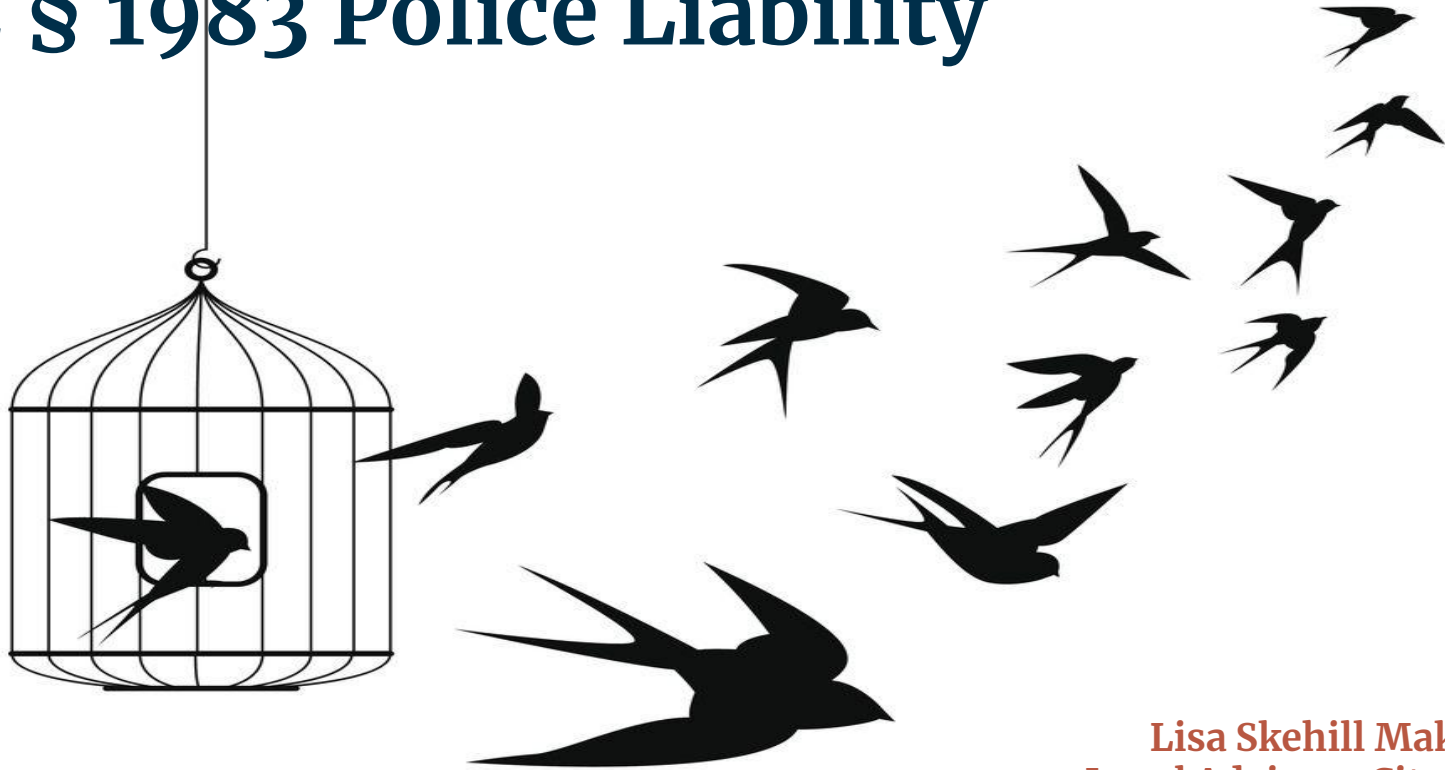
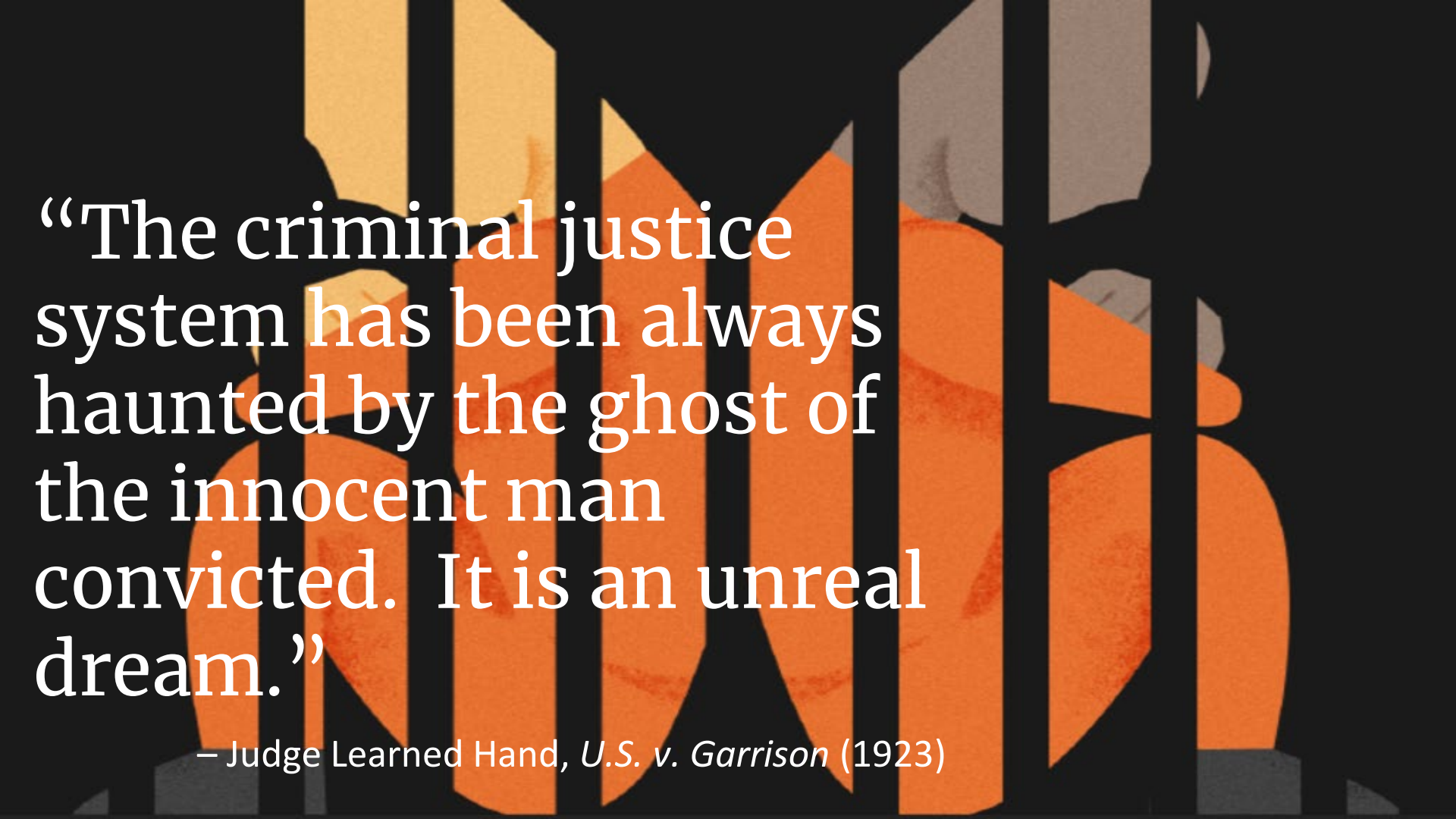


Wrongful Convictions: An Overview of 42 USC § 1983 Police Liability



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IMLA 2022 Mid-Year Seminar
Washington D.C.



“The criminal justice system has been always haunted by the ghost of the innocent man convicted. It is an unreal dream.”

– Judge Learned Hand, *U.S. v. Garrison* (1923)

3,039

wrongfully convicted people have been exonerated since 1989 according to the National Registry of Exonerations

The National Registry
of
EXONERATIONS

3,000

Exonerations
since 1989

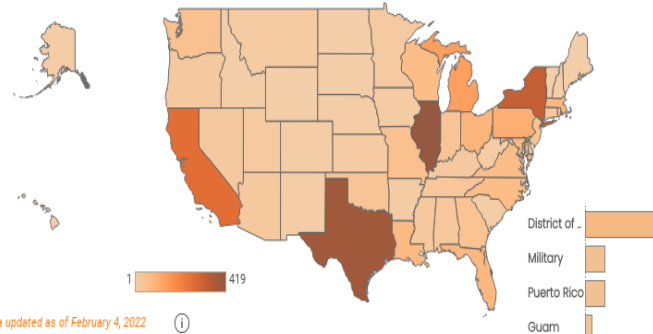
26,710

Years Lost -
Total

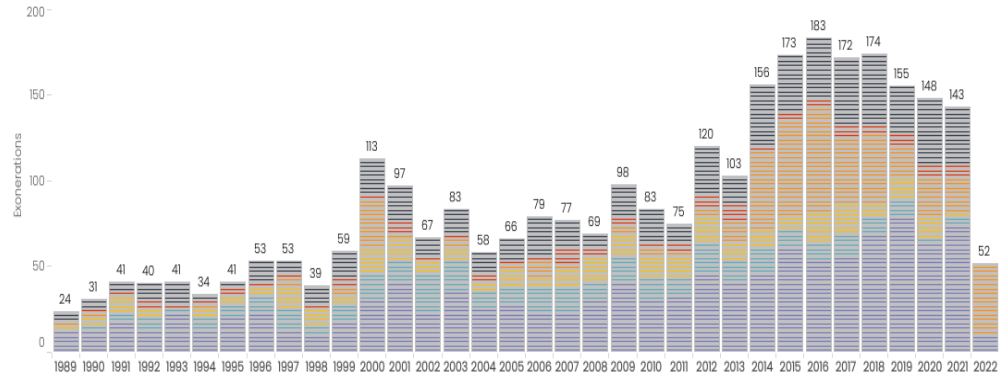
8.9

Years Lost -
Avg./Case

Exonerations by State



Exonerations Total by Year



Contributing Factors	
Mistaken Identification	<input type="checkbox"/> Absent <input type="checkbox"/> Present
False Confession	<input type="checkbox"/> Absent <input type="checkbox"/> Present
Bad Forensic Evidence	<input type="checkbox"/> Absent <input type="checkbox"/> Present
Perjury / False Accusation	<input type="checkbox"/> Absent <input type="checkbox"/> Present
Official Misconduct	<input type="checkbox"/> Absent <input type="checkbox"/> Present
Crime	
Murder	<input type="checkbox"/> 1,139 (38%) <input type="checkbox"/> Death Sentence
Sexual Assault	<input type="checkbox"/> 349 (12%) <input type="checkbox"/> Sentence
Child Sex Abuse	<input type="checkbox"/> 299 (10%) <input type="checkbox"/> (All) ▾
Drugs	<input type="checkbox"/> 453 (15%)
Robbery	<input type="checkbox"/> 613 (20%)
Other	<input type="checkbox"/> 613 (20%)
Race/Ethnicity	
Black	<input type="checkbox"/> 1,522 (51%)
Hispanic	<input type="checkbox"/> 364 (12%)
Other	<input type="checkbox"/> 0
Don't Know	<input type="checkbox"/> 0
White	<input type="checkbox"/> 1,038 (35%)
Gender	
Male	<input type="checkbox"/> 2,740 (91%)
Female	<input type="checkbox"/> 260 (9%)
Additional Aspects	
DNA	<input type="checkbox"/> Absent <input type="checkbox"/> Present
Guilty Plea	<input type="checkbox"/> Absent <input type="checkbox"/> Present

Dashboard designed by



Murder

Sexual Assault

Child Sex Abuse

Drugs

Robbery

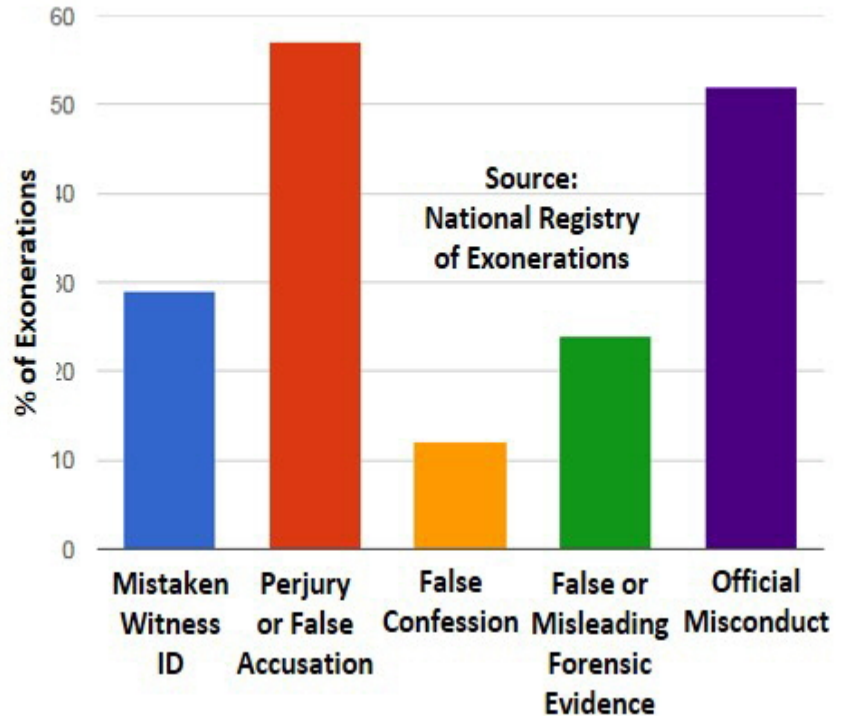
Other

+ a b l e u

54% of Wrongful Convictions Caused by Government Misconduct

-National Registry of Exonerations

- 35% police misconduct
- 30% prosecutorial misconduct
 - ◆ Some involve both prosecutorial and police misconduct
- 24% false or misleading forensic evidence
- 27% false or mistaken witness identification
- 61% perjury or false accusation
- 12% false confession



Due Process Claims

No [] State shall deprive any person of life, liberty, or property, without due process of law.

U.S. Const., Amdt XIV

- Failure to Disclose Exculpatory Evidence (Brady)
- Fabricated Evidence
- Failure to Preserve Exculpatory Evidence
- Reckless Criminal Investigation (8th Cir.)
- Coerced Confessions/ Witness Statements

Sixth Amendment claims

In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence at all critical stages of the criminal proceedings including interrogation by the State.

U.S. Const., Amdt VI

- Post-indictment interrogation
- Line-up conducted without defense counsel
- Use of jailhouse informants to solicit confession/information from defendant

Fifth Amendment claims

No person . . . shall be compelled in any criminal case to be a witness against himself.

U.S. Const., Amdt. V.

- Coerced confessions introduced at trial
- Post-*Miranda* interrogation



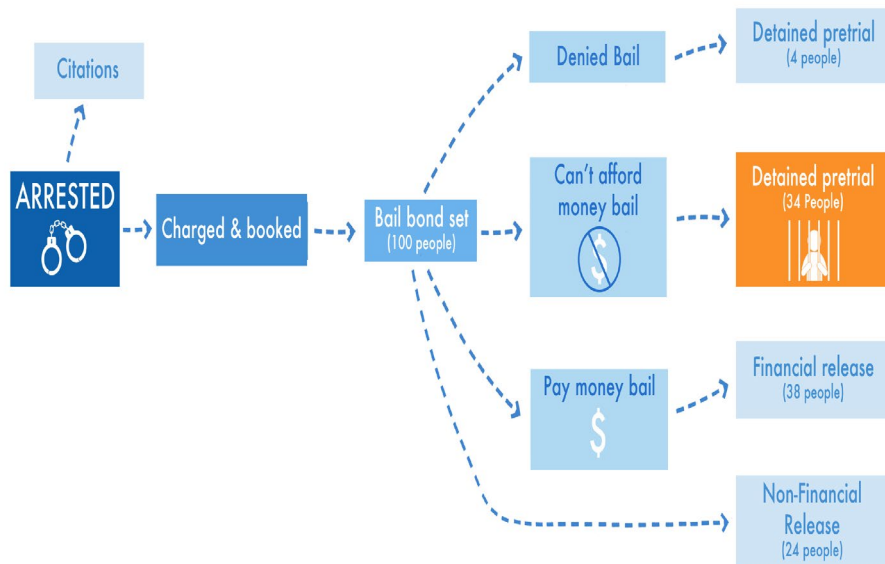
Fourth Amendment claims

The right . . . 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. . .

U.S. Const., Amend. IV

→ Malicious prosecution for retrial detention without probable cause

The Path from Arrest to Pretrial Detention



Prosecutorial Immunity

- Prosecutors have absolute immunity from Section 1983 liability arising from a wrongful conviction for acts intimately associated with the judicial phase of criminal process. *Imbler v. Pachtman*
- Prosecutors can be sued under Section 1983 for administrative and investigative work that are not related to their preparation for trial or hearings. *Buckley v. Fitzsimmons*
 - ◆ Ex. knowingly procuring false testimony during interrogation
- Some courts have held that absolute immunity extends to post-trial withholding of evidence if prosecutor is associated with the appeal.



Favorable Termination Rule

Heck v. Humphrey

Favorable Termination Rule



- Cannot pursue monetary damages for wrongful conviction through a Section 1983 claim without first demonstrating that conviction was terminated in his/her favor. *Heck v. Humphrey*
- Cannot overturn a conviction through a Section 1983 claim. *Preiser v. Rodriguez*
- Can pursue a Section 1983 claim where claim would not contradict the underlying conviction. *Nelson v. Campbell*
- Conviction obtained through plea agreement and Section 1983 claim would not be inconsistent with conviction. *Rollins v. Willett*

Section 1983 Claim Accrual Under *Heck*

- Statute of limitations for Section 1983 claims is governed by individual state's tort law.
- Plaintiff may bring 1983 claim that calls into question a prior criminal conviction only after the conviction has been favorably terminated.
- 1983 claims (false arrest, excessive force, etc.) that do not call into question the validity of a conviction, accrue at the time the conduct occurred.
 - ◆ Note: Where the plaintiff is no longer in custody and cannot challenge the underlying conviction through a *habeas* petition, the claim accrues at the time the prisoner is released from custody. *Povetund v. City of New York*

Fabricated Evidence

Evidence Fabrication

Presentation of evidence known to be perjured is a violation of the defendant's due process rights. *Mooney v. Holohan* (1935)

Procuring convictions by presentation of testimony known to be perjurious applies to law enforcement officers. *Pyle v. Kansas* (1942)

Duty to Correct False Evidence

“Conviction through use of false evidence is a due process violation not only when known to be such but also when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue v. Illinois* (1954)

Fabrication of Evidence: Elements

- ❑ Investigating official (can include prosecutor) fabricated evidence
- ❑ Fabricated evidence was likely to influence jury
- ❑ Evidence was introduced at trial
- ❑ Suffered a deprivation of liberty as a result
- ❑ Fabricated evidence caused the conviction

Brady v. Maryland


Withholding of evidence violates due process where the evidence is material either to guilt or to punishment.

Kyles v. Whitley (1965)

Brady obligation is extended to police

- *Brady* extended to evidence known only to police investigators and not to the prosecutor. Prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including police.
- Courts have extended this obligation to police as one of an affirmative duty to disclose.

Brady duty to disclose exculpatory evidence



Concealing exculpatory evidence, also known as a **Brady violation**, is the most common form of official misconduct and a leading cause of wrongful conviction.

Source: National Registry of Exonerations

- Some courts hold duty to disclose extends even after trial. *But see Gavitt v. Born* (6th Cir. 2016)
- May require disclosure of “new” evidence discovered post-trial
- No duty to disclose evidence a defendant already knows about

42 U.S.C. § 1983: Elements of a *Brady* Claim

- ❑ Evidence must be **favorable** to the accused:
 - ❑ Exculpatory; or
 - ❑ Impeaching;
- ❑ **Withheld** by the state willfully or inadvertently
- ❑ **Prejudice** must have ensued
- ❑ **Material** to guilt or punishment



Suppressed/Withheld by Police



- ❑ Police (versus prosecutor who is entitled to absolute immunity) must have withheld the evidence
- ❑ If defense knew about the exculpatory evidence prior to trial, it is not a *Brady* violation
- ❑ Once police turn evidence over to prosecutor *Brady* is satisfied
 - ❑ *Brady* not satisfied where police turn over exculpatory evidence to prosecutor who is conspiring to frame the defendant *Whitlock v. Bruggemann*

Materiality

Depends on the value of the evidence relative to the other evidence mustered by the state

- Evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different
- Reasonable probability is a probability sufficient to undermine confidence in the outcome

Causation

BUT FOR CAUSATION

Section 1983 claims under *Brady* require the Plaintiff to prove that conviction would not have occurred but for the wrongful withholding of exculpatory evidence

SUPERSEDING/INTERVENING CAUSE

Where a prosecutor introduces evidence obtained through a coercive confession or suggestive lineup and the judge allows it (and the coercive and suggestive tactics have been disclosed and/or are known to the prosecutor and defense), officer liability is cut off. *Wray v. City of New York*, 490 F.3d 189 (2d Cir. 2007).

Police Officer's State of Mind

- An official's negligence cannot support § 1983 due process claim. *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)
- Some courts require a showing of "bad faith," (i.e. intentional withholding of evidence)
- Some courts require a showing of deliberate or reckless indifference
- Others have held officer knowledge or reason to know is sufficient to state a *Brady* claim.

Duty to Preserve Evidence

An officer violates an individual's Fourteenth Amendment due process right if he destroys potentially useful evidence in bad faith

- Stems from *Brady* obligation to turn over exculpatory evidence
- Due process requires that evidence be preserved if it might be expected to play a significant role in the suspect's defense
- Evidence must be material and possess exculpatory value that was apparent before evidence was destroyed and defendant would be unable to obtain comparable evidence by other reasonably available means.
- No duty to preserve evidence the State did not possess

Coerced Confessions



Procedural Due Process

A violation of the Fifth Amendment right against self-incrimination occurs when one has been compelled to be a witness against himself in a criminal case.

A coerced confession that is introduced at trial also violates one's due process rights when the coerced confession is not disclosed.

A coerced confession that is obtained but not used in a legal proceeding is **not** a constitutional violation.

Substantive Due Process

Fourteenth Amendment substantive due process claim may be based on police torture or other abuse that results in a confession.

“Convictions based on evidence obtained by methods that are so brutal and offensive to human dignity that they shock the conscience violate the Due Process Clause.”
Chavez v Martinez, 538 U.S. 760, 774 (2003).

Coerced Witness Testimony

- Coercion of a witness to testify is not in and of itself a violation of the criminal defendant's constitutional rights (albeit may be a violation of witness's rights)
- Violation of due process occurs where coerced testimony is introduced and the coercive tactics (payment, undue pressure, etc.) are not disclosed, i.e. *Brady* violation
 - ◆ Rationale: coerced witness testimony is not necessarily false
- If coerced witness testimony is false and there is evidence that law enforcement helped fabricate the false testimony or knew it to be false and did not disclose it, it is a due process violation under *Mooney* and/or *Brady*

Suggestive Identifications



- Unduly suggestive identification can be a due process violation if introduced at trial
- Judge's admission of suggestive identification may break causal chain *if* the unduly suggestive procedure was accurately disclosed
- If unduly suggestive procedure is suppressed by police, it may form the basis of a due process violation under *Mooney* or *Brady*

Sixth Amendment claims

Evidence obtained in violation of Sixth Amendment gives rise to a Section 1983 claim only if the unlawfully obtained evidence is introduced at trial

- Once judicial process has been initiated, the 6th Amendment guarantees a defendant the right to counsel at all critical stages of the criminal proceedings
- Post-indictment interrogation or line-up conducted without defense counsel
- Jailhouse informants invoke 6th Amendment rights if information was obtained at direction of police

Fifth Amendment claims

Coerced confessions violate the Fifth Amendment when they are introduced at trial

- A violation of the Fifth Amendment right against self-incrimination occurs only if one has been compelled to be a witness against himself in a criminal case
- A coerced confession that is obtained but not used in a legal proceeding is **not** a constitutional violation
- Fifth Amendment Section 1983 claim may accrue at the time the coerced confession is introduced at trial and is not deferred by *Heck* favorable termination rule.
Simmons v. O'Brien (8th Circuit 1995)

Fourth Amendment Claims

Pretrial detention unsupported by probable cause violates the Fourth Amendment.

- A criminal prosecution was initiated against plaintiff and the police officer made, influenced, or participated in decision to prosecute
- The prosecution lacked probable cause
- Plaintiff suffered a deprivation of liberty apart from the initial seizure including continued detention without probable cause
- Resolved in plaintiffs' favor
- Don't have to be convicted to bring Fourth Amendment malicious prosecution claim

Qualified Immunity

- Police officers entitled to qualified immunity from Section 1983 liability arising from a wrongful conviction if the law was not clearly established at the time the conduct occurred.
 - ◆ Certain circuits require fact-specific clearly established conduct
 - ◆ Others review generally whether conduct was clearly established
- Police officers absolutely immune from liability for testimony during trial.

Municipal Liability



- Plaintiff must show constitutional violation was directly attributable to municipal custom, policy, or practice
 - ◆ Training—failure to train officers to disclose evidence
 - ◆ Custom/Practice—practice of maintaining separate police files
 - ◆ Policy
- Municipality not entitled to qualified immunity
- Municipality held to standard of law at time of suit, not time of violation
 - ◆ Example: Chicago “street files” cases, policy of using coercive interrogation tactics, fabricating evidence, etc.

Damages

Jury awards average \$1 million dollars per year of incarceration

- Account for lost wages, medical or psychiatric expenses, pain and suffering, emotional distress, and reputational damage.
- Mitigating Damages:
 - ◆ plaintiff would have been in jail for a separate crime
 - ◆ Plaintiff is/was actually guilty but did not receive a fair trial

Recent Jury awards and Settlements

Jury Verdicts:

- *McCollum, et al. v. Robeson County, et al.*: Sec 1983 claim for coerced confessions that resulted in conviction and sentence to death resulted in \$75 million dollar verdict which was \$1 million per year for each brother plus punitive damages.
- *Rivera v. City of Chicago*: Sec. 1983 claim for witness coercion resulted in \$17 million for 21 years in prison

Settlements:

- In 2017, City of Chicago paid out \$31 million to four plaintiffs who were coerced into confessing to rape and murder and spent 17 years each in prison
- In 2021, jury awarded \$25 million to a man wrongfully convicted for 23 years.
- New York City has paid \$43 million dollar in wrongful conviction settlements since between July 2021 and March 2022.
- City of Chicago has paid more than \$100 million in wrongful conviction settlements and verdicts stemming from one Chicago detective.

Recent Noteworthy Cases

- Vega v. Tekoh, 142 S.Ct. 585 (cert granted):
 - ◆ US Supreme Court has taken up the question involving a Circuit split as whether a police officer's failure to provide *Miranda* warnings give rise to an independent Section 1983 claim.
- Canen v. Champan (7th Cir. 2017):
 - ◆ Police officer entitled to qualified immunity on *Brady* due process claim for failing to disclose that he was not adequately trained on fingerprint testing.
- Stewart v. Wagner (8th Cir. 2016):
 - ◆ Police officer entitled to qualified immunity for Sixth Amendment claim for use of jailhouse informant who obtained confession through use of jailhouse informant who was told to be a "listening post" but not directed to solicit a confession.
- Thompson v. Clark (S.Ct. 2022):
 - ◆ Plaintiff not required to show that prosecution ended with an affirmative indication of innocence. Rather, the plaintiff need only show that prosecution ended without conviction.