FIRE & EMS OFFICER DEVELOPMENT –
AMERICAN HISTORY / LEGAL LESSONS
LEARNED

Lawrence T. Bennett, Esq.
Professor-Educator
Program Chair, Fire Science & Emergency Management
University of Cincinnati
Lawrence.bennett@uc.edu
Cell 513-470-2744
NOT PROVIDING LEGAL ADVICE

Introduction

MODULE I: U.S. CONSTITUTION / FIRE & EMS (p. 9)
MODULE II: AMERICAN REVOLUTION / LEADERSHIP (p. 27)
MODULE III: U.S. HISTORY / STATUTES IMPACTING
EMERGENCY RESPONDERS (p. 72)
MODULE IV: KEY SUPREME COURT DECISIONS IMPACTING
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CASES UPDATED MONTHLY ONLINE:
https://scholar.uc.edu/concern/documents/j098zc50w?locale=en

APPENDIX: SOCIAL MEDIA POLICIES (p. 195)

Ohio FF I / EMT-B (1980 – present)

“FRYE”– Prof. Bennett’s pet therapy dog – greating families of Fallen Firefighters
Former member of Madeira-Indian Hill Joint Fire District, Cincinnati, OH (1987 – 2002), and Deerfield Township Fire Rescue; current member, Greater Cincinnati HAZMAT Unit, and SW Ohio Critical Incident Stress Management Team (pet therapy).

MONTHLY FIRE & EMS LAW NEWSLETTERS:

Just send me an e-mail to be added to our free listserv. Lawrence.bennett@uc.edu

FIRE & EMS LAW Newsletters (monthly):
https://ceas.uc.edu/academics/departments/aerospace-engineering-mechanics/fire-science/fire-service-law.html;

PROF. BENNETT’S OTHER PUBLICATIONS

TEXTBOOK: EMS LAW (Third Edition, 2020); FREE ONLINE TEXTBOOK: (ISBN: 978-1-949104-05-9);


Honor To Teach Firefighters
As a professor, it has also been an honor to see students excel in their careers.

Jason Buss, Jbuss357@gmail.com, on Dec. 14, 2019 graduated from UC Fire Science, Summa Cum Laude (best GPA in the College of Engineering & Applied Science). He is Fire Chief of Village of Northfield Fire Department, and Lieutenant with Richmond Heights Fire Department.  [Photo by author – shared with student’s written permission.]

Also sharing “lessons learned” with young firefighters just starting their careers.

Ross Yaden, ross.yaden5@gmail.com, Colerain Township Fire Department; student at Cincinnati State, Fall Semester, 2019, pursuing an Associate Degree.  [Photo by author - shared with student’s written permission.]

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**COURSE FORMAT**

In my courses at University of Cincinnati, and Cincinnati State, it is helpful to start with a review of American history, so students have a historical understanding of our Nation’s Constitution
(MODULE I), leadership decisions in Revolutionary War (MODULE II), important federal legislation enacted in our nation’s history (MODULE III), and landmark U.S. Supreme Court decisions (MODULE IV). These first four modules are designed to prepare students to analyze recent cases (MODULE V) in these 18 Chapters.

Chap. 1 American Legal System, incl. Fire Code, Fire Invest.
Chap. 2 Line Of Duty Death / Safety
Chap. 3 Homeland Security, incl. Active Shooter, Cybersecurity
Chap. 4 Incident Command, incl Training, Drones
Chap. 5 Emergency Vehicle Operations
Chap. 6 Employment Litigation, incl. Worker’s Comp
Chap. 7 Sexual Harassment, incl. Pregnancy Discrimination
Chap. 8 Race Discrimination
Chap. 9 Americans With Disabilities Act
Chap. 10 Family Medical Leave Act, incl. Military Leave
Chap. 11 Fair Labor Standards Act
Chap. 12 Drug-Free Workplace
Chap. 13 EMS, incl. Community Paramedicine, Corona Virus
Chap. 14 Physical Fitness, incl. Light Duty
Chap. 15 CISM, incl. Peer Support, Mental Health
Chap. 16 Discipline
Chap. 17 Arbitration, Mediation, incl. Labor Relations
Chap. 18 Legislation

Test Your Pre-Course Knowledge:

1. If your Fire Chief asked you to identify five (5) key points for a new Social Media Policy, what would you suggest? [See APPENDIX.]

2. If you were the Officer In Charge [OIC] of this structure fire in Michigan, how would you handle the collection of evidence when arson investigators were not immediately available?

“Shortly before midnight on January 21, 1970, a fire broke out at Tyler's Auction, a furniture store in Oakland County, Mich. The building was leased to respondent Loren Tyler, who conducted the business in association with respondent Robert Tompkins. According to the trial testimony of various witnesses, the fire department responded to the fire and was ‘just watering down smoldering embers’ when Fire Chief See arrived on the scene around 2 a.m. It was Chief See's responsibility ‘to determine the cause and make out all reports.’ Chief See was met by Lt. Lawson, who informed him that two
plastic containers of flammable liquid had been found in the building. Using portable lights, they entered the gutted store, which was filled with smoke and steam, to examine the containers. Concluding that the fire ‘could possibly have been an arson,’ Chief See called Police Detective Webb, who arrived around 3:30 a.m. Detective Webb took several pictures of the containers and of the interior of the store, but finally abandoned his efforts because of the smoke and steam. Chief See briefly ‘[l]ooked throughout the rest of the building to see if there was any further evidence, to determine what the cause of the fire was.’ By 4 a.m., the fire had been extinguished and the firefighters departed. See and Webb took the two containers to the fire station, where they were turned over to Webb for safekeeping. There was neither consent nor a warrant for any of these entries into the building, nor for the removal of the containers….

Four hours after he had left Tyler's Auction, Chief See returned with Assistant Chief Somerville, whose job was to determine the ‘origin of all fires that occur within the Township.’ The fire had been extinguished and the building was empty. After a cursory examination, they left, and Somerville returned with Detective Webb around 9 a.m. In Webb's words, they discovered suspicious ‘burn marks in the carpet, which [Webb] could not see earlier that morning, because of the heat, steam, and the darkness.’ They also found ‘pieces of tape, with burn marks, on the stairway.’ After leaving the building to obtain tools, they returned and removed pieces of the carpet and sections of the stairs to preserve these bits of evidence suggestive of a fuse trail. Somerville also searched through the rubble ‘looking for any other signs or evidence that showed how this fire was caused.’ Again, there was neither consent nor a warrant for these entries and seizures.

***

On February 16, Sergeant Hoffman of the Michigan State Police Arson Section returned to Tyler's Auction to take photographs. During this visit or during another at about the same time, he checked the circuit breakers, had someone inspect the furnace, and had a television repairman examine the remains of several television sets found in the ashes. He also found a piece of fuse. Over the course of his several visits, Hoffman secured physical evidence and formed opinions that played a substantial role at trial in establishing arson as the cause of the fire and in refuting the respondents' testimony about what furniture had been lost. His entries into the building were without warrants or Tyler's consent, and were for the sole purpose "of making an investigation and seizing evidence."” [https://supreme.justia.com/cases/federal/us/436/499/](https://supreme.justia.com/cases/federal/us/436/499/)

U.S. Supreme Court’s holding:

MR. JUSTICE STEWART delivered the opinion of the Court (7 to 1 decision; Chief Justice Rehnquist dissented; Justice Brennan did not participate) In Michigan v. Tyler, 436 U.S. 499 (1978), [https://supreme.justia.com/cases/federal/us/436/499/](https://supreme.justia.com/cases/federal/us/436/499/)
Justice Potter Stewart [1915 – 1985]. “In 1954, when Stewart was only 39, he was appointed to the U.S. Court of Appeals for the 6th Circuit. In 1958, President Dwight D. Eisenhower appointed him to the U.S. Supreme Court, where he served until his retirement in 1981. Although he had a background in Ohio Republican politics and was appointed to the Supreme Court by a Republican president known for his antipathy to judicial liberalism, Stewart was not a conservative justice. Rather, he followed a moderate, pragmatic approach that defied easy categorization. He believed that he should approach each case on its merits, without striving to further an ideological agenda. Over time, his practical approach marked him as a centrist who adhered to no particular wing of the court. *** He later played a significant role in formulating the court's unanimous opinion in *Nixon v. United States* (1974), which ordered President Richard M. Nixon to surrender to the special prosecutor the tape recordings whose disclosure later led Nixon to resign.”

https://www.supremecourt.ohio.gov/MJC/places/pStewart.asp

Potter Stewart Federal Courthouse, Cincinnati – houses U.S. District Court and the U.S. Court of Appeals for the 6th Circuit

**Holding:**

“On the facts of this case, we do not believe that a warrant was necessary for the early morning reentries on January 22. As the fire was being extinguished, Chief See and his
assistants began their investigation, but visibility was severely hindered by darkness, steam, and smoke. Thus they departed at 4 am. and returned shortly after daylight to continue their investigation. Little purpose would have been served by their remaining in the building, except to remove any doubt about the legality of the warrantless search and seizure later that same morning. Under these circumstances, we find that the morning entries were no more than an actual continuation of the first, and the lack of a warrant thus did not invalidate the resulting seizure of evidence.

***

The entries occurring after January 22, however, were clearly detached from the initial exigency and warrantless entry. Since all of these searches were conducted without valid warrants and without consent, they were invalid under the Fourth and Fourteenth Amendments, and any evidence obtained as a result of those entries must, therefore, be excluded at the respondents' retrial.”

Dissent by Chief William Justice Rehnquist:

“The Court does not dispute that the entries which occurred at the time of the fire and the next morning were entirely justified, and I see nothing to indicate that the subsequent searches were not also eminently reasonable in light of all the circumstances. *** In evaluating the reasonableness of the late searches, their most obvious feature is that they occurred after a fire which had done substantial damage to the premises, including the destruction of most of the interior. Thereafter, the premises were not being used, and very likely could not have been used, for business purposes, at least until substantial repairs had taken place. Indeed, there is no indication in the record that, after the fire, Tyler ever made any attempt to secure the premises. As a result, the fire department was forced to lock up the building to prevent curious bystanders from entering and suffering injury. And as far as the record reveals, Tyler never objected to this procedure or attempted to reclaim the premises for himself.”

Thank You – Friends In Fire Service Who Kindly Reviewed Suggested Homework Assignments
Jason Buss, Fire Chief, Village of Northfield Fire Department; Lieutenant, Richmond Heights Fire, OH;
Randy Hanifen, PhD, Assistant Fire Chief, West Chester Township, OH;
William Kramer, PhD, Fire Chief (ret), Deerfield Township Fire Rescue, OH;
Matthew N. Moynihan, Training & Exercise Specialist, Hamilton County Emergency Management & Homeland Security Agency, OH;
Irwin Miller, MPA, Associate Professor, Teas A&M University, San Antonio, TX;
Jennifer L. Ploeger, Paramedic, Colerain Township Department of Fire & EMS, OH;
H. Scott Walker, Fire Protection Studies, Western Illinois University, IL;
Kenneth R. Willette, Executive Director, North American Fire Training Directors, MA.
"FRYE" is named after Frye’s Leap, Lake Sebago, Maine: https://www.mainememory.net/artifact/17428. Our 3 sons went to Camp O-At-Ka, and now our 9 grandsons as they become of age are starting to attend: https://campoatka.org/.

Suggested homework assignments:

1. The 1st Amendment includes a right of free speech. Discuss why emergency responders enjoy only a “limited right” of free speech when posting items on social media about their department. Read: Garcetti et al v. Ceballos, 547 US 410 (2006), https://supreme.justia.com/cases/federal/us/547/410/. See also the APPENDIX for Social Media cases.

2. The 5th Amendment protection against self-incrimination can be an issue in internal fire department investigations. Describe what steps a FD officer assigned to investigate of theft of an antique fire bell must take to require a firefighter to answer questions about possible criminal misconduct of a fellow firefighter (“Garrity rights”). Read: U.S. Supreme Court decision Garrity v. New Jersey, 386 U.S. 493 (1967): https://supreme.justia.com/cases/federal/us/385/493/ “We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic.” *
*Note: Some state courts have similar holdings, including California: 1975 California Supreme Court case: Skelly v. State Personnel Bd., 15 Cal.3d 194: https://scocal.stanford.edu/opinion/skelly-v-state-personnel-bd-30336 . “As it is clear that California's statutory scheme does provide for an evidentiary hearing after the discipline is imposed (§§ 19578, 19580, 19581), we view the petitioner's constitutional attack as directed against that section which permits the punitive action to take effect without according the employee any prior procedural rights. *** Applying the general principles we are able to distill from these various opinions, we are convinced that the provisions of the California Act concerning the taking of punitive action against a permanent civil service employee do not fulfill minimum constitutional demands.”

3. The 14th Amendment includes a “due process” clause. Discuss whether a probationary career firefighter has a right to a pre-disciplinary hearing. Read: U.S. Supreme Court decision in Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), https://supreme.justia.com/cases/federal/us/470/532/ “In these cases, we consider what pretermination process must be accorded a public employee who can be discharged only for cause. *** We conclude that all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures….”

4. In many states fire departments have collective bargaining agreements that include a right to arbitration, and some states have enacted a “Firefighters Bill of Rights” (see below CA, FL, LA). If you were a newly promoted Captain, and took personal notes each time you either cautioned or praised a member of your unit, discuss whether a firefighter facing discipline for repeatedly being late for work would be entitled to a copy of your notes.

SOME STATES HAVE ENACTED A “FIREFIGHTERS BILL OF RIGHTS”
California Firefighters Procedural Bill of Rights Act of 2007

California Statute: Sec. 3254: http://firefightersbillofrights.com/statute/#3254

“(a) A firefighter shall not be subjected to punitive action, or denied promotion, or be threatened with that treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

(b) Punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with an opportunity for administrative appeal.

(c) A fire chief shall not be removed by a public agency or appointing authority without providing that person with written notice, the reason or reasons for removal, and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a fire chief by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, or for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute “reason or reasons.”

Nothing in this subdivision shall be construed to create a property interest, if one does not otherwise exist by rule or law, in the job of fire chief.

(d) Punitive action or denial of promotion on grounds other than merit shall not be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of discovery by the employing fire department or licensing or certifying agency. This one-year limitation period shall apply only if the discovery of the act, omission, or other misconduct occurred on or after January 1, 2008.

If the employing department or licensing or certifying agency determines that discipline may be taken, it shall complete its investigation and notify the firefighter of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the firefighter voluntarily waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(2) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.
(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(5) If the investigation involves a matter in civil litigation where the firefighter is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(6) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant’s criminal investigation and prosecution.

(7) If the investigation involves an allegation of workers’ compensation fraud on the part of the firefighter.

(e) If a predisciplinary response or grievance procedure is required or utilized, the time for that response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the employing department or licensing or certifying agency decides to impose discipline, that agency shall notify the firefighter in writing of its decision to impose discipline within 30 days of its decision, but not less than 48 hours prior to imposing the discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a firefighter if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exists:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the firefighter’s predisciplinary response or procedure.”

**Florida Firefighters’ Bill of Rights:**
112.82 Rights of firefighters. Whenever a firefighter is subjected to an interrogation, such interrogation shall be conducted pursuant to the terms of this section.

1. The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

2. No firefighter shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.

3. All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless the importance of the interrogation or investigation is of such a nature that immediate action is required.

4. The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

5. Interrogation sessions shall be of reasonable duration and the firefighter shall be permitted reasonable periods for rest and personal necessities.

6. The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.

7. A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

8. An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.

9. No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

History.—s. 1, ch. 86-6.”

**Louisiana Firefighters’ Bill of Rights:**
112.82 Rights of firefighters:
https://www.elfr.org/files/93c775886/6eda97e9b8fe985833ee8385e81ea49f.pdf

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HISTORY LESSON – “A republic, if you can keep it.”

Benjamin Franklin [age 81] in 1787

“The deliberations of the Constitutional Convention of 1787 were held in strict secrecy. Consequently, anxious citizens gathered outside Independence Hall when the proceedings ended in order to learn what had been produced behind closed doors. The answer was provided immediately. A Mrs. Powel of Philadelphia asked Benjamin Franklin:

“Well, Doctor, what have we got, a republic or a monarchy?” With no hesitation whatsoever, Franklin responded, “A republic, if you can keep it.”

https://www.ourrepubliconline.com/Author/21

9/17/1787 - The Constitution of the United States of America

https://www.law.cornell.edu/constitution

“Note: The following text is a transcription of the Constitution as it was inscribed by Jacob Shallus on parchment (the document on display in the Rotunda at the National Archives Museum.) The spelling and punctuation reflect the original.”

https://www.archives.gov/founding-docs/constitution-transcript

- **Preamble** ["We the people"]

  “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

- **Article I** [The Legislative Branch]
  - **Section 1** [Legislative Power Vested]
“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

- **Section 2.** [House of Representatives] (see [explanation](#))

  “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

  No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

- **Section 3.** [Senate] (see [explanation](#))

  “The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote…. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.”

- **Section 4.** [Elections of Senators and Representatives]
- **Section 5.** [Rules of House and Senate]
- **Section 6.** [Compensation and Privileges of Members]
- **Section 7.** [Passage of Bills]
- **Section 8.** [Scope of Legislative Power]
- **Section 9.** [Limits on Legislative Power]
- **Section 10.** [Limits on States]

- **Article II** [The Presidency] (see [explanation](#))
  - **Section 1.** [Election, Installation, Removal]

  “The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

  Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”
Section 2. [Presidential Power]

“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.”

Section 3. [State of the Union, Receive Ambassadors, Laws Faithfully Executed, Commission Officers]

Section 4. [Impeachment]

“The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Article III [The Judiciary] (see explanation)

“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

Section 1. [Judicial Power Vested]

“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their
Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.”

Section 2. [Scope of Judicial Power]

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State [changed by 11th Amendment]—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects….

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”

AMENDMENT XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

https://www.archives.gov/founding-docs/amendments-11-27#toc-amendment-xi

Note on meaning of 11th Amendment:

“During the debates over whether to ratify the Constitution, controversy arose over one provision of Article III that allowed federal courts to hear disputes “between” a state and citizens of another state, or citizens or subjects of a foreign state. Anti-Federalists (who generally opposed the Constitution) feared that this provision would allow individuals to sue states in federal court. Several prominent Federalists (who generally favored the Constitution) assured their critics that Article III would not be interpreted to permit a state to be sued without its consent. However, some other Federalists accepted that Article III permitted suits against states, arguing that it would be just for federal courts to hold states accountable.
These [several U.S. Supreme Court decisions on the 11th Amendment] suggest that the Court may regard state sovereign immunity—the legal privilege by which the state government cannot be sued, at least in its own courts, without its consent—as an underlying constitutional “postulate,”—an assumption reflected but not fully captured by the words of the Eleventh Amendment.”

https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xi/interps/133

- **Section 3.** [Treason]
- **Article IV** [The States]
  - **Section 1.** [Full Faith and Credit]
  - **Section 2.** [Privileges and Immunities, Extradition, Fugitive Slaves]

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.” [Changed by 13th Amendment.]

**AMENDMENT XIII**

“Passed by Congress January 31, 1865. Ratified December 6, 1865.

**Section 1.**

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Section 2.**

Congress shall have power to enforce this article by appropriate legislation.”

https://www.archives.gov/founding-docs/amendments-11-27#toc-amendment-xiii
Note on 13th Amendment:

“In 1863 President Lincoln had issued the Emancipation Proclamation declaring ‘all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free.’ Nonetheless, the Emancipation Proclamation did not end slavery in the nation. Lincoln recognized that the Emancipation Proclamation would have to be followed by a constitutional amendment in order to guarantee the abolishment of slavery.

The 13th amendment was passed at the end of the Civil War before the Southern states had been restored to the Union and should have easily passed the Congress. Although the Senate passed it in April 1864, the House did not. At that point, Lincoln took an active role to ensure passage through congress. He insisted that passage of the 13th amendment be added to the Republican Party platform for the upcoming Presidential elections. His efforts met with success when the House passed the bill in January 1865 with a vote of 119–56.”


- Section 3, [Admission of States]
- Section 4, [Guarantees to States]
- Article V, [The Amendment Process]

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

- Article VI, [Legal Status of the Constitution]
- Article VII, [Ratification]
- Signers

“[D]one in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of
America the Twelfth In witness whereof We have hereunto subscribed our Names,

G° Washington
Presidt and deputy from Virginia”

https://www.archives.gov/founding-docs/constitution-transcript

12/15/1791 – BILL OF RIGHTS – FIRST TEN AMENDMENTS - PROTECTION OF INDIVIDUAL LIBERTIES & STATES’ RIGHTS

“The first 10 amendments to the Constitution make up the Bill of Rights. James Madison wrote the amendments, which list specific prohibitions on governmental power, in response to calls from several states for greater constitutional protection for individual liberties. For example, the Founders saw the ability to speak and worship freely as a natural right protected by the First Amendment. Congress is prohibited from making laws establishing religion or abridging freedom of speech. The Fourth Amendment safeguards citizens’ right to be free from unreasonable government intrusion in their homes through the requirement of a warrant.” https://billofrightsinstitute.org/founding-documents/bill-of-rights/

JAMES MADISON – NEED FOR CHECKS & BALANCES - “If all men were angels.”

James Madison [age 37]

“In this Federalist Paper [No. 51; 1788], James Madison explains and defends the checks and balances system in the Constitution. Each branch of government is framed so that its power checks the power of the other two branches; additionally, each branch of government is dependent on the people, who are the source of legitimate authority.

‘It may be a reflection on human nature, that such devices [checks and balances] should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be
necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.’


The Bill of Rights: A History


“The first 10 amendments to the Constitution [https://billofrightsinstitute.org/founding-documents/constitution/] make up the Bill of Rights. James Madison [https://billofrightsinstitute.org/educate/educator-resources/founders/james-madison/] wrote the amendments, which list specific prohibitions on governmental power, in response to calls from several states for greater constitutional protection for individual liberties. For example, the Founders saw the ability to speak and worship freely as a natural right protected by the First Amendment. Congress is prohibited from making laws establishing religion or abridging freedom of speech. The Fourth Amendment safeguards citizens’ right to be free from unreasonable government intrusion in their homes through the requirement of a warrant.

The Bill of Rights was strongly influenced by the Virginia Declaration of Rights, written by George Mason [https://billofrightsinstitute.org/educate/educator-resources/founders/george-mason/].

Other precursors include English documents such as the Magna Carta, the Petition of Right, the English Bill of Rights, and the Massachusetts Body of Liberties.
One of the many points of contention between Federalists, who advocated a strong national government, and Anti-Federalists, who wanted power to remain with state and local governments, was the Constitution’s lack of a bill of rights that would place specific limits on government power. Federalists argued that the Constitution did not need a bill of rights, because the people and the states kept any powers not given to the federal government. Anti-Federalists held that a bill of rights was necessary to safeguard individual liberty.

Madison, then a member of the U.S. House of Representatives, altered the Constitution’s text where he thought appropriate. However, several representatives, led by Roger Sherman, objected, saying that Congress had no authority to change the wording of the Constitution. Therefore, Madison’s changes were presented as a list of amendments that would follow Article VII.

The House approved 17 amendments. Of these, the Senate approved 12, which were sent to the states for approval in August 1789. Ten amendments were approved (or ratified). Virginia’s legislature was the final state legislature to ratify the amendments, approving them on December 15, 1791.

**Ratification of Bill of Rights**

“The several state legislatures ratified the first ten amendments to the Constitution on the following dates: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 27, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; Virginia, December 15, 1791.” https://constitution.findlaw.com/amendments.html
Bill of Rights of the United States of America (1791):
https://billofrightsinstitute.org/founding-documents/bill-of-rights/

The Bill of Rights – Text

“Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

BRI Resources [Bill of Rights Institute]


How has Speech Been Both Limited and Expanded, and How Does it Apply to You and Your School? https://resources.billofrightsinstitute.org/preserving-the-bill-of-rights/speech-limited-expanded-apply-school-2/

Amendment II
A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

BRI Resources

What are the Origins and Interpretations of the Right to Keep and Bear Arms? https://resources.billofrightsinstitute.org/preserving-the-bill-of-rights/origins-interpretations-right-keep-bear-arms/

Amendment III
No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**BRI Resources**

*How Do Due Process Protections for the Accused Protect Us All?*

**Amendment IX**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**BRI Resources**

*What is the Scope of the Bill of Rights?*

**Amendment X**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

**BRI Resources**

*State and Local Governments* https://www.docsoffreedom.org/readings/state-and-local-government”

**MODULE II: AMERICAN REVOLUTION – LEADERSHIP**
Suggested homework assignments:

1. Identify a “leadership challenge” faced by General George Washington during the American Revolution and describe how his leadership was displayed.

2. Despite the bitter winter spent at Valley Forge, PA [Dec. 1777], the troops had great respect for General Washington. Describe a leadership characteristic of a Fire Chief that likewise establishes great respect.

3. Describe a leadership challenge you have personally observed in the fire service and provide a critique on how it was handled.

4. Conduct an Internet search involving a fire service internal issue that “has gone public” by a firefighter’s social media post. What can FD leadership do to help prevent negative publicity? *
[\* For example, see this excellent article: “How fire chiefs can manage political risks - How to understand, analyze, mitigate and respond to newsworthy fire department incidents.” Aug 21, 2019, FireRescue1 (Robert Rielage). https://www.firerescue1.com/politics/articles/how-fire-chiefs-can-manage-political-risks-QBrydGpcDfKeQBYK/. Professor Bennett has known Chief Rielage for many years.]

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HISTORY LESSON – FROM 1607 AND THE AMERICAN REVOLUTION (1765 – 1783)

1607: Jamestown, VA

“On May 14, 1607, a group of roughly 100 members of a joint venture called the Virginia Company founded the first permanent English settlement in North America on the banks of the James River. Famine, disease and conflict with local Native American tribes in the first two years brought Jamestown to the brink of failure before the arrival of a new group of settlers and supplies in 1610.” https://www.history.com/topics/colonial-america/jamestown

1619: African slaves arrive at Jamestown – captives removed from Portuguese ship, by British warship

“Arrival of "20 and odd" Africans in late August 1619, not aboard a Dutch ship as reported by John Rolfe, but an English warship, White Lion, sailing with a letters of marque issued to the English Captain Jope by the Protestant Dutch Prince Maurice, son of William of Orange. A letters of marque legally permitted the White Lion to sail as a privateer attacking any Spanish or Portuguese ships it encountered. The 20 and odd Africans were captives removed from the Portuguese slave ship, San Juan Bautista, following an encounter the ship had with the White Lion and her consort, the Treasurer, another English ship, while attempting to deliver its African prisoners to Mexico. Rolfe's reporting the White Lion as a Dutch warship was a clever ruse to transfer blame away from the English for piracy of the slave ship to the Dutch.” https://www.nps.gov/jame/learn/historyculture/african-americans-at-jamestown.htm
1653: Boston – Great Blaze

“Immediately following the first great blaze in 1653, officials decreed that each house be equipped with a ladder to reach the roof, poles with swabs to snuff out sparks, and other tools to fight fires. Boston became an early leader in firefighting regulations; it was later to pass the first fire-related building codes.

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Volunteers also played a major role in fighting Boston's fires. Responding to a fire had always been a civic duty of all men in Boston; when the cry of ‘fire’ or the pealing of church bells signaled that flames had been spotted, every household was required to send a man with a leather bucket to help fight the fire. In September of 1718, Boston organized the ‘Boston Fire Society,’ the nation's first mutual aid organization. Members pledged to fight fires at each other's homes, rescue their property, and guard against looting.”

https://www.massmoments.org/moment-details/boston-burns.html

1732: George Washington is born

George Washington (February 22, 1732 – December 14, 1799):
https://www.history.com/topics/us-presidents/george-washington

1736: Philadelphia – Benjamin Franklin [age 30] forms Union Fire Company

PHILADELPHIA: Modeled after Boston’s “Mutual Fire Societies.”
“On December 7, 1736 Benjamin Franklin co-founded the Union Fire Company, also known as the “Bucket Brigade”. It was the first formally organized all volunteer fire company in the colonies and was shaped after Boston’s Mutual Fire Societies. The difference between the fires societies of Boston and Franklin’s Union Fire Company was that the former protected its members only while the latter the entire community.” [http://www.benjamin-franklin-history.org/union-fire-company/]

1754-63: French & Indian “Seven Years War”

“Also known as the Seven Years’ War, this New World conflict marked another chapter in the long imperial struggle between Britain and France. When France’s expansion into the Ohio River valley brought repeated conflict with the claims of the British colonies, a series of battles led to the official British declaration of war in 1756. Boosted by the financing of future Prime Minister William Pitt, the British turned the tide with victories at Louisbourg, Fort Frontenac and the French-Canadian stronghold of Quebec. At the 1763 peace conference, the British received the territories of Canada from France and Florida from Spain, opening the Mississippi Valley to westward expansion.” [https://www.history.com/topics/native-american-history/french-and-indian-war]

1753: Washington (age 21), Virginia Regiment, sent to Ohio Valley to confront French

George Washington as a Colonel in Virginia Regiment
[https://www.mountvernon.org/george-washington/artwork/life-portraits-of-george-washington/]

“Control of the expansive Ohio Valley region, especially near the joining of the Monongahela and Allegheny rivers (modern day Pittsburgh), was of great interest to both
the British and their French rivals. Rivers like the Ohio, which connected to the Mississippi, were essential transit corridors for goods produced in this fertile region.

Concerned by reports of French expansion into the Ohio Valley, Virginia Lt. Governor Robert Dinwiddie sent 21-year-old Major George Washington of the Virginia Regiment on a mission to confront the French forces. Washington was to deliver a message from the governor demanding that the French leave the region and halt their harassment of English traders. Washington departed Williamsburg, Virginia in October 1753 and made his way into the rugged trans-Appalachian region with Jacob Van Braam, a family friend and French speaker, and Christopher Gist, an Ohio company trader and guide. On December 11, 1753, amidst a raging snowstorm, Washington arrived and was politely received by Captain Jacques Legardeur de Saint-Pierre at Fort LeBoeuf. After reviewing Dinwiddie's letter, Legardeur de Saint-Pierre calmly wrote a reply stating that the French king's claim to the Ohio Valley was "incontestable."

Washington's return to Virginia during the winter of 1753 was a perilous one, but the group safely returned to Williamsburg after traveling almost 900 miles in two and a half winter months.” [https://www.mountvernon.org/george-washington/french-indian-war/ten-facts-about-george-washington-and-the-french-indian-war/]

1754: Washington's very first battle for the British Government Against France

“Responding to the defiant French, Lt. Governor Dinwiddie ordered the newly promoted Lt. Col. George Washington and approximately 160 Virginia militia to return to the Ohio country in March of 1754. Dinwiddie wanted Washington to ‘act on the defensive,’ but also clearly empowered Washington to ‘make Prisoners of or kill & destroy…’ all those who resisted British control of the region.

Eager to send their own diplomatic directive demanding an English withdrawal from the region, a French force of 35 soldiers commanded by Ensign Joseph Coulon de Villiers de Jumonville camped in a rocky ravine not far from Washington's encampment at the Great Meadows (now in Fayette County, Pennsylvania).

Accompanied by Tanacharison, a Seneca chief (also known as the Half-King) and 12 native warriors, Washington led a party of 40 militiamen on an all night march towards the French position. On May 28, 1754, Washington's party stealthily approached the French camp at dawn. Finally spotted at close range by the French, shots rang out and a vigorous firefight erupted in the wooded wilderness. Washington's forces quickly overwhelmed the surprised French force and killed 13 soldiers and captured another 21.”

[https://www.mountvernon.org/george-washington/french-indian-war/ten-facts-about-george-washington-and-the-french-indian-war/]
1754: Washington (age 22) surrendered to the French at Fort Necessity

“After learning of the attack at Jumonville Glen, Claude-Pierre Pecauty de Contrecoeur, the veteran French commander at Fort Duquesne, ordered Captain Louis Coulon de Villiers, Ensign Jumonville's brother, to assail Washington and his force near Great Meadows. De Villiers left Fort Duquesne with nearly 600 French soldiers and Canadian militiamen, accompanied by 100 native allies.

Aware of the onset of a powerful French column, Washington busily fortified his position at Great Meadows. Despite receiving additional reinforcements, Washington's bedraggled force of around 400 men remained outnumbered by the approaching French. Even more concerning, the small circular wooden fort – named Fort Necessity - built in the center of the meadow was poorly situated and vulnerable to fire from the nearby wooded hills that circled the position.

“On July 1, 1754, the large combined French and native forces reached the Great Meadows. Washington gathered his troops and retreated into Fort Necessity where on a rainy July 3rd the French began firing on the surrounded English. Sensing the hopelessness of his situation, Washington agreed to surrender to the French. The surrender terms, written in French, poorly translated, and soaking wet allowed Washington and his troops to return to Virginia in peace, but one clause in the document had Washington admitting that he had ‘assassinated’ Ensign Jumonville – something that Washington hotly contested despite his signature on the document. *** The Battle of Great Meadows proved to be the only time that Washington surrendered to an enemy in battle.” [https://www.mountvernon.org/george-washington/french-indian-war/ten-facts-about-george-washington-and-the-french-indian-war/](https://www.mountvernon.org/george-wASHINGTON/FREnCH-Indian-war/ten-facts-about-george-washington-and-the-french-indian-war/)
1764: King George (age 26) - Imposes Taxes On Colonies

King George III

1764: Sugar Act [Colonists use sugar to make Rum]

“On April 5, 1764, Parliament passed a modified version of the Sugar and Molasses Act (1733), which was about to expire. Under the Molasses Act colonial merchants had been required to pay a tax of six pence per gallon on the importation of foreign molasses. But because of corruption, they mostly evaded the taxes and undercut the intention of the tax — that the English product would be cheaper than that from the French West Indies. This hurt the British West Indies market in molasses and sugar and the market for rum, which the colonies had been producing in quantity with the cheaper French molasses.”
http://www.ushistory.org/declaration/related/sugaract.html

1765: Stamp Act

“The Stamp Act of 1765 was the first internal tax levied directly on American colonists by the British government. The act, which imposed a tax on all paper documents in the colonies, came at a time when the British Empire was deep in debt from the Seven Years’ War (1756-63) and looking to its North American colonies as a revenue source. Arguing that only their own representative assemblies could tax them, the colonists insisted that the act was unconstitutional, and they resorted to mob violence to intimidate stamp collectors into resigning. Parliament repealed the Stamp Act in 1766, but issued a Declaratory Act at the same time to reaffirm its authority to pass any colonial legislation it saw fit. The issues of taxation and representation raised by the Stamp Act strained relations with the colonies to the point that, 10 years later, the colonists rose in armed
rebellion against the British.” https://www.history.com/topics/american-revolution/stamp-act

1767: Townshend Acts

“The Townshend Acts were a series of measures, passed by the British Parliament in 1767, that taxed goods imported to the American colonies. But American colonists, who had no representation in Parliament, saw it as an abuse of power. The British sent troops to America to enforce the unpopular new laws, further heightening tensions between Great Britain and the American colonies in the run-up to the American Revolutionary War.” https://www.history.com/topics/american-revolution/townshend-acts

3/5/1770: “Boston Massacre”

“On March 5, 1770, a street brawl happened in Boston between American colonists and British soldiers. Later known as the Boston Massacre, the fight began after an unruly group of colonists – frustrated with the presence of British soldiers in their streets – flung snowballs at a British sentinel guarding the Boston Customs House. Reinforcements arrived and opened fire on the mob, killing five colonists and wounding six. The Boston Massacre and its fallout further incited the colonists’ rage towards Britain.” https://www.history.com/topics/american-revolution/boston-tea-party

5/1773: Tea Act

“In May 1773, British Parliament passed the Tea Act which allowed British East India Company to sell tea to the colonies duty-free and much cheaper than other tea companies – but still tax the tea when it reached colonial ports. Tea smuggling in the colonies increased, although the cost of the smuggled tea soon surpassed that of tea from British East India Company with the added tea tax.

Still, with the help of prominent tea smugglers such as John Hancock and Samuel Adams – who protested taxation without representation but also wanted to protect their tea smuggling operations – colonists continued to rail against the tea tax and Britain’s control over their interests.” https://www.history.com/topics/american-revolution/boston-tea-party
12/16/1773: “Boston Tea Party”

“On the evening of December 16, 1773, a few dozen men said to be ‘dressed in the Indian manner,’” their faces darkened by lampblack or charcoal, descended with war whoops down Milk Street in Boston to board three merchant ships moored at Griffin’s Wharf. Prying open the hatches, they used block and tackle to hoist from the holds hundreds of heavy chests containing forty-five tones of Bohea, Congu, Singlo, Souchong, and Hyson tea. For three hours they methodically smashed the lids and scooped the leaves in the harbor.” The British Are Coming, by Rick Atkinson (2009) – Prologue, page 13.

“The event was the first major act of defiance to British rule over the colonists. It showed Great Britain that Americans wouldn’t take taxation and tyranny sitting down, and rallied American patriots across the 13 colonies to fight for independence.” https://www.history.com/topics/american-revolution/boston-tea-party

1774: King George [age 36] - Coercive Acts

“But despite the lack of violence, the Boston Tea Party didn’t go unanswered by King George III and British Parliament. In retribution, they passed the Coercive Acts (later known as the Intolerable Acts) which:

- closed Boston Harbor until the tea lost in the Boston Tea Party was paid for
- ended the Massachusetts Constitution and ended free elections of town officials
- moved judicial authority to Britain and British judges, basically creating martial law in Massachusetts
- required colonists to quarter British troops on demand, using their private homes if needed
- extended freedom of worship to French-Canadian Catholics under British rule, which angered the mostly Protestant colonists.” https://www.history.com/topics/american-revolution/boston-tea-party
9/5/1774: First Continental Congress – Philadelphia

“From 1774 to 1789, the Continental Congress served as the government of the 13 American colonies and later the United States. The First Continental Congress, which was comprised of delegates from the colonies, met in 1774 in reaction to the Coercive Acts, a series of measures imposed by the British government on the colonies in response to their resistance to new taxes.” https://www.history.com/topics/american-revolution/the-continental-congress

“In response to the British Parliament’s enactment of the Coercive Acts in the American colonies, the first session of the Continental Congress convenes at Carpenter’s Hall in Philadelphia. Fifty-six delegates from all the colonies except Georgia drafted a declaration of rights and grievances and elected Virginian Peyton Randolph as the first president of Congress. Patrick Henry, George Washington, John Adams, and John Jay were among the delegates.

Peyton Randolph [age 53]

Patrick Henry [age 38]

John Adams [age 39]
1774: Non-Importation of British Goods

“On September 22, 1774, Charles Thomson, secretary to the Continental Congress in Philadelphia, entered into the minutes this resolution:

That the Congress request the Merchants and Others, in the several Colonies, not to send to Great Britain any Orders for Goods, and to direct the execution of all Orders already sent, to be delayed or suspended, until the sense of the Congress, on the means to be taken for the preservation of the Liberties of America, is made public.

On October 14, 1774 the Congress, chaired by President Peyton Randolph of Williamsburg, announced the result of its deliberations: a set of Declarations and Resolves. The delegates adopted the detailed articles of a non-importation association on October 22, 1774.

DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS:

October 14, 1774

“To obtain redress of these grievances, which threaten destruction to the lives, liberty, and property of his Majesty’s subjects in North-America, we are of opinion, that a non-importation, non-consumption, and non-exportation agreement, faithfully adhered to, will prove the most speedy, effectual, and peaceable measure: and therefore we do, for ourselves, and the inhabitants of the several Colonies, whom we represent, firmly agree and associate under the sacred ties of virtue, honour, and love of our country, as follows:

I. That from and after the first day of December next, we will not import into British America, from Great-Britain or Ireland, any goods, wares or merchandize whatsoever, or from any other place any such goods, wares or merchandize, as shall have been exported from Great-Britain or Ireland; nor will we, after that day, import any East India tea from any part of the world; nor any molasses, syrups,
paneles, coffee, or piemento, from the British plantations, or from Dominica; nor wines from Madeira, or the Western Islands; nor foreign Indigo.

II. That we will neither import, nor purchase any slave imported, after the first day of December next; after which time, we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it. ***"

http://www.history.org/almanack/life/politics/resolves.cfm

American War Of Independence To Come

“Blows would decide, as the king had predicted. Yet no one could forecast that the American War of Independence would last 3,059 days. Or that the struggle would be marked by more than 1,300 actions, mostly small and bloody, plus 241 naval engagements in a theater initially bounded by the Atlantic seaboard, the St. Lawrence and Mississippi Rivers, and the Gulf of Mexico, before expanding to other lands and other waters. Roughly a quarter million Americans would serve the cause in some military capacity. At least one in ten of them would die for that cause – 25,674 deaths by one tally, as many as 35,800 by another. Those deaths were divided with rough parity among battle, disease, and British prisons, a larger portion of the American population to perish in any conflict other than the Civil War.” The British Are Coming, by Rick Atkinson (2009) – Prologue, pages 25-26.

3/20/1775: Ben Franklin [age 69] – Leaves England After 20 Years, Returns To America

“Except for a brief return visit to Philadelphia in 1763-64 … [Benjamin Franklin] had lived at No. 27 [Craven Street, London] since arriving in England as a colonial agent in 1757. Because he was widely deemed a ‘universal genius’ – the accolade did not displease him – his eccentricities were forgiven: chuffing up and down the nineteen oak stairs, dumbbells in hand, for exercise; sitting nude in the open window about the street, regardless of the season, for his morning ‘air bath’; playing his ‘harmonica,’ an improbable contraption constructed of thirty-seven glass hemispheres mounted on an iron spindle and rotated with a foot treadle so that he could elicit three ghostly octaves by touching the moving edges with his moistened fingers. (Mozart and Beethoven, among others, would compose for the instrument.) And Craven Street had also been his laboratory, the sire where he had launched inquiries into sunspots, magnetism, lead poisoning, the organic origins of coal, carriage wheel construction, and ocean salinity. At the foot of the street, in the Thames [River], he had repeated his celebrated kite-and-key
39

“Midnight Ride” of Paul Revere [age 40]

“With the other colonies watching intently, Massachusetts led the resistance to the British, forming a shadow revolutionary government and establishing militias to resist the increasing British military presence across the colony. In April 1775, Thomas Gage, the British governor of Massachusetts, ordered British troops to march to Concord, Massachusetts, where a Patriot arsenal was known to be located. On April 19, 1775, the British regulars encountered a group of American militiamen at Lexington, and the first shots of the American Revolution were fired.” [https://www.history.com/this-day-in-history/first-continental-congress-convenes](https://www.history.com/this-day-in-history/first-continental-congress-convenes)

William Dawes [age 30] – with Paul Revere, rode from Boston to warn them. The “Midnight Ride”
4/19/1775: Lexington, MA – 8 colonists killed, but military supplies moved out of Cambridge

“After Revere conferred with Warren, he returned to his own neighborhood, where he contacted a “friend” (Revere was very careful not to identify anyone he did not need to, in case his deposition fell into the wrong hands) to climb up into the bell tower of Christ Church (today known as the Old North Church) to set the famous signals. The “friend” hung two lanterns, meaning the British planned to leave Boston “by sea” across the Charles River, as opposed to a single lantern, which would mean the troops planned to march entirely “by land,” by the same route William Dawes had taken. *** Narrowly escaping capture by a British patrol just outside of Charlestown, Revere charged his planned route somewhat and arrived in Lexington just past midnight. We do not know what he said at each of the houses along the road. We do know exactly what he said when he got to Lexington, however, as there was a sentry on duty outside the house where Adams and Hancock lodged, and that sentry, a Sergeant Monroe, later wrote down what happened. As Revere approached the house, Monroe told him not to make so much noise, that everyone in the house had retired for the night. Revere cried “Noise! You’ll have noise enough before long! The regulars are coming out!” Despite this, Revere still had trouble convincing the sentry to let him pass until John Hancock, who was still awake
and heard the commotion, recognized Revere’s voice and said “Oh, you, Revere. We are not afraid of you” after which Revere was allowed to enter the house and deliver his news.

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About 30 minutes later William Dawes arrived. The two messengers ‘refreshed themselves’ (probably got something to eat and drink) and then decided to continue on to the town of Concord, to verify that the military stores had been properly dispersed and hidden away. Along the road they were joined by a third man, a Dr. Samuel Prescott, who they recognized as a “High Son of Liberty.” Soon afterwards they were all stopped by a British patrol. Dawes, who had probably turned aside to alarm a house, noticed what was going on and made his escape. The British herded Prescott and Revere into a nearby meadow, when Prescott suddenly said “Put on!” (meaning scatter) and the two patriots suddenly rode off in different directions. Prescott, a local man, successfully eluded capture, and alarmed the militia in Lincoln and Concord; Revere chose the wrong patch of woods to head for and was recaptured by more British soldiers. Held for a while, questioned, and even threatened, Revere was eventually released, although his horse was confiscated. Making his way back into Lexington on foot, Revere assisted Adams and Hancock to leave for Woburn, Massachusetts.” [https://www.biography.com/news/paul-reveres-ride-facts](https://www.biography.com/news/paul-reveres-ride-facts)

**4/19/1775: REVOLUTIONARY WAR (Apr 19, 1775 – Sep 3, 1783)**

![Battle of Lexington, MA (4/19/1775);](https://www.landofthebrave.info/revolutionary-war-timeline.htm)
5/10/1775: Second Continental Congress in Philadelphia – established the Continental Army

Benjamin Franklin [age 69] returns from London

“Franklin returned [from London] to Philadelphia in May 1775, shortly after the Revolutionary War (1775-83) had begun, and was selected to serve as a delegate to the Second Continental Congress, America’s governing body at the time. In 1776, he was part of the five-member committee that helped draft the Declaration of Independence, in which the 13 American colonies declared their freedom from British rule. That same year, Congress sent Franklin to France to enlist that nation’s help with the Revolutionary War. In February 1778, the French signed a military alliance with America and went on to provide soldiers, supplies and money that proved critical to America’s victory in the war.” [https://www.history.com/topics/american-revolution/benjamin-franklin](https://www.history.com/topics/american-revolution/benjamin-franklin)

“When the Second Continental Congress convened in Philadelphia, delegates—including new additions Benjamin Franklin and Thomas Jefferson—voted to form a Continental Army, with Washington as its commander in chief. On June 17, in the Revolution’s first major battle, colonial forces inflicted heavy casualties on the British regiment of General William Howe at Breed’s Hill in Boston. The engagement (known as the Battle of Bunker Hill) ended in British victory, but lent encouragement to the revolutionary cause. Throughout that fall and winter, Washington’s forces struggled to keep the British
contained in Boston, but artillery captured at Fort Ticonderoga in New York helped shift the balance of that struggle in late winter. The British evacuated the city in March 1776, with Howe and his men retreating to Canada to prepare a major invasion of New York. [https://www.history.com/topics/american-revolution/american-revolution-history]

5/10/1775: Ethan Allen and his Green Mountain Boys surprised British garrison at Fort Ticonderoga, NY – British surrendered

Ethan Allen [age 37]

Benedict Arnold [age 34] – turned “Traitor” in 1780 [age 39], defected to British Army

“By the end of 1779, Arnold had begun secret negotiations with the British to surrender the American fort at West Point, New York, in return for money and a command in the British army. Arnold’s chief intermediary was British Major John André (1750-80). André was captured in September 1780, while crossing between British and American lines, disguised in civilian clothes. Papers found on André incriminated Arnold in treason. Learning of André’s capture, Arnold fled to British lines before the Patriots could arrest him. West Point remained in American hands, and Arnold only received a portion of his promised bounty. André was hanged as a spy in October 1780.

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After fleeing to the enemy side, Arnold received a commission with the British army and served in several minor engagements against the Americans. After the war, which ended in victory for the Americans with the Treaty of Paris in 1783, Arnold resided in England. He died in London on June 14, 1801, at age 60. The British regarded him with ambivalence, while his former countrymen despised him. Following his death, Arnold’s memory lived on in the land of his birth, where his name became synonymous with the word “traitor.” “

https://www.history.com/topics/american-revolution/benedict-arnold

6/16/1775: Colonel George Washington [age 43] accepts post of Commander In Chief of Continental Army

https://www.landofthebrave.info/revolutionary-war-timeline.htm

6/17/1775: Battle of Bunker Hill, MA

“One June 17, 1775, early in the Revolutionary War (1775-83), the British defeated the Americans at the Battle of Bunker Hill in Massachusetts. Despite their loss, the inexperienced colonial forces inflicted significant casualties against the enemy, and the battle provided them with an important confidence boost. Although commonly referred to as the Battle of Bunker Hill, most of the fighting occurred on nearby Breed’s Hill.

https://www.history.com/topics/american-revolution/battle-of-bunker-hill
8/1775: King George III [age 37] issued proclamation that colonists were engaged in “rebellion” – Parliament passed American Prohibitory Act – American vessels / cargo can be seized

Dec. 31, 1775 - Failed Battle of Quebec

“On December 31, 1775, during the American Revolutionary War (1775-83), Patriot forces under Colonel Benedict Arnold (1741-1801) and General Richard Montgomery (1738-75) attempted to capture the British-occupied city of Quebec and with it win support for the American cause in Canada. The attack failed, and the effort cost Montgomery his life. The Battle of Quebec was the first major defeat of the Revolutionary War for the Americans.

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Of the approximately 1,200 Americans who participated in the battle, more than 400 were captured, wounded or killed. British casualties were minor.”

https://www.history.com/topics/american-revolution/battle-of-quebec-1775

5/23/1776: King George [age 38] - British hiring German mercenaries

King George arranged with German states to hire mercenaries – “Hessians” - to fight Americans.

6/12/1776: The Virginia Declaration of Rights [format for “Bill of Rights”]

“Virginia's Declaration of Rights was drawn upon by Thomas Jefferson for the opening paragraphs of the Declaration of Independence. It was widely copied by the other colonies and became the basis of the Bill of Rights. Written by George Mason, it was adopted by the Virginia Constitutional Convention on June 12, 1776.

Section 1: Section 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”

https://www.archives.gov/founding-docs/virginia-declaration-of-rights

3/17/1776: British Evacuate Boston

“After the British evacuated Boston on March 17, 1776, General George Washington guessed correctly that their next target would be New York. By mid-April, Washington had marched his 19,000 soldiers to Lower Manhattan. He strengthened the batteries that guarded the harbor and constructed forts in northern Manhattan and on Brooklyn Heights across the East River on Long Island.

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Washington waited throughout June for the British to appear, hoping that somehow his undisciplined troops could hold off an attack, which he was certain would come in Manhattan. In early July, 400 British ships with 32,000 men commanded by General William Howe arrived at Staten Island. When Howe offered a pardon to the rebels, Washington answered, "Those who have committed no fault want no pardon." While he was still convinced that the British would attack Manhattan, he sent more troops to Brooklyn.” [See 8/27/1876 – Battle of Long Island.]

6/1776: Second Continental Congress

Richard Henry Lee, from Virginia, proposed Resolution for Independence – but vote on Resolution was delayed.

Appointment of Committee of 5 to prepare Declaration of Independence:

Richard Henry Lee – Virginia [age 44]

Thomas Jefferson – Virginia [age 33] - principal draftsman
Note: During the beginning of the Revolutionary War (1775), Benjamin Franklin’s son, William, was the Royal Governor of New Jersey, and supported the “Loyalists” who fought against General George Washington’s Continental Army at Battle of Springfield, NJ (6/23/1780).

“In June of 1776, rebels in New Jersey exiled Gov. William Franklin to Connecticut, where Gov. Jonathan Trumbull sided with the patriots. The patriots placed him under guard at Wallingford and then Middletown. However, the stubborn governor-in-exile refused to submit to his captors. He continued gathering intelligence for loyalists and helping protect Connecticut Tories’ property by issuing them royal pardons. In May of 1777, armed guards took William Franklin to Litchfield. They placed him in solitary confinement in the cell reserved for prisoners condemned to death. His filthy room contained a straw mat on the floor and nothing else – no bed, no seat, no toilet facility.”

https://www.newenglandhistoricalsociety.com/william-franklin-bens-son-spent-revolutionary-war-connecticut-jail/
7/2/1776: 12 Colonies voted for Independence; New York did not cast vote until NY Convention approved on July 9.

7/4/1776: Declaration of Independence passed

Below: Presentation of the finished Declaration of Independence by Thomas Jefferson in Philadelphia, July 4, 1776. The Declaration was then signed and copies of the text were transported to key cities such as New York and Boston to be read aloud.”
http://www.historyplace.com/unitedstates/revolution/decindep.htm
In Congress, July 4, 1776.

The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.
He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:
For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured
them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.”

https://www.archives.gov/founding-docs/declaration-transcript [spelling corrected to modern English]

**7/27/1776: Benjamin Franklin Appointed Postmaster General**

“Back on American soil [from England] in 1775, Franklin was part of the Second Continental Congress and served on many committees, including one to establish an independent postal system. On July 26, 1775, the Congress appointed Benjamin Franklin the first Postmaster General of the organization now known as the United States Postal Service. Franklin received an annual salary of $1,000 plus $340 for a secretary and comptroller. He was responsible for all Post Offices -- from Massachusetts to Georgia -- and had authority to hire as many postmasters as he saw fit.” https://about.usps.com/who-we-are/postal-history/pmg-franklin.pdf

**8/27/1776: Battle of Long Island, NY**

General Washington lost the battle and was almost killed. See videotaped interview of Joe Ellis, author of *Revolutionary Summer*. https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/battle-of-long-island/

“After the British evacuated Boston on March 17, 1776, General George Washington guessed correctly that their next target would be New York. By mid-April, Washington had marched his 19,000 soldiers to Lower Manhattan. He strengthened the batteries that guarded the harbor and constructed forts in northern Manhattan and on Brooklyn Heights across the East River on Long Island.
General Howe halted the fighting by the early afternoon and directed his men to dig trenches around the American position on the next day. Before they could be surrounded, Washington ordered his men to evacuate Long Island. From late in the evening of August 29 to dawn on the following morning, Washington watched as 9,000 Continentals were rowed back to Manhattan. As the sun came up, a fog miraculously descended on the remaining men crossing the river. According to eyewitnesses, George Washington was the last man to leave Brooklyn.”


9/16/776: Battle of Harlem Heights, NY

“The British understood Washington's strategy, and retreated as a result. Casualties were high with 150 men lost on both sides including Lieutenant Knowlton who was mortally wounded. With the skirmish concluded, Washington completed his letter to Congress. While he was disappointed that his men failed to execute his orders, he had actually won his first battlefield victory in the war. His soldiers were equally elated that they had forced the British to flee before them.”


https://www.landofthebrave.info/revolutionary-war-timeline.htm

“General George Washington’s army crossed the icy Delaware on Christmas Day 1776 and, over the course of the next 10 days, won two crucial battles of the American Revolution. In the Battle of Trenton (December 26), Washington defeated a formidable garrison of Hessian mercenaries before withdrawing. A week later he returned to Trenton to lure British forces south, then executed a daring night march to capture Princeton on January 3. “https://www.history.com/topics/american-revolution/battles-of-trenton-and-princeton

1/13/1777: Battle of Princeton (NJ)

“After crossing the Delaware on December 25, 1776, George Washington embarked on a ten day campaign that would change the course of the war. Culminating at the Battle of
Princeton on January 3, 1777, Washington snatched victory from the jaws of defeat and proved his amateur army could defeat the British.

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The Battle of Princeton was a classic meeting engagement, both sides stumbled into one another, and neither expected to fight on the ground where the battle raged. Initially, the British commander Charles Mawhood, marched his force south towards Trenton to meet the main British army, when he spotted the American column. Washington had stolen a march on Charles Lord Cornwallis, slipping away from the British forces along Assunpink Creek the night before.

When the American's spotted British troopers around William Clarke's farm, Washington detached Hugh Mercer's brigade to investigate. Mercer ran headlong into the 17th Foot, firmly stationed behind a fence at the end of Clarke's orchard. In the ensuing volleys, Mercer was wounded and his men routed by a bayonet charge. With the outnumbered British on the verge of splitting his army, Washington quickly detached John Cadwalader's Philadelphia Associators to plug the gap. These green troops fought valiantly, but were also broken by British bayonets.

With the battle, and the war, hanging in the balance, Washington personally led fresh troops onto the field while grapeshot and canister from Joseph Moulder's artillery battery forced the British back towards William Clarke's farmhouse. Washington's counterattack broke the British line, which quickly turned into a rout.”

https://www.battlefields.org/learn/revolutionary-war/battles/princeton

6/13/1777: Marquis de Lafayette [age 19] arrives from France

“He landed near Charleston, South Carolina, June 13, 1777, then travelled to Philadelphia, where he was commissioned a Major General on July 31. This reflected his wealth and noble social station, rather than years of battlefield experience — he was only 19 years old. The newly commissioned young general was soon introduced to his commander-in-chief, General George Washington, who would become a lifelong friend. Lafayette was wounded during the September 11, 1777 Battle of the Brandywine. In December, 1777, he camped with Washington and the army at Valley Forge. [http://www.ushistory.org/valleyforge/served/lafayette.html](http://www.ushistory.org/valleyforge/served/lafayette.html)

Marquis de Lafayette

Lafayette's baptism of fire
9/11/1777: Battle of Brandywine, PA


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Surprised and outnumbered by the 18,000 British troops to his 11,000 Continentals, Washington ordered his men to abandon their posts and retreat. Defeated, the Continental Army marched north and camped at Germantown, Pennsylvania. The British abandoned their pursuit of the Continentals and instead began the British occupation of Philadelphia.

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The one-day battle at Brandywine cost the Americans more than 1,100 men killed or captured while the British lost approximately 600 men killed or injured. To make matters worse, the Patriots were also forced to abandon most of their cannon to the British victors after their artillery horses fell in battle.

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Congress, which had been meeting in Philadelphia, fled first to Lancaster, then to York, Pennsylvania, and the British took control of the city without Patriot opposition.”

https://www.history.com/this-day-in-history/the-battle-of-brandywine-begins

9/19/1777: Battles of Saratoga, NY - British General John Burgoyne surrender on Oct. 17
“Fought eighteen days apart in the fall of 1777, the two Battles of Saratoga were a turning point in the American Revolution. On September 19th, British General John Burgoyne achieved a small, but costly victory over American forces led by Horatio Gates and Benedict Arnold. Though his troop strength had been weakened, Burgoyne again attacked the Americans at Bemis Heights on October 7th, but this time was defeated and forced to retreat. He surrendered ten days later, and the American victory convinced the French government to formally recognize the colonist’s cause and enter the war as their ally.”

https://www.history.com/topics/american-revolution/battle-of-saratoga

https://www.landofthebrave.info/revolutionary-war-timeline.htm

Horatio Gates [age 50]

General John Burgoyne [age 55]
On December 19, 1777, 11,000 Continental Army regulars marched into Valley Forge, Pennsylvania, to set up winter quarters during the Revolutionary War. By December 1777, Washington was well aware that some members of the Continental Congress were questioning his leadership abilities. The Valley Forge site—located along trade routes and near farm supplies—was an attempt to balance Congress’ demands for a winter campaign against Philadelphia with the needs of his troops. It was common for armies at the time to withdraw to fixed camps during the winter, as the harsh weather made transportation of troops, arms and supplies extremely difficult. The soldiers who marched to Valley Forge on December 19, 1777 were not downtrodden or desperate. Though they had been defeated in two key battles, and had lost Philadelphia to the British, Continental troops had often put themselves on the offensive, and proved themselves as skilled fighters against professional soldiers with superior numbers. They were certainly tired, and lacking in supplies, but these were not unusual circumstances in the life of a Continental soldier. Once the troops arrived at their winter camp site, military engineers directed the construction of some 2,000 huts laid out in parallel lines, forming a kind of city, along with miles of trenches, five earthen redoubts and a bridge over the Schuylkill River. Raw winter weather made things difficult for the tired troops, while a mismanaged commissary and Congress’ failure to provide the army with sufficient funds for fresh supplies led to widespread hunger and lack of clothing, shoes and other supplies among the men. Yet cold and starvation were not the most dangerous threats to soldiers at Valley Forge: Diseases like influenza, dysentery, typhoid and typhus killed two-thirds of the nearly 2,000 soldiers who died during the encampment.
2/6/1778: France joins war - King Louis XVI - signed treaties with Americans

King Louis XVI [age 24] sends General Comte de Rochambeau [age 53] and Admiral François Joseph Paul de Grasse [age 56].

Louis XVI in French Revolution, guillotined [age 39] January 21, 1793, Place de la Concorde, Paris, France; Spouse: Marie Antoinette

Marie Antoinette [age 23] - in French Revolution, guillotined Oct. 16, 1793 [age 38], Place de la Concorde, Paris, France; Spouse: Marie Antoinette
Jean-Baptiste-Donatien de Vimeur, Comte de Rochambeau [age 53]

“The Comte de Rochambeau was the commander of all French forces in America during the War for Independence. His most important contribution came during the Yorktown Campaign, in which he collaborated with George Washington to force the surrender of a major British army under Charles Cornwallis.”

http://www.ouramericanrevolution.org/index.cfm/people/view/pp0028

Admiral François Joseph Paul de Grasse [1781 - age 59]

“The most important strategic decision that set Gen. George Washington’s Continental Army on the path to victory in the Revolutionary War was not made by Washington, but by French Admiral François Joseph Paul de Grasse. When de Grasse was ordered to sail with his French fleet from the West Indies to America in 1781 to assist Washington and French General Jean-Baptiste Donatien de Vimeur, comte de Rochambeau in the War for American Independence, the French navy commander was given a choice of specific destination. Washington was eager to attack the British stronghold in New York City. Rochambeau, who had arrived with a small army in 1780 to help the Americans, favored confronting Gen. Charles Cornwallis and his British army at Yorktown, Va. For either target, strong naval support from de Grasse’s fleet was essential. De Grasse sided with Rochambeau and chose Virginia. It was closer to his fleet’s base, and the mouth of the Chesapeake Bay was more navigable than New York harbor. His decision
set in motion the course of events that would lead to America’s victory in the Revolutionary War.” [https://www.battlefields.org/learn/biographies/comte-de-grasse](https://www.battlefields.org/learn/biographies/comte-de-grasse)

6/28/1778: Battle of Monmouth (NJ)

“What began as a promising opportunity devolved into a potential disaster. As Washington approached the fighting, he encountered panic stricken troops fleeing the enemy. Enraged, he galloped ahead of his wing. In an angry confrontation on the field of battle, Washington removed Lee from command.

Rallying what troops he had, Washington continued the assault on the Britsh. The commanding general’s delaying action gave time for the rest of the Continental Army to come up and join the battle.

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The fighting see-sawed back and forth under the brutal June sun for several hours. By 6:00 P.M., however, the British had had enough. While Wayne wanted to press the attack, Washington demurred, believing that his men were “beat out and with heat and fatigue.”

The British did not give Washington a chance to renew the fight in the morning, slipping away under the cover of darkness and resuming their withdrawal to New York City.” [https://www.battlefields.org/learn/revolutionary-war/battles/monmouth](https://www.battlefields.org/learn/revolutionary-war/battles/monmouth)

[https://www.landofthebrave.info/revolutionary-war-timeline.htm](https://www.landofthebrave.info/revolutionary-war-timeline.htm)
8/28/1778: Battle of Rhode Island

“The 1st Rhode Island, the first black regiment in America’s history, took part in the action... Located on the right (west) side of the American line, they defended their part of the hill against fierce attacks by German troops. Numbering 400 men, the 1st Rhode Island acquitted itself well, repulsing three separate and distinct charges from 1,500 Hessians under Count Donop.

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After a siege of 12 days by the Americans dug in on Honeyman’s Hill in Middletown, a weary and disappointed Sullivan realized the land attack alone could not penetrate the English line. With extreme regret, Sullivan was obliged to order withdrawal.

On August 30, near midnight, the last of the Continentals was removed from Aquidneck. The regular troops were sent to rejoin Washington, the militia returned home, and only a small force was left to man the guns of Fort Barton. The Battle of Rhode Island was over.”

https://revolutionarywar.us/year-1778/battle-rhode-island/
6/23/1780: Battle of Springfield (NJ)

“At Springfield a terrible battle ensued, involving the Continental regulars and militia against the British soldiers and New Jersey citizens who were loyal to the Crown. Some observers at the time said it was more like a Civil War than a Revolution against an outside power. This internecine battle cut deep, even in the family of Benjamin Franklin, whose own son William, Royal Governor of New Jersey, was a prominent force in organizing the Loyalists.

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It was a losing battle, causing Lee and his men to retreat back towards the slopes of the Short Hills. But at a critical point, Major General Greene sent over two New England regiments with a cannon. The sight of another 400 soldiers advancing on the high ground while the militiamen covered the slopes of nearby Newark (South) Mountain caused the British to stop abruptly. They risked heavy casualties from the cannon on one side and musket fire on the other.

The British began to retreat back to Staten Island. It was the last time they would set foot in New Jersey.”

https://www.durandhedden.org/archives/articles/the_battle_of_springfield

1781: Thomas Jefferson [age 38] on Slavery

Notes on the State of Virginia (1781-1782)

“The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other…”
And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: That his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference!”


https://www.landofthebrave.info/revolutionary-war-timeline.htm

9/5/1781: Battle of the Chesapeake – victory for French / Americans

“Battle of the Chesapeake, also called the Battle of the Virginia Capes or the Battle of the Capes, (5 September 1781), critical naval battle in the Chesapeake Bay (off the coast of Maryland and Virginia) and strategic French victory in the American Revolution. It prevented the British from reinforcing or evacuating the army of Charles Cornwallis the following month at the Siege of Yorktown, Virginia, the last major land battle of the war and the defeat that led the British to sue for peace.”

https://www.britannica.com/event/Battle-of-the-Chesapeake-1781
10/17/1781: Battle of Yorktown – Lord Cornwallis surrenders; General Washington, with help of Admiral deGrasse’s French fleet that blockaded Chesapeake Bay

“In the fall of 1781, a combined American force of Colonial and French troops laid siege to the British Army at Yorktown, Virginia. Led by George Washington and French General Comte de Rochambeau, they began their final attack on October 14th, capturing two British defenses and leading to the surrender, just days later, of British General Lord Cornwallis and nearly 9,000 troops. Yorktown proved to be the final battle of the American Revolution, and the British began peace negotiations shortly after the American victory.” [https://www.history.com/topics/american-revolution/siege-of-yorktown](https://www.history.com/topics/american-revolution/siege-of-yorktown)

[https://www.landofthebrave.info/revolutionary-war-timeline.htm](https://www.landofthebrave.info/revolutionary-war-timeline.htm)

General Charles Cornwallis [age 43]
9/14/1782: George Washington [age 50] reviewing Continental Army and French troops at Verplanck’s Point (NY) – in honor of departing French Commander in Chief Comte de Rochambeau [age 57]


Jean-Baptiste Donatien de Vimeur, comte de Rochambeau

9/3/1783: Treaty of Paris signed by Great Britain and Americans

U.S. gets all territory westward to Mississippi River, and south to Florida, and north to Canada [Britain also signed treaties ending their battles with Spain and Netherlands.]
Benjamin Franklin [age 77]

John Adams [age 48]

John Jay [age 38]
1/14/1784: Treaty of Paris ratified by Congress


10/2/1785: George Washington sits for a “Life Mask”
“Born at French court, famed sculptor Houdon was known for capturing the spirit and accurate likenesses of European heads of state. Insisting upon the need to sculpt Washington from life, Houdon and three assistants arrived at Mount Vernon on October 2, 1785. There, Houdon made a life mask, modeled a terracotta bust.” https://www.mountvernion.org/george-washington/artwork/life-portraits-of-george-washington/

Portrait of George Washington (1785) by Robert Edge Pine:

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Suggested homework assignments:

1. In 1964, Congress passed, and President Lyndon Johnson signed into law, the Civil Rights Act of 1964. Describe how this important statute impacts the fire service.

2. Many states have enacted “statutory presumptions” for firefighter cancer. What is the law in your state require for a firefighter to receive workers comp benefits?

3. Describe recent legislation enacted in your State that has impacted emergency responders; discuss whether your State Fire Chiefs’ association and state IAFF took a position on the legislation; describe that position.
4. Here is a list of Federal statutes that are relevant to the fire service. Describe the relevancy of three of the statutes to the Fire Service.

- 1935 - NLRB
- 1938 – FLSA
- 1964 – Civil Rights Act
- 1968 - PSOB
- 1971 – OSHA
- 1978 – FISA
- 1990 – ADA
- 1996 – HIPAA
- 1999 – FMLA
- 2020 - CARES

LEGISLATIVE PROCESS

Aug. 14, 2020:
PUBLIC SAFETY OFFICERS’ BENEFIT ACT OF 1968 – AMENDED TO INCLUDE COVID-19 DEATHS / INJURIES


“This bill extends death and disability benefits under the Public Safety Officers' Benefits Program (PSOB) to public safety officers (e.g., law enforcement officers) and survivors of public safety officers who die or become injured as a result of COVID-19 (i.e., coronavirus disease 2019). The PSOB program provides death, disability, and education benefits to public safety officers and survivors of public safety officers who are killed or injured in the line of duty. For purposes of death benefits, this bill creates a general presumption that a public safety officer who dies from COVID-19 or related complications sustained a personal injury in the line of duty. For purposes of disability benefits, the bill creates a general presumption that COVID-19 or related complications suffered by a public safety officer constitutes a personal injury sustained in the line of duty.”

May 14, 2020: BI-PARTISAN SUPPORT (Republican and Democrats supported).
Watch video from U.S. Senator – comments by Senator Chuck Grassley (R-IA) and Senator Cory Booker (D-NJ): https://www.youtube.com/watch?v=sSL0BilCMwg


“Today, legislation to ensure fire fighters who die or are permanently and totally disabled due to COVID-19 receive full federal benefits officially became law. The Safeguarding America’s First Responders (SAFR) Act of 2020, was introduced by Senators Chuck Grassley (R-IA) and Cory Booker (D-NJ) and establishes a presumptive benefit under the Public Safety Officer Benefit (PSOB) program for public safety officers who contract COVID-19. *** To date, at least 14 IAFF members have died from COVID-19 and tens of thousands of members have been exposed. These numbers are likely to rise.


“Legislation to ensure fire fighters who die or are permanently and totally disabled due to COVID-19 receive full federal benefits passed the U.S. House of Representatives unanimously and has been sent to the president for his signature.

The bill, S 3607, the Safeguarding America’s First Responders (SAFR) Act of 2020, was introduced by Senators Chuck Grassley (R-IA) and Cory Booker (D-NJ), would establish a presumptive benefit under the Public Safety Officer Benefit (PSOB) program for public safety officers who contract COVID-19.

***

Recognizing this deficiency in law, the IAFF began working with Senators Grassley and Booker in March to craft the SAFR Act, which was introduced and passed by the Senate in May as the virus was peaking in many communities nationwide. Working closely with
Representatives Jerry Nadler (D-NY), Bill Pascrell (D-NJ) and Max Rose (D-NY), this week’s vote brings culminates a months-long campaign to bring this important benefit to fruition.

To date, at least 10 IAFF members have died from COVID-19 and tens of thousands of members have been exposed. These numbers are guaranteed to rise.

S 3607 is expected to be quickly signed into law, and the IAFF will work closely with the administration so ensure its swift implementation."

**July 20, 2020: Passed By House of Representatives**


David Nicola Cicilline (D- Rhode Island, 1st District)

Mr. CICILLINE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 3607) to extend public safety officer death benefits to public safety officers whose death is caused by COVID-19, and for other purposes, and ask for its immediate consideration in the House.

SEC. 2. SENSE OF CONGRESS; PURPOSE.

(a) Sense of Congress.--It is the sense of Congress that--
(1) an infectious disease pandemic known as COVID-19 exists;
(2) to date, there is much still unknown about COVID-19, but it is known that COVID-19 and related complications may be fatal;
(3) services provided by public safety officers are nonetheless essential during this pandemic;
(4) due to the COVID-19 pandemic and what is currently known about how the disease is spread, public safety officers are uncharacteristically at risk of contracting the disease; and
(5) although the Public Safety Officers' Benefits program currently covers deaths and permanent and total disabilities resulting from infectious disease sustained by public safety officers in carrying out their duties, the determination of
claims involving personal injuries believed to have resulted from COVID-19 or its complications may be uniquely challenging or delayed given the lack of—
(A) definitive testing and medical records at this time; and
(B) a definitive uniform body of medical information about how the disease is spread or its effects.

(b) Purpose.—The purpose of this Act is to establish a carefully drawn framework wherein claims under the Public Safety Officers' Benefits program, arising under the unique circumstances described in subsection (a), can be processed expeditiously and under fair and clear standards.

Cleveland Plain Dealer (July 21, 2020)

Congressman Dave Joyce (R-OH 14th District)

“House passes bill to ensure COVID-19 death, disability benefits for first responder - The U.S. House of Representatives on Monday adopted legislation sponsored by Bainbridge Township GOP Rep. Dave Joyce to ensure that families of first responders who die from or are disabled by the coronavirus get Public Safety Officers Benefit program payments for firefighters, police officers and emergency medical technicians who are killed or disabled in the line of duty.”


April 21, 2020: Rose Proposes Legislation to Compensate Public Safety Officers who are Disabled or Die from COVID-19

HISTORY LESSON – AFTER THE AMERICAN REVOLUTION (1783) - PRESENT

5/14/1787: Constitutional Convention (Philadelphia)

George Washington [age 55] – elected President of the Convention; 12 states participated [Rhode Island refused]

“With George Washington presiding, the Constitutional Convention formally convenes on this day in 1787. The convention faced a daunting task: the peaceful overthrow of the new American government as it had been defined by the Article of Confederation. The process began with the proposal of James Madison’s Virginia Plan. Madison had dedicated the winter of 1787 to the study of confederacies throughout history and arrived in Philadelphia with a wealth of knowledge and an idea for a new American government. Virginia’s governor, Edmund Randolph, presented Madison’s plan to the convention. It featured a bicameral legislature, with representation in both houses apportioned to states based upon population; this was seen immediately as giving more power to large states, like Virginia. The two houses would in turn elect the executive and the judiciary and would possess veto power over the state legislatures. Madison’s conception strongly resembled Britain’s parliament. It omitted any discussion of taxation or regulation of trade, however; these items had been set aside in favor of outlining a new form of government altogether.” https://www.history.com/this-day-in-history/constitutional-convention-convenes-in-philadelphia
At the close of the Constitutional Convention of 1787, Franklin was queried as he left Independence Hall on the final day of deliberation. In the notes of Dr. James McHenry, one of Maryland’s delegates to the Convention, a lady asked Dr. Franklin “Well Doctor what have we got, a republic or a monarchy.” Franklin replied, “A republic . . . if you can keep it.”

http://www.whatwouldthefoundersthink.com/a-republic-if-you-can-keep-it

7/16/1787: The Great Compromise – House & Senate

Legislature – Upper House, states equally represented; Lower House, based on population in a decennial census.

“According to the Great Compromise, there would be two national legislatures in a bicameral Congress. Members of the House of Representatives would be allocated according to each state’s population and elected by the people. In the second body—the Senate—each state would have two representatives regardless of the state’s size, and state legislatures would choose Senators. (In 1913, the Seventeenth Amendment was passed, tweaking the Senate system so that Senators would be elected by the people.)”

9/17/1787: Constitution adopted by unanimous consent

The Constitution was adopted by a convention of the States on September 17, 1787, and was subsequently ratified by the several States, on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788. Ratification was completed on June 21, 1788.

Oct. 1787 – May 1788: Federalist Papers

“The Federalist, commonly referred to as the Federalist Papers, is a series of 85 essays written by Alexander Hamilton, John Jay, and James Madison between October 1787 and May 1788. The essays were published anonymously, under the pen name "Publius," in various New York state newspapers of the time. The Federalist Papers were written and published to urge New Yorkers to ratify the proposed United States Constitution, which was drafted in Philadelphia in the summer of 1787. In lobbying for adoption of the Constitution over the existing Articles of Confederation, the essays explain particular provisions of the Constitution in detail. For this reason, and because Hamilton and Madison were each members of the Constitutional Convention, the Federalist Papers are often used today to help interpret the intentions of those drafting the Constitution.”

https://guides.loc.gov/federalist-papers/full-text
James Madison [age 36]


2/4/1789: First Presidential Election

The Electoral College: https://www.archives.gov/federal-register/electoral-college/about.html

“The Electoral College is a process, not a place. The founding fathers established it in the Constitution as a compromise between election of the President by a vote in Congress and election of the President by a popular vote of qualified citizens.

The Electoral College process consists of the selection of the electors, the meeting of the electors where they vote for President and Vice President, and the counting of the electoral votes by Congress.

The Electoral College consists of 538 electors. A majority of 270 electoral votes is required to elect the President. Your state’s entitled allotment of electors equals the number of members in its Congressional delegation: one for each member in the House of Representatives plus two for your Senators. Read more about the allocation of electoral votes.
Under the 23rd Amendment of the Constitution, the District of Columbia is allocated 3 electors and treated like a state for purposes of the Electoral College. For this reason, in the following discussion, the word ‘state’ also refers to the District of Columbia.

Each candidate running for President in your state has his or her own group of electors. The electors are generally chosen by the candidate’s political party, but state laws vary on how the electors are selected and what their responsibilities are. Read more about the qualifications of the Electors and restrictions on who the Electors may vote for.

The presidential election is held every four years on the Tuesday after the first Monday in November. You help choose your state’s electors when you vote for President because when you vote for your candidate you are actually voting for your candidate’s electors.

Most states have a ‘winner-take-all’ system that awards all electors to the winning presidential candidate. However, Maine and Nebraska each have a variation of ‘proportional representation.’

**4/30/1789: George Washington [age 57] sworn in as 1st President**

Congress met in New York City; unanimous (69 to 0) in Senate for George Washington as President – letter taken to Mount Vernon [took 7 days]; he later took Oath of Office on balcony of Federal Hall, Wall Street, New York City

John Adams [age 54] elected Vice President

**9/25/1789: Bill Of Rights drafted:** [https://www.law.cornell.edu/constitution](https://www.law.cornell.edu/constitution)
12/15/1791: Bill of Rights ratified - becomes part of Constitution

“On this day in 1791, Virginia becomes the last state to ratify the Bill of Rights, making the first ten amendments to the Constitution law and completing the revolutionary reforms begun by the Declaration of Independence. Before the Massachusetts ratifying convention would accept the Constitution, which they finally did in February 1788, the document’s Federalist supporters had to promise to create a Bill of Rights to be amended to the Constitution immediately upon the creation of a new government under the document.”
https://www.history.com/this-day-in-history/the-bill-of-rights-becomes-law

James Madison [age 36]

Portrait of George Washington (1789) by Edward Savage:

1795: George Washington – sat for portrait by Charles Willson Peale [his 7th and last portrait of George Washington]

George Washington – portrait (1795) by Gilbert Stuart
1799: At the time of George Washington’s death [age 67], Mount Vernon enslaved population consisted of 317 people.

“Of the 317 enslaved people living at Mount Vernon in 1799, a little less than half (123 individuals) were owned by George Washington himself. Another 153 slaves at Mount Vernon in 1799 were dower slaves from the Custis estate. When Martha Washington's first husband, Daniel Parke Custis, died without a will in 1757, she received a life interest in one-third of his estate, including the slaves. Neither George nor Martha Washington could free these slaves by law and upon Martha’s death these individuals reverted to the Custis estate and were divided among her grandchildren.”
https://www.mountvernon.org/george-washington/slavery/ten-facts-about-washington-slavery/

1795: 11th Amendment to U.S. Constitution – If Congress Upset With U.S. Supreme Court Decision, Can Pass Constitutional Amendment

“The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.”
https://www.law.cornell.edu/constitution/amendmentxi

Explanation:

“In accepting a suit against a state by a citizen of another state in 1793, the Supreme Court [in Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793)] provoked such anger in Georgia and such anxiety in other states that, at the first meeting of Congress following the decision, the Eleventh Amendment was proposed by an overwhelming vote of both Houses and ratified with, what was for that day, ‘vehement speed.’ *** The Amendment proposed by Congress and ratified by the states was directed specifically toward overturning the result in Chisholm and
preventing suits against states by citizens of other states or by citizens or subjects of foreign jurisdictions. It did not, as other possible versions of the Amendment would have done, altogether bar suits against states in the federal courts.”

1801: Chief Justice John Marshall (1801-1835)

[Chief Justice John Roberts, in 2007 interview.] “Roberts believes that Marshall’s temperament and worldview came from his experiences as a soldier at Valley Forge, where he developed a commitment to the success of the nation. ‘Some have speculated that the real root of Marshall’s ill feeling to Jefferson was that Jefferson was not at Valley Forge, was not in the fight, and had what Marshall might regard as a somewhat precious attachment to ideas for the sake of ideas, while Marshall was more personally invested in the success of the American experiment.’ *** During Marshall’s thirty years as chief, “there weren’t a lot of concurring opinions. There weren’t a lot of dissents. And nowadays, you take a look at some of our opinions and you wonder if we’re reverting back to the English model, where everybody has to have their say. It’s more being concerned with the jurisprudence of the individual rather than working toward a jurisprudence of the Court.” Roberts praised justices who were willing to put the good of the Court above their own ideological agendas.”

2/24/1803: U.S. Supreme Court: Marbury v. Madison (5 US 137) – JUDICIAL POWER TO REVIEW CONGRESSIONAL LEGISLATION

Thomas Jefferson
“Facts of the case

Thomas Jefferson defeated John Adams in the 1800 presidential election. Before Jefferson took office on March 4, 1801, Adams and Congress passed the Judiciary Act of 1801, which created new courts, added judges, and gave the president more control over appointment of judges. The Act was essentially an attempt by Adams and his party to frustrate his successor, as he used the act to appoint 16 new circuit judges and 42 new justices of the peace. The appointees were approved by the Senate, but they would not be valid until their commissions were delivered by the Secretary of State.

William Marbury had been appointed Justice of the Peace in the District of Columbia, but his commission was not delivered. Marbury petitioned the Supreme Court to compel the new Secretary of State, James Madison, to deliver the documents. Marbury, joined by three other similarly situated appointees, petitioned for a writ of mandamus compelling the delivery of the commissions.

Question

1. Do the plaintiffs have a right to receive their commissions?
2. Can they sue for their commissions in court?
3. Does the Supreme Court have the authority to order the delivery of their commissions?

Conclusion

The Court found that Madison’s refusal to deliver the commission was illegal, but did not order Madison to hand over Marbury’s commission via writ of mandamus. Instead, the Court held that the provision of the Judiciary Act of 1789 enabling Marbury to bring his claim to the Supreme Court was itself unconstitutional, since it purported to extend the Court’s original jurisdiction beyond that which Article III, Section 2, established. Marshall expanded that a writ of mandamus was the proper way to seek a remedy, but concluded the Court could not issue it. Marshall reasoned that the Judiciary
Act of 1789 conflicted with the Constitution. Congress did not have power to modify the Constitution through regular legislation because Supremacy Clause places the Constitution before the laws. In so holding, Marshall established the principle of judicial review, i.e., the power to declare a law unconstitutional.”

https://www.oyez.org/cases/1789-1850/5us137

5/2/1803: The Louisiana Purchase

“The Louisiana Purchase of 1803 brought into the United States about 828,000 square miles of territory from France, thereby doubling the size of the young republic. What was known at the time as the Louisiana Territory stretched from the Mississippi River in the east to the Rocky Mountains in the west and from the Gulf of Mexico in the south to the Canadian border in the north. Part or all of 15 states were eventually created from the land deal, which is considered one of the most important achievements of Thomas Jefferson’s presidency. *** And in 1801, Spain signed a secret treaty with France to return the Louisiana Territory to France. Reports of the retrocession caused considerable unease in the United States. Since the late 1780s, Americans had been moving westward into the Ohio River and Tennessee River valleys, and these settlers were highly dependent on free access to the Mississippi River and the strategic port of New Orleans. U.S. officials feared that France, resurgent under the leadership of Napoleon Bonaparte, would soon seek to dominate the Mississippi River and access to the Gulf of Mexico. In a letter to U.S. minister to France Robert Livingston, President Thomas Jefferson stated, ‘The day that France takes possession of New Orleans…we must marry ourselves to the British fleet and nation.’”

https://www.history.com/topics/westward-expansion/louisiana-purchase

1804: 12th Amendment to U.S. Constitution

https://www.law.cornell.edu/constitution

- Amendment XII [Election of President and Vice-President (1804)] [see explanation]

1820: Missouri Compromise

“In the years leading up to the Missouri Compromise of 1820, tensions began to rise between pro-slavery and anti-slavery factions within the U.S. Congress and across the
country. They reached a boiling point after Missouri’s 1819 request for admission to the Union as a slave state, which threatened to upset the delicate balance between slave states and free states. To keep the peace, Congress orchestrated a two-part compromise, granting Missouri’s request but also admitting Maine as a free state. It also passed an amendment that drew an imaginary line across the former Louisiana Territory, establishing a boundary between free and slave regions that remained the law of the land until it was negated by the Kansas-Nebraska Act of 1854.”
https://www.history.com/topics/abolitionist-movement/missouri-compromise

April 28, 1845: Frederick Douglas [age 27] writes autobiography: *Narrative of the Life of Frederick Douglass, an American Slave*

“Frederick Douglass was an escaped slave who became a prominent activist, author and public speaker. He became a leader in the abolitionist movement, which sought to end the practice of slavery, before and during the Civil War. After that conflict and the Emancipation Proclamation of 1862, he continued to push for equality and human rights until his death in 1895. *** Douglass’ 1845 autobiography, *Narrative of the Life of Frederick Douglass, an American Slave*, described his time as a slave in Maryland. It was one of five autobiographies he penned, along with dozens of noteworthy speeches, despite receiving minimal formal education. https://www.history.com/topics/black-history/frederick-douglass

1845 AUTOBIOGRAPHY:
“I WAS born in Tuckahoe, near Hillsborough, and about twelve miles from Easton, in Talbot county, Maryland. I have no accurate knowledge of my age, never having seen any authentic record containing it. By far the larger part of the slaves know as little of their ages as horses know of theirs, and it is the wish of most masters within my knowledge to keep their slaves thus ignorant. I do not remember to have ever met a slave who could tell of his birthday. They seldom come nearer to it than planting-time, harvest-time, cherry-time, spring-time, or fall-time. A want of information concerning my own was a source of unhappiness to me even during childhood. The white children could tell their ages. I could not tell why I ought to be deprived of the same privilege. I was not allowed to make any inquiries of my master concerning it. He deemed all such inquiries on the part of a slave improper and impertinent, and evidence of a restless spirit. The nearest estimate I can give makes me now between twenty-seven and twenty-eight years of age. I come to this, from hearing my master say, sometime during 1835, I was about seventeen years old. My mother was named Harriet Bailey. She was the daughter of Isaac and Betsey Bailey, both colored, and quite dark.

My mother was of a darker complexion than either my grandmother or grandfather.

My father was a white man. He was admitted to be such by all I ever heard speak of my parentage. The opinion was also whispered that my master was my father; but of the correctness of this opinion, I know nothing; the means of knowing was withheld from me. My mother and I were separated when I was but an infant—before I knew her as my mother. It is a common custom, in the part of Maryland from which I ran away, to part children from their mothers at a very early age. Frequently, before the child has reached its twelfth month, its mother is taken from it, and hired out on some farm a considerable distance off, and the child is placed under the care of an old woman, too old for field labor. For what this separation is done, I do not know, unless it be to hinder the development of the child's affection toward its mother, and to blunt and destroy the natural affection of the mother for the child. This is the inevitable result.”

https://docsouth.unc.edu/neh/douglass/douglass.html

May 22, 1856 - The Caning of Senator Charles Sumner

“On May 22, 1856, the ‘world's greatest deliberative body’ became a combat zone. In one of the most dramatic and deeply ominous moments in the Senate’s entire history, a member of the House of Representatives entered the Senate Chamber and savagely beat a senator into unconsciousness.

The inspiration for this clash came three days earlier when Senator Charles Sumner, a Massachusetts antislavery Republican, addressed the Senate on the explosive issue of
whether Kansas should be admitted to the Union as a slave state or a free state. In his ‘Crime Against Kansas’ speech, Sumner identified two Democratic senators as the principal culprits in this crime—Stephen Douglas of Illinois and Andrew Butler of South Carolina. He characterized Douglas to his face as a "noise-some, squat, and nameless animal . . . not a proper model for an American senator." Andrew Butler, who was not present, received more elaborate treatment. Mocking the South Carolina senator's stance as a man of chivalry, the Massachusetts senator charged him with taking ‘a mistress . . . who, though ugly to others, is always lovely to him; though polluted in the sight of the world, is chaste in his sight—I mean,’ added Sumner, ‘the harlot, Slavery.’

Representative Preston Brooks was Butler's South Carolina kinsman. If he had believed Sumner to be a gentleman, he might have challenged him to a duel. Instead, he chose a light cane of the type used to discipline unruly dogs. Shortly after the Senate had adjourned for the day, Brooks entered the old chamber, where he found Sumner busily attaching his postal frank to copies of his "Crime Against Kansas" speech.

Moving quickly, Brooks slammed his metal-topped cane onto the unsuspecting Sumner's head. As Brooks struck again and again, Sumner rose and lurched blindly about the chamber, futilely attempting to protect himself. After a very long minute, it ended.

Bleeding profusely, Sumner was carried away. Brooks walked calmly out of the chamber without being detained by the stunned onlookers. Overnight, both men became heroes in their respective regions.

Surviving a House censure resolution, Brooks resigned, was immediately reelected, and soon thereafter died at age 37. Sumner recovered slowly and returned to the Senate, where he remained for another 18 years. The nation, suffering from the breakdown of reasoned discourse that this event symbolized, tumbled onward toward the catastrophe of civil war.”
https://www.senate.gov/artandhistory/history/minute/The_Caning_of_Senator_Charles_Sumner.htm

Chief Justice Roger B. Taney

[See Washington Post article, July 22, 2020.] “The House voted Wednesday to remove statues of Confederate leaders from the Capitol and replace the bust of Roger B. Taney, the U.S. chief justice who wrote the Supreme Court decision that said people of African descent are not U.S. citizens. *** In 1857, Taney wrote the majority decision in the case of Scott, a black man born into slavery who used the courts to demand his freedom. Taney’s ruling, which defended slavery and declared that black people could never become U.S. citizens, came to be viewed as one of the worst Supreme Court decisions in U.S. history. Taney wrote that at the time of the Constitution’s ratification, black people ‘had for more than a century before been regarded as beings of an inferior order and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit.’”


“Facts of the case

Dred Scott was a slave in Missouri. From 1833 to 1843, he resided in Illinois (a free state) and in the Louisiana Territory, where slavery was forbidden by the Missouri Compromise of 1820. After returning to Missouri, Scott filed suit in Missouri court for
his freedom, claiming that his residence in free territory made him a free man. After losing, Scott brought a new suit in federal court. Scott's master maintained that no ‘negro’ or descendant of slaves could be a citizen in the sense of Article III of the Constitution.

Question

Was Dred Scott free or slave?

Conclusion

The majority held that ‘a negro, whose ancestors were imported into [the U.S.], and sold as slaves,’ whether enslaved or free, could not be an American citizen and therefore did not have standing to sue in federal court. Because the Court lacked jurisdiction, Taney dismissed the case on procedural grounds. Taney further held that the Missouri Compromise of 1820 was unconstitutional and foreclose Congress from freeing slaves within Federal territories. The opinion showed deference to the Missouri courts, which held that moving to a free state did not render Scott emancipated. Finally, Taney ruled that slaves were property under the Fifth Amendment, and that any law that would deprive a slave owner of that property was unconstitutional.”

https://www.oyez.org/cases/1850-1900/60us393

1861: Civil War (1861 – 1865)

Ulysses S. Grant, General-in-Chief, Union Army:
https://www.battlefields.org/learn/biographies/ulysses-s-grant

General Robert E. Lee, commander of the Confederate "Army of Northern Virginia":
https://www.nps.gov/gett/learn/historyculture/people.htm
“The Civil War is the central event in America's historical consciousness. While the Revolution of 1776-1783 created the United States, the Civil War of 1861-1865 determined what kind of nation it would be. The war resolved two fundamental questions left unresolved by the revolution: whether the United States was to be a dissolvable confederation of sovereign states or an indivisible nation with a sovereign national government; and whether this nation, born of a declaration that all men were created with an equal right to liberty, would continue to exist as the largest slaveholding country in the world.” https://www.battlefields.org/learn/articles/brief-overview-american-civil-war

“The Civil War was America's bloodiest conflict. The unprecedented violence of battles such as Shiloh, Antietam, Stones River, and Gettysburg shocked citizens and international observers alike. Nearly as many men died in captivity during the Civil War as were killed in the whole of the Vietnam War. Hundreds of thousands died of disease. Roughly 2% of the population, an estimated 620,000 men, lost their lives in the line of duty.” https://www.battlefields.org/learn/articles/civil-war-casualties

1/1/1863: Emancipation Proclamation - Lincoln [age 54] sought to end slavery on New Year's Day

https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation

“On New Year’s morning of 1863, President Abraham Lincoln hosted a three-hour reception in the White House. That afternoon, Lincoln slipped into his office and — without fanfare — signed a document that changed America forever. It was the Emancipation Proclamation, decreeing “that all persons held as slaves” within the rebellious Southern states “are, and henceforward shall be, free.” However, the proclamation did not immediately free any of the nation’s nearly 4 million slaves. The biggest impact was that for the first time, ending slavery became a goal of the Union in
the bloody civil war with the Confederacy." On New Year’s morning of 1863, President Abraham Lincoln hosted a three-hour reception in the White House. That afternoon, Lincoln slipped into his office and — without fanfare — signed a document that changed America forever. ***

By Jan. 31, 1865, both houses of Congress passed the 13th Amendment that “neither slavery or involuntary servitude … shall exist in the United States.” Slavery officially ended on Dec. 18, 1865 after 27, or two-thirds, of the 36 states ratified the amendment.

***

Free African Americans in the North celebrated the news. “We are all liberated by this proclamation,” said the noted orator and former slave Frederick Douglass. “Everybody is liberated. The white man is liberated, the black man is liberated, the brave men now fighting the battles of their country against rebels and traitors are now liberated.” But Douglass cautioned that the proclamation was only a first step; slaves who celebrated the proclamation risked being beaten or hung.”

https://www.washingtonpost.com/history/2019/01/01/lincoln-declared-an-end-slavery-new-years-day-it-went-two-more-years/?utm_term=.41ddb2cefc8e&wpisrc=nl_most&wpmm=1

Frederick Douglas [age 45]

3/2/1863: False Claims Act

See Dec. 21, 2018 Press Release:


“The False Claims Act was originally passed in response to rampant fraud perpetrated against the United States military during the Civil War. Back then, crooked contractors defrauded the Union Army by selling it sick mules, lame horses, sawdust instead of gunpowder, and rotted ships with fresh paint. Unfortunately, what we see today is just a modern version of the same thing — deceptive and fraudulent practices directed at the U.S. government and the American taxpayer,” said Assistant Attorney General Jody Hunt. “The Department of Justice has placed a high priority on rooting out and pursuing
those who cheat government programs for their own gain. The recoveries announced today are a message that fraud and dishonesty will not be tolerated.”

In 1986, Congress strengthened the Act by increasing incentives for whistleblowers to file lawsuits alleging false claims on behalf of the government. These whistleblower, or *qui tam*, actions comprise a significant percentage of the False Claims Act cases that are filed. If the government prevails in a *qui tam* action, the whistleblower, also known as the relator, receives up to 30 percent of the recovery. Whistleblowers filed 645 *qui tam* suits in fiscal year 2018, and this past year the Department recovered over $2.1 billion in these and earlier filed suits.”

**4/15/1865: President Lincoln Assassinated**

“On the evening of April 14, 1865, John Wilkes Booth, a famous actor and Confederate sympathizer, assassinated President Abraham Lincoln at Ford’s Theatre in Washington, D.C. The attack came only five days after Confederate General Robert E. Lee surrendered his massive army at Appomattox Court House, Virginia, effectively ending the American Civil War.” [https://www.history.com/topics/american-civil-war/abraham-lincoln-assassination](https://www.history.com/topics/american-civil-war/abraham-lincoln-assassination)
Execution of the four Lincoln conspirators: David Herold, Lewis Powell, George Atzerodt and Mary Surratt.

https://www.washingtonpost.com/local/four-people-were-hanged-for-lincolns-assassination--and-it-was-caught-on-camera/2015/07/03/377614d4-1905-11e5-ab92-c75ae6ab94b5_story.html

**6/29/1865: Tried by Military Commission**

https://columbialawreview.org/content/the-law-of-the-lincoln-assassination/

“On May 1, 1865, President Andrew Johnson ordered the formation of a military commission to try the accused persons. The actual trial began on May 10th and lasted for about seven weeks. The defendants were allowed to have lawyers and witnesses, but they were not allowed to testify themselves. On June 29, 1865, the Military Commission met in secret session to begin its review of the evidence in the seven-week long trial. A guilty verdict could come with a majority vote of the nine-member commission; death sentences required the votes of six members. The next day, it reached its verdicts. The Commission found seven of the prisoners guilty of at least one of the conspiracy charges. Four of the prisoners: Mary Surratt, Lewis Powell, George Atzerodt, and David Herold were sentenced “to be hanged by the neck until he [or she] be dead”. Samuel Arnold, Dr. Samuel Mudd and Michael O’Laughlen were sentenced to “hard labor for life, at such place at the President shall direct”, Edman Spangler received a six-year sentence. The next day General Hartranft informed the prisoners of their sentences. He told the four condemned prisoners that they would hang the next day.”

https://rarehistoricalphotos.com/execution-lincoln-conspirators-1865/

**12/6/1865: 13th Amendment abolished slavery**

Later Amendments to Constitution: https://www.law.cornell.edu/constitution

Amendment XIII [Abolition of Slavery (1865)] (see explanation)
“On January 31, 1865, the House of Representatives passed the proposed amendment with a vote of 119-56, just over the required two-thirds majority. The following day, Lincoln approved a joint resolution of Congress submitting it to the state legislatures for ratification. But he would not see final ratification: Lincoln was assassinated on April 14, 1865, and the necessary number of states did not ratify the 13th Amendment until December 6. While Section 1 of the 13th Amendment outlawed chattel slavery and involuntary servitude (except as punishment for a crime), Section 2 gave the U.S. Congress the power “to enforce this article by appropriate legislation.”

https://www.history.com/topics/black-history/thirteenth-amendment

4/9/1866: Civil Rights Act of 1866 – Overturned “Black Codes”

On this date, the House overrode President Andrew Johnson’s veto of the Civil Rights Bill of 1866 with near unanimous Republican support, 122 to 41, marking the first time Congress legislated upon civil rights.

President Andrew Johnson – from Raleigh, NC

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”


“The year after the [13th] amendment’s passage, Congress used this power to pass the nation’s first civil rights bill, the Civil Rights Act of 1866. The law invalidated the so-called black codes, those laws put into place in the former Confederate states that governed the behavior of blacks, effectively keeping them dependent on their former
owners. Congress also required the former Confederate states to ratify the 13th Amendment in order to regain representation in the federal government. Together with the 14th and 15th Amendments, also ratified during the Reconstruction era, the 13th Amendment sought to establish equality for black Americans. Despite these efforts, the struggle to achieve full equality and guarantee the civil rights of all Americans would continue well into the 20th century. https://www.history.com/topics/black-history/thirteenth-amendment

Black Codes: “Under black codes, many states required blacks to sign yearly labor contracts; if they refused, they risked being arrested, fined and forced into unpaid labor. Outrage over black codes helped undermine support for President Andrew Johnson and the Republican Party.” https://www.history.com/topics/black-history/black-codes

4/1866: Ohio Rep. John Bingham appointed to Joint Committee on Reconstruction – they drafted what became the 14th Amendment

John Bingham (elected to Congress – four terms (March 4, 1865 – March 3, 1873) https://history.house.gov/People/Listing/B/BINGHAM,-John-Armor-(B000471)/

Jim Crow Era (1865 – 1877):

“However, starting in the 1870s, as the Southern economy continued its decline, Democrats took over power in Southern legislatures and used intimidation tactics to suppress black voters. Tactics included violence against blacks and those tactics continued well into the 1900s. Lynchings were a common form of terrorism practiced against blacks to intimidate them. It is important to remember that the Democrats and Republicans of the late 1800s
were very different parties from their current iterations. Republicans in the time of the Civil War and directly after were literally the party of Lincoln and anathema to the South. As white, Southern Democrats took over legislatures in the former Confederate states, they began passing more restrictive voter registration and electoral laws, as well as passing legislation to segregate blacks and whites. *** And while segregation was literal law in the South, it was also practiced in the northern United States via housing patterns enforced by private covenants, bank lending practices, and job discrimination, including discriminatory labor union practices.”

https://guides.ll.georgetown.edu/c.php?g=592919&p=4172697

“Jim Crow” named after Minstrel shows:

“Several characters in minstrel shows became archetypes, as described in the University of Florida’s digital exhibit, ‘History of Minstrels: From ‘Jump Jim Crow’ to ‘The Jazz Singer.’ Some of the most famous ones were Rice’s “Jim Crow,” a rural dancing fool in tattered clothing; the ‘Mammy,’ an overweight and loud mother figure; and ‘Zip Coon,’ a flamboyant-dressed man who used sophisticated words incorrectly.”

https://www.history.com/news/blackface-history-racism-origins

7/20/1868: 14th Amendment – Due Process Clause

Section 1: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the
equal protection of the laws.” [https://www.google.com/search?client=firefox-b-1-d&q=14th+Amendment]

April 1865: “In 1868, The Fate Of Jefferson Davis’s Neck Swung On Andrew Johnson’s Impeachment”

Jefferson Davis – President of Confederate States (1861 – 1865)

Andrew Johnson – President (1829-1837)

“The treason trial of Confederate President Jefferson Davis was supposed to be the ‘Greatest Trial of the Age’ in 1868. But that title was claimed instead by the Senate impeachment trial of President Andrew Johnson. The two trials became so intertwined that Davis’s prosecution was delayed for months. While ‘the man they denounce as a traitor goes free,’ the Louisville Courier noted, Johnson ‘is upon his trial for high crimes and misdemeanors.’ Moreover, Johnson’s fate could have determined whether Davis would be hanged. *** On May 1, 1867, Davis was brought to the federal court in Richmond for the bail hearing in a courtroom in the same building that previously housed the Confederate Treasury Department. Judge John Underwood noted that a bail request for the rebel leader was ‘a little remarkable’ and issued his decision: ‘The marshal will release the prisoner.’ Davis took his family first to Canada, then to New Orleans and Cuba as he awaited trial, which was set for the next March. *** Johnson escaped conviction by one vote. Because the impeachment trial dragged on into May, the Davis trial had to be delayed again. In early May, the court in Richmond approved a new $100,000 bail, with publisher Greeley and industrialist Cornelius Vanderbilt each ponying up $25,000 of the total. The trial was put off until after the November
presidential election, which Gen. Ulysses S. Grant won. *** On Christmas 1868, lame-
duck President Johnson made the case moot by issuing a general pardon for all
participants in the rebellion, including Davis.”

Washington Post article (2/2/2020):
https://www.washingtonpost.com/history/2020/02/02/jefferson-davis-trial-
impeachment/?utm_campaign=wp_evening_edition&utm_medium=email&utm_source=
newsletter&wpisrc=nl_evening

3/30/1870: 15th Amendment – Right of Citizens to Vote

“Section. 1. The right of citizens of the United States to vote shall not be denied or
abridged by the United States or by any State on account of race, color, or previous
condition of servitude.

Section. 2. The Congress shall have power to enforce this article by appropriate

5/31/1870: Civil Right Act of 1870

“During Reconstruction, Congress enacted the Civil Rights Act of 1870, also known as
the Enforcement Act or the First Ku Klux Klan Act, in order to enforce the terms of the
Fifteenth Amendment, which prohibited the states from denying anyone the right to vote
based on race. The act provided criminal penalties for those attempting to prevent African
Americans from voting by using or threatening to use violence or engaging in other
tactics, such as making threats to terminate a person’s employment or evict them from
their home. As a result of the act, the criminal jurisdiction of the federal courts was
expanded.”

https://www.fjc.gov/history/timeline/civil-rights-act-1870


“Congress followed the Civil Rights Act of 1870 with an 1871 law “to enforce the
Provisions of the Fourteenth Amendment to the Constitution of the United States,” which
came to be known as the Second Enforcement Act or the Second Ku Klux Klan Act. Like
the prior year’s legislation, the act was designed in large part to protect African Americans from Klan violence during Reconstruction, giving those deprived of a constitutional right by someone acting under color of law the right to seek relief in a federal district or circuit court. This part of the legislation was later made a part of the United States Code as 42 U.S.C. §1983 and served as the basis for many federal court lawsuits against state and local officials.’’

https://www.fjc.gov/history/timeline/civil-rights-act-1871

Note: The Civil Rights Act of 1871 became a “civil rights weapon” after US Supreme Court in 1948 held in *Hurd v. Hodge* that restrictive covenants on sale of property to African-Americans were unenforceable.

https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=2706&context=cklawreview


“Ulysses S. Grant – born, Point Pleasant, OH (April 27, 1822)

“The Police Officer Who Arrested A President”

“In 1872, while president, Grant was arrested at the corner of 13th and M streets in Washington. This was not a high crime, but it was — at least theoretically speaking — a misdemeanor. *** The man who led the North to victory in the Civil War was busted for speeding in his horse-drawn carriage. *** That policeman was William H. West, a black man who had fought in the Civil War. ‘Since his retirement,’ the story said, ‘he has decided to let the public know the true story of the arrest.’ It begins with Grant’s love of fast horses. ‘Gen. Grant was an ardent admirer of a good horse and loved nothing better than to sit behind a pair of spirited animals,’ the Star story said. ‘He was a good driver, and sometimes “let them out” to try their mettle.’ And that’s where Grant, as president, rode into the law. The police had been receiving complaints of speeding carriages. After a mother and child were run over and badly injured, Officer West was dispatched to investigate. As West spoke to witnesses, another group of speeding carriages headed
toward him — including one driven by the president of the United States. ‘Policeman West held up his hand for them to stop,’ the story said. ‘Grant was driving a pair of fast steppers and he had some difficulty in halting them, but this he managed to do.’ Grant was a bit testy. ‘Well, officer,’ he said, ‘what do you want with me?’ West replied: ‘I want to inform you, Mr. President, that you are violating the law by speeding along this street. Your fast driving, sir, has set the example for a lot of other gentlemen.’ The president apologized, promised it wouldn’t happen again, and galloped away. But Grant could not curb his need for speed. The next evening, West was patrolling at the corner of 13th and M streets when the president came barreling through again, this time speeding so fast that it took him an entire block to stop. Now Grant was cocky and had a ‘smile on his face,’ the Star article said, that made him look like ‘a schoolboy who had been caught in a guilty act by a teacher.’ He said, ‘Do you think, officer, that I was violating the speed laws?’ ‘I do, Mr. President,’ West said. Grant had an excuse for his speeding, not unlike one no doubt being given somewhere right now: He had no idea he had been going so fast. West was sympathetic but firm. ‘I am very sorry, Mr. President, to have to do it,’ he said, ‘for you are the chief of the nation, and I am nothing but a policeman, but duty is duty, sir, and I will have to place you under arrest.’ *** Anyway, Grant and several of his speeding buddies also arrested went with West to the police station. The president of the United States was ordered to put up 20 bucks as collateral. A trial was held the next day. ‘Thirty-two ladies of the most refined character and surroundings voluntarily came into the court and testified against the drivers,’ the Star story said. ‘The cases were contested bitterly.’ The judge imposed ‘heavy fines’ and a ‘scathing rebuke’ to the speeding drivers, who didn’t include the president. He didn’t show up for court.’”

Washington Post article: Dec. 16, 2018:
https://www.washingtonpost.com/history/2018/12/16/police-officer-who-arrested-president/?utm_term=.9f22b60ea0f1

Oct. 14, 1883: U.S. Supreme Court: Civil Rights Cases, 109 U.S. 3 (1883) – Congress lacked power to stop hotels, theatres from practicing segregation [no longer good law]

“[I]n this set of five cases that were consolidated into one issue, a majority of the court held the Civil Rights Act of 1875 unconstitutional against the lone famous dissent of Justice Harlan. The majority argued that Congress lacked authority to regulate private affairs under the 14th Amendment and that the 13th Amendment ‘merely abolish[e]d slavery’. Segregation in public accommodations would not be declared illegal after these cases until the Civil Rights Act of 1964.”
https://guides.ll.georgetown.edu/c.php?g=592919&p=4172697

____________________________________________________________________

“Two of the cases, those against Stanley and Nichols, were indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those
against Ryan and Singleton, were, one on information, the other an indictment, for denying to individuals the privileges and accommodations of a theatre, the information against Ryan being for refusing a colored person a seat in the dress circle of Maguire's theatre in San Francisco, and the indictment against Singleton was for denying to another person, whose color was not stated, the full enjoyment of the accommodations of the theatre known as the Grand Opera House in New York, ‘said denial not being made for any reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude.’”  


MR. JUSTICE JOHN HARLAN dissenting.

“The opinion in these cases proceeds, it seems to me, upon grounds entirely too narrow and artificial. I cannot resist the conclusion that the substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. *** The purpose of the first section of the act of Congress of March 1, 1875, was to prevent race discrimination in respect of the accommodations and facilities of inns, public conveyances, and places of public amusement.”  


[T]his is the case which gave us the phrase ‘separate but equal’ and upheld state racial segregation laws for public facilities. Justice Harlan again offered a lone dissent. These laws would remain in play until 1954.”  

https://guides.ll.georgetown.edu/c.php?g=592919&p=4172697
“The statute of Louisiana, acts of 1890, c. 111, requiring railway companies carrying passengers in their coaches in that State, to provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong to; and requiring the officer of the passenger train to assign each passenger to the coach or compartment assigned for the race to which he or she belong; and imposing fines or imprisonment upon passengers insisting on going into a coach or compartment other than the one set aside for the race to which he or she belongs; and conferring upon officers of the train power to refuse to carry on the train passengers refusing to occupy the coach or compartment assigned to them, and exempting the railway company from liability for such refusal, are not in conflict with the provisions either of the Thirteenth Amendment or of the Fourteenth Amendment to the Constitution of the United States.”

https://supreme.justia.com/cases/federal/us/163/537/

MR. JUSTICE JOHN HARLAN, dissenting.

“By the Louisiana statute the validity of which is here involved, all railway companies (other than street railroad companies) carrying passengers in that State are required to have separate but equal accommodations for white and colored persons ‘by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations.’ Under this statute, no colored person is permitted to occupy a seat in a coach assigned to white persons, nor any white person to occupy a seat in a coach assigned to colored persons. The managers of the railroad are not allowed to exercise any discretion in the premises, but are required to assign each passenger to some coach or compartment set apart for the exclusive use of his race. If a passenger insists upon going into a coach or compartment not set apart for persons of his race, he is subject to be fined or to be imprisoned in the parish jail. Penalties are prescribed for the refusal or neglect of the officers, directors, conductors and employees of railroad companies to comply with the provisions of the act. *** Thus, the State regulates the use of a public highway by citizens of the United States solely
upon the basis of race. However apparent the injustice of such legislation may be, we have only to consider whether it is consistent with the Constitution of the United States.”

https://supreme.justia.com/cases/federal/us/163/537/

3/3/1919: U.S. Supreme Court - Schenck v. United States
(249 US 47) – PROSECUTION FOR CREATING CLEAR & PRESENT DANGER

“Charles T. Schenck was general secretary of the U.S. Socialist Party, which opposed the implementation of a military draft in the country. The party printed and distributed some 15,000 leaflets that called for men who were drafted to resist military service. Schenck was subsequently arrested for having violated the Espionage Act; he was convicted on three counts.”

https://www.britannica.com/event/Schenck-v-United-States

MR. JUSTICE HOLMES delivered the opinion of the court.

Justice Oliver Homes

“Incriminating document seized under a search warrant directed against a Socialist headquarters, held admissible in evidence, consistently with the Fourth and Fifth Amendment, in a criminal prosecution against the general secretary of a Socialist party, who had charge of the office. Words which, ordinarily and in many places, would be within the freedom of speech protected by the First Amendment may become subject to prohibition when of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent. The character of every act depends upon the circumstances in which it is done. A conspiracy to circulate among men called and accepted for military service under the Selective Service Act of May 18, 1917, a circular tending to influence them to obstruct the draft, with the intent to effect that result, and followed by the sending of such circulars, is within the power of Congress to punish, and is punishable under the Espionage Act, § 4….”

https://supreme.justia.com/cases/federal/us/249/47/
1920s: Great Migration North / KKK

“The era of Jim Crow laws saw a dramatic reduction in the number of blacks registered to vote within the South. This time period brought about the Great Migration of blacks to northern and western cities like New York City, Chicago, and Los Angeles. In the 1920s, the Ku Klux Klan experienced a resurgence and spread all over the country, finding a significant popularity that has lingered to this day in the Midwest. It was claimed at the height of the second incarnation of the KKK that its membership exceeded 4 million people nationwide. The Klan didn’t shy away from using burning crosses and other intimidation tools to strike fear into their opponents, who included not just blacks, but also Catholics, Jews, and anyone who wasn't a white Protestant.”
https://guides.ll.georgetown.edu/c.php?g=592919&p=4172697

8/26/1920 – 19th Amendment – Women’s Suffrage Rights

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.”
https://constitution.findlaw.com/amendments.html

1935: NLRB

“The National Labor Relations Board enforces the National Labor Relations Act by investigating allegations of wrong-doing brought by workers, unions, or employers, conducting elections, and deciding and resolving cases.” https://www.usa.gov/federal-agencies/national-labor-relations-board

Note: See Appendix for NLRB cases involving Social Media policies.

1938: FLSA enacted: 29 USC 207k
Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage

“When he felt the time was ripe, President Roosevelt asked Secretary of Labor Perkins, ‘What happened to that nice unconstitutional bill you had tucked away?’

On Saturday, June 25, 1938, to avoid pocket vetoes 9 days after Congress had adjourned, President Franklin D. Roosevelt signed 121 bills. Among these bills was a landmark law in the Nation's social and economic development -- Fair Labor Standards Act of 1938 (FLSA). Against a history of judicial opposition, the depression-born FLSA had survived, not unscathed, more than a year of Congressional altercation. In its final form, the act applied to industries whose combined employment represented only about one-fifth of the labor force. In these industries, it banned oppressive child labor and set the minimum hourly wage at 25 cents, and the maximum workweek at 44 hours.”
https://www.dol.gov/general/aboutdol/history/flsa1938


(y) “Employee in fire protection activities” means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who—

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

1942: Japanese Internment Camps

“Japanese internment camps were established during World War II by President Franklin Roosevelt through his Executive Order 9066. From 1942 to 1945, it was the policy of the U.S. government that people of Japanese descent would be interred in isolated camps. Enacted in reaction to Pearl Harbor and the ensuing war, the Japanese internment camps are now considered one of the most atrocious violations of American civil rights in the 20th century.” https://www.history.com/topics/world-war-ii/japanese-american-relocation

9/2/1945: World War II Ends

4/15/1947: Jackie Robinson


“Jackie Robinson, who made history in 1947 by becoming the first black baseball player in the major leagues, suffered a heart attack in his home in Stamford, Conn., yesterday morning and died at Stamford Hospital at 7:10 A.M. He was 53 years old.”

https://www.google.com/search?channel=cus2&client=firefox-b-1-d&q=Jackie+Robinson

Note:

“But the first African American to play regularly in the big leagues wasn’t the Brooklyn Dodgers second baseman, it was Moses Fleetwood “Fleet” Walker. On May 1, 1884, the 26-year-old Walker was the catcher for the Toledo Blue Stockings in their opening game in the then-major league American Association. Six decades later, while Robinson was hailed as a pioneer, Walker was seen more as a curiosity.” But the first African American to play regularly in the big leagues wasn’t the Brooklyn Dodgers second baseman, it was Moses Fleetwood “Fleet” Walker.
On May 1, 1884, the 26-year-old Walker was the catcher for the Toledo Blue Stockings in their opening game in the then-major league American Association. Six decades later, while Robinson was hailed as a pioneer, Walker was seen more as a curiosity.” [https://www.washingtonpost.com/history/2019/04/15/first-african-american-major-leaguer-wasnt-who-you-think/]

Note: Prof. Bennett: I was born in Stamford, CT, and grew up seeing Jackie Robinson playing golf at our public golf course, Hubbard Heights. I now can better appreciate why he played at a public golf course, and not at any of the private clubs.

**May 3, 1948: U.S. Supreme Court - Hurd v. Hodge (334 U.S. 24) – FEDERAL COURTS CAN NOT ENFORCE LAND DEEDS PROHIBITING SALE TO AFRICAN AMERICANS**

Note: After this decision, 42 U.S.C. 1983 lawsuits started to be filed against police officers and their municipal employers.

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

Justice Fred M. Vinson

“In 1906, twenty of thirty-one lots in the 100 block of Bryant Street, Northwest, in the City of Washington, were sold subject to the following covenant:

‘. . . that said lot shall never be rented, leased, sold, transferred or conveyed unto any Negro or colored person, under a penalty of Two Thousand Dollars ($2,000), which shall be a lien against said property.’

The covenant imposes no time limitation on the restriction.

***
The Negro petitioners entered into contracts of sale with willing sellers for the purchase of properties upon which they desired to establish homes. Solely because of their race and color, they are confronted with orders of court divesting their titles in the properties and ordering that the premises be vacated. White sellers, one of whom is a petitioner here, have been enjoined from selling the properties to any Negro or colored person. Under such circumstances, to suggest that the Negro petitioners have been accorded the same rights as white citizens to purchase, hold, and convey real property is to reject the plain meaning of language. We hold that the action of the District Court directed against the Negro purchasers and the white sellers denies rights intended by Congress to be protected by the Civil Rights Act, and that, consequently, the action cannot stand.”
https://supreme.justia.com/cases/federal/us/334/24/

5/17/1954: U.S. Supreme Court - Brown v. Board of Education of Topeka (347 US 483) (9 to 0) – PUBLIC SCHOOL SEGREGATION ILLEGAL

Thurgood Marshall - Special Counsel, NAACP - finally got the case he had been hoping for, and in 1952 argued Brown v. Board of Education.

Thurgood Marshall

“The case was reargued in 1953, and after 5 months of waiting, the Supreme Court delivered its opinion that invalidated the separate but equal doctrine. In 1961, President Kennedy appointed Marshall as federal judge to the Second Circuit Court of Appeals in New York City. Marshall spent four years on the court, and none of his opinions were reversed on appeal to the Supreme Court. In 1965, President Johnson called upon Marshall to be the country’s next Solicitor General. Marshall was sworn into office, but only spent two years in the position. In 1967, the President appointed him as the first African-American to be an Associate Justice on the U.S. Supreme Court.” https://www.oyez.org/justices/thurgood_marshall
MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

Chief Justice Earl Warren: https://www.landmarkcases.org/brown-v-board-of-education/earl-warren

“Facts of the case

This case was the consolidation of cases arising in Kansas, South Carolina, Virginia, Delaware, and Washington D.C. relating to the segregation of public schools on the basis of race. In each of the cases, African American students had been denied admittance to certain public schools based on laws allowing public education to be segregated by race. They argued that such segregation violated the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs were denied relief in the lower courts based on Plessy v. Ferguson, which held that racially segregated public facilities were legal so long as the facilities for blacks and whites were equal. (This was known as the ‘separate but equal’ doctrine.)

Question

Does the segregation of public education based solely on race violate the Equal Protection Clause of the Fourteenth Amendment?

Conclusion

Separate but equal educational facilities for racial minorities is inherently unequal, violating the Equal Protection Clause of the Fourteenth Amendment. Chief Justice Earl Warren delivered the opinion of the unanimous Court. The Supreme Court held that “separate but equal” facilities are inherently unequal and violate the protections of the Equal Protection Clause of the Fourteenth Amendment. The Court reasoned that the segregation of public education based on race instilled a sense of inferiority that had a hugely detrimental effect on the education and personal growth of African American children. Warren based much of his opinion on information from social science studies rather than court precedent. The decision also used language that was relatively accessible to non-lawyers because Warren felt it was necessary for all Americans to understand its logic.”
9/4/1957: Little Rock Nine

“The Little Rock Nine were a group of nine black students who enrolled at formerly all-white Central High School in Little Rock, Arkansas, in September 1957. Their attendance at the school was a test of Brown v. Board of Education, a landmark 1954 Supreme Court ruling that declared segregation in public schools unconstitutional. On September 4, 1957, the first day of classes at Central High, Governor Orval Faubus called in the Arkansas National Guard to block the black students’ entry into the high school. Later that month, President Dwight D. Eisenhower sent in federal troops to escort the Little Rock Nine into the school. It drew national attention to the civil rights movement.”

https://www.history.com/topics/black-history/central-high-school-integration
EVIDENCE ILLEGALLY OBTAINED WILL BE EXCLUDED FROM TRIAL

Justice Tom C. Clark: https://www.oyez.org/justices/tom_c_clark

Dollree Mapp

“Facts of the case

Dollree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression.

Question

Were the confiscated materials protected from seizure by the Fourth Amendment?

Conclusion

In an opinion authored by Justice Tom C. Clark, the majority brushed aside First Amendment issues and declared that all evidence obtained by searches and seizures in violation of the Fourth Amendment is inadmissible in a state court. The decision
launched the Court on a troubled course of determining how and when to apply the exclusionary rule.” https://www.oyez.org/cases/1960/236

5/13/1963: U.S. Supreme Court - Brady v. Maryland (373 U.S. 83) – DEFENSE ENTITLED TO EXCULPATORY EVIDENCE PRIOR TO TRIAL

https://supreme.justia.com/cases/federal/us/373/83/

“The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Facts:

In separate trials in a Maryland state court, where the jury was the judge of both the law and the facts but the court passed on the admissibility of the evidence, petitioner Brady and a companion, Boblit, were convicted of first-degree murder and sentenced to death. At his trial, Brady admitted participating in the crime but claimed that Boblit did the actual killing. In his summation to the jury, Brady's counsel conceded that Brady was guilty of murder in the first degree and asked only that the jury return that verdict 'without capital punishment.' Prior to the trial, Brady's counsel had requested the prosecution to allow him to examine Boblit's extrajudicial statements. Several of these were shown to him. However, one in which Boblit admitted to the actual killing was withheld by the prosecution, and it did not come to Brady's notice until after he had been tried, convicted and sentenced and after his conviction had been affirmed by the Court of Appeals of Maryland. In a post-conviction proceeding, the appellate court held that suppression of the evidence by the prosecutor denied Brady due process of law, and it remanded the case for a new trial of the question of punishment, but not the question of guilt, since it was of the opinion that nothing in the suppressed confession could have reduced Brady's offense below murder in the first degree.”
https://www.lexisnexis.com/community/casebrief/p/casebrief-brady-v-maryland
5/18/1963: U.S. Supreme Court - Gideon v. Wainwright (372 US 335) – INDIGENT DEFENDANTS ENTITLED TO APPOINTMENT OF DEFENSE ATTORNEY

“Facts of the case

Clarence Earl Gideon was charged in Florida state court with felony breaking and entering. When he appeared in court without a lawyer, Gideon requested that the court appoint one for him. According to Florida state law, however, an attorney may only be appointed to an indigent defendant in capital cases, so the trial court did not appoint one. Gideon represented himself in trial. He was found guilty and sentenced to five years in prison. Gideon filed a habeas corpus petition in the Florida Supreme Court, arguing that the trial court's decision violated his constitutional right to be represented by counsel. The Florida Supreme Court denied habeas corpus relief.

Question

Does the Sixth Amendment's right to counsel in criminal cases extend to felony defendants in state courts?

Conclusion

The Sixth Amendment's guarantee of a right to assistance of counsel applies to criminal defendants in state court by way of the Fourteenth Amendment. In a unanimous opinion authored by Justice Hugo L. Black, the Court held that it was consistent with the Constitution to require state courts to appoint attorneys for defendants who could not afford to retain counsel on their own. The Court reasoned that the Sixth Amendment's guarantee of counsel is a fundamental and essential right made obligatory upon the states by the Fourteenth Amendment. The Sixth Amendment guarantees the accused the right to the assistance of counsel in all criminal prosecutions and requires courts to provide counsel for defendants unable to hire counsel unless the right was competently and intelligently waived.” [https://www.oyez.org/cases/1962/155]
8/28/1963: Martin Luther King – “I Have A Dream” Speech, Lincoln Memorial, Washington, DC

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

11/22/1963: President Kennedy assassinated, Dallas, TX

John Fitzgerald "Jack" Kennedy

Lee Harvey Oswald (killed Nov. 24, 1963; shot at Dallas County Jail)
Martin Luther King and President Lyndon Johnson – at White House (1963)

“Pres. Lyndon B. Johnson, [was] key ally in the effort to pass the Civil Rights Act of 1964 [July 2, 1964] and the Voting Rights Act of 1965 [Aug. 6, 1965].”

https://www.britannica.com/event/assassination-of-Martin-Luther-King-Jr


“Section. 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.” https://constitution.findlaw.com/amendments.html

“MALICE” TO SUE NEWSPAPERS OR OTHER PRESS FOR LIBEL / SLANDER

Justice William J. Brennan

MR. JUSTICE BRENNAN delivered the opinion of the Court.

“Facts of the case

During the Civil Rights movement of the 1960s, the New York Times published an ad for contributing donations to defend Martin Luther King, Jr., on perjury charges. The ad contained several minor factual inaccuracies. The city Public Safety Commissioner, L.B. Sullivan, felt that the criticism of his subordinates reflected on him, even though he was not mentioned in the ad. Sullivan sent a written request to the Times to publicly retract the information, as required for a public figure to seek punitive damages in a libel action under Alabama law.

When the Times refused and claimed that they were puzzled by the request, Sullivan filed a libel action against the Times and a group of African American ministers mentioned in the ad. A jury in state court awarded him $500,000 in damages. The state supreme court affirmed and the Times appealed.

Question

Did Alabama's libel law unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections?

Conclusion

To sustain a claim of defamation or libel, the First Amendment requires that the plaintiff show that the defendant knew that a statement was false or was reckless in deciding to publish the information without investigating whether it was accurate. In a unanimous opinion authored by Justice Brennan, the Court ruled for the Times. When a statement concerns a public figure, the Court held, it is not enough to show that it is false for the press to be liable for libel. Instead, the target of the statement must show that it was made with knowledge of or reckless disregard for its falsity. Brennan used the term ‘actual
malice’ to summarize this standard, although he did not intend the usual meaning of a malicious purpose. In libel law, ‘malice’ had meant knowledge or gross recklessness rather than intent, since courts found it difficult to imagine that someone would knowingly disseminate false information without a bad intent.”

https://www.oyez.org/cases/1963/39

7/2/1964: Civil Rights Act of 1964

Civil rights leader Martin Luther King Jr. said that the Civil Rights Act of 1964 was nothing less than a “second emancipation.” https://kinginstitute.stanford.edu/king-papers/documents/facing-challenge-new-age-address-delivered-naacp-emancipation-day-rally

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

(a) Employer practices

It shall be an unlawful employment practice for an employer -(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

***
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. [Section 705]

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years.

https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964

The Civil Rights Act of 1964, which ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin, is considered one of the crowning legislative achievements of the civil rights movement. First proposed by President John F. Kennedy, it survived strong opposition from southern members of Congress and was then signed into law by Kennedy’s successor, Lyndon B. Johnson. In subsequent years, Congress expanded the act and passed additional civil rights legislation such as the Voting Rights Act of 1965.”

https://www.history.com/topics/black-history/civil-rights-act

Martin Luther King

3/7/1965 – Bloody Sunday - Selma, Alabama
Alabama State Troopers attack civil-rights demonstrators outside Selma, Alabama, on Bloody Sunday, March 7, 1965

John Lewis: https://johnlewis.house.gov/john-lewis/biography

“John Lewis [age 25] was prepared to get arrested on Sunday, March 7, 1965. ‘I wanted to have something to eat,’ he said, so in his backpack he stored ‘one apple and one orange. I had two books. I had toothpaste and a toothbrush.’ Yet the 25-year-old civil rights leader carried something far more crucial inside as he led some 600 protesters over the Edmund Pettus Bridge in Selma to agitate for the right of African Americans to vote. While most people must move through fear to find courage, Lewis said ‘I never felt fear, not once.’

Lewis was the first to be beaten in the clash with state troopers, who cracked his skull with a billy club on the date that became known as ‘Bloody Sunday.’ The televised images of the bravery shown by Lewis and other protesters in the face of state violence inspired the passage of the 1965 Voting Rights Act just two months later.”

“Hosea Williams, another notable Civil Rights leader, and John Lewis led over 600 peaceful, orderly protestors across the Edmund Pettus Bridge in Selma, Alabama on March 7, 1965. They intended to march from Selma to Montgomery to demonstrate the need for voting rights in the state. The marchers were attacked by Alabama state troopers in a brutal confrontation that became known as ‘Bloody Sunday.’ News broadcasts and photographs revealing the senseless cruelty of the segregated South helped hasten the passage of the Voting Rights Act of 1965.” [https://johnlewis.house.gov/john-lewis/biography](https://johnlewis.house.gov/john-lewis/biography)


Ernesto Miranda
Chief Justice Earl Warren

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court

“Facts of the case

This case represents the consolidation of four cases, in each of which the defendant confessed guilt after being subjected to a variety of interrogation techniques without being informed of his Fifth Amendment rights during an interrogation.

On March 13, 1963, Ernesto Miranda was arrested in his house and brought to the police station where he was questioned by police officers in connection with a kidnapping and rape. After two hours of interrogation, the police obtained a written confession from Miranda. The written confession was admitted into evidence at trial despite the objection of the defense attorney and the fact that the police officers admitted that they had not advised Miranda of his right to have an attorney present during the interrogation. The jury found Miranda guilty. On appeal, the Supreme Court of Arizona affirmed and held that Miranda’s constitutional rights were not violated because he did not specifically request counsel.

Question

Does the Fifth Amendment’s protection against self-incrimination extend to the police interrogation of a suspect?

Conclusion

The Fifth Amendment requires that law enforcement officials advise suspects of their right to remain silent and to obtain an attorney during interrogations while in police custody. Chief Justice Earl Warren delivered the opinion of the 5-4 majority, concluding that defendant’s interrogation violated the Fifth Amendment. To protect the privilege, the Court reasoned, procedural safeguards were required. A defendant was required to be warned before questioning that he had the right to remain silent, and that anything he said can be used against him in a court of law. A defendant was required to be told that he had the right to an attorney, and if he could not afford an attorney, one was to be appointed for him prior to any questioning if he so desired. After these warnings were given, a defendant could knowingly and intelligently waive these rights and agree to answer
questions or make a statement. Evidence obtained as a result of interrogation was not to be used against a defendant at trial unless the prosecution demonstrated the warnings were given, and knowingly and intelligently waived.”

https://www.oyez.org/cases/1965/759

1/16/1967: U.S. Supreme Court - Garrity v. New Jersey (385 U.S. 493)(5 to 4) – INTERNAL INVESTIGATIONS AND ORDERED TO ANSWER QUESTIONS - “GARRITY PROTECTION” FROM PROSECUTION [BUT NOT DISCIPLINE]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

“Syllabus

Appellants, police officers in certain New Jersey boroughs, were questioned during the course of a state investigation concerning alleged traffic ticket ‘fixing.’ Each officer was first warned that: anything he said might be used against him in a state criminal proceeding; he could refuse to answer if the disclosure would tend to incriminate him; if he refused to answer, he would be subject to removal from office. The officers’ answers to the questions were used over their objections in subsequent prosecutions, which resulted in their convictions. The State Supreme Court, on appeal, upheld the convictions despite the claim that the statements of the officers were coerced by reason of the fact that, if they refused to answer, they could, under the New Jersey forfeiture of office statute, lose their positions. That statute provides that a public employee shall be removed from office if he refuses to testify or answer any material question before any commission or body which has the right to inquire about matters relating to his office or employment on the ground that his answer may incriminate him. On the ground that the
only real issue in the case was the voluntariness of the statements, the State Supreme Court declined to pass upon the constitutionality of the statute, though the statute was considered relevant for the bearing it had on the voluntary character of the statements used to convict the officers. The officers appealed to this Court under 28 U.S.C. § 1257(2), and the question of jurisdiction was postponed to a hearing on the merits.

Held:

1. The forfeiture of office statute is too tangentially involved to satisfy the requirements of 28 U.S.C. § 1257(2). The only bearing it had was whether, valid or not, the choice between being discharged under it for refusal to answer and self-incrimination rendered the statements products of coercion. The appeal is dismissed, the papers are treated as a petition for certiorari, and certiorari is granted.

2. The threat of removal from public office under the forfeiture of office statute to induce the petitioners to forgo the privilege against self-incrimination secured by the Fourteenth Amendment rendered the resulting statements involuntary, and therefore inadmissible in the state criminal proceedings.”

https://supreme.justia.com/cases/federal/us/385/493/

4/4/1968: Martin Luther King assassinated in Memphis, TN
“Martin Luther King, Jr. was assassinated in Memphis, Tennessee, on April 4, 1968, an event that sent shock waves reverberating around the world. A Baptist minister and founder of the Southern Christian Leadership Conference (SCLC), King had led the civil rights movement since the mid-1950s, using a combination of impassioned speeches and nonviolent protests to fight segregation and achieve significant civil rights advances for African Americans. His assassination led to an outpouring of anger among black Americans, as well as a period of national mourning that helped speed the way for an equal housing bill that would be the last significant legislative achievement of the civil rights era.”

https://www.history.com/topics/black-history/martin-luther-king-jr-assassination

James Earl Ray: pled guilty in 1969 to the assassination to avoid death penalty – died in prison after serving 29 years.

https://www.britannica.com/event/assassination-of-Martin-Luther-King-Jr

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

“Facts of the case

Terry and two other men were observed by a plain clothes policeman in what the officer believed to be ‘casing a job, a stick-up.’ The officer stopped and frisked the three men and found weapons on two of them. Terry was convicted of carrying a concealed weapon and sentenced to three years in jail.

Question

Was the search and seizure of Terry and the other men in violation of the Fourth Amendment?

Conclusion

In an 8-to-1 decision, the Court held that the search undertaken by the officer was reasonable under the Fourth Amendment and that the weapons seized could be introduced into evidence against Terry. Attempting to focus narrowly on the facts of this particular case, the Court found that the officer acted on more than a ‘hunch’ and that ‘a reasonably prudent man would have been warranted in believing [Terry] was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior.’ The Court found that the searches undertaken were limited in scope and designed to protect the officer's safety incident to the investigation.

“Section. 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President….”

https://constitution.findlaw.com/amendments.html

1968: PSOB


https://fas.org/sgp/crs/misc/R45327.pdf

It is administered by the U.S. Department of Justice, Bureau of Justice Assistance.


Note: On Aug. 14, 2020, President signed into law the “Safeguarding America's First Responders Act of 2020.”

“This bill extends death and disability benefits under the Public Safety Officers' Benefits Program (PSOB) to public safety officers (e.g., law enforcement officers) and survivors of public safety officers who die or become injured as a result of COVID-19 (i.e., coronavirus disease 2019). The PSOB program provides death, disability, and education benefits to public safety officers and survivors of public safety officers who are killed or injured in the line of duty. For purposes of death benefits, this bill creates a general presumption that a public safety officer who dies from COVID-19 or related complications sustained a personal injury in the line of duty. For purposes of disability benefits, the bill creates a general presumption that COVID-19 or related complications suffered by a public safety officer constitutes a personal injury sustained in the line of duty.”

July 21, 2020: House passes bill to ensure COVID-19 death, disability benefits for first responders

“Theyir “Safeguarding America’s First Responders Act” creates a presumption that if a first responder is diagnosed with the coronavirus within 45 days of their last day on the job, the Department of Justice will treat it as a line of duty incident and provide the payments.” https://www.firerescue1.com/legislation-funding/articles/house-passes-bill-to-ensure-covid-19-death-disability-benefits-for-first-responders-deBCm2kVdUMy5ATc/?utm_source=FireRescue1+Member+Newsletter&utm_campaign=7d3689028a-EMAIL_CAMPAIGN_2020_07_21_07_03&utm_medium=email&utm_term=0_758bdbeffe-7d3689028a-41607823


MR. JUSTICE MARSHALL delivered the opinion of the Court.

“Facts of the case

Marvin Pickering, a school teacher, wrote a letter to the editor at the Lockport Herald complaining about a recently defeated school board proposal to increase school taxes. The letter complained about the board’s handling of past proposals and allocation of funds favoring athletics over academics. The school board felt the letter was ‘detrimental to the efficient operation and administration of the schools’ and opted to terminate
Pickering’s employment. Pickering sued in the Circuit Court of Will County alleging his letter was speech protected under the First Amendment. The court ruled in favor of the school board and the Supreme Court of Illinois affirmed.

**Question**

Was Pickering’s letter constitutionally protected free speech?

**Conclusion**

Yes. Justice Thurgood Marshall wrote the 8-1 majority opinion holding that Pickering’s dismissal violated his First Amendment right to free speech. The Supreme Court noted that similar speech is not protected if it contains false statements knowingly or recklessly made. There was no evidence that Pickering’s statements were knowingly false or reckless.

Justice William O. Douglas concurred, but took an even broader view of protected free speech. Justice Hugo L. Black joined in the concurrence. Justice Byron R. White wrote a dissent, agreeing that the letter may be protected speech, but preferring to remand the case for further proceedings to decide whether the statements in the letter were knowingly or recklessly false. [https://www.oyez.org/cases/1967/510](https://www.oyez.org/cases/1967/510)

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**8/26-29/1968 Democratic National Convention - Chicago**

“Over 650 protesters were arrested during the convention. The total number of injured protesters is unknown but over 100 were treated at area hospitals. It was reported that 192 police officers were injured and 49 required medical treatment.” [https://www.history.com/topics/1960s/1968-democratic-convention](https://www.history.com/topics/1960s/1968-democratic-convention)

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“Using media cover, military counterintelligence special agents infiltrated the 1968 Democratic National Convention in Chicago. There was no legitimate Defense investigative purpose for this action. Information collected by Defense elements was routinely transferred to civilian law enforcement authorities without evidence of criminal activity or relevance to the law enforcement missions of the receiving authorities. This activity was improper.” [https://dodsioo.defense.gov/About-DOD-SIOO/](https://dodsioo.defense.gov/About-DOD-SIOO/)
1971: OSHA created by Congress

“The Occupational Safety and Health Administration was established in 1971. Since then, OSHA and our state partners, coupled with the efforts of employers, safety and health professionals, unions and advocates, have had a dramatic effect on workplace safety. Fatality and injury rates have dropped markedly. Although accurate statistics were not kept at the time, it is estimated that in 1970 around 14,000 workers were killed on the job. That number fell to approximately 4,340 in 2009. At the same time, U.S. employment has almost doubled and now includes over 130 million workers at more than 7.2 million worksites. Since the passage of the OSH Act, the rate of reported serious workplace injuries and illnesses has declined from 11 per 100 workers in 1972 to 3.6 per 100 workers in 2009. OSHA safety and health standards, including those for trenching, machine guarding, asbestos, benzene, lead, and bloodborne pathogens have prevented countless work-related injuries, illnesses and deaths. This timeline highlights key milestones in occupational safety and health history since the creation of OSHA.”

https://www.osha.gov/osha40/timeline.html

Federal OSHA neither has regulations, nor jurisdiction, over State, municipal, or volunteer fire departments: https://www.osha.gov/laws-regs/standardinterpretations/2006-10-11-1

“Please be advised that Federal OSHA neither has regulations, nor jurisdiction, over State, municipal, or volunteer fire departments. Section (3)(5) of the Occupational Safety and Health Act of 1970 specifically excludes Federal OSHA's authority over employees of State and local government. The Act provides for States to assume responsibility for occupational safety and health programs under the State's own plan, which must be approved by the U.S. Department of Labor. Each State-plan must include coverage of public employees of the State, and it must be "at least as effective" as Federal OSHA's protection of private sector employees.

As you may know, the State of New York administers its own occupational safety and health program for public sector employees (Public Employee Safety & Health (PESH)) under a plan approved and monitored by Federal OSHA. States are required to have regulations that are, at least as effective as the federal standards, although they may be more stringent. Also, private sector employees in the State of New York are covered by Federal OSHA.

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Richard E. Fairfax, Director
Directorate of Enforcement Programs

22 STATE OSHA PLANS
“State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. There are currently 22 State Plans covering both private sector and state and local government workers, and there are six State Plans covering only state and local government workers. State Plans are monitored by OSHA and must be at least as effective as OSHA in protecting workers and in preventing work-related injuries, illnesses and deaths.”
https://www.osha.gov/stateplans


“Facts of the case

In 1965, six agents of the Federal Bureau of Narcotics forced their way into Webster Bivens’ home without a warrant and searched the premises. The agents handcuffed Bivens in front of his wife and children and arrested him on narcotics charges. Later, the agents interrogated Bivens and subjected him to a visual strip search. Bivens sued the agents for $15,000 in damages each for humiliation and mental suffering. The district court dismissed the complaint for failure to state a cause of action. The U.S. Court of Appeals for the Second Circuit affirmed.

Question
(1) Does violation of an individual’s Fourth Amendment protection against unreasonable search and seizure give rise to a federal claim for damages?

(2) Does governmental privilege extend to federal agents who clearly violate constitutional rights and act outside their authority?

**Conclusion**

Yes, No answer. Justice William J. Brennan Jr., writing for a 6-3 majority, reversed the Second Circuit and remanded. The Supreme Court held that Bivens does have a cause of action for damages arising from the federal agents Fourth Amendment violations. Bivens must provide proof of his injuries in order to recover. The Court did not reach the privilege question because the Court of Appeals did not consider the question. Justice John M. Harlan concurred in the judgment, writing that federal courts have the power to award damages for constitutional violations.

Chief Justice Warren E. Burger dissented, arguing that the doctrine of separation of powers is better served by leaving the question to Congress. He also argued that the doctrine of suppressing evidence obtained in illegal searches is insufficient to deter law enforcement. Justice Hugo L. Black also dissented, arguing that Congress could create the cause of action Bivens stated, but has not, so the majority’s decision is an unconstitutional extension of judicial power. Justice Harry A. Blackmun dissented, supporting the idea that the question in this case is better left to Congress.”


**7/5/1971: 27th Amendment – Congressional Pay Limitation**

“No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.”

[https://constitution.findlaw.com/amendments.html](https://constitution.findlaw.com/amendments.html)

**1973: Watergate Committee**

“In 1973, he Senate Watergate Committee investigation revealed that the executive branch had directed national intelligence agencies to carry out constitutionally questionable domestic security operations. In 1974 Pulitzer Prize–winning journalist Seymour Hersh published a front-page *New York Times* article claiming that the CIA had been spying on anti-war activists for more than a decade, violating the agency’s charter. Former CIA officials and some lawmakers, including Senators William Proxmire and Stuart Symington, called for a congressional inquiry.
The Senator Frank Church Committee investigated and identified a wide range of intelligence abuses by federal agencies, including the CIA, FBI, Internal Revenue Service, and National Security Agency. In the course of their work, investigators identified programs that had never before been known to the American public, including NSA’s Projects SHAMROCK and MINARET, programs which monitored wire communications to and from the United States and shared some of that data with other intelligence agencies. Committee staff researched the FBI’s long-running program of ‘covert action designed to disrupt and discredit the activities of groups and individuals deemed a threat to the social order,’ known as COINTELPRO. The FBI included among the program’s many targets organizations such as the Southern Christian Leadership Conference, the anti-Vietnam War movement, and individuals such as Martin Luther King, Jr., as well as local, state, and federal elected officials.

In 1976 the Senate approved Senate Resolution 400, establishing the Senate Select Committee on Intelligence, to provide ‘vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States.’ In 1978 Congress approved and President Jimmy Carter signed into law the Foreign Intelligence Surveillance Act (FISA), requiring the executive branch to request warrants for wiretapping and surveillance purposes from a newly formed FISA Court.”

1974: FLSA amended – for first time it applies to states and local communities (7k exemption – firefighters & police)

“In 1974 the FLSA was amended to apply to state and local governments for the first time. At that time, Congress enacted the 207k exemption (usually referred to as 7k exemption) to allow firefighters (who commonly worked an average of 48-56 hours a week) and police officers (many of whom worked 45-48 hour schedules) to continue working those hours with minimal impact to taxpayers. In addition, to address the inherent variation in weekly hours that firefighters and police officers had due to their rotating schedules, the 7k exemption extended the 7 day work week applicable to everyone else, to a work period that could be between 7 and 28 days long.”

http://www.firelawblog.com/2018/05/31/origins-of-the-7k-firefighter-overtime-exemption/

Justice Warren E. Burger

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

“Facts of the case

A grand jury returned indictments against seven of President Richard Nixon's closest aides in the Watergate affair. The special prosecutor appointed by Nixon and the defendants sought audio tapes of conversations recorded by Nixon in the Oval Office. Nixon asserted that he was immune from the subpoena claiming ‘executive privilege,’ which is the right to withhold information from other government branches to preserve confidential communications within the executive branch or to secure the national interest. Decided together with Nixon v. United States.

Question

Is the President's right to safeguard certain information, using his ‘executive privilege’ confidentiality power, entirely immune from judicial review?

Conclusion
No. The Court held that neither the doctrine of separation of powers, nor the generalized need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified, presidential privilege. The Court granted that there was a limited executive privilege in areas of military or diplomatic affairs, but gave preference to ‘the fundamental demands of due process of law in the fair administration of justice.’ Therefore, the president must obey the subpoena and produce the tapes and documents. Nixon resigned shortly after the release of the tapes.”

https://www.oyez.org/cases/1973/73-1766

7/5/1971: 26th Amendment – Voting Age

“Section. 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section. 2. The Congress shall have power to enforce this article by appropriate legislation.”

https://constitution.findlaw.com/amendments.html

Jan. 1, 1975: Watergate Convictions

John Mitchell

[Former Attorney General John N. Mitchell] “was one of four Nixon Administration officials who were convicted on Jan. 1, 1975, of all counts in the Watergate cover-up trial. The others were H. R. Haldeman, John D. Ehrlichman and Robert C. Mardian. The three-month trial culminated the principal investigation and prosecution of persons responsible for the biggest political scandal in the nation's history. A Federal grand jury named the then President, Richard M. Nixon, on March 1, 1974, as an unindicted co-conspirator in the case.”

Mitchell was sentenced to 2 ½ to 8 years in prison; he entered prison in 1977 and was released on parole in 1979. [https://www.britannica.com/biography/John-Mitchell](https://www.britannica.com/biography/John-Mitchell)

1976: FLSA – U.S. Supreme Court holds statute does not apply to state and local communities – LATER COURT OVERTURNS

“In 1976, the US Supreme Court struck down the application of the FLSA to state and local government for core governmental activities, including police and firefighters, as being an unconstitutional intrusion on state’s rights. National League of Cities v. Usery, 426 U.S. 833 (1976). Nine years later, the US Supreme Court revisited the Usery decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). This time the Supreme Court reversed course, ruling that Congress could apply the FLSA to state and local governments. It was at that point that the 7k exemption truly went into effect.” [http://www.firelawblog.com/2018/05/31/origins-of-the-7k-firefighter-overtime-exemption/](http://www.firelawblog.com/2018/05/31/origins-of-the-7k-firefighter-overtime-exemption/)

Feb. 18, 1976: President Gerald Ford – Executive Order to stop domestic spying by U.S. Military

“In the early and mid1970s several Congressional committees, including the Church [April 29, 1976 - first report of Sen. Frank Church Commission, Pike, and Ervin committees, conducted investigations and public hearings. After three and a half years of investigation, these committees determined that what had occurred was a classic example of what we would today call ‘mission creep.’ What had begun as a simple requirement to provide basic intelligence to commanders charged with assisting in the maintenance and restoration of order, had become a monumentally intrusive effort. This resulted in the monitoring of activities of innocent persons involved in the constitutionally protected expression of their views on civil rights or anti-war activities. The information collected
on the persons targeted by Defense intelligence personnel was entered into a national data bank and made available to civilian law enforcement authorities. This produced a chilling effect on political expression by those who were legally working for political change in domestic and foreign policies. Senator Ervin concluded ‘the collection and computerization of information by government must be tempered with an appreciation of the basic rights of the individual, of his right to privacy, to express himself freely and associate with whom he chooses.’ As a result of these investigations, DoD imposed severe restrictions on future surveillance of U.S. persons, required that information already in DoD files be destroyed, and established a structure to regulate future DoD intelligence collection. [On Feb. 18, 1976], President Ford issued an Executive Order placing significant controls on the conduct of all intelligence activities. Executive Order (EO) 11905, as the charter for the Intelligence Community, included provisions for an intelligence oversight mechanism.”

**1978: Foreign Intelligence Surveillance Act (FISA)**

“The Foreign Intelligence Surveillance Act (FISA)1 was enacted in 1978. This legislation was the Congressional response to the exposure during multiple Committee hearings of previous abuses of U.S. persons’ privacy rights by certain components of the United States government. Those abuses had occurred, according to the government, as part of its efforts to counter purported threats to national security. Unquestionably, such threats existed in and before 1978; beyond peradventure, however, they pale in comparison to the threats to national security that the United States currently faces. Those threats bear the face of terrorism, primarily foreign but domestic as well. Though FISA is not a legally usable tool for combating domestic terrorism, its electronic surveillance and physical search authority are legal and very effective methods for monitoring the activities of foreign powers and agents of foreign powers while they operate within the United States. Increasingly, indeed, overwhelmingly, the current objective of such operational activities is to thwart terrorist acts.”


“The Department of Justice has completed its review of the 29 FISA applications that were the subject of preliminary findings by the DOJ Inspector General (OIG) in March 2020. We are pleased that our review of these applications concluded that all contained sufficient basis for probable cause and uncovered only two material errors, neither of which invalidated the authorizations granted by the
These findings, together with the more than 40 corrective actions undertaken by the Federal Bureau of Investigation and the National Security Division, should instill confidence in the FBI’s use of FISA authorities. We would like to express our appreciation to the OIG for their focus on the Department’s use of its national security authority. We remain committed to improving the FISA process to ensure that we use these tools consistent with the law and our obligations to the FISA Court. The ability to surveil and to investigate using FISA authorities remains critical to confronting current national security threats, including election interference, Chinese espionage and terrorism.”


Justice Potter Stewart

MR. JUSTICE STEWART delivered the opinion of the Court

“Facts of the case

On January 21, 1970, Tyler’s Auction, a furniture store in Oakland County, Michigan, caught fire shortly before midnight. The building was leased to Loren Tyler, who ran the business with Robert Tompkins. When Fire Chief See arrived on the scene, he was informed that two plastic containers of flammable liquid were found in the building. After determining that arson possibly caused the fire, See called Police Detective Webb. Webb arrived and took pictures, but the smoke and steam forced him to postpone his investigation. Around 4 a.m., the fire was extinguished, and the personnel left the premises. The containers were turned over to Webb. Webb did not have a warrant for any of the entries into the building or the removal of the containers.
The next morning, See returned to the scene with Assistant Chief Somerville, whose job was to determine the ‘origin of all fires that occur in the Township.’ They conducted a cursory examination and left. An hour later, Somerville returned with Webb, and the two discovered evidence of arson. The men did not have warrants for these entrances or seizures of evidence. Over the course of multiple visits beginning on February 16, Sergeant Hoffman of the Michigan State Police Arson Section conducted an investigation and secured further evidence of arson that played an important role in the trial.

At trial, the respondents objected to the introduction of this evidence, but the judge admitted it, and they were convicted. The Court of Appeals of the State of Michigan held that the constitutional protections against illegal searches and seizures did not pertain to arson investigations of burned premises and affirmed the conviction. The Supreme Court of Michigan held that the illegal searches and seizures had violated the Fourth and Fourteenth Amendments. The court reversed the convictions and ordered a new trial.

Question

Does the Fourth Amendment protection against illegal searches and seizures extend to investigations of burned premises for evidence of arson?

Conclusion

Yes. Justice Potter Stewart delivered the opinion of the 7-1 majority. The Court held that any search for administrative purposes, such as to find evidence of a crime, requires a warrant. There are circumstances that require law enforcement agents to act without a warrant, such as when firemen enter a burning building. Once in the building for that purpose, the firemen may seize evidence of arson that is in plain view without obtaining a warrant. The Court also held that determining the cause of the fire is part of a fireman’s job, so firemen may remain in a building without a warrant after a fire has been extinguished for ‘a reasonable amount of time’ to investigate. The Court held that the initial entry and the investigation on the following morning were constitutional, but the subsequent entries and seizures of evidence were not.”

https://www.oyez.org/cases/1977/76-1608

MR. JUSTICE BRENNAN delivered the opinion of the Court.

“Facts of the case

The petitioners, a class of female employees of the Department of Social Services and the Board of Education of the City of New York, sued their employers for depriving them of their constitutional rights. The employers required pregnant women to take unpaid leaves of absence before there was any medical reason to do so. The plaintiffs sought an injunction against the forced leaves of absence in the future, as well as back pay for those that had already occurred.

The district court found that such policies were unconstitutional but held that the city had immunity from paying the back wages. The district court also held that the motion for an injunction was moot because the organizations removed the policy in the intervening time. The Court of Appeals affirmed.

Question

If sued in their official capacity, are local government officials and organizations such as a school board considered ‘persons’ for the purpose of liability for back wages?

Conclusion

Yes. Justice William J. Brennan, Jr. delivered the opinion of the 7-2 majority. The Court held that the legislative history of the Civil Rights Act of 1871, and specifically the Sherman Amendment, indicated that municipalities could be liable for the infringement
of constitutional rights. Additionally, by 1871 there was a clear legislative and precedent-based history for municipal corporations — such as a school board — to be considered a “person” for the purpose of lawsuits and liability. The Court held that this liability only existed when the constitutional infringement was the direct result of an official policy.

https://www.oyez.org/cases/1977/75-1914

6/26/1978: U.S. Supreme Court - Regents of the University of California v. Bakke (438 U.S. 265)(5 to 4) – AFFIRMATIVE ACTION IN ADMISSIONS TO MEDICAL SCHOOL LAWFUL

Note: See U.S. Department of Justice Press Release (Aug. 13, 2020)


Justice Lewis F. Powell, Jr.

“Facts of the case

Allan Bakke, a thirty-five-year-old white man, had twice applied for admission to the University of California Medical School at Davis. He was rejected both times. The school
reserved sixteen places in each entering class of one hundred for ‘qualified’ minorities, as part of the university's affirmative action program, in an effort to redress longstanding, unfair minority exclusions from the medical profession. Bakke's qualifications (college GPA and test scores) exceeded those of any of the minority students admitted in the two years Bakke's applications were rejected. Bakke contended, first in the California courts, then in the Supreme Court, that he was excluded from admission solely on the basis of race.

Question

Did the University of California violate the Fourteenth Amendment's equal protection clause, and the Civil Rights Act of 1964, by practicing an affirmative action policy that resulted in the repeated rejection of Bakke's application for admission to its medical school?

Conclusion

No and yes. There was no single majority opinion. Four of the justices contended that any racial quota system supported by government violated the Civil Rights Act of 1964. Justice Lewis F. Powell, Jr., agreed, casting the deciding vote ordering the medical school to admit Bakke. However, in his opinion, Powell argued that the rigid use of racial quotas as employed at the school violated the Equal Protection Clause of the Fourteenth Amendment. The remaining four justices held that the use of race as a criterion in admissions decisions in higher education was constitutionally permissible. Powell joined that opinion as well, contending that the use of race was permissible as one of several admission criteria. So, the Court managed to minimize white opposition to the goal of equality (by finding for Bakke) while extending gains for racial minorities through affirmative action.”

https://www.oyez.org/cases/1979/76-811

1985: FLSA – U.S. Supreme Court holds statute does apply to state and local communities

“In 1976, the US Supreme Court struck down the application of the FLSA to state and local government for core governmental activities, including police and firefighters, as being an unconstitutional intrusion on state’s rights. National League of Cities v. Usery, 426 U.S. 833 (1976). Nine years later, the US Supreme Court revisited the Usery decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). This time the Supreme Court reversed course, ruling that Congress could apply the FLSA to state and local governments. It was at that point that the 7k exemption truly went into effect.”
http://www.firelawblog.com/2018/05/31/origins-of-the-7k-firefighter-overtime-exemption/

U.S. Department of Labor, Wage & Hour Division (Fact Sheet #8)

“Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis. A "work period" may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.” https://www.dol.gov/agencies/whd/fact-sheets/8-flsa-police-firefighters

3/19/1985: U.S. Supreme Court - Cleveland Board of Education v. Loudermill (470 U.S. 532)(8 to 1) – PROVIDE PRE-TERMINATION HEARING

JUSTICE WHITE delivered the opinion of the Court.

“Facts of the case

James Loudermill stated on his application for employment with the Cleveland Board of Education that he had never been convicted for a felony. After hiring him as a security guard, the board discovered that he had been convicted for grand larceny and without further consideration fired him for providing false information on his application. Since Loudermill qualified as a ‘classified civil servant’ under Ohio law, he obtained a property
right to his employment. This meant he could only be dismissed for cause and could obtain an administrative review of the causes for his termination. The Cleveland Civil Service Commission granted him an administrative review after his termination and found it valid. Loudermill filed suit in District Court alleging that the review system was unconstitutional because it only allowed him to respond to the charges against him after his termination. He argued that the board removed his property without giving him a chance to defend himself in violation of his right to Due Process under the Fourteenth Amendment. The District Court agreed that the Ohio statute gave Loudermill a property right to his job, but ruled that the board did not violate his due process rights because it followed the procedures specified by the same statute for removing the property right. In a similar case, Richard Donnelly alleged that post-dismissal hearings violated his due process rights. The Court of Appeals for the Sixth Circuit heard both cases together and ruled that the board violated both defendants' due process rights by removing their property rights to employment before providing an opportunity for them to respond to charges against them.

Question

Can a state remove a civil servant's property rights to employment before providing an opportunity for that worker to respond to the charges offered for his termination?

Conclusion

No. Justice Byron White authored the opinion for an 8-1 court. The Ohio statute clearly grants civil servants property rights to their employment. In order to lawfully remove this property, the Due Process Clause requires a procedure that carefully weighs the interests of the government in removing the property against the interests of the private party in retaining the property. This procedure must incorporate the ‘essential requirements of due process,’ which ‘are notice and an opportunity to respond.’ There was no strong reason to delay the opportunity to respond until after termination. The Court found that ‘affording the employee an opportunity to respond prior to termination would impose neither a significant administrative burden nor intolerable delays.’ Accordingly, the significant interests of the employees to retain their jobs outweighed the interests of the state to remove employees quickly.”

https://www.oyez.org/cases/1984/83-1362
RANDOM DRUG TESTING LAWFUL FOR CUSTOMS ENFORCEMENT OFFICERS

Justice Anthony Kennedy

JUSTICE KENNEDY delivered the opinion of the Court.

“Facts of the case

In 1986, the United States Customs Service implemented a drug testing program for certain employees who either carry firearms, are involved in intercepting drugs as they enter the country, or are in high level positions involving classified information.

Question

Did the regulations violate the Fourth Amendment?

Conclusion

No. The Court held that the ‘substantial interests’ of the government in stifling the drug trade justified ‘departure from the ordinary warrant and probable cause requirements’ associated with searches. The fact that customs personnel are the country’s ‘first line of defense’ against drug smugglers and they are exposed to a sometimes aggressive criminal element, places them in a unique and important position in which they have a "diminished expectation of privacy."

https://www.oyez.org/cases/1988/86-1879


MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.
“The Company added a further requirement for new employees on July 2, 1965, the date on which Title VII became effective. To qualify for placement in any but the Labor Department, it became necessary to register satisfactory scores on two professionally prepared aptitude tests, as well as to have a high school education.

***

On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job performance ability. Rather, a vice-president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the workforce. The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily, and make progress in departments for which the high school and test criteria are now used.

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The Company contends that its general intelligence tests are specifically permitted by § 703(h) of the [Civil Rights Act of 1964]. That section authorizes the use of ‘any professionally developed ability test’ that is not ‘designed, intended or used to discriminate because of race. . . .’ (Emphasis added.) The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § 703(h) to permit only the use of job-related tests.

***

Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such
qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job, and not the person in the abstract.” https://supreme.justia.com/cases/federal/us/401/424/#tab-opinion-1949187


JUSTICE KENNEDY delivered the opinion of the Court.

“Facts of the case

Recognizing the dangers of drug and alcohol abuse by railroad employees, the Federal Railroad Administration (FRA) implemented regulations requiring mandatory blood and urine tests of employees involved in certain train accidents. Other FRA rules allowed railroads to administer breath and urine tests to employees who violate certain safety rules.

Question

Did the regulations violate the Fourth Amendment?

Conclusion

No. The Court held that the government's interest in assuring safety on the nation's railroads constituted a ‘special need” which justified a departure from standard warrant and probable-cause requirements in searches. Preventing accidents, the goal of most railroad regulations including the one in this case, argued Justice Kennedy, was such a significant concern that it warranted reduced ‘expectations of privacy’ for railroad employees.”

https://www.oyez.org/cases/1988/87-1555
7/26/1990: Americans With Disability Act
https://www.eeoc.gov/eeoc/history/35th/1990s/ada.html

“Passed by Congress in 1990, the Americans with Disabilities Act (ADA) is the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications. EEOC was given enforcement authority for Title I of the Act, the employment discrimination provisions. Congress provided that Title I would not take effect for two years in order to allow the Commission time to develop regulations and technical assistance, time to conduct comprehensive public education programs on the new disability law, and time for employers to adjust to the new requirements.”


“Through its enforcement efforts, DOJ works to ensure that people with disabilities are judged for their skills and what they are able to contribute, rather than having their employment opportunities limited by stereotypes and assumptions about their disability. For example, DOJ recently settled a case involving a Georgia paramedic, who also worked part-time as an emergency medical technician teaching assistant at a technical college, after the college unlawfully terminated her because she had multiple sclerosis.”

(Nov. 7, 2019) SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND LANIER TECHNICAL COLLEGE https://www.ada.gov/lanier_sa.html

“Specifically, the United States alleges that Defendant removed Complainant from the work schedule for an entire school semester, thus reducing her hours and compensation to zero, because of her multiple sclerosis. In doing so, the United States alleges that Defendant terminated Complainant's employment because of her disability.”

https://www.eeoc.gov/eeoc/history/35th/1990s/civilrights.html
“On November 21, 1991, Congress enacted the Civil Rights Act of 1991. Congress acted to address a series of no fewer than seven decisions by the Supreme Court, some of which were regarded as changing the well-established landscape of discrimination law, and calling into doubt existing precedent.

***

In addition, the 1991 Act added a new subsection to Title VII, codifying the disparate impact theory of discrimination, essentially putting the law back as it had been prior to Wards Cove. And in response to Price-Waterhouse, the Act provided that where the plaintiff shows that discrimination was a motivating factor for an employment decision, the employer is liable for injunctive relief, attorney's fees, and costs (but not individual monetary or affirmative relief) even though it proves it would have made the same decision in the absence of a discriminatory motive. The Act also provided employment discrimination protection to employees of Congress and some high-level political appointees. Lastly, Title VII and ADA coverage was extended to include American and American-controlled employers operating abroad.”


“The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the Secretary of the U.S. Department of Health and Human Services (HHS) to develop regulations protecting the privacy and security of certain health information. To fulfill this requirement, HHS published what are commonly known as the HIPAA Privacy Rule and the HIPAA Security Rule. [Nov. 3, 1999].

The Privacy Rule, or Standards for Privacy of Individually Identifiable Health Information, establishes national standards for the protection of certain health information. The Security Standards for the Protection of Electronic Protected Health Information (the Security Rule) establish a national set of security standards for protecting certain health information that is held or transferred in electronic form. The Security Rule operationalizes the protections contained in the Privacy Rule by addressing the technical and non-technical safeguards that organizations called “covered entities” must put in place to secure individuals’ “electronic protected health information” (e-PHI). Within HHS, the Office for Civil Rights (OCR) has responsibility for enforcing the Privacy and Security Rules with voluntary compliance activities and civil money penalties.” https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html

Aug. 7, 2020: An Imaginary Barrier - How HIPAA Promotes Bidirectional Patient Data Exchange With Emergency Medical Services

“Emergency Medical Service (EMS) agencies nationwide still widely report that hospitals and other healthcare providers refuse to share patient information with them, citing concerns under the Health Insurance Portability and Accountability Act (HIPAA). Misconceptions about HIPAA have created an artificial barrier to legitimate, approved bidirectional data exchange between EMS and other providers. As a result, many healthcare systems are missing a critical opportunity to improve outcomes and advance evidence-based practices in prehospital care.”

5/26/1998: U.S. Supreme Court - County of Sacramento v. Lewis (523 U.S. 833)(9 to 0) – HIGH SPEED PURSUITS
JUSTICE SOUTER delivered the opinion of the Court.

“Facts of the case

Philip Lewis was a passenger on a motorcycle that was involved in a high-speed police chase. The chase ended when the motorcycle's driver lost control and tipped the bike over, hurling both riders to the pavement. James Smith, one of two pursuing Sacramento county sheriff's deputies, was unable to stop his car in time and skidded into Philip, causing fatal injuries. Philip's parents, Teri and Thomas Lewis, accused Smith and the Sacramento county police department of deliberate and reckless conduct which ultimately deprived their son of his due process right to life and his protection against unconstitutional seizure. On appeal from an appellate court's reversal of a district court decision favoring Smith, the Supreme Court granted certiorari.

Question

Are the Fourteenth Amendment's substantive due process protection, or the Fourth Amendment's guarantee against illegal seizure, violated by a police officer who, in the course of pursuing a subject, causes their death through deliberate or reckless indifference?

Conclusion

No. In a unanimous decision the Court first ruled that the Fourth Amendment's reasonableness standards prevented its illegal seizure protections from applying to high-speed police chases. Such incidents are merely pursuits and do not constitute actual seizures, especially if they fail due to the death of the subject. Moreover, addressing the Fourteenth Amendment challenge, the Court held that Smith's actions, while perhaps unwise, were not intended to injure or kill those pursued. As such, the negligent infliction of harm during a police chase does not violate due process since it is not an unexpectedly shocking or egregious result under the circumstances.”

https://www.oyez.org/cases/1997/96-1337
“On May 6, the U.S. Department of Education released new Title IX regulations for addressing sexual harassment. As we have sought to ensure institutional compliance with these regulations, our values of innovation, inclusion and impact served as our guideposts in creating this Policy and its provisions of a fair process for all parties involved.

The following is the link to the website that contains our new University Title IX Sexual Harassment Policy and its complaint resolution procedures: https://www.uc.edu/about/equity-inclusion/gender-equity/title-ix/title-ix-sexual-harassment-policy.html.

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This Policy builds on and shall operate congruently with our strong, existing grievance processes; it provides a clear, equitable, and effective framework for addressing allegations of Title IX sexual harassment. Of note, this Policy continues our practice of utilizing the preponderance of the evidence standard of proof in the Title IX grievance process and assures due process for all persons participating in the investigation and adjudication of grievances.”
that this conduct constituted discrimination in violation of Title VII of the Civil Rights Act of 1964. The District Court concluded that Faragher's supervisors' conduct was sufficiently serious to alter the conditions of her employment and constitute an abusive working environment. The court then held that the city could be held liable. In reversing, the en banc Court of Appeals held that Faragher's supervisors were not acting within the scope of their employment when they engaged in the harassing conduct, that knowledge of the harassment could not be imputed to the City, and that the City could not be held liable for negligence in failing to prevent it.

Question

May an employer be held liable under Title VII of the Civil Rights Act of 1964 for the acts of an employee whose sexual harassment of subordinates has created a hostile work environment amounting to employment discrimination?

Conclusion

Yes. In a 7-2 opinion delivered by Justice David H. Souter, the Court held that an employer is vicariously liable under Title VII of the Civil Rights Act of 1964 for actionable discrimination caused by a supervisor. The Court also held that such liability is subject to an affirmative defense looking to the reasonableness of the employer's conduct as well as that of the plaintiff victim. ‘The City had entirely failed to disseminate its policy against sexual harassment among the beach employees and that its officials made no attempt to keep track of the conduct of supervisors like [Faragher's],’ wrote Justice Souter, ‘[u]nder such circumstances, we hold as a matter of law that the City could not be found to have exercised reasonable care to prevent the supervisors' harassing conduct.’"
o to care for the employee’s spouse, child, or parent who has a serious health condition;
o a serious health condition that makes the employee unable to perform the essential functions of his or her job;
o any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty;” or

- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember’s spouse, son, daughter, parent, or next of kin (military caregiver leave).”

Note: On July 16, 2020, the U.S. Department of Labor (Department) announced a Request for Information (RFI) on the Family and Medical Leave Act (FMLA). This RFI solicits feedback on any specific challenges or best practices in the use or administration of FMLA leave. [https://www.dol.gov/agencies/whd/fmla/rfi](https://www.dol.gov/agencies/whd/fmla/rfi)

In the RFI, the Department suggests broad questions for comments that are related to the definition of serious health condition, the use of intermittent FMLA leave, employee notice when seeking FMLA leave, and employer-required certification of an employee’s serious health condition to help frame responses. The RFI also provides a brief overview of seven recently issued opinion letters that pertain to the FMLA and seeks comments about whether it would be helpful to provide additional guidance regarding the interpretations contained in any of these letters through the regulatory process.

Justices of the Supreme Court.

Justice Clarence Thomas

JUSTICE THOMAS delivered the opinion of the Court.

“Facts of the case

The Fair Labor Standards Act of 1938 (FLSA) permits governmental entities to compensate their employees for overtime work by granting them compensatory time in lieu of cash payment. If the employees do not use their accumulated compensatory time, the employer must pay cash compensation under certain circumstances. Harris County, Texas, found that too many of its deputy sheriffs had too many hours of accrued compensatory time. Fearing a budget crisis, the county adopted a policy under which its employees could be ordered to schedule compensatory time at specified times in order to reduce the amount of accrued time that would otherwise require cash payment. Edward Christensen and 128 other deputy sheriffs in Harris County believed they had the right to use their compensatory time when they saw fit. The sheriffs sued, claiming that the FLSA does not permit an employer to compel an employee to use compensatory time in the absence of an agreement permitting the employer to do so. The District Court ruled in favor of the sheriffs, concluding that the policy violated the FLSA. In reversing, the Court of Appeals held that the FLSA did not address the issue in question and thus did not prohibit the county from implementing a compensatory time policy.
Question

Does the Fair Labor Standards Act of 1938 prohibit a public employer from compelling its employees to use their compensatory time without a preexisting agreement?

Conclusion

No. In an opinion delivered by Justice Clarence Thomas, the Court held 6-3 that ‘[n]othing in the FLSA or its implementing regulations prohibits a public employer from compelling the use of compensatory time.’ Justice Thomas wrote for the Court that, ‘under the FLSA, an employer is free to require an employee to take time off work, and an employer is also free to use the money it would have paid in wages to cash out accrued compensatory time. The compelled use of compensatory time challenged in this case merely involves doing both of these steps at once.’”

https://www.oyez.org/cases/1999/98-1167

September 11, 2001 – Attacks On World Trade Center and Pentagon


Justice Sandra Day O'Connor

JUSTICE O'CONNOR delivered the opinion of the Court.
“Facts of the case

In 1997, Toyota Motor Manufacturing, Kentucky, Inc. terminated Ella Williams, citing her poor attendance record. Subsequently, claiming to be disabled from performing her automobile assembly line job by carpal tunnel syndrome and related impairments, Williams sued Toyota for failing to provide her with a reasonable accommodation as required by the Americans with Disabilities Act of 1990 (ADA). Granting Toyota summary judgment, the District Court held that Williams's impairment did not qualify as a disability under the ADA because it had not substantially limited any major life activity and that there was no evidence that Williams had had a record of a substantially limiting impairment. In reversing, the Court of Appeals found that the impairments substantially limited Williams in the major life activity of performing manual tasks. Because her ailments prevented her from doing the tasks associated with certain types of manual jobs that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time, the appellate court concluded that Williams demonstrated that her manual disability involved a class of manual activities affecting the ability to perform tasks at work.

Question

Did the Court of Appeals use the proper standard in determining whether an employee was disabled under the ADA due to carpal tunnel syndrome by showing that her manual disability involved a class of manual activities affecting the ability to perform tasks at work?

Conclusion

No. In a unanimous opinion delivered by Justice Sandra Day O'Connor, the Court held that the Court of Appeals did not apply the proper standard in making its determination because it analyzed only a limited class of manual tasks and failed to ask whether Williams's impairments prevented or restricted her from performing tasks that are of central importance to most people's daily lives. The Court also reasoned that for the purposes of the ADA, an impairment's impact must also be permanent or long-term. ‘Given large potential differences in the severity and duration of the effects of carpal tunnel syndrome, an individual's carpal tunnel syndrome diagnosis, on its own, does not indicate whether the individual has a disability within the meaning of the ADA,’ wrote Justice O'Connor for the Court.”

https://www.oyez.org/cases/2001/00-1089

[Note: Congress later amended the ADA, in effect overturning this decision.]

“Eleven days after the September 11, 2001, terrorist attacks, Pennsylvania Governor Tom Ridge was appointed as the first Director of the Office of Homeland Security in the White House. The office oversaw and coordinated a comprehensive national strategy to safeguard the country against terrorism and respond to any future attacks. With the passage of the Homeland Security Act by Congress in November 2002, the Department of Homeland Security formally came into being as a stand-alone, Cabinet-level department to further coordinate and unify national homeland security efforts, opening its doors on March 1, 2003 [22 Departments].” https://www.dhs.gov/creation-department-homeland-security


Justice William Rehnquist

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

“Facts of the case

William Hibbs, an employee of the Nevada Department of Human Resources, sought leave to care for his wife under the Family and Medical Leave Act of 1993 (FMLA). The FMLA entitles an eligible employee to take up to 12 workweeks of unpaid leave annually for the onset of a ‘serious health condition’ in the employee's spouse. The Department granted Hibbs's request for the full 12 weeks of FMLA leave and, after he had exhausted that leave, informed him that he must report to work by a certain date. When Hibbs failed to do so, he was fired. Pursuant to FMLA provisions creating a private right of action ‘against any employer’ that ‘interfered with, restrained, or denied the exercise of’ FMLA rights, Hibbs sued in Federal District Court, seeking money damages for FMLA
violations. The District Court concluded that the Eleventh Amendment barred the FMLA claim. The Court of Appeals reversed.

**Question**

May an individual sue a State for money damages in federal court for violation of the Family and Medical Leave Act of 1993?

**Conclusion**

Yes. In a 6-3 opinion delivered by Chief Justice William H. Rehnquist, the Court held that State employees may recover money damages in federal court in the event of the State’s failure to comply with the FMLA’s family-care provision. The Court reasoned that Congress both clearly stated its intention to abrogate the States' Eleventh Amendment immunity from suit in federal court under the FMLA and acted within its authority under section 5 of the Fourteenth Amendment by enacting prophylactic, rather than substantively redefining, legislation. ‘In sum, the States' record of unconstitutional participation in, and fostering of, gender-based discrimination in the administration of leave benefits is weighty enough to justify the enactment of prophylactic [section] 5 legislation,’ wrote Chief Justice Rehnquist. Justices Antonin Scalia and Anthony M. Kennedy, who was joined by Justices Clarence Thomas and Scalia, filed dissents.”

https://www.oyez.org/cases/2002/01-1368

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**2/12/2004: Ohio Public Records Act**

149.43 Availability of public records for inspection and copying:
http://codes.ohio.gov/orc/149.43

Records not public – firefighter, EMT home address, etc.

(A) As used in this section:

(1) “Public record" does not mean any of the following:

(7) "Designated public service worker" means a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, county or multicounty corrections officer, community-based correctional facility employee, youth services employee, firefighter, EMT, medical director or member of a cooperating physician advisory board of an emergency medical service organization, state board of pharmacy employee, investigator of the bureau of criminal identification and investigation, judge, magistrate, or federal law enforcement officer.
(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a designated public service worker.

**Note: Journalists Exception – Disclose Personal Address**

“(9) (a) Upon written request made and signed by a journalist, a public office, or person responsible for public records, having custody of the records of the agency employing a specified designated public service worker shall disclose to the journalist the address of the actual personal residence of the designated public service worker and, if the designated public service worker's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the designated public service worker's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.”

See also: Ohio Attorney General – 2020 Ohio Sunshine Laws:  
[https://www.ohioattorneygeneral.gov/yellowbook](https://www.ohioattorneygeneral.gov/yellowbook)

Note: July 23, 2020: New York: “Judge blocks release of NY FF, police discipline records Unions argued that posting unproven or false complaints could sully first responders' reputations and compromise their safety. NEW YORK — A federal judge has halted the public release of police officer disciplinary records in New York, temporarily turning back a state transparency reform enacted in the wake of the police killing of George Floyd. Judge Katherine Polk Failla granted a temporary restraining order late Wednesday barring police departments and other entities in the state from disclosing discipline records until at least Aug. 18, when she'll hear arguments in a union lawsuit challenging their release.” [https://www.firerescue1.com/legal/articles/judge-blocks-release-of-ny-ff-police-discipline-records-7rj16mVBBulShb3oo/?utm_source=FireRescue1+Member+Newsletter&utm_campaign=4b0f0b6849-EMAIL_CAMPAIGN_2020_07_24_08_10&utm_medium=email&utm_term=0_758bdbeffe-4b0f0b6849-41607823](https://www.firerescue1.com/legal/articles/judge-blocks-release-of-ny-ff-police-discipline-records-7rj16mVBBulShb3oo/?utm_source=FireRescue1+Member+Newsletter&utm_campaign=4b0f0b6849-EMAIL_CAMPAIGN_2020_07_24_08_10&utm_medium=email&utm_term=0_758bdbeffe-4b0f0b6849-41607823)
See also: June 10, 2020: New York – “The New York state Senate and Assembly passed the 50-a repeal Tuesday night largely along party lines, as Republicans argued the law would allow the release of unsubstantiated or false complaints against officers. *** June 9, 2020: ALBANY, N.Y. — A decades-old law that kept law enforcement officers’ disciplinary records secret in New York appeared to be headed for an overhaul this week as state lawmakers moved to act on a number of police accountability measures prompted by street demonstrations over the death of George Floyd. The state law, known by its section title, 50-a, was passed in the 1970s to prevent criminal defense attorneys from subjecting officers to cross-examinations about irrelevant information in their personnel file. The law applies to jail guards and firefighters, as well.”


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5/17/2004: U.S. Supreme Court - Tennessee v. Lane (541 US 509) (5 to 4) – ELEVATORS FOR DISABELED, COURTHOUSES AND OTHER PUBLIC INVITED LOCATIONS

Justice John Paul Stevens

Justice Stevens delivered the opinion of the Court.

“Facts of the case

George Lane and Beverly Jones were disabled and could not access upper floors in Tennessee state courthouses. Lane, Jones, and several others sued Tennessee in federal district court, alleging that by denying them public services based on their disabilities, Tennessee was in violation of Title II of the Americans with Disabilities Act (1990). According to Title II, no person may be denied access to ‘services, programs, or activities’ on the basis of his disability. The act allows alleged victims of discrimination to sue states for damages.
Tennessee asked that the case be dismissed, claiming that it was barred by the 11th Amendment's prohibition of suits against states in federal courts (the sovereign immunity doctrine). The state cited *Alabama v. Garrett* (2001), in which the U.S. Supreme Court ruled that Congress had acted unconstitutionally in granting citizens the right to sue states for disability discrimination (such as the denial of employment) under the 14th Amendment's equal protection clause. In that case the Supreme Court reasoned that Congress did not have enough evidence of disability discrimination by states to justify the waiver of sovereign immunity.

The district court rejected the state's argument and denied the motion to dismiss. The Sixth Circuit Court of Appeals panel affirmed. The courts reasoned that because Title II of the ADA dealt with the Due process Clause of the 14th Amendment, not the equal protection clause, the ruling in *Garrett* did not apply. The court found that while Congress may not have had enough evidence of disability discrimination to waive sovereign immunity for equal protection claims, it did have enough evidence of Due Process violations (such as non-handicap-accessible courthouses) to waive the sovereign immunity doctrine for Due Process claims.

**Question**

Did the Americans with Disabilities Act violate the sovereign immunity doctrine of the 11th Amendment when, based on Congress's 14th Amendment enforcement powers of the Due Process clause, it allowed individuals to sue states for denying them services based on their disabilities?

**Conclusion**

No. In a 5-to-4 opinion written by Justice John Paul Stevens, the Court held that Congress had sufficiently demonstrated the problems faced by disabled persons who sought to exercise fundamental rights protected by the Due Process clause of the 14th Amendment (such as access to a court). The Court also emphasized that the remedies required from the states were not unreasonable - they just had to make reasonable accommodations to allow disabled persons to exercise their fundamental rights. Because Title II was a 'reasonable prophylactic measure, reasonably targeted to a legitimate end,' and because Congress had the authority under the 14th Amendment to regulate the actions of the states to accomplish that end, the law was constitutional.”

[https://www.oyez.org/cases/2003/02-1667](https://www.oyez.org/cases/2003/02-1667)
Justice GINSBURG delivered the opinion of the Court.

“Facts of the case

Nancy Drew Suders quit her job as a dispatcher for the Pennsylvania State Police in August 1998. She claimed that she had been sexually harassed by her supervisors since she got the job in March of that year, and that she had finally decided to quit after she was accused of theft, handcuffed, photographed and questioned. Two days before quitting, she had contacted the state police equal opportunity officer about the harassment, but did not file a report because, Suders claimed, the woman was unhelpful and unsympathetic.

Suders then filed suit in federal district court, charging that the harassment had forced her to quit. The district court judge, however, granted summary judgment to the state police before the case went to trial. He found that Suders had failed to use the internal procedures set up by the state police to deal with sexual harassment, and that she therefore could not bring suit unless the police had taken a ‘tangible employment action’ that substantially changed her employment status. On appeal, a Third Circuit Court of Appeals panel overturned the district judge's decision, ruling that the harassment had been so bad that Suders had no choice but to quit. While the police had not fired Suders, they had been directly responsible for her resignation and therefore could not use her failure to file a report as a defense.

Question

When a supervisor makes a workplace environment so hostile (through sexual harassment) that an employee has no choice but to quit, may the employee bring suit even if she did not use the internal procedures established by the employer to report sexual harassment claims?

Conclusion

Yes. In an 8-to-1 decision written by Justice Ruth Bader Ginsburg, the Court ruled that an employee faced with a situation in which a ‘reasonable person ... would have felt
compelled to resign’ could bring suit even if she had not filed a report with the employer before resigning. Her employer, however, could use her failure to file a report, along with evidence of the safeguards it had in place to prevent harassment, in its defense. If it could prove that she had not attempted to prevent the harassment, and that the safeguards in place would have prevented it if she had, the employer would not be liable.”

https://www.oyez.org/cases/2003/03-95

12/6/2004: U.S. Supreme Court - City of San Diego v. John Roe (543 US 77) (9 to 0) – POLICE OFFICER PROPERLY FIRED, VIDEO OF HIM STRIPPING OFF POLICE UNIFORM

Per Curiam decision – opinion not authored by one Justice

“Facts of the case

John Roe, a San Diego police officer, was fired for selling a video on eBay that showed him stripping off a police uniform and masturbating. He then sued the city in federal district court and alleged his firing violated his First Amendment right to freedom of speech. The district court ruled against the officer; the Ninth Circuit reversed.

Question

San Diego fired John Roe from the city police force after he made and sold online a video showing him engaging in sexually explicit acts. Did this violate John Roe's First Amendment right to free speech?

Conclusion

No. In a unanimous per curiam opinion, the Court held that firing Roe for his behavior and ‘speech’ did not violate the First Amendment. Government employers, the Court wrote, could restrict their employees’ speech in ways that would be unconstitutional if applied to the general public. But government employees had the right to speak on matters of public concern, such as on government policies of interest to the public. In this case, however, Roe's activities did not inform the public about the police department and were also detrimental to the force.”

https://www.oyez.org/cases/2004/03-1669
5/30/2005: U.S. Supreme Court - Garcetti et al v. Ceballos (547 US 410)(5 to 4) – “LIMITED” FIRST AMENDMENT RIGHTS OF PROSECUTOR, OTHER PUBLIC EMPLOYEES

Justice Anthony Kennedy (nominated by President Ronald Regan, served from 1988 until retired 2018).

Richard Ceballos, Esq.

Gill Garcetti (LA County Prosecutor, 1992 – 2000)

“Facts of the case

Richard Ceballos, an employee of the Los Angeles District Attorney's office, found that a sheriff misrepresented facts in a search warrant affidavit. Ceballos notified the attorneys prosecuting the case stemming from that arrest and all agreed that the affidavit was questionable, but the D.A.'s office refused to dismiss the case.
Ceballos then told the defense he believed the affidavit contained false statements, and defense counsel subpoenaed him to testify. Seeking damages in federal district court, Ceballos alleged that D.A.s in the office retaliated against him for his cooperation with the defense, which he argued was protected by the First Amendment. The district court ruled that the district attorneys were protected by qualified immunity, but the Ninth Circuit reversed and ruled for Ceballos, holding that qualified immunity was not available to the defendants because Ceballos had been engaged in speech that addressed matters of public concern and was thus protected by the First Amendment.

**Question**

Should a public employee's purely job-related speech, expressed strictly pursuant to the duties of employment, be protected by the First Amendment simply because it touched on a matter of public concern, or must the speech also be engaged in ‘as a citizen?’

**Conclusion**

In a 5-to-4 decision authored by Justice Anthony Kennedy, the Supreme Court held that speech by a public official is only protected if it is engaged in as a private citizen, not if it is expressed as part of the official's public duties. Ceballos's employers were justified in taking action against him based on his testimony and cooperation with the defense, therefore, because it happened as part of his official duties. ‘The fact that his duties sometimes required him to speak or write,’ Justice Kennedy wrote, ‘does not mean his supervisors were prohibited from evaluating his performance.’ Justices Stevens, Souter, Ginsburg and Breyer dissented.

https://www.oyez.org/cases/2005/04-473

See article (Dec. 11, 2019): “Tuesday, Deputy District Attorney Richard Ceballos withdrew his candidacy for L.A. County District Attorney. In response, Rachel Rossi issued the following statement.”

“I wish Richard Ceballos all the best as he made a difficult choice to end his race for Los Angeles County District Attorney. Richard was the first candidate to take a stand and challenge the status quo in our District Attorney’s Office eight months ago. I am grateful for his fight in this race and for his career in fighting for reform. I know this won’t be the last we hear from him.” [https://rachel4da.com/2019/12/11/statement-on-the-withdrawal-of-richard-ceballos-for-district-attorney/](https://rachel4da.com/2019/12/11/statement-on-the-withdrawal-of-richard-ceballos-for-district-attorney/)
“Facts of the case

In two separate cases, employees sued Barber Foods and IBP [Iowa Beef Producers] in federal district court. The employees alleged the companies violated the Fair Labor Standards Act by not paying them for time spent walking to the worksite after putting on required equipment. The district court and later the First Circuit ruled against the Barber employees. A separate district court ruled IBP must compensate its employees for the disputed time. The Ninth Circuit agreed. The U.S. Supreme Court consolidated the cases.

Question

Did the Fair Labor Standards Act require employers to pay employees for time spent walking to and from stations that distributed required safety equipment?

Conclusion

Yes. Justice John Paul Stevens, for a unanimous Court, wrote that putting on required safety equipment qualified as a ‘principal activity’ under the FLSA. The workday began when employees started that activity and therefore included the subsequent time spent walking to the worksite. The time spent waiting to put on safety equipment before that, however, was not included in the workday because it was a "preliminary" activity under the Portal-to-Portal Act.”

https://www.oyez.org/cases/2005/03-1238
2007: Volunteer Responder Incentive Protection Act (VRIPA)


“On December 20, President Trump signed into law appropriations legislation (H.R. 1865), which includes language restoring the Volunteer Responder Incentive Protection Act (VRIPA) in the 2020 tax year. VRIPA exempts nominal volunteer recruitment and retention incentives from being subject to federal income tax and reporting requirements for the 2020 tax year. Specifically, H.R. 1865 exempts property tax benefits and up to $600 per year in other incentives, such as stipends, that volunteer fire and EMS personnel receive as a reward for their service.

***

VRIPA was first enacted in 2007 and was in effect from 2008-2010. Originally, VRIPA exempted property tax benefits and up to $360 per year of other incentives. VRIPA expired in 2011 and 2020 will be the first year that it is back in effect since then. In addition to restoring VRIPA for the 2020 tax year, H.R. 1865 raises the maximum exempted benefits amount for non-property tax benefits from $360 to $600 per year.”

5/29/2007: LEDBETTER v. GOODYEAR TIRE & RUBBER CO., INC. (5 to 4) – PAY DISCRIMINATION, BUT EEOC CHARGE NOT FILED TIMELY [OVERTURNED BY CONGRESS AMENDING TITLE VII]
Justice Samuel Alito (nominated by President George W. Bush in 2006),

“During most of the time that petitioner [Lilly]Ledbetter was employed by respondent Goodyear, salaried employees at the plant where she worked were given or denied raises based on performance evaluations. Ledbetter submitted a questionnaire to the Equal Employment Opportunity Commission (EEOC) in March 1998 and a formal EEOC charge in July 1998. After her November 1998 retirement, she filed suit, asserting, among other things, a sex discrimination claim under Title VII of the Civil Rights Act of 1964. The District Court allowed her Title VII pay discrimination claim to proceed to trial. There, Ledbetter alleged that several supervisors had in the past given her poor evaluations because of her sex; that as a result, her pay had not increased as much as it would have if she had been evaluated fairly; that those past pay decisions affected the amount of her pay throughout her employment; and that by the end of her employment, she was earning significantly less than her male colleagues. Goodyear maintained that the evaluations had been nondiscriminatory, but the jury found for Ledbetter, awarding backpay and damages. On appeal, Goodyear contended that the pay discrimination claim was time barred with regard to all pay decisions made before September 26, 1997—180 days before Ledbetter filed her EEOC questionnaire—and that no discriminatory act relating to her pay occurred after that date.*** Held: Because the later effects of past discrimination do not restart the clock for filing an EEOC charge, Ledbetter’s claim is untimely.”  https://www.supremecourt.gov/opinions/06pdf/05-1074.pdf


“On January 29, 2009, President Obama signed the first piece of legislation of his Administration: the Lilly Ledbetter Fair Pay Act of 2009 (‘Act’). This law overturned the Supreme Court’s decision in Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618 (2007), which severely restricted the time period for filing complaints of employment discrimination concerning compensation [180 days].

The Act states the EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began. The Ledbetter Act recognizes the ‘reality of wage discrimination’ and restores ‘bedrock principles of American law.’ Particularly important for the victims of discrimination, the Act contains an explicit retroactivity provision.

People challenging a wide variety of practices that resulted in discriminatory compensation can benefit from the Act's passage. These practices may include employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises.” https://www.eeoc.gov/eeoc/publications/brochure-equal_pay_and_ledbetter_act.cfm

6/29/2009: U.S. Supreme Court - Frank Ricci v. DeStefano (557 US 557) (5 to 4) – NEW HAVEN FIRE DEPARTMENT PROMOTIONS TO PROCEED; TEST WAS PROFESSIONALLY PREPARED

Justice Anthony Kennedy (nominated by President Ronald Reagan, served from 1988 until retired 2018).
Frank Ricci, New Haven Fire Department:

“Facts of the case

White and Hispanic candidates for promotion in the New Haven, CT fire department sued various city officials in the United States District Court for the District of Connecticut when the New Haven Civil Service Board (CSB) failed to certify two exams needed for the plaintiffs’ promotion to Lieutenant and Captain. The CSB did not certify because the results of the test would have promoted a disproportionate number of white candidates in comparison to minority candidates. The plaintiffs argued that their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, and the 14th Amendment Equal Protection Clause were violated. The federal district court granted the defendants' motion for summary judgment.

On appeal, the United States Court of Appeals for the Second Circuit affirmed. It reasoned that the CSB, by refusing to certify the results of the promotional exam, was trying to fulfill its obligations under the rules utilized by the plaintiffs in their argument and therefore was protected in its actions.

Question

1) Can a municipality reject results from an otherwise valid civil service exam when the results unintentionally prevent the promotion of minority candidates?

2) Does 42 U.S.C. Section 2000e permit federal courts to relieve municipalities from having to comply with local laws that require strict compliance with race-blind merit selection procedures?

Conclusion

Maybe; fact dependent. Not answered. The Supreme Court held that by discarding the exams, the City of New Haven violated Title VII of the Civil Rights Act of 1964. Justice Anthony M. Kennedy wrote the majority joined by Chief Justice John G. Roberts, and
Justices Antonin G. Scalia, Clarence Thomas, and Samuel A. Alito. Before an employer can engage in intentional discrimination for the purpose of avoiding a "disparate impact" on a protected trait (race, color, religion, national origin), the employer must have a "strong basis in evidence" that it will be subject to "disparate impact liability" if it fails to take the discriminatory action. Here, the Court reasoned that New Haven failed to prove it had a 'strong basis in evidence’ that failing to discard the results of the exam would have subjected it to liability, as the exams were job-related, consistent with business necessity, and there was no evidence that an equally-valid, less-discriminatory alternative was available.”

https://www.oyez.org/cases/2008/07-1428


“In January 2008, Citizens United released a film entitled Hillary: The Movie. We refer to the film as Hillary. It is a 90–minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. Hillary mentions Senator Clinton by name and depicts interviews with political commentators and other persons, most of them quite critical of Senator Clinton. Hillary was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand. *** The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—
including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under § 441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship. *** Modern day movies, television comedies, or skits on Youtube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made the ‘purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value’ in order to engage in political speech. 2 U.S.C. § 431(9)(A)(i). Speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute's purpose and design. *** Some members of the public might consider Hillary to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas.”

**Note: see comments on the impact of this decision.**

“The Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission* helped unleash unprecedented amounts of outside spending in the 2010 and 2012 election cycles. The case, along with other legal developments, spawned the creation of super PACs, which can accept unlimited contributions from corporate and union treasuries, as well as from individuals; these groups spent more than $800 million in the 2012 election cycle. It also triggered a boom in political activity by tax-exempt ‘dark money’ organizations that don't have to disclose their donors.”


“Political spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual candidates in elections. While corporations or unions may not give money directly to campaigns, they may seek to persuade the voting public through other means, including ads, especially where these ads were not broadcast.”
2011: Florida abolishes the Fireman’s Rule

https://flsenate.gov/Laws/Statutes/2011/112.182

112.182  “Firefighter rule” abolished.—
(1) A firefighter or properly identified law enforcement officer who lawfully enters upon the premises of another in the discharge of his or her duty occupies the status of an invitee. The common-law rule that such a firefighter or law enforcement officer occupies the status of a licensee is hereby abolished.
(2) It is not the intent of this section to increase or diminish the duty of care owed by property owners to invitees. Property owners shall be liable to invitees pursuant to this section only when the property owner negligently fails to maintain the premises in a reasonably safe condition or negligently fails to correct a dangerous condition of which the property owner either knew or should have known by the use of reasonable care or negligently fails to warn the invitee of a dangerous condition about which the property owner had, or should have had, knowledge greater than that of the invitee.
History.—s. 1, ch. 90-308; s. 693, ch. 95-147.

April 6, 2017: Ohio – Firefighter Cancer - Statutory Presumption Expanded From Cardiovascular, Pulmonary and Respiratory Diseases


4123.68 Schedule of compensable occupational diseases.
http://codes.ohio.gov/orc/4123.68

The following diseases are occupational diseases and compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section.

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(W) Cardiovascular, pulmonary, or respiratory diseases incurred by firefighters or police officers following exposure to heat, smoke, toxic gases, chemical fumes and other toxic substances: Any cardiovascular, pulmonary, or respiratory disease of a firefighter or police officer caused or induced by the cumulative effect of exposure to heat, the inhalation of smoke, toxic gases, chemical fumes and other toxic substances in the
performance of the firefighter's or police officer's duty constitutes a presumption, which may be refuted by affirmative evidence, that such occurred in the course of and arising out of the firefighter's or police officer's employment. For the purpose of this section, "firefighter" means any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer, and "police officer" means any regular member of a lawfully constituted police department of a municipal corporation, township or county, whether paid or volunteer.

***

(X)

(1) Cancer contracted by a firefighter: Cancer contracted by a firefighter who has been assigned to at least six years of hazardous duty as a firefighter constitutes a presumption that the cancer was contracted in the course of and arising out of the firefighter's employment if the firefighter was exposed to an agent classified by the international agency for research on cancer or its successor organization as a group 1 or 2A carcinogen.

(2) The presumption described in division (X)(1) of this section is rebuttable in any of the following situations:

(a) There is evidence that the firefighter's exposure, outside the scope of the firefighter's official duties, to cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cause or progression of the cancer.

(b) There is evidence that shows, by a preponderance of competent scientific evidence, that exposure to the type of carcinogen alleged did not or could not have caused the cancer being alleged.

(c) There is evidence that the firefighter was not exposed to an agent classified by the international agency for research on cancer as a group 1 or 2A carcinogen.

(d) There is evidence that the firefighter incurred the type of cancer alleged before becoming a member of the fire department.

(e) The firefighter is seventy years of age or older.


June 22, 2018: U.S. Supreme Court – Carpenter v. United States, 138 S. Ct. 2206 (5 to 4) – CELL PHONE LOCATION DATA REQUIRES SEARCH WARRANT UNLESS “EXIGENT CIRCUMSTANCES”

Chief Justice John Roberts

“Cell phones perform their wide and growing variety of functions by continuously connecting to a set of radio antennas called ‘cell sites.’ Each time a phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI). Wireless carriers collect and store this information for their own business purposes. Here, after the FBI identified the cell phone numbers of several robbery suspects, prosecutors were granted court orders to obtain the suspects’ cell phone records under the Stored Communications Act. Wireless carriers produced CSLI for petitioner Timothy Carpenter’s phone, and the Government was able to obtain 12,898 location points cataloging Carpenter’s movements over 127 days—an average of 101 data points per day. Carpenter moved to suppress the data, arguing that the Government’s seizure of the records without obtaining a warrant supported by probable cause violated the Fourth Amendment. The District Court denied the motion, and prosecutors used the records at trial to show that Carpenter’s phone was near four of the robbery locations at the time those robberies occurred. Carpenter was convicted. The Sixth Circuit affirmed, holding that Carpenter lacked a reasonable expectation of privacy in the location information collected by the FBI because he had shared that information with his wireless carriers.

Held:

The Government did not obtain a warrant supported by probable cause before acquiring Carpenter’s cell-site records. It acquired those records pursuant to a court order under the Stored Communications Act, which required the Government to show ‘reasonable grounds’ for believing that the records were ‘relevant and material to an ongoing investigation.’ 18 U. S. C. §2703(d). That showing falls well short of the probable cause required for a warrant. Consequently, an order issued under §2703(d) is not a permissible mechanism for accessing historical cell-site records. Not all orders compelling the
production of documents will require a showing of probable cause. A warrant is required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party. And even though the Government will generally need a warrant to access CSLI, case-specific exceptions—e.g., exigent circumstances—may support a warrantless search.”


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See article: “He Won a Landmark Case for Privacy Rights. He’s Going to Prison Anyway.” (June 13, 2019). “This week, a federal appeals court [6th Circuit] decided that Mr. Carpenter’s big victory at the Supreme Court won’t spare him from going to prison for the rest of his life. *** But under the good-faith exception to violations of the Fourth Amendment, the court said the agents acted reasonably and in “good faith” — and so whatever they gathered could still be used at trial. The F.B.I. merely followed the law and the rules that applied at the time of the violation.


6th Circuit decision (June 11, 2019):

“This case returns on remand from the Supreme Court. In our prior opinion, the majority held that the Government’s warrantless collection of Timothy Ivory Carpenter’s cell-site location information (CSLI) did not violate the Fourth Amendment. The Supreme Court disagreed. The unconstitutionality of the Government’s search was not clear until after the Supreme Court reversed our decision, which leads us to the question of whether the FBI agents who obtained Carpenter’s CSLI acted in good faith. Because these agents reasonably relied on the Stored Communications Act (SCA), we AFFIRM the judgment of the district court.”

See also: Cell Phone Store Robber Sentenced to 116 Years (April 16, 2014):
4/26/2019: U.S. Supreme Court - Hefferman v. City of Patterson (578 US ___) (6 to 2) – POLICE OFFICER WITH POLITICAL SIGN FOR MAYOR’S OPPONENT MAY SUE FOR RETALIATION

Justice Steven Breyer (nominated by President Clinton in 1994)

Officer Jeffery Heffernan: https://www.mtsu.edu/first-amendment/article/1457/heffernan-v-city-of-paterson

“Facts of the case

Jeffrey Heffernan was a police officer for the City of Paterson, New Jersey. A fellow police officer observed Heffernan picking up a campaign sign for the mayoral candidate running against the incumbent. When a supervisor confronted him, Heffernan claimed that he was not politically involved, could not vote in the city of Paterson, and was picking up the sign on behalf of his mother. Heffernan was demoted to a walking post because his actions were considered to be ‘overt involvement in political activities.’

Heffernan sued the city of Paterson and claimed that the city had violated his First Amendment rights to freedom of speech and association. The city filed a motion for summary judgment and argued that, since Heffernan had not actually engaged in constitutionally protected speech, the City’s actions had not violated his First Amendment rights. The district court granted the city’s motion for summary judgment because there was no evidence Heffernan associated himself with the political candidate at issue. Heffernan admitted himself that he was not associated with the candidate, and
therefore there is no evidence of a violation of his right to freedom of association. The U.S. Court of Appeals for the Third Circuit affirmed.

Question

Does the First Amendment prohibit the government from demoting a public employee based on a supervisor’s perception that the employee supports a political candidate?

Conclusion

A government employee who is demoted because of perceived involvement in protected political activity is entitled to challenge his demotion under the First Amendment even if the demotion was based on a factual mistake. Justice Stephen G. Breyer delivered the opinion for the 6-2 majority. The Court held that, although there was no First Amendment case that specifically addressed this issue, there was at least one precedential case in which the employer’s motive was what determined whether the action violated the employee’s First Amendment rights. Therefore, when an employer demotes an employee out of a desire to prevent or punish the employee for engaging in protected speech, that action violates the First Amendment, even if the employer made a factual mistake and no protected speech occurred. The Court also held that this rule tracks the language of the First Amendment because it focuses on the harm the government actor committed, which is the same whether or not the employer made a factual mistake, and does not alter the burden that an employee claiming a First Amendment violation must meet, which is to prove that the defendant had an improper motive.”

https://www.oyez.org/cases/2015/14-1280

Jan. 15, 2020: FLSA - U.S. Department of Labor issues its “Final Rule” on benefits that can be given employees, without increasing their overtime “regular rate of pay”


“The Final Rule focuses primarily on clarifying whether certain kinds of benefits or perks and other miscellaneous payments must be included in the regular rate. In relevant part, the Department revises the current regulations to confirm the following:

- the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance;
- payments for unused paid leave, including paid sick leave or paid time off;
• payments of certain penalties required under state and local scheduling laws;
• reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred “solely” for the employer’s benefit; and clarifies that reimbursements that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System or the optional IRS substantiation amounts for travel expenses are per se “reasonable payments”;
• certain sign-on bonuses and certain longevity bonuses;
• the cost of office coffee and snacks to employees as gifts;
• discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples and;
• contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.”

March 27, 2020: Coronavirus Aid, Relief, and Economics Security Act (“CARES”)

U.S. Department of Treasury: “The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress with overwhelming, bipartisan support and signed into law by President Trump on March 27th, 2020. This over $2 trillion economic relief package delivers on the Trump Administration’s commitment to protecting the American people from the public health and economic impacts of COVID-19.”
https://home.treasury.gov/policy-issues/cares

July 30, 2020: The $150k reporting threshold plummets to $10k

“The reporting, which will begin in January of 2021 for all funds received and spent in 2020, will be required of all who have received a total of $10,000 or more. The Terms state that this includes any funds received from HHS under the Coronavirus Aid, Relief, and Economics Security Act (“CARES”), the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, or any other Act primarily making appropriations for the coronavirus response. Therefore, this lowered threshold will likely mean that almost every EMS and ambulance agency will have to follow the reporting requirements.” Page, Wolfberg & Wirth
info@pwwemslaw.com
6/15/2020: U.S. Supreme Court – Bostock v. Clayton County, Georgia (6 to 3) – TITLE VII PROTECTS TRANSGENDERS

Justice Neil Gorsuch (nominated by President Donald Trump, sworn in April 10, 2017)

“In each of these cases, an employer allegedly fired a long-time employee simply for being homosexual or transgender. Clayton County, Georgia, fired Gerald Bostock for conduct ‘unbecoming’ a county employee shortly after he began participating in a gay recreational softball league.”

Gerald Bostock

“Altitude Express fired Donald Zarda days after he mentioned being gay.”


“And R. G. & G. R. Harris Funeral Homes fired Aimee Stephens, who presented as a male when she was hired, after she in-formed her employer that she planned to ‘live and work full-time as a woman.’”
Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit held that Title VII does not prohibit employers from firing employees for being gay and so Mr. Bostock’s suit could be dismissed as a matter of law. The Second and Sixth Circuits, however, allowed the claims of Mr. Zarda and Ms. Stephens, respectively, to proceed.

Held: An employer who fires an individual merely for being gay or transgender violates Title VII.” [https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)

July 17, 2020: Congressman John Lewis dies – Civil Rights Leader

“John Lewis [and Hosea Williams] led over 600 peaceful, orderly protestors across the Edmund Pettus Bridge in Selma, Alabama on March 7, 1965. They intended to march from Selma to Montgomery to demonstrate the need for voting rights in the state. The marchers were attacked by Alabama state troopers in a brutal confrontation that became known as ‘Bloody Sunday.’ News broadcasts and photographs revealing the senseless cruelty of the segregated South helped hasten the passage of the Voting Rights Act of 1965.” [https://johnlewis.house.gov/john-lewis/biography](https://johnlewis.house.gov/john-lewis/biography)
NEW YORK TIMES: Mr. Lewis, the civil rights leader who died on July 17, wrote this essay shortly before his death, to be published upon the day of his funeral. https://www.nytimes.com/2020/07/30/opinion/john-lewis-civil-rights-america.html

6/30/2020: By John Lewis:

“While my time here has now come to an end, I want you to know that in the last days and hours of my life you inspired me. You filled me with hope about the next chapter of the great American story when you used your power to make a difference in our society. Millions of people motivated simply by human compassion laid down the burdens of division. Around the country and the world you set aside race, class, age, language and nationality to demand respect for human dignity.

That is why I had to visit Black Lives Matter Plaza in Washington, though I was admitted to the hospital the following day. I just had to see and feel it for myself that, after many years of silent witness, the truth is still marching on.

Emmett Till was my George Floyd. He was my Rayshard Brooks, Sandra Bland and Breonna Taylor. He was 14 when he was killed, and I was only 15 years old at the time. I will never ever forget the moment when it became so clear that he could easily have been me. In those days, fear constrained us like an imaginary prison, and troubling thoughts of potential brutality committed for no understandable reason were the bars.

Though I was surrounded by two loving parents, plenty of brothers, sisters and cousins, their love could not protect me from the unholy oppression waiting just outside that family circle. Unchecked, unrestrained violence and government-sanctioned terror had the power to turn a simple stroll to the store for some Skittles or an innocent morning jog down a lonesome country road into a nightmare. If we are to survive as one unified nation, we must discover what so readily takes root in our hearts that could rob Mother Emanuel Church in South Carolina of her brightest and best, shoot unwitting concertgoers in Las Vegas and choke to death the hopes and dreams of a gifted violinist like Elijah McClain.

Like so many young people today, I was searching for a way out, or some might say a way in, and then I heard the voice of Dr. Martin Luther King Jr. on an old radio. He was talking about the philosophy and discipline of nonviolence. He said we are all complicit when we tolerate injustice. He said it is not enough to say it will get better by and by. He said each of us has a moral obligation to stand up, speak up and speak out. When you see something that is not right, you must say something. You must do something. Democracy is not a state. It is an act, and each generation must do its part to help build what we called the Beloved Community, a nation and world society at peace with itself.
Ordinary people with extraordinary vision can redeem the soul of America by getting in what I call good trouble, necessary trouble. Voting and participating in the democratic process are key. The vote is the most powerful nonviolent change agent you have in a democratic society. You must use it because it is not guaranteed. You can lose it.

You must also study and learn the lessons of history because humanity has been involved in this soul-wrenching, existential struggle for a very long time. People on every continent have stood in your shoes, through decades and centuries before you. The truth does not change, and that is why the answers worked out long ago can help you find solutions to the challenges of our time. Continue to build union between movements stretching across the globe because we must put away our willingness to profit from the exploitation of others.

Though I may not be here with you, I urge you to answer the highest calling of your heart and stand up for what you truly believe. In my life I have done all I can to demonstrate that the way of peace, the way of love and nonviolence is the more excellent way. Now it is your turn to let freedom ring.

When historians pick up their pens to write the story of the 21st century, let them say that it was your generation who laid down the heavy burdens of hate at last and that peace finally triumphed over violence, aggression and war. So I say to you, walk with the wind, brothers and sisters, and let the spirit of peace and the power of everlasting love be your guide.”

7/30/2020: Obama delivers call to action in eulogy for Lewis … [along with Presidents Clinton and Bush]

”Standing before Lewis’s flag-draped casket, [President] Obama told the story of Lewis’s courage on his first ‘freedom’ ride on a bus, an unofficial test taken with a Black friend to set the stage for the broader Freedom Ride protests on segregated buses in the South. ‘Imagine the courage of two people Malia’s age,
younger than my oldest daughter, on their own,’’ the former president said. ‘‘John was only 20 years old. But he pushed all 20 of those years to the center of the table, betting everything — all of it — that his example could challenge centuries of convention and generations of brutal violence.’’


Aug. 14, 2020: PSOB Amended – COVID-19 DEATHS / INJURIES – Diagnosed With 45 days from last day on duty


(a) Death benefits.—As determined by the Bureau of Justice Assistance, unless competent medical evidence establishes that the death of a public safety officer (as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284)) was directly and proximately caused by something other than COVID–19, COVID–19 (or complications therefrom) suffered by the public safety officer shall be presumed to constitute a personal injury within the meaning of section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(a)), sustained in the line of duty by the officer and directly and proximately resulting in death, if—

(1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021;

(2) the officer was diagnosed with COVID–19 (or evidence indicates that the officer had COVID–19) during the 45-day period beginning on the last day of duty of the officer; and

(3) evidence indicates that the officer had COVID–19 (or complications therefrom) at the time of the officer’s death.

(b) Disability benefits.—As determined by the Bureau of Justice Assistance, COVID–19 (or complications therefrom) suffered by a public safety officer shall be presumed to constitute a personal injury within the meaning of section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)), sustained in the line of duty by the officer, if—
(1) the officer engaged in a line of duty action or activity between January 1, 2020, and December 31, 2021; and

(2) the officer was diagnosed with COVID–19 (or evidence indicates that the officer had COVID–19) during the 45-day period beginning on the last day of duty of the officer.”
MODULE IV: KEY SUPREME COURT DECISIONS IMPACTING EMERGENCY RESPONDERS

Gift to FRYE from children at Stepping Stones
(“Pathways to Independence for People with Disabilities” - https://steppingstonesohio.org/)

Suggested Homework:

Select three U.S. Supreme Court decisions from below list. Read the full decision on Internet. For each case, post a paragraph: RELEVANCY TO MY FIRE DEPARTMENT OR TO FIRE SERVICE.

Note: We have already studied four landmark cases, so do not use these cases:

https://supreme.justia.com/cases/federal/us/401/424/ - USE OF ONLY JOB RELATED TESTS WHEN HIRING

3/21/1989: National Treasury Employees Union v. Von Raab
https://supreme.justia.com/cases/federal/us/489/656/ - RANDOM DRUG TESTING

5/26/1998: County of Sacramento v. Lewis
https://www.law.cornell.edu/supct/html/96-1337.ZO.html EMERGENCY RESPONSE

5/1/2000: Christensen v. Harris County

https://www.law.cornell.edu/supct/html/01-1368.ZS.html - FAMILY MEDICAL LEAVE

5/17/2004: Tennessee v. Lane
https://www.law.cornell.edu/supct/html/02-1667.ZO.html - PARAPLEGIC ACCESS TO PUBLIC BUILDINGS

https://www.law.cornell.edu/supct/html/03-95.ZO.html - HOSTILE WORKPLACE

https://www.law.cornell.edu/supct/cert/07-1428 - PROMOTIONS & RACE DISCRIMINATION

4/26/2019: Hefferman v. City of Patterson
https://www.law.cornell.edu/supct/cert/14-1280 - SUPPORT OF POLITICAL CANDIDATES

6/15/2020: Bostock v. Clayton County, Georgia
https://www.law.cornell.edu/supct/cert/17-1618 - TITLE VII - GENDER CHANGE
MODULE V: RECENT FIRE & EMS CASES

Bruce & Lucy – may they rest in peace. [Bruce was Prof. Bennett’s first Pet Therapy dog – went to Shriner’s Burn Hospital For Children in Cincinnati for many years: https://www.shrinershospitalsforchildren.org/cincinnati ]

Suggested homework:

Select one recent case from each chapter and read the full decision on Internet: https://doi.org/10.7945/1815-f674. For each case, post a paragraph: RELEVANCY TO MY FIRE DEPARTMENT.

These are the 18 Chapter’s in Prof. Bennett’s textbook: FIRE SERVICE LAW (Second Edition, 2017) (ISBN 978-1-4786-3397-6); Waveland Press:

Chap. 1 American Legal System, incl. Fire Code, Fire Invest.
Chap. 2 Line Of Duty Death / Safety
Chap. 3 Homeland Security, incl. Active Shooter, Cybersecurity
Chap. 4 Incident Command, incl Training, Drones
Chap. 5 Emergency Vehicle Operations
Chap. 6 Employment Litigation, incl. Worker’s Comp
Chap. 7 Sexual Harassment, incl. Pregnancy Discrimination
Chap. 8 Race Discrimination
Chap. 9 Americans With Disabilities Act
Chap. 10 Family Medical Leave Act, incl. Military Leave
Chap. 11 Fair Labor Standards Act
Chap. 12 Drug-Free Workplace
Chap. 13  EMS, incl. Community Paramedicine, Corona Virus
Chap. 14  Physical Fitness, incl. Light Duty
Chap. 15  CISM, incl. Peer Support, Mental Health
Chap. 16  Discipline
Chap. 17  Arbitration, Mediation, incl. Labor Relations
Chap. 18  Legislation

U.S. SUPREME COURT – CURRENT JUSTICES

The 9 current Supreme Court justices posed for a portrait on Nov. 30, 2018. This is the first official group photo to include Justice Brett M. Kavanaugh.

The Justices nominated by the President, confirmed by Senate; serve for life time appointments, as do all Federal judges: https://www.supremecourt.gov/about/biographies.aspx

- Clarence Thomas (1991; President George H.W. Bush)
- Ruth Bader Ginsburg (1993; President Bill Clinton)
- Stephen Breyer (1994; President Bill Clinton)
- Chief Justice John Roberts (2005; President George W. Bush)
- Samuel Alito (2006; President George W. Bush)
- Sonia Sotomayor (2009; President Barack Obama)
- Elena Kagan (2010; President Barack Obama)
- Neil Gorsuch (2017; President Donald Trump)
- Brett M. Kavanaugh (since 2018; President Donald Trump)

**U.S. District Courts**

“The nation’s 94 district or trial courts are called U.S. District Courts. District courts resolve disputes by determining the facts and applying legal principles to decide who is right. Trial courts include the district judge who tries the case and a jury that decides the case. Magistrate judges assist district judges in preparing cases for trial. They may also conduct trials in misdemeanor cases.” [https://www.uscourts.gov/about-federal-courts/court-role-and-structure](https://www.uscourts.gov/about-federal-courts/court-role-and-structure)

**U.S. Courts of Appeal**

“There are 13 appellate courts that sit below the U.S. Supreme Court, and they are called the U.S. Courts of Appeals. The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. The appellate court’s task is to determine whether or not the law was applied correctly in the trial court. Appeals courts consist of three judges and do not use a jury. A court of appeals hears challenges to district court decisions from courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims.” [https://www.uscourts.gov/about-federal-courts/court-role-and-structure](https://www.uscourts.gov/about-federal-courts/court-role-and-structure)

**State Court Systems**

Ohio Supreme Court (Columbus, OH)
“The Constitution and laws of each state establish the state courts. A court of last resort, often known as a Supreme Court, is usually the highest court. Some states also have an intermediate Court of Appeals. Below these appeals courts are the state trial courts. Some are referred to as Circuit or District Courts.” [https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts](https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts)
Five Things Your Academy Social Media Policy Must Contain

1. Clear description of need for policy – avoid embarrassment: including full time, part-time, Adjuncts, consultants, etc. [share “war stories” & recent articles in news - Attach A]

The Phoenix Fire Department has an overriding interest and expectation in deciding what is communicated on behalf of the department on social media sites.
https://www.phoenix.gov/firesite/Documents/fire_mp_10518.pdf

2. Reference other policies; no need to “Reinvent The Wheel” [IAFC, IAFF, sample of FD policies– Attach. B]
RELATED POLICIES, STANDARDS AND PROCEDURES

3. Recognize employee First Amendment rights – “balancing test” of U.S. Supreme Court [Attach. C]

Nothing contained in this Management Procedures shall be construed as denying employees their civil or political liberties as guaranteed by the United States and Arizona Constitutions.

4. “Headlines Test” [recent cases – Attach. D]

Keep the “headline test” in mind when posting content or pictures to social media sites.

5. Recognize NLRB decisions – union and non-union [see AMR and other NLRB cases – Attach. E]

Nothing contained in this policy shall be construed as interfering with the rights of employees and employee organizations under the City’s Meet and Confer Ordinance.

[Other Resources, including Prof. Bennett’s monthly Fire & EMS Law newsletters – Attach. F]
ATTACHMENT A –
“WAR STORIES” & RECENT ARTICLES
IN NEWS

See also Prof. Bennett’s online case summaries (including Chap. 16 – Discipline): case summaries since 2018 from newsletters, updated monthly at UC Libraries Scholar@UC:
https://scholar.uc.edu/concern/documents/j098zc50w?locale=en

TWO “WAR STORIES” – (1) STRIPPING POLICE OFFICER STRIPPING; (2) EMS VIDEOTAPING DEAD DRIVER


“The eight-page summary opinion in the San Diego case quickly disposed of a dispute that the justices, during oral arguments, apparently had no wish to hear about at length. It concerned, as the court said, a San Diego officer who made “a video showing himself stripping off his police uniform and masturbating.”

The officer, identified only as John Roe, advertised the tape on the adults-only section of EBay. His supervisor, Sgt. Robert Dare, learned of the videos when he discovered that a San Diego police uniform was for sale on EBay. Following up, Dare discovered the videos and found that the performer was one of his officers.

Roe’s supervisors said his actions violated police department policies and was conduct unbecoming an officer. He was warned he must cease ‘displaying ... or selling any sexually explicit materials.’” https://www.latimes.com/archives/la-xpm-2004-dec-07-nascotus7-story.html
Note: CASE WENT TO U.S. SUPREME COURT – HELD (9 to 0) THAT HE WAS PROPERLY FIRED: City of San Diego v. John Roe (Dec. 6, 2004):
https://supreme.justia.com/cases/federal/us/543/77/#tab-opinion-1961693

“Roe’s activities did nothing to inform the public about any aspect of the SDPD’s functioning or operation. Nor were Roe’s activities anything like the private remarks at issue in Rankin, where one co-worker commented to another co-worker on an item of political news. Roe’s expression was widely broadcast, linked to his official status as a police officer, and designed to exploit his employer’s image.”


Officials said that the firefighter has been placed on "investigatory suspension" while an outside firm probes the incident. *** The firefighter, who was not identified, took a video of the injuries suffered by 23-year-old Dayna Kempson-Schacht, who died July 17 when her car crashed into trees. She died instantly. The video spread after the firefighter shared it with his co-workers and others outside the department.

2020 STORIES IN NEWS

July 23, 2020: TN - Nashville Fire Department Captain's Facebook Posts Draws Anger From Some Community Members - NASHVILLE, Tenn. (WZTV) — Some community members are angry about Facebook posts a Nashville Fire Department captain has made on social media about protesters, wearing masks, and other topics. Now, city and state leaders are denouncing his actions. Tracy Turner is a captain with Fire Station 18 in East Nashville. On his public Facebook page, he’s posted statuses like “These Protesters are the
stupidest people on the planet, other than the arsonist and looters that hang out with them,” and, “It’s not that the Anti-Fa and BLM thugs are so strong that they are able to take over part of a city...It’s that the Democrat Mayors are so weak as to let it happen. Shameful.”


June 23, 2020: MA - Firefighter Resigns After Suspension Over Social Media Post - Markus Dagle resigned his position with the Millbury Fire Department on Tuesday morning, having learned he would be suspended without pay while officials looked into complaints stemming from Facebook comments he allegedly made. The Millbury Fire Department announced the suspension and resignation in a Facebook posting on its page, noting that Dagle’s remarks “in no way” reflect the department.... Screengrabs show Dagle allegedly commented on a Facebook post with, “Civil war 2 bring back the kkk,” before engaging in a dialogue with at least two other Facebook users.According to images of the Facebook thread, another user, Rita Daigle, was the first to respond to Dagle’s comment. She said, in part, “KKK can stay gone I will be in line to kill all them KKK people,” before asking Dagle if he did “not like colored people.” Images of the thread show Dagle allegedly responded: “i do but not cry baby ones.”


June 23, 2020: WI - Madison EMT Resigns Following Facebook Slurs - The comments attributed to DaRosa, which are 3 years old, regarded a news article about riots in Charlotte, N.C. They use the N-word and call for the "extermination of these roaches." However, the comments also say he "feels bad for decent black folk." Calling the remarks "horrible and derogatory," Madison Fire Chief Richard Clark took to the Madison Fire Rescue & Emergency Management Facebook page Sunday to say that the member in question had resigned.


June 22, 2020: NJ - Leonia Firefighter Resigns After 'Inappropriate' Social Media Post - A longtime member and lieutenant with the town's volunteer fire department resigned after posting an "inappropriate" and "indesensible" Facebook post against Asian Americans. The original Facebook post, which has since been deleted, was posted by a Leonia firefighter of an Asian woman holding a sign that used a vulgarity to refer to the police. The post said, "To my Leonia people, who is this and how do you think this is peaceful?" The post garnered over 300 comments, many of which were racist, xenophobic and sexist, Leonia Mayor Judah Zeigler said.

June 18, 2020: AL - Mobile Firefighters Fired Over Social Media Posts - A spokesperson for the Mobile Fire Fighters Association confirms two firefighters were terminated and one resigned over alleged violations of the city's social media policy. In one post about protesters, someone commented, “Just turn the water hose on them and spray them away.” To which, according to one source, one of the terminated firefighters replied, “I don’t go back till Monday! Lol” https://mynbc15.com/news/local/mobile-firefighters-fired-over-social-media-posts

June 19, 2020: CA - Manhattan Beach Fire Chief Sacked After ‘throat’ Comments – [Audio recording] According to the city manager, Drum speaks about negotiations with an external vendor when he says, “Pardon my vernacular,” then, “I think our foot … needs to be clearly on their throat, and they need to feel it, and they need to feel that constant pressure every single day that we mean business.” He mentions a foot being on a throat three times during the clip, less than a month after a Minnesota police officer held a knee on George Floyd’s neck for nearly eight minutes. Floyd, an unarmed Black man, died. https://www.latimes.com/california/story/2020-06-19/mahattan-beach-fire-chief-sacked-after-throat-comments

Feb. 18, 2020: MA - Boston Fire Department’s Vague Free Speech Policies Spark Debate After Firings - Off duty and on Facebook, Octavius Rowe, a 17-year veteran of the Boston Fire Department, made a handful of posts in 2017 that included sentiments the Boston Civil Service Commission determined were bigoted and derogatory, especially against the LGBTQ community. After an investigation into his social media in 2018, Rowe was terminated. He objects to his firing and has since appealed to both the Civil Service Commission and Suffolk Superior Court. Rowe argues that he had no knowledge of the department’s social media policies and was simply exercising his First Amendment rights when he made posts including the word “Smallhat,” a derogatory term for Jewish people, and calling the head of the Boston Urban League a “shoe-shine Negro.” He also repeatedly criticized homosexuals on his Facebook page. “Nothing on my social media designates myself as a firefighter. I could understand the City’s disposition if I had written on my Facebook page that I am a firefighter with the City of Boston,” said Rowe in an interview, claiming he only mentioned firefighting “offhand” in a few posts. “I never ever mentioned what I would do to an individual in my role as a firefighter. When I’m online, I am a private citizen engaging in public discourse.” https://thescopeboston.org/3082/features/boston-fire-department-free-speech/

Feb. 13, 2020: SC - Burton Fire Changes Social Media Policy After Spokesperson’s Profanity-Laced Post - The Burton Fire Department is changing its
social media policy. This comes just days after a profane filled Facebook post written by a spokesperson for the fire district. After a social media post by a Burton Fire District first responder made headlines, the department decided to change their social media policies. This is the statement referencing members of the Democratic party, Burton Fire District Captain Dan Byrnes posted on Facebook just days ago, “keep getting voted into f---ing office by emotional f---ing weak b---es who cry at every f---ing SOB f---ing story.” Byrnes says the post, which was directed at his family members and their political views, was a spillover of pre-existing family tension. https://www.wtoc.com/2020/02/13/burton-fire-changes-social-media-policy-after-spokespersons-profanity-laced-post/

Jan. 12, 2020: MI – Detroit Firefighters To Be Disciplined For Group Photo In Front Of Burning Home - A photo showing 18 firefighters posing in front of the burning home was posted on social media. The photo was later removed from the Facebook site. While Jones did not detail the discipline planned for those involved, he said “supervisors and above will receive a greater degree of disciplinary accountability." All those involved have shown the “appropriate level of regret for this inappropriate behavior,” he added. https://www.mlive.com/news/2020/01/detroit-firefighters-to-be-disciplined-for-group-photo-in-front-of-burning-home.html
“What should we include in our social-media policy? When creating a social media policy, make sure you:

- Remind members to familiarize themselves with your other personnel agreements and policies included in the personnel handbook. – Make sure you specify that these policies apply to social media as well.
- State what the social media policy applies to. – For example, if you are making a general policy it might apply to multi-media, social networking websites, blogs and wikis for department, professional and personal use.
- State that internet postings should not disclose any information that is confidential or proprietary to the department or to any third party that has disclosed information to the department.
- Require any member commenting on any aspect of the department’s business to clearly identify their role within the department or as a member of the department and include a disclaimer, such as "the views expressed are mine alone and do not necessarily reflect the views of (your department’s name)."
- State that internet postings should not include department logos or trademarks unless permission is asked for and granted.
- State that internet postings that include videos and/or photos taken while on duty must be in compliance with the department’s photo and video policy (This may be outlined in the social media policy or a stand-alone policy.)
- Emphasize that internet postings must respect copyright, privacy, fair use, financial disclosure, and other applicable laws.
- State that emergency scenes are never an appropriate place for posting on social media. – Make sure you reiterate appropriate scene behavior during and after an emergency. Even though a scene may be under control an innocent post or photo (even if the photo is not posted on a social media site) can be seen by the public and bystanders as being disrespectful to the victims involved in the incident.
- Clearly state that members should never post or use social media while caring for a patient.
- Include that the department reserves the right to request that certain subjects are avoided, members to withdraw certain posts, and remove inappropriate content.
- Clearly explain any required approval process for a member to post about or on behalf of the department and the industry on Department blogs, Facebook pages, Twitter accounts, etc., including exactly what does and what doesn’t require approval.”
IAFC SOCIAL MEDIA TOOLKIT: https://www.iafc.org/topics-and-tools/resources/resource/social-media-handbook


SAMPLE FD SOCIAL MEDIA POLICIES

AR: Phoenix Fire Department:
https://www.phoenix.gov/firesite/Documents/fire_mp_10518.pdf

FL: City of Sandford Fire Department:


MA: Boston Fire Department:


ME: Westbrook Fire Department:

**SD:** Spearfish Fire Department:

**NY:** Town of Watertown Fire Department: [https://www.twfd46ny.com/social-media-policy.html](https://www.twfd46ny.com/social-media-policy.html)

**WV:** Pipestem Volunteer Fire Department:
[https://www.pipestemfd.com/documents/PVFD%20Social%20Media%20Policy.pdf?__cf_chl_jschl_tk__=e93e887c0cdd674c2ebb62bd96092391faa9889d-1596989494-0-AY8Vod3_YClomDxlAQKo4SswMWemf6mL_4l3zkDaYDhfozaMEyV9eTzuO_D1NBbDCjjiMxuWw86zkIdfMVHKziApIZRWZM4arBCnDUJ-_aGw0xm-kNFgulmd5am_h3jgQ6-nzlMDAUn8iTTSZRG2oW746xbFkIjE17PqnoS5G3nRbrryb6bB5DHTb6Y4-Q0gVwVw4WcHuzSZFbkbDflS2A7sskK3PnCcYJP66uzzJRpzZlq7X_FGbw6vn8vmzWrlC98_iElzQDXq88TTrtGLXXUBSHYNk9rUHLwg1bnnVzkezRSPNiVvehsi8zDFsVpkjnM10RZzc_7KdA9YE8](https://www.pipestemfd.com/documents/PVFD%20Social%20Media%20Policy.pdf?__cf_chl_jschl_tk__=e93e887c0cdd674c2ebb62bd96092391faa9889d-1596989494-0-AY8Vod3_YClomDxlAQKo4SswMWemf6mL_4l3zkDaYDhfozaMEyV9eTzuO_D1NBbDCjjiMxuWw86zkIdfMVHKziApIZRWZM4arBCnDUJ-_aGw0xm-kNFgulmd5am_h3jgQ6-nzlMDAUn8iTTSZRG2oW746xbFkIjE17PqnoS5G3nRbrryb6bB5DHTb6Y4-Q0gVwVw4WcHuzSZFbkbDflS2A7sskK3PnCcYJP66uzzJRpzZlq7X_FGbw6vn8vmzWrlC98_iElzQDXq88TTrtGLXXUBSHYNk9rUHLwg1bnnVzkezRSPNiVvehsi8zDFsVpkjnM10RZzc_7KdA9YE8)
ATTACHMENT C – FIRST AMENDMENT RIGHTS

https://www.oyez.org/cases/2005/04-473

COUNTY DEPUTY PROSECUTOR DISCIPLINED – PUBLIC EMPLOYEE MAKES STATEMENTS ABOUT HIS OFFICIAL DUTIES – LAWSUIT PROPERLY DISMISSED

“Respondent Richard Ceballos has been employed since 1989 as a deputy district attorney for the Los Angeles County District Attorney's Office. During the period relevant to this case, Ceballos was a calendar deputy in the office's Pomona branch, and in this capacity he exercised certain supervisory responsibilities over other lawyers. In February 2000, a defense attorney contacted Ceballos about a pending criminal case. The defense attorney said there were inaccuracies in an affidavit used to obtain a critical search warrant.

***

After examining the affidavit and visiting the location it described, Ceballos determined the affidavit contained serious misrepresentations. The affidavit called a long driveway what Ceballos thought should have been referred to as a separate roadway. Ceballos also questioned the affidavit's statement that tire tracks led from a stripped-down truck to the premises covered by the warrant. His doubts arose from his conclusion that the roadway's composition in some places made it difficult or impossible to leave visible tire tracks.

Ceballos spoke on the telephone to the warrant affiant, a deputy sheriff from the Los Angeles County Sheriff's Department, but he did not receive a satisfactory explanation for the perceived inaccuracies. He relayed his findings to his supervisors, petitioners Carol Najera and Frank Sundstedt, and followed up by preparing a disposition memorandum. The memo explained Ceballos' concerns and recommended dismissal of the case. On March 2, 2000, Ceballos submitted the memo to Sundstedt for his review. A few days later, Ceballos presented Sundstedt with another memo, this one describing a second telephone conversation between Ceballos and the warrant affiant.

Based on Ceballos' statements, a meeting was held to discuss the affidavit. Attendees included Ceballos, Sundstedt, and Najera, as well as the warrant affiant and other employees from the sheriff's department. The meeting allegedly became heated, with one lieutenant sharply criticizing Ceballos for his handling of the case.
Despite Ceballos' concerns, Sundstedt decided to proceed with the prosecution, pending disposition of the defense motion to traverse. The trial court held a hearing on the motion. Ceballos was called by the defense and recounted his observations about the affidavit, but the trial court rejected the challenge to the warrant.

Ceballos claims that in the aftermath of these events he was subjected to a series of retaliatory employment actions. The actions included reassignment from his calendar deputy position to a trial deputy position, transfer to another courthouse, and denial of a promotion. Ceballos initiated an employment grievance, but the grievance was denied based on a finding that he had not suffered any retaliation. Unsatisfied, Ceballos sued in the United States District Court for the Central District of California, asserting, as relevant here, a claim under Rev. Stat. § 1979, 42 U. S. C. § 1983. He alleged petitioners violated the First and Fourteenth Amendments by retaliating against him based on his memo of March 2.

HOLDING: U.S. District Court properly granted summary judgment to the employer, dismissing Ceballos’ lawsuit. “When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom. See, e. g., Waters v. Churchill, 511 U. S. 661, 671 (1994) (plurality opinion) (‘[T]he government as employer indeed has far broader powers than does the government as sovereign’). Government employers, like private employers, need a significant degree of control over their employees' words and actions; without it, there would be little chance for the efficient provision of public services.”

We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

See article about decision: May 1, 2017: Public Employees, Private Speech: 1st Amendment doesn't always protect government workers – American Bar Association Journal
https://www.abajournal.com/magazine/article/public_employees_private_speech

“The so-called Pickering-Connick balancing test served as the legal lodestar for several decades until the U.S. Supreme Court introduced a categorical threshold test. In Garcetti v. Ceballos (2006), the court declared that when public employees make statements pursuant to their official job duties, they have no free speech protection at all—even if the speech blows the whistle on alarming governmental corruption. The Garcetti decision left many public employees without a constitutional remedy, forcing them to rely on whistleblower statutes, which vary from state to state and may not protect their speech. Garcetti has had an indelible impact on free speech cases of public employees. In
fact, many plaintiffs attorneys refer to the phenomenon of being ‘Garcettized.’ However, 
Garcetti often doesn’t control public employee online-speech cases, as the employees 
often are not engaging in official, job-duty speech when they post online comments. 
Nonetheless, public employees often lose free speech cases because courts defer to an 
employer’s judgment that the employee’s inflammatory posts will cause disharmony or 
make the public view the public employer with derision or disrespect.”

Dec. 6, 2004: U.S. SUPREME COURT: City of San Diego 
**POLICE OFFICER STRIPPING WHILE WEARING PD UNIFORM – TERMINATED – LAWSUIT PROPERLY DISMISSED**

“Respondent John Roe, a San Diego police officer, made a video showing himself stripping off a police uniform and masturbating. He sold the video on the adults-only section of eBay, the popular online auction site. His user name was “Codestud3@aol.com,” a word play on a high priority police radio call…. The uniform apparently was not the specific uniform worn by the San Diego police, but it was clearly identifiable as a police uniform. Roe also sold custom videos, as well as police equipment, including official uniforms of the San Diego Police Department (SDPD), and various other items such as men’s underwear. Roe’s eBay user profile identified him as employed in the field of law enforcement.

Roe’s supervisor, a police sergeant, discovered Roe’s activities when, while on eBay, he came across an official SDPD police uniform for sale offered by an individual with the username ‘Codestud3@aol.com.’ He searched for other items Codestud3 offered and discovered listings for Roe’s videos depicting the objectionable material. Recognizing Roe’s picture, the sergeant printed images of certain of Roe’s offerings and shared them with others in Roe’s chain of command, including a police captain. The captain notified the SDPD’s internal affairs department, which began an investigation. In response to a request by an undercover officer, Roe produced a custom video. It showed Roe, again in police uniform, issuing a traffic citation but revoking it after undoing the uniform and masturbating.

***

Applying these principles to the instant case, there is no difficulty in concluding that Roe’s expression does not qualify as a matter of public concern under any view of the public concern test. He fails the threshold test and Pickering [v. Board of Ed. of Township High School Dist. 205, Will Cty., 391 U.S. 563 (1968)] balancing does not come into play.
Roe’s activities did nothing to inform the public about any aspect of the SDPD’s functioning or operation. Nor were Roe’s activities anything like the private remarks at issue in Rankin, where one co-worker commented to another co-worker on an item of political news. Roe’s expression was widely broadcast, linked to his official status as a police officer, and designed to exploit his employer’s image.

The speech in question was detrimental to the mission and functions of the employer. There is no basis for finding that it was of concern to the community as the Court’s cases have understood that term in the context of restrictions by governmental entities on the speech of their employees.”

https://www.oyez.org/cases/1982/81-1251

ASSISTANT DISTRICT ATTORNEY FIRED – TRIED TO DISTRIBUTE QUESTIONNAIRE TO FELLOW PROSECUTORS ABOUT OFFICE POLITICS – LAWSUIT PROPERLY DISMISSED

“The respondent, Sheila Myers, was employed as an Assistant District Attorney in New Orleans for five and a half years. She served at the pleasure of petitioner Harry Connick, the District Attorney for Orleans Parish. During this period, Myers competently performed her responsibilities of trying criminal cases.

In the early part of October, 1980, Myers was informed that she would be transferred to prosecute cases in a different section of the criminal court. Myers was strongly opposed to the proposed transfer and expressed her view to several of her supervisors, including Connick. Despite her objections, on October 6, Myers was notified that she was being transferred.

Myers again spoke with Dennis Waldron, one of the First Assistant District Attorneys, expressing her reluctance to accept the transfer. A number of other office matters were discussed, and Myers later testified that, in response to Waldron’s suggestion that her concerns were not shared by others in the office, she informed him that she would do some research on the matter.

That night, Myers prepared a questionnaire soliciting the views of her fellow staff members concerning office transfer policy, office morale, the need for a grievance committee, the level of confidence in supervisors, and whether employees felt pressured to work in political campaigns. Early the following morning, Myers typed and copied the questionnaire. She also met with Connick, who urged her to accept the transfer. She said she would “consider” it. Connick then left the office. Myers then distributed the
questionnaire to 15 Assistant District Attorneys. Shortly after noon, Dennis Waldron learned that Myers was distributing the survey. He immediately phoned Connick and informed him that Myers was creating a ‘mini-insurrection’ within the office. Connick returned to the office and told Myers that she was being terminated because of her refusal to accept the transfer. She was also told that her distribution of the questionnaire was considered an act of insubordination. Connick particularly objected to the question which inquired whether employees ‘had confidence in and would rely on the word’ of various superiors in the office, and to a question concerning pressure to work in political campaigns which he felt would be damaging if discovered by the press.”

HOLDING: The U.S. District Court judge, who ordered that Myers be re-hired, is reversed. “Myers' questionnaire touched upon matters of public concern in only a most limited sense; her survey, in our view, is most accurately characterized as an employee grievance concerning internal office policy. The limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment.”


HIGH SCHOOL TEACHER SENT LETTER TO LOCAL NEWSPAPER CRITICAL OF RECENT TAX INCREASE FOR SCHOOLS – LAWSUIT MAY PROCEED

“Appellant Marvin L. Pickering, a teacher in Township High School District 205, Will County, Illinois, was dismissed from his position by the appellee Board of Education for sending a letter to a local newspaper in connection with a recently proposed tax increase that was critical of the way in which the Board and the district superintendent of schools had handled past proposals to raise new revenue for the schools. Appellant's dismissal resulted from a determination by the Board, after a full hearing, that the publication of the letter was ‘detrimental to the efficient operation and administration of the schools of the district’ and hence, under the relevant Illinois statute, Ill.Rev.Stat. c. 122, § 10-22.4 (1963), that ‘interests of the school require[d] [his dismissal].’

HOLDING: The Illinois courts that upheld the termination are reversed.

Justice Thurgood Marshall wrote: “The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees.

***
In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. Since no such showing has been made in this case regarding appellant's letter… his dismissal for writing it cannot be upheld and the judgment of the Illinois Supreme Court must, accordingly, be reversed and the case remanded for further proceedings not inconsistent with this opinion.”
ATTACHMENT D – RECENT CASES


FIRED – VIDEOTAPE WHILE AT WORK AN ABORTION CLINIC PATIENT BEING TRANSPORTED BY AMBULANCE

Sally Passmore and Paula Thyfault and worked at a radiation therapy center in Jacksonville, FL. They are anti-abortion advocates, and while on duty from their Oncology parking lot videotaped the Jacksonville FD transport a patient from the abortion clinic next door and sharing video with friend who posted it on social media.

U.S. District Court Judge Marcia Morales Howard granted summary judgment to their employer and dismissed the lawsuit. Judge Howard wrote, “Passmore and Thyfault have failed to identify any evidence in the record from which a jury could conclude that 21st Century’s reasons for terminating each of them were false, much less, evidence that the real reason for their terminations was based on religious discrimination.”


FIRED – TWITTER ABOUT COMPANY EMPLOYEES SUPPORTING TRUMP FOR PRESIDENT

Kathleen Junglass, was Director / Vice President of HR at senior living center; her Twitter post on Jan. 24, 2016 supported Donald Trump as candidate for President.

@realdonaldtrump I am the VP of HR in a comp[any] outside of Philly[A]n informal survey of our employees shows 100% AA employees Voting Trump!
U.S. District Court Senior Judge Robert F. Kelly granted summary judgement to her employer and dismissed her lawsuit. Judge Kelly wrote, “Ms. Jungclaus fails to assert that any defamatory statements were made during these conversations or that any of the elements of defamation were met. Rather, the facts, as stated and for the purposes of this section only, show the following: an employee engaged in behavior that potentially violated a company policy; her supervisor brought the behavior to the attention of, what was in effect, a disciplinary committee; and that committee then determined that a negative employment action against the employee was appropriate. Simply because a meeting was held that determined Ms. Jungclaus should be fired, does not mean that she was defamed during that meeting.”


**FIREDD:** THREATENING FACEBOOK POSTS ABOUT CO-WORKERS AS HATERS – JURY AWARDS HER $285,000

Beth Schirnhofer worked as a billing assistant for Premier Comp Solutions, which provides services to insurance carriers, third party administrators, and employers in workers’ compensation in Pittsburg area. “Beginning in May, 2010, Ms. Schirnhofer was having panic attacks and sought mental health treatment from Jefferson Regional Medical Center, and was diagnosed with PTSD…. At some point during the day on February 5, 2014, [her Supervisor] learned from Ms. Gozner [co-worker] that Ms. Schirnhofer was posting on Facebook about haters and being bullied, but that the posts did not specifically mention work.

Her Facebook posts to co-worker included:

February 4, 2014: “I am the way I am cause I c what u do and I don’t want any part of it. Got 99 plus problems and a bitch ain’t one!!!”

February 5, 2014: (during her lunch hour at work): “I understand now y ppl who r bullied commit suicide nobody sees it and turns a blind eye....fuck it the bullies win I am done trying to deal and get through it...I have no more strengt....fml;”
U.S. Magistrate Judge Cynthia Reed Eddy granted the employer’s motion for summary judgement concerning claims of violation of FMLA; claims about violation of ADA for not accommodating her by giving more break times may proceed.

**April 12, 2019: Jury verdict for plaintiff**

“We, the jury, answer the following:

1. On Plaintiff's Americans With Disabilities Act discrimination claim, we find in favor of (circle one): Plaintiff

2. On Plaintiff's Pennsylvania Human Relations Act and Allegheny County Human Relations Act discrimination claim, we find in favor of (circle one): Plaintiff

3. On Plaintiff's Americans With Disabilities Act retaliation claim, we find in favor of (circle one): Plaintiff

4. On Plaintiff's Pennsylvania Human Relations Act and Allegheny County Human Relations Act retaliation claim, we find in favor of: Defendant

Note: Answer question 5 only if the above finding on questions 1, 2, 3, or 4 is for Plaintiff. If all above findings are in favor of Defendant, have your presiding juror sign and date this form and advise the bailiff that you've reached a verdict.

5. Do you find that Defendant would have made the same decision to terminate Plaintiff regardless of her alleged disability? Yes ✓ No ----

6. Do you find that Defendant terminated Plaintiff because she posed a direct threat to the health or safety of herself and/or others in the workplace? Yes ____ No ___ 

Notes: Answer question 7 only if you found in favor of Plaintiff on questions 1, 2, 3, or 4.

7. We find Plaintiff's damages to be (write the amount or, if none, write "none"): 

   Front pay:  $ 0

   Back pay:  $ 35,000

   Non-economic damages: $ 250,000”

**FIRED: FACEBOOK POSTS ABOUT KKK**


“Mindy Caplan was a District Manager, responsible for eight or nine Victoria Secret Stores in the Pittsburg, PA area. “During the evening hours of June 17, 2014, VSS received an anonymous ethics complaint about Caplan that mentioned, among other things, the existence of two ‘disturbing’ posts from Caplan's Facebook profile…. The ethics complaint also included accusations that Caplan made racist and derogatory remarks while on the job, and refused to hire or promote African-American candidates. ***On June 18, 2014, senior human resources generalist Laura Martinez ("Martinez") and human resources director Cassandra McBride ("McBride") received and investigated the ethics complaint against Caplan…. Martinez and McBride located the two Facebook posts identified in the ethics complaint: the first was a reposted picture depicting a person wearing a Ku Klux Klan-reminiscent white, hooded robe emblazoned with the Los Angeles Clippers logo and the number 42, and was captioned ‘Game 5 in LA is Free Sheet Night...Donald Sterling Bobble head doll night too!’; the second was a reposted picture of an African-American female named ‘Airwrecka McBride’ appearing on a local newscast, with a caption stating ‘I’ve been spelling Erica wrong my whole life.’”

June 2, 2017: Judge Upholds $1.5 Million Facebook Post Verdict  **FIRED: FIRE INVESTIGATOR – JURY AWARDS HER $1.5 MILLION**

“Chief U.S. District Judge Frank Whitney upheld Friday last month’s $1.5 million judgment against the city of Charlotte, a further setback to the city. A jury awarded former fire investigator Crystal Eschert $1.5 million because it found the Fire Department retaliated against her for complaining about the quality of renovations at a new office building renovated for Eschert and her colleagues. The city said that wasn’t true. Charlotte said she was fired for what it said was an offensive Facebook post made after riots in Ferguson, Mo. in 2014.” [https://www.charlotteobserver.com/news/politics-government/article154126809.html](https://www.charlotteobserver.com/news/politics-government/article154126809.html)

**FIRED: WHILE ON FMLA LEAVE FOR ROTATOR-CUFF SURGERY, POSTED PHOTOS ENJOYING VACATION AT BUSH GARDENS AND ST. MARTIN**

Rodney Jones worked as Activities Director at a Tampa Bay long term nursing facility. “Approximately a month after returning from FMLA leave to have rotator-cuff surgery on his shoulder, Jones was suspended and subsequently fired from his job as Activities Director…. While on the 30 days of additional leave, Jones twice visited the Busch Gardens theme park in Tampa Bay, Florida and went on a trip to St. Martin. Jones spent his time at Busch Gardens walking around and taking pictures of the park's Christmas decorations. He sent these pictures to his staff via text message, hoping to give them ideas for decorating Accentia's facilities. Jones also visited his family in St. Martin for three days. He posted photos from these trips on his Facebook page, including pictures of himself on the beach, posing by a boat wreck, and in the ocean.”

11th Circuit Court of Appeals (Atlanta; 3 to 0) held that there were factual questions about the reasons for his termination, and therefore the case was remanded back to U.S. District Court who had previously granted summary judgment to the employer.


**FIRED: TV CRIME REPORTER USED HIS FACEBOOK TO RESPOND TO VIEWER COMMENTS**

“Redford, a white male, was hired by KTBS in April of 2001 to be an on-air crime reporter. In 2008, Redford created a Facebook page. On August 30, 2012, a KTBS employee, Adam Berhiet (‘Berhiet’), sent an email to the entire KTBS news department, including Redford, describing the KTBS social media policy. The KTBS social media policy states that when an employee sees complaints from viewers, he or she should ‘not respond at all.’

***
On November 15, 2012, Redford wrote the following comment on his Facebook page:

Some moron had to go and comment under this story in the KTBS story. The only intelligent thing he had to ask was, “Does Bob Griffith still play with hamsters? ?” I get so damn tired of stupid people. What the heck purpose does that serve? ? Casey Ford is his name. Sorry, but that crap just gets on my last nerve.
On the same day that Redford was fired, Rhonda Lee ("Lee"), a black female, was also fired for violating the social media policy. Lee was an on-air KTBS personality who responded at least three times to negative viewer comments on the official KTBS Facebook page.

U.S. District Court Judge Elizabeth Erny Foote denied the employer’s motion for summary judgment. “As described above, this Court has found that Redford has presented sufficient evidence to raise a genuine dispute of material fact as to whether he was fired because he violated the KTBS social media policy. If Redford is able to prove that he was fired because of his race or sex, then he will be able to prove that KTBS knowingly issued a false statement as to the termination of his employment. As such, the Court finds that Redford has created a genuine dispute of fact as to this element of the test.”


FIRED: FACEBOOK POST THAT EMPLOYEES WHO CALLED IN SICK WERE ACTUAL AT PARTY HOSTED BY ANOTHER EMPLOYEE

“Loria Robertson (‘Robertson’), a Sam’s Club employee, hosted a party on July 4, 2010. Two Sam’s Club cashiers called in sick to attend. Robertson posted photographs of the cashiers two days later on her Facebook page. Rodriquez viewed the party photographs and posted a comment on Facebook…..

On July 6, 2010, Rodriquez publicly commented on Robertson’s Facebook page:

    I hear that Caleb didn’t show up for work on this day what’s up with that????? He is partying with you guys?? WOW and Carrie tried to call in for him and knew about this ... you guys are amazing and bold enough to post these [pictures] hahahahaha

Rodriquez realized ‘the severity’ of her comment and deleted it the same day. Nevertheless, Robertson complained to Sam’s Club that Rodriquez posted the comment.”

U.S. Court of Appeals for 5th Circuit (3 to 0) affirmed the decision of the U.S. District Court who granted summary judgment to the employer. “Sam’s Club certainly could have concluded that Rodriquez’s public comment violated its policies.”
The matter of the tenure hearing of Jennifer O'Brien, State Operated School District of the City of Paterson, Passaic County

Fired: School Teacher – Students “Future Criminals”

“There are about seven hundred students in the school, and the student body is almost entirely comprised of minority students, including African-Americans and Latinos. There were twenty-three students in O'Brien's first-grade class. Almost all were six years old. All were either Latino or African-American.

On March 28, 2011, O'Brien posted two statements on Facebook, an internet social-networking site. The first statement was, ‘I'm not a teacher I'm a warden for future criminals!’ The second statement was, ‘They had a scared straight program in school why couldn't [I] bring [first] graders?’

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Here, O'Brien claimed that her statements were addressed to a matter of genuine public concern, specifically student behavior in the classroom. The ALJ and Commissioner found, however, that O'Brien was not endeavoring to comment on a matter of public interest, that is, the behavior of students in school but was making a personal statement, driven by her dissatisfaction with her job and conduct of some of her students. The ALJ and Acting Commissioner further found that, even if O'Brien's comments were on a matter of public concern, her right to express those comments was outweighed by the district’s interest in the efficient operation of its schools. There is sufficient credible evidence in the record to support these findings. Therefore, O'Brien failed to establish that her Facebook postings were protected speech under the Pickering balancing test.”
ATTACHMENT E - NLRB

AMR CONNECTICUT SETTLEMENT – EMPLOYEE FACEBOOK POSTINGS – CALLED SUPERVIVOR “DIC” and “A SCUMBAG”

Nov. 2010: NLRB Complaint - AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 443

“At all material times, Respondent has maintained the following rules in its Employee Handbook:

(a) Blogging and Internet Posting Policy

- Employees are prohibited from posting pictures of themselves in any media, including but not limited to the Internet, which depicts the Company in any way, including but not limited to a Company uniform, corporate logo or an ambulance, unless the employee receives written approval from the EMSC Vice President of Corporate Communications in advance of the posting;
- Employees are prohibited from making disparaging, discriminatory or defamatory comments when discussing the Company or the employee's superiors, co-workers and/or competitors.”

Feb. 7, 2011: Company Settles Facebook Firing Case: An ambulance company [AMR] agrees to revise ‘overly broad’ communications rules in settling the case of an employee who was fired after criticizing her boss on the social-networking site.

A Connecticut ambulance company that fired an employee after she criticized her boss on Facebook agreed today to settle a complaint brought by the National Labor Relations Board.

The NLRB sued American Medical Response of Connecticut on October 27, 2010, claiming the employee, Dawnmarie Souza, was illegally fired and denied union representation after she posted negative comments about her supervisor to her Facebook page. According to copies of Souza's Facebook posts obtained by CNET, she called her supervisor a ‘dic’ in one and ‘a scumbag’ in another.

The closely watched case touched on whether employers have the right to discipline employees for comments they make on social-networking sites. The NLRB complaint
said Souza "engaged in concerted activities with other employees by criticizing respondent's supervisor...on her Facebook page" on November 8, 2009. Souza was fired on December 1, 2009.

In response to the NLRB complaint last year, AMR claimed Souza's comments were not protected activity. However, the NLRB contended that AMR's termination of Souza's employment violated the National Labor Relations Act, which allows employees to discuss the terms and conditions of their employment with co-workers and others.

Complicating things was that Souza, a member of the Teamsters, allegedly requested union representation during an internal AMR disciplinary process and was refused. That dispute apparently led her to post disparaging comments about her supervisor, which were posted from her home computer.

Under the terms of the settlement, AMR agreed to revise ‘overly broad rules’ in the employee handbook regarding how employees can communicate on the Internet and with co-workers regarding their work conditions, the board said. The company also agreed to not discipline employees for requesting union representation.”

March 7, 2011: NLRB v. American Medical Response: A Rare Case of Protected Employee Speech on Facebook:

“In this case, the NLRB simply clarified that these generally permissible policies regulating free speech are not permissible if they interfere with employees’ rights to organize labor unions and engage in concerted activities. It seems like a tough call to say that nasty comments, calling one’s boss a ‘dick’ and ‘scumbag,’ are protected. However, Souza’s case is stronger than most cases of employee disparagement. Here, not only did other co-workers post their support on the issue, but the reason she posted them in the first place was because she was denied Union representation. These seem to be key factors that led the NLRB to view Souza’s comments as protected ‘concerted activities.’”

NATIONAL LABOR RELATIONS ACT, Section 7 states:

“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection…”

In 2018, the United States Supreme Court issued an opinion in Epic Systems Corp. v. Lewis, May 31, 2018; https://www.oyez.org/cases/2017/16-285
“Since the [Labor] Act’s earliest days, the [Labor] Board and federal courts have understood § 7’s ‘concerted activities’ clause to protect myriad ways in which employees may join together to advance their shared interests.” For example, a confidentiality rule could violate the statute if it prevented employees from sharing information about pay or company practices. If an employee publicly complains about the employer, even if it is aggressive, inflammatory, or false, it could be protected by the NLRA law.”

RECENT CASES


“The Respondent discharged employee Audelia Santiago at least in part because she violated its rule 9 by posting certain comments on Facebook on June 27, 2014. As noted above, there are no exceptions to the judge’s finding that Rule 9 is unlawfully overbroad. Applying Continental Group, Inc., 357 NLRB 409 (2011), and Double Eagle Hotel & Casino, 341 NLRB 112 (2004), enf’d. 414 F.3d 1249 (10th Cir. 2005), the judge found that Santiago’s discharge was unlawful because the termination was imposed pursuant to an overly broad rule, and the conduct for which Santiago was discharged touched the concerns animating Sec. 7 of the Act. [Note: In 2005, the 10th Circuit in Double Eagle held that the casino’s following employee handbook rule was too broad:

“Never discuss Company issues, other employees, and personal problems to or around our guests. Be aware that having a conversation in public areas with another employee will in all probability be overheard.”
https://casetext.com/case/double-eagle-hotel-casino-v-nlrb
The National Labor Relations Board orders that the Respondent, Tinley Park Hotel and Convention Center, LLC, Tinley Park, Illinois, its officers, agents, successors, and assigns, shall 1. Cease and desist from:

(a) Maintaining any rule that prohibits employees from discussing their wages and other terms and conditions of employment with employees and nonemployees.

(b) Maintaining an overly broad rule that prohibits discourteous or disrespectful treatment of guests, visitors, supervisors, or fellow associates.

(c) Maintaining an overly broad rule that prohibits disloyalty, including disparaging or denigrating the food, beverages, or services of the Respondent, its guests, associates, or supervisors by making or publishing false or malicious statements.

(d) Maintaining an overly broad rule that prohibits any other conduct that the Respondent believes has created, or may lead to the creation of, a situation that may disrupt or interfere with the amicable, profitable and safe operation of the Respondent.

(e) Discharging or disciplining employees for violating an overly broad and unlawful rule.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”


“The Region submitted this case for advice as to whether certain provisions of the Employer’s Social Media Policy violate Section 8(a)(1) of the Act.1 We conclude that provisions of the policy prohibiting employees from posting inaccurate or false information about the Employer and requiring employees to keep confidential the Employer’s policies and procedures place a disproportionate adverse impact on NLRA rights and therefore violate Section 8(a)(1).
The Employer [rehabilitation center and nursing home near Pittsburg] also has an Employee Handbook with various rules, including a Social Media Policy. The Social Media Policy is over two pages long. Underneath the main heading “GUIDELINES,” the Employer defines “social media” to include all means of communicating or posting information or content of any sort on the Internet, including to your own or someone else’s web log or blog, journal or diary, personal web site, social networking or affinity website, web bulletin board or a chat room, whether or not associated or affiliated with Friendship Ridge, as well as any other form of electronic communication. The policy is then delineated under several subheadings in bold font, including “Be respectful,” “Be honest and accurate,” and “Post only appropriate and respectful content.”

The Employer provided no specific justification for maintaining any aspect of its Social Media Policy, despite the Region repeatedly requesting that information.

file:///C:/Users/lawre/AppData/Local/Temp/Social%20Media%20Case.pdf

ARTICLES ABOUT NLRB SOCIAL MEDIA DECISIONS

2020: SOCIAL MEDIA POLICIES, CORPORATE CENSORSHIP AND THE RIGHT TO BE FORGIVEN: A PROPOSED FRAMEWORK FOR FREE EXPRESSION IN AN ERA OF EMPLOYER SOCIAL MEDIA MONITORING
https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1602&context=jbl

“The National Labor Relations Board has stated that Section 7 protections extended to the following employee social media speech: (1) a paramedic posting derogatory comments about her supervisor and discussing supervisory actions online with coworkers after being denied union representation during a work-related dispute; (2) tweeting about the status of ongoing union negotiations; (3) Facebook discussions about how employees were being treated by the employer at work in terms of work assignments and compensation; (4) an employer’s ‘pre-emptive’ firing of an employee due to fear of the consequences of the employee’s Facebook postings about sexually-derogatory comments directed at her in the workplace; (5) Facebook postings among employees regarding another employee’s promotion and mismanagement; (6) Facebook postings among employees criticizing a supervisor’s attitude and performance; (7) multiple Facebook postings criticizing management, which were widely followed by fellow employees; (8) five employees complaining on Facebook about a coworker’s conduct; (9) employees criticizing, in a Facebook conversation, the employer’s inaccurate payroll tax withholding, with one employee “liking” the conversation, and (10) employees complaining on Facebook about late paychecks.”
https://scholarship.law.upenn.edu/jbl/vol14/iss4/3/
ATTACHMENT F – OTHER RESOURCES

Prof. Bennett’s monthly Fire & EMS Law newsletters: just send him e-mail at lawrence.bennett@uc.edu

See recent Newsletters: 
https://ceas.uc.edu/academics/departments/aerospace-engineering-mechanics/fire-science/fire-service-law.html

FIRE & POLICE RESOURCES


- The Rules
  1. Your First Amendment rights are very limited. (00:07:04)
  2. Just because something is an Internet meme doesn’t mean you can post it. (00:08:40)
  3. Nothing you post online is truly private. Check your privacy settings. But remember nothing you post is truly private. (00:09:41)
  4. Before posting, ask yourself: if my employer receives a complaint about what I’m going to post, how will it react? If the answer is “not so well” or “they’ll start a disciplinary investigation,” is the post really worth it? (00:10:18)
  5. Be positive with your posts, not negative and critical. (00:10:48)
  6. If you have the slightest doubt about whether to post something, sleep on it. Ask a fellow officer, one you think of as responsible and serious, what he/she thinks. (00:11:27)
  7. Think: Who are your “friend.” (00:12:35)
  8. Ask yourself – can someone figure out that I’m a police officer from my social media profile or my prior posts? (00:13:20)
  9. Your credibility can be called into question by what you’ve posted online. (00:14:14)
10. Think about your job, your family, and your safety. (00:14:52)

**Oct. 3, 2017: Social Media Policy for the Fire Service - How to craft an effective social media policy for your department:**
https://www.powerdms.com/blog/social-media-policy-fire-service/

**Nov. 2, 2012: City Fire Department implements new social media policy - Kevin Rector, The Baltimore Sun:**

**Dec. 15, 2010: Social media policies: What you need to know - A poorly drafted social media policy at your department can create unexpected sources of liability:**

**OTHER RESOURCES**

**July 27, 2020: State Social Media Privacy Laws**

“State lawmakers began introducing legislation beginning in 2012 to prevent employers from requesting passwords to personal Internet accounts to get or keep a job. Similar legislation prohibits colleges and universities from requiring access to students’ social media accounts. Twenty-six states have enacted laws that apply to employers; 16 apply to educational institutions, and one (Wisconsin) applies to landlords, as shown below. In addition, Maine and Vermont authorized studies. In 2016, the Uniform Law Commission adopted the [Employee and Student Online Privacy Protection Act](https://www.ncsl.org/research/telecommunications-and-information-technology/state-laws-prohibiting-access-to-social-media- usernames-and-passwords.aspx).”
Feb. 6, 2020: What Employers Should Consider When Drafting A Social Media Policy
https://www.forbes.com/sites/alonzomartinez/2020/02/06/what-employers-should-consider-when-drafting-a-social-media-policy/#7a0ad8901d6e

“The Washington Post recently found itself in the crosshairs of a social media uproar after it suspended one of its journalists over a single tweet. Following the death of basketball star Kobe Bryant, Felicia Sonmez tweeted a link to a 2016 story detailing rape allegations raised against Bryant in 2003. The response by the Twittersphere was swift and furious, as the reporter received backlash, including physical threats, and was then placed on administrative leave by her employer pending a review and investigation against their social media policy.

The Post took action alleging “[Sonmez’s] tweets displayed poor judgment that undermined the work of her colleagues.” But over 400 Post employees disagreed, with many contending the reporter had not violated the Post’s social media guidelines because Sonmez merely tweeted a factual statement. After reviewing the reporter’s social posts, the Post conceded Sonmez did not violate their policy and permitted her to return to work.

We urge The Post to immediately provide Felicia with a security detail and take whatever other steps are necessary to ensure her safety, as it has done in the past when other reporters were subject to threats. The company should issue a statement condemning abuse of its reporters, allow Felicia to return to work, rescind whatever sanctions have been imposed and provide her with any resources she may request as she navigates this traumatic experience.  https://docs.google.com/document/d/1ErQ7bN352jQZ0Ka8kCzAW8CWrtzEnUtvms5BG2Kdt1E/preview
"The Court carved a narrow exception in Lane v. Franks, when it protected employee speech made during compelled testimony.51 Most recently, the Court in Heffernan v. City of Paterson reintroduced the idea of evaluating an employer's motive in retaliation when it held that an employer's mistaken belief did not shield him from liability.52 As a result of these narrow restrictions, a large swath of public employee speech falls outside the scope of the First Amendment.

Footnote 51: See Lane v. Franks, 134 S. Ct. 2369, 2380 (2014) (holding that employee speech made during trial is protected citizen speech).

Footnote 52: See Heffernan v. City of Paterson, 136 S. Ct. 1412, 1418 (2016) (determining that an employer's motive matters in a retaliation claim when a supervisor demoted a police officer after he saw him carrying a campaign sign for a mayoral candidate)."

May 6, 2019: Terrorism, Violent Extremism, and the Internet: Free Speech Considerations


FBI, What We Investigate: Terrorism, https://www.fbi.gov/investigate/terrorism(last visited Apr. 23, 2019) (citing the internet, the use of social media, and “homegrown violent extremists,” which the FBI defines as “global-jihad-inspired individuals who are based in the U.S.,” as “[t]hree factors [that] have contributed to the evolution of the terrorism threat landscape”).
University of Cincinnati
Promoted to Professor - Educator (8/2019); Program Chair, Fire Science &
Emergency Management (2009 – present); promoted to Associate Professor - Educator (2012); joined UC 2007.

Law
Katzman, Logan, Halper & Bennett, 9000 Plainfield Road, Cincinnati, OH (partner: 1992 – 2007) (Of Counsel, 2007 -
present); lbennett@katzmanlaw.com (513-793-4400)

Education
Juris Doctor - Washington College of Law, Wash. D.C.
(1970);
B.A. – Gov’t & Pol. Science, American University,
Wash. D.C. (1967);
Ohio certified FF I / EMT-B (1979 – present)
Textbooks / Other Publications


LEGAL LESSONS LEARNED (2020): case summaries since 2018 from newsletters, updated monthly at UC Libraries Scholar@UC: [https://scholar.uc.edu/concern/documents/j098zc50w?locale=en](https://scholar.uc.edu/concern/documents/j098zc50w?locale=en);

FIRE & EMS LAW Newsletters (2020): monthly review of recent court decisions; [https://ceas.uc.edu/academics/departments/aerospace-engineering-mechanics/fire-science/fire-service-law.html](https://ceas.uc.edu/academics/departments/aerospace-engineering-mechanics/fire-science/fire-service-law.html);


New UC Courses Terrorism For Emergency Responders (2019); UAVs (Drones) For Emergency Responders (2018); Community Paramedicine (2017).

Fire & Public Service Activities


SW Ohio Peer Support Team 2019 - present

SW Ohio Critical Incident Stress Mgt Team 2018 – present; also 1994-2013

FBI – InfraGard 2017 - present

Hamilton County Local Emerg. Planning Committee 2015 - present

Greater Cincinnati HAZMAT Unit 2013 – present

Hamilton County Fire Chiefs Association 2013 – present

Therapy Pets of Greater Cincinnati 2008 – present * Cincinnati Enquirer article: [https://www.catsober.org/siteCat/assets/File/Pet%20Therapy%20at%20CAT%20ENQ%20front%20page%206_11_19.pdf](https://www.catsober.org/siteCat/assets/File/Pet%20Therapy%20at%20CAT%20ENQ%20front%20page%206_11_19.pdf)

Other Employment

Adjunct Prof, Cincinnati State 2000 – present

VP / General Counsel, Johnson & Hardin Printing Co. 1992-1997

GE Aircraft Engines - Corporate Attorney/International 1979–1992
