

# PBI CIVIL RIGHTS SYMPOSIUM YEAR IN REVIEW

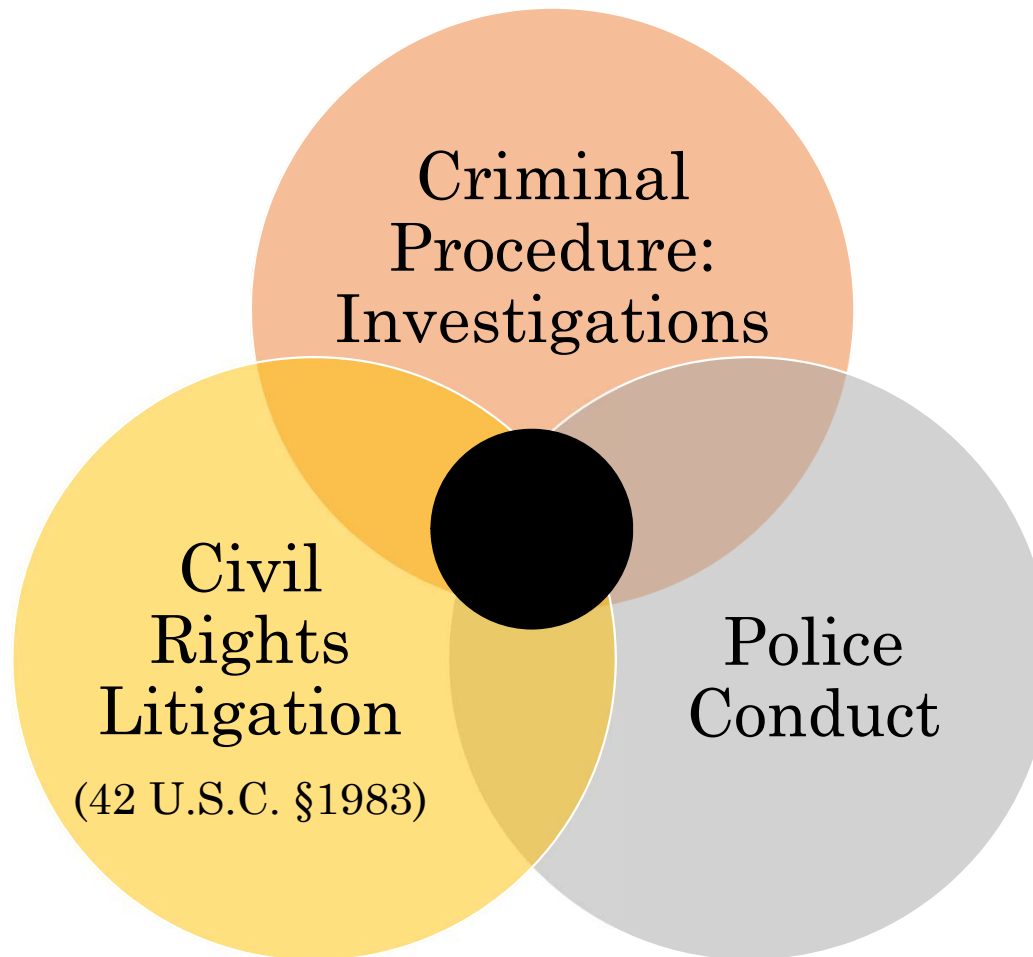
42 U.S.C. § 1983,  
THE FOURTH AND EIGHTH AMENDMENTS  
(AND QUALIFIED IMMUNITY)

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## 42 U.S.C. § 1983

- Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . .

- Person
- Acting under color of state law
- Subjects or causes any person in the U.S. to be subjected
- To the deprivation of rights, privileges, or immunities secured by the Constitution and laws



# Mitchum v. Foster

407 U.S. 225 (1972)

The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, “whether that action be executive, legislative, or judicial.”



“the deprivation of rights,  
privileges , or immunities  
secured by the Constitution and  
laws”

CONSTITUTIONAL RIGHTS



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# SCOTUS Cases Term Years 2017-2018

1. *Lozman v. City of Riviera Beach, Fla.*, 138 S. Ct. 1945 (2018)
2. *Collins v. Virginia*, 138 S. Ct. 1663 (2018)
3. *Byrd v. United States*, 138 S. Ct. 1518 (2018)
4. *Timbs v. Indiana*, 139 S. Ct. 682 (2019)
5. *Carpenter v. United States*, 138 S.Ct. 2206 (2018)
6. *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500 (2019)



# The Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.



# Timbs v. Indiana, 139 S. Ct. 682 (2019)

Whether the Eighth Amendment's Excessive Fines Clause is an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause.





# Timbs v. Indiana,

139 S. Ct. 682 (2019) (internal citations omitted)

- “Like the Eighth Amendment’s proscriptions of cruel and unusual punishment and excessive bail, the protection against excessive fines guards against abuses of government’s punitive or criminal-law-enforcement authority.”
- “This safeguard, we hold, is fundamental to our scheme of ordered liberty, with deep roots in our history and tradition.”
- **“The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.”**



# **Carpenter v. United States, 585 U.S. \_\_\_\_ (2018)**

This case presents the question whether the Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of the user's past movements.



# United States v. Jones, 565 U.S. 400 (2012)

- “The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”



**United States v. Jones,**  
**565 U.S. 400 (2012) (J. Sotomayor, concurring)**

“Physical intrusion is now unnecessary to many forms of surveillance . . . it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties...”



# Carpenter v. United States, 585 U.S. \_\_\_\_ (2018)

## Trespass

- the Government's installation of a GPS device on a person's vehicle and its use of the device to monitor the vehicle's movements, constitutes a search"

## Third party Doctrine

- "the Court has drawn a line between what a person keeps to himself and what he share with others. We have previously held that a "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties"



## **Carpenter v. United States, 585 U.S. \_\_\_\_ (2018)**

- Allowing government access to cell-site records contravenes that expectation. Although such records are generated for commercial purposes, that distinction does not negate Carpenter's anticipation of privacy in his physical location.



# Qualified Immunity

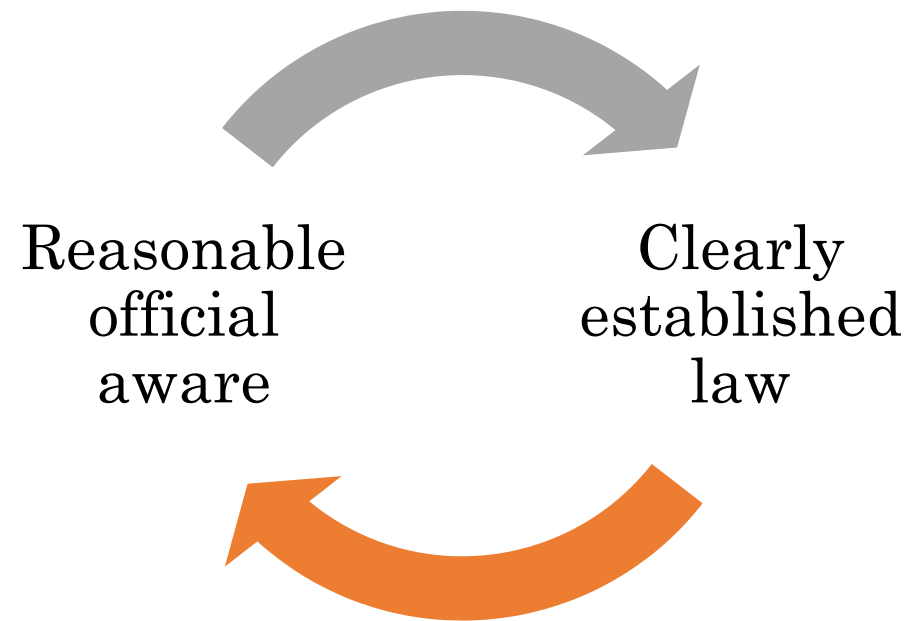


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# Qualified Immunity

“Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”





## City of Escondido, Cal. v. Emmons, 139 S. Ct. 500, (2019)

- “Under our cases, the clearly established right must be defined with specificity. This Court has repeatedly told courts not to define clearly established law at a high level of generality. . . .
- “Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.



# Excessive Force and Qualified Immunity

1. What courts are able to create “clearly established law.”
2. Whether circuit court splits preclude a finding “clearly established law.”
3. The level of specificity necessary to create “clearly established law.”



# Excessive Force & Qualified Immunity



“Use of excessive force is an area of the law in which the result depends very much on the facts of each case . . .”



“Clearly established means that . . . every reasonable official would understand that what he is doing is unlawful.”

