

**CURRENT ISSUES
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Benjamin V. Madison, III

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Sarah E. Ricks and Evelyn M. Tenenbaum

Employment Discrimination

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IN
CONSTITUTIONAL LITIGATION**

A Context and Practice Casebook

Sarah E. Ricks

RUTGERS SCHOOL OF LAW - CAMDEN

Contributions by

Evelyn M. Tenenbaum

ALBANY LAW SCHOOL

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To Tom, Kate, and Charlie, with love
— Sarah Ricks, Philadelphia, Pennsylvania

To Howard, Joanna, and Karen, with love
— Evelyn Tenenbaum, Albany, New York

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Foreword by David Rudovsky

This new casebook admirably fills a significant need in the teaching of the complex and dynamic issues in the area of constitutional litigation. For many years, law teachers of this increasingly important topic have either had to generate their own materials or choose among some few standard case books. Now, Professor Ricks has authored a new and quite different casebook that provides far more than the usual cases, comments and questions.

Professor Ricks approaches the constitutional and statutory materials from several perspectives: doctrinal development, legislative responses, litigation decisions, and practical considerations that inform the litigation and decision making in this area. Included in each substantive chapter are the social and political contexts of the constitutional issues, leading Supreme Court and Circuit Court opinions, excerpts from oral arguments on major cases in the Supreme Court, legislative initiatives, expert reports, jury instructions, representative pleadings, and even interviews with leading civil rights litigators. Students are provided with the full range of materials from the files of litigators to the decisions by the courts.

As an example, the chapter on prisoner rights litigation includes the leading cases and the development of controlling doctrine, but also provides a rich mix of materials from litigation files, investigative reports from public interest organizations, and legislative hearings that bear on the major issues. Professor Ricks also provides thoughtful questions and innovative simulations that will encourage students to think through these problems from the perspectives of the lawyers, inmates, prison officials, judges, and legislators.

The world of constitutional litigation is far broader than case law. Professor Ricks has captured the multi-dimensional aspects of this field of law and has produced a casebook that will greatly enhance teaching, learning and practice of constitutional litigation.

David Rudovsky
Kairys, Rudovsky, Messing & Feinberg
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August 2010

Foreword by Karen Blum

For years I've been putting together my own materials to teach a course on Police Misconduct Litigation. The course takes a practical approach and gets the students involved in working on real cases with attorneys, from both the plaintiffs' and defense bar, who are experienced in the area of section 1983 litigation. There has been no casebook that provides students with the opportunity to see how all the facets of a case come together.

Sarah Ricks has created an incredibly useful, contextually-based casebook that tells the story of constitutional litigation from many different perspectives. Students go behind the scenes and come to understand litigation from reading not only case law, but from examining briefs, oral arguments, pleadings, and expert opinions.

Chapter Six explores Fourth Amendment standards and Police Misconduct. The Chapter begins with facts and statistics about a police officer's job, the typical job requirements, salaries, and training. This is important information for students to have when they are reading cases that evaluate the reasonableness of a police officer's conduct. Following the key cases of *Tennessee v. Garner* and *Graham v. Connor*, the Chapter includes sample jury instructions and verdict forms for excessive force cases. An excessive force "dog-bite" case is followed from complaint to verdict, giving the students insight into how multiple claims and defendants may be reduced as the case proceeds, with the ultimate disposition of the case turning on a single issue in a single claim with respect to a single officer. Students are invited to think about the time and expense of litigation and the economic pressures to reject a settlement that would not compensate for the investment of time expended by plaintiff's counsel. The coverage of *Scott v. Harris* includes excerpts from the oral argument and an amicus brief submitted by the National Police Accountability Project. A post-*Scott* Circuit decision provides a window for exploration of how *Scott* is being applied and whether it establishes a "*per se*" rule for the use of deadly force in cases involving motor vehicle chases.

For professors and students who want more from legal education than the unadorned case-method approach can provide, Professor Ricks has compiled a set of materials that brings the case law to life. Teaching and learning about constitutional litigation will be a much richer experience thanks to her efforts.

Karen M. Blum
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August 2010

Series Editor's Preface

Welcome to a new type of casebook. Designed by leading experts in law school teaching and learning, Context and Practice casebooks assist law professors and their students to work together to learn, minimize stress, and prepare for the rigors and joys of practicing law. **Student learning and preparation for law practice are the guiding ethics of these books.**

Why would we depart from the tried and true? Why have we abandoned the legal education model by which we were trained? Because legal education can and must improve.

In Spring 2007, the Carnegie Foundation published *Educating Lawyers: Preparation for the Practice of Law* and the Clinical Legal Education Association published *Best Practices for Legal Education*. Both works reflect in-depth efforts to assess the effectiveness of modern legal education, and both conclude that legal education, as presently practiced, falls quite short of what it can and should be. Both works criticize law professors' rigid adherence to a single teaching technique, the inadequacies of law school assessment mechanisms, and the dearth of law school instruction aimed at teaching law practice skills and inculcating professional values. Finally, the authors of both books express concern that legal education may be harming law students. Recent studies show that law students, in comparison to all other graduate students, have the highest levels of depression, anxiety and substance abuse.

The problems with traditional law school instruction begin with the textbooks law teachers use. Law professors cannot implement *Educating Lawyers* and *Best Practices* using texts designed for the traditional model of legal education. Moreover, even though our understanding of how people learn has grown exponentially in the past 100 years, no law school text to date even purports to have been designed with educational research in mind.

The Context and Practice Series is an effort to offer a genuine alternative. Grounded in learning theory and instructional design and written with *Educating Lawyers* and *Best Practices* in mind, Context and Practice casebooks make it easy for law professors to change.

I welcome reactions, criticisms, and suggestions; my e-mail address is michael.schwartz@washburn.edu. Knowing the author(s) of these books, I know they, too, would appreciate your input; we share a common commitment to student learning. In fact, students, if your professor cares enough about your learning to have adopted this book, I bet s/he would welcome your input, too!

Professor Michael Hunter Schwartz, Series Designer and Editor
Co-Director, Institute for Law Teaching and Learning
Associate Dean for Faculty and Academic Development

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