

Two syllabi:

- Margo Schlanger, *Incarceration and the Law* (U. Mich.)
- Sharon Dolovich, *Prison Law & Policy* (UCLA) (with permission)
- As can be seen, they are quite different; a chart identifying different coverage choices follows at the end.

Schlanger, *Incarceration and the Law* (Sample Syllabus)
3 credit regular elective, open to second-semester 1Ls

Course Description: The United States has the highest national incarceration rate in the world. In 1980, approximately 500,000 people were behind bars in this country. Now, even after significant pandemic-related decarceration, the figure is over 1.8 million (nearly two-thirds of whom are non-white), locked up in jails, state prisons, and federal prisons. This course will examine both relevant constitutional law and statutory law. The central topics are the Eighth Amendment's ban on cruel and unusual punishments and its Fourteenth Amendment analog, and Congress's regulation of prison-related litigation in the Prison Litigation Reform Act. We'll also examine the statutory law relating to prevention of sexual abuse; First Amendment and related statutory rights in prison and jail; solitary and supermax confinement; race, sex, and disability discrimination inside jails and prisons; and the law of injunctive relief in constitutional cases brought by incarcerated people. (We will not discuss criminal procedure, habeas corpus, or sentencing.) This course is for anyone interested in civil rights, criminal prosecution, or criminal defense.

Week 1: Introduction (Chapter 1, entire): *Ruffin v. Commonwealth*, *Cooper v. Pate*

Weeks 2-4: Conditions of Confinement/Use of Force (Chapter 2, entire)

- 8th Amendment: Early: *Jackson v. Bishop*, *Estelle v. Gamble*, *Hutto v. Finney*
- 8th Amendment, 1980s-present: *Rhodes v. Chapman*, *Whitley v. Albers*, *Wilson v. Seiter*, *Hudson v. McMillian*, *Helling v. McKinney*, *Farmer v. Brennan*
- 14th Amendment: *Bell v. Wolfish*, *Kingsley v. Hendrickson*, *Castro v. County of Los Angeles*

Week 5: Solitary Confinement (Chapter 3, entire): *In re Medley*, *Madrid v. Gomez*, *The Mandela Rules*, *Ashker v. Brown*, *Davis v. Ayala*, *Porter v. Clarke*

Weeks 6-8: Injunctive Litigation (Chapter 14)

- Before the PLRA: pp. 757-59, 764-802: *Hutto v. Finney*, *Lewis v. Casey*, *Rufo v. Inmates of the Suffolk County Jail*
- Statutory Supplement—Civil Rights of Institutionalized Persons Act
- The PLRA: pp. 802-82 (but omit *Miller v. French* & part E, pp. 869-871): *The Prison Litigation Reform Act*, 18 U.S.C. § 3626, *Brown v. Plata*
- Statutory supplement—PLRA

Week 8: (Week 8 day 2) *The Litigation Process and the PLRA*

- Chapter 15: pp. 931-36 (PLRA and damages)

- Chapter 16, entire: Prison Litigation Reform Act; Woodford v. Ngo, Ross v. Blake

Week 9: Sexual Abuse (Chapter 5)

- pp. 315-48: Prison Rape Elimination Act; Jacoby v. PREA Coordinator, Crawford v. Cuomo, Graham v. Sheriff of Logan County
- Statutory supplement—PREA

Week 10: Freedom of Expression and Religion (Chapter 6)

- Constitutional Law: pp. 369-73, 388-447 (that is, skip Procunier v. Martinez and Jones v. North Carolina Prisoners' Labor Union): Turner v. Safley, O'Lone v. Estate of Shabazz, Thornburgh v. Abbott, Beard v. Banks, Singer v. Raemisch, PLN v. Cook
- Statutory law: pp. 448-79: Religious Freedom Restoration Act, Religious Land Use and Institutionalized Persons Act, Holt v. Hobbs

Week 11: Procedural Due Process (Chapter 8, entire, except the part on parole revocation, pp. 505-14)

- Prison discipline: pp. 505-06, 514-17
- What process is due? pp. 517-33
- Is any process due? pp 533-63

Week 12: Race Discrimination (Chapter 10)

- Race and who goes to prison: pp. 589-97
- Intentional race discrimination: pp. 597-618: Washington v. Lee, Lee v. Washington, Johnson v. California, Richardson v. Runnels, Mitchell v. Cate

Week 13: Sex and Disability Discrimination

- Sex discrimination (Chapter 11): pp. 629-49, 665-73 (that is, skip reproduction and childrearing): Women Prisoners of D.C. v. D.C., the Bangkok Rules (posted)
- Disability discrimination (Chapter 13), entire: U.S. v. Georgia; Americans with Disabilities Act; Rehabilitation Act; Andrews v. Rauner, McBride v. Mich. Dept. of Corr.

Rationale for class order: The casebook groups liability chapters and remedy chapters. Instead, I switch back and forth between liability and remedy in order to emphasize the relationship between them. The omissions are painful for me. Some years, I have been able to include more on programming and criminal prosecution. If I'm teaching it, I tend to put criminal prosecution at the end of the semester. And programming etc. seems to be appropriate right after Chapter 2 or 3, since it is largely a liability path-not-taken.

Dolovich. LAW 389: Prison Law & Policy (Fall 2025)

Course Administration: The casebook we will be using this semester is: *Incarceration and the Law: Cases and Materials* (SSB). Other listed supplementary materials will be made available. [Note: this syllabus was developed using the 10th edition; pages have been updated for the new, 11th edition.]

For background reading, I also recommend:

- David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (1996)
- Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to WWII* (2008)
- Kenneth E. Hartman, *Mother California: A Story of Redemption Behind Bars* (2009)
- Albert Woodfox, *Solitary: Unbroken by Four Decades in Solitary Confinement* (2019)
- Calvin Duncan and Sophie Cull, *The Jailhouse Lawyer* (2025)

I. Introduction to Prisons and Prison Law

- SSB 1-17, 26-43
- Craig Haney, *The Wages of Prison Overcrowding*, 22 Wash. U. J. L. Pol’y 265 (2006) (pp. 269-77, 282-92 only)
- Sharon Dolovich, *No Walking Away: How Paying Attention to Correctional Officers Will Help Us Understand the Harms American Incarceration Causes*, Marquette Lawyer, Fall 2025 (forthcoming)

II. The History of Prisoners’ Rights Litigation

Background, SSB 17-25

1. “Slaves of the State”

- SSB 43-46
- Taja-Nia Y. Henderson, *Property, Penalty, and (Racial) Profiling*, 12 Stan. J. Civil Rts-Civil Liberties 177 (2016) (read ONLY pp. 182-208)
- Blackmon, pp. 1-2, 7-9, 299-304
- Oshinsky, excerpts (on convict leasing and Southern plantation prisons post-Emancipation)
- Rebecca McLennan, *Untangling the Nineteenth Century Roots of Mass Incarceration*, LPE Project, May 16, 2023
- Constitutional (Washington Post podcast): Fair Punishment (episode 9), Oct. 23, 2017 <https://itunes.apple.com/us/podcast/constitutional/id1254001472?mt=2&i=1000393876010>
- Jerry Mitchell, *Inside the Prison Where Inmates Set Each Other on Fire and Gangs Have More Power than Guards*, Mississippi Center for Investigative Reporting, Aug. 19, 2019

2. The “Hands-off” Era

- SSB 53 note 3, 51-53

- *Atterbury v. Ragen*, 237 F.2d 953 (1956)
 - When reading *Atterbury*, keep a list of the (many) different arguments the court offers as to why it cannot (will not?) hear the case. Which if any do you find compelling reasons for federal courts to maintain a “hands-off” attitude towards prisoner suits? Which do you find unpersuasive, and why?
3. The Reform Era and Beyond
- SSB 48-60
 - Pugh v. Locke, 406 F.Supp. 318 (Ala.1976) read ONLY pp.321-35
 - Hallinan, pp. 21-33 (ch.2 + first two pages ch.3)
 - Recommended: Attica (2021) (documentary film) (Streaming on Paramount + (first week is free for those who don’t already have access) and DVD is available on reserve at the library.)

III. Deference in Action: 1st Amendment Speech, Turner and Beyond

1. Religious Freedom/Introducing Deference in Prison Law
 - SSB 458-79 (*Holt v. Hobbs*)
 - Greenhill v. Clarke, 944 F.3d 243 (4th Cir. 2019) (read ONLY intro, Pts I-III)
2. Freedom of Speech, pre-Turner
 - SSB 369-79 (*Procunier v. Martinez*)
 - What is the standard of review in *Martinez*? How would you characterize the Court’s attitude towards the arguments offered by defendant prison officials? Towards judicial review of prisoners’ claims?
 - *Pell v. Procunier*, 417 U.S. 817 (1974)
 - Heather Anne Thompson, *What’s Hidden Behind the Walls of America’s Prisons?* The Conversation, June 4, 2017
3. *Turner v. Safley*
 - SSB 388-99 (*Turner*)
 - What is the *Turner* standard? How deferential is it to prison officials, and in what ways? How would you compare J. O’Connor’s treatment of the mail reg v. the marriage reg? How do you explain the difference? What does J. Stevens mean by the first sentence of his dissent?
 - SSB 411-20 (*Thornburgh*)
 - What is left of *Martinez* after *Thornburgh*? What is left of *Turner*’s principle of content neutrality? What do you take from how *Thornburgh* defines the right in its treatment of *Turner*’s second factor? What does the Court’s handling of the “all or nothing” rule mean for *Turner*’s fourth factor going forward?
4. Critiques of *Turner* test/deference
 - SSB 405-407 (Intro + Pt. 1 of J. Brennan’s dissent on *O’Lone*)
 - SSB 452-57

5. *Turner* Applied
 - A. First Amendment Religious Freedom
 - SSB 400-410 (*O'Lone* majority + dissent (some is repeat from prior assignment))
 - *Greenhill v. Clarke*, 944 F.3d 243 (4th Cir. 2019) (read ONLY Part IV)
 - B. First Amendment Association
 - SSB 448-51
 - *Overton v. Bazzetta*, 539 U.S. 126 (2003) (read ONLY majority opinion)
 - What is the Court's view of the 2-year ban on visits for those with 2+ substance abuse violations? Is this a valid management strategy? What guidance does *Overton* provide re *Turner*'s second factor ("alternative means of exercising the right")?
 - *SL v. Swanson*, 24-120601-CZ (Mich. Dec. 30., 2024) (order and opinion)
 - C. First Amendment Speech
 - *In re Collins*, 86 Cal App 4th 1176 (2001)
 - *Clement v. CDC*, 220 F.Supp.2d 1098 (2002): read ONLY pp. 1098 (summary paragraph), 1101 (intro graph), 1103 (Part C ONLY), 1109-14 (Part IV: A-F)
 - *Clement v. CDC*, 364 F.3d 1148 (9th Cir. 2004): ONLY pp. 1148-52 (intro, Parts I & II)
 - When reading *Collins* and *Clement*, pay attention to the posture the respective courts take to the defendants' arguments. How would you characterize the difference? How, if at all, does that difference affect the outcome?
 - SSB 441-47 (*Prison Legal News v. Cook*)
 - Is the *PLN* court's approach more like *Collins* or more like *Clement*? What aspects of the *PLN* opinion inform your answer?
 - **Please note:** We will not be discussing *PLN v. Cook* in class. I flag it for you here as another good example of what happens when a court takes plaintiffs' claims seriously and critically examines defendants' arguments. As you read, identify the key moments in the court's analysis, and consider how the case might have gone the other way had the court taken a different approach in its application of *Turner*.
6. *Turner 2.0: Beard v. Banks*
 - SSB 420-33 (*Beard*)
 - *Beard v. Banks*, 548 US 521 (2006) (read ONLY pp.2578, 2581, 2591-93)
 - Is *Turner* a good fit for the claim at issue in *Beard*? (See SSB 389-90 and J. Thomas's dissent for relevant discussion.) What quantum of evidence must the defendants present to satisfy their burden? And what quantum of evidence must plaintiffs present? Why the difference? What is Justice Ginsburg's theory of deference in prison law? In what ways is her view on this question inconsistent with that of the majority?
 - SSB 434-41 (*Singer v. Raemisch*)
 - Is *Singer* a fair application of *Beard*? Do you agree that *Singer* failed to meet the

evidentiary burden established in *Beard*? Was *Singer* decided correctly? Why or why not?

- Affidavit of Bryon Cibrario (submitted in support of Singer)

IV. **Eighth Amendment Punishments Clause I: Conditions**

1. Deliberate Indifference

- SSB 69-71 (MPC § 2.02)
- SSB 71-77 (*Estelle v. Gamble*)
 - When, according to *Gamble*, is medical neglect an 8th Am violation? Why? What standard does J. Stevens endorse in his opinion, and how does it differ from the standard established by J. Marshall in the majority?
- SSB 99-103, 104-107 (*Wilson v. Seiter*, Intro & Parts I-II majority opinion, parts of J.White dissent)
 - What is the holding of *Wilson*? How does the majority justify it?
- SSB 123-33 (*Farmer v. Brennan* majority) (**please be aware that some may find the *Farmer* facts to be especially disturbing**)
 - What, after *Farmer*, constitutes deliberate indifference? How, according to the majority, might this mental state be proved? What potential objections to its holding does the majority identify, and how does it respond to each?

2. Deliberate Indifference III: Justifications and Critiques

- SSB 134-59

3. Deliberate Indifference II: COVID Edition

- *Wilson v. Williams*, 961 F.3d 829 (6th Cir. 2020)
- Von Staich, Final Order on defendants' mootness claim (Cal. Nov. 16, 2021) (read ONLY pp. 1, 81-92)
- SSB Supp. S5-S9

4. Conditions of Confinement

- SSB 78-89 (*Rhodes v. Chapman*)
- SSB 103-104 (*Wilson* Part III only)
 - After *Wilson*, what showing must incarcerated plaintiffs make in order to succeed on a conditions claim? In what way does *Wilson* alter the requisite showing in place after *Rhodes*?
- SSB 107-108 (notes)
- Sharon Dolovich, *Evading the Eighth Amendment: Prison Conditions and the Courts*, in *The Eighth Amendment and Its Future in a New Age of Punishment* (Berry & Ryan, eds., 2020) (read ONLY pp.152-54)
- SSB 116-123 (*Helling v. McKinney*)
- *Gray v. Hardy*, 826 F.3d 1000 (7th Cir. 2016)
- Craig Haney, *The Wages of Prison Overcrowding*, 22 Wash. U. Journal of Law & Policy 265 (2006) (pp. 269-77, 282-92 only)

- Jane Kahn, *Safety Concerns of a Prisoners' Rights Lawyer*, Los Angeles Daily Journal, Feb. 4, 2011
5. Solitary Confinement: Constitutional Prisons?
- SSB 209-14 (background)
 - SSB 221-22, 232-33 (*Madrid* intro/conclusion/post-*Madrid* advocacy)
 - SSB 237-42, 245-46 (perspectives)
 - SSB 248-51, 258-60 (CA hunger strike/ CCPOA opposition to strike demands)
 - SSB 260-62(*Davis v. Ayala*)
 - SSB 265-66 (*Porter v. Clarke*)
 - CO.6 interview excerpt (on NY HALT legislation)
 - Ed Shanahan and Jan Ransom, *Judge Orders Striking N.Y. Corrections Officers Back to Work*, N.Y. Times, Feb. 18. 2025
 - Jerry Mitchell, *Inside the Prison Where Inmates Set Each Other on Fire and Gangs Have More Power than Guards*, Mississippi Center for Investigative Reporting, Aug. 19, 2019 (review)
6. Failure to Protect
- SSB 315-24 (PREA Commission Report)
 - *Notice of Proposed Rulemaking*, National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR Part 115, Federal Register, Vol. 76, No. 23, Feb. 3, 2011 (read ONLY 6275-77 (rule contents))
 - SSB 327-29 (Jacoby), 330 (notes #2-4)
- V. **The Eighth Amendment Punishments Clause II: Use of Force**
- SSB 66-69 (Jackson v. Bishop)
 - SSB 90-99 (Whitley v. Albers)
 - How does the *Whitley* majority present the facts? How does this presentation differ from J. Marshall's framing of the facts in dissent? What mens rea standard does the case establish for Eighth Amendment excessive force claims? What mens rea standard would J. Marshall have established?
 - SSB 108-16 (Hudson v. McMillian)
 - Hallinan pp. 82-91 (ch.7)
 - Bruce Porter, *Terror on an Eight-Hour Shift*, N.Y. Times Mag., Nov. 26, 1995, at 42 (CS 78-89)
 - Editorial, *The Youngest, Cruellest Justice*, N.Y. Times, Feb. 27, 1992.
 - SSB 181-89 (*Kingsley v. Hendrickson*)
 - How does the *Kingsley* standard compare with the standard established in *Whitley*? What is the doctrinal relationship between the two cases?
- VI. **Brown v Plata**
- SSB 807-11 (18 U.S.C. § 3626)
 - SSB 830-869 (*Plata*)

- What specific showings are required before a district court can order a population reduction? Track J. Kennedy’s arguments as to each. Are they convincing? What if anything surprises you about the majority opinion? About J. Scalia’s dissent? About J. Alito’s dissent?
- Margo Schlanger, *Prisoners with Disabilities*, in 4 Reforming Criminal Justice: Punishment, Incarceration, and Release 295 (2017)
- *Rasho v. Jeffreys*, 22 F.4th 703 (7th Cir. 2022) (read ONLY 706-14, 718-725, 727-730 (i.e., all of the majority, and the intro, Part II, and most of Part III of J. Ripple’s dissent))
- Rasho notes/questions (handout)
 - Please note: We will not be discussing *Rasho v. Jeffreys* in class. I include it here because it raises key issues related to 8th Am deliberate indifference and to the appropriate scope of remedial orders under § 3626, which makes it both doubly relevant and a helpful study aid. Refer to handout for more detail and questions to guide your reading.

VII. Prisoners’ Right of Access to the Courts

1. The Basic Right
 - Writ Writer (Passage Productions, 2008) (to be screened prior to class)
 - SSB 481-83 (*Ex Parte Hull*)
2. The Past and Present of Right of Access Claims
 - SSB 493-97 (*Bounds v. Smith*)
 - SSB 492-93 n.3 (*Shaw v. Murphy*)
 - SSB 497-504 (notes on *Lewis*)
 - SSB 776-89 (*Lewis v. Casey*)
 - What is left of the right of access to the courts after *Lewis*?
 - *Johnson v. Dunn*, 2:21-cv-1701-AMM (ND AL, July 23, 2025) (Sanctions order, excerpts)
3. The PLRA: Limits on Prisoner Suits
 - 28 U.S.C. § 1915
 - 42 U.S.C. § 1997e
 - SSB 947-51, 969-73, 975-79
4. PLRA Redux: The Exhaustion Requirement
 - SSB 951-69 (*Woodford, Ross*)
 - *Valentine v. Collier*, 2020 U.S. Dist. LEXIS 112807 (S.D. Tex. June 27, 2020), read ONLY pp.1-2 (to end left-hand column) + Pt III.A
 - SSB supp. 12 (bottom)-15 (*Valentine*, J. Sotomayor dissent from denial of application to vacate stay) (please read ONLY to end of II.A)

Coverage in Sample Syllabi

Chapter	Schlanger	Dolovich
1: Prisons, Jails, and Prisoners' Rights: An Introduction	✓	✓
2: Conditions of Confinement	✓	✓
3: Solitary Confinement	✓	✓
4: Programming, Work, Reentry	X	X
5: Sexual Abuse	✓	✓
6: Freedom of Expression and Religion	✓	✓
7: Access to the Courts	X (but see Lewis v. Casey, Ch. 14)	✓
8: Procedural Due Process	✓	X
9: Searches	X	X
10: Race and National Origin Discrimination	✓ race X national origin	X
11: Women Prisoners	✓	X
12: LGBTQ Prisoners	X	X
13: Disability	✓	X
14: Injunctive Litigation	✓	X
15: Damages: Causes of Action and Defenses	✓ PLRA X remainder	X
16: The Litigation Process	✓	✓
17: Private Prisons and Prison Contractors	X	X
18: Criminal Prosecution of Prison/Jail Staff	X	X
19: State Constitutional Law	X	X
20: Accountability: Voting, Standards, and External Oversight	X	X