

Re: More cases on violations of due process

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## PROCEDURAL DUE PROCESS RIGHTS GUARENTEED BY THE U. S. CONSTITUOIN

### (A) *Hamdi v. Rumsfeld* 03-6696, U.S. Supreme Court, June 28, 2004:

... ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property"); see also *id.*, at 266 (noting "the importance to organized society that procedural due process be observed," and emphasizing that "the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions").....

### (B) [*La BUY v. HOWES LEATHER CO.*, 352 U.S. 249 (1957) ]

... "As this Court pointed out in *Los Angeles Brush Corp. v. James*, 272 U.S. 701, 706 (1927): ". . . [W]here the subject concerns the enforcement of the . . . [r]ules which by law it is the duty of this Court to formulate and put in force," mandamus should issue to prevent such action there under so palpably improper as to place it beyond the scope of the rule invoked....

... "We believe that supervisory control of the District Courts by the Courts of Appeals is necessary to proper [352 U.S. 249, 260] judicial administration in the federal system."

### (C) *Boddie v. Connecticut* 401 U.S. 371 (1971) – Due Process – The Opportunity to be Heard

... "These due process decisions, representing over a hundred years of effort by this Court to give concrete embodiment to this concept, provide, we think, complete vindication for appellants' contentions. In particular, precedent has firmly embedded in our due process jurisprudence two important principles upon whose application we rest our decision in the case before us.

..... Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "[w]herever one is assailed in his person or his property, there he may defend," *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876). See *Baldwin v. Hale*, 1 Wall. 223 (1864); *Hovey v. Elliott*, 167 U.S. 409 (1897). The theme that "due process of law signifies a right to be heard in one's defense," *Hovey v. Elliott*, supra, at 417, has continually recurred in the years since *Baldwin*, *Windsor*, and *Hovey*. 3 Although "[m]any controversies [401 U.S. 371, 378] have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.*, at 313.

Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance, see *Windsor*, supra, at 278, or who, without justifiable excuse, violates a procedural rule requiring the production of evidence necessary for orderly adjudication, *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351 (1909). What the Constitution does require is "an opportunity . . . granted at a meaningful time and in a meaningful manner," *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, supra, at 313. The formality and procedural requisites for the hearing can vary, depending upon

the importance of the interests involved and the nature of the subsequent proceedings. <sup>4</sup>That the hearing required by due process [401 U.S. 371, 379] is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, <sup>5</sup>except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. <sup>6</sup>In short, "within the limits of practicability," *id.*, at 318, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.

Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question. Thus, in cases involving religious freedom, free speech or assembly, this Court has often held that a valid statute was unconstitutionally applied in particular circumstances because it interfered with an individual's exercise of those rights. <sup>7</sup>

No less than these rights, the right to a meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws [401 U.S. 371, 380] that operate to jeopardize it for particular individuals. See *Mullane v. Central Hanover Tr. Co.*, *supra*; *Covey v. Town of Somers*, 351 U.S. 141 (1956).

In *Mullane* this Court held that the statutory provision for notice by publication in a local newspaper, although sufficient as to beneficiaries of a trust whose interests or addresses were unknown to the trustee, was not sufficient notice under the Due Process Clause for known beneficiaries. Similarly, *Covey* held that notice by publication in a foreclosure action, even though sufficient to provide a normal person with an opportunity for a hearing, was not sufficient where the defendant was a known incompetent. The Court expressly rejected an argument that "the Fourteenth Amendment does not require the State to take measures in giving notice to an incompetent beyond those deemed sufficient in the case of the ordinary taxpayer." *Id.*, at 146. Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard. The State's obligations under the Fourteenth Amendment are not simply generalized ones; rather, the State owes to each individual that process which, in light of the values of a free society, can be characterized as due....."