

# RECENT FEDERAL CASES OF INTEREST TO CITIES

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## Animal Quiz

- The following short quiz consists of 4 questions and will tell you whether you are qualified to be a professional.
- The questions are NOT that difficult.

## QUESTION NO. 1

- 1. How do you put a giraffe into a refrigerator?

## ANSWER

- The correct answer is:
- Open the refrigerator, put in the giraffe, and close the door.
- This question tests whether you tend to do simple things in an overly complicated way.

## QUESTION NO. 2

- 2. How do you put an elephant into a refrigerator?

## ANSWER

- Did you say, Open the refrigerator, put in the elephant, and close the refrigerator? (Wrong Answer)
- Correct Answer: Open the refrigerator, take out the giraffe, put in the elephant and close the door.
- This tests your ability to think through the repercussions of your previous actions.

## QUESTION NO. 3

- 3. The King of the Forest is hosting an animal conference. All the animals attend except one.
- Which animal does not attend?

## ANSWER

- Correct Answer: The Elephant. The elephant is in the refrigerator. You just put him in there.
- This tests your memory. OK, even if you did not answer the first three questions correctly, you still have one more chance to show your true abilities.

## QUESTION NO. 4

- 4. There is a river you must cross but it is inhabited by crocodiles.
- How do you manage it?

## ANSWER

- Correct Answer: You swim across. All the crocodiles are attending the Animal Meeting.
- This tests whether you learn quickly from your mistakes.

## SUMMARY

- According to Anderson Consulting Worldwide, around 90% of the professionals they tested got all questions wrong.
- But many preschoolers got several correct answers.
- Anderson Consulting says this conclusively disproves the theory that most professionals have the brains of a four year old.

### *Sole v. Wyner,* 127 S.Ct. 2188 (2007)

- Artwork at state beach
- 42 USC 1983 First Amendment
- Injunctive relief
- Must be prevailing party at end

***Davis v. McKinney, M.D.,*  
518 F.3d 304 (5th Cir. 2008)**

- Qualified Immunity
- 1<sup>st</sup> Amendment Retaliation
- Porn on computers
- Did not get the job she applied for
- *Garcetti* analysis
- "mixed speech" test

***Fry v. Pliler, 127 S.Ct. 2321*  
(2007)**

- Convicted of 2 murders
- Claimed exclusion of evidence a due process violation
- Discusses appropriate standard of review when constitutional error in state court trial is first recognized by a federal court
- "substantial and injurious effect or influence"

*Jacob Winkelman v. Parma City School District*, 127 S. Ct. 1994 (2007)

- "IDEA"
- 6<sup>th</sup> Circuit refused to let parents go forward without attorney
- US Supreme Court disagreed saying parents had legal interest as well

***Rigley v. FEMA*, 512 F.3d 727 (5th Cir. 2008)**

- Katrina and Rita "continued rent assistance payments"
- Plaintiffs challenged denial of payments
- No property interest in continued rental payments

*Burdick v. Quarterman*, 504 F.3d 545 (5th Cir. 2007)

- Due Process claim
- Trial court did not admonish Defendant's as to range of punishment
- Claimed ineffective counsel as well
- Since advised by own attorneys- voluntary plea

*Baranowski v. Hart*, 486 F.3d 112 (5th Cir. 2007)

- Prisoner claims violation of 1<sup>st</sup>, 14<sup>th</sup> and Religious Land Use and Institutionalized Persons Act
- Claims failure to treat Jewish faith equally
- Must be "reasonably related to penalogical interests"
- Must afford reasonable opportunity

***Marco Outdoor Advertising, Inc. v. Regional Transit Authority*, 489 F.3d 669 (5th Cir. 2007)**

- Losing bidder sues alleging breach of due process
- Issue was whether bid process created any property right in receiving contract to support due process claim

***Reliable Consultants, Inc. v. Earle*, 517 F.3d 738 (5th Cir. 2008)**

- Challenge of constitutionality of statute making it crime to promote or sell sexual devices
- Dec action claiming violation of liberty rights (14<sup>th</sup> Amendment) and free speech (1<sup>st</sup> Amendment)
- 5<sup>th</sup> Circuit found no governmental interest for statute

*Barrow v. Greenville Independent School Dist.*, 480 F.3d 377 (5th Cir. 2007)

- Teacher applied for assistant principal position
- Not considered for job because daughter in private school
- Title VII disparate impact claim
- Was superintendent policy maker

*Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 127 S.Ct. 2162 (2007)

- Goodyear tire employee 19 years when retired
- Claimed sexual discrimination
- 180 days still applies

*Alvarado v. Texas Rangers,*  
492 F.3d 605 (5th Cir. 2007)

- Female trooper
- Requested five times for “promotion” to sergeant
- Title VII
- Promotion or transfer
- Objective inquiry

*Federal Express Corp. v. Holowecki,*  
128 S.Ct. 1147 (2008)

- ADEA requirement to file timely charge
- Worker file intake questionnaire with detailed affidavit
- Issue was whether this constituted a charge
- Reasonably construed to be because had all information

***Lauderdale v. TDCJ*, 512  
F.3d 157 (5th Cir. 2007)**

- Female sued claiming sexual harassment and constructive discharge
- Prior to discharge able to perform all functions and no adverse actions taken against her
- Duty to mitigate damages
- Immunity never available in sexual harassment claims

***Rockwell Int'l Corp. v. U.S.*,  
127 S.Ct. 1397 (2007)**

- Qui tam relator
- False claims act
- Original source
- Test: whether provided information that jury eventually used to find fraudulent claims

*Morgan v. Potter*, 489 F.3d  
195 (5th Cir. 2007)

- US Postal worker
- Filed discrimination claim
- 90 days to file from date denial letter received
- Presumption of receipt of 5 days after denial letter mailed

*Jenkins v. Cleco Power, LLC*,  
487 F.3d 309 (5th Cir. 2007)

- Job as call center specialist
- Failed to establish he was disabled
- Attempted to accommodate

*Greenwell v. State Farm Mutual  
Automobile Insurance Co.*, 486 F.3d  
840 (5th Cir. 2007)

- Excessive absences from work
- Warned
- Missed due to son's illness
- Did not file under FMLA
- Didn't give notice as soon as practicable under unforeseen absences

*Morse v. Frederick*, 127 S.Ct.  
2618

- Senior in high school
- Banner "Bong Hits 4 Jesus"
- First Amendment case
- School does not have to tolerate
- Court's first ruling on student speech in almost 20 years

***Brown v. Miller*, 519 F.3d  
231 (5th Cir. 2008)**

- Due process claim against lab tech after being released –DNA cleared
- Created a misleading and scientifically inaccurate report
- Reasonable lab tech would have understood actions violated rights
- Law clear at time
- Denied qualified immunity defense

***Jordan v. Ector County*, 516  
F.3d 290 (5th Cir. 2008)**

- District clerk employee ran and lost election
- Demoted
- Judge's desk- fired
- 1<sup>st</sup> Amendment retaliation claim
- Elements to prevail
- Employee is still protected against distant retaliation

***U.S. v. Mata, 517 F.3d 279  
(2008)***

- Protective sweep exception to 4<sup>th</sup> Amendment which prohibits warrantless searches
- Truck full of marijuana
- Warrant never arrived
- Exigent circumstances allowed officers to enter
- Consent was voluntary

***Ali v. Federal Bureau of Prisons,  
128 S.Ct. 831 (2008)***

- Transferred to new cell and items disappeared
- Detention of goods exception
- Immunity for “any” officer

***Gonzalez v. United States*, \_\_\_\_  
S.Ct. \_\_\_\_, 2008 WL 2001954  
(May 12, 2008)**

- Consent to magistrate judge by Petitioner's counsel
- Petitioner objected on appeal that he did not give consent
- Court said consent by counsel is sufficient

***United States v. Atlantic  
Research Corp.*, 127 S.Ct. 2331  
(2007)**

- Soil and groundwater contaminated
- Voluntarily cleaned site up pursuant to CERCLA
- Issue in case was whether or not they could get reimbursement for cost if only voluntary

*Parents Involved in Community Schools v. Seattle School District No. 1*, 127 S.Ct. 2738 (2007)

- Assign school transfer requests
- Classified children as either "white" or "nonwhite"
- Classified as black or "other"
- Alternate methods not considered
- Not narrowly tailored

*Bowles v. Russell*, 127 S.Ct. 2360 (2007)

- Convicted of murder
- Court never served Defendant or attorney with denial of Motion for New Trial
- Court reopened case for appeal under Federal Rule 4(a)(6)
- Rule only allows 14 days to file, Court gave 17 days – filed on 16<sup>th</sup> day
- Appeal denied as untimely - jurisdictional

***Panetti v. Quarterman,***  
**127 S.Ct. 2842 (2007)**

- Claimed mentally incompetent for first time 8 years after conviction while on death row
- 8<sup>th</sup> Amendment claim
- Hearing without own psychiatric evidence is not enough

***Uttecht v. Brown,*** 127  
**S.Ct. 2218 (2007)**

- Juror Z confused over instructions given in jury selection
- Claims made under 6<sup>th</sup> and 14<sup>th</sup> Amendments for being excused because can not be impartial
- Deference given to trial court in these type of situations

*Brendlin v. California*, 127  
S.Ct. 2400 (2007)

- Passenger
- Parolee at large
- Search vehicle
- Temporary detention of car equals temporary detention of all passengers
- All can challenge the legality of the stop

*Los Angeles County v. Rettelle*,  
127 S.Ct. 1989 (2007)

- Search warrant
- In bed naked
- Search warrant looking for 3 black individuals – these 2 were white
- 2 minutes later police apologized and left
- Officers acted reasonably

*Erickson v. Pardus*, 127 S.Ct. 2197 (2007)

- Fair notice of claims
- Federal Rule 8(a)(2) "short and plain statement of the claim showing the pleader is entitled to relief"

*Longoria v. Dretke*, 507 F.3d 898 (5th Cir. 2007)

- Mexican Mafia
- Haircut
- RLUIPA claim
- "substantial burden" on exercise of religion
- Did not meet the order and safety requirement

*DeLeon v. City of Corpus Christi*,  
488 F.3d 649 (5th Cir. 2007)

- Pled guilty to aggravated assault
- Brought civil rights action to recover
- *Heck* Doctrine
- Deferred adjudication was functional equivalent of a judgment of conviction

*U.S. v. Bruno*, 487 F.3d 304  
(5th Cir. 2007)

- Knock and announce case
- Filed Motion to Suppress
- Suppression is not proper remedy

*U.S. v. Martinez*, 486 F.3d 855  
(5th Cir. 2007)

- *Terry* Stop case
- Tip on Defendant
- Tricked out of house and was arrested
- Mistrust of anonymous tips...

*United States v. Bolden*, 508  
F.3d 204 (5th Cir. 2007)

- Motion to suppress evidence
- *Terry* stop
- Gunshots around corner
- "reasonable belief"
- key: short amount of time elapsed

*Freeman v. Gore*, 483 F.3d  
404 (5th Cir. 2007)

- Unlawful arrest and excessive force claim
- Attempted to serve felony search warrant – not home
- Mom was at home and arrested
- Warrant didn't allow officers to do what they did

*Meadours v. Ermel*, 483 F.3d  
417 (5th Cir. 2007)

- Plaintiff shot and killed
- 23 shots were fired with 14 strikes
- Court denied qualified immunity on summary judgment
- Actions of individuals should be examined individually and not collectively

*Alice L. v. Dusek*, 492 F.3d 563  
(5th Cir. 2007)

- Title IX claim
- Denied motion to dismiss on qualified immunity grounds
- Moved to stay all discovery during appeal
- Discovery can proceed on unrelated claims

*Dearmore v. City of Garland*,  
519 F.3d 517 (5th Cir. 2008)

- Property owner challenged the constitutionality City ordinance
- Who is prevailing party under Sec. 1988
- Case of first impression
- 3 prong test to be met for answer

## Other recent cases decided after paper turned in:

- In Re: Volkswagen
- CBOCS West Inc. v Humphries
- Gomez-Perez v. Potter