

## October Term 2013 Begins: Supreme Court Preview

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Each year on the first Monday in October, the Supreme Court begins a new term. Today's the first Monday in October 2013, so in this post, I'll summarize several of the criminal cases that the Court will hear during the term that has just begun. This will be a selective preview rather than a comprehensive one: I'm not going to list all the criminal cases in which certiorari has been granted, and the Court likely will add a few additional cases over the next several months in any event.

As an aside, those interested in the non-criminal cases on the Court's docket might enjoy [this preview](#) by appellate lawyer Howard Bashman, or [this one](#) by the *Los Angeles Times*, which argues that the term "gives the court's conservative bloc a clear opportunity to shift the law to the right on touchstone social issues such as abortion, contraception and religion, as well as the political controversy over campaign funding." Also, *New York Magazine* has just published a [long interview](#) with Justice Scalia. It's a great read for those interested in the Justices' personalities. High points include how Justice Scalia gets his news, what he thinks of the devil, and which of his opinions he views as the most courageous.

Back to business. Upcoming criminal law cases include:

1. *Kansas v. Cheever*, where the Question Presented is: "Whether, when a criminal defendant affirmatively introduces expert testimony that he lacked the requisite mental state to commit capital murder of a law enforcement officer due to the alleged temporary and long-term effects of the defendant's methamphetamine use, the state violates the defendant's Fifth Amendment privilege against self-incrimination by rebutting the defendant's mental state defense with evidence from a court-ordered mental evaluation of the defendant." In other words, the Court is going to get into the thicket of how and to what extent the Fifth Amendment applies to court-ordered mental health examinations against a defendant. The SCOTUSBlog case page is [here](#).
2. *Fernandez v. California*, where the Question Presented is: "Whether, under *Georgia v. Randolph*, a defendant must be personally present and objecting when police officers ask a co-tenant for consent to conduct a warrantless search or whether a defendant's previously stated objection, while physically present, to a warrantless search is a continuing assertion of Fourth Amendment rights which cannot be overridden by a co-tenant." This is an issue that arises quite a bit in practice and it will be good to have a clear answer. The SCOTUSBlog case page is [here](#).
3. *Paroline v. United States*, where the Question Presented is: "What, if any, causal relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. Sec. 2259?" That's pretty opaque, but the case concerns the long-standing dispute over restitution in child pornography cases. The issue is whether, when a defendant is convicted of possessing images of a particular victim, that defendant may be ordered to pay restitution for all the harm done to that victim as a result of the victim's portrayal in child pornography, or whether the defendant's restitution liability is limited to the harm done to the victim as a result of the defendant's personal possession of the image. The SCOTUSBlog case page is [here](#).
4. *Navarette v. California*, where the Question Presented is: "Whether the Fourth Amendment requires an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle." The answer has the potential to be significant outside the limited context of traffic stops,

but even if it is “just” a traffic stop case, it may have a major practical impact. (And it will definitely make it into the next version of my traffic stops paper.) The SCOTUSblog case page is [here](#).

SCOTUSBlog has a complete list of merits cases for the term, together with the Question(s) Presented for each case, [here](#). On the list but not summarized above are an interesting case or two involving substantive federal criminal law, and a follow-up to the *Lafley* and *Frye* cases about the effective assistance of counsel in plea bargaining. As always, it should be an interesting term. Stay tuned.