custody unit — to other parts of the prison, including the medical wing. If lock downs could be accomplished to facilitate the inmates' *medical* needs, what compelling interest was served by refusing any lock downs *ever* to facilitate an inmate's *religious* needs?

The prison's last argument was that, if Yellowbear's request was accommodated, a flood of other inmate requests would ensue—the "slippery slope." Again, however, the state failed to present any evidence of what such a flood of unreasonable requirements might entail, and conclusory statements alone did not suffice.

The Court has recognized the possibility that there may be cases where that approach is inappropriate and the "need for uniformity precludes the recognition" of *any* exceptions to *anyone,* or where a well-documented slippery slope argument could support such a uniform rule. But one thing is certain. To warrant any of that, the law requires considerably more than milquetoast musing that granting one request might lead to others.

The prison also failed in its obligation to show that the process adopted was the least restrictive of various alternatives. Yellowbear proposed at least two solutions-first, transport him to the sweat lodge in the early morning, before the general population had been allowed into common areas; and second, build another sweat lodge, in his quadrant. The prison did not explain how difficult or expensive these potential solutions might be.

The court imagined a far different discussion if the prison allowed Yellowbear to visit the sweat lodge intermittently; then the question would be one of degree. But here, where he was completely foreclosed, there was no doubt that RLUIPA was violated.

http://www.ca10.uscourts.gov/opinions/12/12-8048.pdf (last accessed Mar. 6, 2014).

Search and Seizure: Questions Remain About Reasonableness of Police Killing Occupant's Dogs During "High Risk Search" of Home

Thurston v. City of North Las Vegas Police Department, No. 12-15729 (9th Cir. Jan. 9, 2014).

The Ninth Circuit has reversed and remanded a lower court grant of summary judgment where police shot and killed two dogs more than 20 minutes after they entered a home to conduct a search, finding that questions remained as to the reasonableness of the officers' actions.

The North Las Vegas Police Department executed a search warrant at the home of Louise Thurston. It was a "high risk search warrant" and the officers, while carrying out the search, shot and killed Thurston's pit bull and mastiff. Thurston filed suit under Section 1983, alleging illegal seizure of her dogs in violation of the Fourth and Fourteenth Amendments. The district court granted a motion for summary judgment brought by the police department and various individual officers, holding that they acted reasonably in shooting the dogs. Thurston appealed.

HELD: The Ninth Circuit reversed and remanded as to the individual officers, holding summary judgment was improperly granted because issues of material fact remained, but dismissed the claims against the department, finding no evidence that the dogs were shot pursuant to government policy or practice.

DISCUSSION: Police may only shoot dogs (e.g. destroy property) during the execution of a search warrant if it is reasonably necessary under the circumstances to effectuate the performance of their duty. To determine reasonable necessity, courts evaluate the totality of the circumstances and balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing government interests at stake." Here, the majority was unable to determine whether such action was reasonably necessary because genuine issues of material fact remained.

First, the Circuit Court noted the police waited 20 minutes after entering the house to shoot the dogs, at which point Thurston and her daughter were both zip-tied and under control. The city attorney stated the house was not yet secured 20 minutes after entry when the dogs were shot, but the court found no evidence to support that contention. For the majority, this raised questions about the officers' opportunity to observe the dogs and/or call animal control.

Second, there was conflicting evidence about whether the dogs attacked the officers. The police stated the animals were acting aggressively – bearing teeth and growling – but Thurston, who did not see the attack, testified that her dogs were not aggressive; as she was being escorted out, they were happy and "wiggling their tails." The court found a reasonable jury could find either story to be true, making the facts uncertain when viewed in a light most favorable to Thurston.

Last, the police department policy required animal control be present, and sometimes participate, whenever police know animals are inside a home wherein a search warrant will be executed. For the majority the fact that there was no animal control officer in this case, despite the 20-minute window during which one could be summoned, further heightened their curiosity as to the reasonableness of shooting the dogs.

The court pointed out Thurston's right was clearly established. In *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962 (9th Cir. 2005), the Ninth Circuit held a reasonable officer "should have known that to create a plan to enter the perimeter of a person's property, knowing all the while about the presence of dogs on the property, without considering a method of subduing the dogs besides killing them, would violate the Fourth Amendment." As a result, the officers were denied qualified immunity.

On the issue of the city's liability, the Court unanimously agreed that no evidence was presented indicating the officers shot the dogs pursuant to a government policy or practice, and thus the *Monell* claim was dismissed.

DISSENT: The dissent differed from the majority on two primary issues. First, it noted the case was different from *Hell's Angels* because the officers did not know dogs were on the property and did not solely plan to shoot the dogs as a control method. Second, it noted officers stated the dogs "appeared safely confined to the fenced-in backyard" and thus the 20-minute period was reasonable because it was not until the dogs entered the house that the officers feared for their safety. Thus a reasonable jury could only find for Thurston if she showed that the officers knew the dogs could get in the house. The majority countered by noting that the officers'

testimony that the dogs were in a fenced-in backyard had been contradicted by Thurston – according to her, the animals were in the house when the police got there – which only raised more questions for the majority.

http://cdn.ca9.uscourts.gov/datastore/memoranda/2014/01/09/12-15729.pdf
(last accessed Mar. 6, 2014).

Speech: School District Justified in Sending Students Home Who Refused to Remove or Cover American Flag Shirts Where Violence Might Result

Dariano v. Morgan Hill Unified School District, No. 11-17858 (9th Cir. Feb. 27, 2014).

The Ninth Circuit has upheld, under the standards in *Tinker*, the actions of a California school district in sending home several students who refused to remove or reverse their American flag shirts on Cinco de Mayo to defuse likely conflict and violence with Mexican-American students.

On Cinco de Mayo 2009 at California's Morgan Hill School, Mexican students carried Mexican flags and Caucasian students hung a makeshift American flag from a tree while chanting "USA." As might be expected this led to an altercation between the student groups. One student was wearing an American flag t-shirt was approached and threatened by a Mexican student.

The following Cinco de Mayo, in 2010, a group of students wore American flag T-shirts to school. Several were confronted by Mexican students. The assistant principal was approached by those worried about the safety of the American-flag wearers, and by a group of Mexican students asking why Caucasian students "get to wear their flag out when we [sic] don't get to wear our [sic] flag?"

The principal directed the assistant principal to have those wearing American flag shirts turn them inside our or take them off. The students, while admitting their shirts put them at risk of violence, refused the instructions. Two students were allowed to return to classes because school officials determined their shirts were less "prominent" and did not put them at much risk. But the remaining students were told to turn their shirts inside out or go home (their absence would not count against them). They went home.

Students who went home were then threatened with phone calls and text messages. Rumors surfaced that gang members were coming to "take care" of the American-flag-wearing kids. Parents of three children that went home did not let them go to school May 6 or 7 and then sued the school under Section 1983, alleging violations of Equal Protection and Due Process under the California state and federal Constitutions. On cross motions for summary judgment the district court held school officials (the principal and assistant principal) did not violate the students' constitutional rights and dismissed all claims against the school district based on sovereign immunity.