San Diego County Sheriff's Department

Legal Affairs Unit

Supreme Court Legal Update
October 2010 Term

Robert Faigin
Chief Legal Advisor

robert.faigin@sdsheriff.org

Perspective

- Chief Legal Advisor – San Diego County Sheriff's Department.
- Employed by the Sheriff's Department for over ten (10) years.
- Current faculty at the University of Phoenix.
- Former Senior Deputy District Attorney, Deputy City Attorney, and Private Attorney.

Beverly Hillbillies

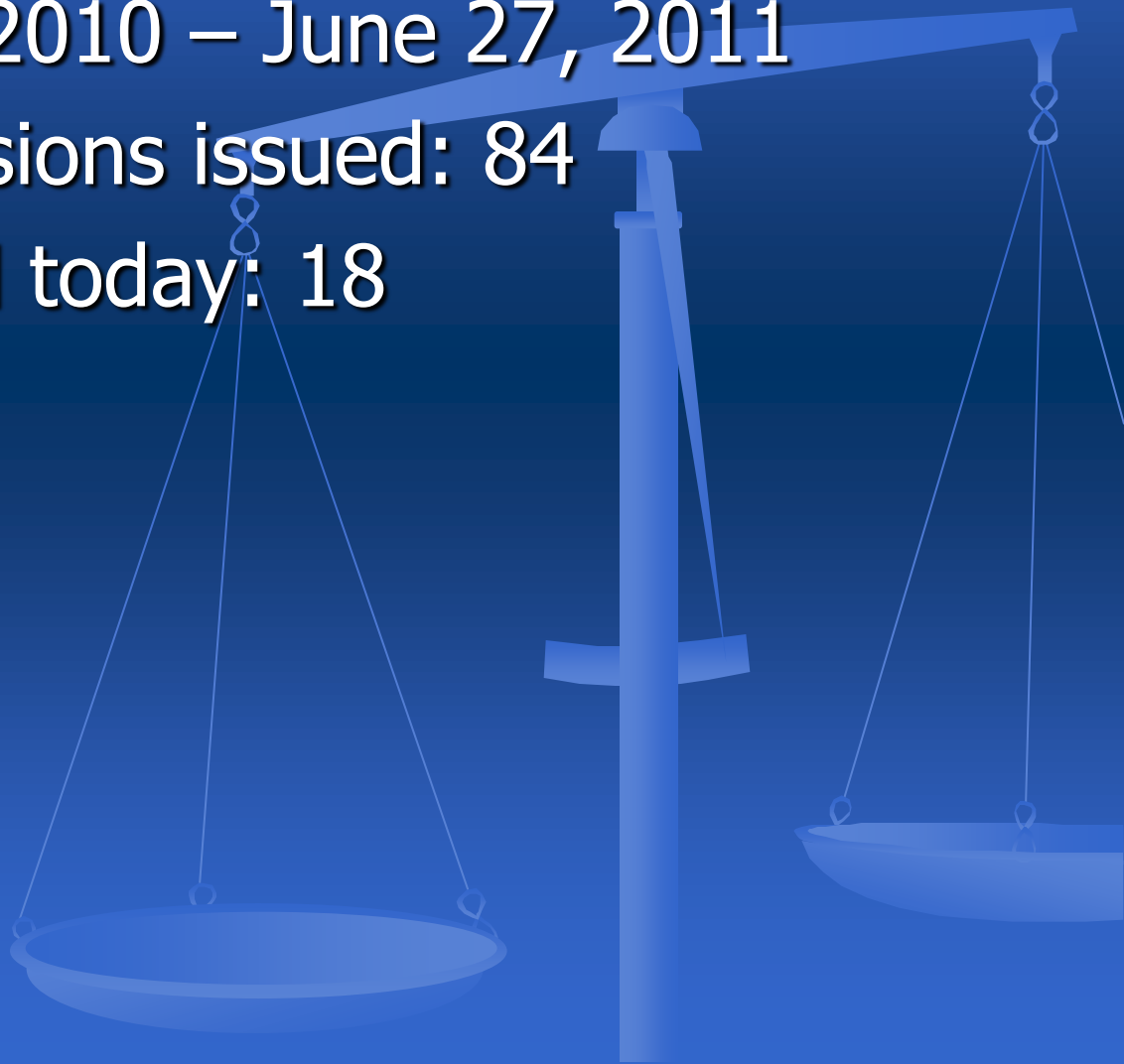
Jed Miss Hathaway Mr. Drysdale

Granny Jethro Elly May

U.S. Supreme Court

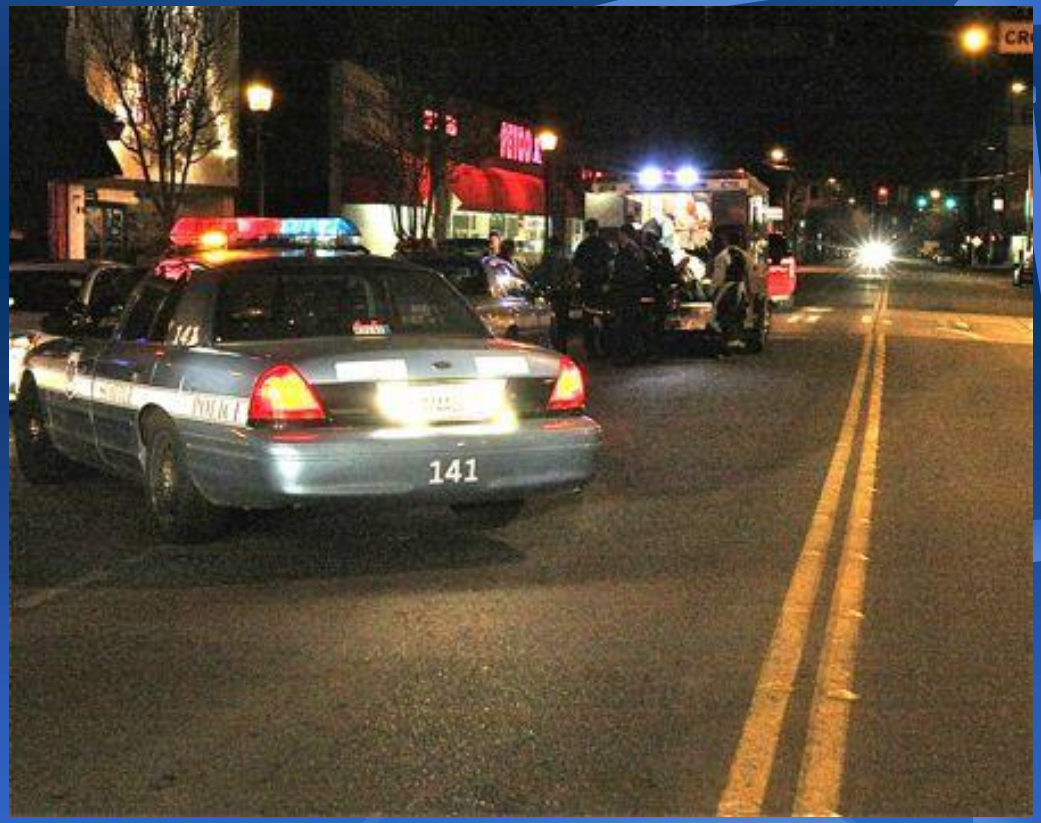
Statistics

- Term: October 2010 – June 27, 2011
- Number of decisions issued: 84
- Cases discussed today: 18



Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

FACTS OF CASE



Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

Confrontation Clause of the 6th Amendment states:

"In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him."

Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

- Confrontation Clause only applies to "testimonial statements."
- Testimonial statements specifically include statements made during 'police interrogations' solely directed at establishing the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator.

Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

- Not all statements to police and not all interrogations by law enforcement are subject to the Confrontation Clause:
  - 911 call to police regarding ongoing DV – Not testimonial
  - Statements by DV victim about what "had occurred" with no emergency in progress - Testimonial

Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

- If a statement is testimonial, in order for it to be admissible in court:
  1) Declarant must testify

     or

  2) Declarant must be unavailable AND Defendant must have had an opportunity to cross examination examine the Declarant regarding his statement.
- A non testimonial statement is admissible in court.

Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

The key is the primary purpose for which the out of court statements are made:

If "primary purpose of the interrogation" is "to enable police assistance to meet an ongoing emergency" then the statements are going to be admissible in court.

Michigan v. Bryant
February 28, 2011, 179 L.Ed.2d 93

Identification and description of a shooter and the location of the shooting are not testimonial statements if they had a "primary purpose…to enable police assistance to meet an ongoing emergency."

NASA v. Nelson

January 19, 2011, 178 L.Ed.2d 667

FACTS OF CASE

NASA v. Nelson

January 19, 2011, 178 L.Ed.2d 667

- "[T]he Government has an interest in conducting basic employment background checks."
  - To ensure the security of its facilities; and
  - To employ a competent, reliable workforce.
- "[T]he Government is entitled to have its projects staffed by reliable, law-abiding persons who will 'efficiently and effectively' discharge their duties."

NASA v. Nelson

January 19, 2011, 178 L.Ed.2d 667

- A drug-treatment inquiry is a reasonable, employment-related inquiry:
  - "The Government, recognizing that illegal-drug use is both a criminal and medical issue, seeks to separate out those drug users who are taking steps to address and overcome their problems. Thus, it uses responses to the drug treatment question as a mitigating factor in its contractor credentialing decisions."

NASA v. Nelson

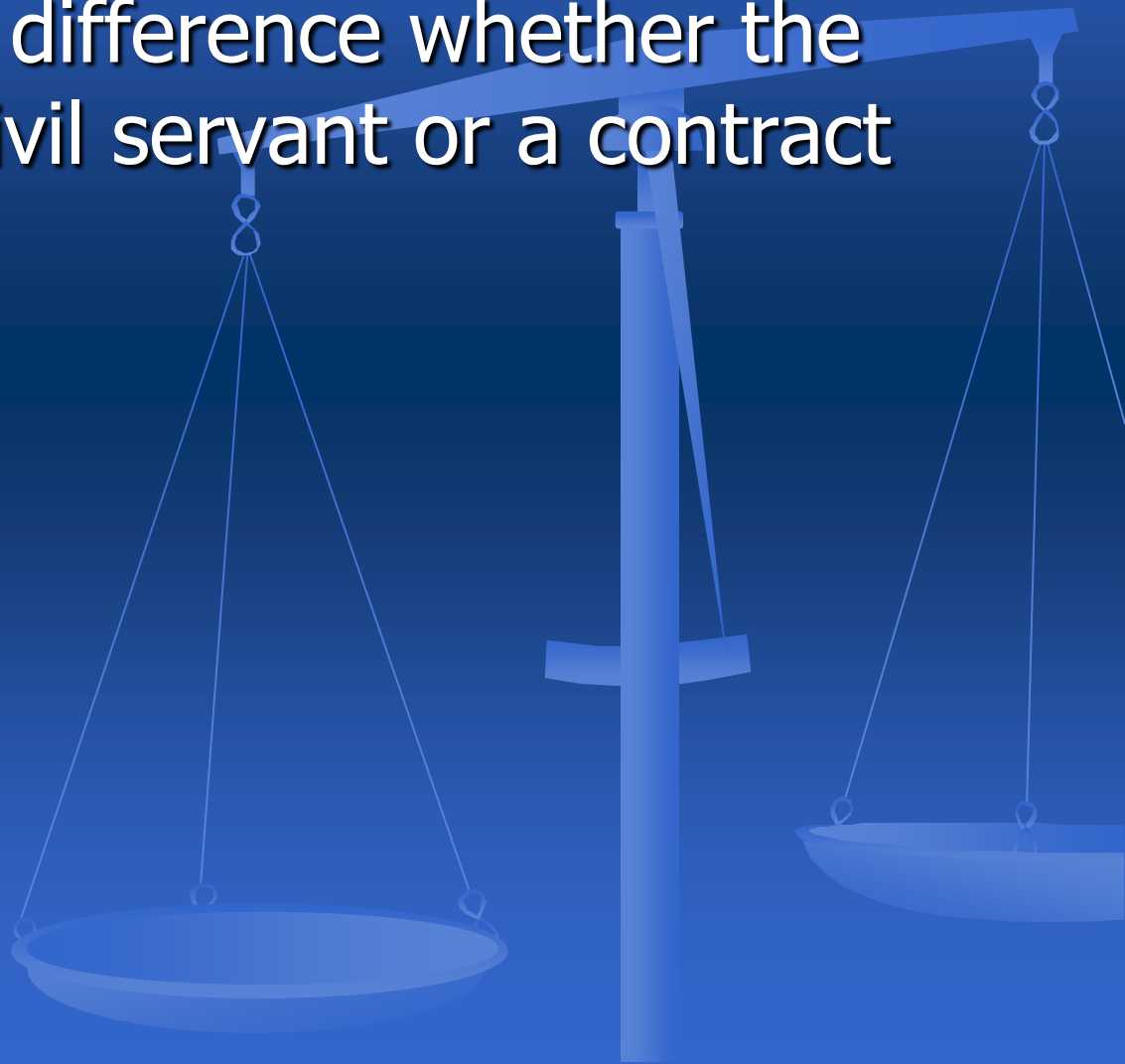
January 19, 2011, 178 L.Ed.2d 667

- "Open ended questions" regarding an employees honesty or trustworthiness are also reasonably aimed at identifying capable employees who will faithfully conduct the Government's business.

NASA v. Nelson

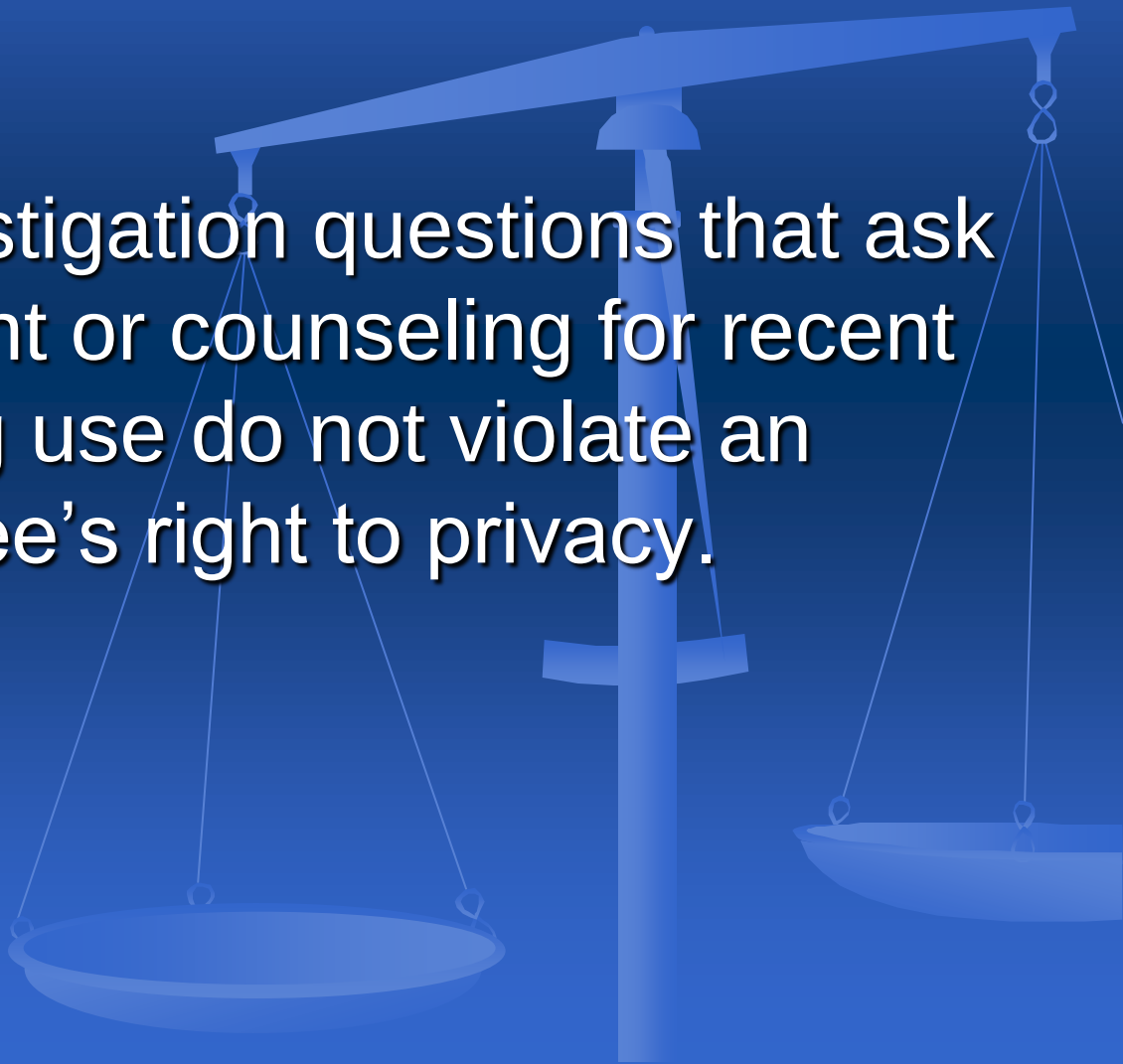
January 19, 2011, 178 L.Ed.2d 667

- Doesn't make a difference whether the employee is a civil servant or a contract employee.



NASA v. Nelson

January 19, 2011, 178 L.Ed.2d 667

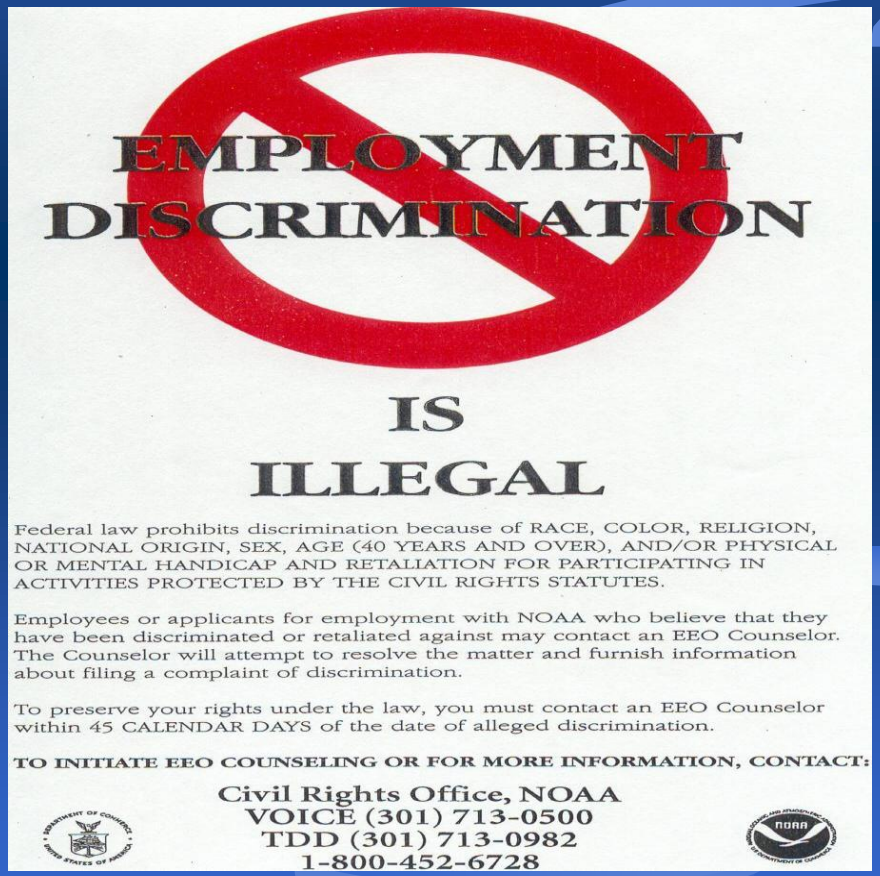


Background investigation questions that ask about treatment or counseling for recent illegal drug use do not violate an employee's right to privacy.

Thompson v. North American Stainless LP

January 24, 2011 DJDAR 1214

FACTS OF CASE



EMPLOYMENT DISCRIMINATION

IS

ILLEGAL

Federal law prohibits discrimination because of RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE (40 YEARS AND OVER), AND/OR PHYSICAL OR MENTAL HANDICAP AND RETALIATION FOR PARTICIPATING IN ACTIVITIES PROTECTED BY THE CIVIL RIGHTS STATUTES.

Employees or applicants for employment with NOAA who believe that they have been discriminated or retaliated against may contact an EEO Counselor. The Counselor will attempt to resolve the matter and furnish information about filing a complaint of discrimination.

To preserve your rights under the law, you must contact an EEO Counselor within 45 CALENDAR DAYS of the date of alleged discrimination.

TO INITIATE EEO COUNSELING OR FOR MORE INFORMATION, CONTACT:

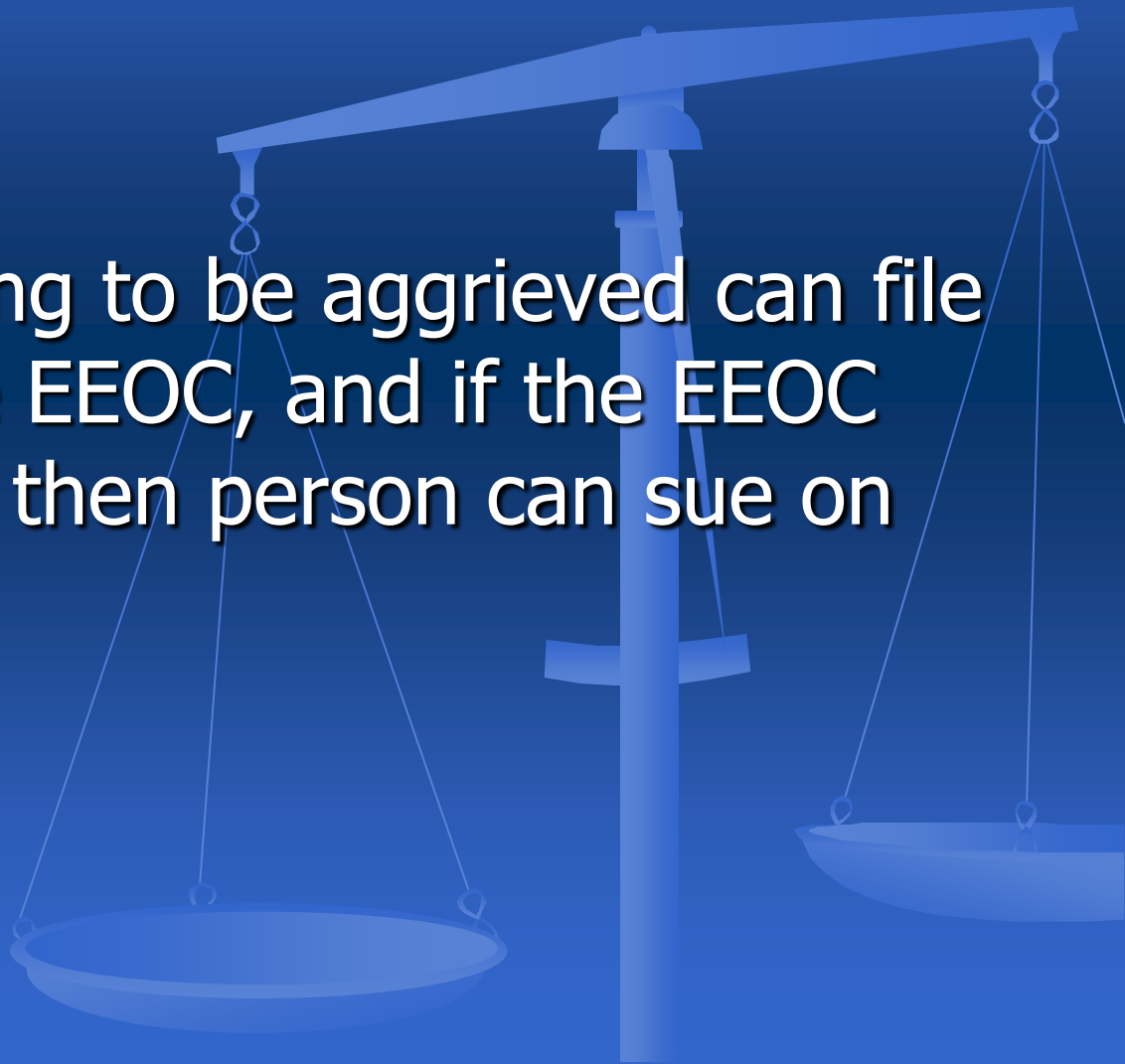
Civil Rights Office, NOAA
VOICE (301) 713-0500
TDD (301) 713-0982
1-800-452-6728

Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214

Title VII provides that "[i]t shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has made a charge" under Title VII.

Title VII prohibits discrimination on the basis of race, color, religion, sex, and national origin.

Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214

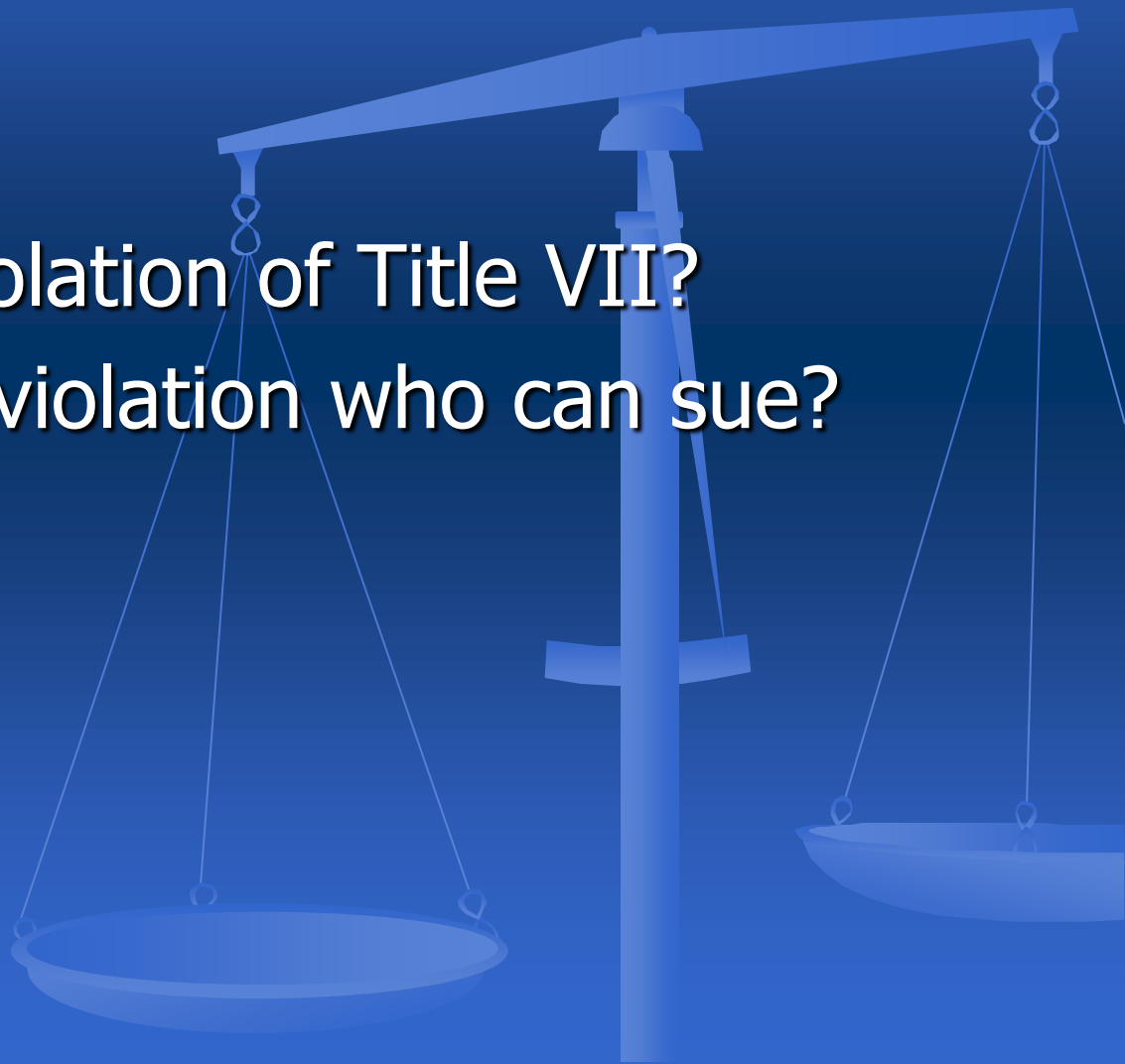


A person claiming to be aggrieved can file a claim with the EEOC, and if the EEOC declines to sue, then person can sue on their own.

Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214

Two questions:

1) Was there a violation of Title VII?
2) If there was a violation who can sue?



Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214

1) Was there a violation of TITLE VII? YES.

Title VII's antiretaliation provision prohibits any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination."

Court said its "obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired. "

Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214

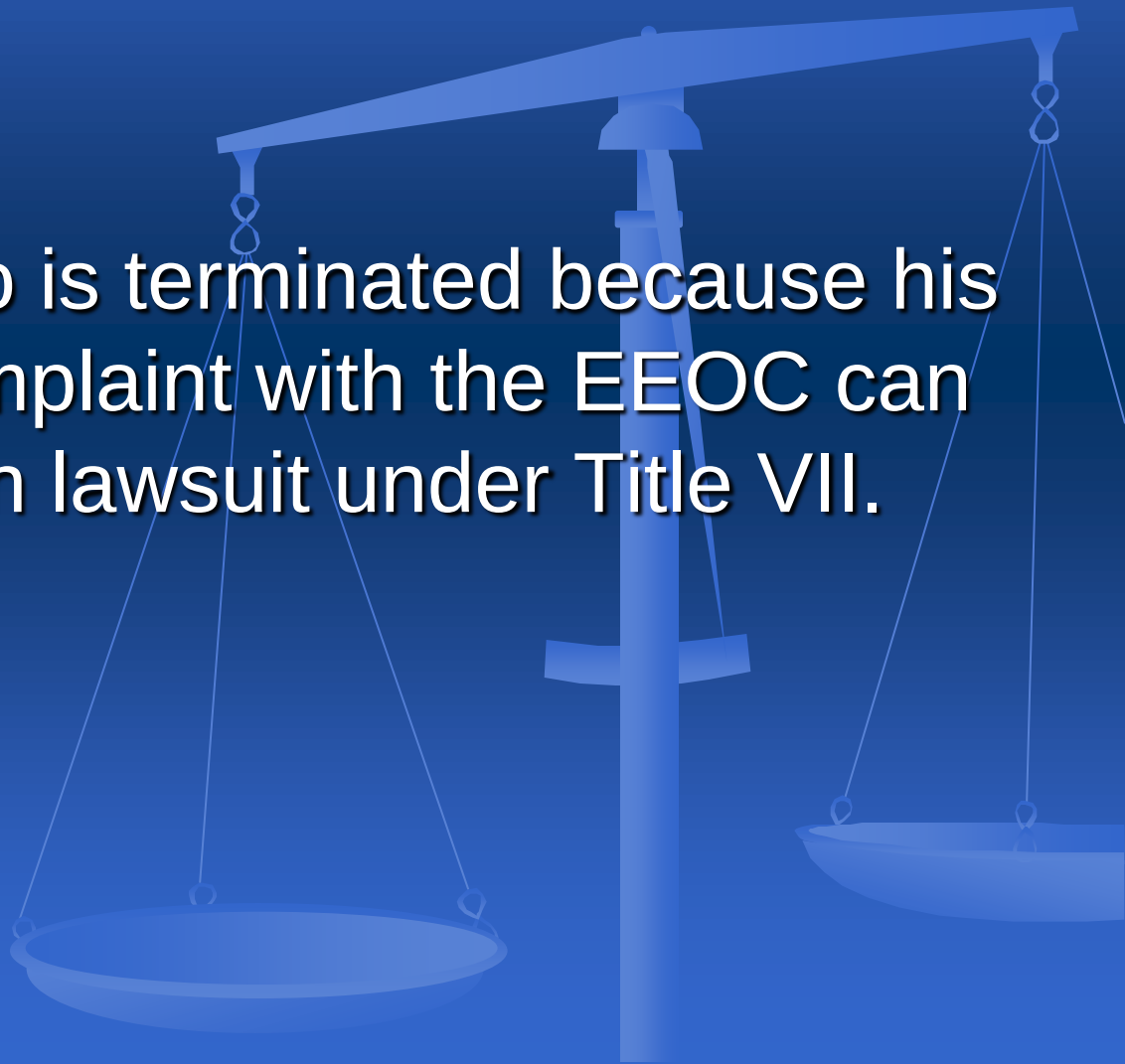
2) Who can sue?

Not everyone is "aggrieved:"

any plaintiff with an interest "arguably [sought] to be protected by the statutes," CAN SUE.

Plaintiff's who might technically be injured but whose interests are unrelated to the statutory prohibitions in Title VII – CANNOT SUE.

Thompson v. North American Stainless LP
January 24, 2011 DJDAR 1214



An employee who is terminated because his fiancé filed a complaint with the EEOC can file a retaliation lawsuit under Title VII.

Kasten v. Saint-Gobain Performance Plastics Corp.

March 22, 2011 DJDAR XX

FACTS OF CASE

Kasten v. Saint-Gobain Performance Plastics Corp.

March 22, 2011 DJDAR XX

Fair Labor Standards Act (FLSA), "forbids employers 'to discharge … any employee because such employee has filed any complaint' alleging a violation of the Act."

Issue: Does filed mean orally or writing?

Kasten v. Saint-Gobain Performance Plastics Corp.

March 22, 2011 DJDAR XX

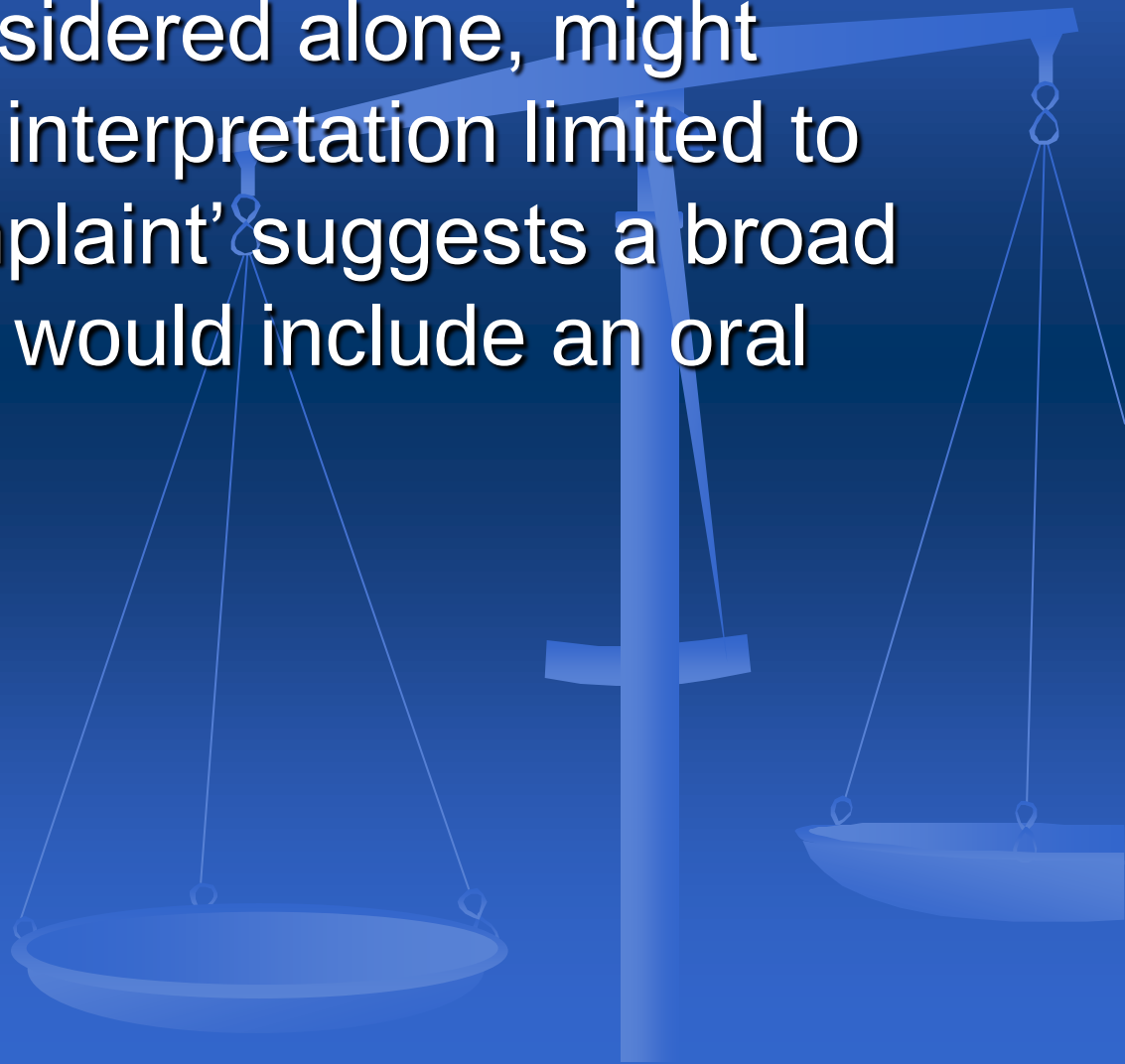
"Some dictionary definitions of 'filed' contemplate a writing while others permit using 'file' in conjunction with oral material."

Additionally, some state statutes and federal regulations sometimes contemplate oral filings.

Kasten v. Saint-Gobain Performance Plastics Corp.

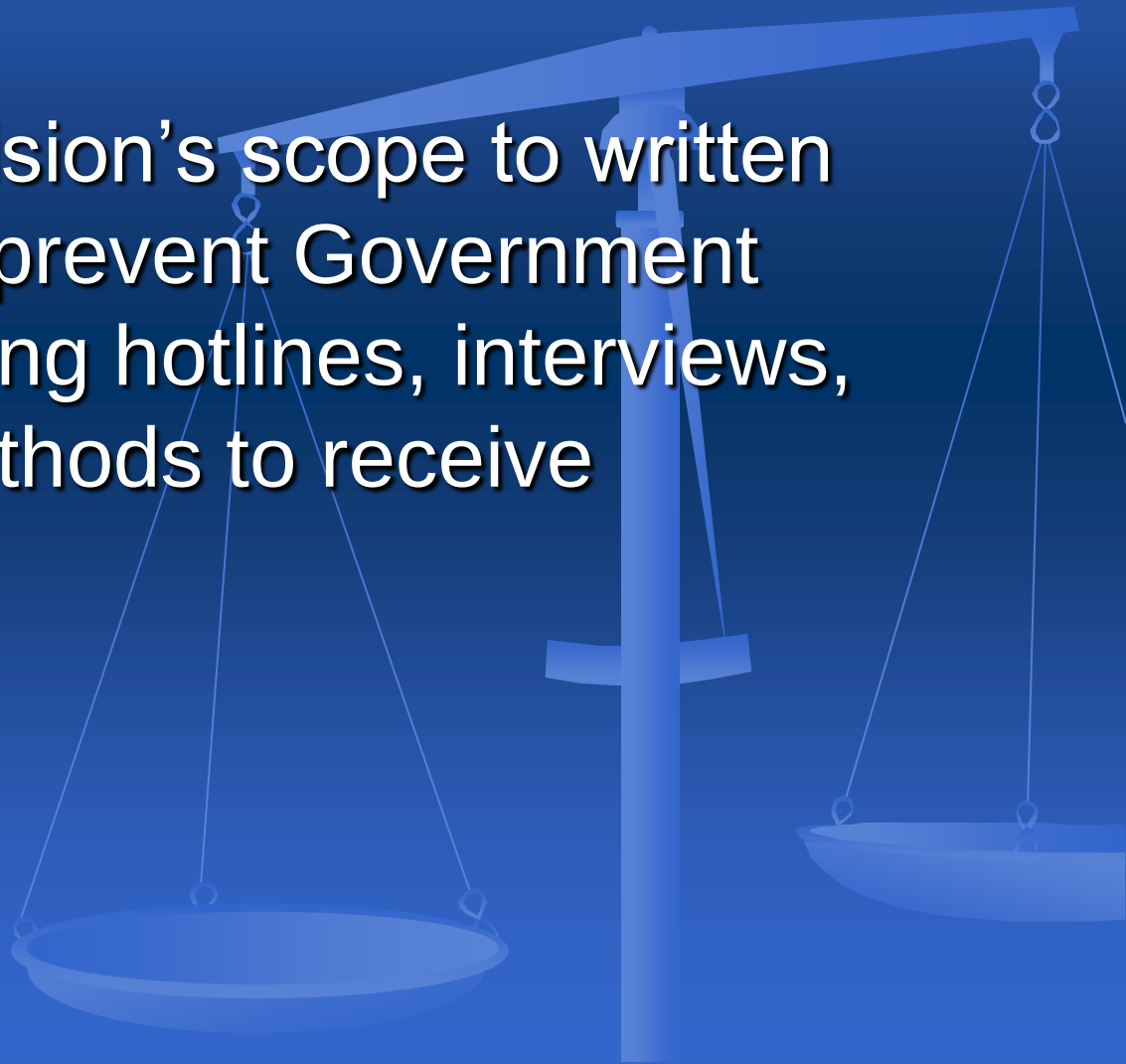
March 22, 2011 DJDAR XX

"Even if 'filed' considered alone, might suggest a narrow interpretation limited to writings, 'any complaint' suggests a broad interpretation that would include an oral complaint."



Kasten v. Saint-Gobain Performance Plastics Corp.

March 22, 2011 DJDAR XX



"Limiting the provision's scope to written complaints could prevent Government agencies from using hotlines, interviews, and other oral methods to receive complaints."

Kasten v. Saint-Gobain Performance Plastics Corp.

March 22, 2011 DJDAR XX

For purposes of the FLSA, the term “filed any complaint” includes oral, as well as written, complaints.

Staub v. Proctor Hospital
March 1, 2011 DJDAR XX

FACTS OF CASE

YOUR RIGHTS UNDER USERRA

THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

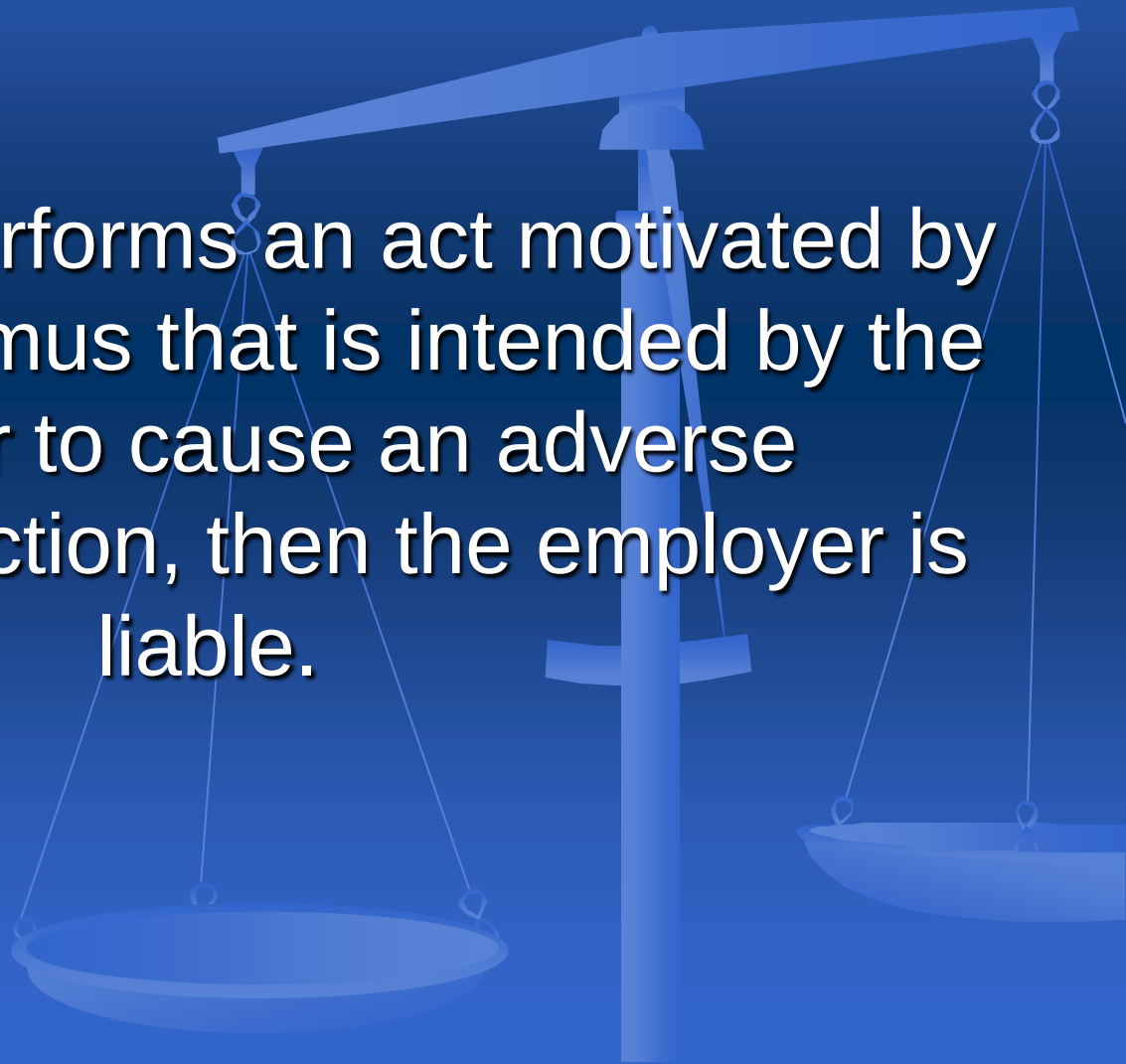
Staub v. Proctor Hospital March 1, 2011 DJDAR XX

So long as an earlier employee intended, for discriminatory reasons, that adverse action occur, he has the intent required for USERRA liability.

The decisionmaker's exercise of judgment does not prevent the earlier employee's action from being the proximate cause of the harm.

Staub v. Proctor Hospital March 1, 2011 DJDAR XX

If a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, then the employer is liable.



Ortiz v. Jordan

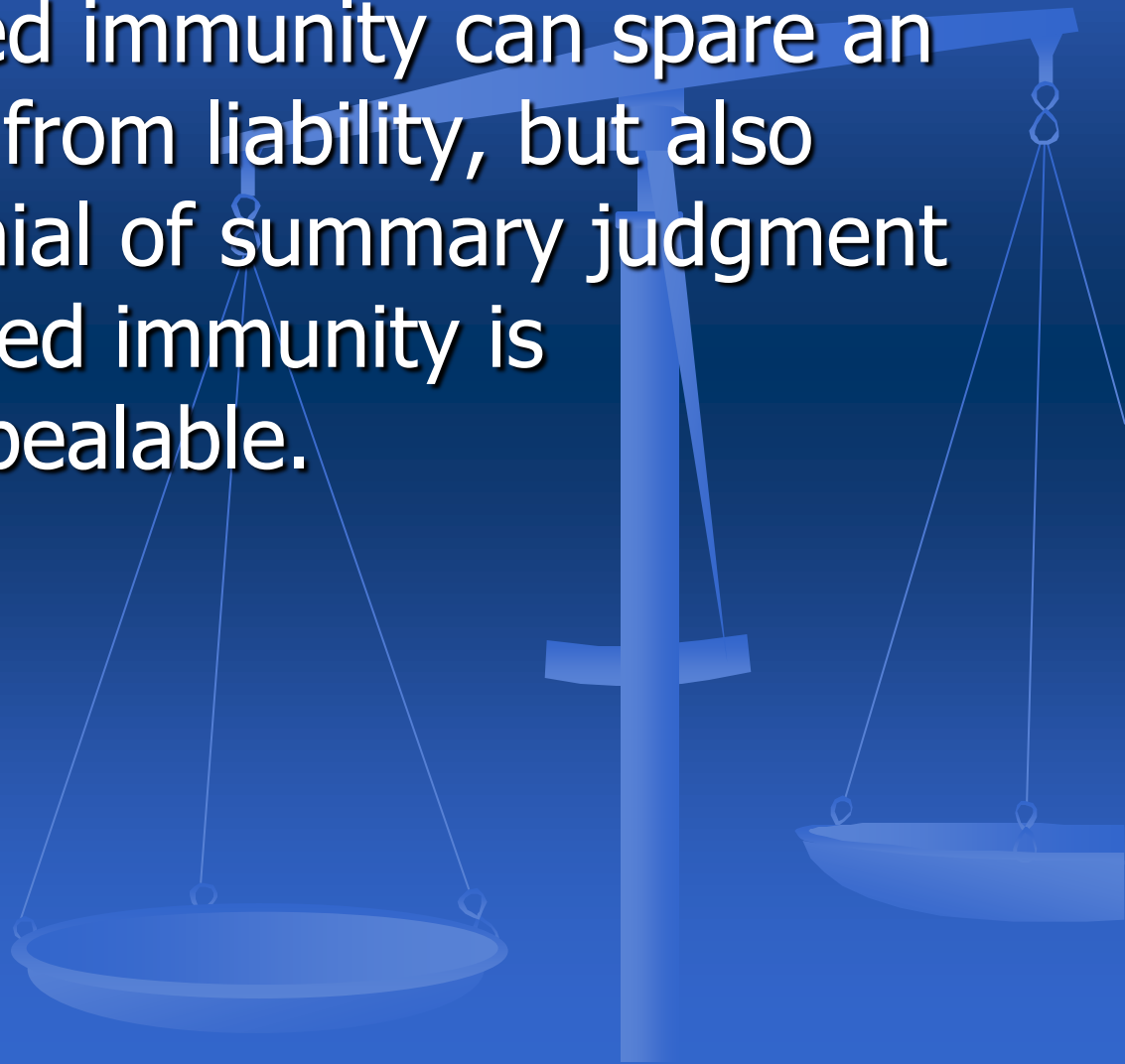
January 24, 2011, 178 L.Ed.2d 703

FACTS OF CASE

Ortiz v. Jordan

January 24, 2011, 178 L.Ed.2d 703

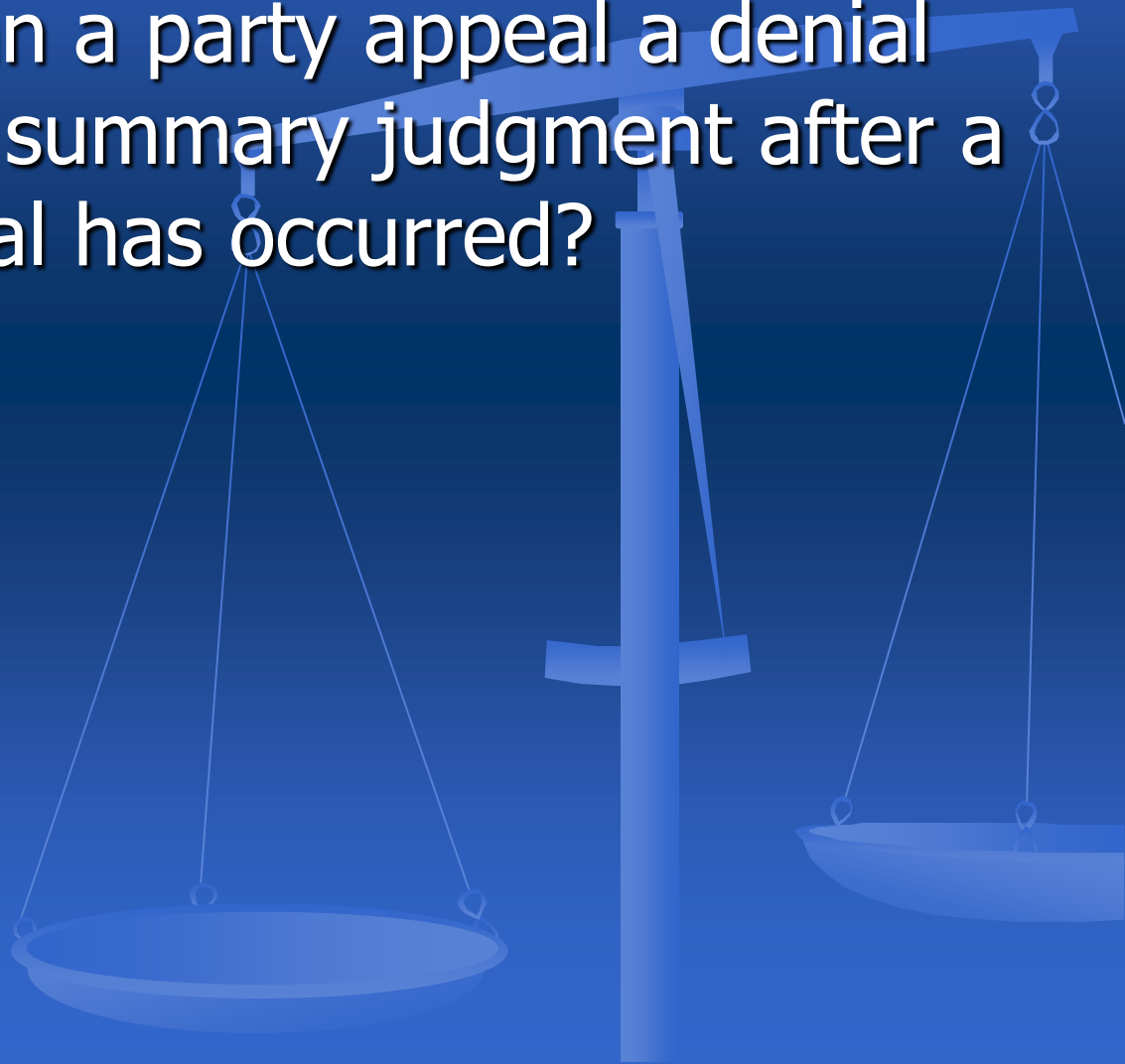
Because qualified immunity can spare an official not only from liability, but also from trial, a denial of summary judgment based on qualified immunity is immediately appealable.



Ortiz v. Jordan

January 24, 2011, 178 L.Ed.2d 703

Issue: Can a party appeal a denial of summary judgment after a trial has occurred?



Ortiz v. Jordan

January 24, 2011, 178 L.Ed.2d 703

A party may not appeal an order denying summary judgment after a full trial on the merits.

Los Angeles County v. Humphries November 30, 2010 DJDAR 17872

FACTS OF CASE

Los Angeles County v. Humphries November 30, 2010 DJDAR 17872

Monell = Municipality cannot be held liable in a civil rights lawsuit just because it employed the wrongdoer.

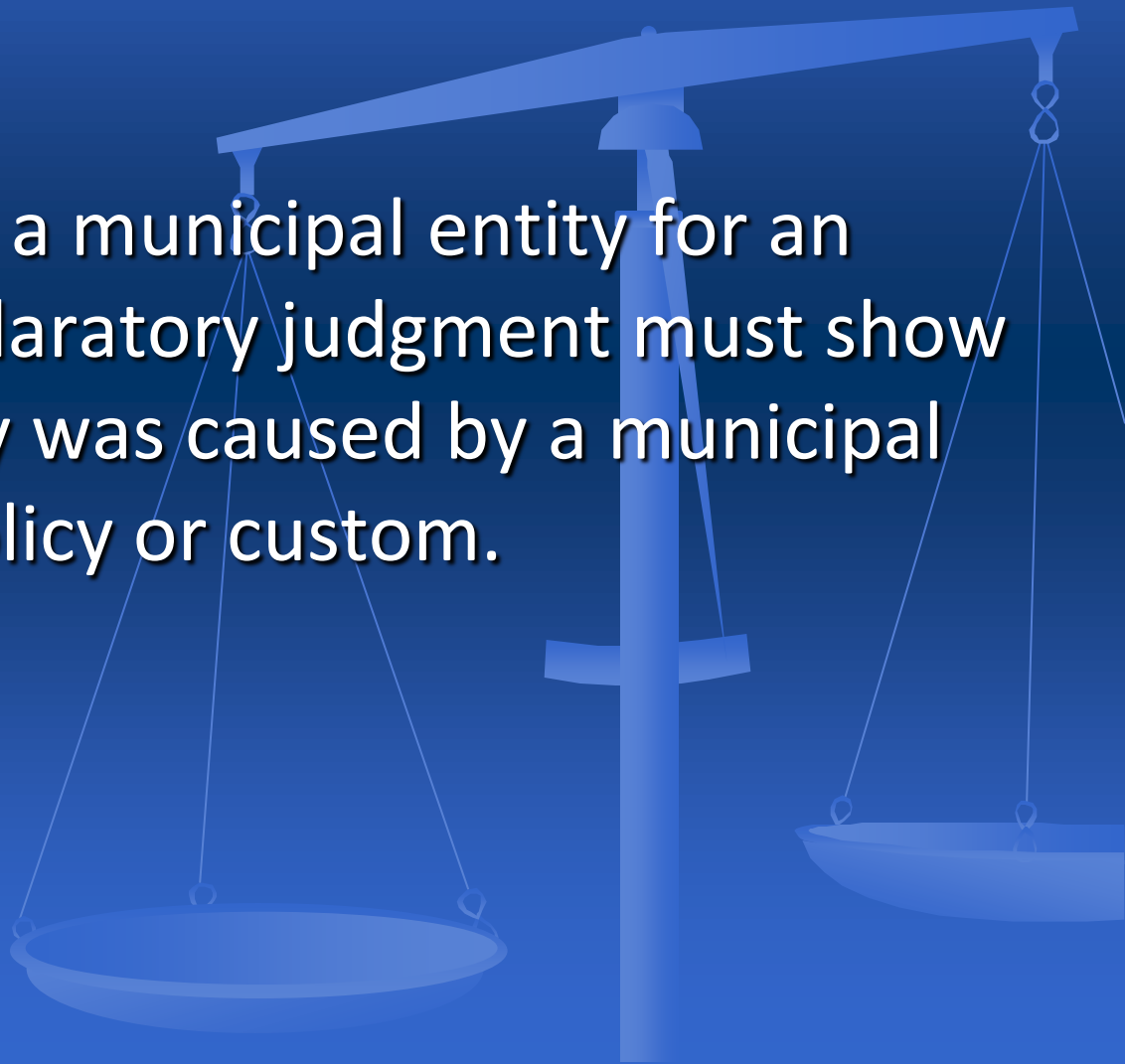
To sue a municipality for money damages, a civil rights Plaintiff must show that their injury was caused by a municipal policy or custom.

Los Angeles County v. Humphries November 30, 2010 DJDAR 17872

Issue: Whether same rule applies to Plaintiff seeking an injunction or declaratory relief?

Answer: No reason to distinguish between money damages and prospective relief such as declaratory judgment or injunction.

Los Angeles County v. Humphries November 30, 2010 DJDAR 17872



Plaintiffs suing a municipal entity for an injunction or declaratory judgment must show that their injury was caused by a municipal policy or custom.

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594

FACTS OF CASE

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594

Plaintiffs seeking to impose civil "liability on local governments must prove that their injury was caused by 'action pursuant to official municipal policy,' which includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." (Monell)

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594

"A local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy" for civil rights purposes, "but the failure to train must amount to 'deliberate indifference to the rights of persons with whom the [untrained employees] come into contact."

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference."

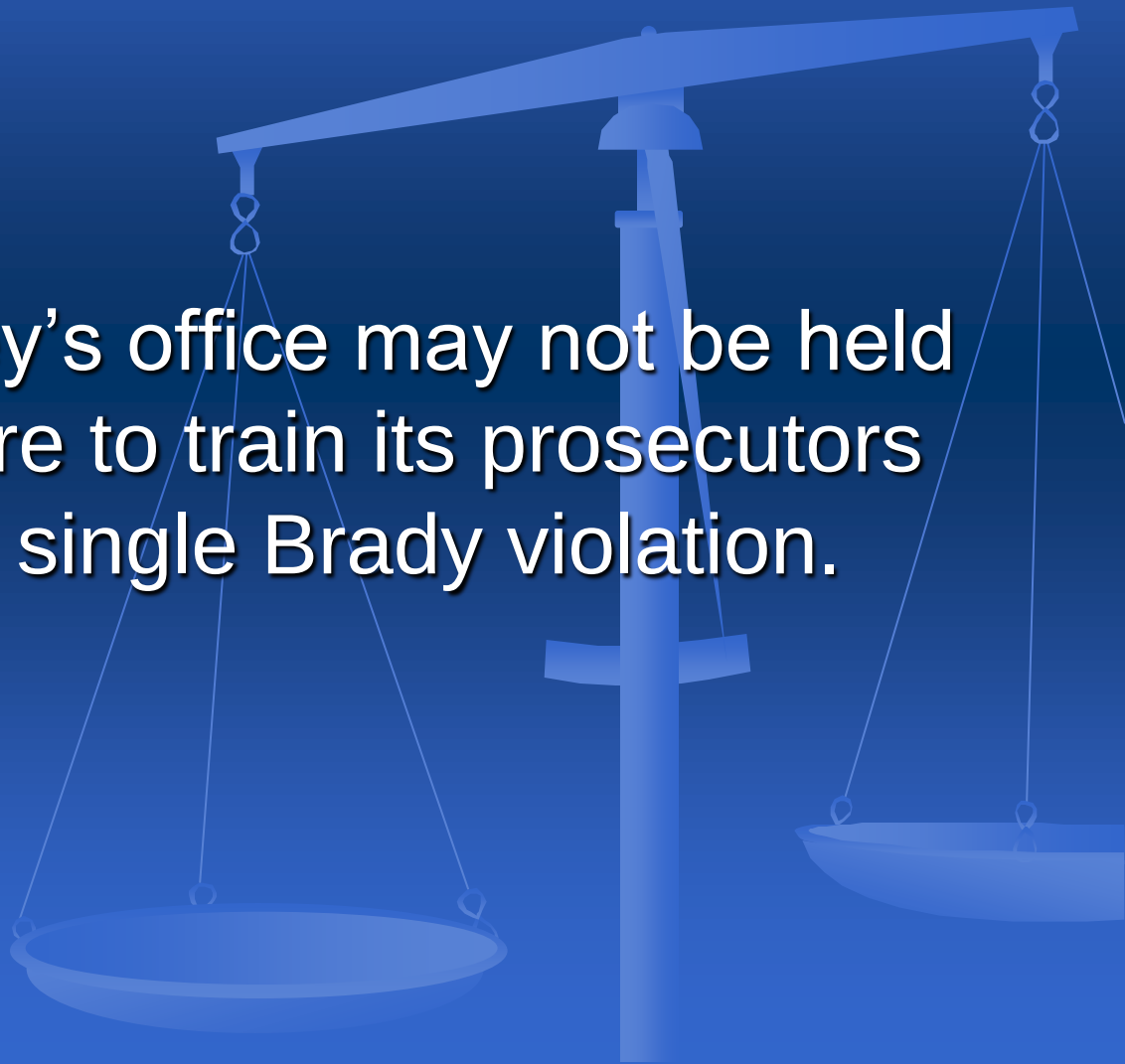
"Without notice that a course of training is deficient, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights."

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594

Plaintiff contended "that the *Brady* violation in his case was the 'obvious' consequence of failing to provide specific *Brady* training and that this 'obviousness' showing can substitute for the pattern of violations ordinarily necessary to establish municipal culpability."

Ct. said "recurring constitutional violations are not the 'obvious consequence' of failing to provide prosecutors with formal in-house training."

Connick v. Thompson
March 29, 2011 U.S. LEXIS 2594



A district attorney's office may not be held liable for failure to train its prosecutors based on a single Brady violation.

Snyder v. Phelps

March 2, 2011, 179 L.Ed.2d 172

FACTS OF CASE

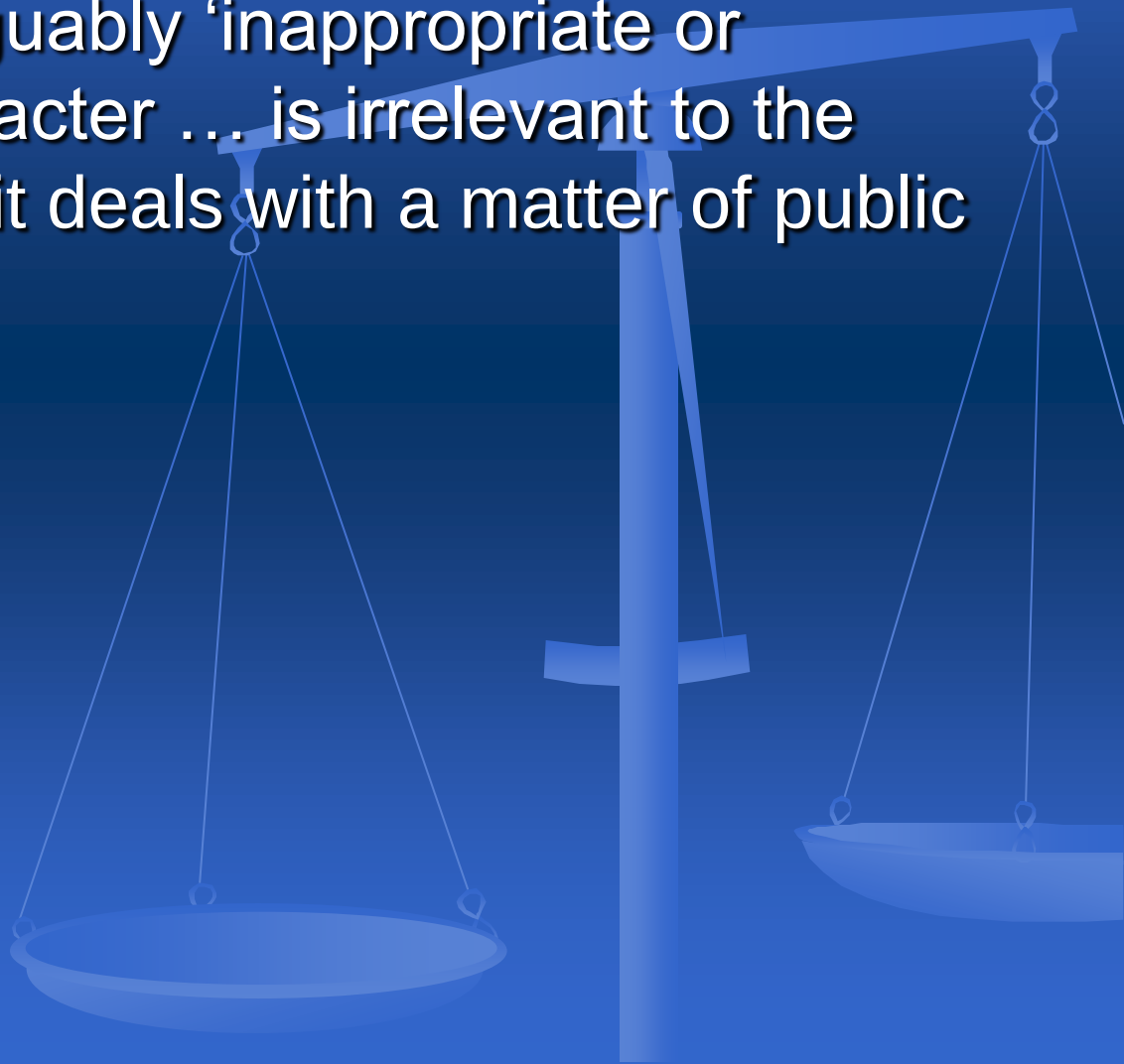
Snyder v. Phelps
March 2, 2011, 179 L.Ed.2d 172

- "Speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values' and is entitled to special protection."

- "Speech is of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community,'" "or when it 'is a subject of general interest and of value and concern to the public."

Snyder v. Phelps
March 2, 2011, 179 L.Ed.2d 172

- "A statement's arguably 'inappropriate or controversial character … is irrelevant to the question whether it deals with a matter of public concern."



Snyder v. Phelps
March 2, 2011, 179 L.Ed.2d 172

- Church's signs plainly relate to public, rather than private, matters. "The placards highlighted issues of public import – the political and moral conduct of the United States and its citizens, the fate of the Nation, homosexuality in the military, and scandals involving the Catholic clergy" and the church conveyed its views on those issues in a manner designed to reach as broad a public audience as possible.

Snyder v. Phelps
March 2, 2011, 179 L.Ed.2d 172

The First Amendment shields a church from liability for its picketing outside of a military funeral.

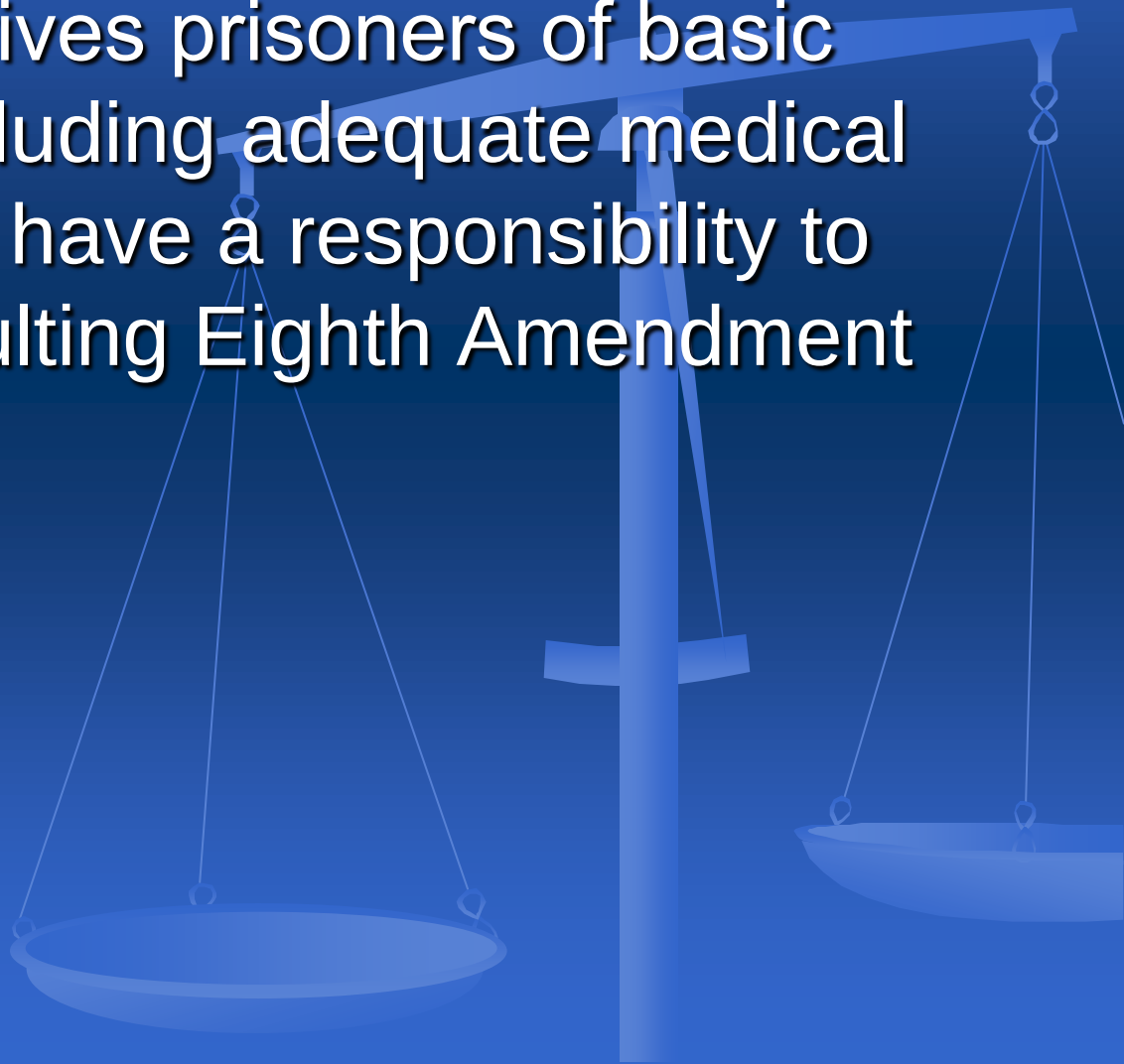
Brown v. Plata
May 23, 2011 DJDAR XX

FACTS OF CASE

California Institution for Men
Aug. 7, 2006

Brown v. Plata
May 23, 2011 DJDAR XX

- "If a prison deprives prisoners of basic sustenance, including adequate medical care, the courts have a responsibility to remedy the resulting Eighth Amendment violation."



Brown v. Plata
May 23, 2011 DJDAR XX

- Under the Prison Litigation Reform Act, "only a three judge court may limit a prison population."

- "Before convening such a court, a district court must have entered an order for less intrusive relief that failed to remedy the constitutional violation and must have given the defendant a reasonable time to comply with its prior orders."

Brown v. Plata
May 23, 2011 DJDAR XX

- "Once convened, the three-judge court must find by clear and convincing evidence that 'crowding is the primary cause of the violation' and 'no other relief will remedy [the] violation,"

- "and that the relief is 'narrowly drawn, extends no further than necessary…, and is the least intrusive means necessary to correct the violation."

Brown v. Plata
May 23, 2011 DJDAR XX

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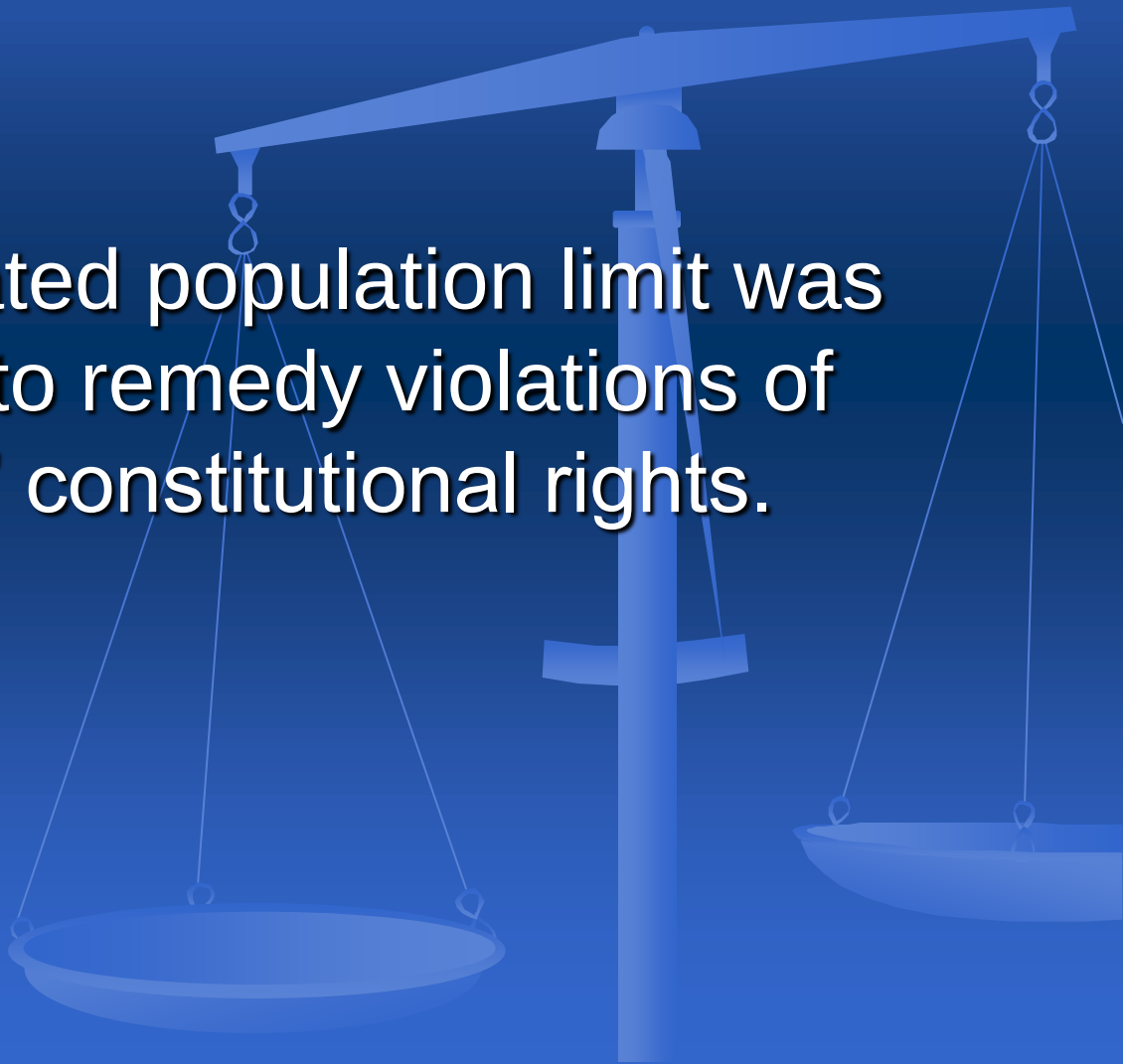
Brown v. Plata
May 23, 2011 DJDAR XX



A court mandated population limit was necessary to remedy violations of prisoners' constitutional rights.

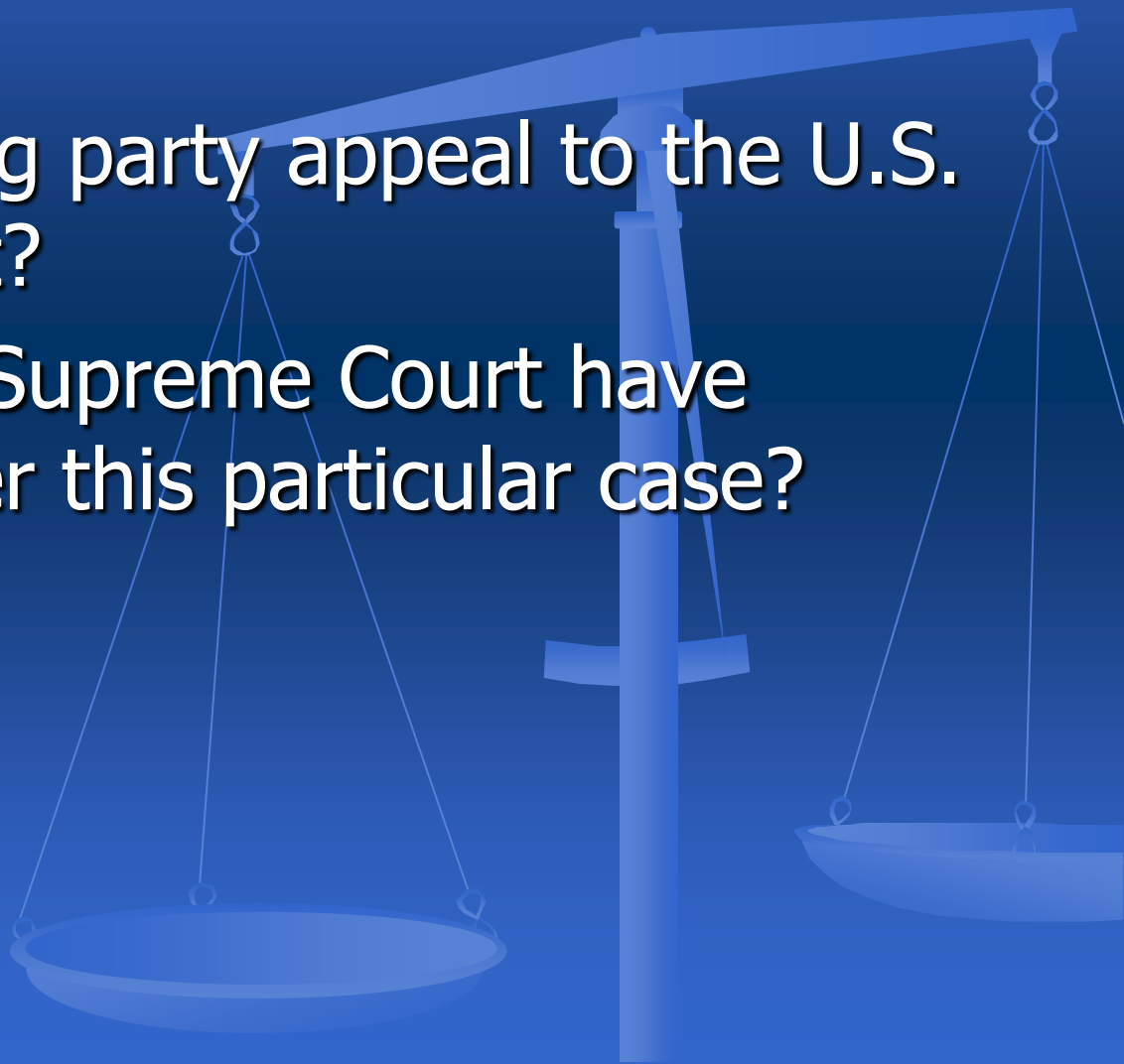
Camreta v. Greene
May 26, 2011 DJDAR XX

FACTS OF CASE

Camreta v. Greene
May 26, 2011 DJDAR XX

Two issues:

1) Can a prevailing party appeal to the U.S. Supreme Court?
2) Does the U.S. Supreme Court have jurisdiction over this particular case?



Camreta v. Greene
May 26, 2011 DJDAR XX

1) Can a prevailing party appeal to the U.S. Supreme Court?

Yes. Even though prevailed through qualified immunity, bad law subjects others to potential liability.

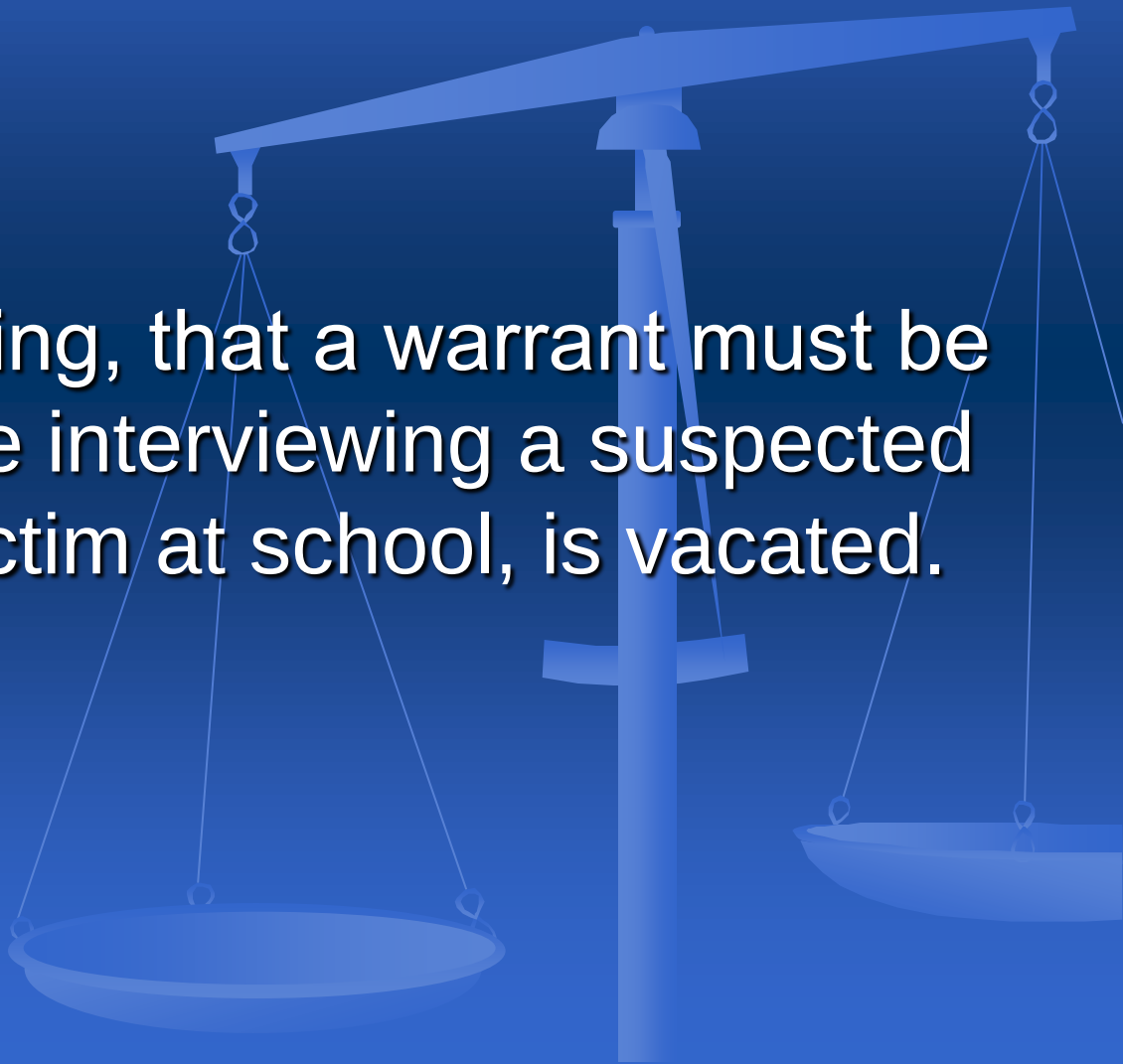
Camreta v. Greene
May 26, 2011 DJDAR XX

2) Does the U.S. Supreme Court have jurisdiction over this particular case?

In order to address the issue on appeal "both the plaintiff and the defendant ordinarily retain a stake in the outcome."

Here issue moot. Child almost 18 and moved out of CPS jurisdiction.

Camreta v. Greene
May 26, 2011 DJDAR XX



Ninth Circuit's ruling, that a warrant must be obtained before interviewing a suspected child abuse victim at school, is vacated.

Kentucky v. King
May 16, 2011 DJDAR XX

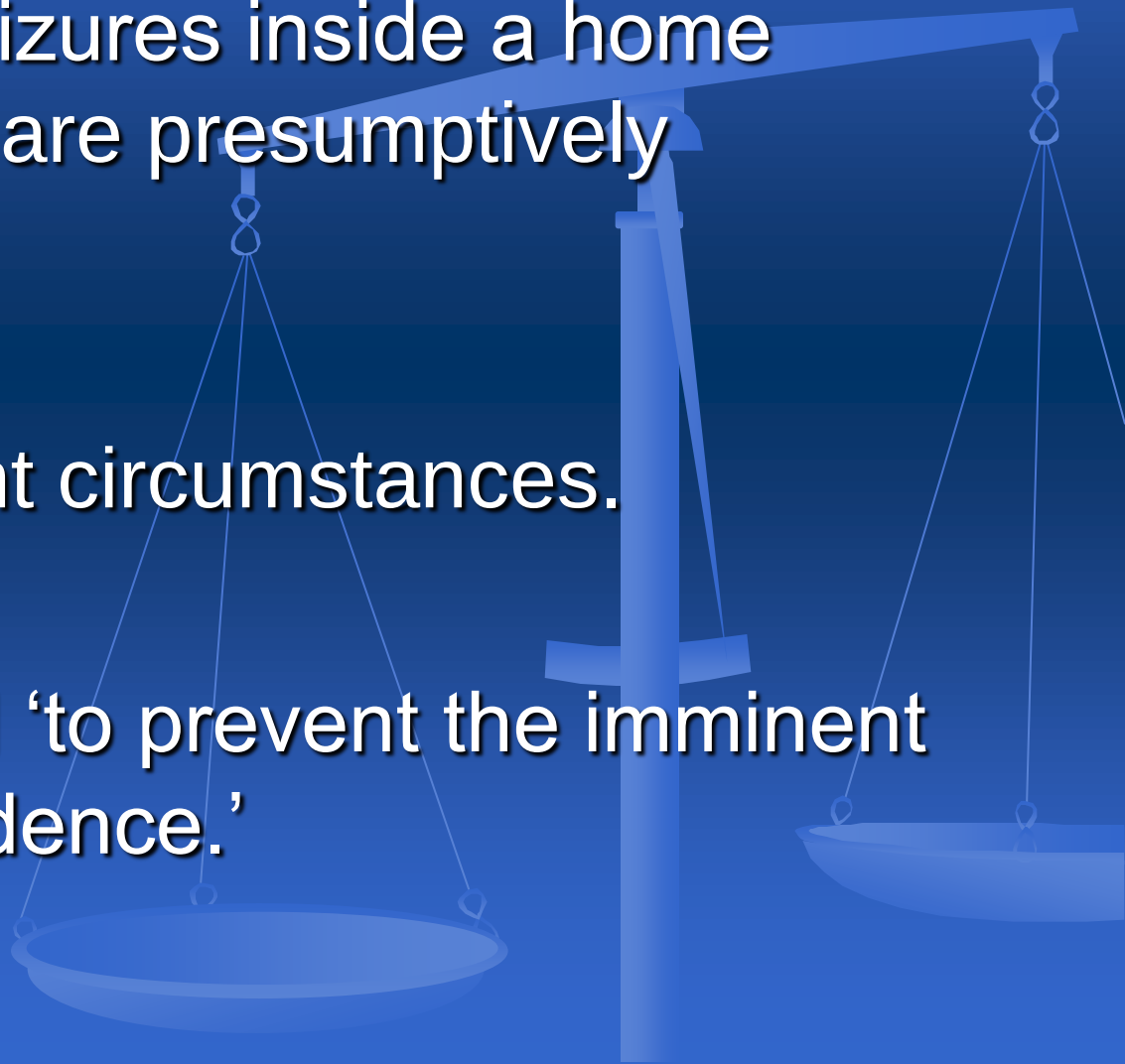
FACTS OF CASE

Kentucky v. King
May 16, 2011 DJDAR XX

"Searches and seizures inside a home without a warrant are presumptively unreasonable."

Exception: Exigent circumstances.

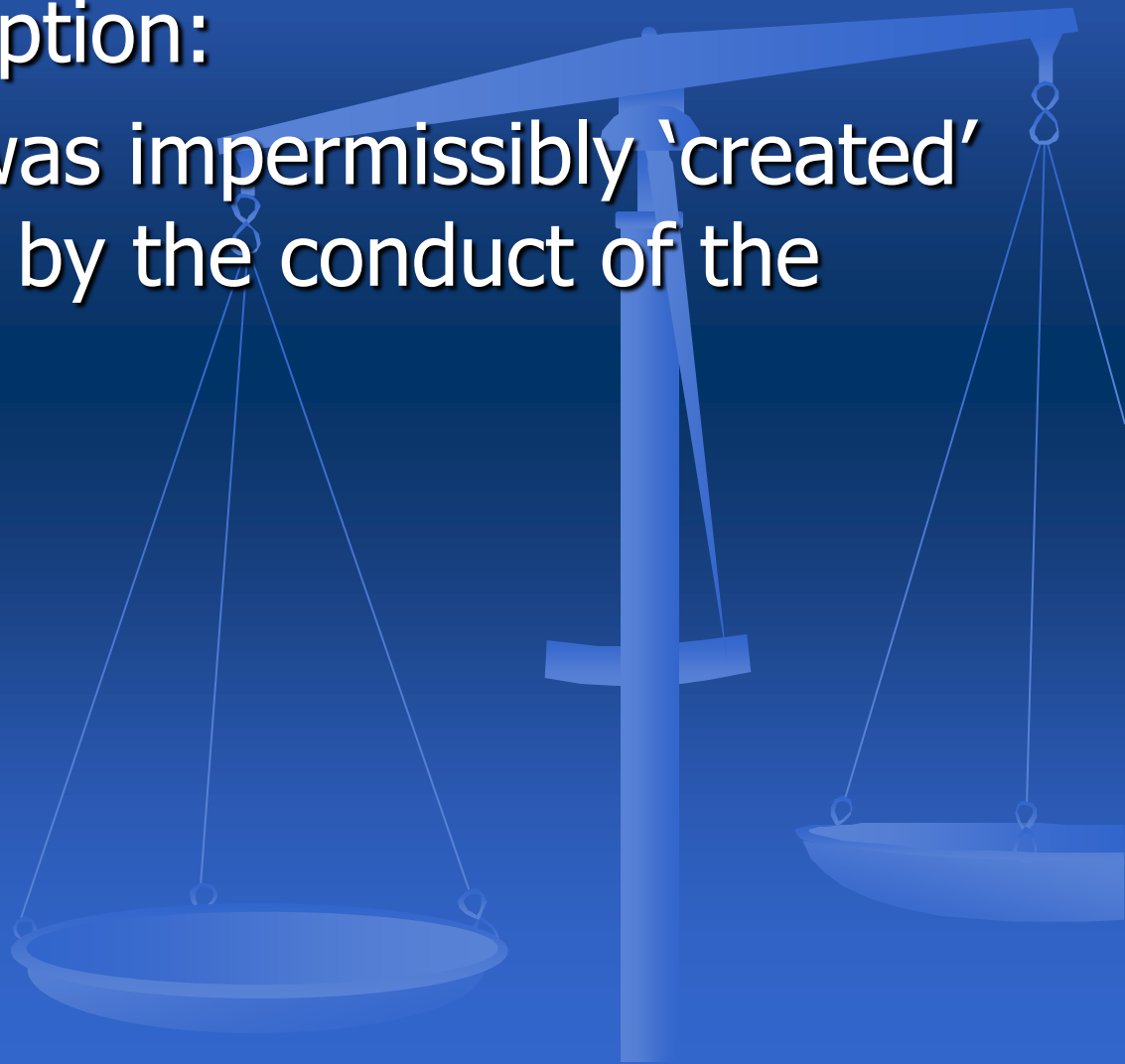
Includes the need 'to prevent the imminent destruction of evidence.'



Kentucky v. King
May 16, 2011 DJDAR XX

Exception to Exception:

Where exigency was impermissibly 'created' or 'manufactured' by the conduct of the police."



Kentucky v. King
May 16, 2011 DJDAR XX

A warrantless entry based on exigent circumstances is reasonable when the police did not create the exigency by engaging or threatening to engage in conduct violating the Fourth Amendment.

Skinner v. Switzer
March 7, 2011 DJDAR XX

FACTS OF CASE

Skinner v. Switzer
March 7, 2011 DJDAR XX

Federal habeas petitions, as opposed to civil rights actions, are the exclusive remedy "for the prisoner who seeks 'immediate or speedier release' from confinement."

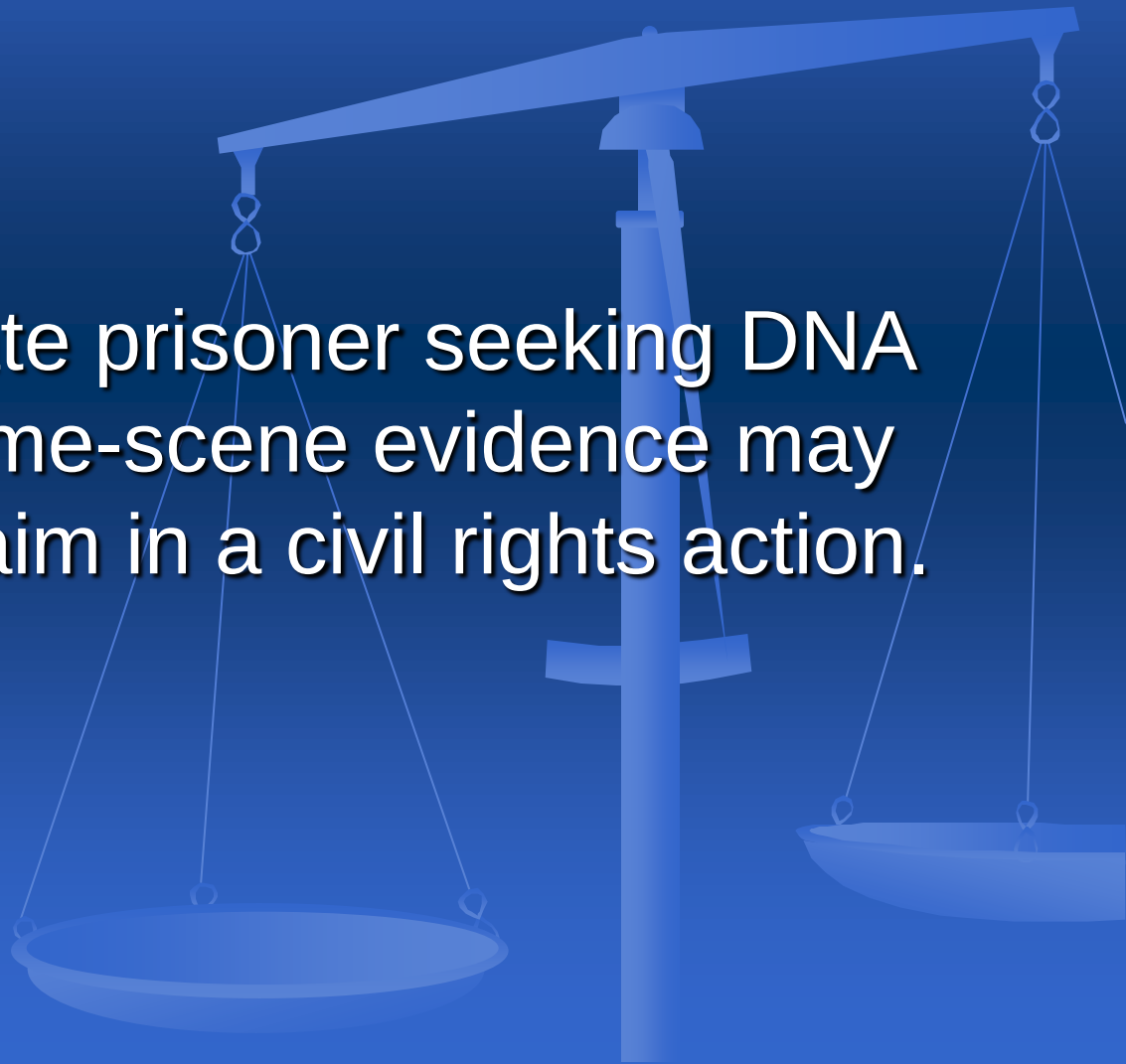
"Where the prisoner's claim would not 'necessarily spell speedier release' however, suit may brought" through a civil rights action."

Skinner v. Switzer
March 7, 2011 DJDAR XX

Here, success in the Plaintiff's "suit for DNA testing would not 'necessarily imply' the invalidity of his conviction. While test results might prove exculpatory, that outcome is hardly inevitable."

The results might prove inconclusive or they might further incriminate the Plaintiff.

Skinner v. Switzer
March 7, 2011 DJDAR XX



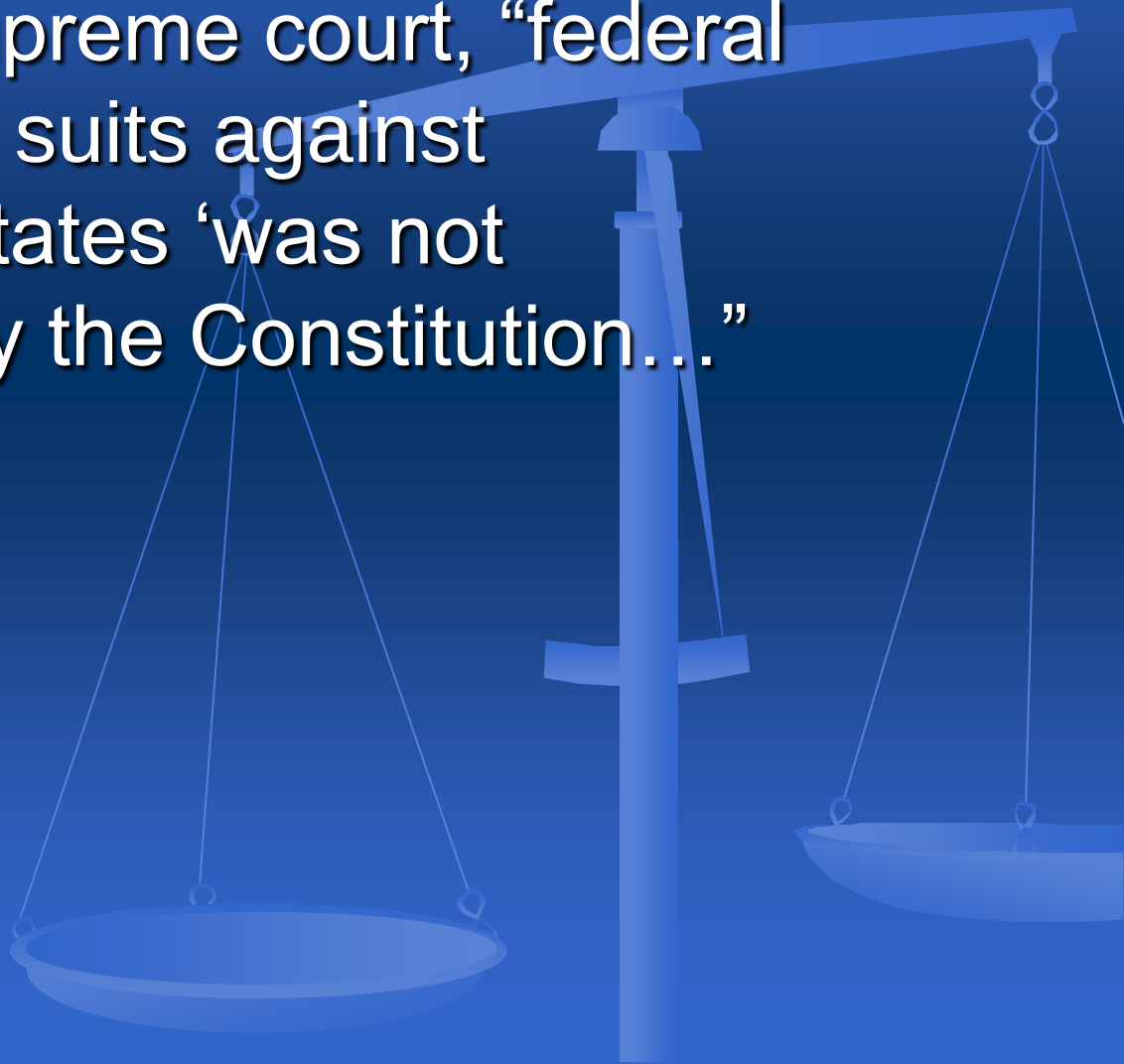
A convicted state prisoner seeking DNA testing of crime-scene evidence may assert that claim in a civil rights action.

Sossaman v. Texas
April 20, 2011 DJDAR XX

FACTS OF CASE

Sossaman v. Texas April 20, 2011 DJDAR XX

- According to Supreme court, “federal jurisdiction over suits against unconsenting States ‘was not contemplated by the Constitution…”



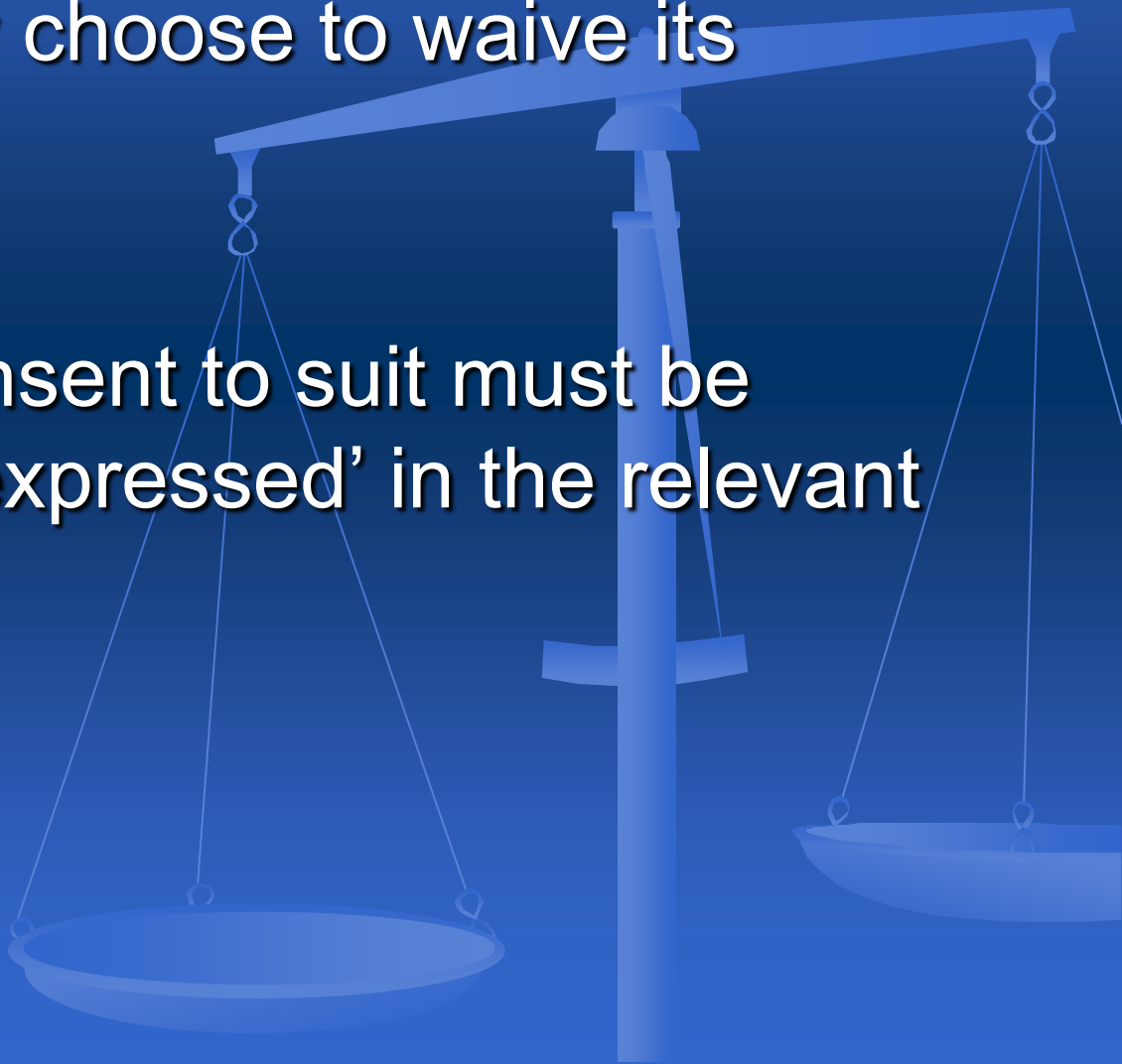
Sossaman v. Texas
April 20, 2011 DJDAR XX

- RLUIPA provides an express private cause of action for "appropriate relief against a government."

- Issue: Does the term "appropriate relief" included private suits for money damages against a State.

Sossaman v. Texas April 20, 2011 DJDAR XX

- "A State … may choose to waive its immunity."
- "The State's consent to suit must be 'unequivocally expressed' in the relevant statute's text."



Sossaman v. Texas April 20, 2011 DJDAR XX

- The term “appropriate relief” in RLUIPA is not so free from ambiguity that the Court may conclude that the States, by receiving federal funds, have unequivocally expressed an intent to waive their immunity.

Sossaman v. Texas
April 20, 2011 DJDAR XX

States, in accepting federal funding, do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA.

J.D.B. v. North Carolina
June 16, 2011 DJDAR XX

FACTS OF CASE

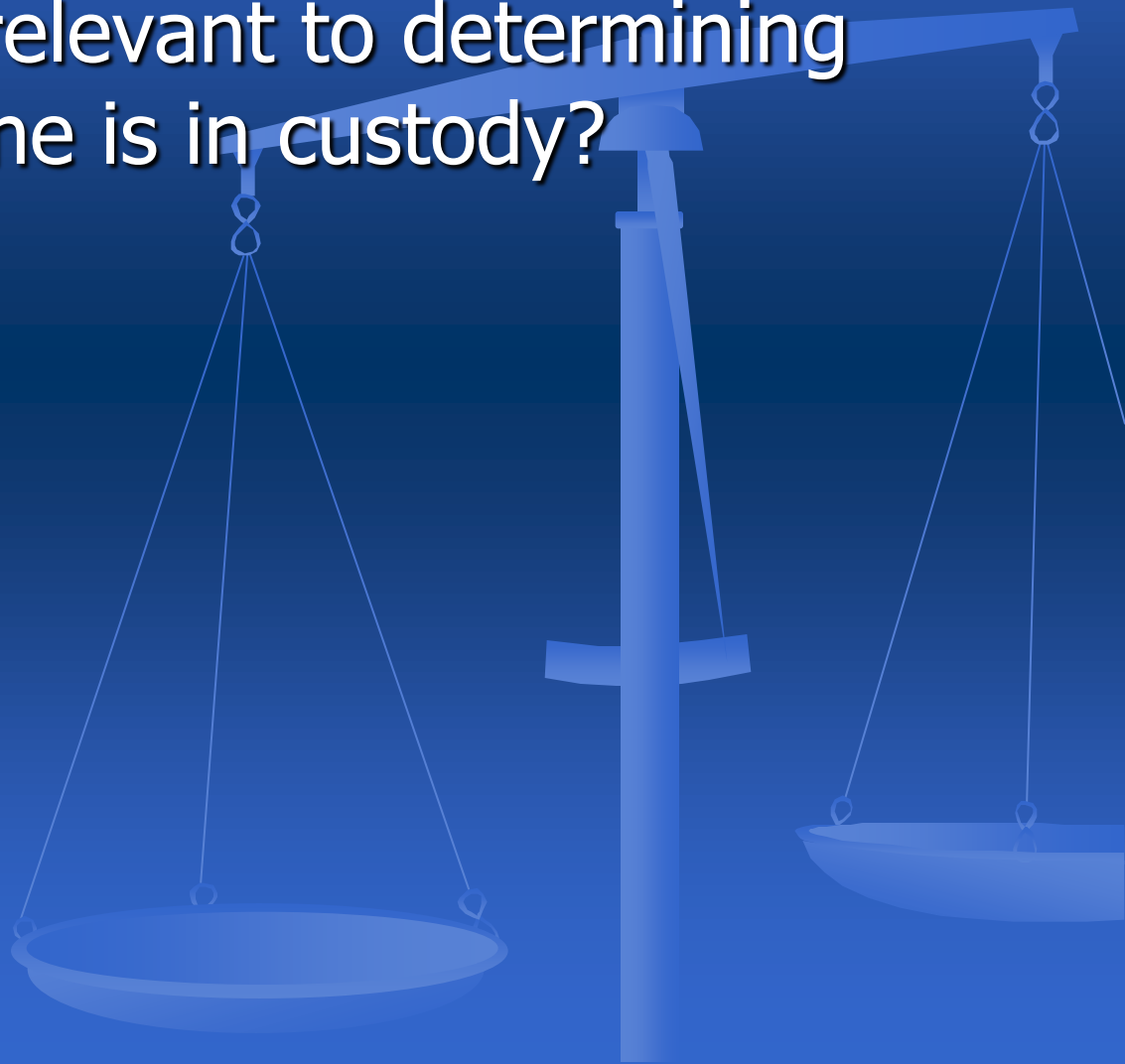
VS.

NO CUSTODY

CUSTODY

J.D.B. v. North Carolina June 16, 2011 DJDAR XX

- Issue: Is age relevant to determining whether someone is in custody?



J.D.B. v. North Carolina June 16, 2011 DJDAR XX

- "Whether a suspect is 'in custody' for Miranda purposes is an objective determination involving two discrete inquires:

- 'First, what were the circumstances surrounding the interrogation; and

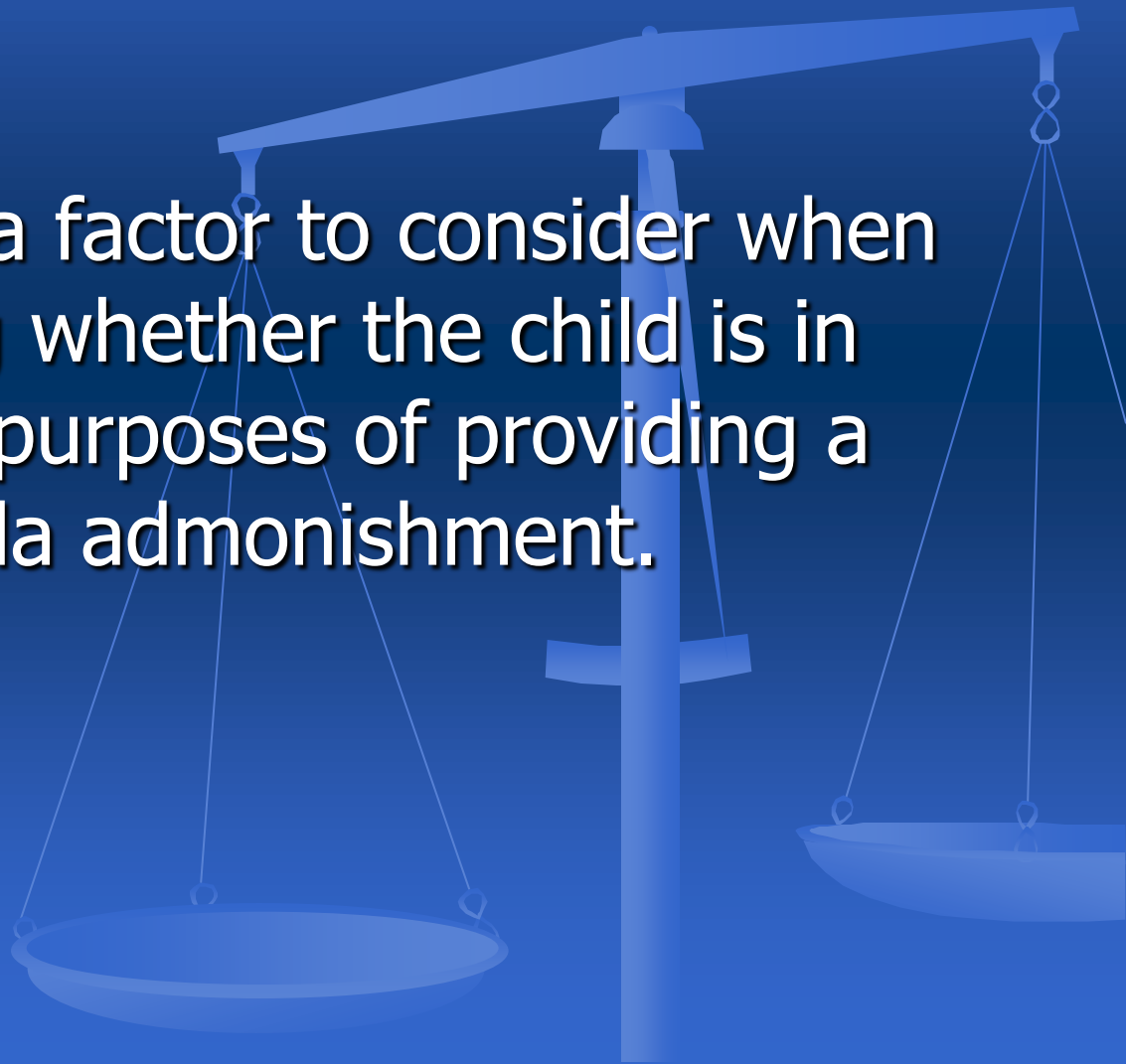
- second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave."

J.D.B. v. North Carolina June 16, 2011 DJDAR XX

- "In some circumstances, a child's age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'"
- "In the specific context of police interrogation, events that 'would leave a man cold and unimpressed can overawe and overwhelm a' teen."

J.D.B. v. North Carolina
June 16, 2011 DJDAR XX

A child's age is a factor to consider when determining whether the child is in custody for purposes of providing a Miranda admonishment.



Davis, United States
June 16, 2011 DJDAR XX

FACTS OF CASE

Davis, United States June 16, 2011 DJDAR XX

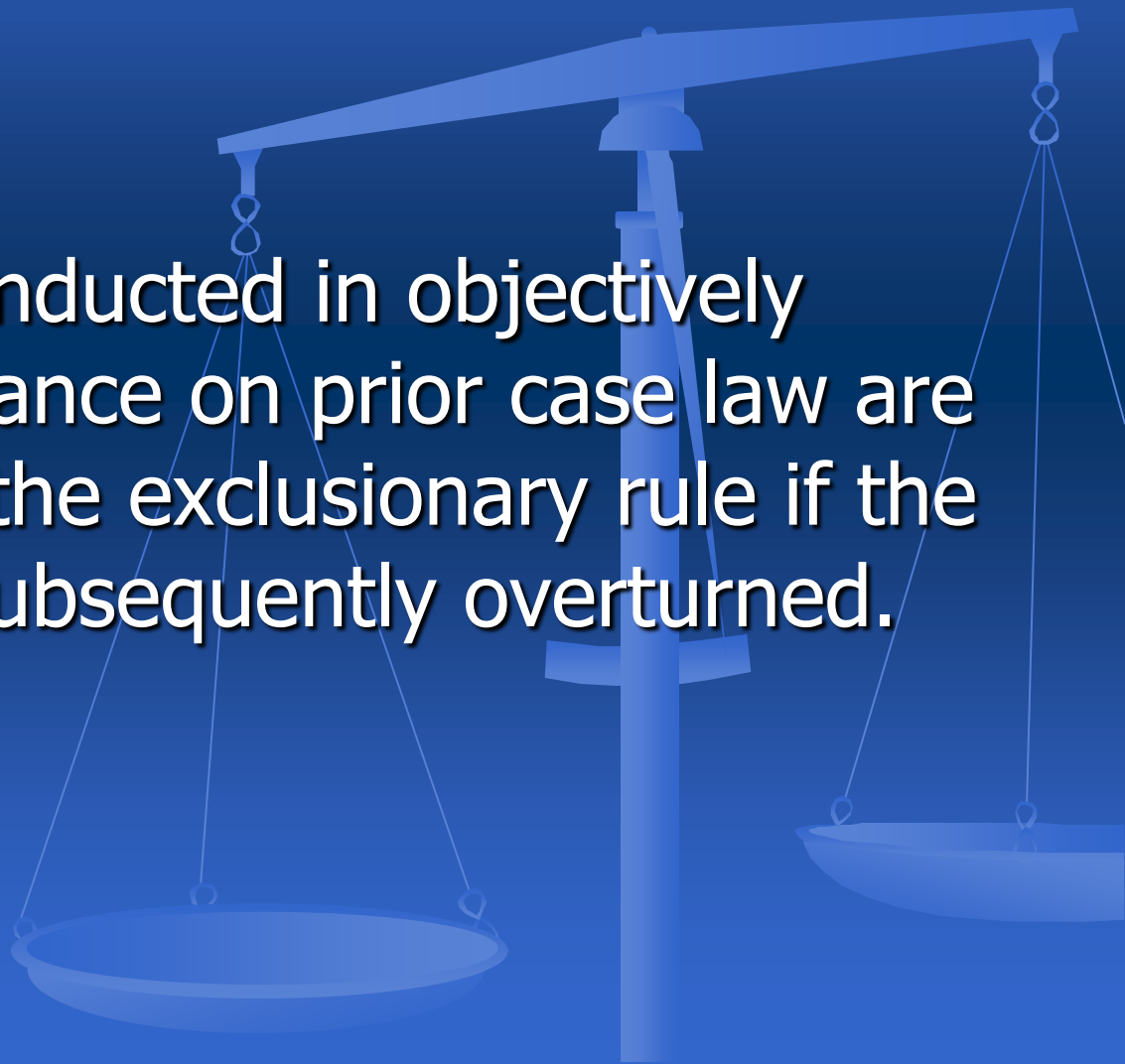
"The exclusionary rule's sole purpose is to deter future Fourth Amendment violations."

"When the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights" exclusion tends to be the appropriate remedy.

Davis, United States June 16, 2011 DJDAR XX

When the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrent value of suppression is diminished, and exclusion cannot ‘pay its way.’

Davis, United States
June 16, 2011 DJDAR XX



Searches conducted in objectively reasonable reliance on prior case law are not subject to the exclusionary rule if the case law is subsequently overturned.

Borough of Duryea v. Guarnieri
June 20, 2011 DJDAR XX

FACTS OF CASE

Borough of Duryea v. Guarnieri June 20, 2011 DJDAR XX

- The First Amendment protects "the right of the people … to petition the Government for a redress of grievances."
- "[T]he First Amendment invests public employees with certain rights, [however;] it does not empower them to 'constitutionalize the employee grievance.'"

Borough of Duryea v. Guarnieri June 20, 2011 DJDAR XX

- Supreme Court has previously held that "a public employee suing his employer under the First Amendment's Speech Clause must show that he spoke as a citizen on a matter of public concern."

- Issue: Does the same rule applied to the First Amendment's Petition Clause.

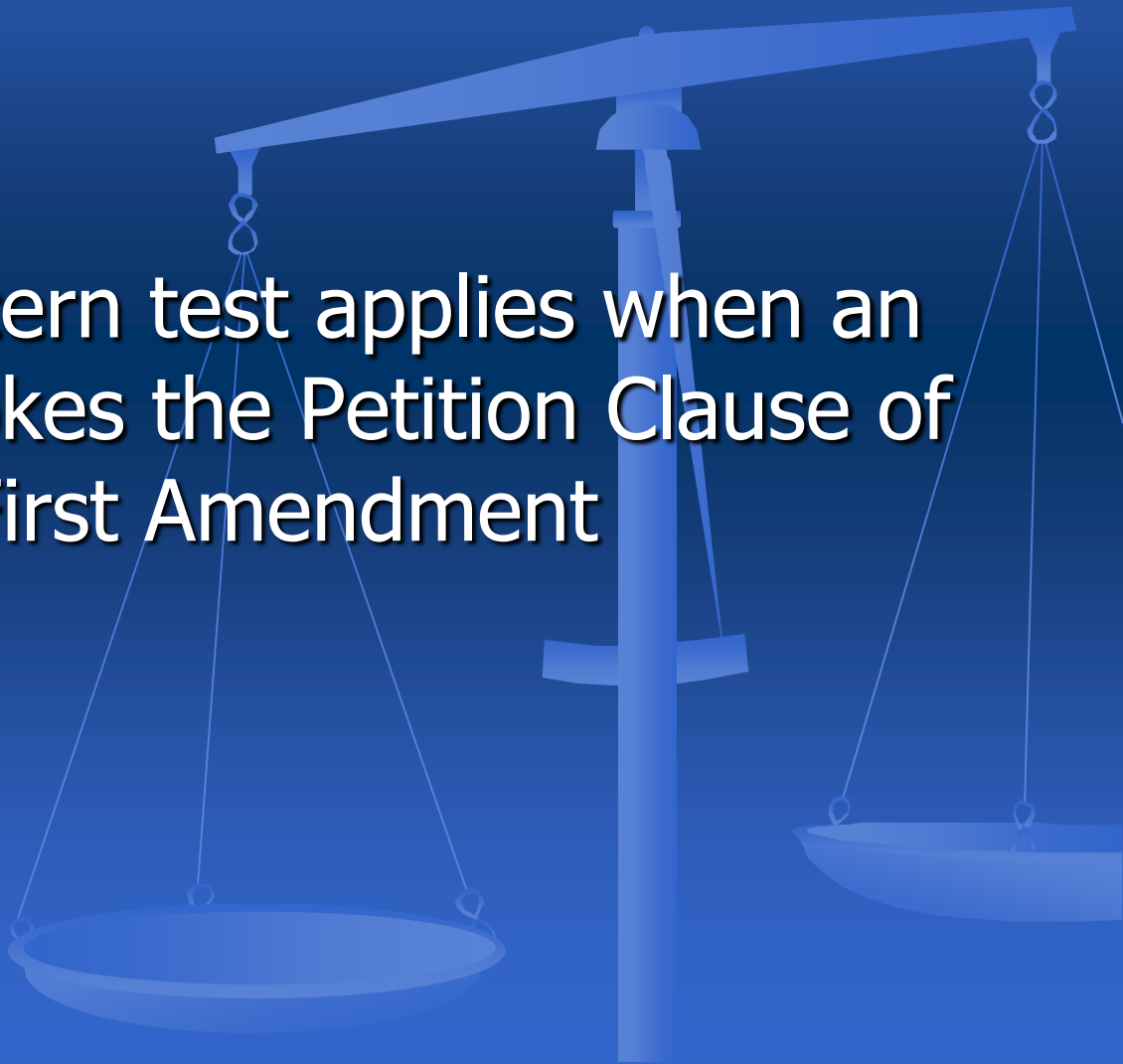
Borough of Duryea v. Guarnieri June 20, 2011 DJDAR XX

- "If a public employee petitions as an employee on a matter of purely private concern, his First Amendment interest must give way, as it does in speech cases."
- "If he petitions as a citizen on a matter of public concern, his First Amendment interest must be balanced against the government's countervailing interest in the effective and efficient management of its internal affairs."

Borough of Duryea v. Guarnieri June 20, 2011 DJDAR XX

- If the balance favors the public employee, the First Amendment claim will be sustained.
- If the balance favors the employer, the employee's First Amendment claim will fail even though the petition is on a matter of public concern.
- Whether a petition relates to a matter of public concern will depend on its "content, form, and context …, as revealed by the whole record."

Borough of Duryea v. Guarnieri
June 20, 2011 DJDAR XX



The public concern test applies when an employee invokes the Petition Clause of the First Amendment

Bullcoming v. New Mexico June 23, 2011 DJDAR XX

FACTS OF CASE

Bullcoming v. New Mexico June 23, 2011 DJDAR XX

- "The Sixth Amendment's Confrontation Clause confers upon the accused '[i]n all criminal prosecutions, … the right … to be confronted with the witnesses against him.'"
- The Confrontation Clause permits admission of "[t]estimonial statements of witnesses absent from trial…only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross examine."

Bullcoming v. New Mexico June 23, 2011 DJDAR XX

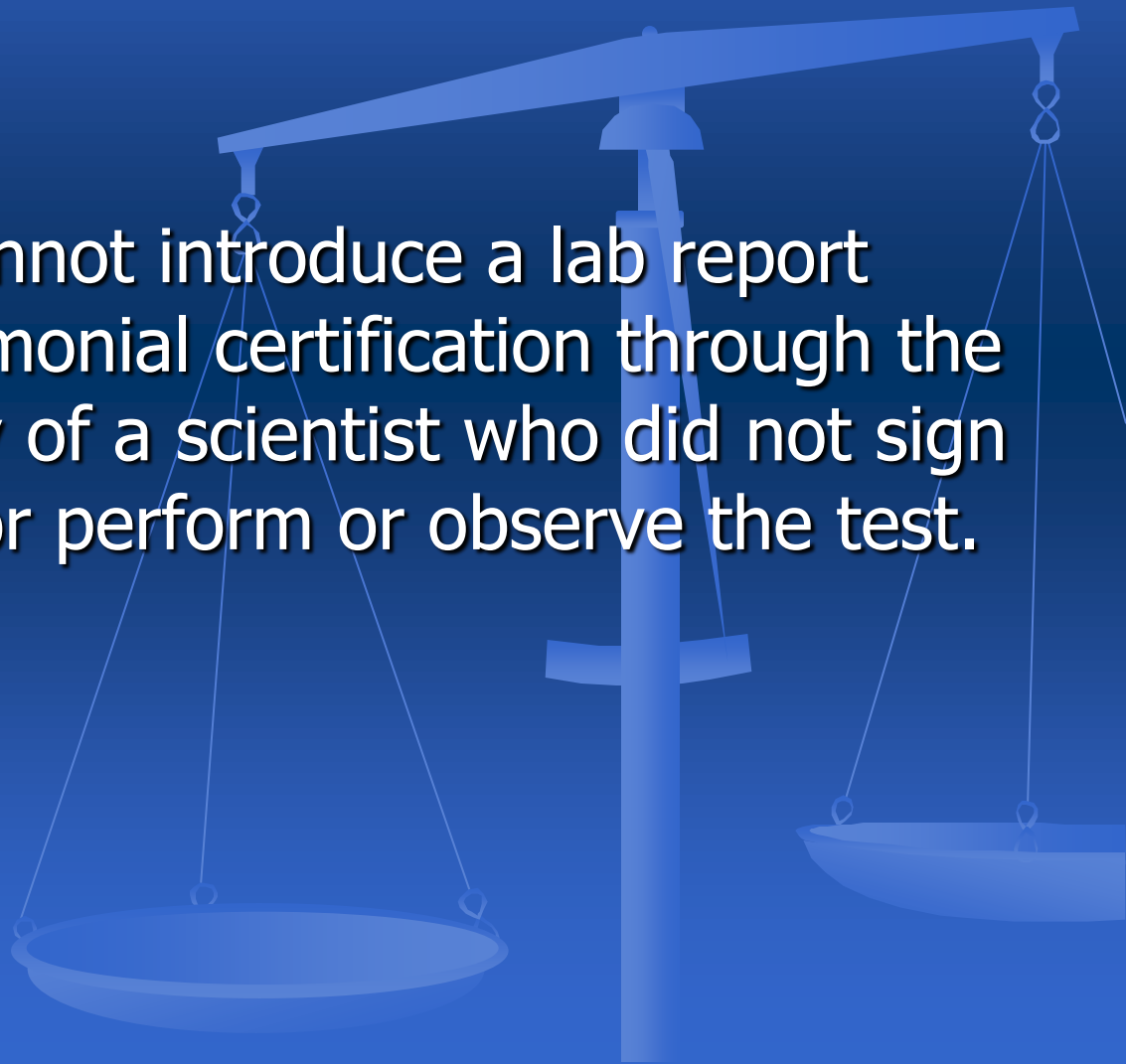
- A document created solely for an 'evidentiary purpose' made in aid of a police investigation is testimonial.

- The Supreme Court has said that an analyst's certification prepared in connection with a criminal investigation or prosecution is 'testimonial,' and therefore falls within the Confrontation Clause.

Bullcoming v. New Mexico June 23, 2011 DJDAR XX

- Here, the State never asserted that the analyst who signed the certification was unavailable, nor did the Defendant have an opportunity to cross-examine the analyst.
- Analysts who write reports that the prosecution introduce must be made available for confrontation
- Here, when the State elected to introduce the analyst's certification, the analyst became a witness that the Defendant had the right to confront.

Bullcoming v. New Mexico June 23, 2011 DJDAR XX



A prosecutor cannot introduce a lab report containing a testimonial certification through the in-court testimony of a scientist who did not sign the certification or perform or observe the test.

Sneek Peak

- Cases on tap for 2011 Term:
- United States v. Jones: Whether police need a warrant to use advanced technology to track suspects.
- Florence v. Board of Freeholders: Whether jails may strip-search people arrested for even the most minor offenses.
- Missouri v. Frye: Whether defendants have a right to competent lawyers to help them decide whether to plead guilty.
- Perry v. New Hampshire: When eyewitness evidence may be used at trial.
- Smith v. Cain: What should happen when prosecutors withhold evidence.