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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CONN ET AL. *v.* GABBERT

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 97–1802. Argued February 23, 1999– Decided April 5, 1999

Petitioners Conn and Najera, prosecutors in the "Menendez Brothers" case on retrial, learned that Lyle Menendez had written a letter to Traci Baker, in which he may have instructed her to testify falsely at the first trial. Baker was subpoenaed to testify before a grand jury and to produce any correspondence that she had received from Menendez. She later responded that she had given Menendez's letters to her attorney, respondent Gabbert. When Baker appeared to testify before the grand jury, accompanied by Gabbert, Conn directed police to secure a warrant to search Gabbert for the letter. At the same time that Gabbert was being searched, Najera called Baker before the grand jury for questioning. Gabbert brought suit against the prosecutors under 42 U. S. C. §1983, contending, *inter alia*, that his Fourteenth Amendment right to practice his profession without unreasonable government interference was violated when the prosecutors executed a search warrant at the same time his client was testifying before the grand jury. The Federal District Court granted petitioners summary judgment, but the Ninth Circuit reversed in part, holding that Gabbert had a right to practice his profession without undue and unreasonable government interference, and that because the right was clearly established, petitioners were not entitled to qualified immunity.

Held: A prosecutor does not violate an attorney's Fourteenth Amendment right to practice his profession by executing a search warrant while the attorney's client is testifying before a grand jury. To prevail in a §1983 action for civil damages from a government official performing discretionary functions, the qualified immunity defense requires that the official be shown to have violated clearly established statutory or constitutional rights of which a reasonable person

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would have known. *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818. There is no support in this Court's cases for the Ninth Circuit's conclusion that the prosecutors' actions in this case deprived Gabbert of a liberty interest in practicing law. See *Board of Regents of State Colleges* v. *Roth*, 408 U. S. 564, 578; *Meyer* v. *Nebraska*, 262 U. S. 390, 399. The cases relied upon by the Ninth Circuit or suggested by Gabbert all deal with a complete prohibition of the right to engage in a calling, and not the sort of brief interruption as a result of legal process which occurred here. See, *e.g.*, *Dent* v. *West Virginia*, 129 U. S. 114. Gabbert's argument that the search's improper timing interfered with his client's right to have him outside the grand jury room and available to consult with her is unavailing, since a grand jury witness has no constitutional right to have counsel present during the proceeding, and none of this Court's decisions has held that such a witness has a right to have her attorney present outside the jury room. This Court need not decide whether such a right exists, because Gabbert had no standing to raise the alleged infringement of his client's rights. Although he does have standing to complain of the allegedly unreasonable timing of the search warrant's execution to prevent him from advising his client, challenges to the reasonableness of the execution of a search warrant must be assessed under the Fourth Amendment, not the Fourteenth, see *Graham* v. *Connor*, 490 U. S. 386, 395. Pp. 4–7.

131 F. 3d 793, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment.