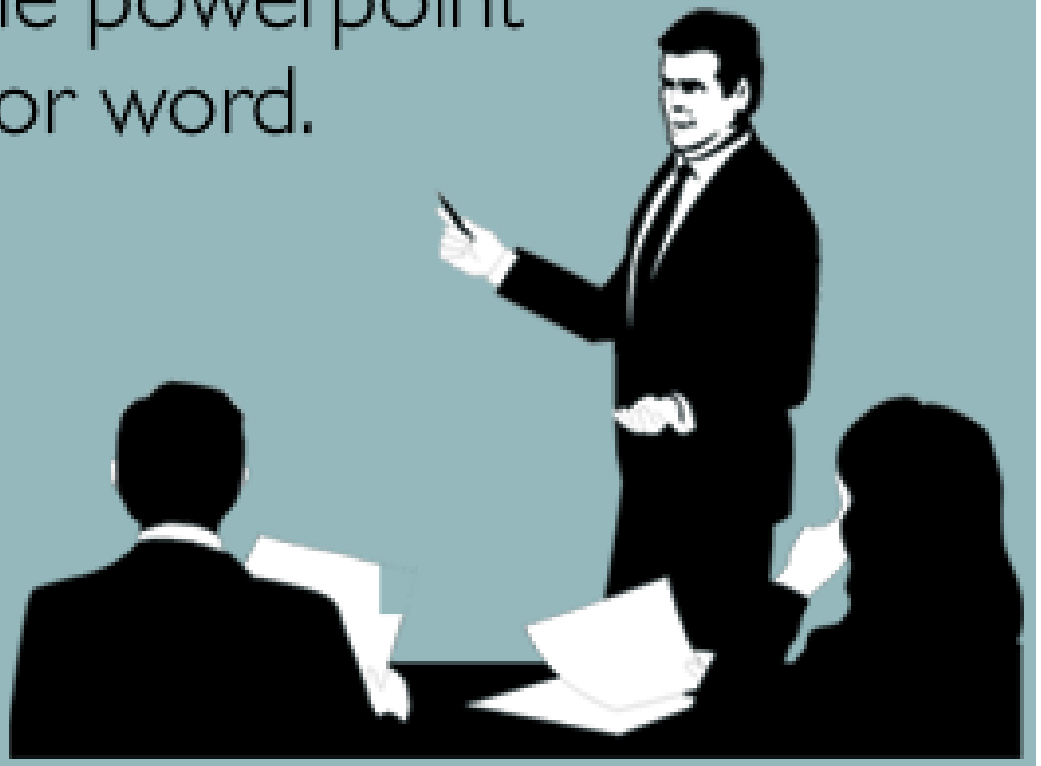
Recent Trends in Public Sector Litigation

*The views in this presentation represent the thoughts and impressions of Gary Millward only, and not those of the Provo City Attorney's Office or Provo City

For my presentation today, I'll be reading the powerpoint slides word for word.



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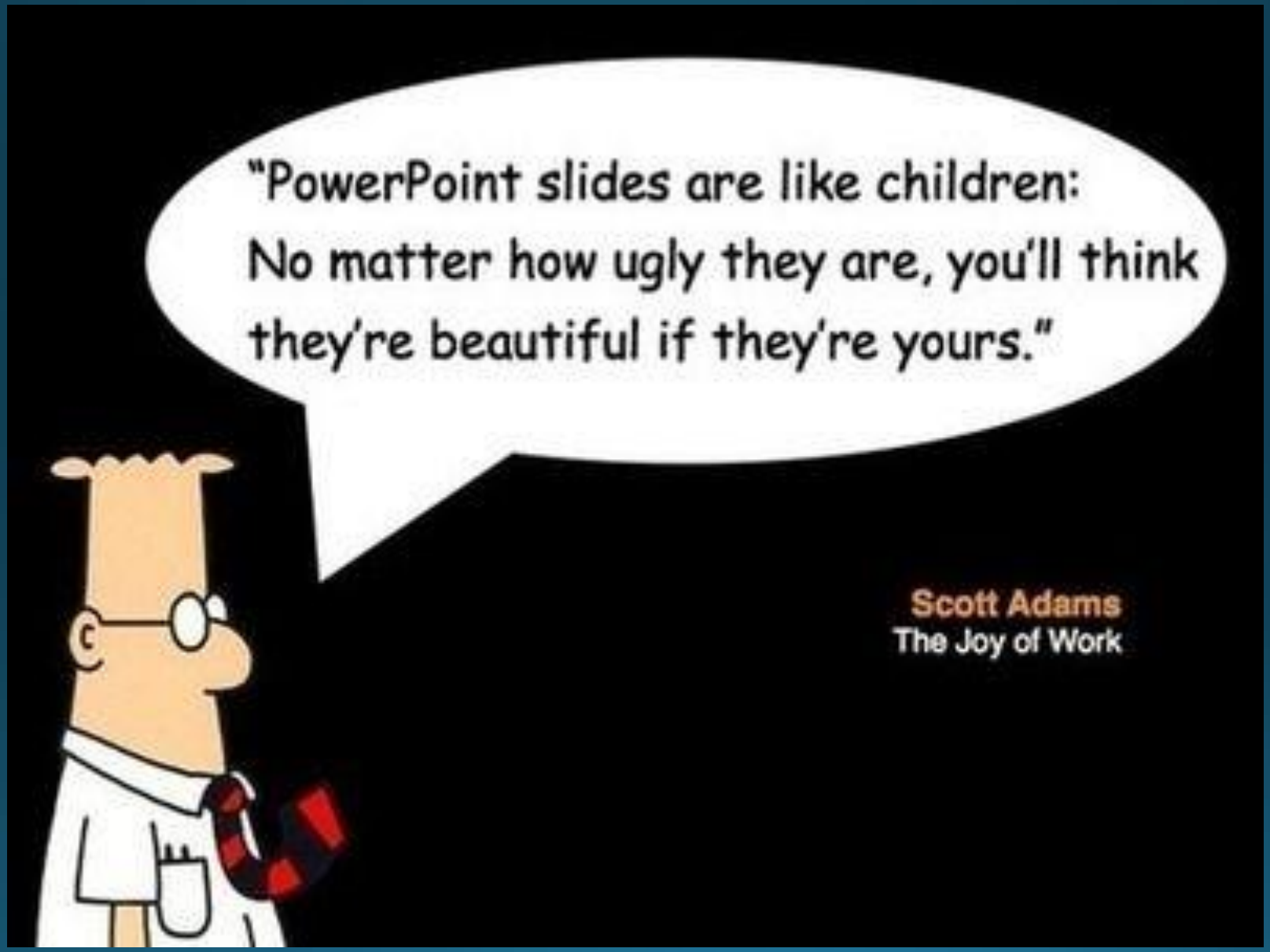
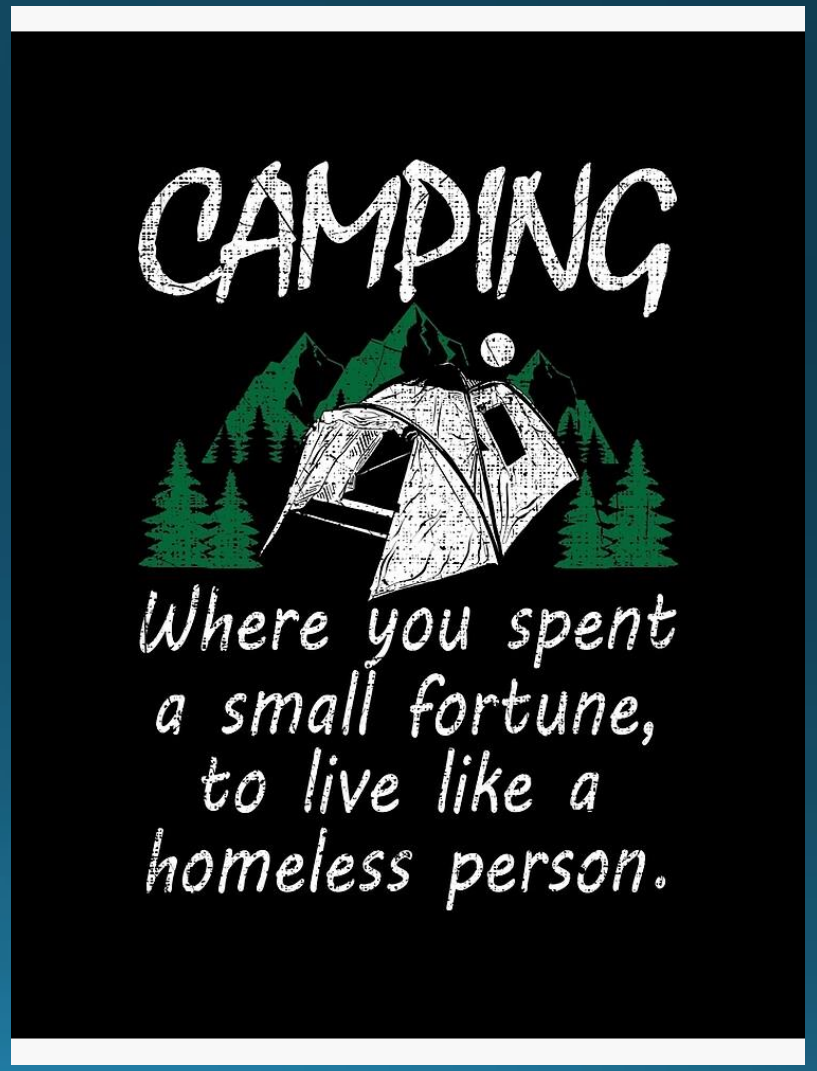

"PowerPoint slides are like children:
No matter how ugly they are, you'll think
they're beautiful if they're yours."
Scott Adams
The Joy of Work

303 Creative LLC v. Elenis

- Web designer sought injunction against Colorado statute prohibiting denial of service due to her religious views on marriage
- U.S. Supreme Court found the statute violated freedom of speech
- Risk Crux: Run new statutes and ordinances by your lawyers

City of Grant's Pass v. Johnson

- Coalition of unhoused persons sues City over law restricting camping on public property
- U.S. Supreme Court found that regulating camping on public property does not violate 8th Amendment
- Risk Crux: Run new statutes and ordinance by your lawyers

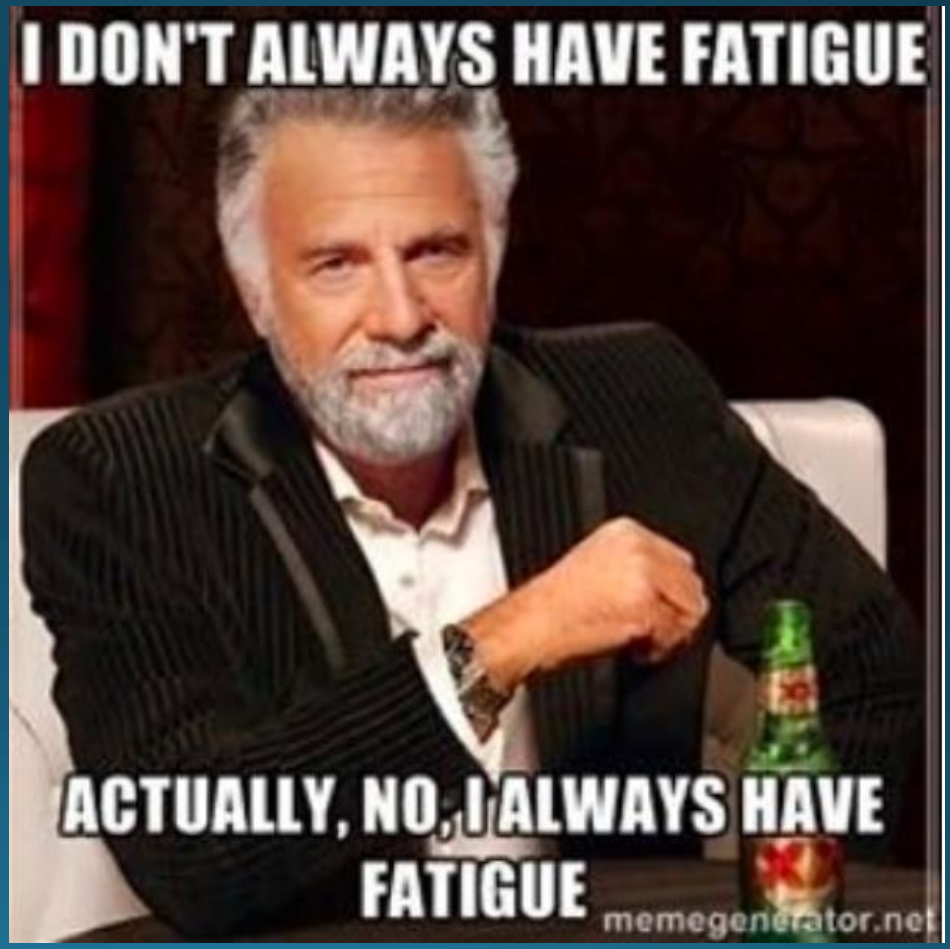


Fawley v. Lea Cnty. Bd. of Comm'rs

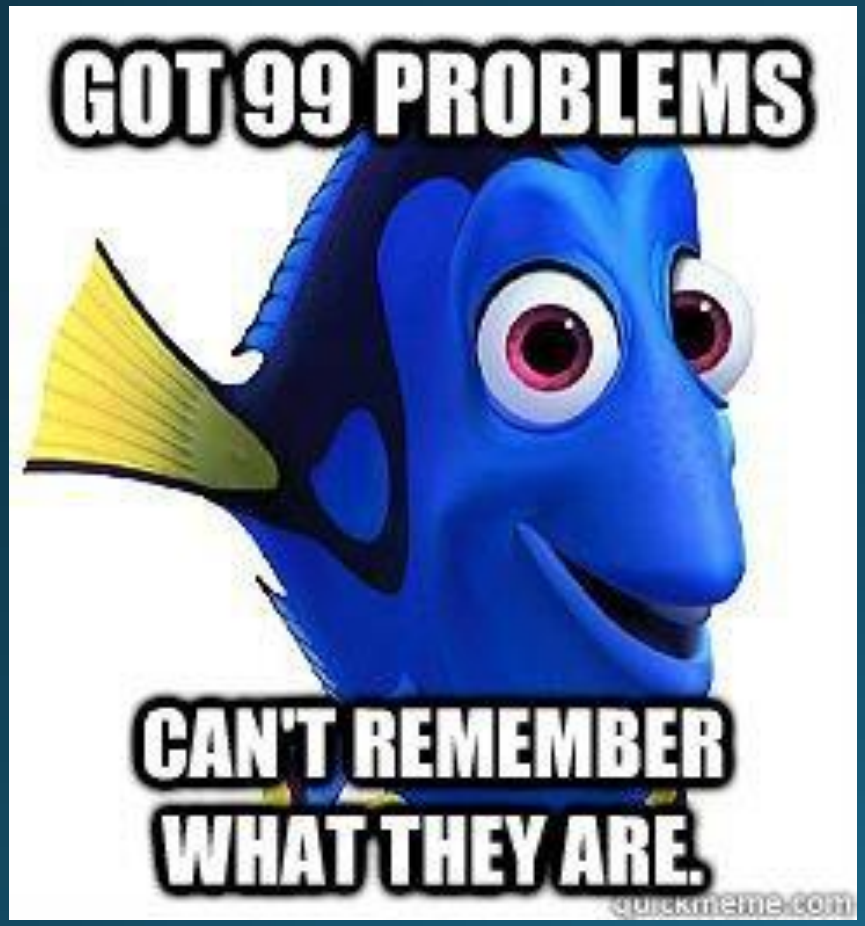
- Prisoner alleged his constitutional rights violated by failure to file a case and petition
- Court found that no unconstitutional policy or custom was alleged and upheld dismissal
- Risk Crux: Look over policies, be careful of customs

Freeman v. City of Cheyenne

- HR Director sues for lack of reasonable accommodation for anxiety and exhaustion
- Did not identify duration of impairment; case dismissed
- Risk Crux: Reasonable accommodations must be, well, reasonable



Cash v. City of Durant

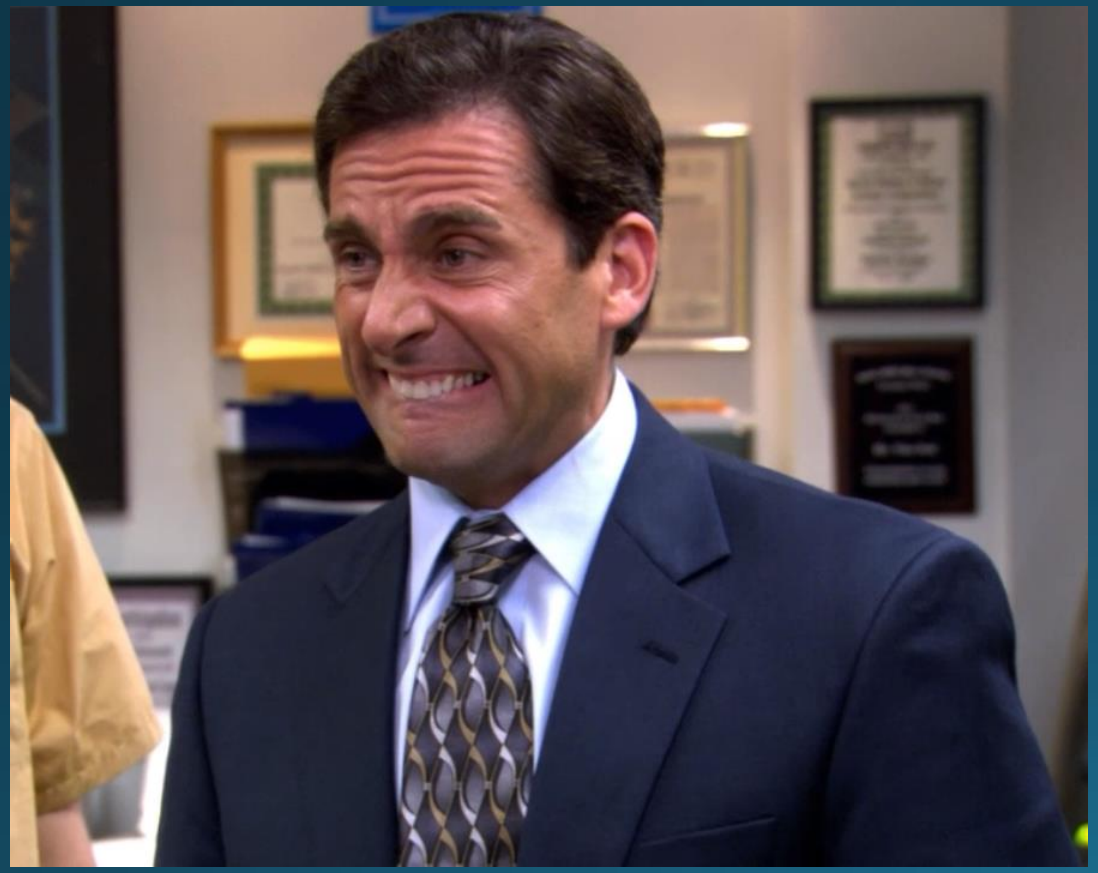


- At traffic stop, suspect resisted arrest and was injured
- Later complaint for excessive force was not timely, but suspect said he couldn't remember till recently due to head injury
- Court didn't buy it
- Risk Crux: Use statutory deadlines

Bustillos v. City of Artesia

- Journalist arrested for refusing to provide I.D. while filming on public property
- Court found reasonable suspicion of some other crime necessary before arrest
- Risk Crux: Train your police departments

Johnson v. City of Cheyenne



- Plaintiff drinks with woman at her apartment – leaves his DL – woman later raped by burglar
- Plaintiff incarcerated for 24 years, then exonerated by DNA
- Court finds no underlying constitutional violation.
- Risk Crux: Train your police departments

Haulmark v. City of Wichita

- Deaf individual sues for City not having closed captioning; district court dismisses
- Reversed - 10th Circuit says further discovery is necessary
- Risk Crux: Careful of ADA requirements

St. George v. City of Lakewood

- Plaintiff has escort over, argument ensues mid-encounter, shoots warning shot as she flees
- Police arrive, announce, plaintiff comes out with shotgun and pumps it
- Shot in leg, sues for excessive force
- Court tosses it – not defending himself + qualified immunity
- Risk Crux: Train your police departments

Larson v. Pleasant Grove City

- City TUF challenged as a tax
- Court determined TUF is a fee, not a tax
- Fee must be reasonable
- Risk Crux: Think ahead

Brown v. City of Fruit Heights

- Slip and fall on black ice in a parking lot
- Notice on temporary unsafe condition
- No evidence of actual or constructive notice
- Summary judgment affirmed
- Risk Crux: if you're on notice, abate the condition

Brindley v. Logan City

- Employee fail BAC test
- Then fails a second
- Terminated under policy
- Overturned on basis that board impermissibly denied confrontation of witness
- Risk Crux: Use witnesses; have policy; follow policy

Anderson v. Daggett Sch. Dist.

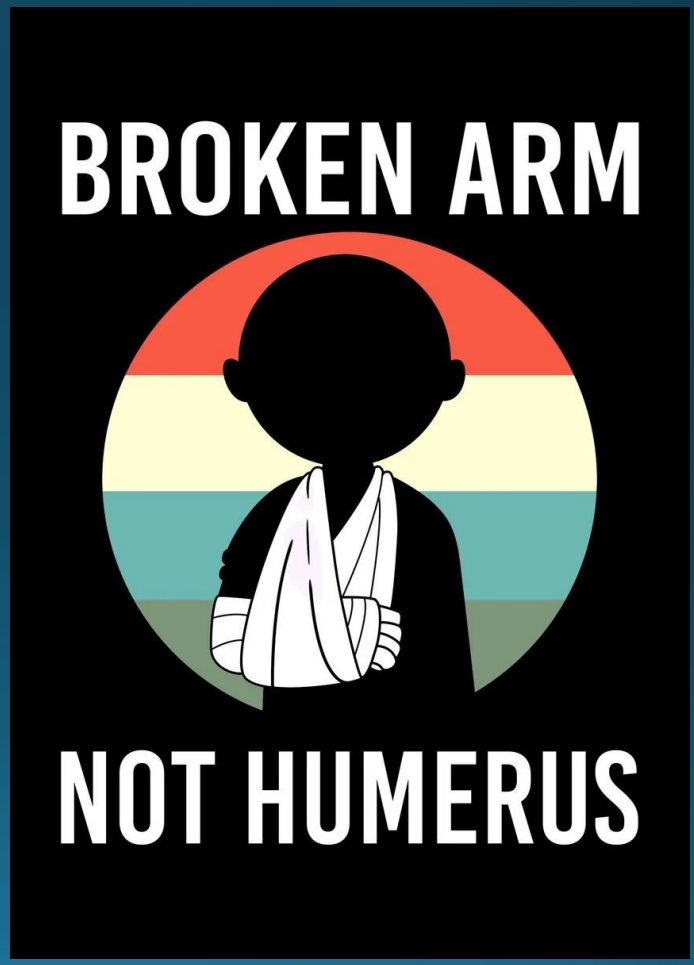
- Teacher gave old textbooks to students encouraging burning
- Also encouraged skipping class
- Terminated after a hearing
- Reversed due to wrong standard (shocks conscience v. consistency & proportionality)
- Risk Crux: Consult attorneys for admin appeals

Mariani v. Dep't of Pub. Safety

- Plaintiff crashed motor scooter during license test
- Sued DLD
- Dismissed on the license exception of GIAU
- Risk Crux: Use immunity

Ofa v. Dep't of Hum. Servs. & Career Serv. Rev. Off.

- Youth corrections counselor intervenes in fight and breaks arm of a youth
- Fired for excessive force
- Court deemed termination proportional and consistent with policy
- Risk Crux: Have policy, follow policy



Moulding Invs., LLC v. Box Elder Cnty

- Commission approves a landfill for company that had prior approval; denies for another
- Equal protections lawsuit follows
- Court determined approvals sought in different climates
- Risk Crux: Have articulable reasons for treating differently

Doutre v. Box Elder Cnty

- Teens driving off railroad embankment to get air
- Lose control and crash; then sued
- County had immunity for incline; not enough evidence against City on pothole
- Risk Crux: Use immunity; fix problems when known

Graves v. Utah Cnty. Gov't

- County HR reports discrimination by commissioner
- During pendency of investigation County officials reveal it
- Dismissal upheld on basis that no express waiver in Immunity Act
- Risk Crux: Use immunity

Vittoria v. Provo City

- Woman falls on sidewalk across from library
- Offer to pay medical bills – declined
- Suit filed after statute of limitations, dismissal upheld
- Risk Crux: Keep deadlines in mind

Questions?

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