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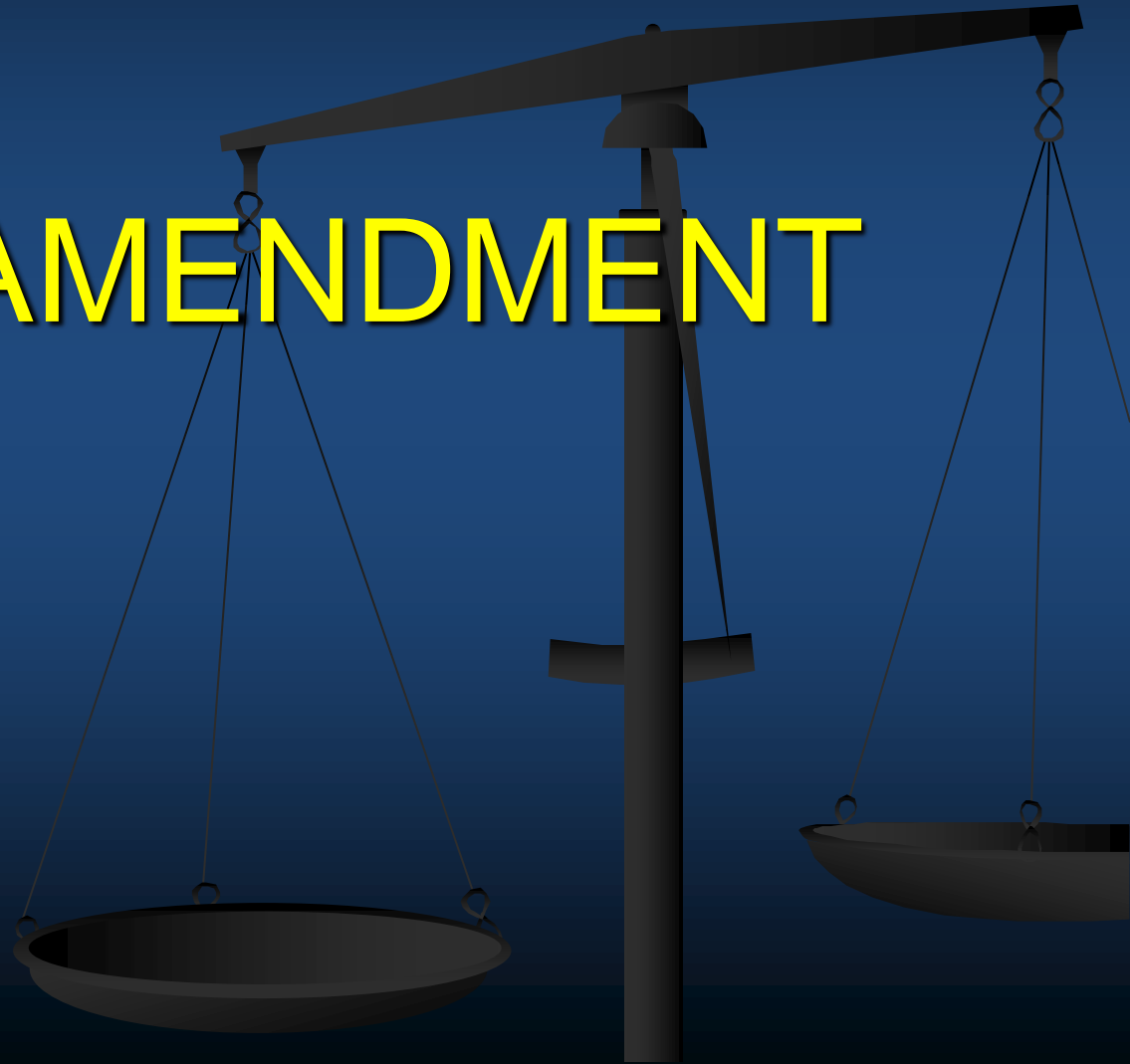
RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

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**TEXAS CITY ATTORNEYS ASSOCIATION
FALL CONFERENCE
DALLAS, TEXAS
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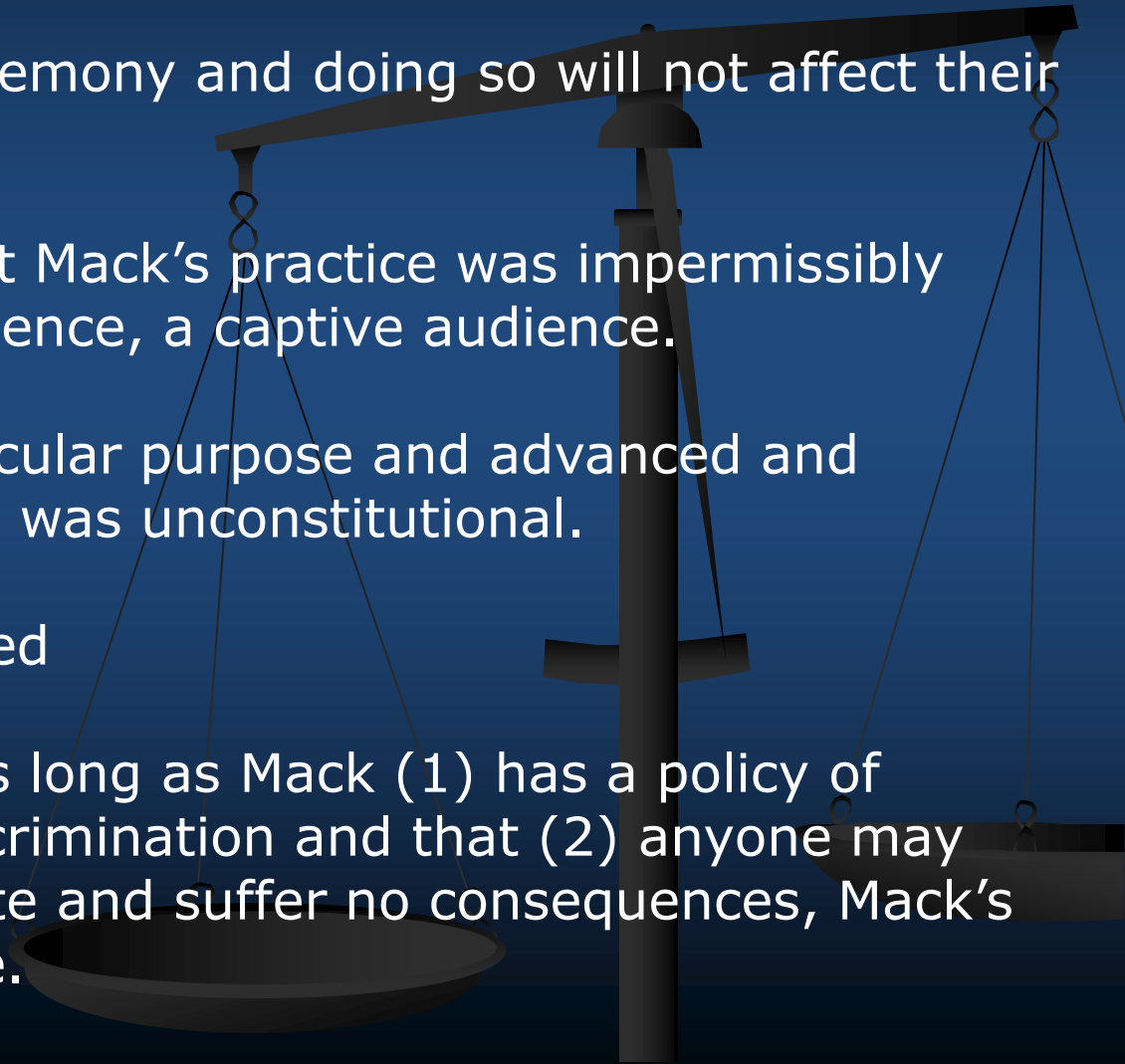


FIRST AMENDMENT

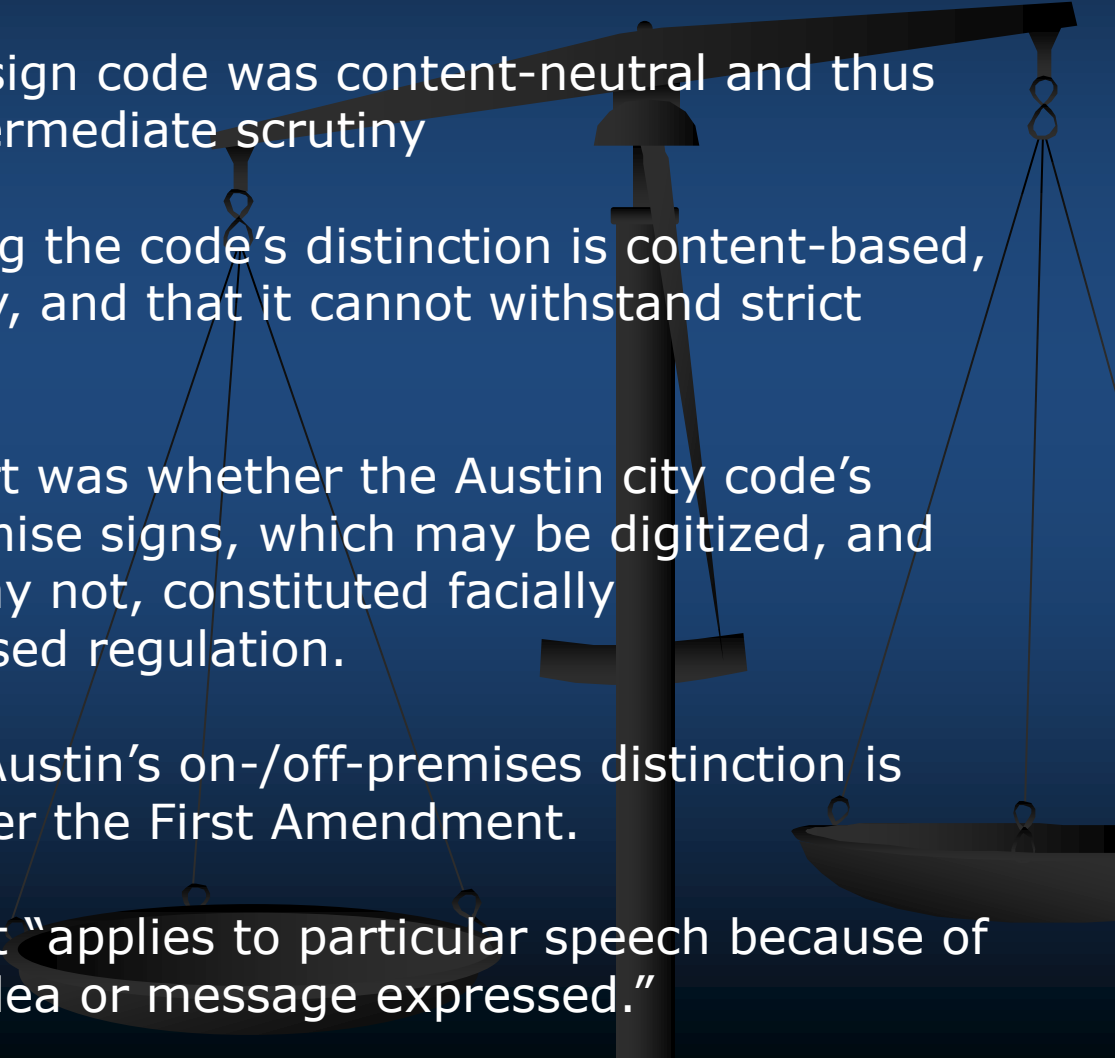


Freedom From Religion v. Mack


- Opens his court with a ceremony that includes a prayer.
- Need not watch the ceremony and doing so will not affect their cases.
- District court found that Mack's practice was impermissibly coercive because in essence, a captive audience.
- Ceremony had a nonsecular purpose and advanced and endorsed religion. Thus was unconstitutional.
- The Fifth Circuit reversed
- Court concluded that as long as Mack (1) has a policy of denominational nondiscrimination and that (2) anyone may choose not to participate and suffer no consequences, Mack's practice is non-coercive.



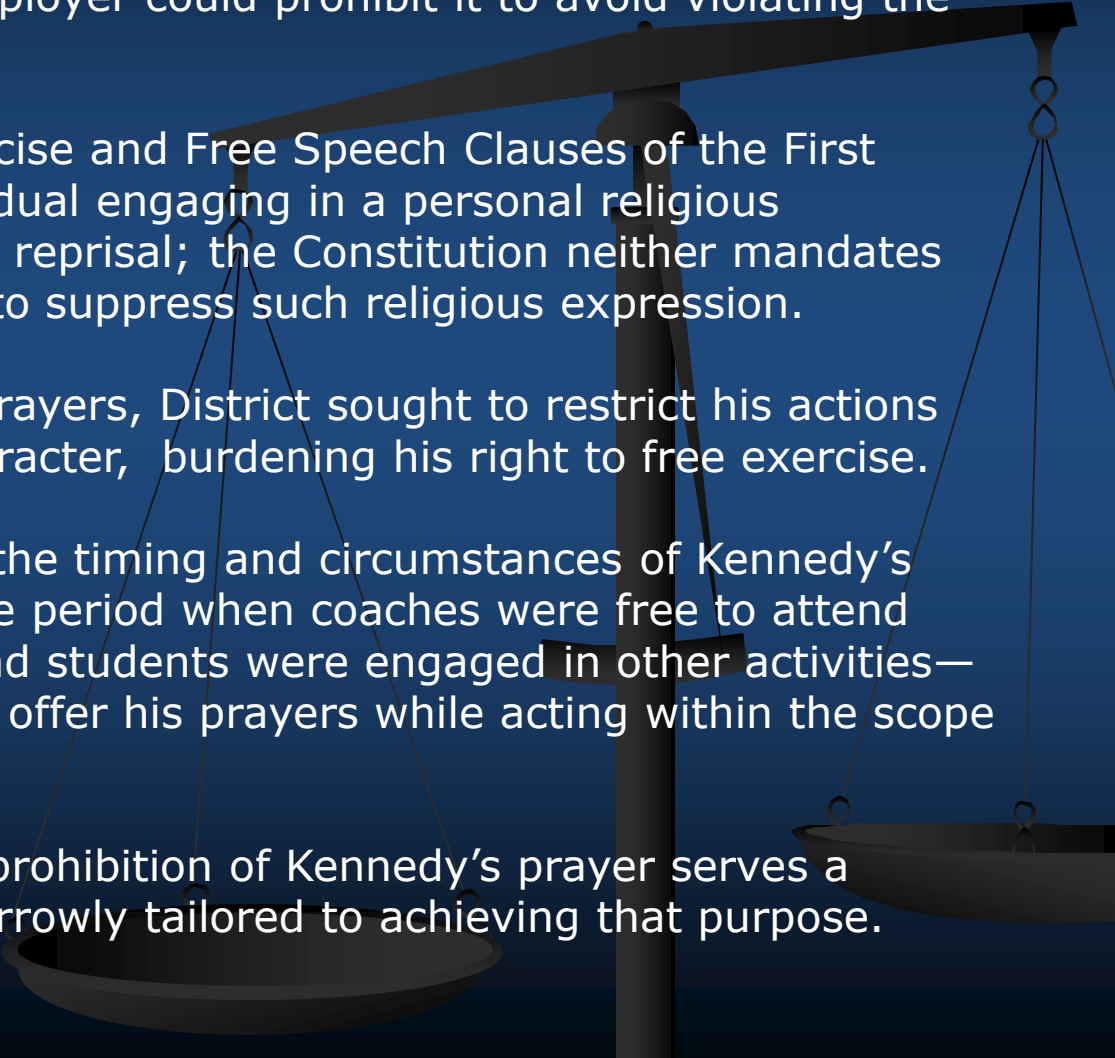
City of Austin, Texas v. Reagan National Advertising

- Denied applications because its sign code does not allow the digitization of off-premises signs. Sued arguing violates the First Amendment.
 - District court held that the sign code was content-neutral and thus that it need only satisfy intermediate scrutiny
 - Fifth Circuit reversed, finding the code's distinction is content-based, therefore subject to scrutiny, and that it cannot withstand strict scrutiny.
 - Issue presented to the Court was whether the Austin city code's distinction between on-premise signs, which may be digitized, and off-premise signs, which may not, constituted facially unconstitutional content-based regulation.
 - Court held that the City of Austin's on-/off-premises distinction is facially content-neutral under the First Amendment.
 - Speech is content based if it "applies to particular speech because of the topic discussed or the idea or message expressed."
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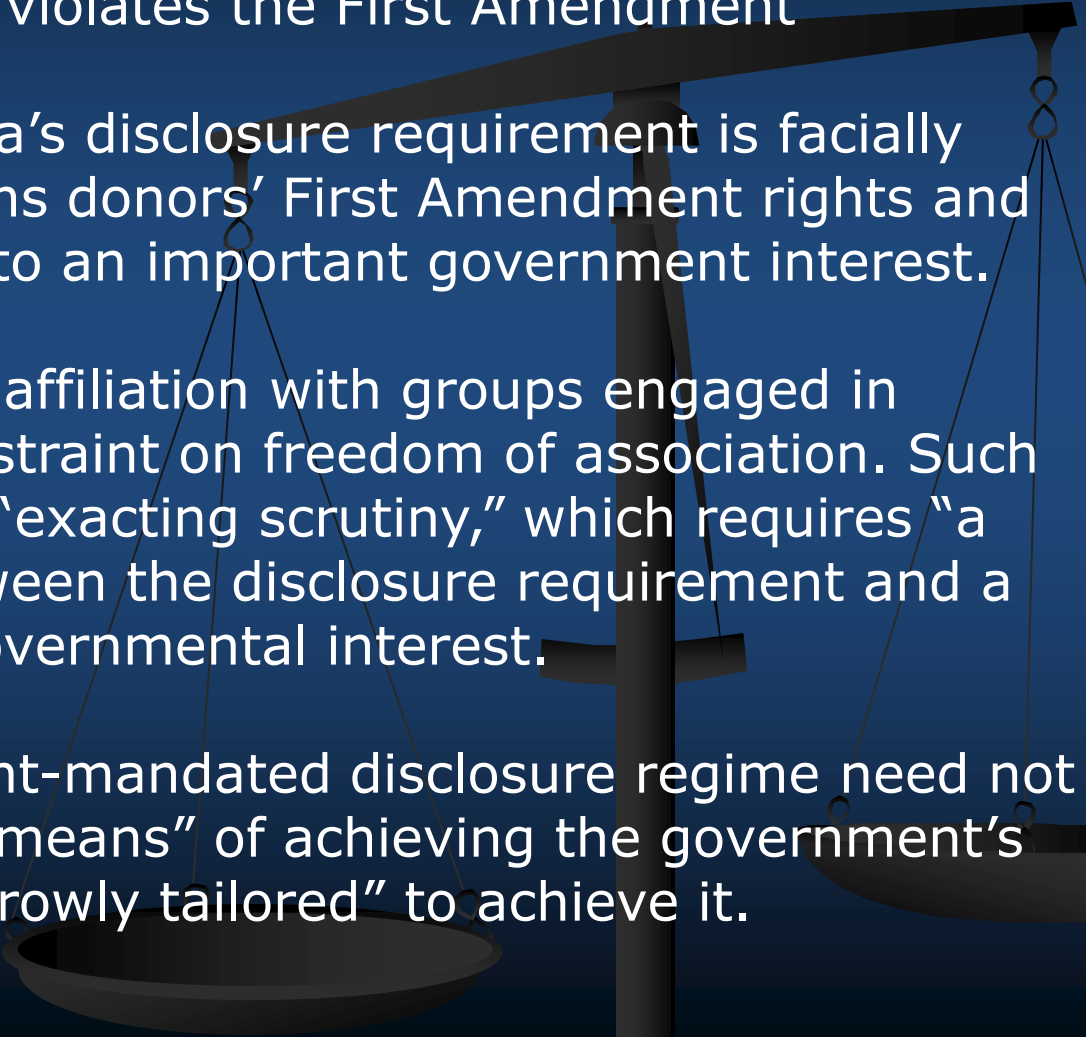
Shurtleff v. Boston

- Manages three flagpoles in front of City Hall. Ordinarily, the City raises the United States flag on one flagpole, the Commonwealth of Massachusetts flag on the second flagpole, and its own flag on the third flagpole.
 - Camp Constitution applied to fly a “Christian flag”
 - Denied Camp Constitution’s flag-raising request, finding it was the first time any entity or organization had requested to fly a religious flag.
 - Whether Boston’s refusal to fly a private religious organization’s flag depicting a cross on a city flagpole violate the organization’s First Amendment rights.
 - Court which held that Boston’s flag-raising program does not constitute government speech, so its refusal to fly the private religious organization’s flag violates First Amendment rights.
 - May not exclude speech based on “religious viewpoint.”
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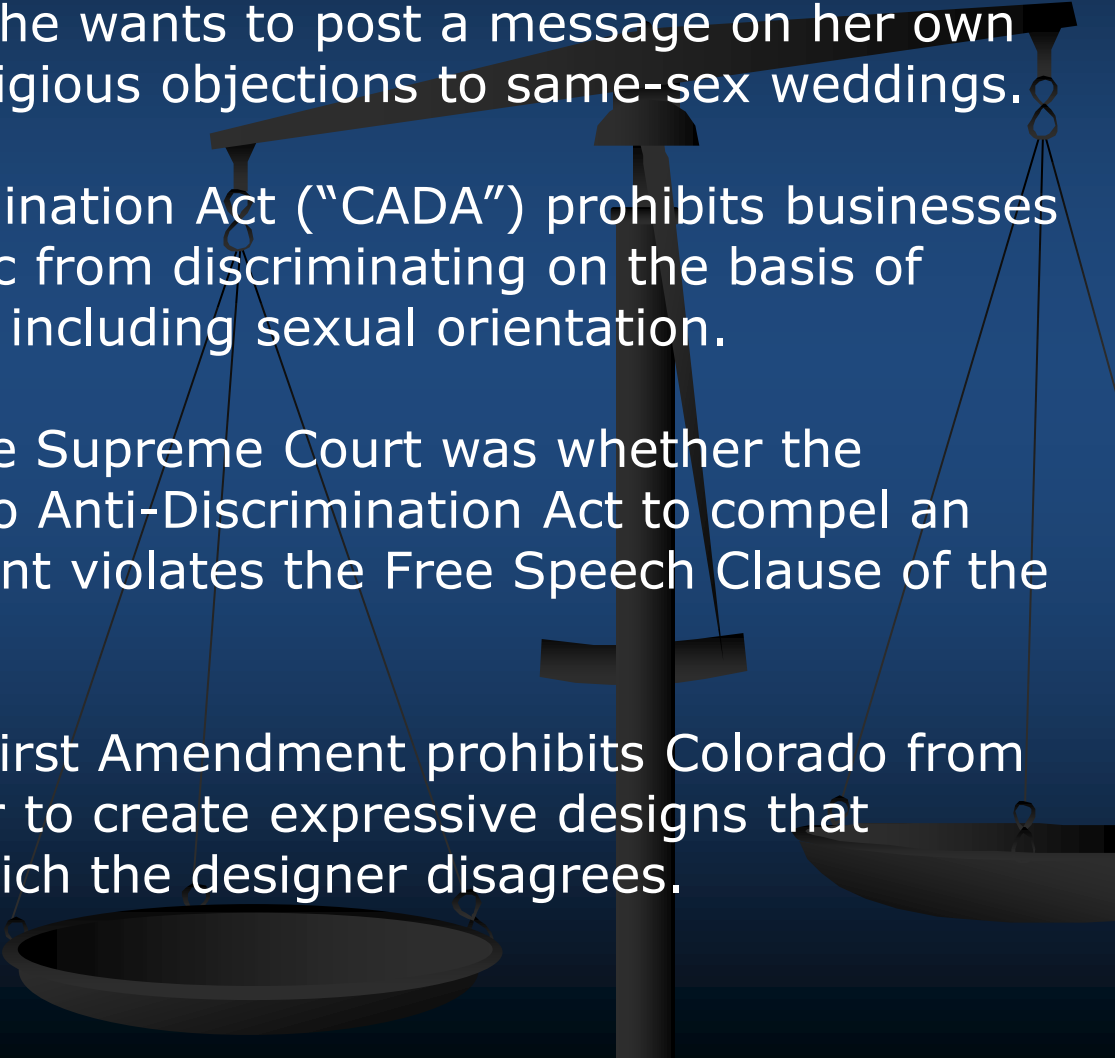
Kennedy v. Bremerton School District

- High school football coach engaged in prayer
 - Question presented in this matter was whether a public school employee's prayer during school sports activities was protected speech, and if so, whether the public school employer could prohibit it to avoid violating the Establishment Clause.
 - Court held that the Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.
 - In forbidding Mr. Kennedy's prayers, District sought to restrict his actions because of their religious character, burdening his right to free exercise.
 - As to his free speech claim, the timing and circumstances of Kennedy's prayers—during the postgame period when coaches were free to attend briefly to personal matters and students were engaged in other activities—confirm that Kennedy did not offer his prayers while acting within the scope of his duties as a coach.
 - District cannot show that its prohibition of Kennedy's prayer serves a compelling purpose and is narrowly tailored to achieving that purpose.
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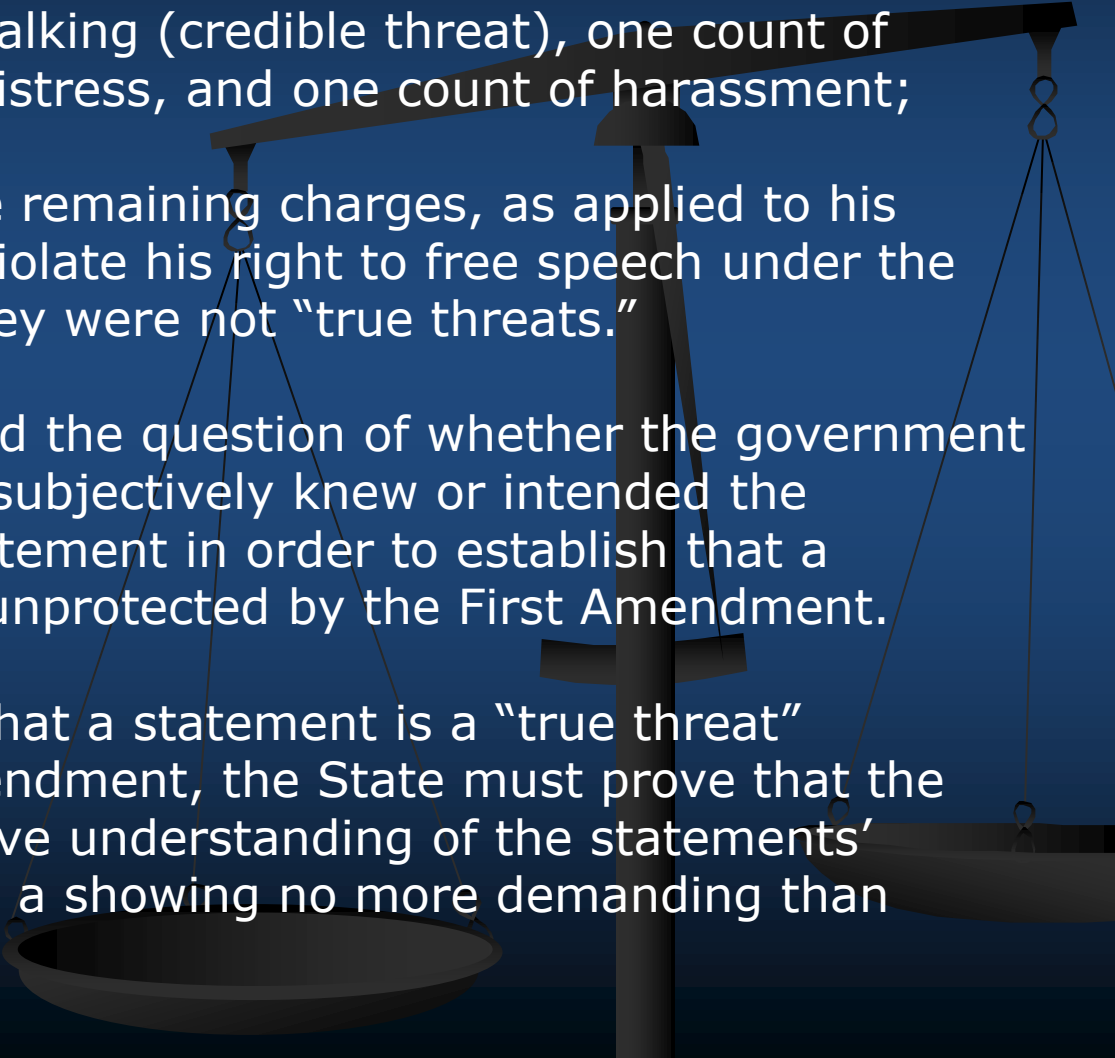
Americans for Prosperity v. Bonta

- Whether the policy of the California attorney general's office requiring charities to disclose the names and addresses of their major donors violates the First Amendment
 - Court held that California's disclosure requirement is facially invalid because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest.
 - Compelled disclosure of affiliation with groups engaged in advocacy is a type of restraint on freedom of association. Such a restraint is subject to "exacting scrutiny," which requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest."
 - " Though the government-mandated disclosure regime need not be the "least restrictive means" of achieving the government's interest, it must be "narrowly tailored" to achieve it.
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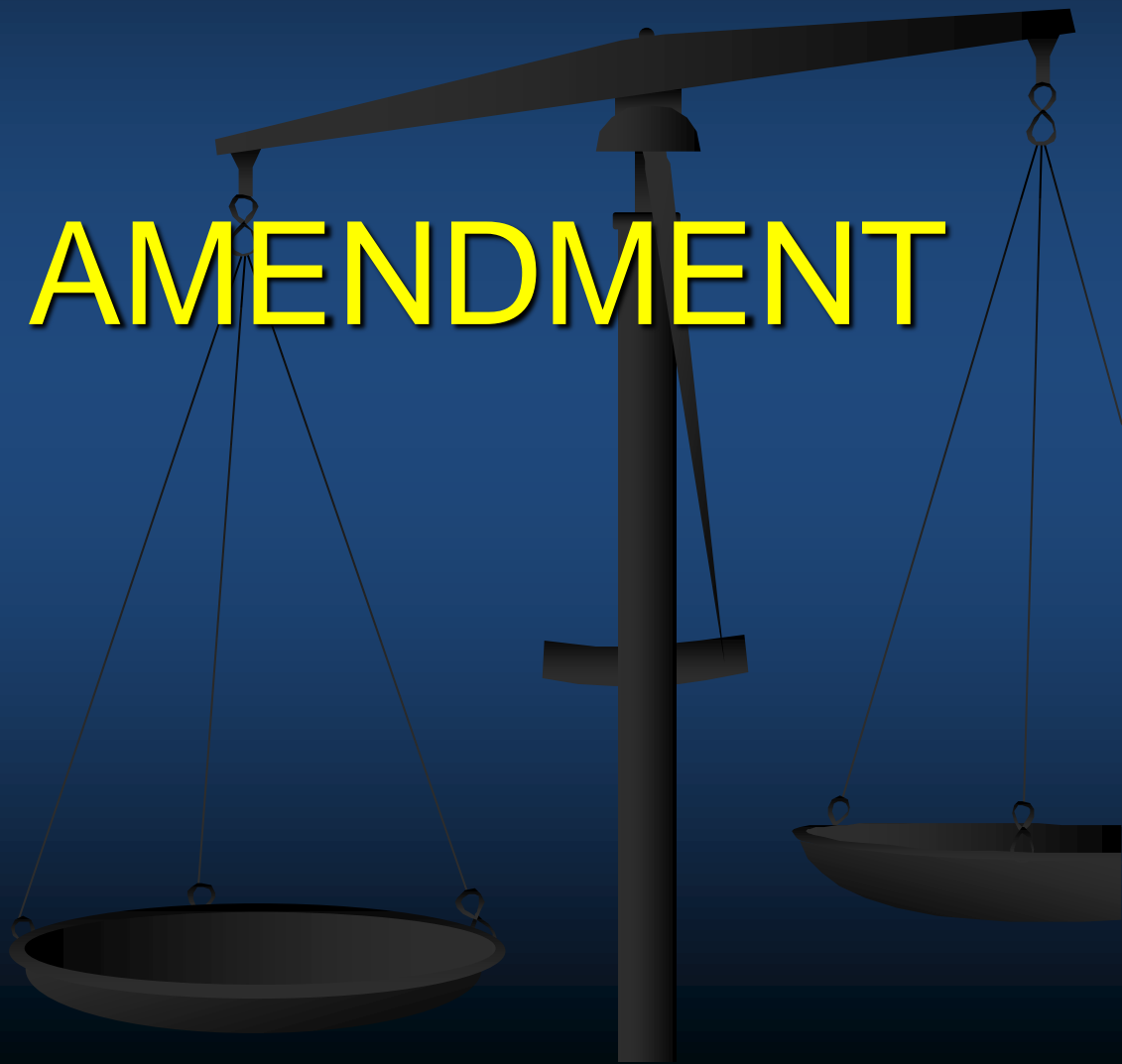
303 Creative LLC v. Elenis

- Owner of a graphic design firm who wants to expand her business to include wedding websites. However, she opposes same-sex marriage on religious grounds so does not want to design websites for same-sex weddings. She wants to post a message on her own website explaining her religious objections to same-sex weddings.
 - The Colorado Anti-Discrimination Act (“CADA”) prohibits businesses that are open to the public from discriminating on the basis of numerous characteristics, including sexual orientation.
 - The issue presented to the Supreme Court was whether the application of the Colorado Anti-Discrimination Act to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.
 - The Court held that the First Amendment prohibits Colorado from forcing a website designer to create expressive designs that convey messages with which the designer disagrees.
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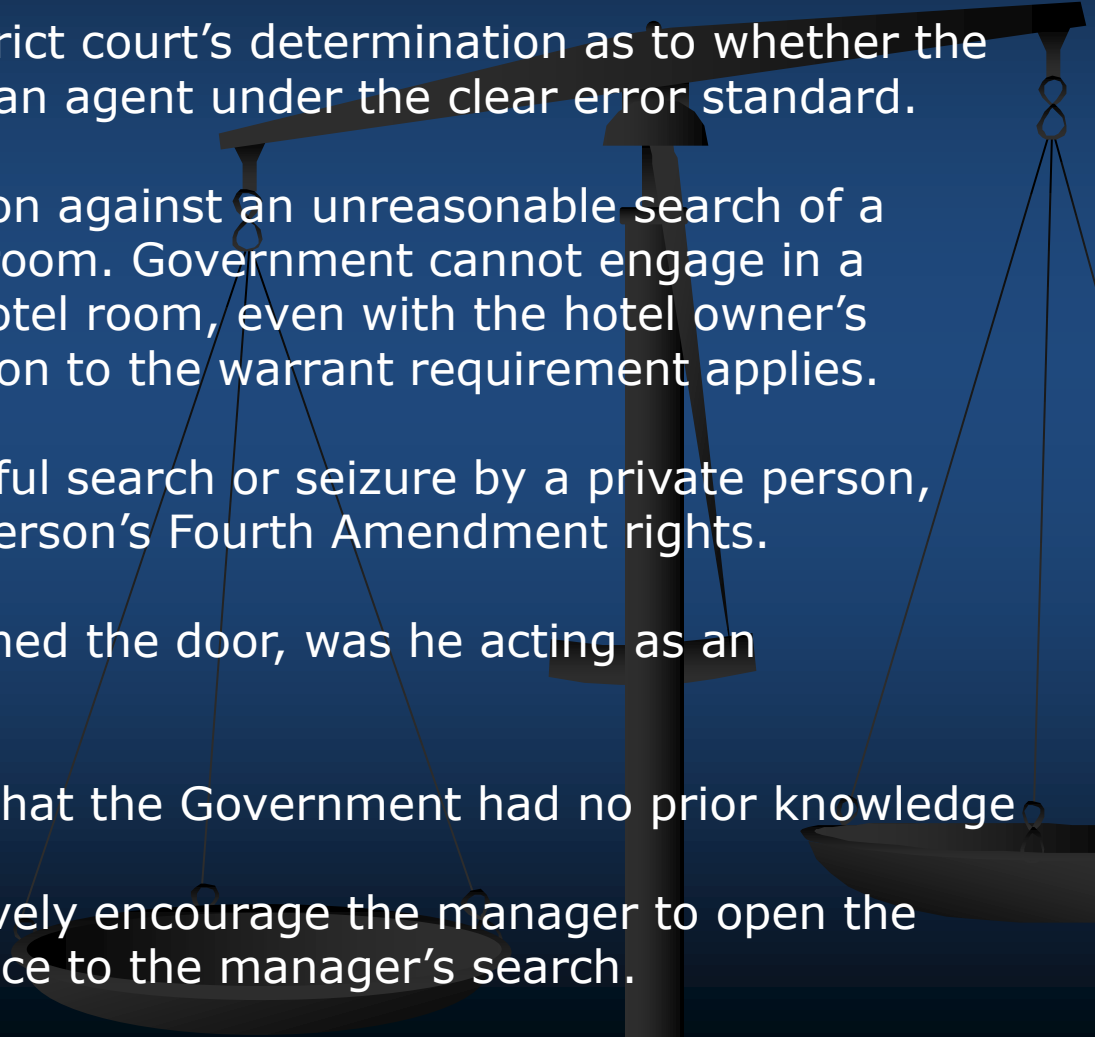
Counterman v. Colorado

- Sending “creepy” messages from numerous different accounts even after blocked
 - Charged with one count of stalking (credible threat), one count of stalking (serious emotional distress, and one count of harassment;
 - Counterman claimed that the remaining charges, as applied to his Facebook messages, would violate his right to free speech under the First Amendment because they were not “true threats.”
 - Supreme Court was presented the question of whether the government must show that the speaker subjectively knew or intended the threatening nature of the statement in order to establish that a statement is a “true threat” unprotected by the First Amendment.
 - Court held that to establish that a statement is a “true threat” unprotected by the First Amendment, the State must prove that the defendant had some subjective understanding of the statements’ threatening nature, based on a showing no more demanding than recklessness.
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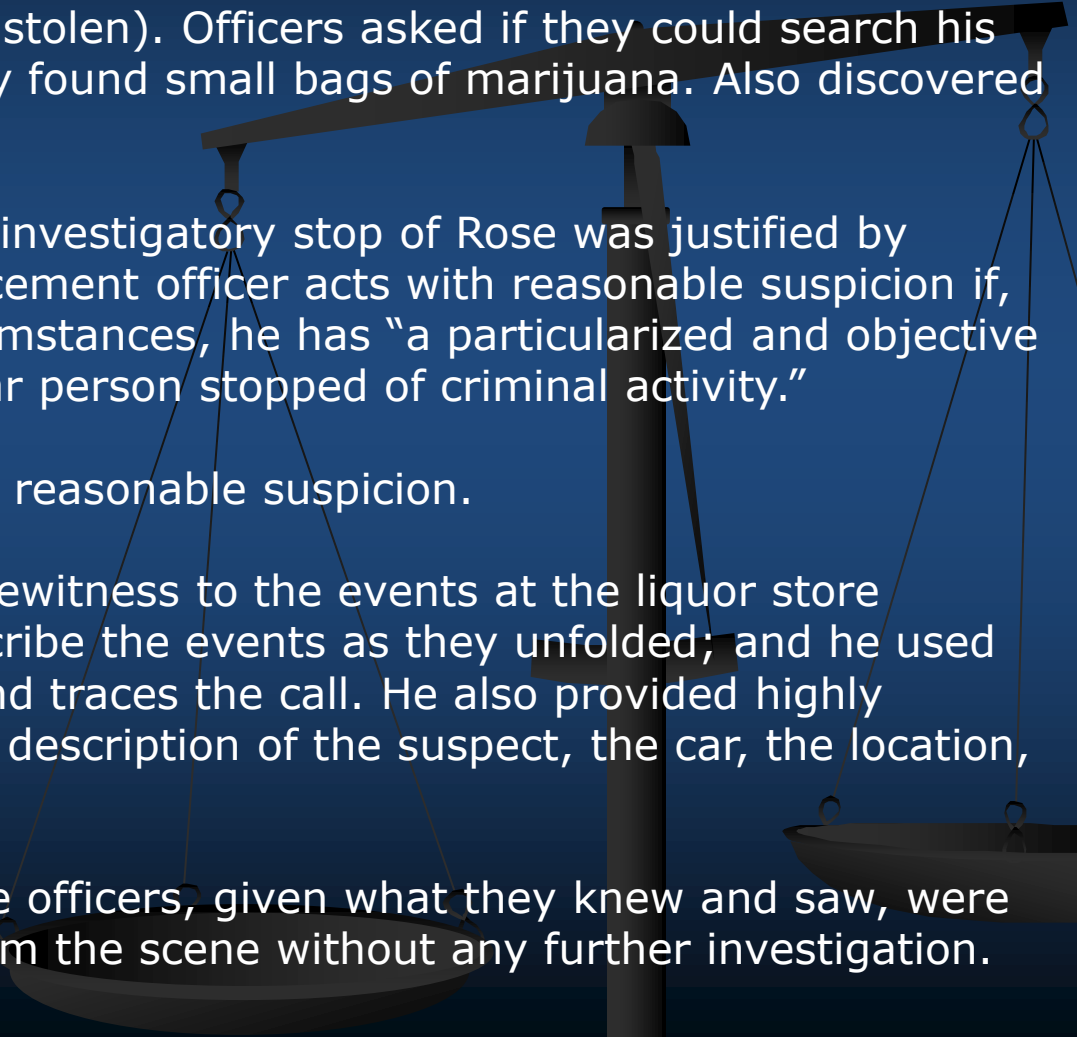
FOURTH AMENDMENT



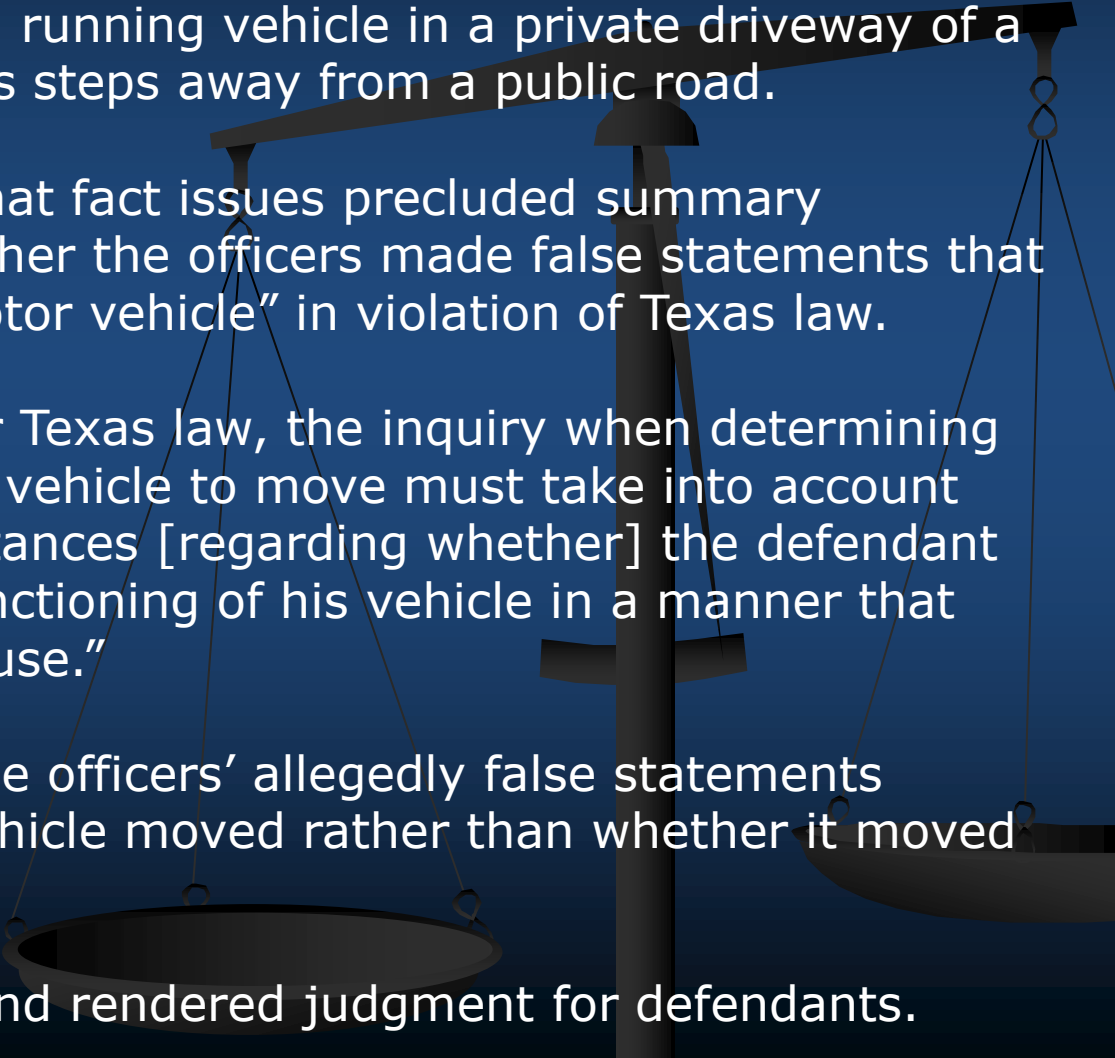
USA v. Cordova-Espinoza

- Cordova illegally entered the US. He then moved to suppress the fruits of the hotel-room search, arguing that the hotel manager was acting as a Government agent, and the Government lacked a search warrant.
 - Fifth Circuit reviewed the district court's determination as to whether the hotel manager was acting as an agent under the clear error standard.
 - Fourth Amendment's protection against an unreasonable search of a home also applies to a hotel room. Government cannot engage in a warrantless search inside a hotel room, even with the hotel owner's permission, unless an exception to the warrant requirement applies.
 - Evidence obtained in a wrongful search or seizure by a private person, however, does not violate a person's Fourth Amendment rights.
 - When the hotel manager opened the door, was he acting as an instrument of the state?
 - District court properly found that the Government had no prior knowledge
 - Government did not affirmatively encourage the manager to open the door and thus did not acquiesce to the manager's search.
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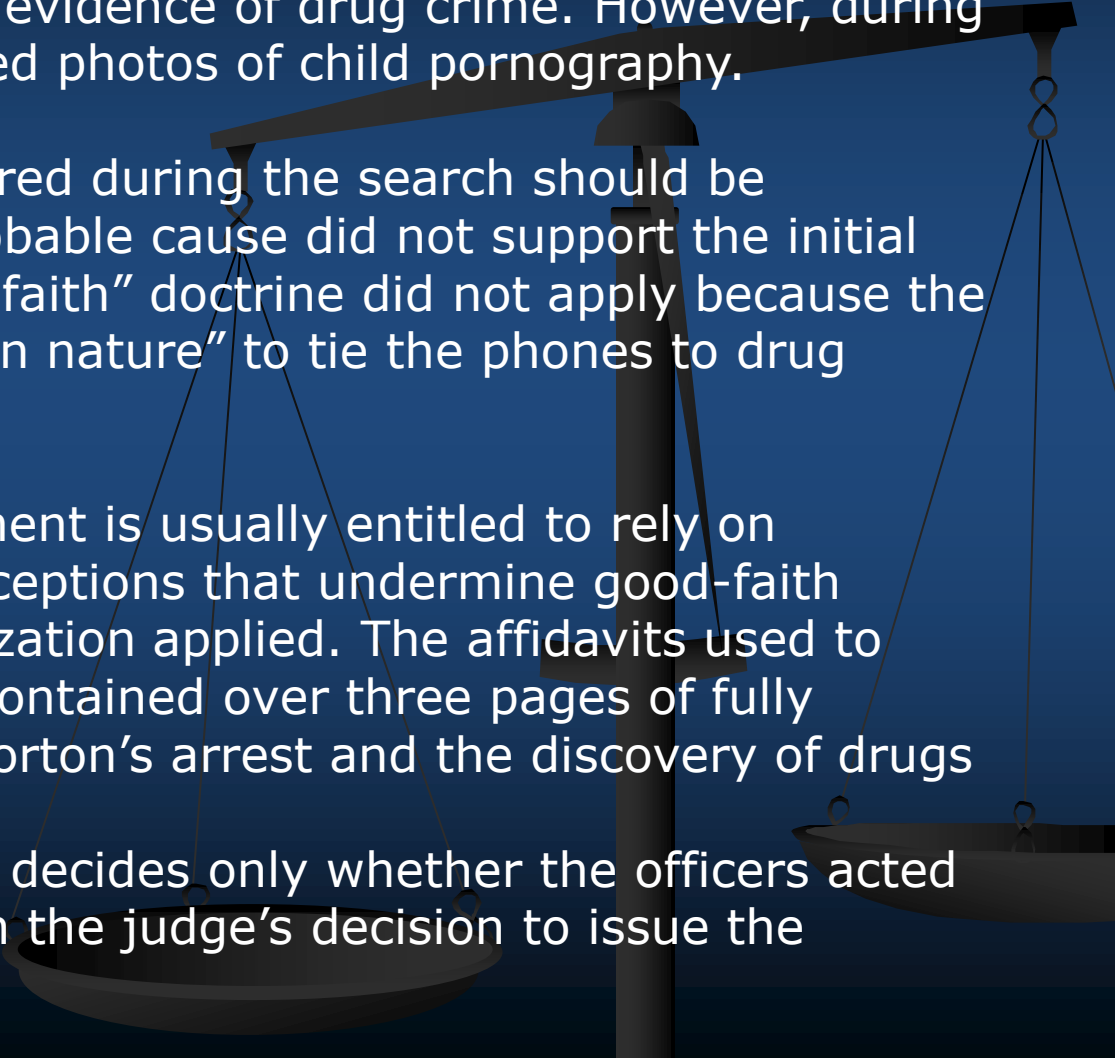
USA v. Rose

- 911 caller reported armed robbery, transpiring in the parking lot of a liquor store. Caller declined to identify himself but described two people sitting in car.
 - Officers patted him down. Another officer walked behind the dumpster and found a handgun (which came back as stolen). Officers asked if they could search his car, and suspect stated yes. They found small bags of marijuana. Also discovered an outstanding arrest warrant.
 - 5th Circuit reviewed whether the investigatory stop of Rose was justified by reasonable suspicion. Law enforcement officer acts with reasonable suspicion if, based on the totality of the circumstances, he has "a particularized and objective basis for suspecting the particular person stopped of criminal activity."
 - A 911 call can sometimes supply reasonable suspicion.
 - Caller identified himself as an eyewitness to the events at the liquor store parking lot; he professed to describe the events as they unfolded; and he used the 911 system which records and traces the call. He also provided highly specific information and detailed description of the suspect, the car, the location, etc.
 - Unreasonable to suggest that the officers, given what they knew and saw, were required to simply walk away from the scene without any further investigation.
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Garcia v. Orta

- Garcia alleged that his Fourth Amendment rights were violated because he was detained without probable cause for driving while intoxicated.
 - Found sleeping in a parked, running vehicle in a private driveway of a construction site, which was steps away from a public road.
 - District court determined that fact issues precluded summary judgment, specifically whether the officers made false statements that Garcia was “operating a motor vehicle” in violation of Texas law.
 - Interlocutory appeal. Under Texas law, the inquiry when determining whether a person caused a vehicle to move must take into account “the totality of the circumstances [regarding whether] the defendant took action to affect the functioning of his vehicle in a manner that would enable the vehicle’s use.”
 - The Court explained that the officers’ allegedly false statements pertained to how far the vehicle moved rather than whether it moved at all.
 - The Fifth Circuit reversed and rendered judgment for defendants.
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USA v. Morton

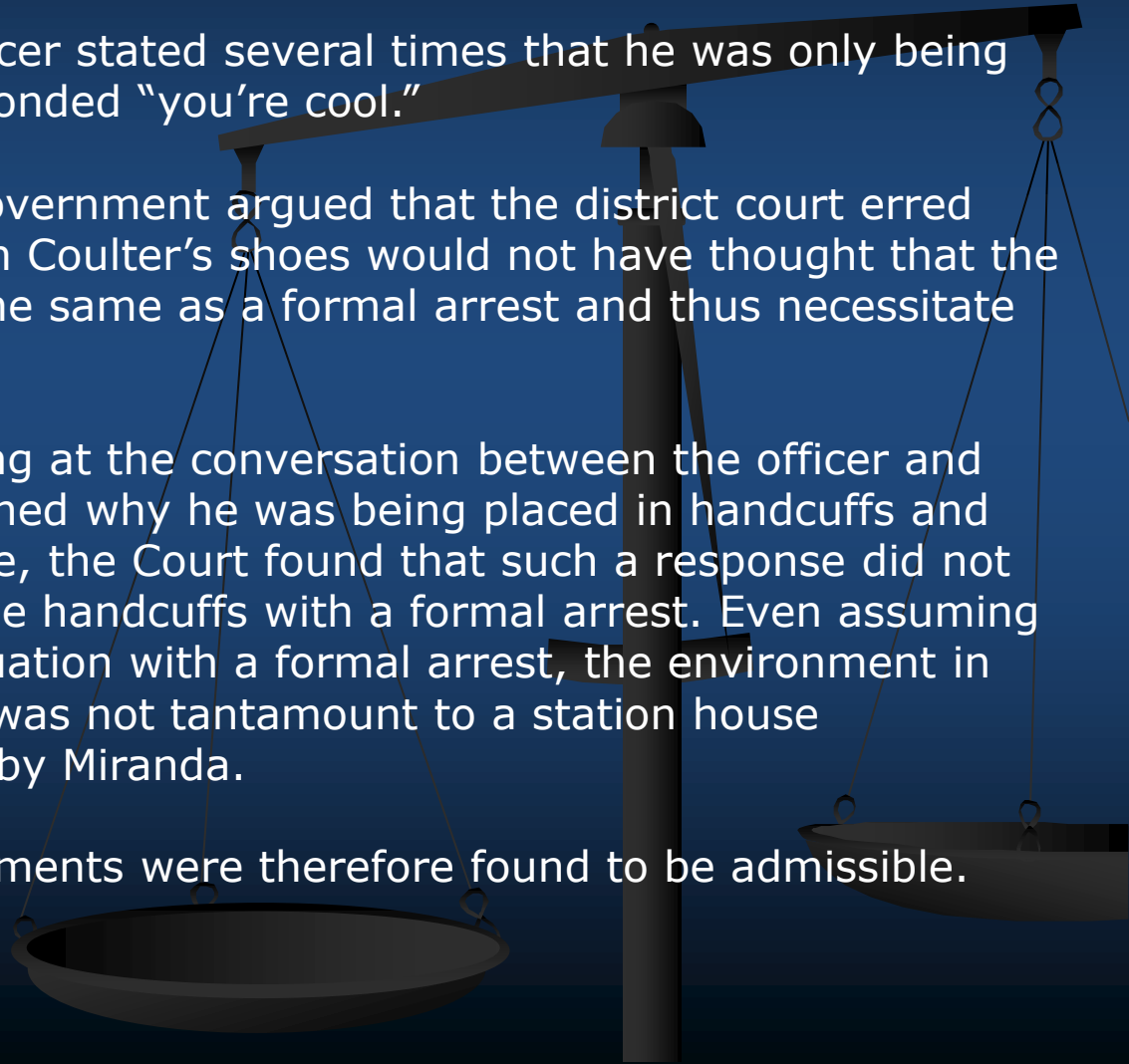
- Arrested after finding drugs in his car during a traffic stop. Officers also located 3 cell phones in his car. Warrant was signed, authorizing the search of the phones for evidence of drug crime. However, during the search, officers discovered photos of child pornography.
 - Argued the evidence discovered during the search should be suppressed, arguing that probable cause did not support the initial warrants and that the “good faith” doctrine did not apply because the affidavits were too “general in nature” to tie the phones to drug activity.
 - Court held that law enforcement is usually entitled to rely on warrants and none of the exceptions that undermine good-faith reliance on a judge’s authorization applied. The affidavits used to search Defendant’s phones contained over three pages of fully detailed facts surrounding Morton’s arrest and the discovery of drugs
 - Fifth Circuit explained that it decides only whether the officers acted in good faith when relying on the judge’s decision to issue the warrants.
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USA v. Johnlouis

- Whether the Fourth Amendment applies to letter carriers as gov't actors.
- Letter carrier, was picking up a package for delivery when her thumb slipped through a preexisting hole. After she felt a plastic bag containing something that felt like marijuana, removed her thumb and then looked through the hole. She then lifted a previously torn flap and saw hard white rocks that she believed to be meth. Girard suggested he call the police because the package contained meth.
- K-9 sniffed the package and got a hit, and a probable cause search warrant was issued for the address on the package. 18 pounds of methamphetamine were recovered
- Moved to suppress, arguing that the narcotics evidence had been seized in violation of his Fourth Amendment rights following an illegal search of a parcel by a USPS letter carrier. After the district court denied the motion, finding that the letter carrier was not a government actor subject to warrant requirements, the Fifth Circuit affirmed.
- The letter carrier was not carrying out a law enforcement function at the time she inspected the package. Her inspection resulted from her thumb slipping into an existing hole and she felt what she believed were drugs. Girard was not a government actor to whom the Fourth Amendment applied.

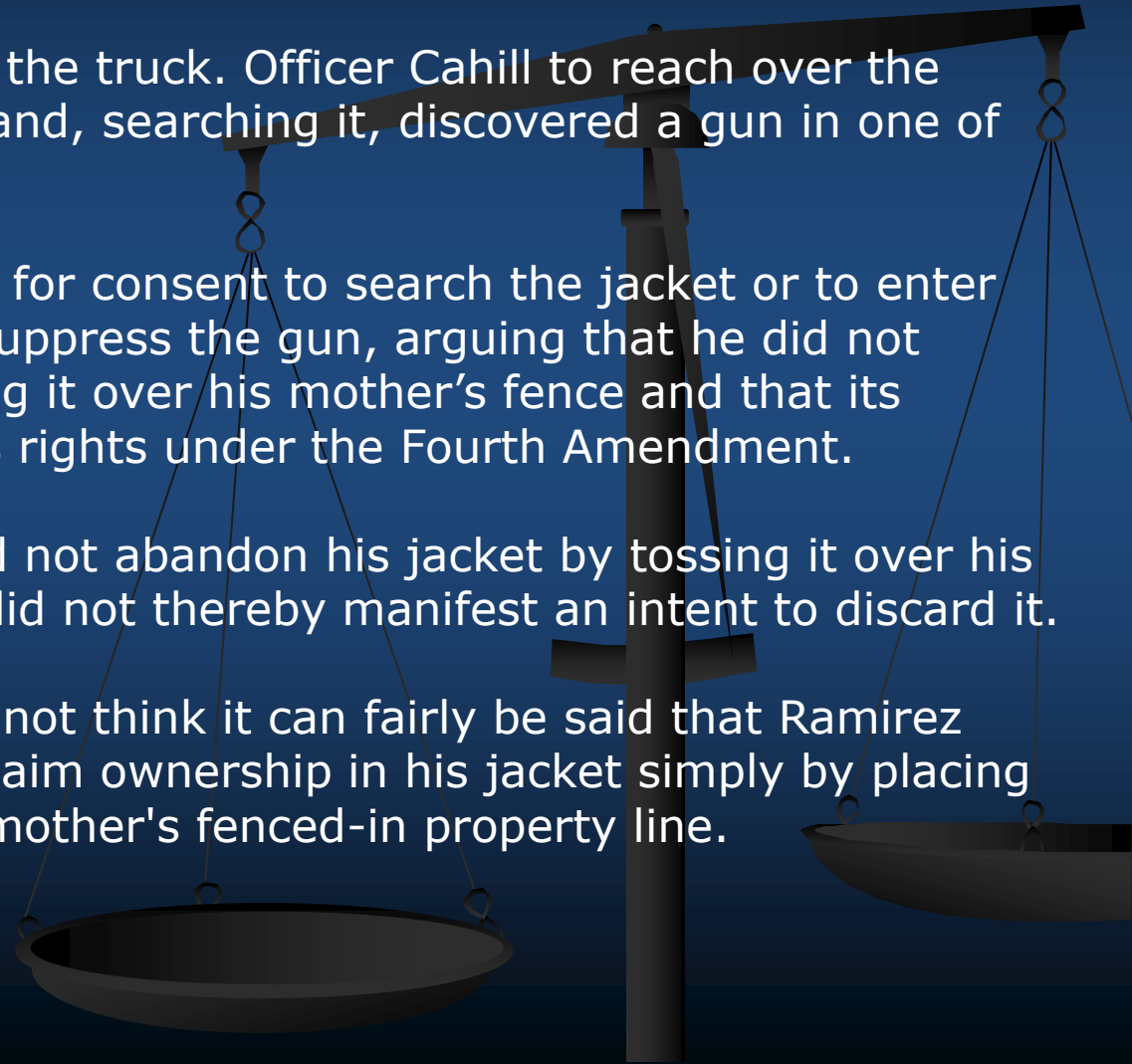
USA v. Coulter

- Officer thought that Coulter might have been a burglar and pulled him over. Coulter voluntarily stepped out of the van and denied having any guns. He also did not have any identification. After a background check, the officer discovered that Coulter was on parole for aggravated robbery.
- While handcuffing him, the officer stated several times that he was only being detained to which Coulter responded “you’re cool.”
- On interlocutory appeal, the government argued that the district court erred because a reasonable person in Coulter’s shoes would not have thought that the restraint on his freedom was the same as a formal arrest and thus necessitate Miranda warnings.
- The Fifth Circuit agreed. Looking at the conversation between the officer and Coulter when the officer explained why he was being placed in handcuffs and Coulter’s “you’re cool” response, the Court found that such a response did not convey that Coulter equated the handcuffs with a formal arrest. Even assuming that Coulter did equate the situation with a formal arrest, the environment in which Coulter was questioned was not tantamount to a station house interrogation as contemplated by Miranda.
- All of Coulter’s unwarned statements were therefore found to be admissible.



United States v. Ramirez

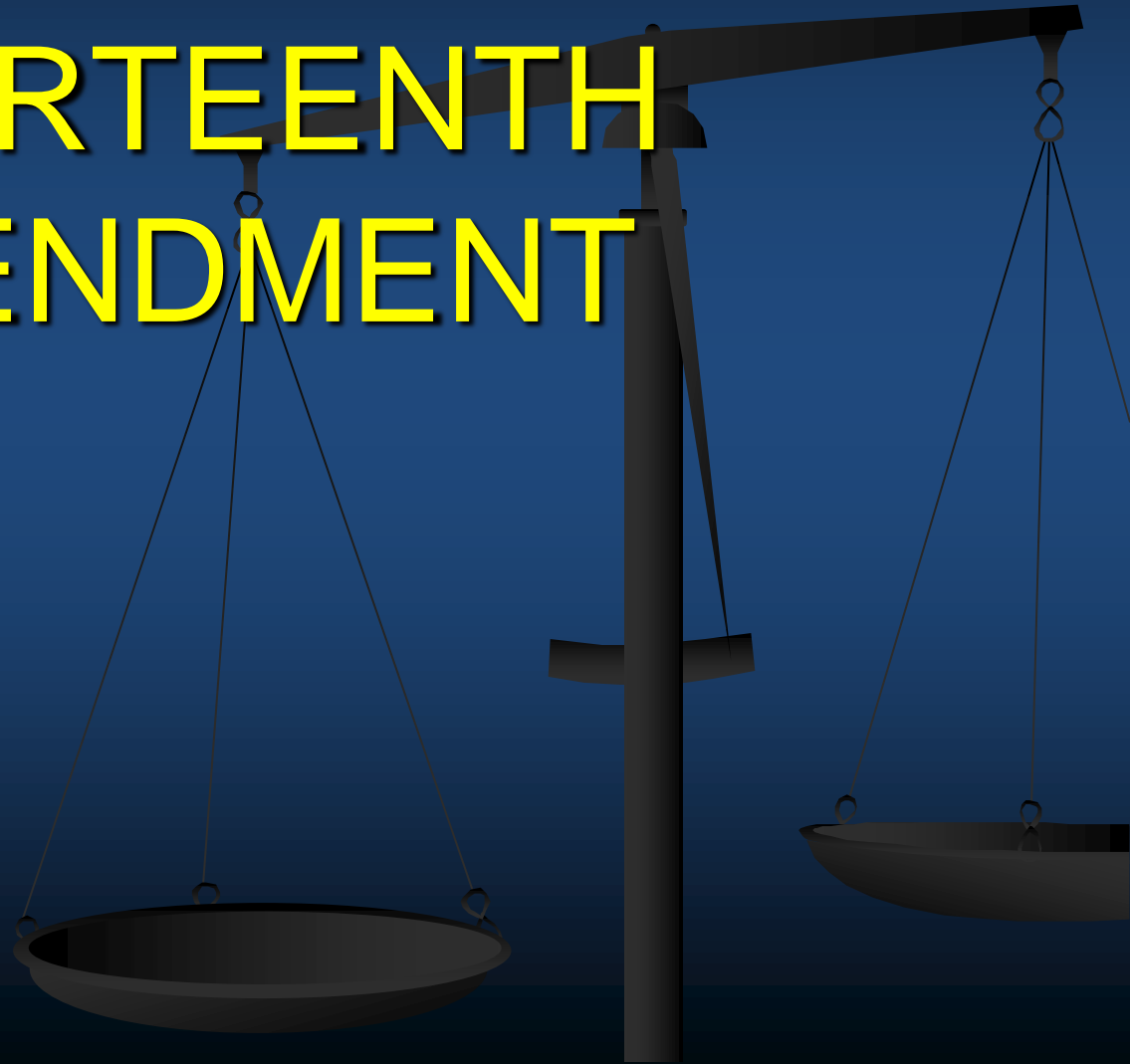
- Observed Ramirez roll through a stop sign before pulling into his mother's driveway. Officer Copeland observed Ramirez toss his jacket over the fence into his mother's yard and onto the back corner of a closed trash bin.
- No contraband was found in the truck. Officer Cahill to reach over the fence to retrieve the jacket and, searching it, discovered a gun in one of its pockets.
- Officer Copeland did not ask for consent to search the jacket or to enter the property. He moved to suppress the gun, arguing that he did not abandon his jacket by tossing it over his mother's fence and that its search therefore violated his rights under the Fourth Amendment.
- Fifth held that Defendant did not abandon his jacket by tossing it over his mother's fence because he did not thereby manifest an intent to discard it.
- Court explained that it does not think it can fairly be said that Ramirez manifested an intent to disclaim ownership in his jacket simply by placing it on the private side of his mother's fenced-in property line.



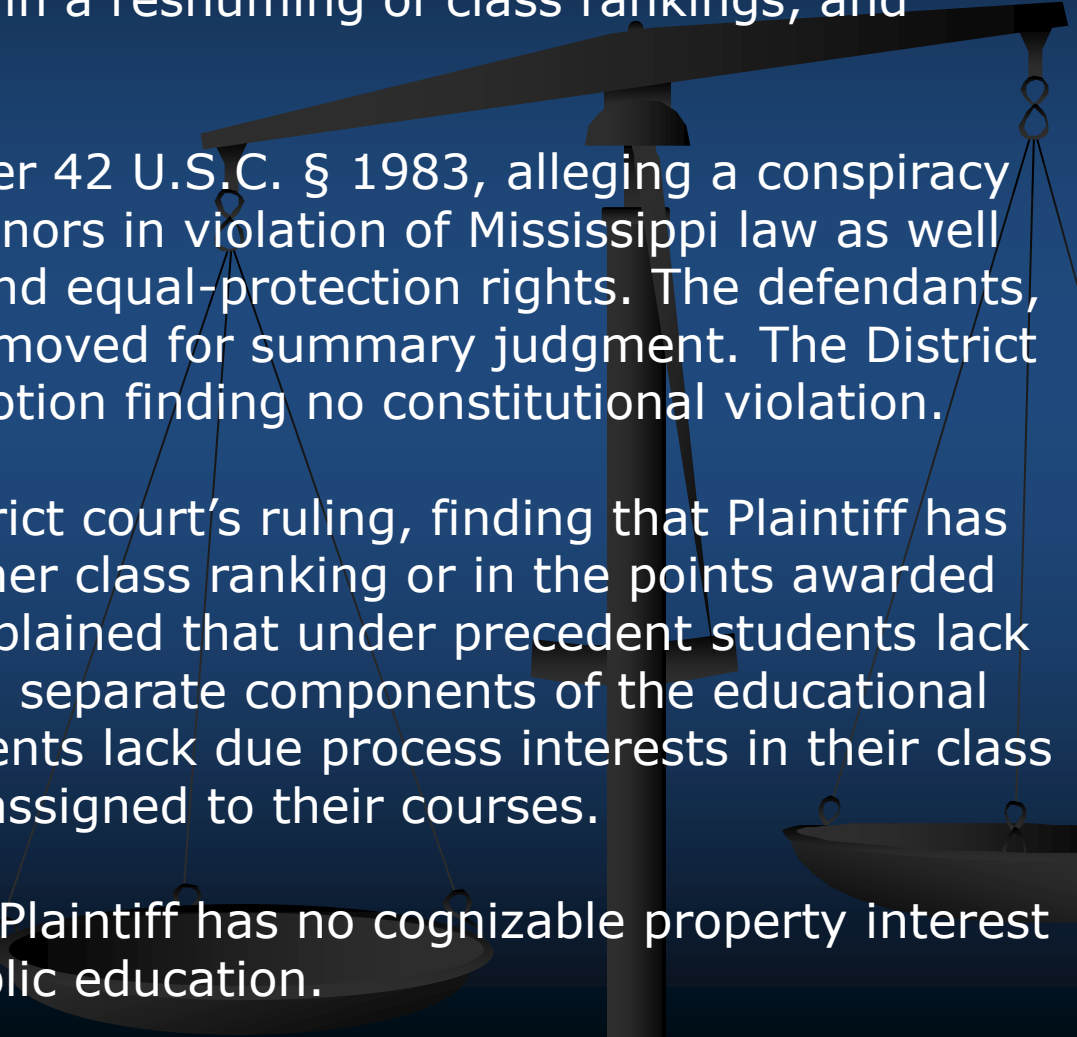
USA v. Tenorio

- Customs officers stopped Tenorio's vehicle and Tenorio told the officers that he was leaving the country and traveling to Mexico. Tenorio declared that he did not have any weapons or ammunition and that he had \$3,200 in U.S. currency.
- Tenorio "appeared nervous" during the encounter and "began to have a facial twitch" "as soon as [they] started talking about the currency. Tenorio "kept looking back towards the canine to see what the canine was doing."
- Initial encounter lasted less than five minutes. Once pulled over for the secondary search, Tenorio was given an opportunity to amend his declaration. Canine alerted to the back of Tenorio's vehicle. After sniffing the vehicle, the canine came over to Tenorio and alerted to his boot. Also during the secondary inspection, an officer discovered a GPS tracker beneath the steering wheel of Tenorio's
- Tenorio moved to suppress evidence obtained from the searches at the border and the search of his cell phones, as well as his post-arrest statements to Agent Conner.
- Fifth Circuit explained that the border-search exception allows "routine" searches and seizures without individualized suspicion or probable cause. Here, Appellant first argued that the canine sniff of his person required reasonable suspicion. The court wrote it did not because the canine sniff here was a routine border search and therefore did not require individualized suspicion.

FOURTEENTH AMENDMENT



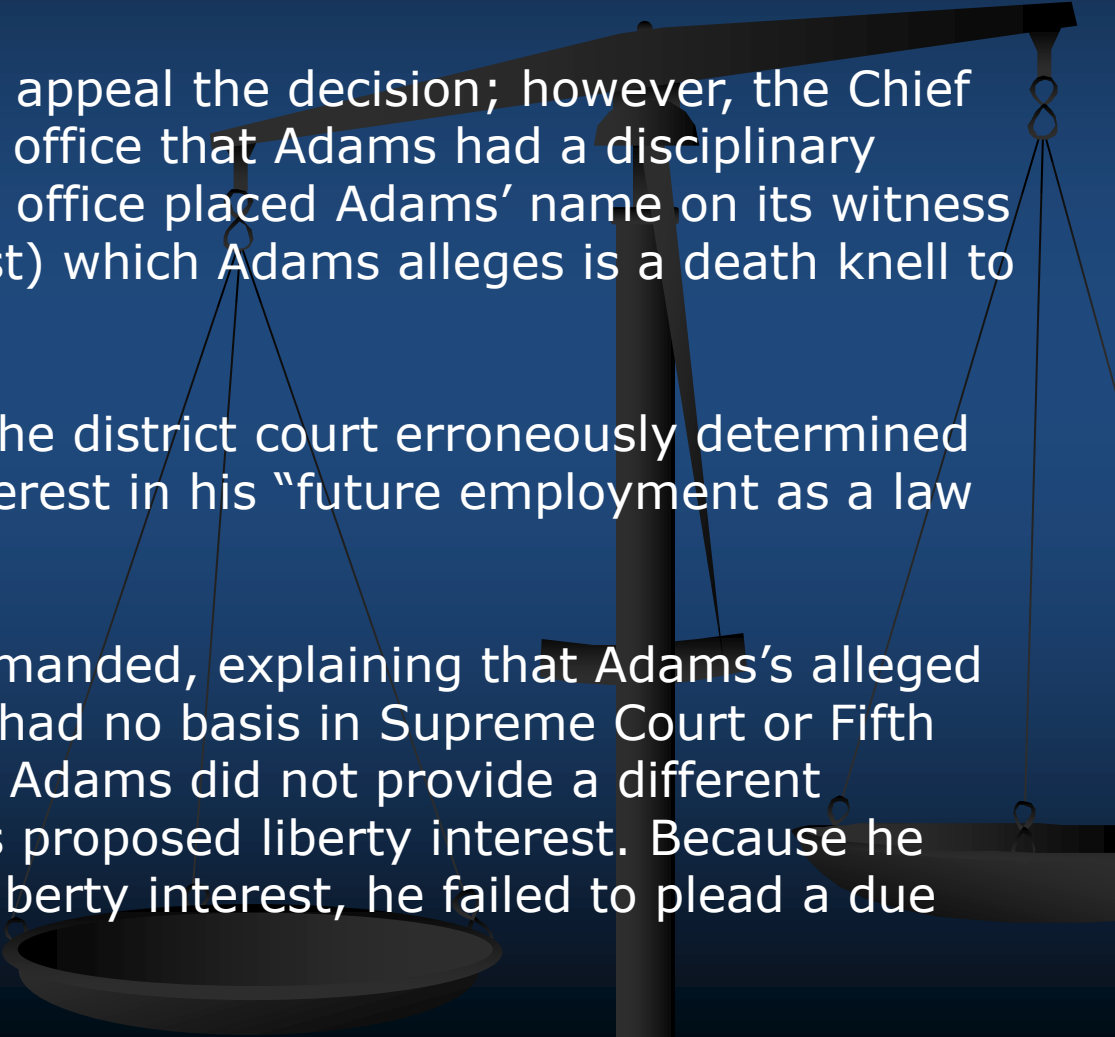
James v. Cleveland School Dist

- As the result of a longstanding desegregation decree, Plaintiff's high school was consolidated with another school before her senior year. All transcripts were reviewed and revised to comply with the handbook retrospectively. This resulted in a reshuffling of class rankings, and Plaintiff ended up third.
 - She sued school officials under 42 U.S.C. § 1983, alleging a conspiracy to strip her of salutatorian honors in violation of Mississippi law as well as her Federal due-process and equal-protection rights. The defendants, invoking qualified immunity, moved for summary judgment. The District Court granted defendants' motion finding no constitutional violation.
 - Fifth Circuit affirmed the district court's ruling, finding that Plaintiff has no such property interest in her class ranking or in the points awarded for her courses. The court explained that under precedent students lack "any protected interest in the separate components of the educational process." It follows that students lack due process interests in their class rank or in the quality points assigned to their courses.
 - Further, the court wrote that Plaintiff has no cognizable property interest in the components of her public education.
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SECTION 1983



Adams v. City of Harahan

- Adams was fired when the HPD Chief determined Adams was guilty of conduct unbecoming an officer, unsatisfactory work performance and false statements.
 - Adams exercised his right to appeal the decision; however, the Chief had already alerted the DA's office that Adams had a disciplinary action against him. The DA's office placed Adams' name on its witness notification list (the Giglio list) which Adams alleges is a death knell to a career in law enforcement.
 - Primary issue was whether the district court erroneously determined that Adams had a liberty interest in his "future employment as a law enforcement officer."
 - Fifth Circuit reversed and remanded, explaining that Adams's alleged liberty interest in his career had no basis in Supreme Court or Fifth Circuit precedent. Moreover, Adams did not provide a different constitutional anchor for this proposed liberty interest. Because he failed to state a cognizable liberty interest, he failed to plead a due process violation
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Allen v. Hays

- Allen was known by the Houston Police Department for history of PTSD. Stopped for a routine traffic stop. Two officers approached the vehicle with guns drawn. Allen told the officers he was going to reach for his wallet. Hayes instructed Allen to stop moving, to stop reaching and within seconds and without warning, fired 6 shots, hitting Allen 5 times at point-blank range.
- Allen then fell on the gas pedal, driving his vehicle head on into a nearby tree. Officers broke the driver's window and removed Allen, handcuffing him. At no point did any officer attempt to use any life-saving procedures, and EMS was not called until 6 minutes after the shooting. Died at the scene.
- After years of litigation, the district court dismissed the claims in toto.
- On appeal, the Fifth Circuit reviewed Plaintiffs' claims for unlawful arrest and detention, excessive force, denial of medical care and racial discrimination, reversing and remanding the dismissal of all claims except for the race discrimination claim.
- In doing so, the Fifth Circuit explained that it must take as true Plaintiffs' assertion that Hays had no reason to believe that Allen was armed. Further, a reasonable officer would know that a seriously injured man likely could not move and to handcuff Allen constituted an arrest without probable cause.

Rogers v. Jarrett

- Prisoner working in a hog barn when part of the ceiling collapsed on his head. Condition deteriorated, and he ended up being taken to the hospital by helicopter. He was diagnosed with a traumatic brain injury but released the following day.
- Rogers sued alleging that his 8th and 14th Amendment rights had been violated by the jail staff with deliberate indifference and also asserting a premises liability claim under the TTCA. District court dismissed the Section 1983 claims finding that the Defendants were entitled to qualified immunity and declined to exercise supplemental jurisdiction
- The Fifth Circuit affirmed. Court explained that Rogers failed to raise a factual dispute over whether the prison officials acted with deliberate indifference. Rogers had to show that the supervisors were aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and drew the inference.
- Defendants had to know that Rogers medical need was so severe that even a layman would recognize that care was required. While both Defendants knew that Rogers had been hit in the head, Rogers did not have visible injuries other than a scraped knee, he acted normal, and he even wanted to go eat lunch.

Vardeman v. City of Houston



- Loops around the passenger pickup area and eventually parked his vehicle. Traffic officer told him to move. Vardeman pulled forward but then saw his family coming out. He parked, opened the tailgate and officer again told him to move. When he said his family was there, the officer told him to “move his f-ing car” and called for assistance.
- As Vardeman finished loading his family’s bags into the car, defendant Rickey Simpson approached and yelled at Vardeman to “move the f-ing car or I will whip your bitch ass.” When Vardeman’s daughter tried to intervene, Simpson pushed her out of the way. Vardeman then pushed Simpson, who responded by punching Vardeman in the face with a closed fist, knocking him to the ground. Simpson then stood over Vardeman in a threatening manner.
- Vardeman sued the City under Section 1983 for Fourth and Fourteenth Amendment violations, mental anguish, negligence and deliberately indifferent or negligently hiring and management. He also asserted state law claims against Simpson for assault and battery as well as Section 1983 claims. The district court dismissed on the pleadings.
- Fifth Circuit affirmed as to the City, finding that Vardeman did not sufficiently allege a policy, custom or practice. While Vardeman alleged a list of bad acts by the City’s employees, jailers and police officers, none of them were meaningfully related to Simpson’s actions at the airport. Further, Vardeman did not adequately allege a pattern or practice of assault.
- However, the Court did find that Vardeman’s allegations regarding Simpson presented a plausible claim that, viewed objectively, could constitute excessive force. Further, because Simpson also stood over Vardeman after he was knocked to the ground, that could also constitute a seizure even if for a brief moment.

Foley Bey v. Prator

- Plaintiffs, who identify as Moorish Americans, attempted to enter a Caddo Parish Courthouse to file documents with the clerk. When they came to security, they informed the officers that they wished to enter without passing thru the screening, because it violated their rights under the Fourth Amendment and their rights as Moorish Americans under the US-Morocco Treaty of Peace and Friendship.
- Officers informed them that they could not enter without going thru the screening and could leave. After Plaintiffs refused to leave, they were arrested, searched and taken to the Caddo Correctional Center where their religious headwear was removed.
- District court dismissed Plaintiffs' claims, the Fifth Circuit reviewed to determine whether the officers perpetrated a false arrest without probable cause and violated Plaintiff's religious rights by removing and searching their religious headgear.
- After reviewing the record, which included video of the arrest, it was determined that the officers, at the very least, reasonably thought they had probable cause to arrest as the officers were authorized to control the entry of the courthouse.
- Further, it was not clearly established under the law that, once they arrested the Plaintiffs, the officers could not search their headgear solely because it had religious significance. When an arrest is made, it is reasonable for the arresting officer to search the person arrested. Accordingly, the Fifth Circuit upheld the dismissal, finding that the officers were entitled to qualified immunity.

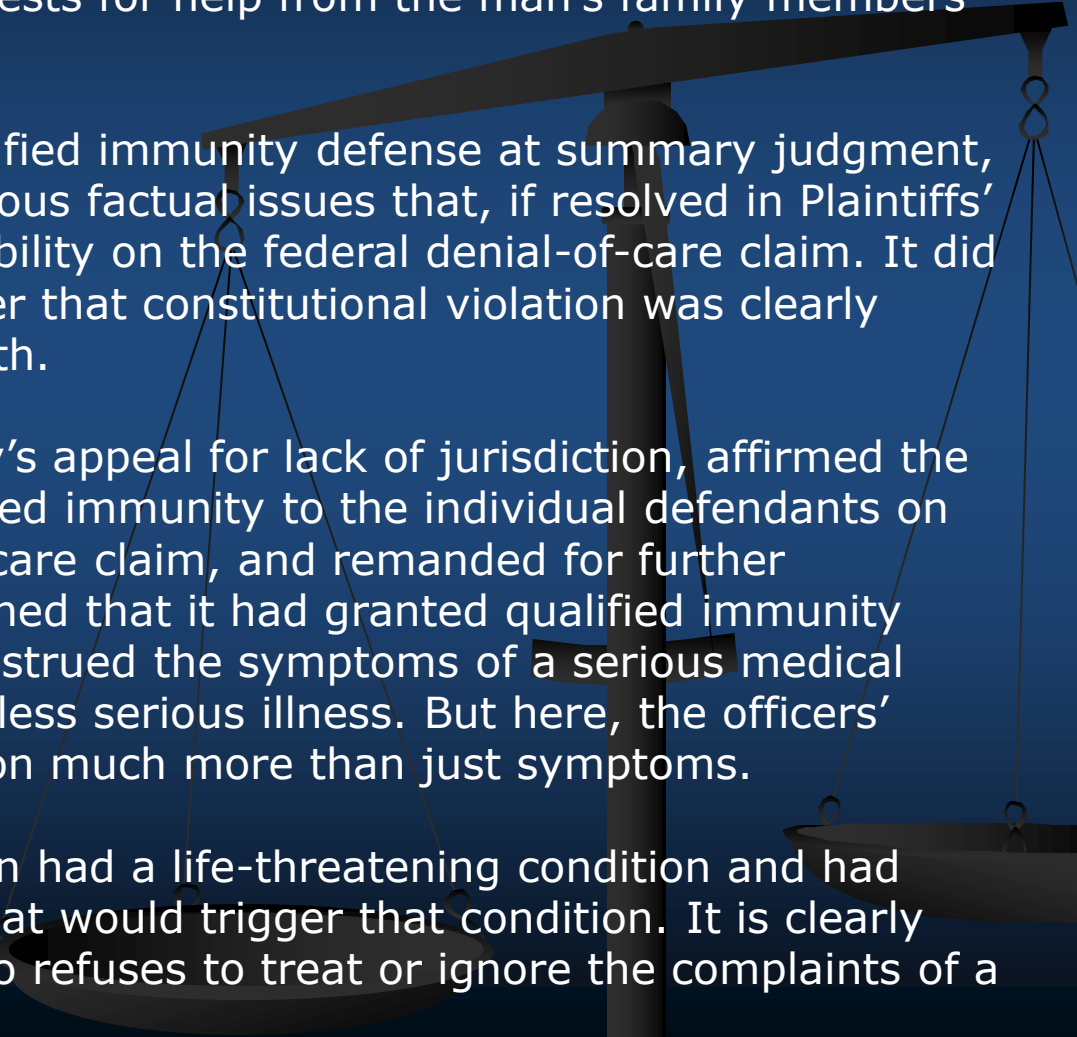
Liggins v. Duncanville

- Liggins had a severe mental health episode. Mother called 911 and Duncanville Chief of Police arrived on scene. He learned from Liggins' mom that her son was unarmed and having a mental breakdown inside the home. Chief told the mom that son would not be shot.
- Chief, without the negotiating team, ordered officers to enter the home. Once inside officer shot Liggins after he reached for a cell phone. Liggins survived after emergency surgery.
- Liggins sued the City for the Police Chief's decision to order officers to enter the house, arguing that the Police Chief was a policy maker for the City. District court dismissed, finding that the Chief was not a policy maker as he did not have final authority to establish municipal policy, and that Liggins could not show that the Chief acted with deliberate indifference when he gave the order to enter the house.
- Fifth Circuit discussed whether a single decision can constitute a policy. To warrant application, the constitutional harm in question must've been the "plainly obvious" consequence of the actor's single decision. That means, the decision must have been made despite a "high degree of predictability concerning the consequences."
- The Court emphasized that this is a "stringent standard" which requires "unmistakable culpability and clearly connected causation." In this case, the Court found that Liggins provided no evidence of predictability or the requisite degree of culpability.
- While the Chief could have waited for a crisis intervention team, failing to do so doesn't show that the Chief disregarded any of the obvious consequences of his decision. Making difficult decisions does not evidence an intentional ignorance of all associated risks. At worst, it was negligence – not deliberate indifference.

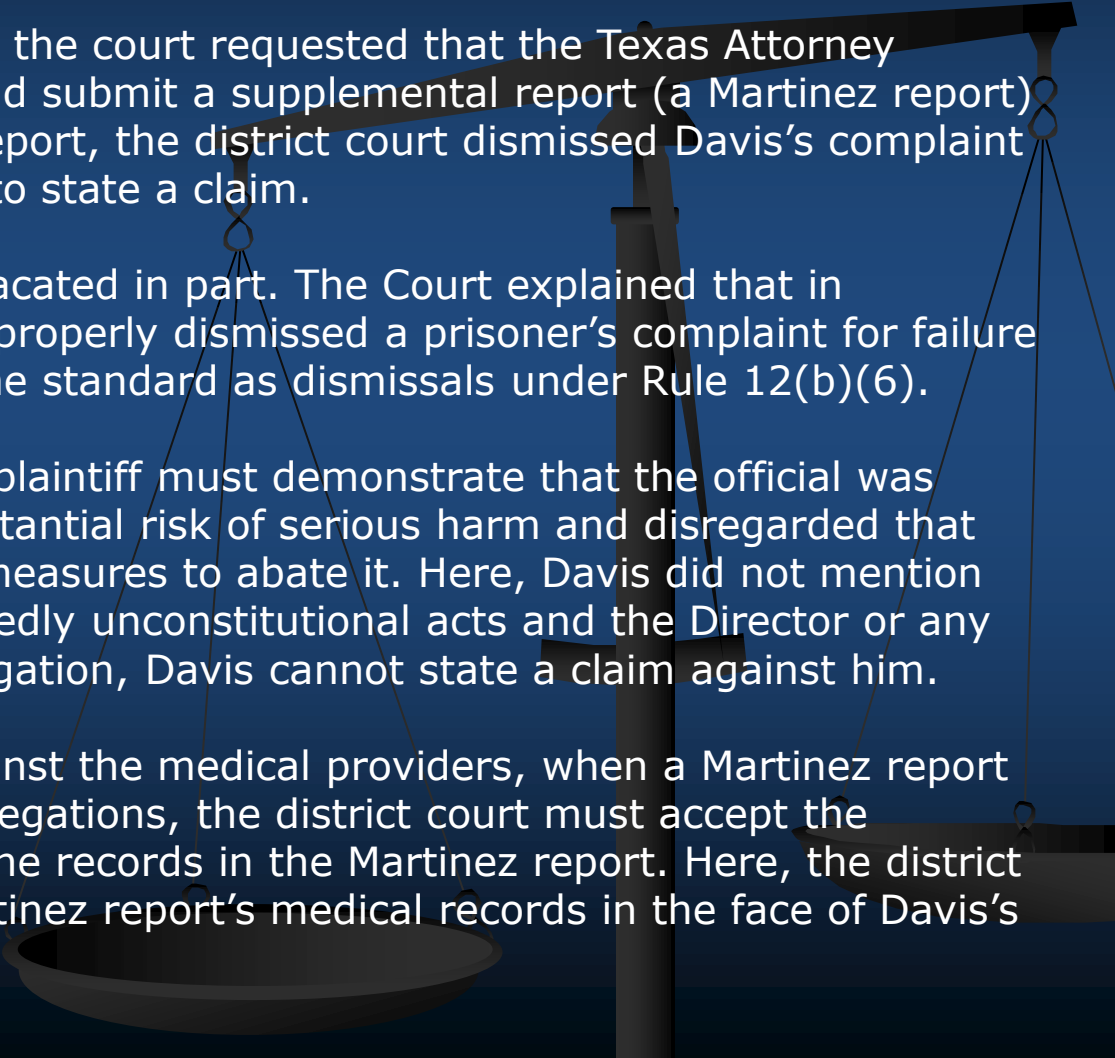
Crane v. City of Arlington

- Crane stopped at a light. Officer observed an object being tossed from the passenger's window. The officer said she thought it might have been a crack pipe and called for backup. The object was actually a candy cane. Once the officer pulled the car over, she realized it was a candy cane but still ran a warrant check on Crane, which returned several warrants
- Two officers responded as backup. Crane was asked to step out of the car because he had outstanding warrants. Crane refused. One of the officers, Roper, told the backseat passenger to open the door. Officer then opened the door, unholstered his pistol and ordered everyone to put their "f-ing hands up." He then entered the car and pointed his gun at Crane.
- According to the passengers, Officer Roper then put his arm around Crane's neck. Another officer told Officer Roper to get out of the car. When Crane reached his hand to turn off the car, Officer Roper shot him. An autopsy would later show that Crane was shot four times.
- Sued the City of Arlington and Officer Roper, alleging excessive force. The district court dismissed the passengers' claims, finding that they could not bring the claims as bystanders. District court also granted summary judgement as to Officer Roper based on qualified immunity.
- On appeal, the Fifth Circuit affirmed the dismissal of the passengers but reversed as to the officer. The Court found that, viewing the facts in the light most favorable to Plaintiffs, Crane was shot while in a chokehold, in a parked car, and while evading arrest for confirmed misdemeanors and an unconfirmed felony parole violation.
- The officer was on notice that the use of deadly force is objectively reasonable only where an officer has "a reasonable belief that he or the public was in imminent danger...of death or serious bodily harm." While officer stated he believed Crane had a gun, the Court found that was not reasonable.

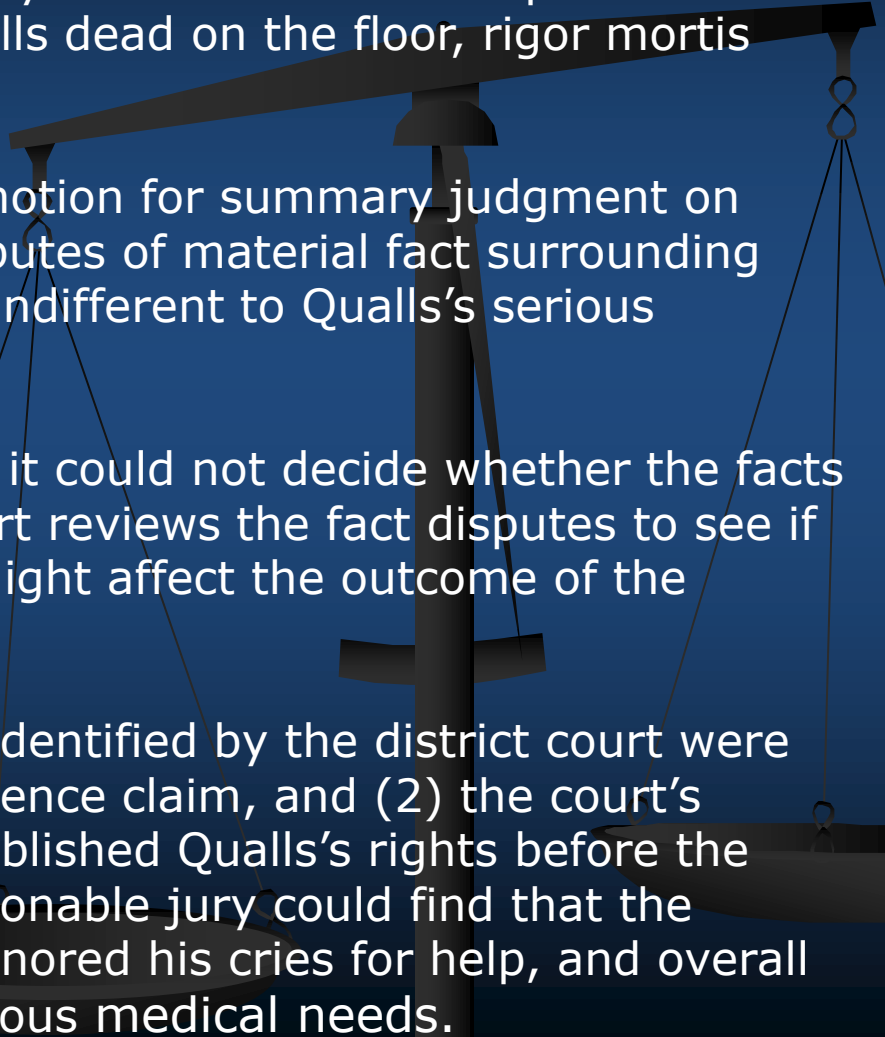
Williams v. City of Yazoo

- Man detained at County Detention Center died after bleeding internally for hours. Alleged that law enforcement officials knew that the man had been assaulted with a metal pipe and that he was vulnerable to internal bleeding if injured, yet they ignored requests for help from the man's family members and fellow detainees
 - In rejecting the officials' qualified immunity defense at summary judgment, the district court found numerous factual issues that, if resolved in Plaintiffs' favor, would establish their liability on the federal denial-of-care claim. It did not, however, consider whether that constitutional violation was clearly established at the time of death.
 - Fifth Circuit dismissed the City's appeal for lack of jurisdiction, affirmed the district court's denial of qualified immunity to the individual defendants on the federal denial-of-medical-care claim, and remanded for further proceedings. The Court explained that it had granted qualified immunity when law enforcement misconstrued the symptoms of a serious medical condition for intoxication or a less serious illness. But here, the officers' knowledge of risk was based on much more than just symptoms.
 - The officers knew that the man had a life-threatening condition and had suffered trauma of the type that would trigger that condition. It is clearly established that an official who refuses to treat or ignore the complaints of a detainee violates their rights.
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Davis v. Lumpkin

- Davis, an inmate, sued the Director of the Texas Department of Criminal Justice – Correctional Institutions Division, and multiple medical providers within the prison system for violating his Eighth Amendment right to medical care.
 - To help develop the factual record, the court requested that the Texas Attorney General look into Davis’s claims and submit a supplemental report (a Martinez report) to the court. After reviewing the report, the district court dismissed Davis’s complaint as legally frivolous and for failure to state a claim.
 - Fifth Circuit affirmed in part and vacated in part. The Court explained that in reviewing whether a district court properly dismissed a prisoner’s complaint for failure to state a claim, it applied the same standard as dismissals under Rule 12(b)(6).
 - To show deliberate indifference, a plaintiff must demonstrate that the official was aware that an inmate faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. Here, Davis did not mention any relationship between the allegedly unconstitutional acts and the Director or any prison policy. Without such an allegation, Davis cannot state a claim against him.
 - However, regarding his claims against the medical providers, when a Martinez report conflicts with a pro se plaintiff’s allegations, the district court must accept the plaintiff’s allegations as true, not the records in the Martinez report. Here, the district court improperly relied on the Martinez report’s medical records in the face of Davis’s conflicting allegations.
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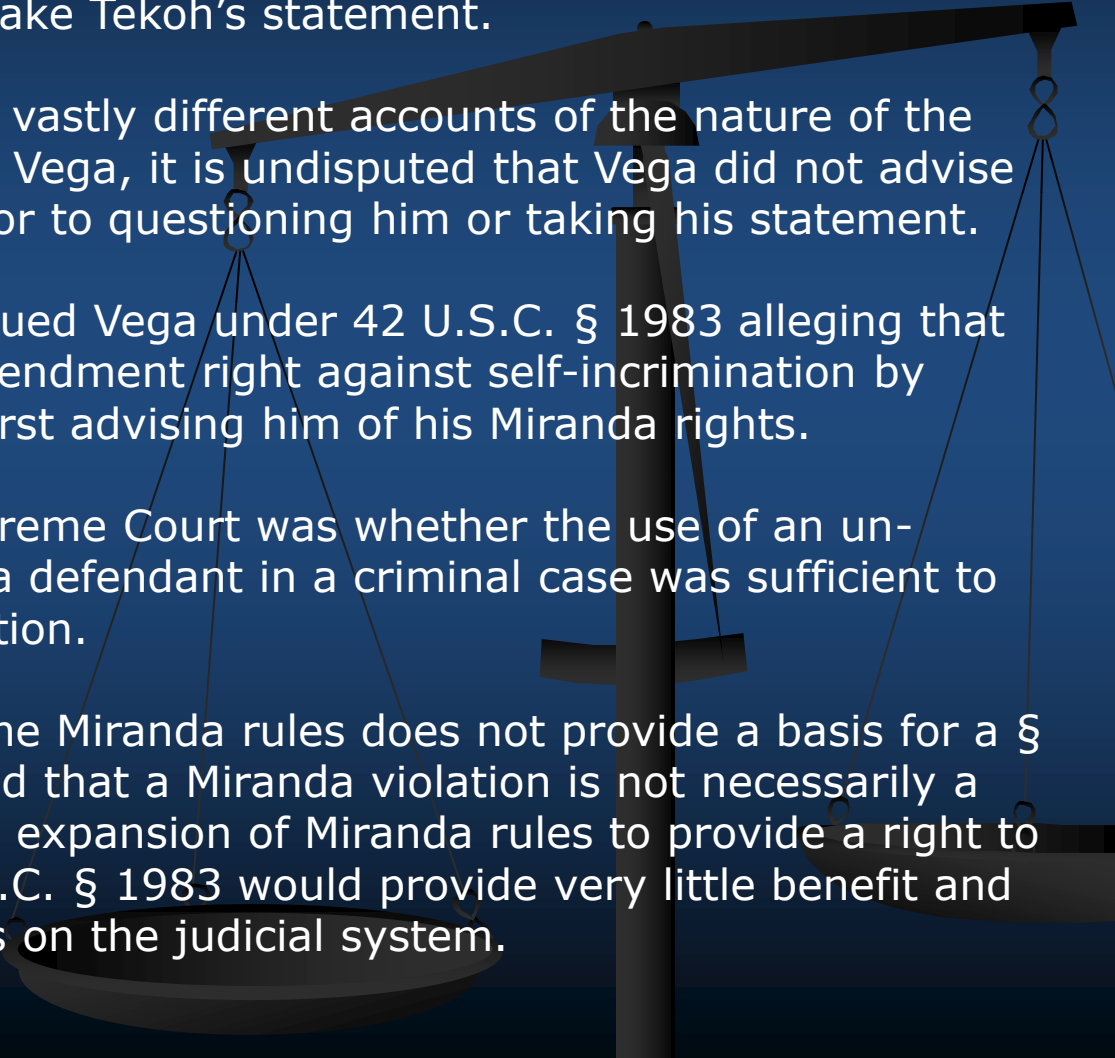
Sims v. Griffin

- Qualls, a known drug abuser, spent the last 34 hours of his life on a jailhouse floor, enduring a slow, agonizing death as his body shut down following a drug overdose. Unable to stand or speak coherently, he moaned in pain, hallucinated, vomited repeatedly and cried out for help that never came. By the time officers noticed Qualls dead on the floor, rigor mortis had already set in.
 - The district court denied the officers' motion for summary judgment on qualified immunity finding genuine disputes of material fact surrounding whether the officers were deliberately indifferent to Qualls's serious medical needs.
 - On appeal, the Fifth Circuit stated that it could not decide whether the facts disputes were genuine; rather, the court reviews the fact disputes to see if they are material (i.e., whether they might affect the outcome of the lawsuit.)
 - Court found that (1) the fact disputes identified by the district court were material to Plaintiff's deliberate indifference claim, and (2) the court's decision in *Easter v. Powell* clearly established Qualls's rights before the officers allegedly violated them. A reasonable jury could find that the officers each refused to treat Qualls, ignored his cries for help, and overall evinced a wanton disregard for his serious medical needs.
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Thompson v. Clark

- Watson after seeing a diaper rash on the infant and mistaking the rash for signs of abuse she dialed 911. In response, two EMTs arrived. The EMTs saw nothing amiss.
- Officers followed up to investigate the alleged child abuse and insisted on seeing Thompson's daughter. Asked whether the officers had a warrant, which they did not. Nevertheless, the officers physically tried to enter Thompson's home
- Prosecution dropped the charges against him, stating that the "people are dismissing the case in the interest of justice."
- Sec. 1983 malicious prosecution claim against the police officers. District court granted judgment in favor of the defendants on Thompson's malicious prosecution claim due to his failure to establish favorable termination of his criminal case
- Question presented to the Supreme Court is whether a plaintiff who seeks to bring a Section 1983 action alleging unreasonable seizure pursuant to legal process must show that the criminal proceeding against him "formally ended in a manner not inconsistent with his innocence," or that the proceeding "ended in a manner that affirmatively indicates his innocence."
- 6-3 majority opinion the Court held that a plaintiff wishing to bring a Section 1983 claim for malicious prosecution need only show that his prosecution ended without a conviction – acquittal is not required.

Vega v. Tekoh

- Tekoh worked as a patient transporter in a hospital in Los Angeles. After a patient accused him of sexual assault, hospital staff reported the allegation to the Los Angeles Sheriff's Department. Deputy Vega went to the hospital to ask Tekoh some questions and to take Tekoh's statement.
 - Although the parties described vastly different accounts of the nature of the interaction between Tekoh and Vega, it is undisputed that Vega did not advise Tekoh of his Miranda rights prior to questioning him or taking his statement.
 - Following the acquittal Tekoh sued Vega under 42 U.S.C. § 1983 alleging that Vega violated Tekoh's Fifth Amendment right against self-incrimination by taking his statement without first advising him of his Miranda rights.
 - Question presented to the Supreme Court was whether the use of an un-Mirandized statement against a defendant in a criminal case was sufficient to support a 42 U.S.C. § 1983 action.
 - Court held that a violation of the Miranda rules does not provide a basis for a § 1983 claim. The Court reasoned that a Miranda violation is not necessarily a Fifth Amendment violation and expansion of Miranda rules to provide a right to sue for damages under 42 U.S.C. § 1983 would provide very little benefit and would impose substantial costs on the judicial system.
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Kallinen v. Newman

- Judge Newman used his private Facebook account to support his campaign for reelection as well as share news about his personal and family life with the public.
- Plaintiff commented on three of Judge Newman's posts that related to his campaign for reelection. The comments accused Judge Newman of having "court cronies" and doing "favors for them at the expense of other litigants." Judge Newman deleted the comments and blocked Plaintiff's account.
- Plaintiff sued Judge Newman under 42 U.S.C. Section 1983, alleging that he violated his First Amendment rights. The district court denied his motion to amend his complaint and granted Judge Newman's motion to dismiss under Rule 12(b)(6), holding that he failed to plead facts sufficient to show that Newman acted under the color of state law as required by Sec. 1983.
- The District Court further determined that even if Kallinen alleged that Judge Newman acted under the color of state law, the alleged facts showed that Judge Newman was entitled to qualified immunity "because there was no clearly established law that made the Facebook campaign page a government-created forum subject to First Amendment protection."
- Fifth Circuit affirmed. The court held that because Judge Newman was not acting under the color of state law when he blocked Plaintiff and deleted his comments, the court held that Plaintiff has not met his burden under Section 1983

Fisher v. Moore



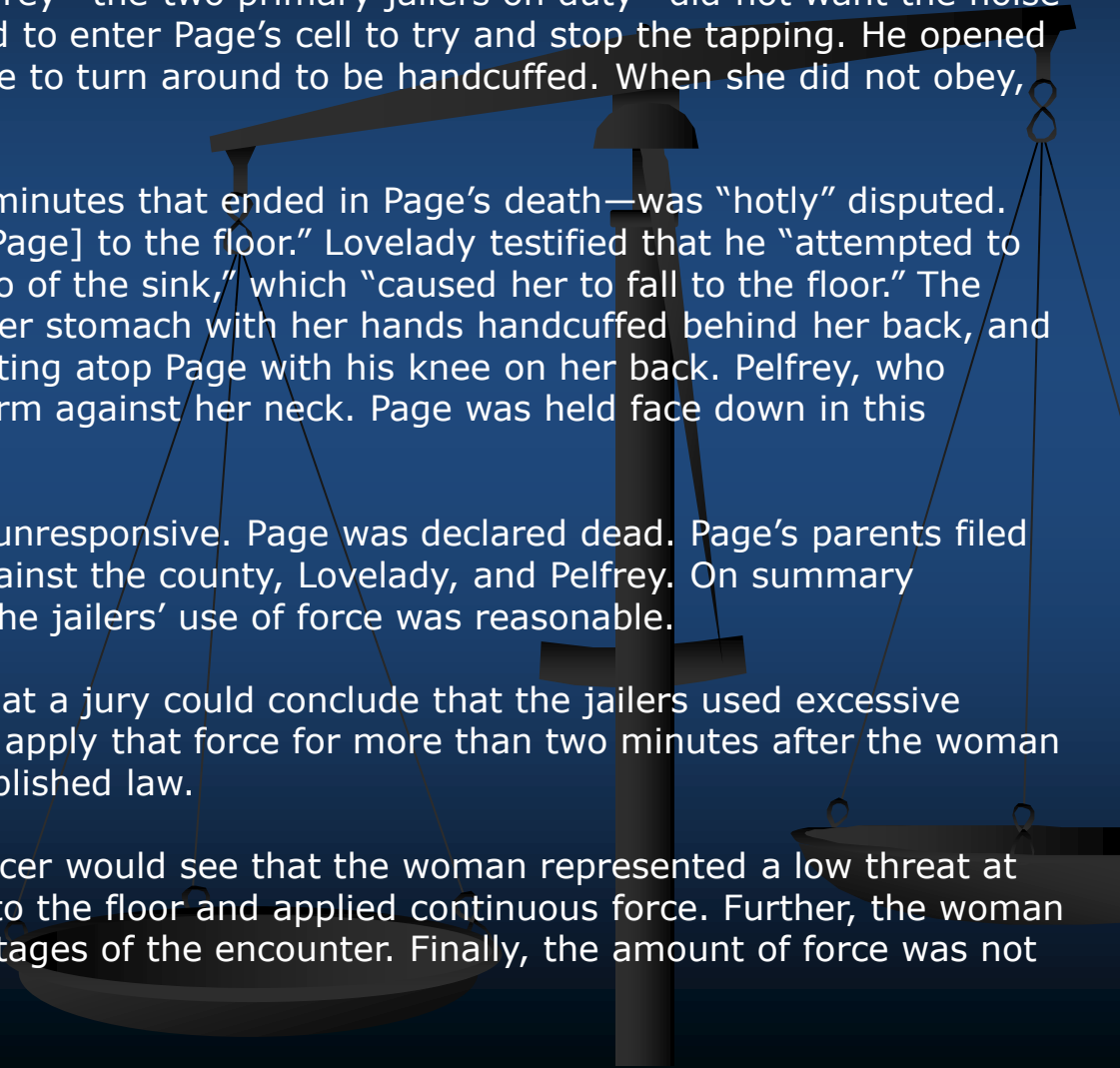
- Victim had the cognitive ability of a four- or five-year-old. Due to her conditions, the victim needed assistance transitioning throughout the school day and was to be “escorted at all times in middle school.” The victim was sexually assaulted by another student with known violent tendencies and who was known to pose a risk to female students.
- Despite knowing of this attack and the aggressor’s tendencies, the victim’s teachers let both her and her aggressor wander the school unsupervised, and she was again assaulted by the very same student. The victim’s mother sued various school officials under 42 U.S.C. Section 1983, alleging liability under the so-called “state-created danger” doctrine, an exception to the general rule that government has no duty under the Due Process Clause to protect people from privately inflicted harms.
- School officials sought dismissal on qualified immunity grounds, arguing that the state-created danger doctrine was not clearly established in this circuit when the underlying events occurred. The district court denied their motion.
- The Fifth Circuit reversed and remanded with instructions to dismiss the Section 1983 claim. The court explained that the circuit has never adopted a state-created danger exception to the sweeping “no duty to protect” rule. And a never-established right cannot be a clearly established one.
- The court does not think it is prudent to adopt a never-recognized theory of Section 1983 liability in the absence of rigorous briefing that grapples painstakingly with how such a cause of action, however widely accepted in other circuits, works in terms of its practical contours and application, details on which the court’s sister circuits disagree. The court explained it is reluctant to expand substantive due process doctrine given the Supreme Court’s recent forceful pronouncements signaling unease with implied rights not deeply rooted in our Nation’s history and tradition.

Sweetin v. City of Texas City

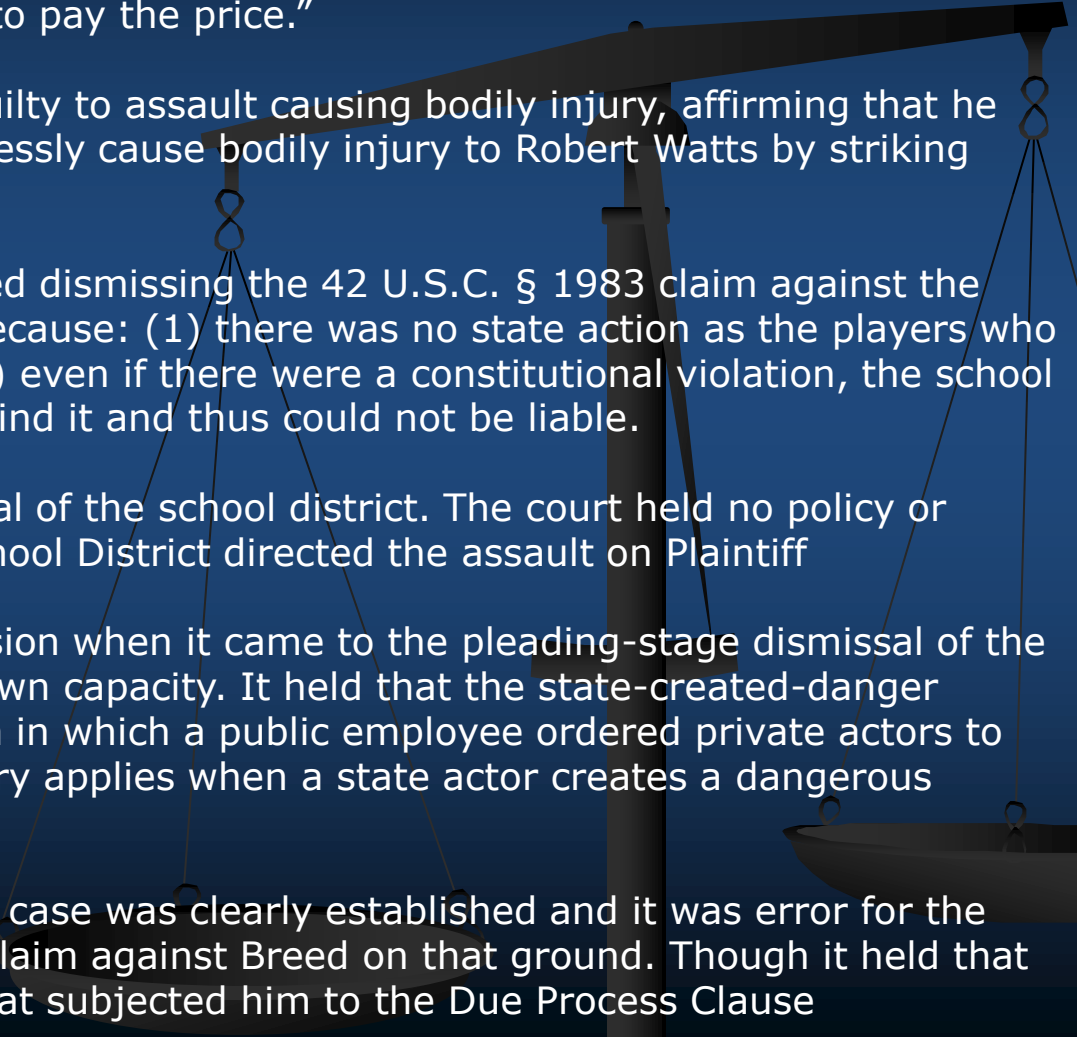
- Fire Marshal authorized Wylie to serve as the City's "EMS Administrator," to handle the permitting of private-sector, non-emergency ambulances
- Drove their ambulance to Texas City for a routine pick-up at a nursing home. Unbeknownst to them, Windsor no longer had a permit, so driving into the City for this routine pick-up would violate a Texas City ordinance. Wylie spotted the Windsor ambulance parked outside.
- Wylie pulled up and asked Sweetin and Stefek some questions about why they were there and where they were headed. They declined to answer, citing the patient's confidentiality.
- Wylie approached them and said: "You are detained. You are not allowed to leave. You must wait right here." This seemed bizarre a man in a paramedic's uniform, driving a Texas City Fire Department vehicle, detaining them in a city other than Texas City.
- Wylie knew he did not have the authority to detain them. He called the Fire Marshal because he did not even have the power to issue them a citation.
- Sued Wylie (in his individual capacity) and the City under 42 U.S.C. § 1983, alleging that they were unreasonably seized in violation of the Fourth Amendment.
- Fifth Circuit found officer acted beyond the scope of his discretionary duties as "permit officer," he is not entitled to qualified immunity. But the claim against the City fails because the officer did not have final policymaking authority.
- City cannot be held liable under 42 U.S.C. Section 1983 because Wylie does not have any final policymaking authority. Section 1983 allows suits against persons for violating federal rights. That term includes municipalities like Texas City. But a city cannot be held liable under Section 1983 on respondeat superior

Fairchild, et al v. Coryell City

- Page spent several months in the Coryell County jail awaiting trial. She had serious mental health challenges as well as physical ailments.
- Page began tapping her hairbrush on the cell door, and at one point she knocked her hip against the door. the hall. Lovelady and Wesley Pelfrey—the two primary jailers on duty—did not want the noise to disrupt others on s. Lovelady decided to enter Page’s cell to try and stop the tapping. He opened the food slot in the door and asked Page to turn around to be handcuffed. When she did not obey, Lovelady used pepper spray.
- What happened next—a span of a few minutes that ended in Page’s death—was “hotly” disputed. The plaintiffs say Lovelady “slammed [Page] to the floor.” Lovelady testified that he “attempted to turn her around and she suddenly let go of the sink,” which “caused her to fall to the floor.” The struggle resulted in Page lying flat on her stomach with her hands handcuffed behind her back, and Lovelady, who weighed 230 pounds, sitting atop Page with his knee on her back. Pelfrey, who weighed 390 pounds, pressed his forearm against her neck. Page was held face down in this manner for over two minutes.
- The jailers rolled Page over to find her unresponsive. Page was declared dead. Page’s parents filed the underlying 42 U.S.C § 1983 suit against the county, Lovelady, and Pelfrey. On summary judgment, the District Court held that the jailers’ use of force was reasonable.
- The Fifth Circuit reversed, explaining that a jury could conclude that the jailers used excessive force. Further, the jailers’ continuing to apply that force for more than two minutes after the woman was subdued would violate clearly established law.
- The court explained any reasonable officer would see that the woman represented a low threat at the moment when the jailer threw her to the floor and applied continuous force. Further, the woman did not actively resist at these critical stages of the encounter. Finally, the amount of force was not proportional to the need for force.



Watts v. Northside Indep Sch Dist

- Texas high school football Marble Falls High School played John Jay High School may have been unprecedented. By the fourth quarter, Breed was “increasingly agitated, angry and enraged over his belief that the referee crew was making ‘bad calls,’” and over “alleged racial comments” referee Robert Watts had directed at players. Coach Breed told John Jay players “to hit” Watts because “he need[ed] to pay the price.”
 - In December 2015, Breed pleaded guilty to assault causing bodily injury, affirming that he did “intentionally, knowingly, or recklessly cause bodily injury to Robert Watts by striking him.”
 - Magistrate Judge (“MJ”) recommended dismissing the 42 U.S.C. § 1983 claim against the school district under Rule 12(b)(6) because: (1) there was no state action as the players who hit Watts were private actors, and (2) even if there were a constitutional violation, the school district was not the moving force behind it and thus could not be liable.
 - The Fifth Circuit affirmed the dismissal of the school district. The court held no policy or custom of Northside Independent School District directed the assault on Plaintiff
 - The Court reached a different conclusion when it came to the pleading-stage dismissal of the claims brought against Breed in his own capacity. It held that the state-created-danger theory does not even fit this situation in which a public employee ordered private actors to commit an assault. Instead, the theory applies when a state actor creates a dangerous condition that results in harm.
 - Consequently, the state action in this case was clearly established and it was error for the District Court to dismiss the § 1983 claim against Breed on that ground. Though it held that Breed was engaged in state action that subjected him to the Due Process Clause
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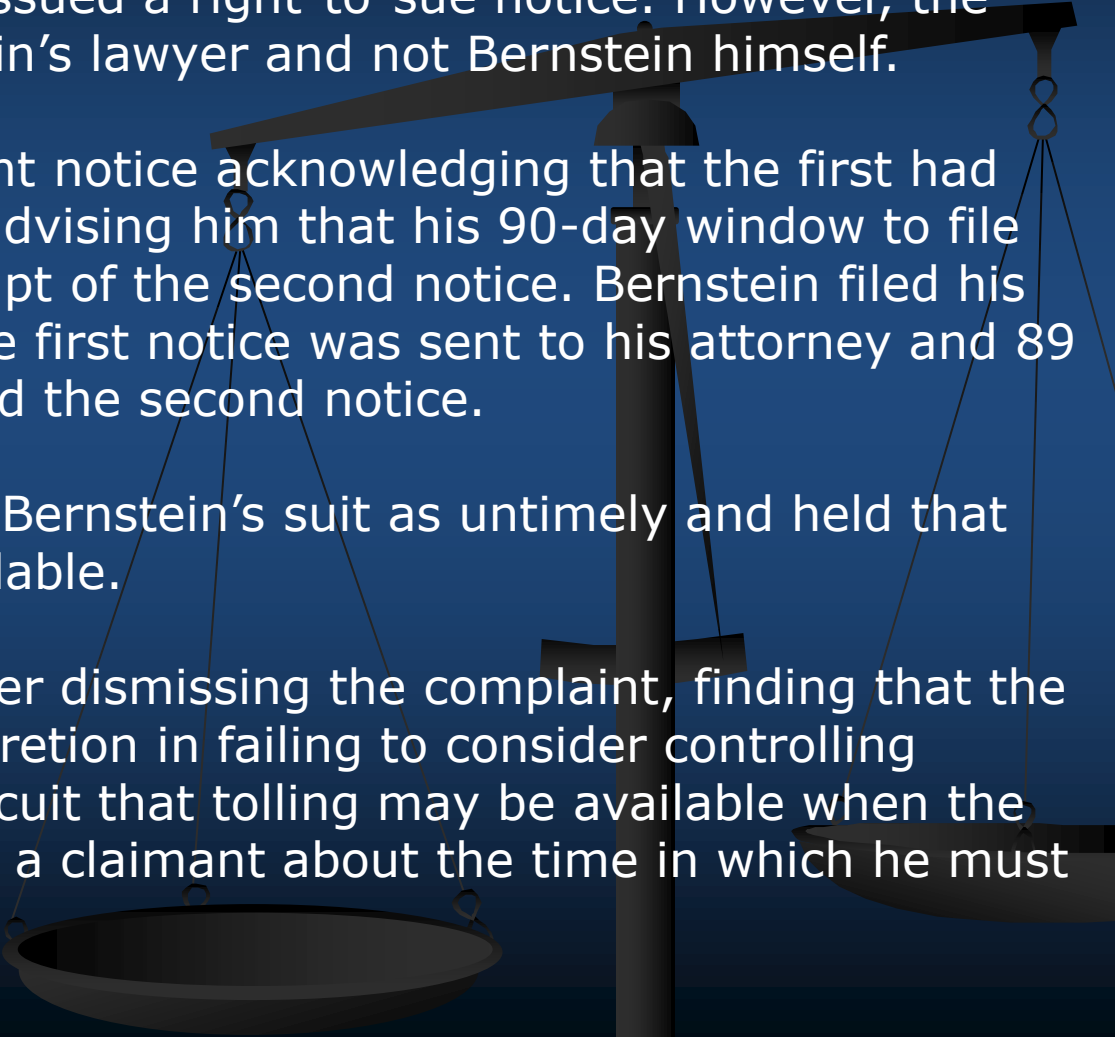
Solis v. Serrett

- Officer Serrett pulled over for failing to properly signal and driving outside of his lane. Serrett posed a series of questions to Robinson, but Solis interjected and answered the questions
- Serrett believed that either Robinson or Solis (or both) were intoxicated, he requested the assistance of a backup officer. Robinson objected, stating "I am not intoxicated." Serrett viewed this as a refusal to submit to the field sobriety test. He arrested Robinson.
- Solis began recording the encounter on her cell phone and stepped out of the vehicle herself. Solis began to narrate the events, and Sims interjected stating "well actually, he gave him multiple opportunities, I'm gonna say it for the camera . . . multiple opportunities, and he refused."
- Solis then stopped filming but continued to hold her cell phone. She twice requested Serrett's badge number. Serrett reached out and said, "Can I see your phone for a second please?" Solis jerked the phone away from Serrett's hand and responded, "No you can't"
- Sims then held his knee on Solis's back as Serrett handcuffed her. Officer Serrett informed Solis that she was being arrested for public intoxication, stood her up, and walked her over to the police car.
- Claims under 42 U.S.C. § 1983, including excessive force, unreasonable seizure due to an arrest without probable cause, malicious prosecution, violation of her First Amendment rights for arresting her in retaliation for filming the officers, and violation of her Fourteenth Amendment rights.
- Summary judgment on all of Solis's claims except her excessive force § 1983 claim. It found that disputed issues of material fact barred summary judgment on the excessive force claim
- Fifth Circuit denied Appellee's motion to dismiss, reversed the district court's order denying Appellant's motion for summary judgment. The court analyzed the officers' actions and found that their conduct was not so objectively unreasonable as to violate Appellee's constitutional rights.

TITLE VII



Bernstein v. Maximus Federal Services

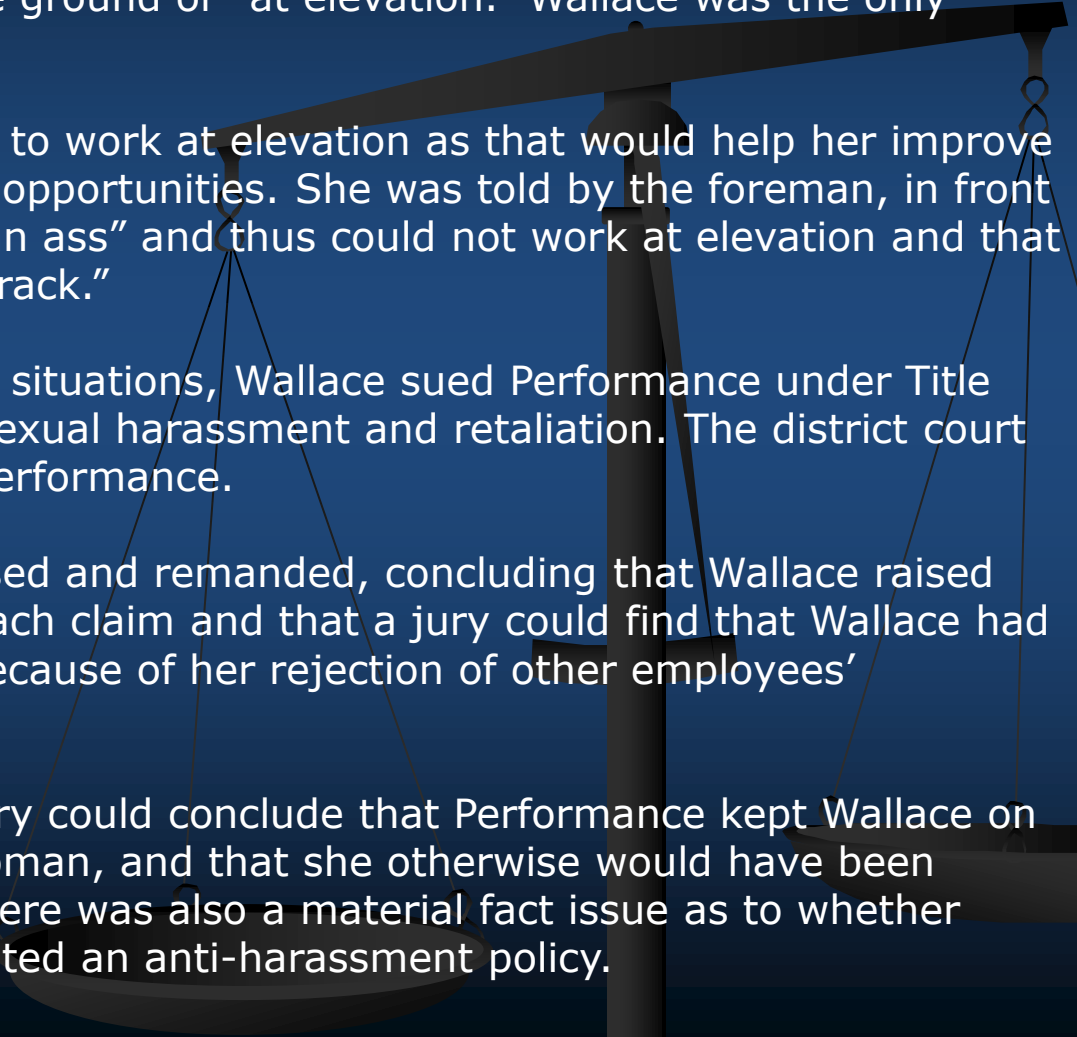
- After the EEOC closed its investigation into Bernstein's charge of discrimination, the agency issued a right-to-sue notice. However, the notice only reached Bernstein's lawyer and not Bernstein himself.
 - EEOC then sent a subsequent notice acknowledging that the first had not reached Bernstein and advising him that his 90-day window to file suit began to run upon receipt of the second notice. Bernstein filed his complaint 141 days after the first notice was sent to his attorney and 89 days after Bernstein received the second notice.
 - The district court dismissed Bernstein's suit as untimely and held that equitable tolling was unavailable.
 - Fifth Circuit vacated the order dismissing the complaint, finding that the district court abused its discretion in failing to consider controlling precedent from the Fifth Circuit that tolling may be available when the EEOC affirmatively misleads a claimant about the time in which he must file his federal complaint.
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Hudson v. Lincare, Inc.



- Hudson, a black female, sued her employer under Title VII, alleging that she suffered from a racially hostile work environment, and that Lincare not only failed to do anything about it, but also retaliated against her for complaining.
- Hudson's allegations fell into three general buckets: (1) her co-workers used racial epithets and made racially charged comments in the office; (2) she was called the n-word at a contentious June 2019 meeting; and (3) she suffered additional mistreatment in the fallout from that meeting. Hudson left Lincare in August 2019, telling HR that she resigned because of perceived racial harassment and discrimination.
- Fifth Circuit affirmed. While the parties disagreed over the nature and frequency of Hudson's harassment, there was no genuine dispute that Lincare's response was prompt, reasonable and effective.
- The record reflected that as soon as Lincare knew about Hudson's harassment, it intervened, conducting an investigation and issuing final written warnings to several employees. Further, Hudson did not suffer an adverse employment action to support her retaliation claim.
- While Hudson was placed on a formal action plan, Hudson did not demonstrate that Lincare's reason for doing so was pretextual. Likewise, there was no evidence of causation between her protected activity and the retaliation she supposedly suffered.

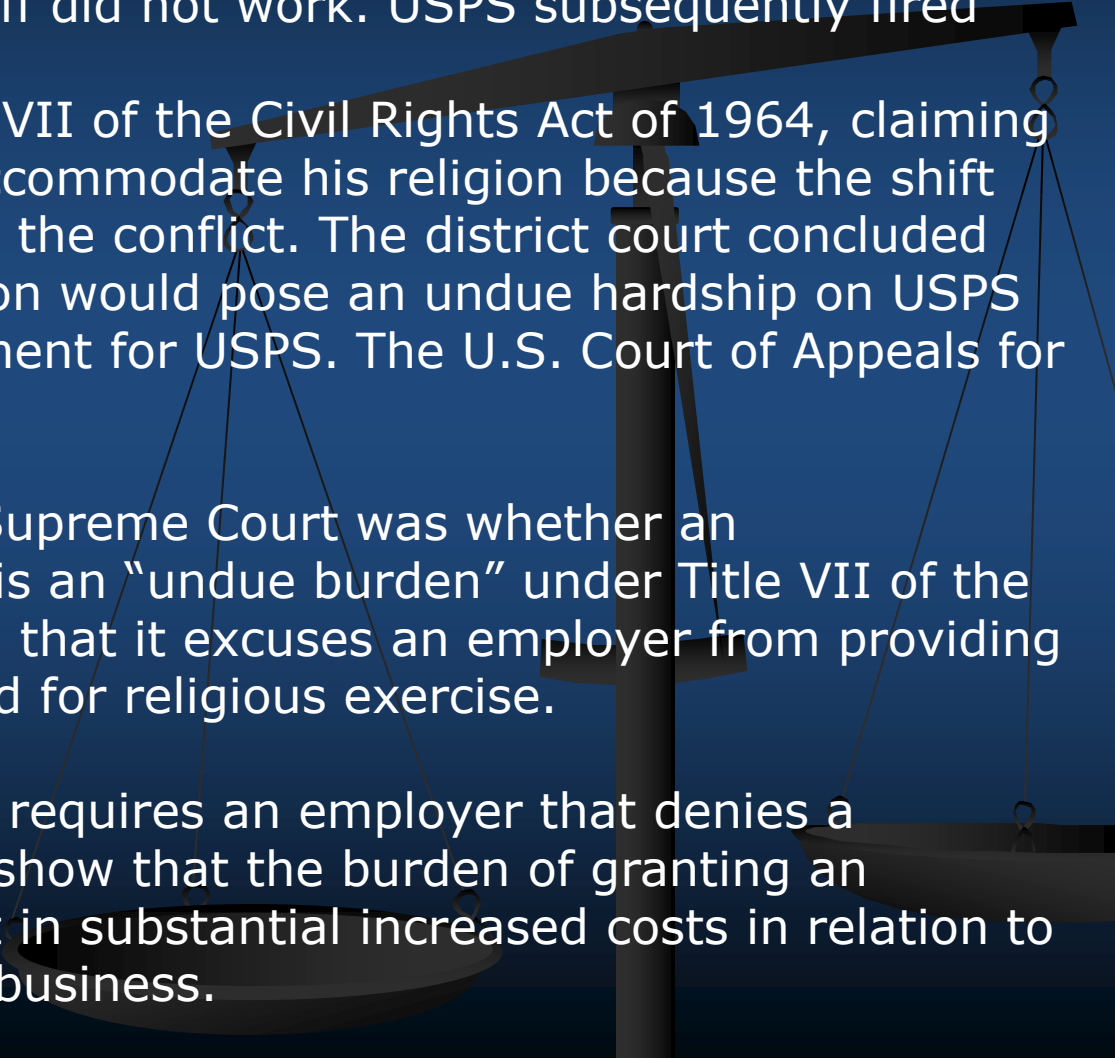
Wallace v. Performance Contractors

- Performance hired Megan Wallace as a laborer but laid her off as part of a reduction in force in 2017. Performance then rehired Wallace as a “helper,” which was considered a promotion. Helpers worked a hands-on role, following pipefitters and welders around the site, and worked either on the ground or “at elevation.” Wallace was the only female helper.
 - When she began work, she asked to work at elevation as that would help her improve her skills and bring advancement opportunities. She was told by the foreman, in front of others, that she had “tits and an ass” and thus could not work at elevation and that women were not allowed “on the rack.”
 - After other similar comments and situations, Wallace sued Performance under Title VII, alleging sex discrimination, sexual harassment and retaliation. The district court granted summary judgment for Performance.
 - On appeal, the Fifth Circuit reversed and remanded, concluding that Wallace raised genuine material fact issues on each claim and that a jury could find that Wallace had been suspended and later fired because of her rejection of other employees’ harassment.
 - Further, the Court found that a jury could conclude that Performance kept Wallace on the ground because she was a woman, and that she otherwise would have been allowed to work “at elevation.” There was also a material fact issue as to whether Performance effectively implemented an anti-harassment policy.
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Hamilton v. Dallas County

- Plaintiffs are nine female detention service officers employed by the Dallas County Sheriff's Department.
- Gender-based scheduling policy went into effect and only male officers were given full weekends off whereas female officers were allowed two weekdays off or one weekday and one weekend day off. The explanation provided to the female officers was that it would be safer for the male officers to be off during the weekends as opposed to during the week.
- The female officers filed suit against the County alleging violations of Title VII and the Texas Employment Discrimination ACT. County moved for and was granted dismissal, arguing that the Plaintiffs did not suffer, or plead, an adverse employment action.
- On appeal, the Fifth Circuit affirmed. While the Plaintiffs alleged direct evidence of discrimination, Title VII also requires Plaintiffs to show that they have suffered some adverse employment action by the employer. And Fifth Circuit precedent requires that the adverse employment action must be an ultimate employment decision such as hiring, granting leave, discharging, promoting or compensating. Here, the Plaintiffs did not allege that they suffered such an action.

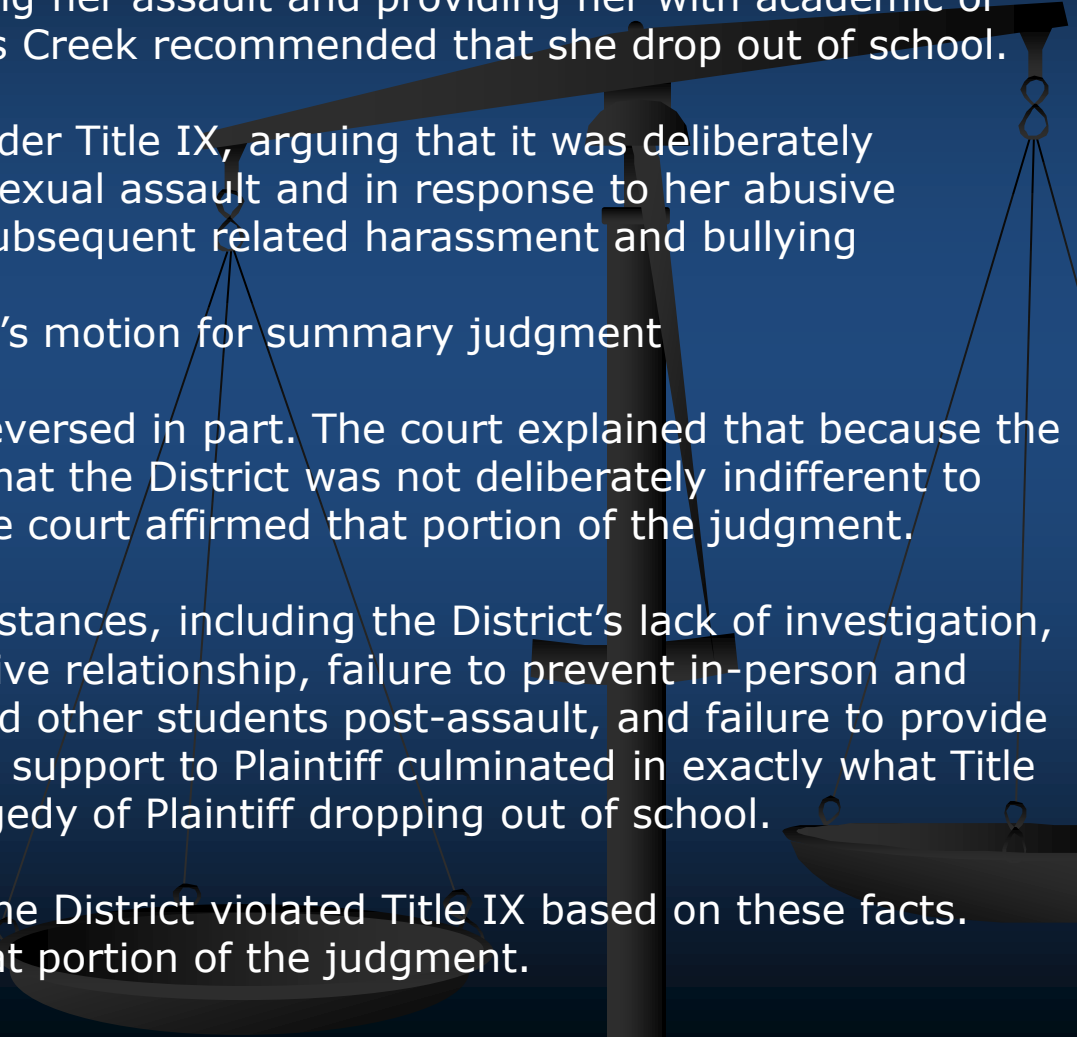
Groff v. DeJoy

- Gerald Groff is a Christian and U.S. Postal Service worker. He refused to work on Sundays due to his religious beliefs. USPS offered to find employees to swap shifts with him, but on numerous occasions, no co-worker would swap, and Groff did not work. USPS subsequently fired him.
 - Groff sued USPS under Title VII of the Civil Rights Act of 1964, claiming USPS failed to reasonably accommodate his religion because the shift swaps did not fully eliminate the conflict. The district court concluded the requested accommodation would pose an undue hardship on USPS and granted summary judgment for USPS. The U.S. Court of Appeals for the Third Circuit affirmed.
 - The issue presented to the Supreme Court was whether an inconvenience to coworkers is an “undue burden” under Title VII of the Civil Rights Act of 1964 such that it excuses an employer from providing an accommodation requested for religious exercise.
 - The Court held that Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.
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TITLE IX



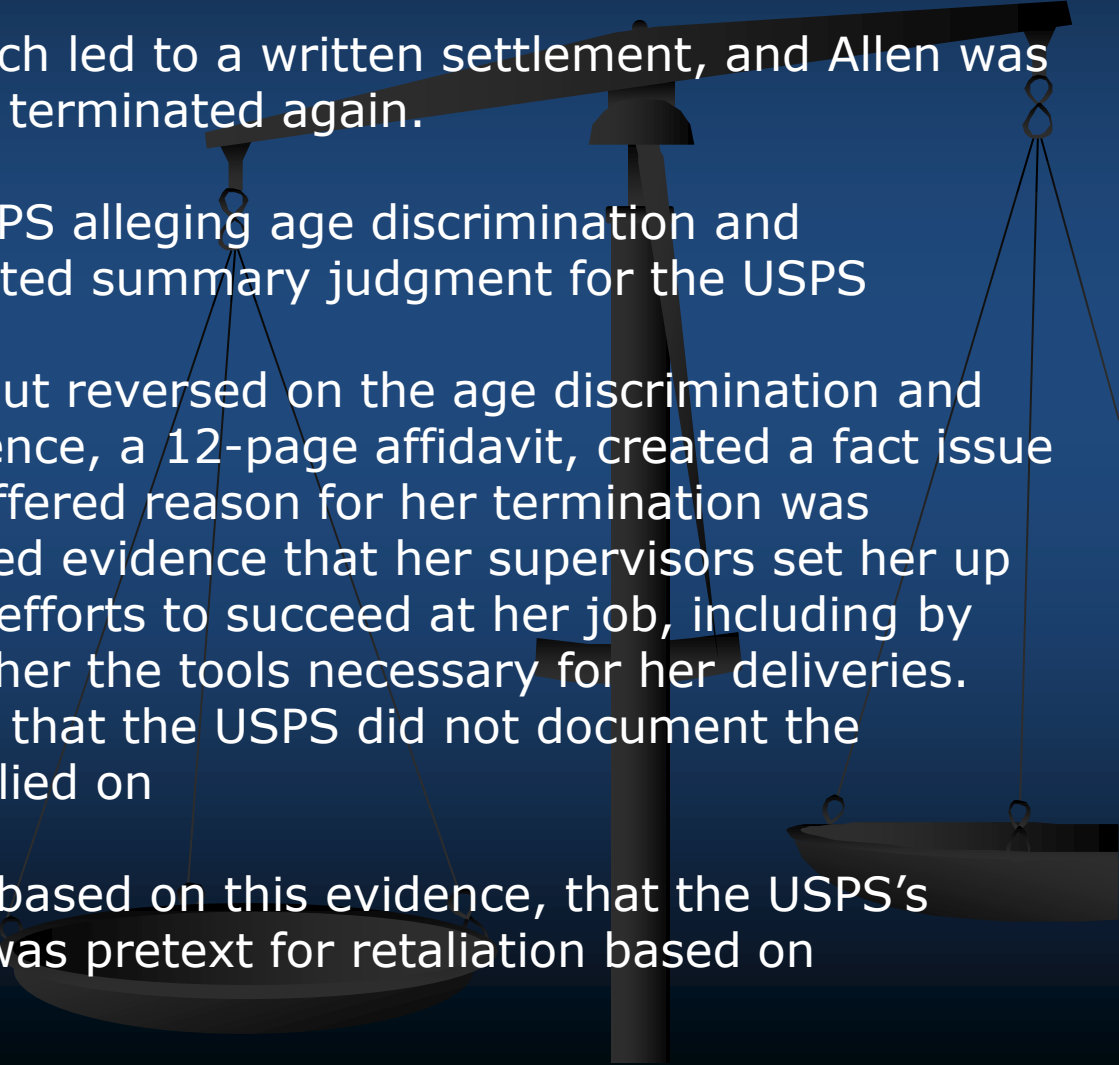
Roe v. Cypress-Fairbanks Indep

- Plaintiff alleges that when she was fourteen years old, she was brutally sexually assaulted by another student in a stairwell at Cypress Creek High School
 - Plaintiff says instead of investigating her assault and providing her with academic or other appropriate support, Cypress Creek recommended that she drop out of school.
 - Plaintiff sued the school district under Title IX, arguing that it was deliberately indifferent both to the risk of her sexual assault and in response to her abusive relationship, sexual assault, and subsequent related harassment and bullying
 - The district granted Cypress Creek's motion for summary judgment
 - Fifth Circuit affirmed in part and reversed in part. The court explained that because the district court correctly concluded that the District was not deliberately indifferent to Plaintiff's risk of sexual assault, the court affirmed that portion of the judgment.
 - However, the totality of the circumstances, including the District's lack of investigation, awareness of the pre-assault abusive relationship, failure to prevent in-person and cyberattacks from the assailant and other students post-assault, and failure to provide any academic or other appropriate support to Plaintiff culminated in exactly what Title IX is designed to prevent—the tragedy of Plaintiff dropping out of school.
 - A reasonable jury could find that the District violated Title IX based on these facts. Accordingly, the court reversed that portion of the judgment.
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ADEA



Allen v. USPS

- Allen was hired by the USPS when she was 53 years old and was subject to a 90-day probationary period. She was fired before the probationary period lapsed.
 - Allen contacted the EEOC which led to a written settlement, and Allen was reinstated. However, she was terminated again.
 - Allen filed suit against the USPS alleging age discrimination and retaliation. District court granted summary judgment for the USPS.
 - Fifth Circuit affirmed in part but reversed on the age discrimination and retaliation claim. Allen's evidence, a 12-page affidavit, created a fact issue as to whether the USPS's proffered reason for her termination was pretextual. Allen had submitted evidence that her supervisors set her up for failure by obstructing her efforts to succeed at her job, including by hiding her mail, and denying her the tools necessary for her deliveries. Allen had submitted evidence that the USPS did not document the performance deficiencies it relied on.
 - A reasonable jury could find, based on this evidence, that the USPS's reason for terminating Allen was pretext for retaliation based on her reporting to the EEOC.
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QUALIFIED IMMUNITY



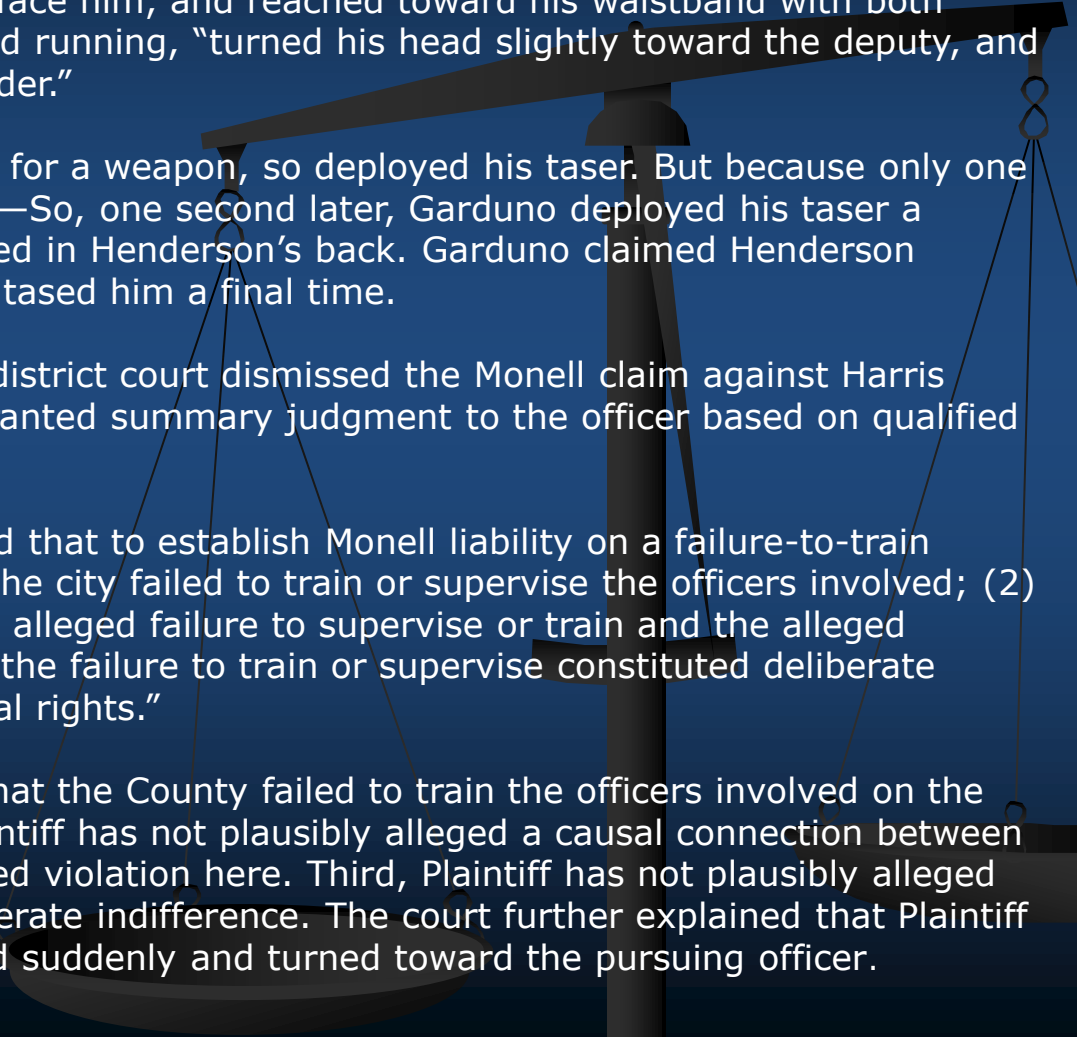
Converse v. City of Kemah

- Chad Silvis threatened to commit suicide by jumping off a bridge in Kemah, Texas. A passerby alerted an officer after which various officers arrived at the scene. After some conversation with Silvis, the officers were able to forcefully pull Silvis off the bridge railing.
- The officers arrested Silvis and he was driven to the Kemah jail. While in his cell, Silvis was yelling, banging his hands against the cell door, and stating that he “should have jumped.”
- Silvis used the blanket to hang himself from the top bunk of the bed in his cell. The officers did not discover his body until forty-five minutes later.
- Filed suit against the police officers alleging that the officers were deliberately indifferent to Silva’s serious medical needs in violation of the Fourteenth Amendment. After limited discovery, the district court dismissed Plaintiffs’ claims based on qualified immunity.
- Fifth Circuit reversed the district court’s dismissal of plaintiffs’ claims based on qualified immunity, holding that the complaint contains sufficient factual allegations to state a claim for relief. In this case, plaintiffs have pleaded sufficient facts that allow the court to draw the reasonable inference that the officers are not entitled to qualified immunity because they were subjectively aware that Silvis was at a significant risk of suicide and responded unreasonably to that risk by failing to remove the blanket from Silvis’s cell, in violation of the Fourteenth Amendment.

Ramirez v. Escajeda

- Ramirez called 9-1-1 to report that her 30-year-old son Daniel Ramirez was preparing to hang himself from the basketball hoop in their back yard. Dispatch informed the El Paso Police Department of a suicide in progress. Neither Maria's call nor the dispatch stated that Daniel had a weapon.
- Saw Daniel standing on his tiptoes with a rope around his neck connected to a basketball hoop. Daniel was staring forward with his hands clenching the rope around his neck. Concerned he could be walking into an "ambush," Escajeda moved closer, and tased Daniel in the abdomen for five seconds.
- Daniel's parents sued Escajeda under 42 U.S.C. § 1983 alleging the tasing constituted excessive force in violation of their son's Fourth and Fourteenth Amendment rights. Invoking qualified immunity, Escajeda moved for summary judgment.
- As to the first qualified immunity prong, the District Court found two material fact disputes that precluded it from deciding whether Escajeda used constitutionally excessive force: (1) whether the tasing contributed to Daniel's death, and (2) whether the tasing was unreasonable under the circumstances. As to the second prong, the District Court concluded it was clearly established at the time of the incident that "officers may not use a taser against a subdued person who neither committed any crime nor who resisted the officers' authority."
- Fifth Circuit granted qualified immunity. The court explained that the district court and Plaintiffs rely on cases holding that officers may not use force against arrestees who are already subdued and in police custody. This case is markedly different. The reason Defendant tased the man was that he was not in custody and Defendant was afraid he might have a weapon. Even if that fear turned out to be groundless—something the court wrote it cannot decide here—Defendant still did not transgress any clearly established law.

Henderson v. Harris County

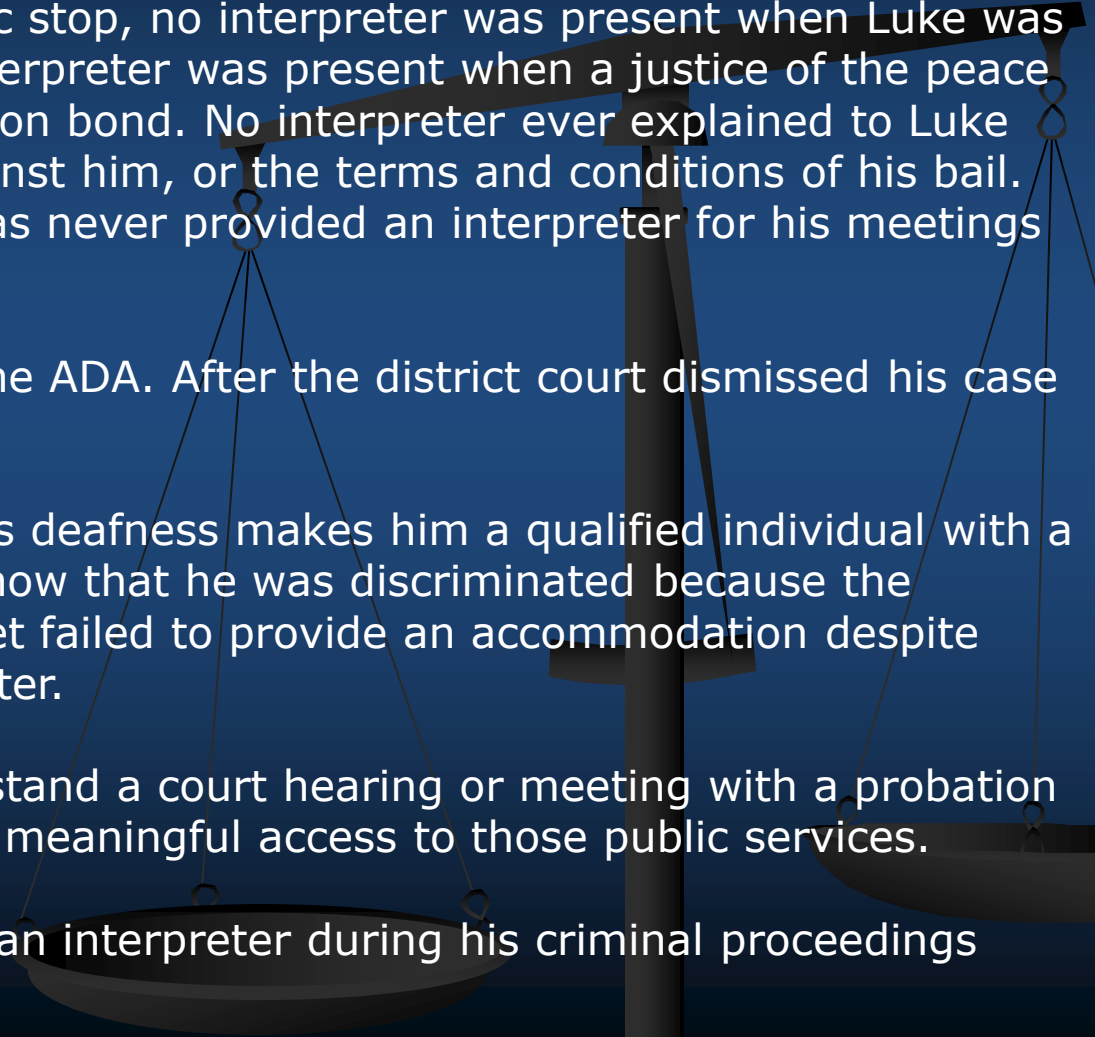


- Went to to investigate drug activity. Saw three men and claimed smelled marijuana. When Henderson saw the officers, he ran.
- Garduno warned, "I'm going to tase you." What happened next was disputed. According to Garduno, Henderson stopped, turned to face him, and reached toward his waistband with both hands. By Henderson's telling, he stopped running, "turned his head slightly toward the deputy, and raised his hands in the air as if to surrender."
- Garduno feared Henderson was reaching for a weapon, so deployed his taser. But because only one of the taser's prongs reached Henderson—So, one second later, Garduno deployed his taser a second time. This time both prongs lodged in Henderson's back. Garduno claimed Henderson continued to struggle. So Garduno "dry" tased him a final time.
- Sued Harris County and the officer. The district court dismissed the Monell claim against Harris County for failure to state a claim and granted summary judgment to the officer based on qualified immunity.
- Fifth Circuit affirmed. The court explained that to establish Monell liability on a failure-to-train theory, a plaintiff must prove that: "(1) the city failed to train or supervise the officers involved; (2) there is a causal connection between the alleged failure to supervise or train and the alleged violation of the plaintiff's rights; and (3) the failure to train or supervise constituted deliberate indifference to the plaintiff's constitutional rights."
- First, Plaintiff has not plausibly alleged that the County failed to train the officers involved on the constitutional use of tasers. Second, Plaintiff has not plausibly alleged a causal connection between any failure to train officers and the alleged violation here. Third, Plaintiff has not plausibly alleged that any failure to train constituted deliberate indifference. The court further explained that Plaintiff concededly ran from police, then stopped suddenly and turned toward the pursuing officer.

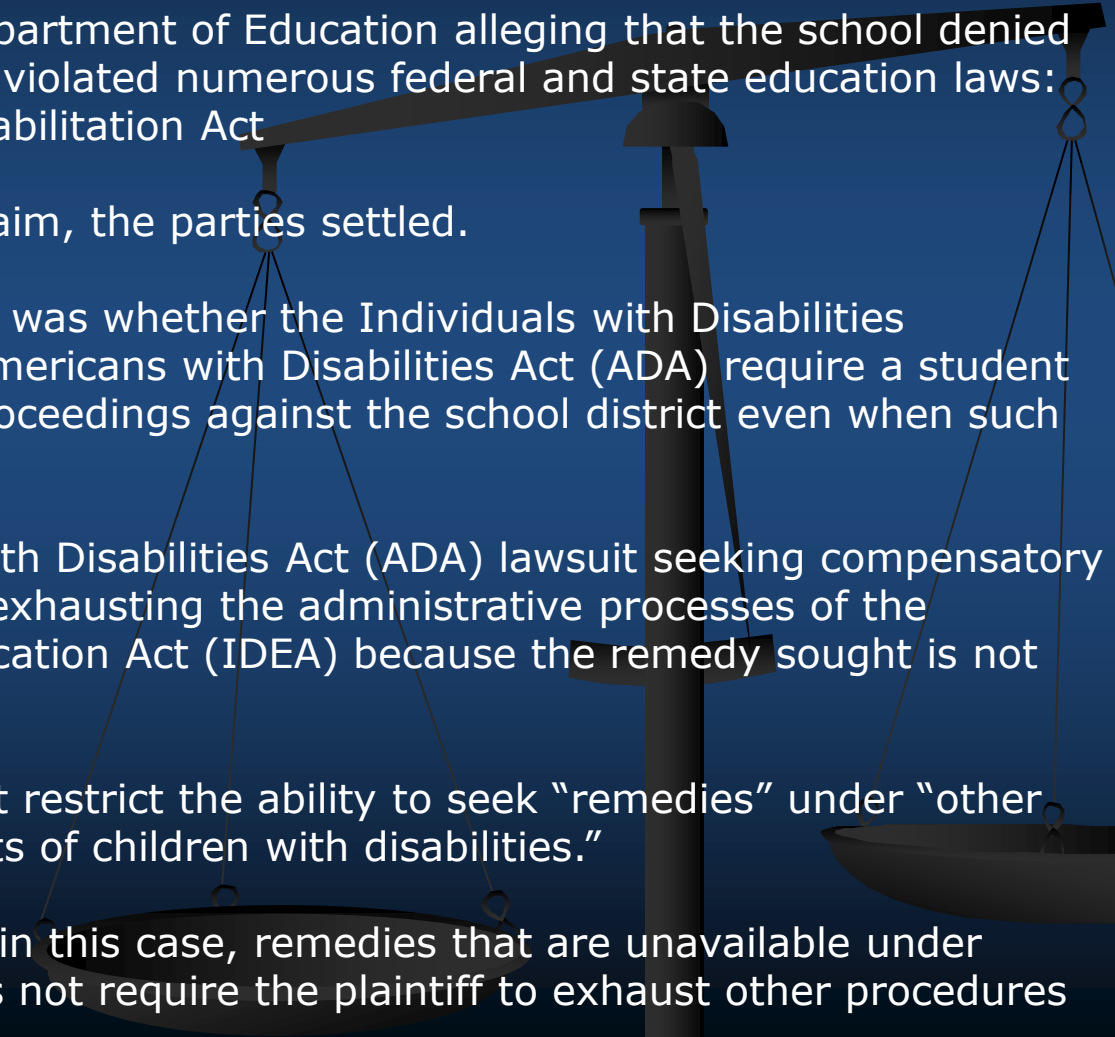
ADA



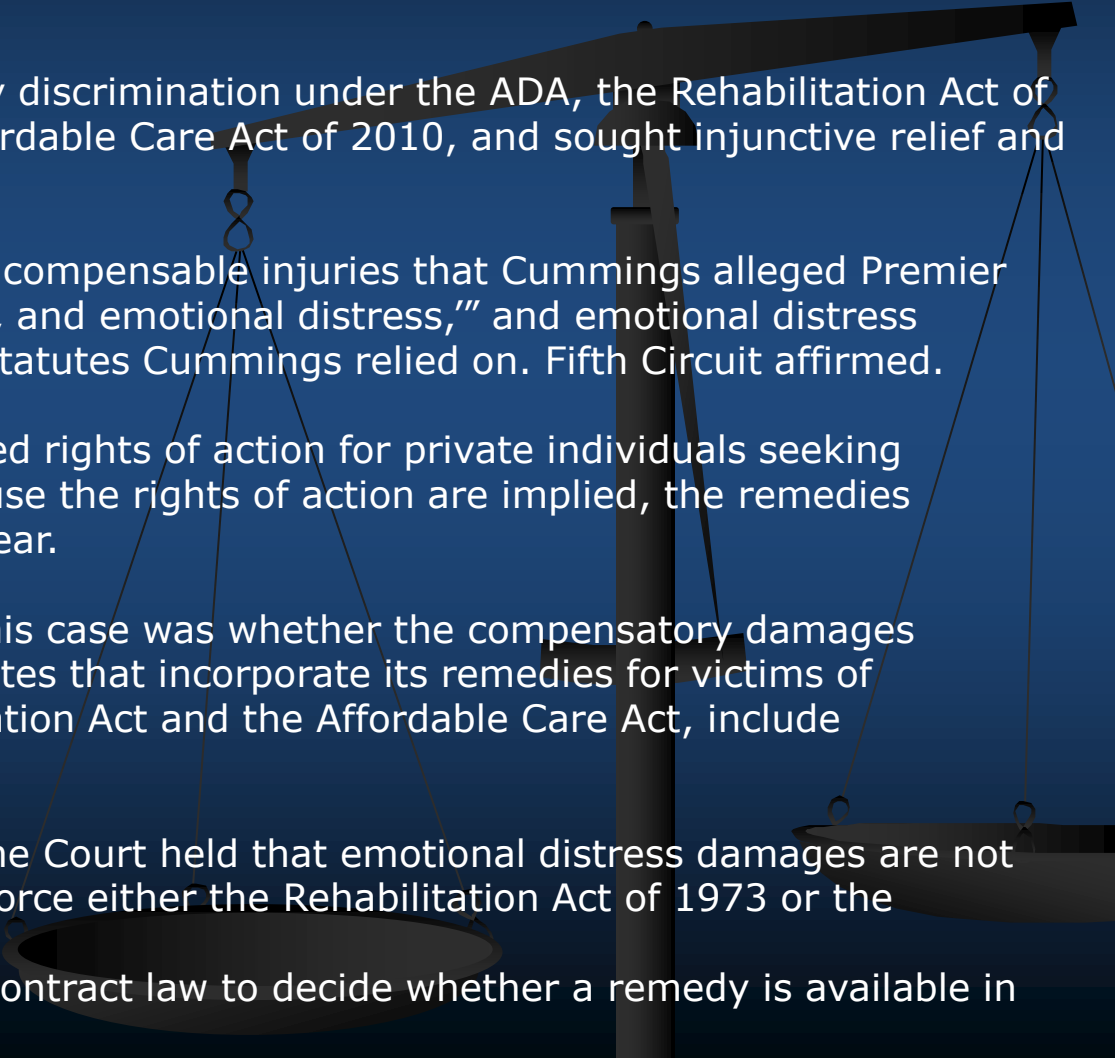
Luke v. State of Texas

- Luke is a deaf individual who has trouble speaking and reading English
 - When he was arrested for marijuana possession, no interpreter was provided the night of his arrest during a traffic stop, no interpreter was present when Luke was booked and detained, and no interpreter was present when a justice of the peace arraigned him and released him on bond. No interpreter ever explained to Luke his legal rights, the charges against him, or the terms and conditions of his bail. Even during his probation, he was never provided an interpreter for his meetings with his probation officers.
 - Luke filed suit under Title II of the ADA. After the district court dismissed his case on the pleadings
 - Fifth Circuit explained that Luke's deafness makes him a qualified individual with a disability. And that Luke could show that he was discriminated because the Defendants knew he was deaf yet failed to provide an accommodation despite multiple requests for an interpreter.
 - Further, not being able to understand a court hearing or meeting with a probation officer is, by definition, a lack of meaningful access to those public services.
 - Thus, denying a deaf defendant an interpreter during his criminal proceedings violated the ADA.
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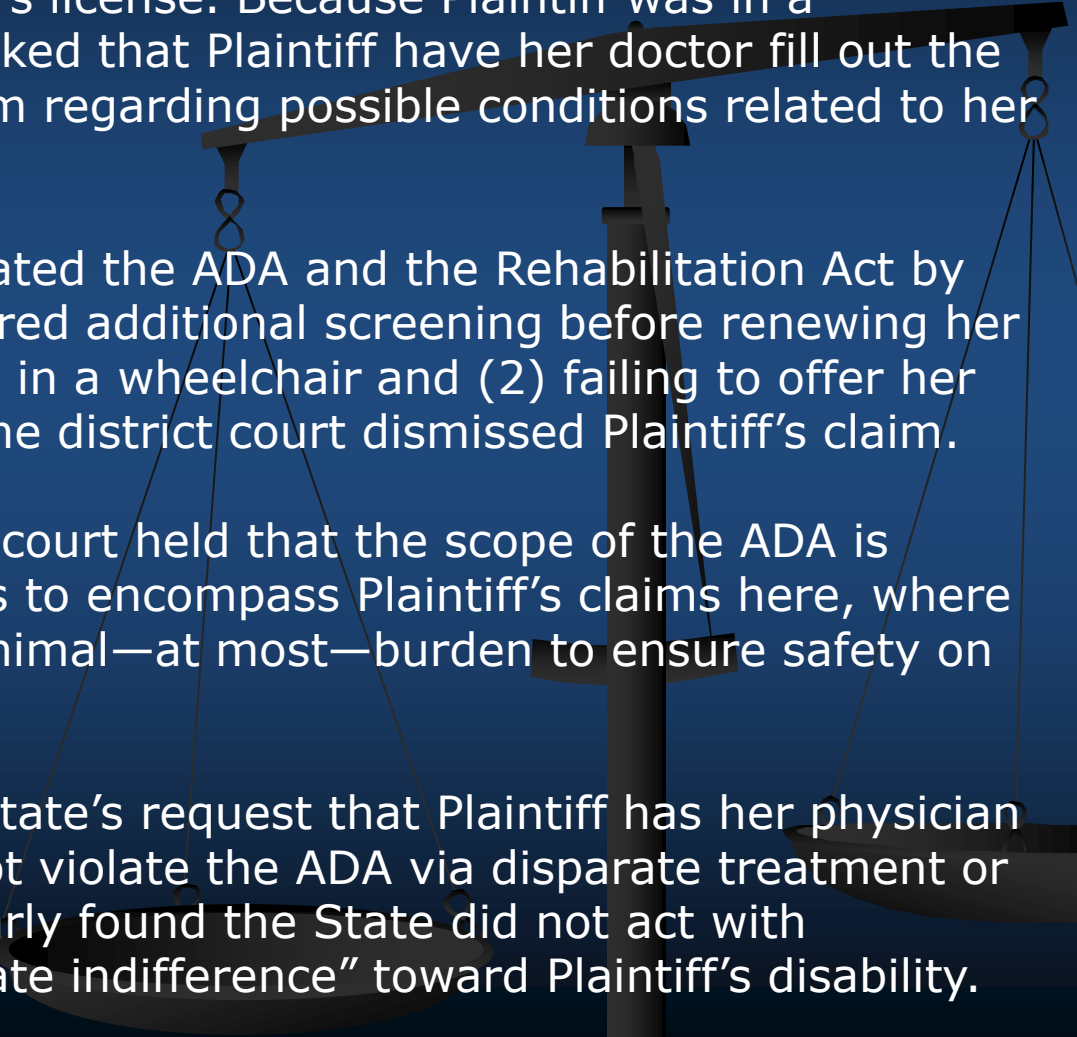
Perez v. Sturgis Public Schools

- 23-year-old deaf student in Michigan. Although the school assigned him a classroom aide, the aide was not trained to work with deaf students and did not know sign language. Shortly before Perez was supposed to graduate, the school notified his parents that he did not qualify for a diploma.
 - Complaint with the Michigan Department of Education alleging that the school denied him an adequate education and violated numerous federal and state education laws: (IDEA), the (ADA), and the Rehabilitation Act
 - Before a hearing on the IDEA claim, the parties settled.
 - Question for the Supreme Court was whether the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA) require a student to exhaust his administrative proceedings against the school district even when such proceedings would be futile.
 - Court held that an Americans with Disabilities Act (ADA) lawsuit seeking compensatory damages may proceed without exhausting the administrative processes of the Individuals with Disabilities Education Act (IDEA) because the remedy sought is not one IDEA provides.
 - As a general rule, IDEA does not restrict the ability to seek “remedies” under “other Federal laws protecting the rights of children with disabilities.”
 - If a plaintiff seeks, as Perez did in this case, remedies that are unavailable under IDEA, the second provision does not require the plaintiff to exhaust other procedures for relief.
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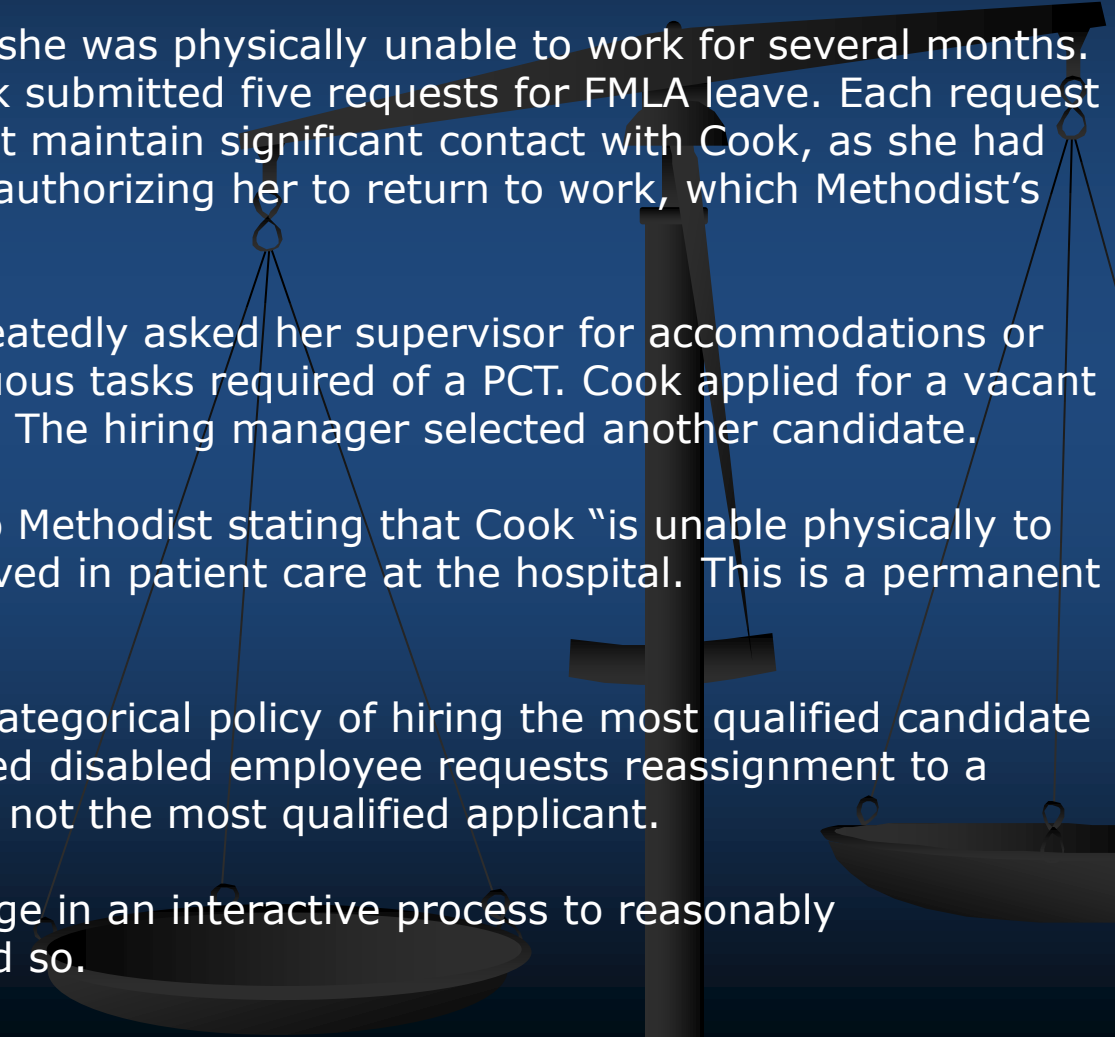
Cummings v. Premier Rehab Keller

- Cummings has been deaf since birth and is legally blind. Contacted Premier Rehab to treat her chronic back pain and requested that Premier provide an ASL interpreter. Premier refused and told her she could communicate with her therapist using written notes, lipreading, gesturing....
 - Cummings sued Premier for disability discrimination under the ADA, the Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act of 2010, and sought injunctive relief and damages.
 - District court finding that “[t]he only compensable injuries that Cummings alleged Premier caused were ‘humiliation, frustration, and emotional distress,’” and emotional distress damages are unavailable under the statutes Cummings relied on. Fifth Circuit affirmed.
 - Supreme Court has recognized implied rights of action for private individuals seeking enforcement of those statutes, because the rights of action are implied, the remedies available under the statutes are unclear.
 - Question for the Supreme Court in this case was whether the compensatory damages available under Title VI and the statutes that incorporate its remedies for victims of discrimination, such as the Rehabilitation Act and the Affordable Care Act, include compensation for emotional distress.
 - In a 6-3 majority opinion the Supreme Court held that emotional distress damages are not recoverable in a private action to enforce either the Rehabilitation Act of 1973 or the Affordable Care Act.
 - Supreme Court uses the analogy of contract law to decide whether a remedy is available in these situations.
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Clark v. State of LA, Dept of Pub Sfty

- Plaintiff sometimes utilizes a wheelchair. She was doing so in September 2019 when she went to her local Office of Motor Vehicles (OMV) to have her address changed on her driver's license. Because Plaintiff was in a wheelchair, OMV employees asked that Plaintiff have her doctor fill out the entirety of a short medical form regarding possible conditions related to her ability to drive.
 - Plaintiff claimed that OMV violated the ADA and the Rehabilitation Act by (1) determining that she required additional screening before renewing her license solely because she was in a wheelchair and (2) failing to offer her reasonable accommodation. The district court dismissed Plaintiff's claim.
 - The Fifth Circuit affirmed. The court held that the scope of the ADA is broad, but it is not so broad as to encompass Plaintiff's claims here, where she was asked to endure a minimal—at most—burden to ensure safety on the public roadways.
 - Court, having found that the State's request that Plaintiff has her physician fill out the medical form did not violate the ADA via disparate treatment or failure to accommodate, similarly found the State did not act with "something more than deliberate indifference" toward Plaintiff's disability.
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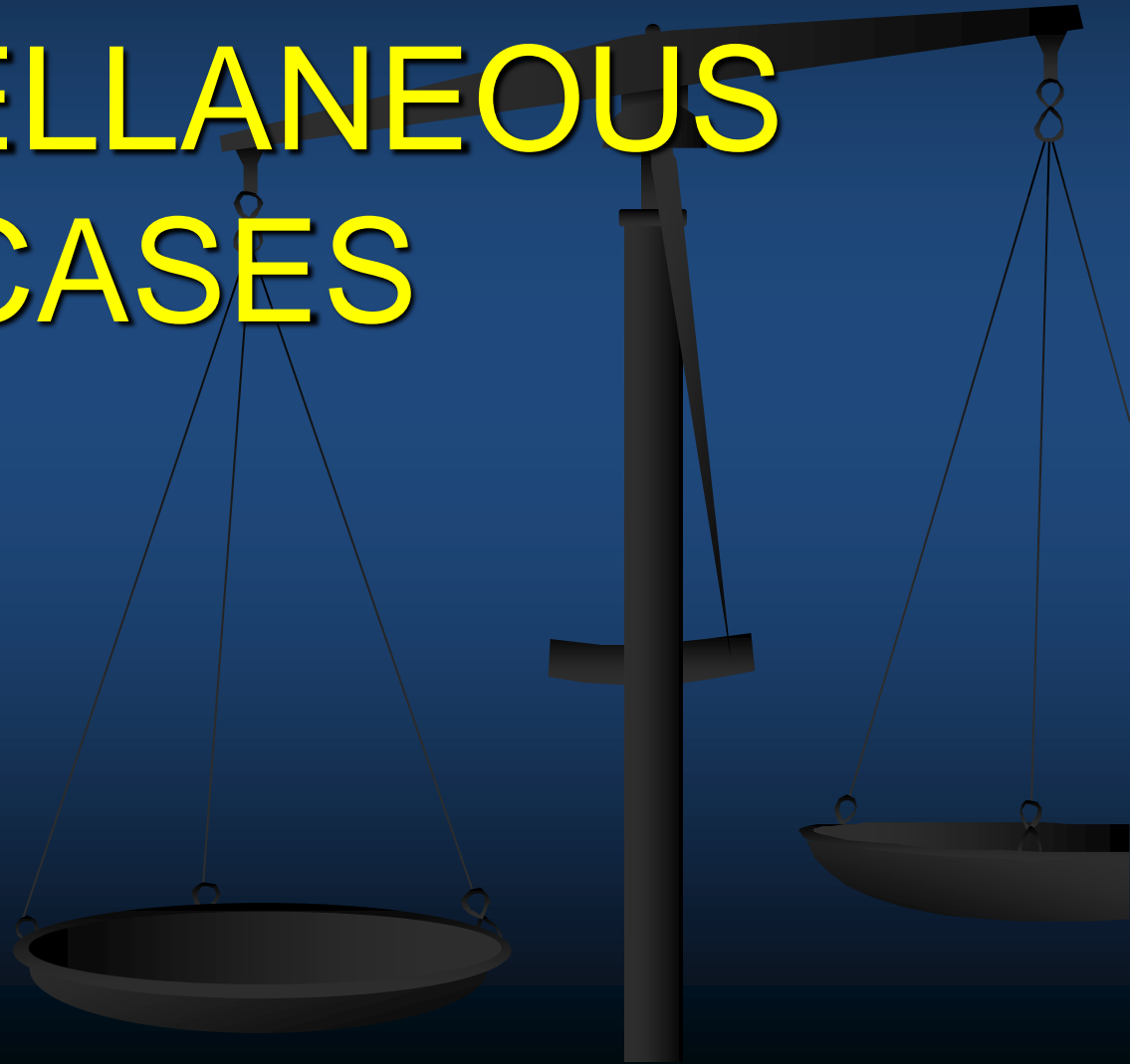
EEOC v. Methodist Hospitals

- Cook injured her back on the job while turning a patient. When Cook was able to work on light duty, Methodist assigned her to a temporary position at the pharmacy.
 - Cook's physicians certified that she was physically unable to work for several months. Cook received FMLA leave. Cook submitted five requests for FMLA leave. Each request was approved. Methodist did not maintain significant contact with Cook, as she had not provided a medical release authorizing her to return to work, which Methodist's FMLA Policy required.
 - While on FMLA leave, Cook repeatedly asked her supervisor for accommodations or assistance with the more strenuous tasks required of a PCT. Cook applied for a vacant scheduling coordinator position. The hiring manager selected another candidate.
 - Cook's physician sent a letter to Methodist stating that Cook "is unable physically to return to the type of work involved in patient care at the hospital. This is a permanent restriction."
 - EEOC asserts that Methodist's categorical policy of hiring the most qualified candidate violates the ADA when a qualified disabled employee requests reassignment to a vacant role, even if he or she is not the most qualified applicant.
 - Methodist was required to engage in an interactive process to reasonably accommodate Cook, which it did so.
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EEOC v. Methodist Hospitals

- Cook caused a subsequent breakdown when she failed to respond to Methodist's letters offering her additional leave. Accordingly, the ADA was not violated
- Employee's "unilateral withdrawal from the interactive process is fatal to her claim," so long as the employer "engaged in a good-faith, interactive process with the employee regarding her request for a reasonable accommodation."
- The Court rejected the EEOC's assertion that Methodist violated its duty under the ADA to make a reasonable accommodation by refusing to reassign Cook to the vacant scheduling coordinator position.
- So, Elaborating, the Court explained that at summary judgment, an employee's unilateral withdrawal from the interactive process is fatal to her claim, so long as the employer engaged in a good-faith, interactive process with the employee regarding her request for a reasonable accommodation.
- Based on the evidence in this record, the Court concluded: "[N]o reasonable jury could find that Methodist was unwilling to participate in the interactive process. When Cook did not respond she caused the breakdown of the interactive process. Thus, Methodist did not act unlawfully when it refused to reassign Cook to the vacant scheduling coordinator position."

MISCELLANEOUS CASES

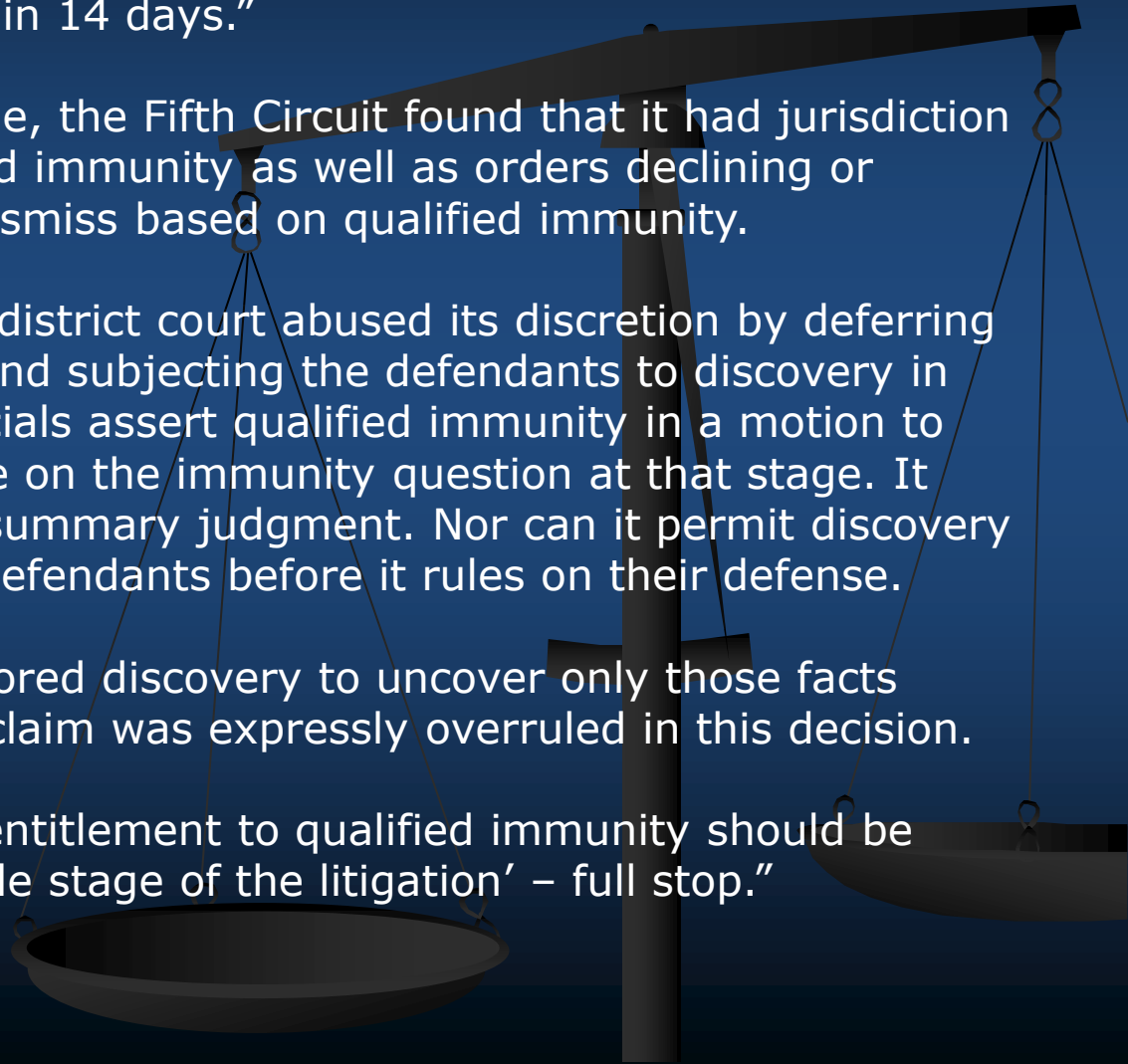


Amin v. United Parcel Service

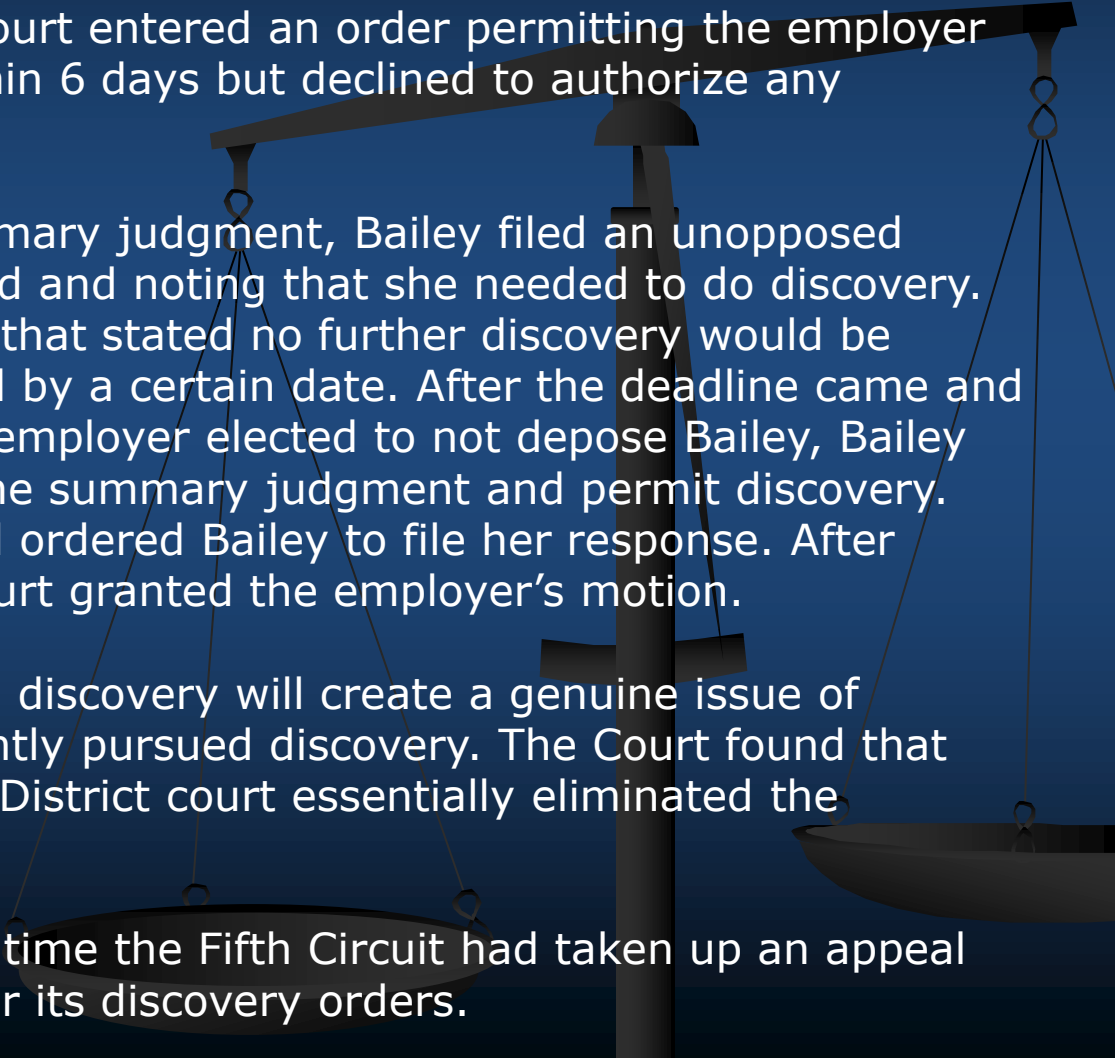
- Left workstation to use the restroom. Told him he had already used his 10-minute break, telling him he could use the restroom right where he was. Amin then defecated himself. The following day, the same manager gave Amin a written warning for insubordination, a notice of UPS' intent to suspend Amin, and a notice of UPS' intent to discharge him.
- Having failed to secure any relief from the grievance process, Amin filed a federal diversity action alleging: (1) false imprisonment, (2) invasion of privacy, (3) intentional infliction of emotional distress (IIED), and (4) negligent supervision.
- Fifth Circuit affirmed the dismissal of the IIED claim, finding that Amin had not presented independently sufficient evidence that his emotional distress was "severe." Being depressed or withdrawn was not enough. Further, the bathroom incident alone was insufficient under Texas law to find IIED. There must be "sufficient proof of severe emotional distress, wholly apart from any outrageous conduct on the defendant's part."
- Regarding the LMRA claim, the Fifth Circuit did not find preemption and reversed and remanded the claim, stating that Texas law imposes a continuous, non-delegable duty on employers to supervise their employees and that this duty is independent of any obligation established by the CBA.
- Fifth Circuit also reversed and remanded the invasion of privacy claim, making an Erie guess as no Texas court had ruled on this issue before. In doing so, the Court stated, "In recent years, there have been troubling reports of industry practices that deny employees adequate bathroom breaks. It is important to clarify that such actions.....are not immune from liability."

Carswell v. Camp

- Defendants appealed district court's scheduling order, which stated that "any pending motions to dismiss on the basis of qualified immunity are denied without prejudice" and that "any defendant desiring to assert qualified immunity who has not already done so by way of answer must file an answer asserting qualified immunity within 14 days."
- Under the collateral order doctrine, the Fifth Circuit found that it had jurisdiction to review orders denying qualified immunity as well as orders declining or refusing to rule on a motion to dismiss based on qualified immunity.
- 5th Circuit further found that the district court abused its discretion by deferring its ruling on qualified immunity and subjecting the defendants to discovery in the meantime. Where public officials assert qualified immunity in a motion to dismiss, a district court must rule on the immunity question at that stage. It cannot defer that question until summary judgment. Nor can it permit discovery against the immunity-asserting defendants before it rules on their defense.
- Concept of allowing narrowly tailored discovery to uncover only those facts needed to rule on the immunity claim was expressly overruled in this decision.
- "The rule is that 'a defendant's entitlement to qualified immunity should be determined at the earliest possible stage of the litigation' – full stop."



Bailey v. KS Mgmt Services

- ADEA claim claiming that it engaged in unlawful age discrimination and retaliation. District court entered initial scheduling order, ordering the parties to provide initial disclosures but not permitting any additional discovery.
 - At the pretrial conference, the court entered an order permitting the employer to file a summary judgment within 6 days but declined to authorize any discovery.
 - Day after employer filed its summary judgment, Bailey filed an unopposed motion to extend time to respond and noting that she needed to do discovery. Court entered a discovery order that stated no further discovery would be allowed until Bailey was deposed by a certain date. After the deadline came and went for the deposition and the employer elected to not depose Bailey, Bailey again asked the court to defer the summary judgment and permit discovery. The court denied the motion and ordered Bailey to file her response. After Bailey filed her response, the court granted the employer's motion.
 - Bailey must show that additional discovery will create a genuine issue of material fact and that she diligently pursued discovery. The Court found that Bailey had satisfied her burden. District court essentially eliminated the discovery period.
 - Interestingly, this was the third time the Fifth Circuit had taken up an appeal from this same district court over its discovery orders.
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Vaughan v. Lewisville ISD

- Lawsuit alleging that the district's at-large election system violated Section 2 of the Voting Rights Act ("VRA") and seeking injunctive relief.
 - Vaughan did not state in his complaint that he was white and did not belong to any of the district's racial minorities.
 - Vaughan responded to LISD's standing argument, contending that he had first-party standing as an "aggrieved person" under the VRA.
 - Plaintiff lacked standing to bring his Section 2 claim because he is white. The district court then granted Defendants' motion for sanctions against Plaintiff, his attorneys, and their law firm based on the findings that Plaintiff's lawsuit was frivolous
 - Fifth Circuit vacated the district court's sanctions order and remanded to determine the extent to which the order is footed upon specific contemptuous conduct in the attorneys' prosecution of the case. The court held that Plaintiff's lawsuit did not merit sanctions.
 - LISD points to no precedent in the circuit considering whether a voter in his position has standing under the VRA, let alone "squarely controlling precedent."
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