RECENT FEDERAL CASES OF INTEREST TO CITIES

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What is Celibacy?

- Celibacy can be a choice in life, or a condition imposed by circumstances.
- While attending a Marriage Weekend, Frank and his wife Ann listened to the instructor declare, "It is essential that husbands and wives know the things that are important to each other."

  He then addressed the men.
- "Can you name and describe your wife's favorite flower?"

The Answer

- Frank leaned over, touched Ann's arm gently, and whispered,
- "Gold Medal-All-Purpose, Isn't it?"

- And thus began Frank's life of celibacy.

Things Don't Always Go As Expected

Harris v. Pontotoc County Sch. Dist., 635 F.3d 685 (5th Cir. 2011)

- Eighth grader accused of hacking into school's computer system thru his mom's school computer
- Harris was sent to alternative school; his mother was reassigned After a verbal altercation Mrs. Harris was terminated.
- Derek sued for violation of his due process rights and defamation. Mrs. Harris sued for wrongful termination in retaliation for protected First Amendment speech.
- Transfer to an alternative education program does not deny access to public education does not violate the Fourteenth Amendment. His due process rights were not violated.
- With respect to Mrs. Harris, the First Amendment did not apply.
- First Amendment protects a public employee's speech only if the speech addresses a matter of "public concern." In this case, Mrs. Harris speech was about matters that were personal – the treatment of her son.

Doe v. Reed, 130 S.Ct. 2811 (2010)

- Signatories to referendum petitions do not typically have a constitutional right to keep their identities private.
- Placing one's signature on a petition is an expressive act implicating the First Amendment
- Claim that disclosure would have the purpose and effect of facilitating harassment of individual signatories should be addressed in the context of that narrow claim

Christian Legal Society v. Martinez, 130 S.Ct. 2971 (2010)

- Sought official recognition
- Required to comply with the school's non-discrimination policy
- Suit under § 1983 alleging that the denial of RSO status violated its First and Fourteenth Amendment rights to free speech, expressive association, and free exercise of religion.
- "All comers" policy

Morgan v. Swanson, 610 F.3d 877 (5th Cir. 2010)

- Ban on the distribution of religious messages by the students to other students while on school property resulted in "religious viewpoint discrimination."
- Not entitled to qualified immunity.

Comer v. Scott, 610 F.3d 929 (5th Cir. 2010)

- Claims termination under TEA neutrality policy violated due process and Establishment Clause.
- Issue: Whether TEA neutrality policy constitutes an establishment of religion in violation of the First Amendment's Establishment Clause.

U.S. v. Stevens, 130 S.Ct. 1577 (2010)

- First Amendment case
- Animal cruelty depicted in videos still protected speech
- 1999 Federal Law ruled unconstitutional- too broad
- Government's "promise" to use it responsibly not enough

Snyder v. Phelps, 131 S.Ct. 1207 (2011)

- Political picketing at a military funeral
- Protected by the Constitution if it addresses publicly important issues
- First Amendment shields Westboro from tort liability for its picketing
- Westboro obeyed the orders given by police for the protest
- Majority of the Court declined to react emotionally to the message of Westboro or the context of Westboro's choice to convey the message at the service member's funeral
- As a nation, we have chosen a different course — to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

McDonald v. City of Chicago, 130 S.Ct. 3020 (2010)

- Declined to allow an unlimited right to weapons ownership
- Right is limited to weapons in "common use" and does not extend to "dangerous and unusual" weapons.

United States v. Allen, 625 F.3d 830 (5th Cir. 2010)

- ICE Agents executed a search warrant
- Discovered approximately 3300 child pornography images
- Allen filed a motion to suppress evidence, contending that the search warrant was invalid under the Fourth Amendment because it lacked particularity and was not supported by probable cause.
- Argued that the agents involved in the search reasonably believed the warrant was valid because the warrant application, affidavit and attachments had been reviewed by several ICE agents and the US Attorney's Office prior to submission to the magistrate judge, who also reviewed the materials before signing the warrant.
- Seizure falls under the good-faith exception to the exclusionary rule.
- Although the language of the warrant was flawed, a reasonable officer could have easily concluded that the warrant was valid based on the many levels of review the warrant had been subjected to.

United States v. Gomez, 623 F.3d 265 (5th Cir. 2010)

- Police Dispatch received a 911 call
- Witnessed a Hispanic male brandishing a black and gray pistol at people at a gas station and then had hopped into a car with two other passengers. Phone call originated from a payphone.
- Never told the officers that the tip came from a payphone.
- The responding officers spotted the car and conducted a felony stop.
- Spotted the handgun protruding from underneath the back of the driver's seat in plain view.
- Fifth Circuit reviewed to see whether the officers had reasonable suspicion to conduct a felony stop.
- In making this determination, the Court looked at four factors: (1) the credibility and reliability of the informant; (2) the specificity of the information contained in the tip; (3) the extent to which the information in the tip can be verified by the officers in the field; and (4) whether the tip concerns active or recent activity or has instead gone stale.
- Whether the "anonymous" nature of Mike's call to 911 precluded a finding of reasonable suspicion.

United States v. Olivares-Pacheco, 633 F.3d 399 (5th Cir. 2011)

- Border Patrol agents spotted a truck and while following the truck, agents noticed that the truck was dragging some brush.
- None of the passengers would make eye contact with them. Passengers admitted they were in the US illegally
- Appellant moved to suppress the evidence from the traffic stop, contending that it was not supported by reasonable suspicion and was thus in violation of the Fourth Amendment.
- In order to temporarily detain a vehicle, the Border Patrol agent on roving patrol must be aware of specific articulable facts together with rational inferences that warrant a reasonable suspicion.
- In this sort of stop, the Fifth Circuit emphasizes eight factors: (1) the area's proximity to the border; (2) the characteristics of the area; (3) usual traffic patterns; (4) the agents' experience in detecting illegal activity; (5) the driver's behavior; (6) the aspects or characteristics of the vehicle; (7) information about recent illegal trafficking of aliens in the area; and (8) the number of passengers and their behavior.
- In this specific case, the truck was stopped over 200 miles from the border, so proximity was not a factor.
- Facts known to the officers at the time of the stop portray an unremarkable and suspicionless situation.

Lewis v. City of Chicago, 130 S.Ct. 2191 (2010)

- Disparate impact claim based on the City's use of results of a performance exam
- Each time the City used the test results to make hiring decisions, it constituted a separate "use" of the policy
- Extends the statute of limitations period

City of Ontario v. Quon, 130 S.Ct. 2619 (2010)

- SWAT team pagers
- Treat text messages same way treated e-mails
- Search of the text messages was reasonable
- "special needs" of the workplace
- Warrantless search by a government employer, when conducted for the investigation of work-related misconduct, is reasonable if it is justified at its inception, and the measures adopted are reasonably related to the objectives of the search.

Kemp v. Holder, United States Department of Justice; AKAL Security, Inc., 610 F.3d 231 (5th Cir. 2010)

- Discharged from his position as a court security officer
- Alleging violations of the ADA
- Whether he is disabled as defined by the ADA by showing either that he has a physical impairment that substantially limited one or more of his major life activities
- Perceived "substantial limitation"

Granger v. Aaron's, Inc., 636 F.3d 708 (5th Cir. 2011)

- Plaintiffs claimed store manager engaged in sexual harassment
- Their attorney filed complaints of discrimination with the Office of Federal Contract Compliance Programs ("OFCCP"),
- OFCCP never informed that they had filed with the wrong agency until after the 300-day period expired.
- Aaron's filed a motion to dismiss, arguing that Appellees had failed to file a charge of discrimination with the EEOC within 300 days of their separation.
- Appellees argued that their claims were constructively filed with the OFCCP, Alternatively, the Appellees argued that their 300-day deadline should be equitably tolled because of the OFCCP's representations that they were processing their claims.
- Exercised due diligence in pursuing Appellees' rights

Harris v. Tunica, Inc., 628 F.3d 237 (5th Cir. 2010)

- Plaintiff alleged that she was being discriminated against based on religion when they terminated her employment.
- On December 11, 2008, the EEOC issued Harris a "right to sue" letter informing her that she had 90 days to file suit.
- Lawyer's paralegal miscalculated the 90-day deadline and Harris' filing was outside the 90-day period.
- Equitable tolling is typically extended only where "the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass
- Supreme Court noted that "under our system of representative litigation, each party is deemed bound by the acts of his lawyer-agent."
- The Fifth Circuit concluded that the negligence of Harris' attorney and his staff did not entitle Harris to equitable tolling

Thompson v. N. Am. Stainless, L.P., 131 S.Ct. 863 (2011)

- Thompson's fiancée filed a sex discrimination charge Thompson subsequently fired.
- Thompson filed EEOC charge and Title VII suit contending that his firing was retaliation for his fiancée's EEOC charge.
- District Court granted summary judgment on the ground that third-party retaliation claims were not permitted by Title VII
- Supreme Court reversed deciding that an employer may no more fire an employee for a relative or close associate's sex discrimination claim than it can fire the complaining employee.
- The Court took a common sense approach to this analysis
- Court attempted to limit the reach of its decision by making clear that the "close family member" might extend to spouses and future spouses

NASA v. Nelson, 131 S.Ct. 746 (2011)

- Contract employees sued over requirement of a standard background check to federal contract employees with long-term access to federal facilities. Court held that NASA's background checks on independent governmental contractors were constitutional.
- The Court determined that questions about a history of counseling, drug treatment, or drug use did not violate any right to informational privacy as they were reasonable.

Kasten v. Saint-Gobain Performance Plastics Corp., 131 S.Ct. 1325 (2011)

- Anti retaliation suit under the FLSA, claiming discharged because of oral complaints regarding the placement of time clocks in locations that prevented workers from receiving credit for time spent putting on and taking off work-related protective gear.
- Whether, for purposes of the FLSA, an oral complaint was formal enough to be considered "filed," or whether complaints must be made in writing.
- Purpose of the Act would be undermined if all complaints were required to be written, held that a complaint could be "filed" orally.
- The Court did not reach the issue of to whom such an oral complaint could be made to be considered "filed"

Staub v. Proctor Hospital, 131 S.Ct. 1186 (2011)

- Hospital fired Staub in 2004, and he later filed a lawsuit claiming that his supervisor was out to get him as a result of disapproval of his military service.
- Ultimate firing decision was made by a more senior executive, not Staub's supervisor.
- The Seventh Circuit reversed holding that there was no evidence that the decision-maker shared the supervisor's anti-military bias.
- Supreme Court reversed-Employer can be found liable for the discriminatory acts of supervisors, who do not themselves make employment decisions but do influence the employment decision-makers
- So long as the supervisor intends that the adverse action occur for discriminatory reasons, that intent is sufficient to impose liability on the employer.

Cuadra v. Houston Indep. Sch. Dist., 626 F.3d 808 (5th Cir. 2010)

- Cuadra alleges that he was instructed by the Principal and Vice Principal to delete some of the student names from the drop-out list. Cuadra eventually resigned after multiple reassignments within the school district.
- Obtained a grand jury indictment against Cuadra for knowingly making a false alteration to a government record.
- Cuadra turned around and filed a § 1983 suit, alleging violations of the Fourth and Fourteenth Amendment.
- Cuadra argued that the Appellees violated his Fourth Amendment rights by intentionally withholding information and manipulating evidence to procure his indictment. Cuadra further argued that the Appellees violated his Fourteenth Amendment substantive due process right based on his prosecution.
- The Fourth Amendment may be violated if the criminal charges were initiated without probable cause. However, if facts supporting an arrest are presented to an intermediary – such as a grand jury – the intermediary's decision breaks the chain of causation.
- No Fourteenth Amendment due process right to be free from criminal prosecution unsupported by probable cause; rather, prosecution without probable cause falls under the Fourth Amendment

Kovacic v. Villarreal, 628 F.3d 209 (5th Cir. 2010)

- Kovacic was escorted from a bar by Laredo Police after he had become intoxicated and causing problems.
- Kovacic insisted that they drop him at a convenience store 30 minutes later, Kovacic was struck and killed by a car while he was walking on the roadway.
- Kovacic's family filed suit against the officers and for false arrest, excessive force and failure to protect. The court granted the officers motion to dismiss on all claims except a § 1983 due process claim under the "special relationship" theory. The officers filed an interlocutory appeal.
- There is no constitutional duty that requires state officials to protect persons from private harms. An exception to this general rule is when there is a "special relationship" between the individual and the state.
- Accident occurred after Kovacic had been released from custody.
- The Court concluded that reasonable, competent officers would not have determined that it would violate Kovacic's constitutional rights to honor his request to let him out at the convenience store; thus, the officers were entitled to qualified immunity.

Morgan v. Swanson, 627 F.3d 170 (5th Cir. 2010)(rehearing en banc granted, *Morgan v. Swanson*, 628 F.3d 705 (5th Cir. Dec. 17, 2010))

- Continuing saga of Plano ISD versus God and candy canes. Several parents filed suit on the behalf of their children after several Plano ISD principals confiscated and prohibited the distribution of candy canes, pencils with "Jesus loves me" on them, free tickets to a Christian drama and anything that had the word "Christmas" on it.
- Parents alleged that their children's First Amendment rights had been violated. Administrators motion to dismiss based on qualified immunity were denied.
- The issue before the Fifth Circuit was whether it was clearly established at the time of the alleged misconduct that elementary students have a First Amendment right to be free from religious-viewpoint discrimination while at school.
- Appellants had fair warning that the suppression of student-to-student distribution of literature on the basis of religious viewpoint is unlawful under the First Amendment. Appellants were not entitled to qualified immunity.

Carnaby v. City of Houston, 636 F.3d 183 (5th Cir. 2011)

- When Carnaby identified himself to police, he stated he was a "CIA Agent."
- Carnaby did not have a weapon on him but did have three guns in his car.
- The family sued the officers for excessive force along with a host of other claims.
- The district court granted the officers' motions for summary judgment based on qualified immunity as well as the City's motion for summary judgment because the City cannot be liable if the officers did not violate the Fourth Amendment.
- The Fifth Circuit examined the Fourth Amendment excessive force claim on the basis of whether the use of deadly force was unreasonable in that situation.
- The Fifth Circuit stated that they had yet to address whether a municipality can ever be held liable for failure to train its officers when the officers did not commit any constitutional violation. The Court declined to address this issue here

Zarnow v. City of Wichita Falls, 614 F.3d 161 (5th Cir. 2010)

- Discovered gun, ammunition, blasting caps and fuses in office
- Warrant for home and seized firearms and ammunition..
- Whether the City was responsible for the individual officers' misuse of the plain view doctrine
- Chief was the sole official responsible for internal police policy, and City had impliedly delegated its policymaking authority to the chief.
- As not an official policy on "plain view" practices, the court looked to whether there was a custom or practice

Valle v. City of Houston, 613 F.3d 536 (5th Cir. 2010)

- Depressed son locked himself in the house.
- Captain authorized entry into the house
- Had to show that the Captain had final policymaking authority and that his decision was the moving force behind the unconstitutional injury.
- Alleged officers exercised excessive force in entering their home and lethal seizure of their son and that it was done pursuant to a City policymaker's orders (the Captain).

Wilkins v. Gaddy, 130 S.Ct. 1175 (2010)

- Eighth Amendment Claim of cruel and unusual punishment
- Claims he was "maliciously and sadistically" assaulted
- Use of excessive force can still be cruel and unusual punishment even when there is not serious injury
- No "significant injury" threshold requirement

Saenz v. Harlingen Medical Center, L.P., 613 F.3d 576 (5th Cir. 2010)

- Requested intermittent FMLA leave
- Saenz was terminated for her non-FMLA approved absences (by virtue of failing to timely communicate with the TPA regarding her absences)
- Had conveyed enough information to the supervisor to know that Saenz' condition qualified for FMLA leave
- FMLA provides a low threshold of notice "as soon as practicable under the facts and circumstances of the particular case."

Connick v. Thompson, 131 S.Ct. 1350 (2011)

- Thompson was convicted, sentenced to death, and served seventeen years in prison. A month before his execution, a crime lab report was discovered which would have exonerated Thompson in the armed robbery case; a subsequent trial resulted in Thompson's acquittal of the murder charges.
- Thompson brought a § 1983 suit against the District Attorney's office, alleging that the prosecutors had failed to disclose the crime lab report in violation of *Brady v. Maryland*.
- Thompson contended that this violation was caused by the DA's deliberate indifference to an obvious need to train prosecutors to avoid such constitutional violations. The jury found the DA's office liable for failure to train and awarded damages to Thompson, and the Fifth Circuit affirmed.
- The Supreme Court reversed in a 5-4 split. While the prosecutors should have given Thompson's attorneys the blood evidence, misconduct by prosecutors which leads to a wrongful conviction can lead to liability for the DA's office only if there is awareness of a pattern of similar bad behavior, but a training program for prosecutors addressing the problem is not put in place.
- The failure to train must constitute deliberate indifference to the rights of persons with whom the untrained prosecutors come into contact; without notice that a training program is deficient (*i.e.* that there is a pattern of similar constitutional violations), decision-makers cannot be said to have deliberately chosen a training program to cause violations of constitutional rights.

Hertz Corporation v. Friend, 130 S. Ct. 1181 (2010)

- Hertz tried to remove the case from state court to federal court based on diversity jurisdiction. The District Court held that California was Hertz's principal place of business because a plurality of its relevant business activity takes place there.
- Supreme Court granted cert in order to give clarity to the jurisdictional question: Where is a corporation's principal place of business?
- Supreme Court unequivocally stated that the focus for determining federal diversity jurisdiction with respect to a corporation is the "nerve center." That is, a corporation's principal place of business is where its "high level officers direct, control, and coordinate the corporation's activities."
- The true test is where the "actual center of direction, control and coordination" lies

A.A. by and through Betenbaugh v. Needville ISD, 611 F.3d 248 (5th Cir. 2010)

- Grooming policy for boys hair
- Native American (Lipan Apache) religious beliefs
- Placed in in-school suspension and not permitted to socialize
- Claimed violated rights to free exercise of religion under the First and Fourteenth Amendments and similar rights under the Texas Religious Freedom Restoration Act ("TRFRA"),
- Fifth Circuit addressed the case on TRFRA grounds.
- District could not sufficiently justify the stated reasons for its grooming policy, family demonstrated a sincere religious belief in wearing his hair uncut and in plain view which would be burdened by the policy

Thaler v. Haynes, 130 S.Ct. 1171 (2010)

- Brought a habeas challenge to conviction based on voir dire
- Two different judges presided at two different stages of voir dire
- Batson challenge was made
- Haynes claimed judge who did not witness the voir dire could not fairly rule on the Batson challenge
- Court disagreed and refused to follow this rule

Florida v. Powell, 130 S.Ct. 1195 (2010)

- Miranda warning case
- Plaintiff argued the warning given was constitutionally insufficient
- Requires that officers only "clearly inform" suspects of their legal rights
- Court said FBI was "exemplary"

Maryland v. Shatzer, 130 S.Ct. 1213 (2010)

- The issue is whether a detained criminal suspect who is asked to speak with a lawyer can ever be questioned again without a lawyer present
- Fourteen day rule
- No basis in the constitution for Miranda, but instead it is judicially created
- Court distinguishes between suspect being questioned and lawful imprisonment

Milner v. Dept. of the Navy, 131 S.Ct. 1259 (2011)

- Freedom of Information Act ("FOIA") requests for the U.S. Navy's Explosive Safety Quantity Distance ("EQSD") information for the naval magazine at Indian Island.
- Navy refused to release the data, relying on Exemption 2 to FOIA, which protects from disclosure material "related solely to the internal personnel rules and practices of an agency."
- The Supreme Court held that FOIA Exemption 2 only precludes the disclosure of certain records pertaining to human resources and employee relations issues. As EQSD data does not fall under the exception, the Navy's withholding of the maps was improper.
- The Court determined that the adjective "personnel" plainly refers to human beings

FCC v. AT&T, 131 S.Ct. 177 (2011)

- Supreme Court unanimously held that corporations do not have a right of "personal privacy" under the Freedom of Information Act.
- The Court's analysis turned on the word "personal." Chief Justice Roberts rejected the contention that "personal" applied to a corporation—which is legally a person—as standard dictionary definitions do not ordinarily relate to artificial persons.
- Court held that AT&T could not hide behind the personal privacy exemption to FOIA.
- In closing, Chief Justice Roberts commented, "We trust that AT&T will not take it personally."

Ortiz v. Jordan, 131 S.Ct. 884 (2011)

- §1983 case alleging sexually assaulted by a corrections officer and did not act to protect her against future assaults, and was retaliated against for her reporting of the assaults in violation of the 8th & 14th Amendments.
- Moved for summary judgment on qualified immunity grounds, but the district court denied finding that the qualified immunity defense turned on material facts in dispute. Prison officials did not appeal the denial of summary judgment. Case proceeded to trial and Ortiz obtained favorable verdicts against the prison authorities.
- Appealed denial of summary judgment which reversed the jury verdict and held that qualified immunity applied.
- S. Court reversed holding that party in a federal case may not appeal a denial of a motion for summary judgment after the Court has conducted a full trial on the merits.
- Prison officials should have filed an interlocutory appeal. However, once the case proceeded to trial, the trial record superseded the summary judgment record, and the qualified immunity defense must be evaluated in light of the evidence received by the trial court.

Sossamon v. Texas, 131 S.Ct. 1651 (2011)

- Inmate sued under RLUIPA, arguing he was denied access to the chapel and religious services while he was on cell restriction for disciplinary infractions.
- District court held sovereign immunity barred Sossamon's claims for monetary relief. The Fifth Circuit affirmed, holding the officials could not be sued in their individual capacities under RLUIPA
- S. Court affirmed the holdings of the lower courts. States, by accepting federal funds, "do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA." Thus, sovereign immunity bars suits for damages because no statue expressly and unequivocally includes such a waiver.

DeMoss v. Crain, 636 F.3d 145 (5th Cir. 2011)

- DeMoss, a Muslim prison inmate, challenged various policies as violating the RLUIPA.
- Fifth Circuit rejected his challenges to the prison policies that required inmate-led religious services to be tape recorded when there is no staff member or outside volunteer present; barred inmates from carrying a pocket-sized Bible or Qur'an; required inmates to be clean-shaven; and did not permit inmates to stand for extended periods of time in prison dayrooms.
- Each of the policies was demonstrated to be the least restrictive means of serving compelling penological interests without imposing substantial burdens on the inmate's religious practices.

Kentucky v. King, -- S.Ct. ---, 2011 WL 1832821 (May 16, 2011)

- "Exigent circumstances" exception to the Fourth Amendment
- Police officers followed a suspected drug dealer to an apartment complex after an undercover drug bust. The suspect went into a breezeway and the officers heard a door shut, but the officers could not see which of two apartments the suspect entered. Smelling marijuana coming from one apartment, the officers knocked on that door, assuming the suspect had entered that apartment. No one came to the door.
- Hearing noises they believed constituted destruction of evidence, the officers kicked down the door, finding King (who was not the suspected drug dealer) with marijuana and cocaine.
- King argued that the exigent circumstances rule does not apply when—as here—the police effectively create the emergency justifying a warrantless search of a residence.
- Supreme Court disagreed. Unless the police threatened to do, or actually did, something that violated the Fourth Amendment, the "exigent circumstances" rule still applies.
- Court pointed out that occupants of a residence have other protections against warrantless searches. If they fail to take advantage of those protections (for example, telling the police that they cannot enter), it is their own fault.
- This case is important as it helps resolve the varied and inconsistent manner in which different states have treated police-created emergencies differently for purposes of the exigent circumstances rule.

United States v. Pack, 612 F.3d 341 (5th Cir. 2010)

- Moved to suppress evidence of his possession of marijuana and pistol discovered during a traffic stop and search
- Trooper making the stop became suspicious on noting Pack's nervous behavior and in uncovering inconsistent and conflicting responses to his inquiries about their travel plans
- Trooper requested a canine search, which alerted the trooper to search the trunk, and found eighteen pounds of marijuana
- "No factual nexus" between any alleged Fourth Amendment violation consisting of the continued detention and the discovery of the drugs and firearm, because the discovery was inevitable given the continued detention of the driver.
- Short delay caused by the investigation did not render the length of the entire detention unreasonable.

Berghuis v. Thompkins, 130 S.Ct. 2250 (2010)

- Three hour interrogation, after given his *Miranda* rights
- At no time did he express that he wanted to remain silent, that he did not want to talk to police, or that he wanted an attorney
- Asked whether he believed in God and whether he prayed for forgiveness for the murder. He responded "Yes" to both questions but refused to make a written confession.
- Moved to suppress his statements, arguing he had invoked his Fifth Amendment right to remain silent,
- Suspect must make clear without ambiguity when he wants to claim the right to counsel after receiving *Miranda* warnings and extended that to a suspect's intent to claim the right to silence.

United States v. Chavira, 614 F.3d 127 (5th Cir. 2010)

- Handcuffed to a chair, and questioned her for 30-45 minutes.
- Stated that the minor was her daughter and a US citizen
- Motion to suppress statements made during secondary processing because she was not Mirandized.
- Whether Chavira's Fifth Amendment rights were violated when customs officers questioned her at secondary processing without giving her the warnings required under *Miranda*.
- Should have been given her *Miranda* warnings
- Reasonable person would have realized that the officers were asking something more than routine immigration questions.

Presley v. Georgia, 130 S.Ct.721 (2010)

- Sixth Amendment Case
- Trial court excluded defendant's uncle from voir dire
- Voir dire is to remain public with very limited exceptions
- Court obligated to take every reasonable measure to accommodate public attendance

Berghuis v. Smith, 130 S.Ct. 1382 (2010)

- Sixth Amendment Case
- Convicted of murder by all white jury
- Smith and 36 witnesses to the shooting were African American
- Panel from which jury was drawn had 3 African Americans in its 60-100 members
- Smith failed to meet his burden of proof

Michigan v. Bryant, 131 S.Ct. 1143 (2011)

- Confrontation Clause case
- Covington mortally wounded. Covington told the police he had been shot by "Rick" (referring to Bryant) outside Bryant's house.
- Michigan S. Court reversed the conviction under the Sixth Amendment's Confrontation Clause, holding the statements to be inadmissible testimonial hearsay.
- The Supreme Court reversed, holding that Covington's statements made during emergency are admissible because they had primary purpose to enable police assistance to meet an ongoing emergency.
- Justice Scalia's dissent : Constitution prohibits out-of-court statements, even though evidentiary rules allowed juries to hear them under some circumstances.