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BRUTALITY AT THE BAR: THE SUPREME COURT AND POLICE MISCONDUCT

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St. Francis County was a rural area in east central Arkansas, and in late December 1927, the bodies of two boys were found in the local Cutoff Bayou. Julius McCollum had been 11 years old, the white son of a local store owner. Elbert Thomas, 19 years old, was Black, and the twin tragedies broke everyone in the small community near the county line. Both had been at the McCollum family store on December 29, as had Robert Bell and Grady Swain, two Black youths, eighteen and fourteen respectively. In the rush to discover what happened to the victims, a witness claimed that Bell had admitted to him on the night of the twenty-ninth that Bell had drowned Thomas and that Swain had drowned McCollum. Their race was already a source of suspicion for white law enforcement, so they were both arrested, and in the process of an "interrogation," whipped mercilessly and repeatedly, forcing both to make confessions to the crimes. Both were quickly convicted of first-degree murder by all-white juries and sentenced to death before appealing the verdicts to the Arkansas Supreme Court, which overturned the ruling. "The officers admitted whipping the defendants, but denied that they did so to obtain the confessions," the Court's decision explained. "They claimed that they whipped them because they were impudent to them, and said that the confessions were free and voluntary." Still, the Court overturned the ruling based on insufficient evidence, and thus "it will not be necessary to decide whether or not the confessions were extorted from the defendants by whipping them." The ruling, however, took pains to note that even though it wouldn't rule on the confession issue, "this court is committed to the rule that confessions used in evidence against the defendant must be free and voluntary, and they must not be extorted from them by whipping them or by any inquisitorial method."[1]

On retrial, the cases were moved to Woodruff County to avoid local furor, and the defendants were split. Robert Bell was convicted again by an all-white jury and this time sentenced to life in prison. This time the appellate court had to deal with the forced confession. Bell "told how he was made to lie upon the floor, clad only in a thin shirt and trousers, and was whipped with a leather strap attached to a handle—the strap was three and a half feet long and three inches wide."[2] That testimony was freely admitted to by law enforcement, who argued that it happened not to get a confession but instead because "he was a mean, hard-headed nigger."

> "Did you whip him at any time because he wouldn't confess and give details?" one officer was asked. "I whipped him to try to make him tell where the money was."
> Q. Not about the killing of Julius McCullom?
> A. Well, I don't know—probably I might have done that. I don't know; maybe it was in connection with the case.

DOI: 10.4324/9781003109969-26

> Q. Did he make a free and voluntary confession or not?
> A. Well, I don't know that I could say Bell ever made a free and voluntary confession. I got a confession out of him by piecemeal—it was never very free. There never was any voluntary confession coming from this big nigger."[3]

It was difficult to argue that the confession was not coerced, and the Court agreed that it was. "It was the duty of the State to affirmatively show that the confessions made to the sheriff and McCullom were given free from the undue influence under which the prior confessions were made, and this it has wholly failed to do. The only reasonable inference, from all the facts, is that such influence did remain and produce the confession."[4]

The case was an early example of police brutality being adjudicated in a state appellate court, but it went no further because it was a matter decidedly under the purview of the state. The Arkansas Supreme Court's ruling in *Bell v. State* (1929) demonstrated the importance of appellate courts, as all-white juries were likely to convict brutalized Black defendants despite incidents of police brutality. Appellate judges were more likely to weigh such issues with more consideration. But that consideration would not provide any consistency in appellate judicial thinking about the role of police brutality in due process. When such cases began to appear at the federal level and in the Supreme Court, justices were unable to formulate consistent policy, and in the process abetted the continuation of police brutality under a lenient rubric that led many officers to assume, rightly, that their crimes would not be considered crimes when push came to shove.

If there was any demonstrable trajectory of Supreme Court thinking about police brutality, it was an early protection for victims of police brutality that began to shift in the 1940s to a more vigorous protection of abusive police. The most important turning point in that transition came in the 1945 *Screws v. United States* decision wherein a divided court admittedly ruling against its own beliefs validated police brutality and damaged the Justice Department's ability to bring civil rights cases against abusive officers. The turn to validation hinged in part on states' rights claims that determination of what constituted excessive treatment should be determined by the states that employed law enforcement. But the most important factor in governing the Court's turn to protecting police abusers was the seeming inscrutability of police "willful intent" and a broad benefit of the doubt given to claims of law enforcement that officers felt threatened at the time of their violent acts. Such arguments would ensure that though the Supreme Court had an intentionally limited role in adjudicating cases of police brutality, the frayed trajectory of its rulings would cast a long shadow and create a permissive atmosphere for officers to act with relative impunity in the decades following World War II.

Seven years after *Bell*, a similar case from Mississippi finally appeared at the Supreme Court. In March 1934, three Black tenant farmers were arrested following the murder of white planter Raymond Stewart in Kemper County, in rural east central Mississippi. They were indicted on April 4 and sentenced to death on April 6, a week after the planter's death. The only evidence against the tenant farmers was confessions forced under abject torture. On appeal, the Mississippi Supreme Court decided that the torture was not a denial of due process, and that complicity ultimately led the case to the federal Supreme Court two years later.[5]

When one of the defendants protested his innocence, sheriff's deputies hanged him from a tree branch, then let him down just before he was no longer able to breathe. Then they did it again. They tied him to the tree and whipped him. He still refused to confess, but two days later they took him to jail anyway, along with his two supposed accomplices. They "were made to strip, and they were laid over chairs and their backs were cut to pieces with a leather strap with buckles on it, and they were likewise made by the said deputy definitely to understand that the whipping would be continued unless and until they confessed, and not only confessed, but confessed in every matter of detail as demanded by those present, and in this manner, the defendants confessed the crime, and as the whippings progressed and were repeated, they changed or adjusted their confession in all

particulars of detail so as to conform to the demands of their torturers."[6] It was impossible for a neutral observer to not see the actions of the deputies as a denial of due process, so the Supreme Court reversed, not only scolding the trial court, which "knew that there was no other evidence upon which conviction and sentence could be based," but also the Mississippi Supreme Court, which "denied a federal right fully established and specially set up and claimed."[7]

It was a rare rebuke of police brutality, but one that was exceedingly clear as to the role of police violence in the maintenance of Fourteenth Amendment due process rights for criminal suspects. And the rarity of the case itself in the nation's highest court seemed to be ready for revision, as in February 1939, three years after the *Brown* decision, Franklin Roosevelt's Justice Department, led by Attorney General Frank Murphy, created the Civil Liberties Unit of the department's Criminal Division, an office that would the following year change its name to the Civil Rights Section. "In a democracy, an important function of the law enforcement branch of the government is the aggressive protection of the fundamental rights inherent in a free people," said Murphy upon the Section's creation. "In America these guarantees are contained in express provisions of the Constitution and in acts of Congress"[8] It was a body that could work to prosecute rights violations in areas where police violence was accepted as routine, particularly in racialized situations, wherein suspects were members of minority groups.

And the Section was more than window dressing. In 1940, as the Civil Liberties Unit was changing its name to the Civil Rights Section, the government filed charges in the Northern District of Georgia against white Atlanta police officers who tortured young Quintar South, accused of theft, in attempting to provoke a confession. A federal district judge ruled in what became known as *United States v. Sutherland* that such abuse violated the "color of law" statute, Section 52 of Title 18 of the criminal code. "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," said the statute, "or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens," would be fined or imprisoned for up to a year. If ~~th~~ injury resulted, the penalty jumped to ten years. If the actions killed someone, or if sexual abuse was part of the injury, then life imprisonment or the death penalty was appropriate. The officer on trial for the torture of Quintar South, the judge ruled, was clearly guilty under the "color of law" statute, as well as the Fourteenth Amendment.[9]

The abuse was so obvious that the *Sutherland* case never made it further in the appellate process, but others did. *Chambers v. Florida* (1940) was not initiated by the Justice Department. On the hot night of May 13, 1933, an elderly white man named Robert Darsey was robbed and murdered in Broward County, Florida. Less than an hour after the crime, a Black man named Charlie Davis was arrested for it, and over the following day, as many as forty additional Black men were arrested and held without warrants, authorities claiming that they wanted to protect them from potential mob violence. The men were questioned in marathon sessions over five days without counsel for hours at a time until they provided confessions, and then they were further interrogated until the confessions matched the version of the story that the authorities wanted. Three of the men pleaded guilty to murder and another was found guilty by an all-white jury, based almost solely on the forced confession. All four were sentenced to death, a sentence affirmed by the Florida Supreme Court. Florida argued to the federal Supreme Court that the body didn't have jurisdiction to overturn a jury trial, but Hugo Black, writing for the majority, disagreed. The Court had jurisdiction because law enforcement violated the rights of the defendants. "The very circumstances surrounding their confinement and their questioning, without any formal charges having been brought, were such as to fill petitioners with terror and frightful misgivings," he wrote. "To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due

process of law a meaningless symbol." The Supreme Court reversed the convictions, keeping with the precedent established in *Brown*.[10]

The Court did it again four years later in *Ashcraft v. Tennessee* (1944), this time with police abuse of a white suspect. E.E. Aschraft was accused of hiring a Black man, John Ware, to kill his wife. There was little to no evidence of such a plot, but Memphis police placed Ashcraft in a small interrogation room under a hot light and questioned him constantly, in shifts, from a Saturday to a Monday, nonstop. Even then, Ashcraft, though he complained of horrific abuse, never ~~admitted to confessing~~ to the crime, though the officers claimed that he did. The murder convictions of both Ashcraft and Ware were built almost entirely on Ashcraft's supposed confession under the most extreme duress. Hugo Black again wrote the opinion of the court, reversing the conviction and arguing that Ashcraft's confession was coerced.[11] There were, however, cracks in the armor. Justice Robert H. Jackson dissented, joined by Felix Frankfurter and Owen Roberts, arguing that if "a sovereign State" had decided that the confession was satisfactory and that the federal courts had no business interceding on the defendant's behalf. "Even where there was excess and abuse of power on the part of officers, the State still was entitled to use the confession," wrote Jackson. The state was allowed to determine what constituted torture or abuse, and if the state ruled that the confession was acceptable, then federal courts needed more than just a lack of belief in their judgment to overturn a conviction.[12] The split decision demonstrated that the nascent federal consensus against police brutality was beginning to fray, an unraveling that would only be exacerbated the following year in *Screws v. United States* (1945).

The case began two years prior on January 29, 1943, when Robert Hall was arrested on suspicion that he had stolen a tire in Baker County, Georgia. He was driven by car to the courthouse in county seat Newton, but before he even entered the building, the sheriff, Claud Screws, a deputy, and a policeman began beating him with fists and blackjacks. They later claimed that he had insulted them and tried to steal one of their guns, despite the fact that he was handcuffed at the time. After thirty minutes of abuse, Hall was finally knocked unconscious. Screws and the deputies then dragged him into the courthouse by his feet and threw him into a jail cell. Hall was clearly dying, so an ambulance was called. It took him to a hospital where died within the hour without ever regaining consciousness.[13]

The Justice Department first attempted to convince Georgia authorities to prosecute the case against Screws, but both local and state authorities declined, arguing that investigating the case at the local level would require the same law enforcement that stood accused, thus making it virtually impossible to make a case in a rural part of the state where the powerful white population had no problem with the behavior of its sheriff or his deputies. And so, without any local effort, the still-new Civil Rights Section indicted on three counts, relying on Sections 51 and 52 of Title 18 of the criminal code. Section 52 was the "color of law" statute, while Section 51 made it illegal "if two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." A federal district judge threw out the charge based on Section 51, arguing that the statute was intended to deal with private rather than public citizens, but the Section 52 charges stood, and all three officers were found guilty in a federal jury trial, receiving three years in prison and a thousand dollar fine.[14]

The decisions were upheld at the federal appellate level before arriving at the Supreme Court, a body that demonstrated the fraying trajectory of past thinking about police brutality in four separate opinions written in a case that came to be known *Screws v. United States* (1945). The majority opinion came from William O. Douglas, joined by Hugo Black, Stanley Reed, and Chief Justice Harlan Stone. The first issue that the majority dealt with was a challenge based on the vagueness of the statute itself. Douglas was sensitive to the challenge but ruled that a long history of case law had given the Court good reason to deflect such a charge. He explained that the law was enacted to

enforce the Fourteenth Amendment, stemming from the Civil Rights Act of 1866, the purpose of which was "to protect all persons in the United States in their civil rights, and furnish the means of their vindication."[15] Such protection required a wide net.

But the vagueness contention was not the only potential pitfall of the law's application to the *Screws* case. A violator of the section "under color of any law, statute, ordinance, regulation, or custom, willfully subjects" someone to a deprivation of their rights, and Douglas focused his attention on the willfulness of that action. He noted that "willfully" was not added to the statute until 1909, taking from the addition a decided intent by legislators to limit the law's reach. "We think the inference is permissible that its severity was to be lessened by making it applicable only where the requisite bad purpose was present, thus requiring specific intent not only where discrimination is claimed, but in other situations as well."[16] And so any conviction must come with a finding "that petitioners had the purpose to deprive the prisoner of a constitutional right, *e.g.,* the right to be tried by a court, rather than by ordeal. And in determining whether that requisite bad purpose was present, the jury would be entitled to consider all the attendant circumstances – the malice of petitioners, the weapons used in the assault, its character and duration, the provocation, if any, and the like."[17] The trial court judge did not instruct the jury on willful intent. Instead, he told the body that "if these defendants, without its being necessary to make the arrest effectual or necessary to their own personal protection, beat this man, assaulted him or killed him while he was under arrest, then they would be acting illegally under color of law." But without willfulness, no matter how "shocking and revolting" an "episode in law enforcement," there was not guilt under the statue.[18] And so the Court, which had seemingly taken a relatively hard line against police brutality in previous cases, turned away from its own precedent and reversed the Screws conviction, in the process making convictions for police brutality charges that much more difficult for prosecutors, as the standard now required conclusive proof of willful intent. Douglas argued that since the officers claimed that they were responding to protect themselves, it was essentially the job of the prosecution to disprove such notions, despite the fact that the only witness to the case was the dead victim of police misconduct.

Owen Roberts, Felix Frankfurter, and Robert Jackson dissented, all agreeing that "this brutal misconduct rendered these lawless law officers guilty of manslaughter, if not of murder, under Georgia law." But "instead of leaving this misdeed to vindication by Georgia law, the United States deflected Georgia's responsibility by instituting a federal prosecution. But this was a criminal homicide only under Georgia law. The United States could not prosecute the petitioners for taking life. Instead, a prosecution was brought, and the conviction now under review was obtained under" Section 52, "put on the statute books on May 31, 1870, but, for all practical purposes, it has remained a dead letter all these years." Their argument was that the crime of Screws and his accomplices was unconscionable murder, but compensatory action under federal law to do something wherein a state refused to do anything was not the intention of the law itself. Section 52 "was never designed for the use to which it has now been fashioned."[19]

Frank Murphy, in a separate dissenting opinion, relieved himself of such wrangling over the finer points:

> "Robert Hall, a Negro citizen, has been deprived not only of the right to be tried by a court, rather than by ordeal. He has been deprived of the right to life itself. That right belonged to him not because he was a Negro or a member of any particular race or creed. That right was his because he was an American citizen, because he was a human being. As such, he was entitled to all the respect and fair treatment that befits the dignity of man, a dignity that is recognized and guaranteed by the Constitution. Yet not even the semblance of due process has been accorded him. He has been cruelly and unjustifiably beaten to death by local police officers acting under color of authority derived from the state. It is

> difficult to believe that such an obvious and necessary right is indefinitely guaranteed by the Constitution or is foreign to the knowledge of local police officers so as to cast any reasonable doubt on the conviction under § 20 of the Criminal Code of the perpetrators of this 'shocking and revolting episode in law enforcement.'"[20]

Reversing the Screws conviction, he argued, would be tantamount to abetting the crime after the fact, and would set a disturbing precedent that would only facilitate more police brutality. It was a conclusive and moral decision (and one that proved particularly prescient) that only served to highlight the inherent problem with the case, as the fourth opinion, written by Wiley Rutledge, went in the exact opposite direction.

Rutledge acknowledged everything that Murphy acknowledged. "The right not to be deprived of life or liberty by a state officer who takes it by abuse of his office and its power is such a right," he argued. "To secure these rights is not beyond federal power." The sections 51 and 52 "have done, in a manner history long since has validated. Accordingly, I would affirm the judgment." But voting with his beliefs was something he was unwilling to do. The Court "is divided in opinion. If each member accords his vote to his belief, the case cannot have a disposition. Stalemate should not prevail for any reason, however compelling, in a criminal cause or, if avoidable, in any other." And so his opinion concurred with that of Douglas, "in order that disposition may be made of this case."[21]

It was high-order equivocation and one that would have a devastating impact on the Civil Rights Section's ability to prosecute cases of police brutality at the federal level. Screws himself was reelected as sheriff by his white constituents and acquitted by an all-white jury in a retrial. More importantly, the requirement to prove willful intent against the word of officers themselves, combined with the dissenting view that the federal government should not even be in the business of taking such cases as civil rights violations when states should be charging them as murders or manslaughters, functionally closed the door on federal civil rights prosecutions of incidents of brutality by state and local law enforcement for the next two decades. And it did so as World War II came to a close and the era of civil rights began in earnest, only heightening the incidents of police brutality.

Those strands came together most notoriously in the case of Isaac Woodard. Nine months after the Supreme Court's *Screws* decision, on February 12, 1946, Woodard, a decorated Black veteran of the Pacific theater of World War II, returned home to South Carolina after an honorable discharge from the Army. He boarded a Greyhound bus in Augusta and argued with the driver about the ability to use the restroom at a local bus stop outside of town, prompting the driver to contact local authorities in Batesburg. They pulled Woodard from the bus and violently assaulted him in a nearby alley before taking him to jail on a charge of disorderly conduct. There they further abused him, jabbing his eyes with billy clubs and blinding him. Authorities sent him, blind, before a judge the next morning, who declared him guilty of disorderly conduct and fined him fifty dollars. It was more than two days before he was allowed to see a doctor.[22]

The violence was reminiscent of that of Screws three hundred miles southwest, but it received far more national attention because of Woodard's military service. The NAACP, under the leadership of Walter White, investigated the case and worked to publicize it. Orson Welles described the case on his national radio program, and Woody Guthrie recorded a song about the violence. In September, White met with Harry Truman at the White House, and the story he told the President led Truman to direct the Justice Department to open an investigation. Screws had all but foreclosed the possibility of civil rights charges in the case, but the bus stop where Woodard was taken happened to be on federal property and he was in his service uniform during the assault. That gave the federal government jurisdiction without requiring the use of Section 52.[23]

But jurisdiction wasn't necessarily a panacea for police violence. The Justice Department brought charges against the officers in federal district court in Columbia, South Carolina, but on November 5, they were acquitted by an all-white jury after less than thirty minutes of deliberation, even though

the local sheriff, Lynwood Shull, never denied abusing Woodw[illegible] Though prosecutors interviewed no one but the bus driver and by most accounts presented a lackluster, incomplete case, there was no appeal. Shull and his deputies were never punished.[24] If federal jurisdiction to prosecute violence was unsuccessful, and the use of federal civil rights statutes to compensate for local inaction was precluded by the Supreme Court, law enforcement officers could act with relative impunity without fearing any federal consequence.

And they did, for decades, without any real imposition by the Supreme Court. If anything, the Court actually further facilitated incidents of police brutality when in 1968, it ruled that police officers could stop and frisk suspects without probable cause, as long as the officer had a "reasonable suspicion" that a crime was being committed or would be committed. The case, *Terry v. Ohio*, did not involve an incident of police brutality, per se, as the officer frisked suspects in the process of casing a store and carrying a gun, but the lack of violence involved in the case did not abrogate the permissive ruling that gave officers the ability to claim reasonable suspicion without probable cause when stopping and frisking suspects.[25] Based on the ruling, what became known as "Terry stops" became common practice, most notoriously in New York City, where thousands of incidents of stop-and-frisk were made each year, roughly three-quarters of those incidents practiced on minorities and seventy percent of them found to be unjustified.[26]

Another consequence of the Supreme Court's inaction involved danger to police officers themselves. In June 1978, for example Terrence Johnson, a fifteen-year-old Black youth, was arrested in Prince George's County, Maryland, twelve miles from the Supreme Court building, on suspicion of stealing from coin-operated laundry machines. Though he was a minor, his parents were not notified of his arrest. Instead, officers beat him mercilessly in various rooms of the station until, attempting to protect himself, Johnson pulled the gun of one of the officers and shot him, ultimately killing two of the policemen who had abused him. At Johnson's trial, despite testimony about police brutality being suppressed, the jury did not convict him of first or second-degree murder, opting instead for a charge of voluntary manslaughter. It is possible that had testimony about the county's long history of police brutality been admitted, he would have been acquitted entirely.[27]

Johnson's case was finally adjudicated in 1981, and four years later, the Supreme Court again continued its inconsistent thinking about police brutality, obviously influenced by cases like that of Terrence Johnson. *Tennessee v. Garner* (1985) had its roots in an act of violence perpetrated more than a decade prior. On October 3, 1974, Memphis police officers witnessed a fleeing suspect from a burglary call. The suspect, Edward Garner, was 15 years old and obviously unarmed, but when he began to climb a fence to escape rather than obey an officer's demand to halt, the officer shot him in the head and killed him. Garner had stolen ten dollars from the house. The officers did not break a law, as Tennessee statute provided that "if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest." Instead, Garner's father initiated a civil suit in federal court, which finally arrived at the Supreme Court in 1985. Byron White, writing for the majority, argued that the use of deadly force was a Fourth Amendment seizure, then ruled that the seizure had to be justified. Though common law usually justified such deadly force, common law came into being at a time when most offenses were punishable by death, White reasoned. Times had changed. Deadly force, he argued, could not be used simply to prevent escape, as allowed by Memphis law. It was only justified if "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."[28]

It was a ruling that sided with Garner, but at the same time there were plenty of cases wherein deadly force was used by police in less overtly egregious manners. "Probable cause to believe" and "significant threat" were vague concepts that police could use in their favor after killing unarmed suspects. As in the *Screws* decision decades prior, which worried over "willful intent," the Court relied on officer impressions to determine justification, and when the police were the perpetrators of violence, using

their own claims about what they believed at the time of the violence to decide whether or not it was justified would obviously provide other officers with excuses for their actions.[29]

And the Court was not done. It would go even further four years later in Graham v. Connor (1989). Dethorne Graham had left a convenience store without buying anything, leading a policeman to follow him, stop him, and ultimately assault him. Graham filed suit against the officer in federal court, and though the district court and court of appeals both agreed that the officer, M.S. Connor, was liable for the attack, the Supreme Court, now complete with Ronald Reagan's conservative justices, reversed the decisions. Writing for the majority, William Reinquist argued that the only amendment that held in such cases was the Fourth Amendment, and that the Due Process Clause of the Fourteenth Amendment could not apply to such ca[illegible]. With only seizure claims being valid, then, seizure "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." The right to make arrests necessarily entailed "the right to use some degree of physical coercion or threat thereof to effect it," Reqinquist claimed. But "because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," its "proper application requires careful attention to the facts and circumstances of each particular case." Only adding insult to injury, he reasoned that "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation," and "the 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."[30] The ruling only exacerbated the permission slip that the Court had been providing in various forms since *Screws* to allow officers at least relatively free reign to use violence against suspects.

With that permission slip in place, ensconcing itself ever since the *Screws* decision in the immediate wake of World War II, the Court seemed reluctant for the rest of the century and into the twenty-first to wrestle with the issue of police brutality. In June 2020, for example, as uprisings around the country brought the issue of police brutality to a fever pitch, the Supreme Court refused to hear eight cases dealing with qualified immunity, a practice making it difficult for police officers to be held accountable and built on the reasonableness standard developed by the Court in its Fourth Amendment cases. Several months later, it heard the case of Roxanne Torres. Torres had been sitting in her car in an Albuquerque housing complex parking lot in 2014 when police officers in tactical gear arrived at the complex to serve a warrant. Torres was not the subject of the warrant, but because she saw unidentified men with weapons approaching her, she tried to drive away. The police officers responded by shooting at her thirteen times, hitting her twice. Unlike so many before her, Torres lived to sue her attackers in a case that made it to the Supreme Court.[31]

The Court, however, had been moving steadily away from the concern it showed for victims of police brutality in the 1930s, and was fully uninterested by the twenty-first century's third decade. In October 2021, the Supreme Court sided with the officers against Torres in a brief unsigned decision without any dissent. It was interpreted by pundits as an endorsement of the qualified immunity standard, requiring that plaintiffs "must not only show that the official accused of misconduct violated a constitutional right, but also that the right had been 'clearly established' in a previous ruling." Still, in two other decisions in 2021, demonstrating that the frayed edges of the Court's thinking on police brutality had not yet been stitched wholly in favor of violent law enforcement officials, the Supreme Court sided with prisoners against abusive corrections officers in unprovoked attacks. "Some cases are so egregious, the court suggested, that no precedent directly on point was necessary to allow a plaintiff to sue." But being shot two times by officers while sitting in your car was not so egregious.[32]

The Supreme Court has, perhaps intentionally, not been the principal arbiter of police brutality claims and incidents in the United States, but the evolution of its few rulings over time has had an inordinate impact on the willingness of law enforcement to engage in violent behavior. From *Screws*

forward, the Court has, through both inconsistency of application and a decided trend toward taking the word of officers over and against their victims, created a permissiveness of which law enforcement has regularly taken advantage. It is, in fact, telling that the history of a practice so prevalent in American society is so limited in its Supreme Court precedent, leading many to hope that the justices will begin to assert themselves on the issue as they have in other high-profile controversial issues, with an emphasis that harkens back to its thinking of the 1930s, rather than of the 1940s.

Notes

1 *Bell and Swain v. State*, 177 Ark. 1034, 1036 (Ark. 1928).
2 *Bell v. State*, 180 Ark. 79, 83 (Ark. 1929).
3 *Bell v. State*, 180 Ark. 79, 84 (Ark. 1929).
4 The ruling rested on *Love v. State*, 22 Ark. 226 (1860), wherein a confession was coerced by a mob not through violence but through threats. *Bell v. State*, 180 Ark. 79, 90 (Ark. 1929).
5 There were earlier cases that at least approached a consideration of police brutality without actually adjudicating the issue. *Logan v. United States* (1892) dealt with a suspect's right to be protected while in the custody of federal marshalls, not because the marshals themselves actually abused the suspect, but because a lynch mob in Indian Country sought to kill a group of suspects accused of larceny while they were in federal custody. See *Logan v. United States*, 144 US 263 (1892).
6 *Brown v. Mississippi*, 297 US 278, 282 (1936).
7 *Brown v. Mississippi*, 297 US 278, 287 (1936). For a detailed examination of the *Brown* case, see Richard C. Cortner, *A "Scottsboro" Case in Mississippi: The Supreme Court and* Brown v. Mississippi (Jackson: University Press of Mississippi, 1986). For more on Brown and its place in the Supreme Court's engagement with both police brutality and civil rights more broadly, see Marilynn Johnson, Street Justice: A History of Police Violence in New York City (Boston: Beacon Press, 2003), 146–148; and Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 117–135.
8 *Baltimore Sun*, 4 February 1938, 1.
9 *United States v. Sutherland*, 37 F. Supp. 344 (N.D. Ga. 1940); and 18 U.S. Code § 242, Deprivation of rights under color of law.
10 *Chambers v. Florida*, 309 U.S. 227, 240 (1940). For more on Chambers, see Klarman, *From Jim Crow to Civil Rights*, 227–229.
11 *Ashcraft v. Tennessee*, 322 U.S. 143 (1944).
12 *Ashcraft v. Tennessee*, 322 U.S. 143, 156 (1944). For more on police brutality in Ashcraft, see US Senate, *Confessions and Police Detention*, Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, 85 Cong., 2nd sess, 7 and 11 March 1958 (Washington: USGPO, 1958), 49; "Confessions–Admission of confession obtained after 36 hours of continuous questioning by state officers held deprivation of due process (*Ashcraft v. Tennessee*, 64 Sup. Ct. 921)," *Harvard Law Review* 57 (July 1944): 919–921; "Note on *Ashcraft v. Tennessee*," *Marquette Law Review* 28 (Summer 1944): 125–127; and "Note on *Ashcraft v. Tennessee*," *Minnesota Law Review* 28 (June 1944): 497–498. For more on police brutality in relation to forced confessions in particular, see US Senate, *Confessions and Police Detention*; and Darius Rejali, *Torture and Democracy* (Princeton: Princeton University Press, 2009), 69–74.
13 Robert K. Carr, "*Screws v. United States*: The Georgia Police Brutality Case," *Cornell Law Review* 31 (November 1945): 51–52.
14 Ibid., 50, 52–53.
15 *Screws v. United States*, 325 U.S. 91, 98 (1945)
16 Ibid., at 103.
17 Ibid., at 107.
18 Ibid., at 92, 94; and Carr, "*Screws v. United States*," 53–58.
19 *Screws v. United States*, 325 U.S. 91, 138 (1945); and Carr, "*Screws v. United States*," 61–63.
20 Ibid., at 134–135; and Carr, "*Screws v. United States*," 58–60.
21 *Screws v. United States*, 325 U.S. 91, 134 (1945). See also "Federal Prosecution of State Law Enforcement Officers under the Civil Rights Act," *Yale Law Journal* 55 (April 1946): 576–583; and Charles W. Corcoran, "Federal Court Remedies against State and Local Police Abuses: Third Degree Practices Enjoined," *Journal of Criminal Law and Criminology* 39 (No. 4 1949): 490–497; Taylor Branch, *Parting the Waters: America in the King Years, 1954–1963* (New York: Simon and Schuster, 1988), 408–409; and David Mark Chalmers, *Backfire: How the Ku Klux Klan Helped the Civil Rights Movement* (Lanham, MD: Rowman & Littlefield, 2003), 74.

22 The fullest account of the Woodard case is Richard Gergel, *Unexampled Courage: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring* (New York: Farrar, Straus and Giroux, 2019). But it is not the only one. See, for example, Tinsley E. Yarbrough, *A Passion for Justice: J. Waties Waring and Civil Rights* (New York: Oxford University Press, 1987), 48–53; Michael R. Gardner, *Harry Truman and Civil Rights* (Carbondale: Southern Illinois University Press, 2002), 17–23, 211–212; John Egerton, *Speak Now Against the Day: The Generation Before the Civil Rights Movement in the South* (Chapel Hill: University of North Carolina Press, 1995), 362–363; and Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Knopf Doubleday, 2011), 398–399.
23 See Gergel, *Unexampled Courage*.
24 Ibid.
25 *Terry v. Ohio*, 392 US 1 (1968).
26 "Stop-and-Frisk Data," ACLU of New York, 2019 Report, https://www.nyclu.org/en/stop-and-frisk-data, accessed 2 April 2022; and James P. O'Neill, "Crime and Enforcement Activity in New York City," 2017, https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2017-enforcement-report.pdf, accessed 2 April 2022.
27 Rick Seltzer and Charles F. Turner, "Racism, Police Brutality, and the Trial of Terrence Johnson," *Insurgent Sociologist* 11 (July 1981): 67–74.
28 *Tennessee v. Garner*, 417 US 1 (1985).
29 For more, see Chad Flanders nad Joseph Welling, "Police Use of Deadly Force: State Statutes 30 Years After Garner," *Saint Louis University Public Law Review* 35 (No. 1 2015): 109–156.
30 *Graham v. Connor*, 490 U.S. 386 (1989). See also Jill I. Brown, "Defining 'Reasonable' Police Conduct: *Graham v. Connor* and Excessive Force during Arrest," *UCLA Law Review* 38 (No. 5 1991): 1257–1286; and Geoffrey P. Alpert and William C. Smith, "How Reasonable Is the Reasonable Man?: Police and Excessive Force," *Journal of Criminal Law and Criminology* 85 (Autumn 1994): 481–501.
31 Adam Liptak, "Heightened Gravity for a Police Violence Case," *New York Times*, 21 July 2020, 14A.
32 Adam Liptak, "Legal Shield for Officers Is Bolstered in 2 Decisions," *New York Times*, 19 October 2021, 16A.