Current Issues in Constitutional Litigation

A Context and Practice Casebook

Third Edition

2024 Supplement

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January 2024 Supplement to
CURRENT ISSUES IN CONSTITUTIONAL LITIGATION: A CONTEXT & PRACTICE CASEBOOK (3D ED. 2020)

Chapter 2 Eighth Amendment Prisoner Litigation

p. 78, *For further discussion* at the end of Note 1

See Taylor v. Riojas, __ U.S. __, 141 S. Ct. 52 (2020) (holding conditions of confinement violated inmate's Eighth Amendment rights where he was housed for six days in a cell covered in "massive amounts" of feces and later in a cell that was frigidly cold and equipped with only a clogged drain to dispose of bodily waste, in an order granting certiorari, vacating the judgment, and remanding).

Chapter 5 Action under "color of" state law

p. 286, *For further discussion,* add Note 3

In 2023, the Supreme Court heard oral argument on the following issue:

> Courts have increasingly been called upon to determine whether a public official who selectively blocks access to his or her social media account has engaged in state action subject to constitutional scrutiny. To answer that question, most circuits consider a broad range of factors, including the account's appearance and purpose. But in the decision below, the court of appeals rejected the relevance of any consideration other than whether the official was performing a "duty of his office" or invoking the "authority of his office." App. 5a.
>
> The question presented is: Whether a public official's social media activity can constitute state action only if the official used the account to perform a governmental duty or under the authority of his or her office.

Petition for Writ of Certiorari in *Lindke v. Freed*, Dkt. No. 22-611 (argued Oct. 31, 2023). The same day, the Supreme Court heard argument on a similar state action issue: whether a public official engages in state action by blocking an individual from the official's personal social-media account, when the official uses the account to communicate about job-related matters with the public, but not pursuant to any governmental authority or duty. Petition for Writ of Certiorari in *O'Connor-Ratcliff v. Garnier*, Dkt. No. 22-324 (cert. granted April 24, 2023).

Chapter 6 Fourth Amendment Standards and Police Misconduct

p. 319 - Add to Chapter Overview, after cite to *County of Sacramento v. Lewis*

See Torres v. Madrid, _ U.S. __ , 141 S.Ct. 989, 1003 (2021) **(**the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued; where police fired weapons into suspect's vehicle as she drove off, the suspect was seized).

p. 337, Add to end of Note 1, Development of Doctrine in the Lower Courts: Applying *Garner* & *Graham*

; see City of Tahlequah v. Bond, 595 U.S. __, __ (2021) (*per curiam*) (refusing to decide "whether recklessly creating a situation that requires deadly force can itself violate the Fourth Amendment").

Chapter 7 Distinguishing 4th, 14th, and 8th Amendment Claims

p. 410 - *For further discussion* before Note 1

In a 2021 case concerning physical force against a pretrial detainee, the Supreme Court declined to decide whether the force was reasonable or whether the constitutional right was clearly established. Instead, the Court remanded those questions to the Eighth Circuit. The Court reasoned that, "[a]lthough the Eighth Circuit cited the *Kingsley* factors, it is unclear whether the court thought the use of a prone restraint—no matter the kind, intensity, duration, or surrounding circumstances—is *per se* constitutional so long as an individual appears to resist officers' efforts to subdue him." *Lombardo v. City of St. Louis*, _ U.S. __, 141 S. Ct. 2239, 2241-42 (2021) (granting certiorari, vacating the judgment, and remanding).

Chapter 9 Absolute Immunity

p. 497 – Add to Chapter Overview after cite to *Clinton v. Jones*

See Trump v. Vance, _ U.S. _, 140 S. Ct. 2412, 2431 (2020) **(**President is not absolutely immune from state criminal subpoenas seeking his private papers)

Chapter 10 Other Statutes and Recurring Procedural Issues

p. 563, *For further discussion*, after note 1

The Fourth Circuit recently joined the majority of circuits in holding that a plaintiff who successfully obtains a preliminary injunction can qualify as a "prevailing party." "When a preliminary injunction provides the plaintiff concrete, irreversible relief on the merits of her claim and becomes moot before final judgment because no further court-ordered assistance proves necessary, the subsequent mootness of the case does not preclude an award of attorney's fees." *Stinnie v. Holcomb*, 77 F.4th 200, 210 (4th Cir. 2023), *cert. petition filed* (Dec. 2023). In so holding, the Fourth Circuit reversed its own longstanding precedent and mended a circuit split.

Id. at 207-10. The Fourth Circuit reasoned, in part, that "almost every other circuit" agreed with its 2023 construction of "prevailing party":

> [A]ll have concluded that a plaintiff whose case is rendered moot after she wins a preliminary injunction – so that the injunction by definition cannot be "reversed, dissolved, or otherwise undone" by a later order, *Sole*, 551 U.S. at 83 – may qualify as a prevailing party in appropriate circumstances. *See Planned Parenthood Sw. Ohio Region v. Dewine*, 931 F.3d 530, 542 (6th Cir. 2019); *Higher Taste, Inc. v. City of Tacoma*, 717 F.3d 712, 716 (9th Cir. 2013); *Rogers Grp., Inc. v. City of Fayetteville*, 683 F.3d 903, 909–10 (8th Cir. 2012); *Kan. Jud. Watch v. Stout*, 653 F.3d 1230, 1238 (10th Cir. 2011); *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1356 (11th Cir. 2009); *People Against Police Violence v. City of Pittsburgh*, 520 F.3d 226, 233 (3d Cir. 2008); *Dearmore v. City of Garland*, 519 F.3d 517, 524 (5th Cir. 2008); *Dupuy v. Samuels*, 423 F.3d 714, 723 n.4 (7th Cir. 2005); *Select Milk Producers, Inc. v. Johanns*, 400 F.3d 939, 948 (D.C. Cir. 2005); *Haley v. Pataki*, 106 F.3d 478, 483–84 (2d Cir. 1997).

Id. at 209.

p. 578, *For further discussion*, add Note 5

5. Individual Supreme Court Justices recently contributed to debate about the scope of the exhaustion requirement of the PLRA. Justice Thomas dissented from a denial of certiorari because "whether a prisoner who fails to comply with [the PLRA's] exhaustion requirement may cure the defect by filing an amended or supplemental complaint after his release" is an important issue that has divided the Circuits and "I see no reason to continue allowing certain prisoners in the Third and Ninth Circuits to proceed unencumbered by the PLRA's exhaustion requirement while those in the Fifth and Eleventh Circuits are required to comply." *Wexford Health v. Garrett*, _ U.S. _, 140 S.Ct. 1611, 1611-12 (2020).

If an inmate faces imminent risk from the spread of COVID, could a prison's long delay in the grievance procedures exempt the plaintiff from the exhaustion requirement? Justice Sotomayor suggests the answer is "yes":

> This Court has made clear that the PLRA requires exhaustion only of "available" judicial remedies. *Ross* v. *Blake*, 578 U. S. ——, ——, 136 S.Ct. 1850, 1858–1859 (2016). "[T]he ordinary meaning of the word 'available' is 'capable of use for the accomplishment of a purpose.' " *Ibid*. (some internal quotation marks omitted). Thus, when a grievance procedure is a "dead end"—when "the facts on the ground" indicate that the grievance procedure provides no possibility of relief—the procedures may well be "unavailable." *Id.*, ——, 136 S.Ct., at 1859.
>
> The Fifth Circuit seemed to reject the possibility that grievance procedures could ever be a "dead end" even if they could not provide relief before an inmate faced a serious risk of death. But if a plaintiff has established that the prison grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid–19, the

> procedures may be "unavailable" to meet the plaintiff's purposes, much in the way they would be if prison officials ignored the grievances entirely. *Ibid.*

Valentine v. Collier, _ U.S. __, 140 S. Ct. 1598, 1601 (2020) (statement of Sotomayor, J., with whom Ginsburg, J. joins, respecting the denial of application to vacate stay).

p. 580, D.2., **Heck v. Humphrey *Bar on 42 U.S.C § 1983 Actions***, add to end

What must plaintiff show to prevail on a claimed Fourth Amendment violation for unreasonable seizure pursuant to legal process? The Court granted certiorari to answer this question: "Whether the rule that a plaintiff must await favorable termination before bringing a Section 1983 action alleging unreasonable seizure pursuant to legal process requires the plaintiff to show that the criminal proceeding against him has "formally ended in a manner not inconsistent with his innocence," [citing 11th Circuit], or that the proceeding "ended in a manner that affirmatively indicates his innocence," [citing 2d Circuit]." *Thompson v. Clark*, _ U.S. _, 141 S.Ct. 1682 (2021).

The Supreme Court chose the former. In *Thompson v. Clark*, 596 U.S. 36 (2022), the Court held that plaintiff could satisfy the "favorable termination" requirement if the criminal prosecution ended without a conviction and declined to require an affirmative indication of innocence. "Because the American tort-law consensus as of 1871 did not require a plaintiff in a malicious prosecution suit to show that his prosecution ended with an affirmative indication of innocence, we similarly construe the Fourth Amendment claim under § 1983 for malicious prosecution. . . [R]equiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary to protect officers from unwarranted civil suits—among other things, officers are still protected by the requirement that the plaintiff show the absence of probable cause and by qualified immunity." *Thompson v. Clark*, 596 U.S. 36, 48–49 (2022)

In December 2023, the Supreme Court granted certiorari to refine the plaintiff's burden in a Fourth Amendment malicious prosecution claim.

> To make out a Fourth Amendment malicious prosecution claim under 42 U.S.C. § 1983, a plaintiff must show that legal process was instituted without probable cause. *Thompson v. Clark*, 142 S. Ct. 1332, 1338 (2022). Under the charge-specific rule, a malicious prosecution claim can proceed as to a baseless criminal charge, even if other charges brought alongside the baseless charge are supported by probable cause. Under the "any-crime" rule, probable cause for even one charge defeats a plaintiff's malicious prosecution claims as to every other charge, including those lacking probable cause.
>
> The question presented is: Whether Fourth Amendment malicious prosecution claims are governed by the charge-specific rule, as the Second, Third, and Eleventh circuits hold, or by the "any- crime" rule, as the Sixth Circuit holds.

Petition for Certiorari in *Chiaverini v. City of Napoleon, Ohio*, Dkt. No 23-50 (cert. granted Dec. 13, 2023).

Chapter 11 Qualified Immunity

p. 642, *For further discussion*, add at end

Did the Supreme Court recently signal lower courts to rein in the expansive doctrine of qualified immunity? Some Fifth Circuit judges think so. Dissenting from a refusal to rehear a panel opinion that had granted police qualified immunity, Judge Willett summarized the Supreme Court's indirect warning to lower courts to curb qualified immunity by recognizing obvious constitutional violations without a factually similar case:

> [T]he panel opinion collides with recent warnings from the Supreme Court summarily negating grants of qualified immunity for obvious constitutional violations. Twice in recent months, the Supreme Court has vacated immunity grants. . . And while these quiet, "shadow docket" actions may not portend a fundamental rethinking of qualified immunity, the Court seems determined to dial back the doctrine's harshest excesses. . . . Most importantly here, the Court is warning us to tread more carefully when reviewing obviously violative conduct.
>
> First came *Taylor v. Riojas* . . . [__ U.S. __, 141 S. Ct. 52 (2020)]. The Court summarily reversed our decision granting qualified immunity to prison officials who confined a prisoner for several days in a pair of "shockingly unsanitary cells"—the first cell **"covered, nearly floor to ceiling, in massive amounts of feces"** (with one officer telling another that Taylor would "have a long weekend"), and the second cell "frigidly cold" and flooded with raw sewage, in which Taylor "was left to sleep naked" (with another officer expressing hope that Taylor would "f***ing freeze"). The Supreme Court held that the prison officials had fair warning, without a factually similar case, that these conditions were plainly unconstitutional. . . .
>
> Indeed, *Taylor* was the first time in 16 years (and just the third time *ever*) that the Supreme Court expressly found official misconduct to violate "clearly established" law. In *Taylor*, the Court harkened back nearly 20 years to *Hope v. Pelzer*, which held that, when a constitutional violation is sufficiently obvious, qualified immunity can be denied even absent a previous case declaring virtually identical conduct unconstitutional. . . [T]he Court's intervening cases have sent the opposite message: Officers cannot be sued for violating someone's constitutional rights unless the specific actions at issue have previously been held unlawful. *Taylor*, however, declares that the obviousness principle has vitality and that egregiousness matters. In summarily reversing us without full briefing or argument, the Court sent the message that not only were we wrong, we were *obviously* wrong. . . .
>
> And though a rarity, *Taylor* was not a one-off. . . [T]he Supreme Court doubled down in another case from our circuit, *McCoy v. Alamu*, involving an inmate gratuitously assaulted with pepper spray "for no reason at all" by a prison guard who was angry with another inmate. [*McCoy v. Alamu*, —— U.S. ——, 141 S. Ct. 1364 (2021)]. The Court issued a "grant, vacate, and remand" order directing us to reconsider in light of *Taylor*. The Supreme Court's reliance on *Taylor* confirms that the Court does not consider that

> case an anomaly, but instead a course correction signaling lower courts to deny immunity for clear misconduct, even in cases with unique facts.
>
> As in *Taylor*, we granted qualified immunity in *McCoy* because there was no case with materially similar facts. . . [The Supreme Court's] message is low-key but loaded. These two orders make clear that the Court is earnest about reining in qualified immunity's severest applications. This doctrinal clarification may not amount to sweeping reexamination, but the upshot is plain: In cases with "particularly egregious facts," courts must not strain to absolve constitutional violations. Even if the precise fact pattern is novel, there is no need for a prior case exactly on point where the violation is obvious.[44]
> . . .
> In my judgment, nothing better captures the yawning rights-remedies gap of the modern immunity regime than giving a pass to alleged conscience-shocking abuse at the motion-to-dismiss stage and step one of the immunity inquiry.
> * * *
> This year America commemorates the sesquicentennial of our preeminent civil rights statute, 42 U.S.C. § 1983, the text of which promises a federal remedy for the violation of "any" right—not just "clearly established" ones. Nonetheless, the atextual, judge-created doctrine of qualified immunity shields lawbreaking officials from accountability, even for patently unconstitutional abuses, thus largely nullifying § 1983. The pages of F.3d abound with head-scratching examples:
>
> > • stealing $225,000 while executing a search warrant [*Jessop v. City of Fresno*, 936 F.3d 937 (9th Cir. 2019), *cert. denied*, —— U.S. ——, 140 S. Ct. 2793 (2020)]
> > • shooting a 10-year-old boy in the leg while repeatedly trying to shoot the nonthreatening family dog [*Corbitt v. Vickers*, 929 F.3d 1304 (11th Cir. 2019), *cert. denied*, —— U.S. ——, 141 S. Ct. 110 (2020)]
> > • releasing a police dog on a surrendered suspect (since the suspect was *sitting* on the ground while in a prior case the suspect was *lying* on the ground) [*Baxter v. Bracey*, 751 F. App'x 869 (6th Cir. 2018), *cert. denied*, —— U.S. ——, 140 S. Ct. 1862, (2020)]
>
> [W]hile qualified immunity has enjoyed special solicitude at the Supreme Court, perhaps these "particularly egregious facts" will prompt another meaningful message from the Court, one that marries law with justice (and common sense) and makes clear that those who enforce our laws are not above them.

Ramirez v. Guadarrama, 2 F.4th 506, 522-24 (5th Cir. 2021) (Willett, J., joined by Graves and Higginson, Circuit Judges, dissenting from the denial of rehearing en banc) (footnotes omitted).

Further, Justice Thomas has continued to register his "strong doubts about our § 1983 qualified immunity doctrine." *Baxter v. Bracey*, __ U.S. __, 140 S. Ct. 1862 (2020) (Thomas, J., dissenting from the denial of certiorari); *Hoggard v. Rhodes*, __ U.S. __, 141 S. Ct. 2421 (2021) ("we should reconsider. . . the judicial doctrine of qualified immunity") (statement of Thomas, J., respecting the denial of certiorari).

Yet, despite criticism of qualified immunity from Justices, judges, and the public, the Supreme Court has continued to adhere to and arguably strengthen the doctrine. For example, in reaffirming that, if "not an obvious case," plaintiff must show a violation of clearly established law by "identify[ing] a case that put [defendant] on notice that his specific conduct was unlawful," the Supreme Court has hinted that the only body of law to consult for the "clearly established" inquiry might be limited to *its own* decisions. Because the number of Supreme Court rulings is far smaller than the thousands of federal circuit court rulings, if rights were limited to only those "clearly established" by the Supreme Court, qualified immunity would expand. *See, e.g., Rivas-Villegas v. Cortesluna*, 595 U.S. _ (2021) (*per curiam*) ("[e]ven assuming that Circuit precedent can clearly establish law for purposes of §1983, [a specific 9th Circuit precedent] is materially distinguishable and thus does not govern the facts of this case").

In 2024, the Supreme Court will again have the opportunity to address qualified immunity. A petition for certiorari pending in December 2023 attacks both the legitimacy of qualified immunity for lacking sound foundation as well as federal court application of the doctrine. Eugene R. Fidell et al, Petition for a Writ of Certiorari in *Martinez v. Jenneiahn*, 2023 WL 8582389 (No. 23-611) (Dec. 5, 2023). The Petition argues new scholarship demonstrates that original language of 42 U.S.C. § 1983 expressly abrogated state law immunities and that key language was omitted from the statute when Congress ordered codification.

> [T]he original text of the Civil Rights Act of 1871 specifically abrogated state common-law defenses, thereby precluding qualified immunity. Recent scholarship has reinvigorated interest in the original text as evidence that "any immunity grounded in state law has no application to the cause of action we now know as Section 1983." Alexander A. Reinert, *Qualified Immunity's Flawed Foundation*, 111 Calif. L. Rev. 201, 238 (2023); *see, e.g., Price v. Montgomery County*, 72 F.4th 711, 727 n.1 (6th Cir. 2023) (Nalbandian, J., concurring in part) (discussing this scholarship).
>
> Judges have contended that this renewed attention to the original text should trigger a "seismic" shift in our understanding of Section 1983. *Rogers*, 63 F.4th at 980-981 (Willett, J., concurring) ("[T]he Supreme Court's original justification for qualified immunity that Congress wouldn't have abrogated common law immunities absent explicit language-is faulty because the 1871 Civil Rights Act expressly included such language."); *see, e.g., Erie v. Hunter*, 2023 WL 3736733, at *2 n.2 (M.D. La. May 31, 2023) (Jackson, J.) (calling for this Court to grapple with the original text, which "inarguably eliminates all ... immunities"); *Thomas v. Johnson*, 2023 WL 5254689, at *7 (S.D. Tex. Aug. 15, 2023) (Rosenthal, J.) (noting that "the original text" may have resulted in "the abrogation of the common law immunities that form the basis of contemporary qualified immunity jurisprudence").
>
> a. As originally enacted, the Civil Rights Act of 1871 read:
>
> Any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, *19 **any such**

> **law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding**, be liable to the party injured * * *."
>
> Civil Rights Act of 1871, ch. 22, § 1, 17 Stat. 13, 13 (emphasis added).
>
> This text plainly abrogated state common law, including the common-law immunities that formed the original basis for qualified immunity. . . . Accordingly, in 1871, an ordinary reader of the Civil Rights Act would have unambiguously understood Congress to have created liability that was not limited by state common-law immunities. Indeed, that is precisely what the legislative debates suggest Congress understood as well. *See* Reinert, *supra*, at 238-239 & nn.247-250 (collecting legislative evidence);

Petition for a Writ of Certiorari in *Martinez*, 2023 WL 8582389 at *17-*19; *see* Petition for Certiorari in *Benning v. Oliver*, 2023 WL 884651, *12-13 (Dec. 15, 2023) (arguing for the same and other reasons that the Supreme Court should "Overrule, Pare Back, Or Clarify" qualified immunity; Supreme Court should clarify that "where officials are not faced with making split-second decisions, precise factual correspondence between prior decisions and the instant case is not necessary to overcome qualified immunity).

Other teaching materials: news stories, videos, reports by governments & non-profits, websites

News Stories

Chapter 1 – Historical Context

Magazine article connecting 2021 coup attempt and Reconstruction/Redemption violence
NPR radio on 2021 coup attempt and 1898 Wilmington

Chapter 2 – Eighth Amendment Prison Litigation

Mississippi jails mental health patients
https://www.propublica.org/series/committed-to-jail

Fifth Circuit ruling that lifetime disenfranchisement violates cruel & unusual punishment clause

Feb. 2022 op-ed re: Covid vaccine & prison guards
https://www.latimes.com/opinion/story/2022-02-01/california-covid-prison-guards

Ohio inmates sue prison for failure to protect from white supremacist stabbing:

Georgia & other state prisons failing to treat medical conditions: https://www.ajc.com/news/state--regional-govt--politics/for-some-prisons-and-jails-diabetes-has-meant-death-sentence/wVz7xy1g4ujG3ClhH1visJ/?fbclid=IwAR043-m7pfTXOUh22LuJEjP0vAhILeHIFvjzO86PQjcRu_iDmaPzIKhetZs

U.S. Department of Justice finds Alabama's prisons routinely violate the Eighth Amendment rights of prisoners by failing to protect them from prisoner-on-prisoner violence and sexual abuse and failing to provide safe conditions: https://assets.documentcloud.org/documents/5793211/DOJ-Report-on-Alabama-Prisons.pdf

Nance v. Ward, _ U.S. _, 142 S.Ct. 2214 (2022) (death row inmate can use Section 1983 as the procedural vehicle to challenge the method-of-execution where alternative method was not authorized under state law)

Supreme Court holds violation of Miranda is not basis for Section 1983 damages remedy. *Vega v. Tekoe* (2022) https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf https://www.scotusblog.com/2022/06/tantamount-to-nothing-miranda-rights-cannot-be-wronged/

Eighth Amendment Excessive Fines clause incorporated via 14th Am & applies to states: https://www.supremecourt.gov/opinions/18pdf/17-1091_5536.pdf

Incarceration of women and girls: https://www.sentencingproject.org/publications/incarcerated-women-and-girls/

Federal Bureau of Prisons administrator testifies before legislature about addressing reports of sexual misconduct by inmates and employees

Prison conditions: In Brooklyn, prison lost heat & power, inmates living in cold:

Delaware prison riot lawsuit: http://www.wboc.com/story/39905386/inmates-charged-in-prison-riot-claim-abuse-in-lawsuit

New Pennsylvania prison construction: http://www.philly.com/philly/news/crime/prison-graterford-phoenix-phila-convention-center-20170901.html

Women returning from prison graduate from jobs training program – Mothers in Charge: http://www.philasun.com/stateside/mothers-charge-women-working-4-change-holds-graduation-ceremony-fourth-cohort/

Pennsylvania prison suicides at all time high http://inquirer.com/news/graterford-prison-suicide-pennsylvania-lawsuits-correct-care-solutions-mhm-20200220.html

2021 update of non-profit report on Covid in correctional facilities. As of June 2020, coronavirus outbreaks in correctional facilities and over 570 incarcerated people and 50 correctional staff had died. June 2020 ACLU Report has details.

Detainees have sued jails and prisons for 14th and 8th Amendment claims based on failure to curb the spread of COVID. ACLU suit filed on behalf 2000 detainees in a Dallas, Texas facility.

Pittsburgh ballot initiative to ban solitary confinement

Report on COVID spread to 70% of inmates in a federal prison

Losing a relative to prison, then Covid

To hear directly from inmates, website Prison Radio has voice commentaries. Radio journalist Noelle Hanrahan directs the non-profit and took this class at Rutgers Law in 2020.

Chapter 3 – Fourteenth Amendment Substantive Due Process

Prosecutors' confidential informant murdered: http://www.philly.com/philly/news/crime/anthony-reaves-chester-bennett-homes-murder-20170903.html

Article discussing creative settlement terms & reparations Alexis Karteron, Reparations for Police Violence, 45 N.Y.U. Rev. L. & Soc. Change 405 (2021)

Chapter 5 – Action Under Color of Law

Watch for Exercise 5B, p. 313. This is the raw footage from a security camera in the bar where an off-duty police officer beat up the bartender. It has graphic violence. Consider who put the video on YouTube and why. https://www.latimes.com/87452008-132.html

Chapter 6 – Fourth Amendment

President Biden's 2022 Executive Order on effective, accountable policing

Pro Publica Dec. 2023 report on police body cameras
https://www.propublica.org/article/how-police-undermined-promise-body-cameras

Most police body camera footage is not released to the public

Justice Department reports on police departments, e.g.,
https://www.justice.gov/crt/file/922421/download
https://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-racial-discrimination.html

George Floyd Justice in Policing Act of 2020

Non-profit report: Guide to Fair, Safe, Community Policing

Non-profit report:
State Attorneys' General Potential to Reform Police and End Police Brutality

ACLU Criminal Law & Police Reform Project

RadioLab podcast on Graham & The Reasonable Man:
https://www.wnycstudios.org/podcasts/radiolab/articles/graham

Washington Post Police Shootings Database:
https://www.washingtonpost.com/graphics/investigations/police-shootings-database/

Frontline documentary about Policing the Police, study of Newark NJ:
https://www.youtube.com/watch?v=2_8vTl6D940

Police driving maneuver has killed 30 people since 2016: Pit Maneuver by police

Police officer's body camera shows punch overdosing man who died: https://www.inquirer.com/news/philadelphia-police-punch-28-year-old-man-overdose-died-logan-20200214.html

Pro bono excessive force litigation by private firm: https://www.law360.com/access-to-justice/articles/1247699/sidley-s-push-for-retrial-pays-off-in-excessive-force-case?nl_pk=8e2ff29c-fe02-47df-b6f8-36b93adc88f2&utm_source=newsletter&utm_medium=email&utm_campaign=access-to-justice

Interview with author of "The End of Policing" https://www.npr.org/sections/codeswitch/2020/06/03/457251670/how-much-do-we-need-the-police

American Law Institute policing blog posts: https://thealiadviser.org/policing-posts/

Complaint to United Nations filed by law student clinic & ACLU(including Tue Ho, who took this class at Rutgers Law in 2021):

> Drexel School of Law and American Civil Liberties Union (ACLU) of Pennsylvania filed a letter of allegation with UN Special Procedures on behalf of the protesters and residents who experienced and witnessed police brutality in response to Black Lives Matter protests in May/June 2020 across Philadelphia.
>
> We allege Philadelphia violated their rights to peaceful assembly and freedom of expression and used excessive force in violation of international law. We also allege that the Philadelphia Police Department's policies on the use of force do not comply with international human rights standards and that the City's police accountability procedures are inadequate. We also created an illustrative timeline here.

Mississippi sheriff proposed reforms after officers plead guilty to torture

Chapter 7 – Post Arrest Excessive Force Claims

Book review. Flint Taylor (Peoples Law Office Chicago) on Chicago Police Officer Jon Burge Torture cases https://www.chicagotribune.com/entertainment/books/ct-books-flint-taylor-0505-20190424-story.html
Article discussing Chicago reparations for Jon Burge torture cases by Rutgers Prof. Alexis Karteron (2021)

In 2015, Chicago approved compensating victims of police torture. 60 living victims eligible for up to $100,000. Additional terms: Survivors and families of victims given psychological counseling and free college tuition; public memorial to the deceased victims; Chicago students learn about police officer Burge's conduct. https://en.wikipedia.org/wiki/Jon_Burge#City_reparations

Chapter 8 – Procedural Due Process

California police fired for domestic violence:

https://www.mercurynews.com/2019/11/10/these-california-police-officers-were-charged-with-brutalizing-loved-ones-so-why-are-so-many-still-carrying-a-gun/

This 3-minute excerpt from an interview with Jill Burella is about her police officer husband attacking her. Excerpt from a radio documentary co-authored by Noelle Hanrahan, a student in this class at Rutgers Law in 2020. Out of the Shadows (c) Prison Radio 2002

Chapter 9 – Absolute Immunity

Federal judiciary approves new judicial conduct rules addressing judges' sexual harassment https://www.law360.com/legalethics/articles/1137546/judiciary-approves-sweeping-metoo-era-reforms?nl_pk=5c67c2e3-1763-4481-9888-c4743ec565ac&utm_source=newsletter&utm_medium=email&utm_campaign=legalethics&read_more=1

Do Immigration judges need more independence - converted to Article 1 judges? https://www.law360.com/access-to-justice/articles/1138674/identity-crisis-do-immigration-judges-need-more-freedom-?nl_pk=5c67c2e3-1763-4481-9888-c4743ec565ac&utm_source=newsletter&utm_medium=email&utm_campaign=access-to-justice

Judge does not get immunity for accompanying sheriff in executing warrant https://www.ca4.uscourts.gov/opinions/221757.P.pdf

In 2022, a federal court awarded the former juvenile detainees $206 million in compensatory and punitive damages against the two ex-judges. Wallace v. Powell, No. 3:09-CV-286, 2022 WL 3447197 (M.D. Pa. Aug. 16, 2022)

The Lawyers' Committee for Civil Rights Under Law filed a lawsuit alleging that three judges in White County, OK routinely jail indigent defendants who can't afford to pay court-ordered fines and fees. The lawsuit also names an Oklahoma state agency, alleging it is complicit in incentivizing attorneys to close cases quickly, in absence of recognizing defendants' rights.

Chapter 10 - Other Statutes & Recurring Procedural Issues

Attorneys Fees - petition for fees denied & results in sanctions for Pennsylvania attorney
http://www.pacourts.us/assets/opinions/DisciplinaryBoard/out/5DB2018-Pollick.pdf
https://casetext.com/case/young-v-smith-52

Chapter 11 – Qualified Immunity

Reuters multi-part investigation of police excessive force and qualified immunity (May - December 2020), plus shorter individual stories https://www.reuters.com/investigates/section/usa-police-immunity/

Cato Institute podcast on Qualified Immunity & why Supreme Court should revisit: https://www.youtube.com/watch?v=_ZsGkKbOfDg

ACLU video on holding police accountable: https://www.youtube.com/watch?v=6mPJ5w9-XF4

Bloomberg Law on Qualified Immunity: https://www.youtube.com/watch?v=nE9cNjCjPGM

CBS Sunday Morning on Qualified Immunity:
https://www.youtube.com/watch?v=JUmPSppj2YQ

Professor Ricks op-ed: https://www.nj.com/opinion/2020/06/supreme-court-should-make-it-easier-to-sue-cops-who-violate-our-civil-rights.html

State statutes creating state analogue to Section 1983 but limiting or without qualified immunity

https://reason.com/2021/02/19/new-mexico-could-be-the-third-state-to-authorize-lawsuits-against-abusive-cops-without-qualified-immunity/

https://nmindepth.com/2021/01/25/nm-lawmakers-tackle-civil-rights-protections-and-police-accountability/

https://reason.com/volokh/2020/08/02/connecticut-passes-law-curbing-back-qualified-immunity-but-with-loopholes/

Instagram sites or search #EndQualifiedImmunity or #QualifiedImmunity:

https://www.instagram.com/endqualifiedimmunitynow/

https://www.instagram.com/endingqualifiedimmunity/

https://www.instagram.com/qualified_immunity/

https://www.instagram.com/explore/tags/qualifiedimmunityreform/

Videos

Returning citizens: incarcerated women transitioning from jail

http://www.mothersincharge.org/project/mic-documentary/

Role of Child Protective Service Worker, Social Worker, Lawyers

Frontline on Maine child protective service agency

1. **Please watch all of Part 2 (15 minutes),** which includes a meeting between the child protective service workers and the lawyer, about whether to remove a 2-year old child from his home:

   https://www.youtube.com/watch?v=YSsC5cHVCWA

2. If you want to see the next step in 2-year old Mark's case, please watch the first 5 minutes of Part 3:

https://www.youtube.com/watch?v=PslCKn1L22k

Other videos – or watch one you find yourself:

3. Interview about role of child protective service worker/social worker in investigating allegations of abuse or neglect. While this is a UK video, and the procedural terms "conference" and "core group" do not apply, this gives a good overview of steps in the process:

   https://www.youtube.com/watch?v=VcsFzoBrmb0

General background - Violence, Incarceration, Survivors

http://www.theaterofwitness.org/films/

- Walk in My Shoes - 4 Philadelphia Police Officers, 3 community members
- Beyond the Walls - survivors of violence

ACLU YouTube Channel – various topics
https://www.youtube.com/channel/UC7M42vQrNmZ0tnmmenLWwBA

Websites & Non-profits

Justice Collaboratory – criminal justice reform https://law.yale.edu/justice-collaboratory

ACLU Prisoners' Rights Project https://www.aclu.org/issues/prisoners-rights

CATO Institute Criminal Law & Civil Liberties https://www.cato.org/research/criminal-law-civil-liberties

Prison Policy Initiative: https://www.prisonpolicy.org/

Abolitionist Law Center https://abolitionistlawcenter.org/

Amistad Law Project https://amistadlaw.org/about

Police – misconduct, off duty, use of force

Cato Institute National Police Misconduct Reporting Project
https://www.policemisconduct.net/

Center for Policing Equity: https://policingequity.org/what-we-do/a-policy-plan-for-policing-in-america

Justice Collaboratory: https://law.yale.edu/justice-collaboratory