

ALITO, J., concurring

SUPREME COURT OF THE UNITED STATES

DAVID BOBBY, WARDEN *v.* ROBERT J. VAN HOOK

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

No. 09–144. Decided November 9, 2009

JUSTICE ALITO, concurring.

I join the Court’s *per curiam* opinion but emphasize my understanding that the opinion in no way suggests that the American Bar Association’s Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003) (2003 Guidelines or ABA Guidelines) have special relevance in determining whether an attorney’s performance meets the standard required by the Sixth Amendment. The ABA is a venerable organization with a history of service to the bar, but it is, after all, a private group with limited membership. The views of the association’s members, not to mention the views of the members of the advisory committee that formulated the 2003 Guidelines, do not necessarily reflect the views of the American bar as a whole. It is the responsibility of the courts to determine the nature of the work that a defense attorney must do in a capital case in order to meet the obligations imposed by the Constitution, and I see no reason why the ABA Guidelines should be given a privileged position in making that determination.