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U.S. Supreme Court to Consider Whether Citizens can be Jailed for Refusing to Give Their Names to the Police

Carson City, Nevada. The United States Supreme Court announced today that on March 22, 2004, it will hear oral arguments in a Nevada case that will determine whether or not states can criminally punish persons who refuse to identify themselves to the police.

In *Hiibel v. District Court*, the nation's highest court will decide for the first time whether it is unconstitutional for police officers investigating a crime to arrest persons who refuse to identify themselves believing they've done nothing wrong.

Larry Hiibel was arrested by a Humboldt County deputy sheriff after he refused to identify himself when asked. The deputy was investigating a bystander's claim that he had seen a man striking a female passenger in a pickup truck. Mr. Hiibel was found standing outside a pickup in which his daughter was a passenger. When the deputy asked Mr. Hiibel to identify himself, he said he would cooperate but that he would not provide identification because he did not believe he had done anything wrong. The deputy said he thought Mr. Hiibel might be intoxicated but he was never charged with DUI.

Mr. Hiibel was convicted of resisting an officer for refusing to turn over his ID.

State Court Divided on Constitutionality of Statute

In a split decision, the Nevada Supreme Court upheld the conviction. The majority found the individual's constitutional right to privacy was outweighed by officer and community safety, expressing concern that terrorists could escape detection if officers don't have probable cause to arrest.

The dissent, led by then-Chief Justice Deborah A. Agosti, stated that "the right to wander freely and anonymously, if we so choose, is a fundamental right of privacy in a democratic society." The dissent would have overturned the law as an invasion of privacy, noting that it is a person's conduct, not their name, that is potentially dangerous. The dissent urged that, precisely because of the threat of terrorism, now more than ever it is important to vigilantly protect and safeguard the constitution and personal liberties.

"We can't yield to a climate of paranoia," Robert E. Dolan, the attorney who will be arguing Mr. Hiibel's case, said. "Many people have died protecting our freedoms and if we allow our civil liberties to be undermined by fear of terrorism, then their deaths will have been in vain."

(more)

Split of Authority

The Ninth Circuit federal appeals court recently found the same statute unconstitutional in a civil case.

Law enforcement officers in Nevada thus find themselves in a real quandary. If they arrest someone for refusing to identify themselves, the conviction will stick in state court but they can be successfully sued in federal court for violating that person's civil rights.

Other jurisdictions are split on the issue as well. As the law now stands, in some jurisdictions, a person under a shadow of suspicion who has not committed any crime, can be approached by the police, do absolutely nothing, and yet be arrested, convicted, and thrown in jail. Other jurisdictions have said that this violates the constitution.

The U.S. Supreme Court agreed to take Mr. Hiibel's case in part because of the split of authority.

Court filings by attorneys for Mr. Hiibel argue that the law violates the constitutional right against self incrimination. Attorneys James P. Logan, Jr. and Harriet E. Cummings also argue that it violates the constitutional prohibition against unreasonable searches and seizures.

"It is inimical to a free society that mere silence can lead to imprisonment," they wrote.

The state argues that a person's name is not entitled to privacy protection, and that any right of privacy is outweighed by the public interest in crime prevention and effective law enforcement. It also said that giving one's name is neither incriminating nor testimonial, but neutral.

The high court's decision in Hiibel should resolve, once and for all, whether a person has to identify themselves to the police even if there are no grounds for arrest.

Background on Mr. Hiibel's Legal Team

Lead Counsel James P. Logan, Jr. is a graduate of McGeorge School of Law in Sacramento, California. He has been with the Office of the Nevada State Public Defender in Carson City since 1990 and is the Chief Appellate Deputy.

Robert E. Dolan will argue the case on behalf of Mr. Hiibel. He is a graduate of St. John's University Law School in Queens, New York. Mr. Dolan has been with the Office of the Nevada State Public Defender in Winnemucca since 1998, where he is the Supervising Deputy Public Defender.

Harriet E. Cummings is assisting on the briefs and in argument preparation. She is a graduate of the University of California, Davis, School of Law. Ms. Cummings has been with the Office of the Nevada State Public Defender in Carson City since 1997 and is currently the Appellate Deputy.

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The parties' briefs will be available at <http://www.abanet.org/publiced/preview/briefs/march04.html>

Other materials, including amicus briefs, are available at <http://www.epic.org/privacy/hiibel>