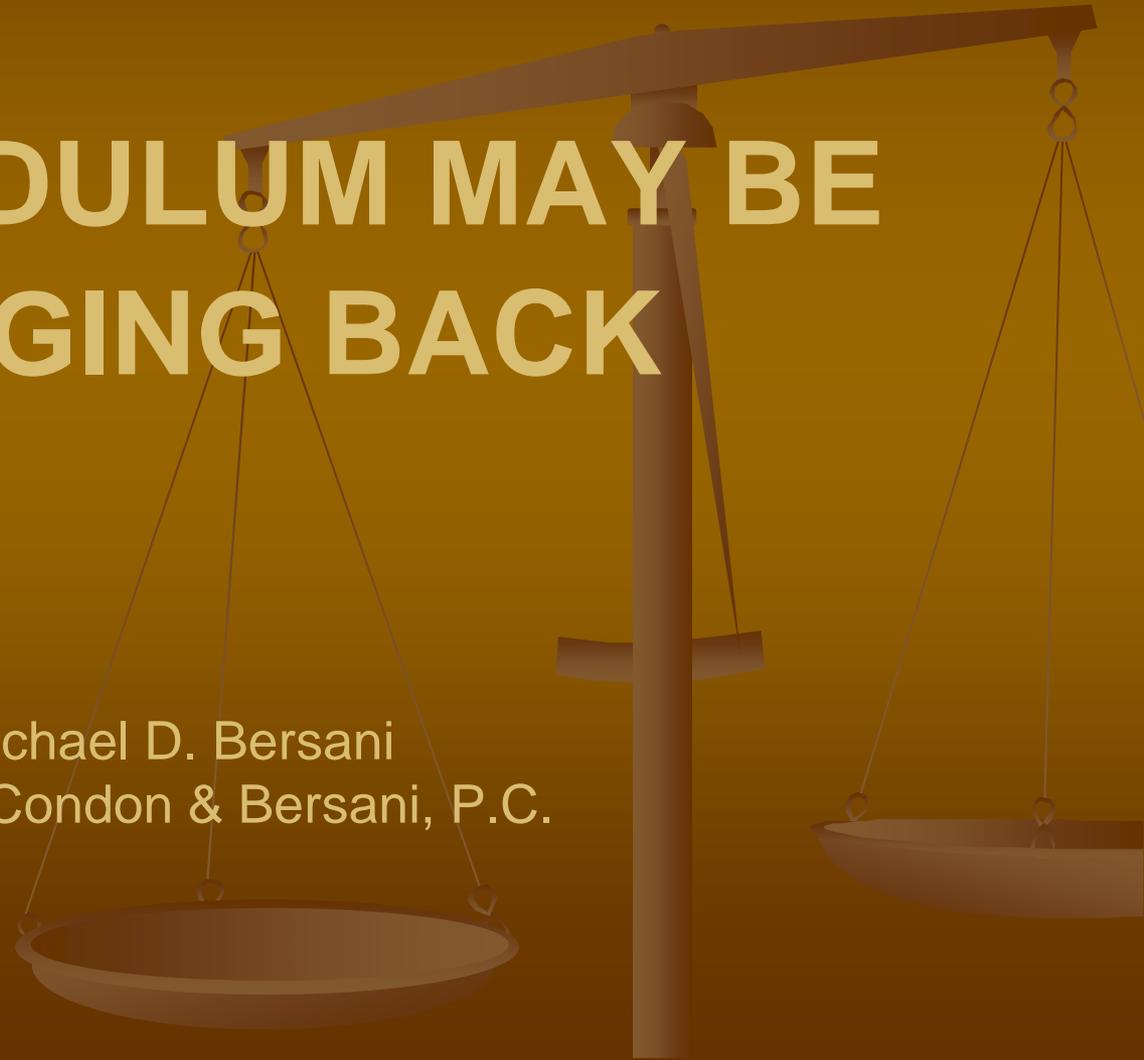


# EMPLOYMENT RETALIATION CLAIMS:

## THE PENDULUM MAY BE SWINGING BACK

Michael D. Bersani  
Hervas, Condon & Bersani, P.C.



# CICERO MAYOR SOCKED FOR \$1.7 MILLION



TOM CRUIZE/SUN-TIMES

Saying "the whole truth didn't come out" at the trial, Betty Loren-Maltese maintained she's confident of winning on appeal. The verdict directed her to pay \$100,000 in punitive damages.



David Niebur  
Wins \$911,000



Phillip Bue  
Wins \$801,000

## FORMER POLICE CHIEF SAYS TO TAKE MONEY FROM HER 'MAKEUP FUND'

By STEVE WARMBIR  
FEDERAL COURTS REPORTER

The jury had spoken, but the barbs kept flying Monday after two former top Cicero cops won a \$1.7 million verdict against Cicero and its feisty town president.

The jury said the officers were unjustly fired and included \$100,000 in punitive damages to be paid by Town President Betty Loren-Maltese.

"\$50,000 will probably come out of Betty's makeup fund," former Cicero Police Superintendent David Niebur said of the often heavily made-up town president.

When told about the comment, Loren-Maltese shot back: "What do you expect from an unprofessional?"

The exchange was just one example of the verbal salves fired

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# Alsip officer's lawsuit settled; \$900,000 OK'd in midst of trial

[South-Southwest Final , SSW Edition]

Carlos Sadovi, Tribune staff reporter. Chicago Tribune. Chicago, Ill.: Oct. 5, 2004. pg. 1 (Copyright 2004 by the Chicago Tribune)

For more than seven years, **Alsip** Patrol Officer James McGreal has waited to clear his name.

He claimed that after blowing the whistle on alleged police corruption he was passed over for promotions three times. He also alleged his three sons have had to endure hearing his name smeared.

On Friday, what was to be the fourth day of trial in a lawsuit filed by McGreal in U.S. District Court, lawyers for him and for two retired **Alsip** police chiefs--David Snooks and Kenneth Wood--agreed to an out-of-court settlement of \$900,000.

McGreal, a police veteran of almost 25 years, contended the former chiefs tried to wrongly fire him and brand him as mentally unstable after he made accusations of wrongdoing in the department. He has stayed on the job since filing the suit.

"I am glad to have had the opportunity to prove to my entire community that I never did anything wrong and that all of the charges of misconduct were nothing but retaliation," McGreal said through his lawyer Jon Loevy.

McGreal alleged he was targeted by Snooks and Wood after contacting state police about illegal gambling at a local Elks Club and possible police corruption.

Wood retired in 2001 and Snooks in July. In the trial, McGreal, 46, said he was passed over for sergeant despite being ranked first on the promotion list, costing him more than \$460,000 in lost wages and retirement benefits.

"He's a bona fide whistleblower. He spoke out about corruption in **Alsip**, and they retaliated against him," Loevy said. "For six years he's refused to settle. He wanted his three sons to have a chance to see that this case against him was nonsense."

But Bill Kurnik, who represented Snooks and Wood, said the insurance company representing the town and the former chiefs told lawyers to settle. The agreement was reached as defense lawyers were set to start arguing their case.

Insurers warned McGreal's lawyers that they would cut the settlement amount by \$100,000 every day the case advanced in court. Neither side admits wrongdoing, Kurnik said.

# Ex-Stickney cop wins whistleblower case; Village confronts \$3.7 million verdict

[North Shore Final , NS Edition] Sara Olkon, Tribune staff reporter Freelance reporter Joseph Ruzich contributed to this story. [Chicago Tribune](#). Chicago, Ill.: Aug 16, 2006. pg. 6 (Copyright 2006 by the Chicago Tribune)

A retired Stickney police commander who sued the village, mayor and police chief for "destroying" his life in retaliation for alleging police and municipal corruption has won a \$3.7 million jury award.

The federal panel said Monday that Richey Hare Sr. should get \$1.7 million in compensatory damages from the village of Stickney and \$1 million in punitive damages each from Mayor Donald Tabor and Police Chief John Zitek.

"I don't feel like I won," Hare said from his home in Homer Glen on Tuesday. "This thing ain't going to be done for a long time. I still am going to be broke and not have a career."

Hare, 48, filed a whistleblower lawsuit in 2002, alleging Stickney officials, including Tabor and Zitek, set out to destroy him after he and five others reported alleged corruption to the Cook County state attorney's office.

Neither Tabor nor Zitek were charged with any criminal wrongdoing and either couldn't be reached or declined to comment Tuesday. A village official, Dora Madsen, pleaded guilty in 2003 for her part in the case.

Stickney Village Atty. Stanley T. Kuser Jr., who did not litigate the matter, said Tuesday that no decision had been made on whether to appeal.

"They will explore all of their motions before the trial judge," Kuser said.

But at Tuesday's board meeting, village officials said they would appeal the verdict, which drew the ire of some of about 40 residents who attended.

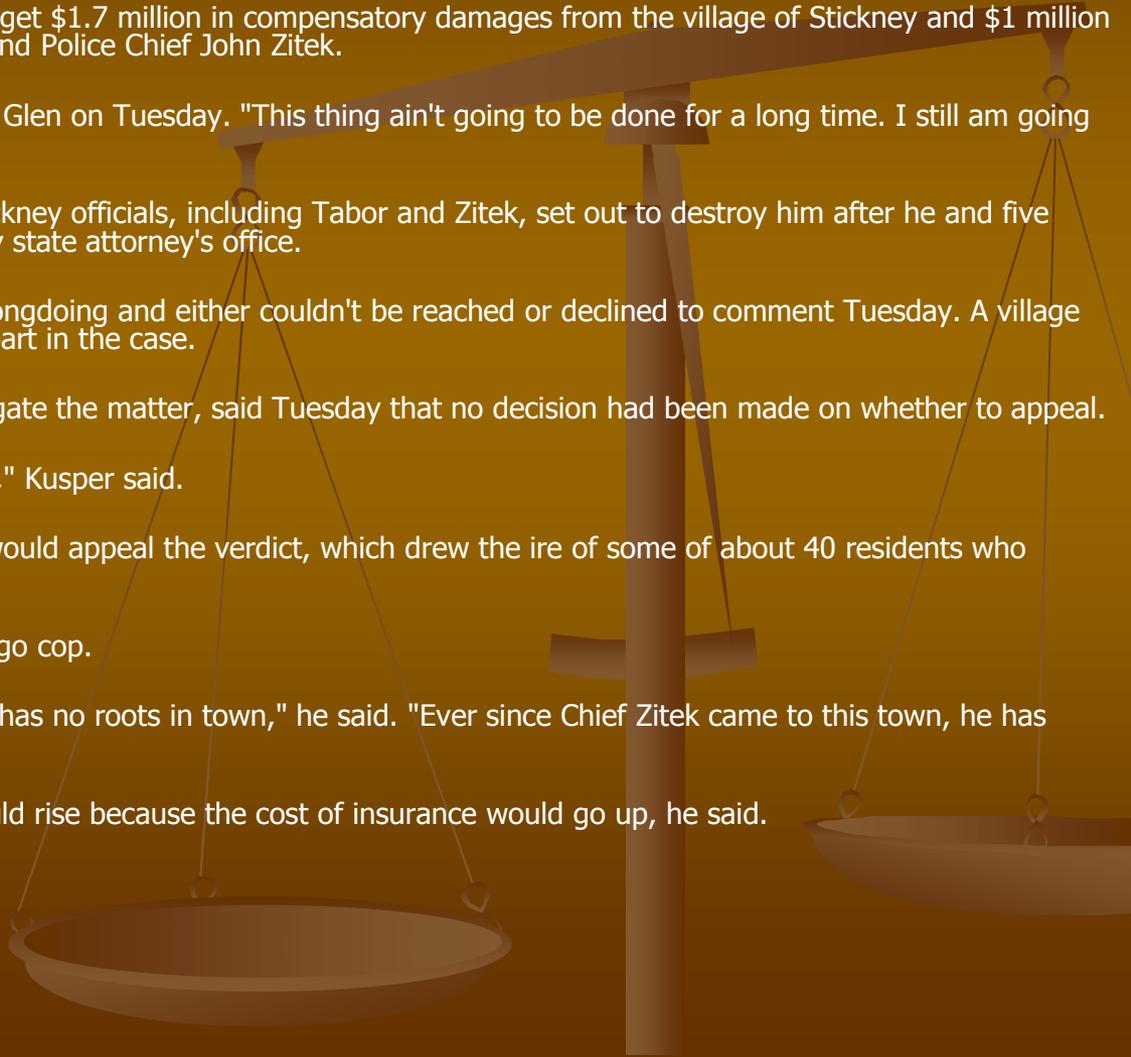
Cody Mares, 46, directed his anger at Zitek, a former Chicago cop.

We have a "police chief who came from another town who has no roots in town," he said. "Ever since Chief Zitek came to this town, he has been a cancer. ... I am ashamed and disgusted."

Mares questioned the appeal, assuming fees and taxes would rise because the cost of insurance would go up, he said.

"You should just admit [guilt]," he said.

"If we were guilty, we would admit it," Tabor said.



# I. First Amendment Retaliation Litigation

A. "Congress shall make no law . . . abridging the freedom of speech"

B. First Amendment protects public employee's right to speak out as a citizen on matters of public concern.

C. Balancing Employee's First Amendment Rights versus Employer's Authority to Discipline

1. Public employee does not forfeit rights as a citizen just because he or she is employed by the government.

2. Public employer's rights

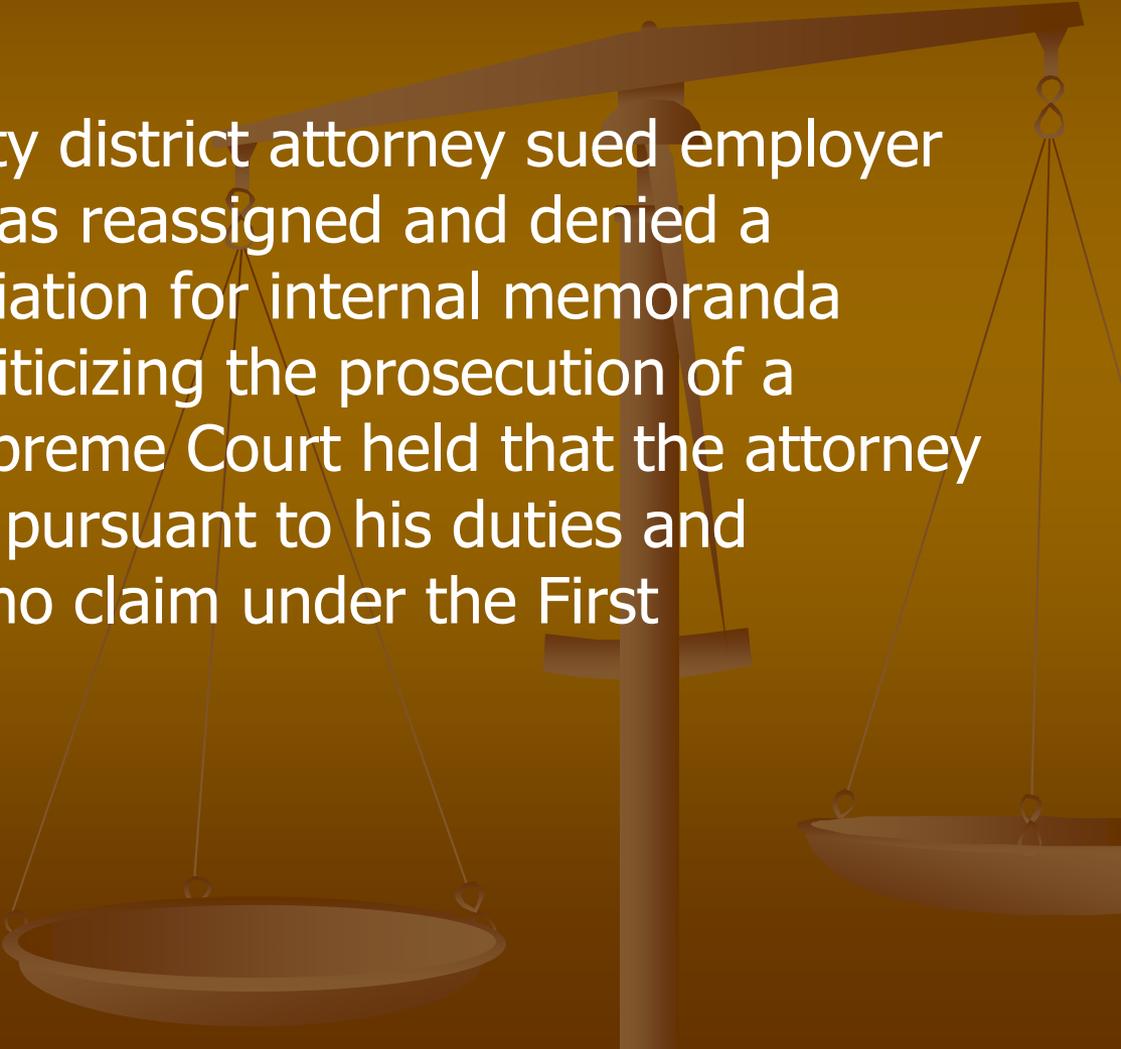
a. Unrelated legitimate reason (misconduct, job performance, etc.) motivates discipline.

b. Employee's speech motivated discipline - Employer has the authority to discipline where the employee's speech disrupts the workplace.

## II. U.S. Supreme Court Case Law

### **Garcetti v. Ceballos, 547 U.S. 410 (2006)**

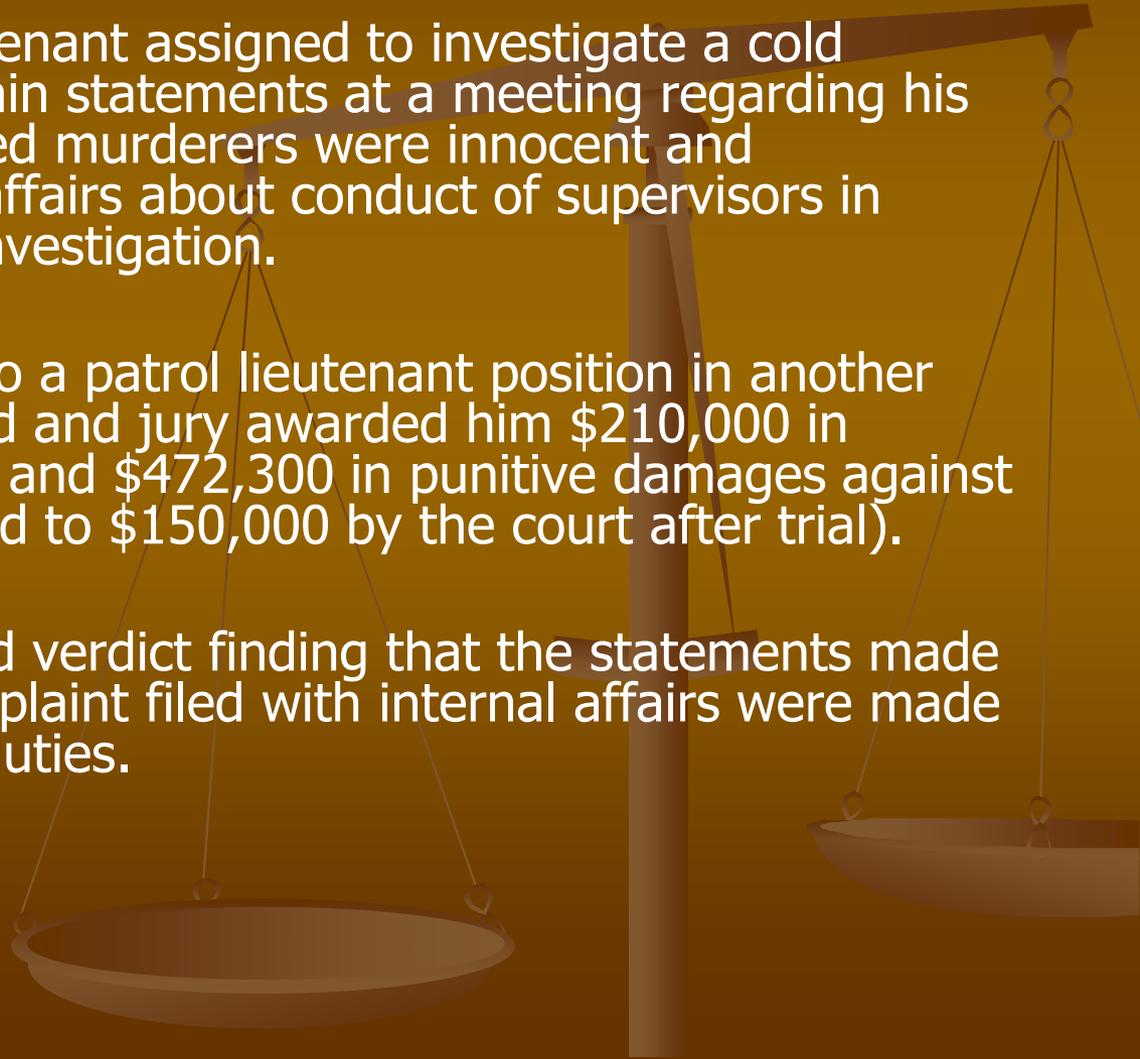
Los Angeles deputy district attorney sued employer alleging that he was reassigned and denied a promotion in retaliation for internal memoranda which he wrote criticizing the prosecution of a criminal case. Supreme Court held that the attorney wrote the memos pursuant to his duties and therefore he had no claim under the First Amendment.



# III. Post-Garcetti Case Law

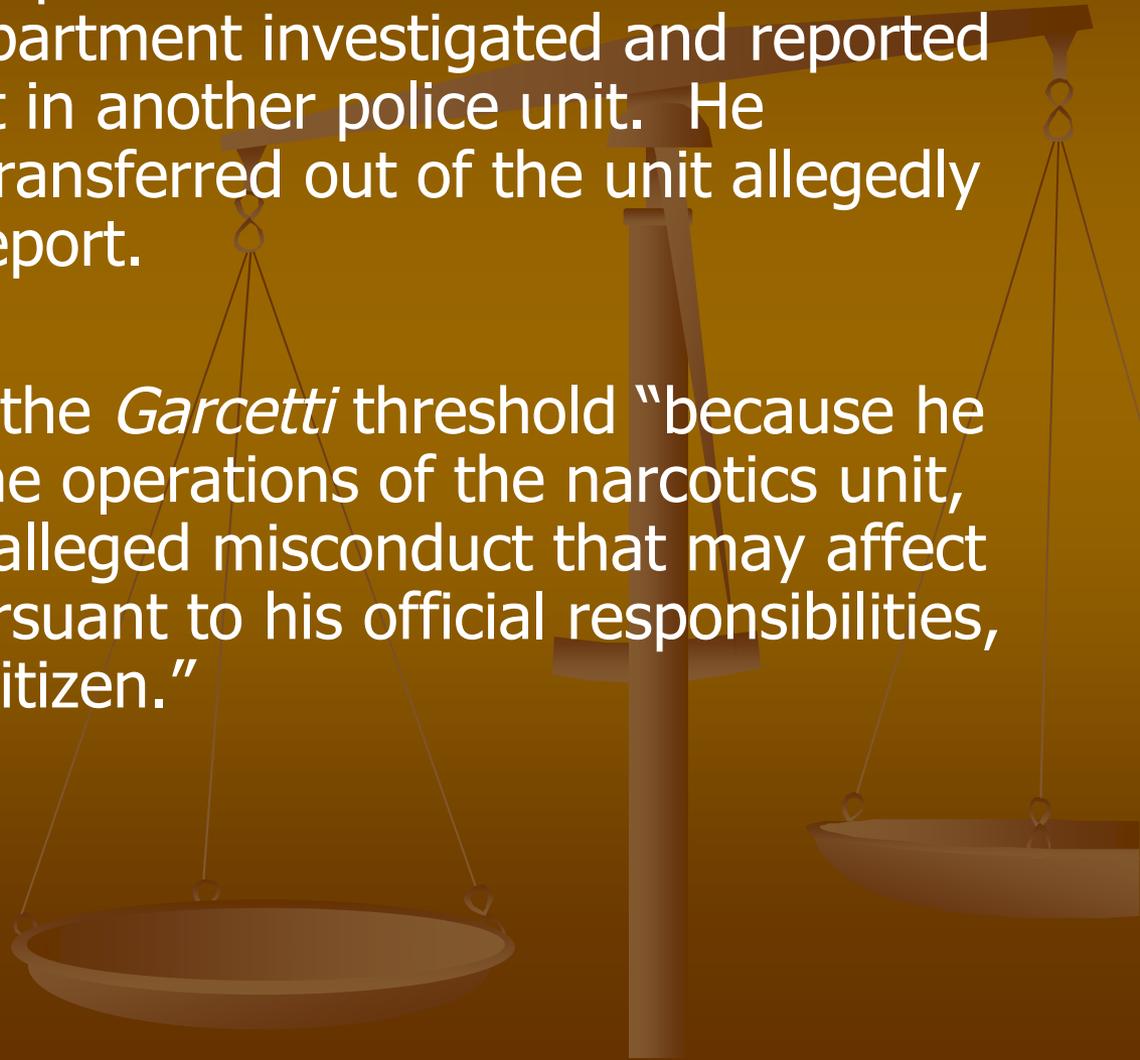
## **Callahan v. Fermon, 526 F.3d 1040 (7th Cir. 2008)**

- Illinois State Police lieutenant assigned to investigate a cold murder case made certain statements at a meeting regarding his belief that two convicted murderers were innocent and complained to internal affairs about conduct of supervisors in ordering him to cease investigation.
- Lieutenant transferred to a patrol lieutenant position in another district. Lieutenant sued and jury awarded him \$210,000 in compensatory damages and \$472,300 in punitive damages against two supervisors (reduced to \$150,000 by the court after trial).
- Appellate Court reversed verdict finding that the statements made at the meeting and complaint filed with internal affairs were made pursuant to his official duties.



## ***Vose v. Kliment*, 506 F.3d 565 (7th Cir. 2007)**

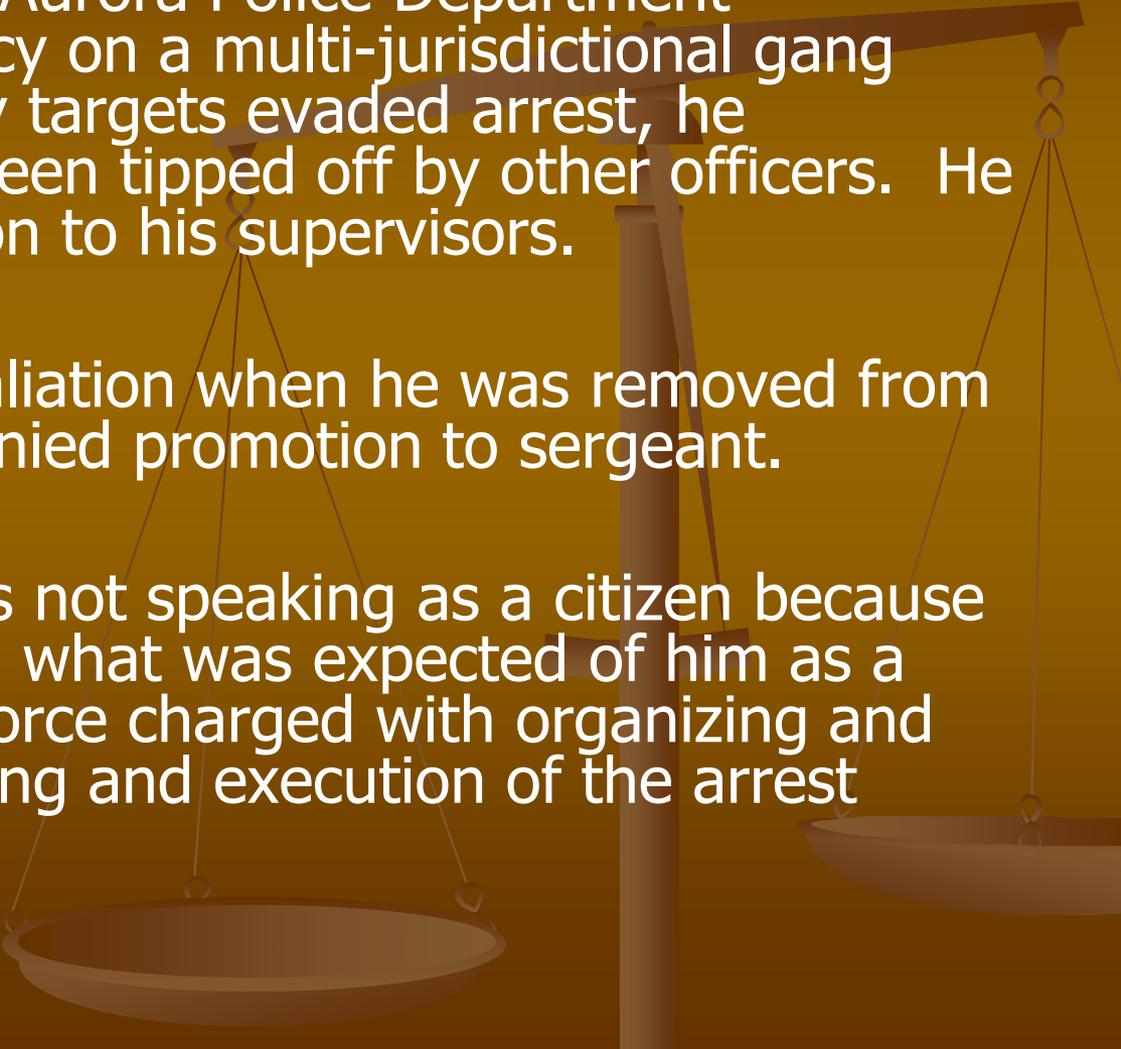
- Police sergeant who supervised the narcotics unit in the Springfield Police Department investigated and reported suspected misconduct in another police unit. He resigned after being transferred out of the unit allegedly in retaliation for his report.
- His case did not pass the *Garcetti* threshold “because he was responsible for the operations of the narcotics unit, his speech regarding alleged misconduct that may affect his unit was made pursuant to his official responsibilities, and not as a private citizen.”



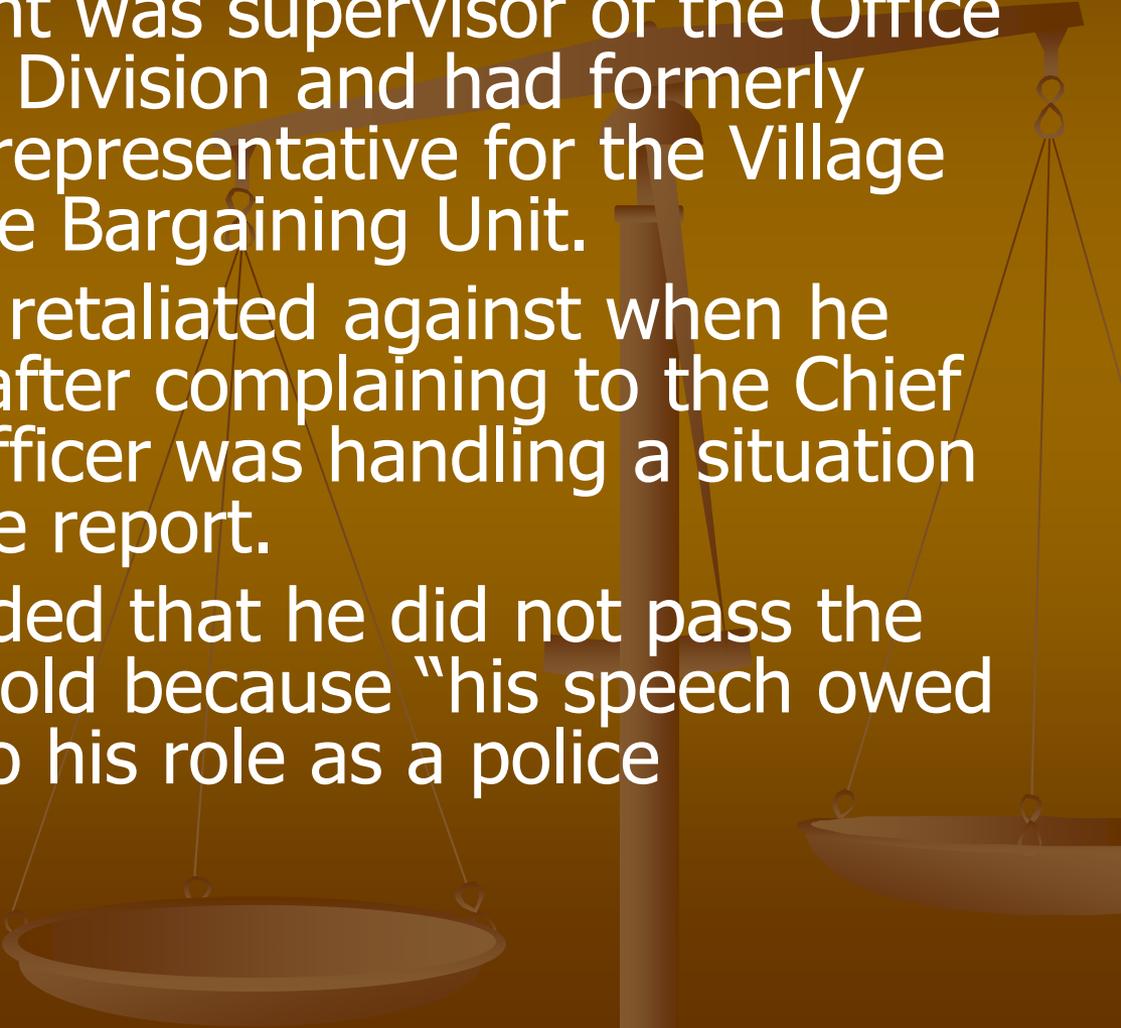
## ***Morales v. Jones*, 494 F.3d 590 (7th Cir. 2007)**

- Milwaukee vice control officers re-assigned to street patrol duties after informing an Assistant District Attorney about allegations that the police chief and deputy police chief had harbored the deputy chief's brother, who was wanted on felony warrants.
- Speech was not protected by the First Amendment because it was made pursuant to their official duties.
- But, testimony given in a civil deposition was protected under the First Amendment because it had nothing to do with his job duties.

## ***Sigsworth v. City of Aurora*, 487 F.3d 506 (7th Cir. 2007)**

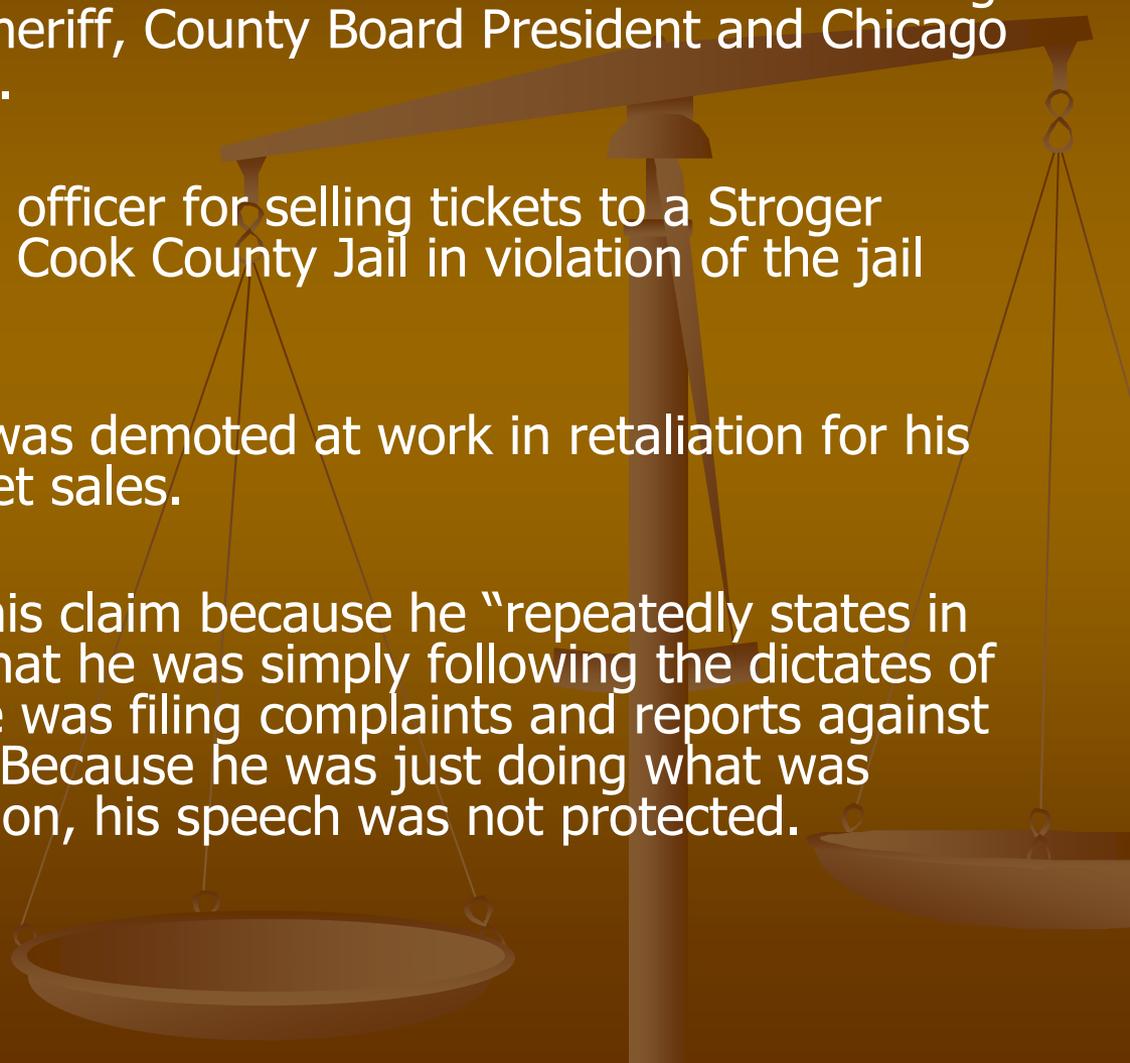
- Investigator with the Aurora Police Department represented his agency on a multi-jurisdictional gang task force. When key targets evaded arrest, he suspected they had been tipped off by other officers. He reported that suspicion to his supervisors.
  - He sued claiming retaliation when he was removed from the task force and denied promotion to sergeant.
  - The court said he was not speaking as a citizen because “he was merely doing what was expected of him as a member of the task force charged with organizing and overseeing the planning and execution of the arrest warrants.”
- 

## ***Kasak v. Village of Bedford Park*, 514 F.Supp.2d 1071 (N.D. Ill. 2007)**

- Police lieutenant was supervisor of the Office of the Juvenile Division and had formerly been the lead representative for the Village Police Collective Bargaining Unit.
  - He felt he was retaliated against when he was demoted after complaining to the Chief that a fellow officer was handling a situation of a false police report.
  - The court decided that he did not pass the *Garcetti* threshold because “his speech owed his existence to his role as a police sergeant.”
- 

## ***Young v. County of Cook, 2007 WL 1704287 (N.D. Ill. 2007)***

- Plaintiff was superintendent of Division 5 of the Cook County Jail. He was also an active Democrat who worked hard during his off time to get Sheriff, County Board President and Chicago Alderwoman elected.
- He reported a fellow officer for selling tickets to a Stroger political event at the Cook County Jail in violation of the jail rules.
- He claimed that he was demoted at work in retaliation for his reporting of the ticket sales.
- The Court rejected his claim because he “repeatedly states in unequivocal terms that he was simply following the dictates of his position when he was filing complaints and reports against his fellow officers.” Because he was just doing what was required of his position, his speech was not protected.



## IV. Equal Protection Claims

- A. “. . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of laws.”
- B. Typical case involves race or sex discrimination; but, recently Supreme Court recognized a “class of one” claim: a single person or entity not belonging to a class based on race, gender, etc., can claim discrimination based on an irrational or arbitrary governmental decision. Olech v. Willowbrook, 528 U.S. 562 (2000).
- C. **Engquist v. Oregon Dept. of Agriculture**, 128 S.Ct. 2146 (2008)
- State employee claimed that she was laid off during company’s reorganization for arbitrary or vindictive reasons. Supreme Court rejected her claim, finding that the “class of one” claims do not apply in the public employment context.

## V. Conclusion