Justices' Private Conference	24	25
26 10:00 am - Oral Arguments and Likely Orders	27 10:00 am - Oral Argument and Likely Opinions, Event	28 10:00 am - Oral Argument	29	30 Justices' Private Conference		

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30 Days of Stevens

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