1. **Hiibel v. Sixth Judicial District Court of Nevada (2003)**

**Overview**: <https://www.youtube.com/watch?v=APynGWWqD8Y>

This Landmark Supreme Court Case focuses on the rights of the accused case Hiibel v. Sixth Judicial District Court of Nevada (2003). Larry Hiibel looked up from where he was sitting on the side of Grass Valley Road and saw the police officer approaching. The officer parked his car and walked along the gravel shoulder towards him. Hiibel was sitting next to his truck, and a young woman was sitting inside it. The Sheriff's Department had received a call from a witness reporting that a man had assaulted a woman in a red and silver GMC truck on Grass Valley Road. Hiibel’s truck fit that description. There were also skid marks in the gravel which made it appear the truck had stopped suddenly. The officer told Hiibel that someone had reported a fight between a man and a woman, and asked Hiibel if he had any identification on him. Hiibel refused to show ID or give his name, saying he had done nothing wrong. He began to taunt the police officer. After asking for identification eleven times, the officer warned Hiibel that he would be arrested if he refused to identify himself. Hiibel continued to refuse, and was arrested. He was charged with violating Nevada’s “stop and identify” statute. This law gave police the power to require a suspect to give his name. Hiibel was fined $250. Hiibel argued that his arrest and the Nevada law were unconstitutional violations of the Fourth and Fifth Amendments. The Fourth Amendment protects individuals’ right to be “secure in their persons, papers and effects against unreasonable searches,” and the Fifth Amendment affirms that no one can be compelled (forced) to be a witness against himself. His case eventually went to the Supreme Court.

**Before Video Questions**:

1. What information did police ask Larry Hiibel, and why was he arrested?

2. On what grounds did Hiibel challenge his conviction?

3. In your opinion, did the officer have probable cause to approach Hiibel and ask for his identification? Use textual evidence to support your answer.

**Refusing to Give Name a Crime**

Supreme Court Upholds Nevada Law Requiring Identification

*By Charles Lane,* Washington Post Staff Writer

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The Supreme Court yesterday upheld a state law that makes it a crime to refuse to tell the police one's name when stopped for suspicious behavior, a ruling that strengthens the ability of law enforcement officers to detain citizens even where they lack enough evidence for a full arrest. By a vote of 5 to 4, the court ruled that Larry Dudley Hiibel's constitutional rights to be free of unreasonable arrest and to remain silent were not violated when Deputy Lee Dove arrested him for refusing to give his name after Dove stopped Hiibel and questioned him near Winnemucca, Nev., on May 21, 2000. Hiibel was convicted of violating Nevada's "stop and identify" law and fined $250. Hiibel and his supporters, such as the American Civil Liberties Union, had urged the court to strike down the Nevada statute, arguing that it effectively criminalizes a citizen's silence. Advocates for the homeless had argued that laws such as Nevada's could be used to harass homeless people, who are often mentally ill or lack identification cards.

But the author of the majority opinion, Justice Anthony M. Kennedy, made it clear that he regarded the disclosure of one's name, the only piece of information the Nevada law specifically requires, as a modest intrusion on privacy. And whatever privacy interest or concern about self-incrimination Hiibel might have had was outweighed by the state's interests in protecting police officers and investigating crime, Kennedy wrote. *"As best we can tell, [Hiibel] refused to identify himself only because he thought his name was none of the officer's business,"* Kennedy wrote. *"Even today, [Hiibel] does not explain how the disclosure of his name could have been used against him in a criminal case."* Kennedy was joined by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor, Antonin Scalia and Clarence Thomas. Eighteen other states have laws like Nevada's, but not all of them provide for criminal penalties.

**Hiibel v. Sixth Judicial District Court of Nevada (2003)**

Nevada's law says that police may detain anyone "under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime," and that "any person so detained shall identify himself, but may not be compelled to answer any other inquiry." It was intended to codify the Supreme Court's 1968 decision in *Terry v. Ohio*. That case empowered police to briefly detain suspicious subjects -- such as people who seem to be "casing" a bank in preparation for a robbery -- question them and search them for weapons. The court created "Terry stops" to cover situations in which the police have "reasonable suspicion" of criminal conduct but not enough information for "probable cause," the constitutional standard for making an arrest. Until yesterday, the court had never clearly said what police may require of a citizen in a Terry stop -- although in a famous concurrence to *Terry*, Justice Byron R. White had said there is no obligation to respond to police questions.

Hiibel, a rancher who sports a Stetson hat, made his case to the public on a Web site that includes a videotape of his encounter with Dove. The film, shot by a camera mounted on Dove's car, shows a possibly inebriated Hiibel refusing 11 requests for his name before being handcuffed and arrested.

Dove, responding to a tip about a man punching a woman in a pickup truck, had come upon Hiibel standing next to his pickup on the side of a road. His teenage daughter was in the cab. Hiibel had argued that the Nevada law turns *Terry* into a license to arrest people just for seeming suspicious. But Kennedy said that would not happen because "an officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the [Terry] stop." As for the risk of self-incrimination from disclosing one's name to police, Kennedy said that would happen *"only in unusual circumstances."* But Justice John Paul Stevens, in a dissenting opinion, called this assumption *"quite wrong."* Hiibel's name could have helped police link him to criminal activity, Stevens noted, so he *"acted well within his rights when he opted to stand mute."* Justice Stephen G. Breyer, joined by Justices David H. Souter and Ruth Bader Ginsburg, also dissented, arguing that the court should have endorsed the position outlined in White's *Terry* concurrence.

**After Video Questions**:

4. How did the Supreme Court rule in this case?

5. What reason(s) did Justice Anthony M. Kennedy state for his ruling?

6. Dissenting in the case, Justice Stevens argued, *“The [majority] reasons that we should not assume that the disclosure of petitioner’s name would be used to incriminate him…But why else would an officer ask for it?... A name can provide the key to a broad array of information about the person, particularly in the hands of a police officer with access to a range of law enforcement databases.”* Explain why you either agree or disagree with his assessment of the case?

1. **Morse v. Frederick**

**Overview**: <https://www.youtube.com/watch?v=n_LsGoDWC0o>

Joseph Frederick, a senior at Juneau-Douglas High School, unfurled a banner saying "Bong Hits 4 Jesus" during the Olympic Torch Relay through Juneau, Alaska on January 24, 2002. Frederick's attendance at the event was part of a school-supervised activity. The school's principal, Deborah Morse, told Frederick to put away the banner, as she was concerned it could be interpreted as advocating illegal drug activity. After Frederick refused to comply, she took the banner from him. Frederick originally was suspended from school for 10 days for violating school policy, which forbids advocating the use of illegal drugs.

**Before Video Questions:**

1. What did Joseph do to irritate his principal, and what was the consequence?
2. Schools have strict governing policies (dress code, attendance rules, handbook guidelines, etc.), but are they enforceable without violating 1st amendment rights?

 The majority of the Supreme Court acknowledged that the Constitution affords lesser protections to certain types of student speech at school or school-supervised events. Finding that the message Frederick displayed was by his own admission not political in nature, as was the case in Tinker v. Des Moines, the Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use. As such, the state had an "important" if not "compelling" interest in prohibiting/punishing student speech that reasonably could be viewed as promoting illegal drug use. The Court, therefore, held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without fear of violating a student's First Amendment rights.

**Justice Opinions:**

Justice Clarence Thomas concurred with the majority. Citing various scholarly sources on the history of public education, Justice Thomas argued that the First Amendment was never meant to protect student speech in public schools. Justices Alito and Kennedy also concurred with the majority, but were careful to note that the majority's decision was at the outer parameters of constitutionally protected behavior.

Justice Stephen Breyer argued that the majority did not need to decide this case on its merits, but could have decided it on the basis of the doctrine of "qualified immunity." Qualified immunity prevents government officials, such as a school principal, from being sued for actions taken in their official capacities. This protection is in place as long as the legality of the conduct is open to debate. Since Justice Breyer argued that it was not clear whether Frederick's speech was constitutionally protected, Morse was entitled to qualified immunity. This decision would demonstrate judicial restraint, i.e., not having a court decide a larger issue if deciding a smaller issue could dispose of the case.

Justice John Paul Stevens took the position that the school's interest in protecting students from speech that can be reasonably regarded as promoting drug use does not justify Frederick's punishment for his attempt to make an ambiguous statement simply because it refers to drugs. His dissent took issue with the majority's justification that the speech could "reasonably be perceived as promoting drug use" because the constitutionality of speech should not depend on the perceptions of third parties.

**After Video Questions**

1. This case resulted in several justices interpreting the case differently. Why is it important for a justice to provide a concurring or dissenting opinion when a unanimous decision is not possible?
2. What is “qualified immunity”?
3. Identify which justice you agree with most in this case, and provide a reason.

Riley v. California & *United States v. Wurie*

**Overview**: <https://www.youtube.com/watch?v=b3W4BW5yaxY>

One appeal concerns a Boston area drug dealer sentenced to 22 years after being convicted of distributing crack cocaine, for being a felon in possession of a firearm and other charges following his 2007 arrest.

When suspect Brima Wurie was arrested after the police suspected he was selling drugs from his vehicle, the authorities took him to the station and reviewed calling logs on his “flip” phone. They did so, according to court records, after noticing that the phone was repeatedly receiving calls from “my house” as displayed on its external screen. The authorities opened the phone and saw on its wallpaper a picture of a woman with a baby. The police traced the “my house” phone number to a different residence than the one to where Wurie initially claimed he was he living. The authorities suspected that, at that address, was a “hidden mother cache” of crack cocaine.

On the mailbox, they found Wurie’s name and saw through the apartment window a woman looking like the one on the flip phone’s wallpaper. After getting a search warrant, they discovered crack cocaine, marijuana, cash, a firearm and ammunition, according to court records. The 1st U.S. Circuit Court of Appeals threw out evidence obtained from the search, which resulted in two of the three charges against Wurie being tossed. The court declared a “bright-line rule” and said “the search-incident-to-arrest exception does not authorize the warrantless search of data on a cell phone seized from an arrestee’s person.”

The other appeal the justices said today they would review concerns a San Diego college student, David Riley, who was pulled over while driving a Lexus in 2009 for allegedly having expired tags. Local police at the scene learned Riley was driving with a suspended license, and impounded the vehicle. San Diego Police policy was to document the contents inside seized vehicles. They discovered firearms under the hood, and arrested him for allegedly carrying concealed and loaded weapons.

Using precedent first established by the Supreme Court in 1914, the officers searched Riley incident to the arrest, a routine practice across America. They found a Samsung Instinct M800 smartphone. Police searched it twice, without warrants, once at the scene of arrest the other hours later at the station, according to the record. The cops found evidence suggesting that Riley was a gang member. They also found a photo of him with a suspected gang member posing in front of a red Oldsmobile that the authorities believed was recently involved in a drive-by shooting.

The authorities subsequently performed a ballistics analysis from the weapons seized from Riley, tests suggesting the guns were fired in the drive-by shooting. After a hung jury and a second trial, and without eyewitnesses, a jury convicted Riley with shooting at an occupied vehicle, attempted murder and assault with a semiautomatic weapon. At trial, the authorities showed the jury the picture of Riley and the Oldsmobile. He was convicted on all counts and sentenced to 15 years to life. Riley appealed to the Supreme Court, claiming the fruits of the phone search should be suppressed because the authorities did not have a warrant. California’s top court had already sanctioned warrantless mobile phone searches upon arrest.

**Questions before video:**

1. Police conduct a search on a suspect when conducting an interrogation (empty pockets, look through wallet, car sweep, etc.), so why do people feel inspecting a phone is too invasive?
2. Why are law enforcement officers frustrated with the steps required to obtain a warrant?
3. Please provide your input on which case is stronger for the *prosecution* (Riley or Wurie).

After considering *Riley* and *Wurie* together, the Supreme Court issued a single opinion. Recognizing that its decision would have an impact on the ability of law enforcement to combat crime, the Court nevertheless concluded as follow: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is...simple - get a warrant." In so concluding, the Court cited University of Illinois College of Law Professor Emeritus Wayne LaFave to caution against the accepted proposition that the exceptions to the warrant requirement had swallowed the rule.

As part of its disposition, the Supreme Court distinguished its previous decisions in *Chimel v. California* (where officer safety and preservation of evidence permitted police only to search the arrestee's person and the area within his immediate control), *United States v. Robinson* (where the rule from *Chimel* permitted police to search the contents of a cigarette pack), and *Arizona v. Gant* (where the Court extended *Chimel* to vehicles but only in limited factual circumstances).

The Court explained that cell phones are unique in that they are: (1) based on a technology that was "nearly inconceivable" when *Chimel* and *Robinson* were decided; and (2) distinct from the unique vehicle context in *Gant*. Equating searching the contents of a cell phone with finding a key in a suspect's pocket and searching a suspect's home with that key, the Court explained that allowing law enforcement access to cell phone data as part of a search incident to arrest - which could include thousands of texts, photographs, videos, and records of calls - was a constitutional bridge too far.

**Questions after video:**

1. What type of decision was made by the Supreme Court if a single opinion was issued?
2. What *may* permit an officer to bypass obtaining a warrant for a search?
3. The FBI recently clashed with Apple Inc. in regards to accessing private information on a domestic terrorist’s cell phone. The Riley and Wurie cases were supported by the Supreme Court. Provide your point of view regarding the debate on safety and security vs. privacy.