Qualified Immunity

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There are numerous situations where individuals file lawsuits claiming someone violated their constitutional rights. Usually, but not always, a governmental entity or its employees are named as defendants. Qualified immunity is often the strongest defense in a civil rights lawsuit. In a case where an officer shot at a fleeing vehicle to try and disable it but missed and hit the driver, the Supreme Court in *Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015) reiterated:

> The doctrine of qualified immunity shields officials from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." A clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." "Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law."

More recently, in a shooting case from Tucson, the Supreme Court *in Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) held: "The key inquiry is whether the official had 'fair notice that her conduct was unlawful.'" (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). The struggle is determining what this means in various factual circumstances.

Today, constitutional rights are fairly well defined although there is considerable strength in the qualified immunity doctrine when considering the particular facts of each case and whether on those facts the law is clearly established. Courts will frequently ask plaintiff's counsel: "What's your best case." For example, the Ninth Circuit Court of Appeals in *S.B. v. Cnty. of San Diego*, 864 F.3d 1010, 1016 (9th Cir. 2017), recognized that under Supreme Court precedent the general excessive force principles from *Graham v. Connor* and *Tennessee v. Garner* do not by themselves create clearly established law. The court in *S.B.* held: "We hear the Supreme Court loud and clear. Before a court can impose liability on Moses [officer], we must identify precedent as of August 24, 2013 –

the night of the shooting – that put Moses on clear notice that using deadly force in these particular circumstances would be excessive."

Practically speaking, why would a plaintiff consider pursuing a constitutional tort claim against both the governmental entity and the individual government actor? The most important reason for filing suit against the entity and the individual is that an individual may invoke qualified immunity against a claim for damages, but an entity cannot. There is no *respondeat superior* liability and proving municipal liability (*Monell* claim) for a constitutional tort must meet the official act, policy, or custom requirement.

Proving a constitutional tort claim is not an easy task. The difficulties in pursuing constitutional tort claims against both individuals and entities have reduced the number of cases that are filed in federal court, and attorneys pursue more cases as state law claims only. In federal court, motion practice narrows, if not decides, many cases. The Supreme Court's robust qualified immunity doctrine, in particular, provides substantial protection to governmental officials from monetary damages. Over the past ten years, the Supreme Court has had a string of reversals of lower courts that have denied qualified immunity to government officials. I have included below a list of the relevant United States Supreme Court cases and several cases from the Ninth Circuit. I include a list of Ninth Circuit because this is where I practice, the number of cases is significant, the panels are diverse, and the Supreme Court has felt the need to correct the Ninth Circuit on several occasions despite the Ninth Circuit stating it hears the Supreme Court loud and clear.

As we also see in media and academia, the qualified immunity defense is under attack. In the list of qualified immunity articles below, I include a number of articles advocating a change. A call for change has been present for a long time although the crowd is growing larger. The late Justice Scalia believed the modern doctrine is not faithful to the common-law immunities when § 1983 was enacted. *Crawford-El v. Britton*, 523 U.S. 574 (1998). And Justice Thomas has for many years called on the Court to reconsider the qualified immunity jurisprudence. *Ziglar v. Abbasi*, 582 U.S. (2017). Sotomayor consistently argues against qualified immunity as did the late Justice Ginsberg. *E.g., Kisela v. Hughes*, 138 S. Ct. 1148, 1155 (2018); *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 381 (2009).

Here are a few areas I would like to briefly develop during this seminar. The first is to ask if a different qualified immunity jurisprudence developed, what would it look like. What are the best arguments it should or should not change? I will use the tension in several of the recent social worker cases to give some ideas.

The second is how qualified immunity actually plays out in litigation today. Qualified immunity is often decided on summary judgment where, accepting the facts that a reasonable jury could conclude, the question is whether those facts sufficiently state a

constitutional violation; and second, whether that specific violation of the law was clearly established. But when there are factual disputes, the factual dispute may play out to a jury with the court answering the legal question. Whether an interlocutory appeal can be pursued after a denial of a motion for summary judgment will be discussed.

A third area is how qualified immunity shapes discovery. *See, e.g., Martel v. County of Los Angeles*, 56 F.3d 993 (9th Cir. 1995) (en banc) (plaintiff failed to show that he was prejudiced by trial court's denial of motion for continuance to depose deputies). The qualified immunity defense is asserted early on and prior to extensive discovery and, while the motion is pending, what discovery can or should be done?

The fourth area is qualified immunity defense and advice of counsel. We may not have much time to discuss this so here is a little more on this. Officers and other government officials should be encouraged to consult with legal counsel and supervisors when there is time to do so. Of course, many times there is little time for such consultation. Public officials and officers make split-second decisions and there may be little opportunity to consult with anyone. There are situations, however, such as when obtaining search warrants or making an employment decision, when a government official may have time to consult with legal counsel. When the officer or other official consults and relies upon the attorney's advice, I have argued this should make a difference in whether the officer is entitled to qualified immunity or good faith immunity if she is later sued. Attorney advice as part of the qualified immunity analysis, however, remains unclear. Part of the reason is because the qualified immunity analysis is an objective standard and not a subjective standard as to what the individual officer or official knew or believed.

Edward Dawson's article entitled: *Qualified Immunity for Officers' Reasonable Reliance on Lawyers' Advice*, 110 Nw. U. L. Rev. 525 (2016) was published a few years ago. He explores whether an officer can support a qualified immunity defense by arguing that she reasonably relied on legal advice. As noted by Dawson, the Supreme Court briefly discussed the issue in *Messerschmidt v. Millender*, 132 S. Ct. 1235 (2012). *Messerschmidt* involved a search warrant of a criminal suspect's former foster parents' home. Before the search warrant was obtained, the officers consulted their superiors and a deputy county attorney. In finding the officers were entitled to qualified immunity, the Supreme Court first emphasized the fact that a neutral magistrate issued the warrant and this is the clearest indication that the officers acted objectively reasonable. The Court then noted that the officers also consulted with a superior officer and the deputy county attorney's approval was obtained. This provided further support for the officer's qualified immunity defense that there was probable cause.

Following *Messerschmidt*, the Ninth Circuit recognized that it is important to the qualified immunity analysis that the officers submitted warrants to the prosecutor for

review.

> "Under *Messerschmidt*, consulting with and getting approval of one's superiors and of a judicial officer operates for an individual police officer something like liability insurance, though, like liability insurance, there are exceptions and exclusions to protection. One such exception occurs when 'it is obvious that no reasonably competent officer would have concluded that a warrant should issue.'"

Armstrong v. Asselin, 734 F.3d 984 (9th Cir. 2013); s*ee also Dupris v. McDonald*, 554 Fed. Appx. 570 (9th Cir. 2014) (tribal prosecutor's independent authorization of arrests was sufficient to establish good faith); *Los Angeles Police Protective League v. Gates*, 907 F.2d 879 (9th Cir. 1990) (supervisors sought and followed advice of city attorney).

Before asserting advice of counsel as a defense in litigation, the officer or official should understand if legal counsel was not provided all relevant facts before offering advice, raising the defense may point out these deficiencies. The qualified immunity defense may also be undermined if the attorney was new at the job and was rubber stamping what the officer or official wanted. As pointed out in *Armstrong*, bad advice does not automatically mean that an officer or official is entitled to qualified immunity. The attorney should have the experience and knowledge to reach a reasoned independent decision. And, the officer must have followed the advice. If advice of counsel is asserted, any privilege may be waived and the attorney may be called as a witness. Any contemporaneous written memoranda will also be subject to disclosure.

QUALIFIED IMMUNITY CASES

Qualified immunity cases include those listed below.

I. Supreme Court Opinions:

Taylor v. Riojas (Nov. 2, 2020) (no qualified immunity to officers who housed inmates in cells teeming with human waste).

City of Escondido v. Emmons, 139 S. Ct. 500 (2019) (Ninth Circuit erred by defining the clearly established right at a high level of generality as the right to be from excessive force).

Kisela v. Hughes, 138 S. Ct. 1148 (2018) (officer entitled to qualified immunity after responding to a call of erratic behavior and then shooting woman who was holding a kitchen knife, did not drop the knife, and moved toward another individual).

District of Columbia v. Wesby, 138 S. Ct. 577 (2018) (A reasonable officer could have concluded that there was probable cause to believe the partygoers knew they did not have permission to be in the house, and the officers had probable cause to arrest the partygoers because the officers found a group of people who claimed to be having a bachelor party with no bachelor, in a near-empty house, with strippers in the living room and sexual activity in the bedroom, and who fled at the first sign of police).

White v. Pauly, 137 S.Ct. 548 (2017) (police officer was entitled to qualified immunity on an excessive force claim where no settled Fourth Amendment principle required the officer, who arrived late to the scene and witnessed shots being fired by one of several individuals in a house, to second-guess the earlier steps already taken by his fellow officers or shout a warning to an armed occupant before shooting).

Hernandez v. Mesa, 137 S.Ct. 2003 (2017) (cross-border shooting by border patrol officer; qualified immunity analysis is limited to the facts that were knowable to the defendant officers at the time; facts learned after the incident are irrelevant).

Cty. of Los Angeles v. Mendez, 137 S. Ct. 1539 (2017) (Ninth Circuit's provocation rule, which held that an officer's otherwise reasonable and lawful defensive use of force was unreasonable as a matter of law if the officer intentionally or recklessly provoked a violent response and the provocation was an independent constitutional violation conflated excessive force claims with other Fourth Amendment claims and permitted excessive force claims that could not otherwise succeed).

Mullenix v. Luna, 136 S.Ct. 306 (2015) (per curium) ("The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would known.' A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right.' "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate.' 'Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.'"; case involved officer who shot at suspect's fleeing car and killed driver).

Taylor v. Barkes, 135 S.Ct. 2042 (2015) (right of incarcerated prisoner to adequate suicide prevention protocols was not clearly established).

City and County of San Francisco v. Sheehan, 135 S.Ct. 1765 (2015) (police officers were entitled to qualified immunity from group home resident's § 1983 claim that they violated her Fourth Amendment rights by failing to accommodate her mental illness before entering her private room after she threatened officers with a knife who then retreated and then made another entry into her room).

Carroll v. Carman, 135 S.Ct. 348 (2014) (qualified immunity because the law was not "beyond debate" as to whether officers may conduct a "knock and talk" at an entrance other than the front door).

Lane v. Franks, 134 S.Ct. 2369 (2014) (First Amendment claim of retaliation for speech outside of work but official entitled to qualified immunity as there was no controlling precedent).

Wood v. Moss, 134 S. Ct. 2056 (2014) (secret service agents entitled to qualified immunity after moving protesters).

Plumhoff v. Rickard, 134 S. Ct. 2012 (2014) (police officers did not violate the Fourth Amendment when they shot and killed driver of a fleeing vehicle to end a dangerous car chase).

Tolan v. Cotton, 134 S.Ct. 1861 (2014) (in looking at qualified immunity on motion for summary judgment, court must view evidence in light most favorable to nonmoving party, genuine dispute of facts should be resolved by jury).

Stanton v. Sims, 134 S.Ct. 3 (2013) (law was not clearly established that a warrantless entry to a home, in hot pursuit of a suspect who an officer has probable cause to arrest for a misdemeanor, violated Fourth Amendment).

Ryburn v. Huff, 132 S. Ct. 987 (2012) (police officers protected by qualified immunity after entering home without warrant).

Filarsky v. Delia, 132 S.Ct. 1657 (2012) (private attorney who assisted in investigation into firefighter's alleged wrongdoing was entitled to qualified immunity; murky as to whether private actors are entitled to qualified immunity).

Messerschmidt v. Millender, 132 S.Ct. 1235 (2012) (qualified immunity with respect to scope of search warrant).

Ashkroft v. al-Kidd, 131 S.Ct. 2074 (2011) ("existing precedent must have placed the statutory or constitutional question beyond debate").

Camreta v. Greene, 131 S.Ct. 2020 (2011) (because case was moot and defendant who had been granted qualified immunity but the Ninth had rules the defendant must obtain a warrant before interviewing a suspected child abuse victim at school, the decision was vacated).

Safford Unified School Dist. v. Redding, 557 U.S. 364 (2009) (unconstitutional strip-search of middle school student Savana Redding; qualified immunity for school officials and remanded for consideration of *Monell* claim).

Pearson v. Callahan, 555 U.S. 223 (2009) (court may consider either prong in determining whether qualified immunity applies).

Hope v. Pelzer, 536 U.S. 730 (2001) (no need to have a case on point to overcome qualified immunity).

Saucier v. Katz, 533 U.S. 194 (2001) (establishing sequential analysis, i.e., whether the facts alleged violate a constitutional right and if so, whether the right is clearly established).

Alden v. Maine, 119 S.Ct. 2240 (1999) (immunity of the States from suit without their consent is fundamental aspect of sovereignty, recounts history of the Eleventh Amendment).

County of Sacramento v. Lewis, 523 U.S. 833 (1998) (discussing contours of constitutional rights and if covered by specific constitutional provision, then should not be analyzed under substantive due process).

Bogan v. Scott Harris, 523 U.S. 44 (1998) (local legislators are absolutely immune from suit under § 1983 for legislative activities).

Kalina v. Fletcher, 523 U.S. 118 (1997) (immunity looks at nature of the function involved and not the identify of the person who performed it; preparation and filing of a sworn pleading is protected by absolute immunity).

Hunter v. Bryant, 502 U.S. 224 (1991) (qualified immunity issues should be resolved at earliest opportunity; officials are entitled to an accommodation for reasonable error).

Anderson v. Creighton, 483 U.S. 635 (1987) (qualified immunity, i.e., "could have believed" that action comported with Constitution).

Mitchell v. Forsyth, 472 U.S. 511 (1985) (officials are immune unless law clearly proscribed the actions they took).

Harlow v. Fitzgerald, 457 U.S. 800 (1982) (qualified immunity shields public officials from undue interference with their duties and potentially disabling threats of liability).

II. Ninth Circuit Opinions:

Several of the Supreme Court decisions cited above are cases where the Court reversed the Ninth Circuit's denial of qualified immunity. These cases include: *City and County of San Francisco v. Sheehan*, 135 S.Ct. 1765 (2015); *Wood v. Moss*, 134 S.Ct. 2056 (2014); *Stanton v. Sims*, 134 S.Ct. 3 (2013); *Ryburn v. Huff*, 132 S.Ct. 987 (2012); *Ashcroft v. al-Kidd*, 131 S.Ct. 2074 (2011); and *Safford Unified School District v. Redding*, 557 U.S. 364 (2009).

Tobias v. Arteaga No. 18-56360 (9th Cir. 2021) (forced confession of 13 year old minor and denying qualified immunity on 5th Amendment claim but reversing the denial of qualified immunity on Fourteenth Amendment due process claim).

Benavidez v. Cnty. of San Diego (9th Cir. 2021) (social workers were not entitled to qualified immunity for alleged unconstitutional judicial deception and unconstitutional medical examinations).

O'Doan v. Sanford (9th Cir. 2021) (officers entitled to qualified immunity for force used in apprehending mentally disturbed individual).

Rice v. Morehouse, (9th Cir. 2021) (denying qualified immunity for use of take-down by law enforcement officers on suspect who was passively resisting).

Hernandez v. Town of Gilbert, (9th Cir. 2021) (officers entitled to qualified immunity when using a canine to subdue plaintiff who had fled in vehicle and refused to get out of the vehicle).

Tabares v. City of Huntington Beach (9th Cir. 2021) (officers not entitled to qualified immunity and panel distinguished California negligence law regarding use of deadly force and Fourth Amendment law while finding both claims presented jury questions).

Villanueva v. California (9th Cir. 2021) (denying qualified immunity based on factual dispute as to whether suspect who was turning his vehicle around presented a danger to the officers who began shooting).

Anderson v. Marsh (9th Cir. 2021) (dismissing appeal because the court did not have jurisdiction to review denial of qualified immunity based on fact dispute).

Sandoval v. Cnty. of San Diego (9th Cir. 2021) (denying qualified immunity and discussing evidence and Fourteenth Amendment right to adequate medical care while in custody at jail).

Nunes v. Arata, Swingle, Van Egmond & Goodwin, (9th Cir. 2020) (denying qualified immunity for accessing juvenile court records without a court order).

Rico v. Ducart, 980 F.3d 1292 (9th Cir. 2020) (holding no reasonable officer would have understood that failure to follow court-ordered actions would violate constitutional rights of inmates).

Monzon v. City of Murrieta, 978 F.3d 1150 (9th Cir. 2020) (holding use of deadly force was objectively reasonable when officers fired into vehicle after suspect accelerated towards the officers)

Cortesluna vv. Leon, 979 F.3d 645 (9th Cir. 2020) (officers entitled to qualified immunity for firing beanbag rounds but denying qualified immunity for leaning on plaintiff's back after he was in custody)

Ventura v. Rutledge, 978 F.3d 1088 (9th Cir. 2020) (officer entitled to qualified immunity for using deadly force when suspect advanced towards him with a knife)

Lam v. City of Los Banos, 976 F.3d 986 (9th Cir. 2020) (affirming jury verdict and denying qualified immunity for use of deadly force after suspect who had stabbed

the officer, the officer retreated, and the suspect did not approach)

Cates v. Stroud, 976 F.3d 972 (9th Cir. 2020) (prison officials who performed strip search of visitor were entitled to qualified immunity)

Sampson v. Cnty. of L.A., 974 F.3d 1012 (9th Cir. 2020) (denying qualified immunity on First Amendment retaliation claim for retaliating against legal guardian who complained of sexual harassment by removing children).

Hernandez v. Skinner, 969 F.3d 930 (9th Cir. 2020) (denying qualified immunity to offers who arrested witness based on unlawful presence in the United States).

Hanson v. Shubert, 968 F.3d 1014 (9th Cir. 2020) (discussing lack of jurisdiction over an order denying motion for reconsideration of a denial of qualified immunity).

Monzon v. City of Murrieta, 966 F.3d 946 (9th Cir. 2020) (affirming qualified immunity for use of deadly force against driver who accelerated towards officers).

Dees v. Cnty of San Diego, 960 F.3d 1145 (9th Cir. 2020) (social workers entitled to qualified immunity for conducting interview of children at school).

Wilk v. Neven, 956 F.3d 1143 (9th Cir. 2020) (denying qualified immunity to warden, assistant warden, and caseworker in claim filed by prisoner after being assaulted by another inmate whom he had identified as a threat during a classification meeting).

Orn v. City of Tacoma, 949 F.3d 1167 (9th Cir. 2020) (denying qualified immunity to officers who fired into the side and rear of a vehicle moving away from them).

Vazquez v. Cnty of Kern, 949 F.3d 1153 (9th Cir. 2020) (denying qualified immunity to officer who sexually harassed prisoner)

Bearchild v. Cobban, 949 F.3d 1130 (9th Cir. 2020) (denying qualified immunity to prison guard who was accused of sexually assaulting inmate during pat-down search

Tuumalemalo v. Greene, 946 F.3d 471 (9th Cir. 2019) (denying qualified immunity for use of choke hold on non-resisting person)

Blight v. City of Manteca, 944 F.3d 1061 (9th Cir. 2019) (affirming qualified immunity for officers who executed search warrant issued based on informant)

Martinez v. City of Clovis, 943 F.3d 1260 (9th Cir. 2019) (officers entitled to qualified immunity because was not clearly established under the state-created danger in the context of officers protecting victims of domestic violence)

Capp v. Cty. of San Diego, 940 F.3d 1046 (9th Cir. 2019) (social worker was not entitled to qualified immunity based on First Amendment retaliation claim; it was clear at the time the official acted that government officials were prohibited from threatening to have custody of children taken away after father criticism of official and agency).

Jessop v. City of Fresno, 936 F.3d 937 (9th Cir. 2019) (no clearly established law that officers violate the Fourth or Fourteenth Amendment when they steal property seized pursuant to a warrant).

West v. City of Caldwell, 931 F.3d 978 (9th Cir. 2019) (officers entitled to qualified immunity for exceeding consent after firing tear gas into the house).

Nehad v. Browder, 929 F.3d 1125 (9th Cir. 2019) (disputed facts surrounding use of deadly force precluded summary judgment on qualified immunity).

Greisen v. Hanken, 925 F.3d 1097 (9th Cir. 2019) (chief of police entitled to damages for city manager's retaliation after chief complained city manager was using improper accounting and budgeting practices; city manager not entitled to qualified immunity and court affirmed $4 million damages awarded by jury to chief).

Tschida v. Motl, 924 F.3d 1297 (9th Cir. 2019) (ethics commissioner entitled to qualified immunity based on reliance on enacted confidentiality statute and refusing to release ethics complaint).

Perez v. City of Roseville, 926 F.3d 511 (9th Cir. 2019) (qualified immunity protected police chief and supervisors after terminating probationary officer because of her ongoing extramarital relationship with a married officer).

Emmons v. City of Escondido, 921 F.3d 1172 (9th Cir. 2019) (officer entitled to qualified immunity after grabbing plaintiff and forcing him to the ground during a domestic violence investigation).

Jessop v. City of Fresno, 2019 U.S. App. LEXIS 26674, 2019 WL 4183011 (9th Cir. 2019) (law was not clearly established that officers violate the Fourth or Fourteenth Amendment when they steal property seized pursuant to a warrant).

Advanced Bldg. & Fabrication, Inc. v. Cal. Highway Patrol, 918 F.3d 654 (9th Cir. 2019) (qualified immunity denied to a tax employee who got into physical confrontation with business owner, left and then came back with police who obtained a warrant and allowed the tax employee to go through business records although search was beyond scope of the warrant).

Horton v. City of Santa Maria, 915 F.3d 592 (9th Cir. 2018) (officer entitled to qualified immunity after failing to check on minor after his mother advised that he had suicidal tendencies).

Hines v. Youseff, 914 F.3d 1218 (9th Cir. 2019) (prison officials entitled to qualified immunity on Eighth Amendment claim of a heightened risk of exposure to Valley Fever).

Olivier v. Baca, 913 F.3d 852 (9th Cir. 2019) (officials entitled to qualified immunity after lockdown that caused delay in transferring detainees who were forced to sleep on floor).

Pers. Rep. of the Estate of C.J. P. v. Washington, 913 F.3d 831 (9th Cir. 2019) (social workers are not entitled to absolute immunity for their investigatory conduct, discretionary decisions or recommendations; any immunity is only qualified).

Foster v. City of Indio, 908 F.3d 1204 (9th Cir. 2018) (officer was entitled to qualified immunity for initial stop but issues of fact precluded summary judgment on fatal shooting claim).

Whalen v. McMullen, 907 F.3d 1139 (9th Cir. 2018) (warrantless entry into a home using a ruse violated Fourth Amendment but officer entitled to qualified immunity because the right was not clearly established).

Scott v. County of San Bernardino, 903 F.3d 943 (9th Cir. 2018) (denying qualified immunity to middle school resource officer's arrest, handcuffing, and taking school girls to police station to teach them a lesson or to prove a point).

Ioane v. Hodges, 903 F.3d 929 (9th Cir. 2018) (denying qualified immunity to IRS agent who violated Fourth Amendment when during the execution of a search warrant at plaintiff's home, agent insisted on escorting plaintiff to bathroom and watching her while she relieved herself).

Mellen v. Winn, 900 F.3d 1085 (9th Cir. 2018) (denying qualified immunity based on

allegations that defendant detective withheld material impeachment evidence and there was an issue of material fact as to whether the detective acted with deliberate indifference; plaintiff was imprisoned for 17 years before securing habeas relief; serial informant was a known liar).

Rodriguez v. Swartz, 899 F.3d 719 (9th Cir. 2018) (*Bivens* action involving the shooting of a teenage Mexican citizen across the border violated Fourth Amendment and border patrol officer was not entitled to qualified immunity).

Vos v. City of Newport Beach, 892 F.3d 1024 (9th Cir. 2018) (question for jury as to whether Vos was an immediate threat to the officers, officers had surrounded him while he was behaving erratically and brandishing scissors at 7-Eleven).

Pike v. Hester, 891 F.3d 1131 (9th Cir. 2018) (violation of Fourth Amendment to conduct after-hours search of plaintiff's locked office; no qualified immunity).

Felarca v. Birgeneau, 891 F.3d 809 (9th Cir. 2018) (officers acted reasonably in removing student protestors; officers entitled to qualified immunity).

Easley v. City of Riverside, 890 F.3d 851 (9th Cir. 2018) (shooting following a traffic stop; officers entitled to qualified immunity after plaintiff pulled a gun and threw it away because a reasonable officer could have feared that plaintiff had a gun and was turning to shoot him).

Recchia v. City of L.A. Dept of Animal Servs., 889 F.3d 553 (9th Cir. 2018) (euthanizing pigeons justified under state law allowing officers to seize animals kept in public spaces without proper care and attention)

Reese v. County of Sacramento, 888 F.3d 1030 (9th Cir. 2018) (after jury verdict that use of force was excessive, court determined that plaintiff failed to identify any sufficient analogous cases showing that under similar circumstances there was a clearly established Fourth Amendment right against the use of deadly; officers responded to an anonymous call that man had fired an automatic gun, was on drugs, was possibly crazy, had a knife and went back inside apartment; when plaintiff opened door plaintiff was holding a large knife and was shot).

Smith v. City & Cty. of Honolulu, 887 F.3d 944 (9th Cir. 2018) (jury found 47 hour detention before probable cause determination was not unreasonable; jury instructions and juror misconduct did not warrant new trial).

Demaree v. Pederson, 887 F.3d 879 (9th Cir. 2018) (social workers not entitled to qualified immunity after removing children from home without court order).

Thompson v. Rahr, 885 F.3d 582 (9th Cir. 2018) (police officer used excessive force when he pointed a gun at plaintiff's head after plaintiff had been searched, was calm and compliant, and was being watched over by a second armed deputy).

Keates v. Koile, 883 F.3d 1228 (9th Cir. 2018) (no qualified immunity based on allegations that plaintiffs' daughter was detained and transported to mental health facility without consent or court order).

Bonivert v. City of Clarkston, 883 F.3d 865 (9th Cir. 2018) (no qualified immunity for officers based on allegation that plaintiff's Fourth Amendment rights were violated when officer forced their way into his home without a warrant, threw him to the ground and then tasered and arrested him).

Perez v. City of Roseville, 882 F.3d 843 (9th Cir. 2018) (partial qualified immunity in a case where plaintiff alleged she was terminated on the basis of an extramarital affair in violation of her rights to privacy and intimate association).

Kramer v. Cullinan, 878 F.3d 1156 (9th Cir. 2018) (qualified immunity for University president when it was not clearly established due process law that charges would trigger requirements of name-clearing hearing).

Frudden v. Pilling, 877 F.3d 821 (9th Cir. 2017) (law not clearly established that school uniform policy violated First Amendment).

Smith v. City of Santa Clara, 876 F.3d 987 (9th Cir. 2017) (officers may enter home without warrant seeking probationer whom they believe had reoffended by participating in a violent felony).

Jones v. Las Vegas Metro. Policy Dep't, 873 F.3d 1123 (9th Cir. 2017) (issues of fact as to whether repeated tasing was reasonable; qualified immunity defense would proceed to trial).

Zion v. Cty. of Orange, 874 F.3d 1073 (9th Cir. 2017) (excessive force used if defendant officer fired a second round of bullets after plaintiff was down on the floor after being shot, and then officer stomped on the plaintiff's head).

Morales v. Fry, 873 F.3d 817 (9th Cir. 2017) ("clearly established" prong of qualified

immunity is determined by the judge as a matter of law).

Longoria v. Pinal County, 873 F.3d 699 (9th Cir. 2017) (issue of fact whether plaintiff was surrendering at the time he was shot).

Entler v. Gregoire, 872 F.3d 1031 (9th Cir. 2017) (prisoner disciplined for threatening prison staff; partial qualified immunity – no qualified immunity of a threat to file criminal case, qualified immunity granted on threat to file grievance).

Isayeva v. Sacramento Sheriff's Dep't, 872 F.3d 939 (9th Cir. 2017) (deputy entitled to qualified immunity for tasing and then shooting plaintiff; *Tennessee v. Garner* and *Graham v. Connor* are cast at a high level of generality and do not clearly establish the law governing when the use of deadly force is lawful).

Estate of Lopez v. Gelhaus, 871 F.3d 998 (9th Cir. 2017) (issue of fact whether force was excessive when 13 year old boy who was holding a plastic toy gun never raised it or made any gesture toward the officers).

Sharp v. Cty. of Orange, 871 F.3d 901 (9th Cir. 2017) (officers entitled to qualified immunity for arresting, detaining and searching husband and wife while searching for son; no qualified immunity on First Amendment retaliation claim when husband's detention continued because of his belligerent demeanor).

Woodward v. City of Tucson, 870 F.3d 1154 (9th Cir. 2017) (former tenant lacked standing to assert Fourth Amendment violation based on entry into apartment; no Fourth Amendment violation for shooting individual who attacked officers with hockey stick; rejects provocation theory).

Lam v. City of San Jose, 869 F.3d 1077 (9th Cir. 2017) (jury verdict upheld in case where officer shot individual who was behaving erratically; district court has discretion on whether to allow special interrogatories for the purpose of the qualified immunity defense because if the plaintiff was believed, the officer was not entitled to qualified immunity; and, to preserve the defense, a motion under 50(a) and 50(b) must be made during trial).

Bracken v. Okura, 869 F.3d 771 (9th Cir. 2017) (off-duty security guard acting under color of law was not entitled to qualified immunity because he was not serving public governmental function while being paid by hotel).

Shafer v. Cty. of Santa Barbara, 868 F.3d 1110 (9th Cir. 2017) (university student who

was arrested while carrying water balloons after refusing to obey officer's commands; although there was sufficient evidence to support the jury's verdict finding excessive force, the officer was entitled to qualified immunity because the law was not clearly established that an officer cannot progressively increase his use of force from verbal commands, to an arm grab, and then a leg sweep maneuver when a misdemeanor refuses to comply with the officer's orders and resists, obstructs, or delays the officer in performance of duties).

Moonin v. Tice, 868 F.3d 853 (9th Cir. 2017) (policy announced in email from highway patrol commander that prohibited officers from discussing problems with K9 program violated First Amendment and law was clearly established such that commander was not entitled to qualified immunity).

S.B. v. Cnty. of San Diego, 864 F.3d 1010 (9th Cir. 2017) (deputy entitled to qualified immunity because it was not clearly established that using deadly force on mentally disturbed individual who grabbed knife from his pocket violated constitution).

Reed v. Lieurance, 863 F.3d 1196 (9th Cir. 2017) (issue of fact as to whether there was probable cause to arrest for destructing buffalo herding operation).

Brewster v. Beck, 859 F.3d 1194 (9th Cir. 2017) (law enforcement had no justification for continued impound of plaintiff's vehicle after plaintiff showed up with proof of ownership and valid driver's license).

Santopietro v. Howell, 857 F.3d 980 ((9th Cir. 2017) (no qualified immunity for arrest of street performer for actions of another performer).

Lowry v. City of San Diego, 858 F.3d 1248 (9th Cir. 2017) (en banc) ("bite and hold" policy using service dog after responding to burglary call did not violate Fourth Amendment; since no constitutional violation, no *Monell* claim).

Ames v. King County, 846 F.3d 340 (9th Cir. 2017) (deputy entitled to qualified immunity after subduing and handcuffing mother after deputy responded to her son's apparent suicide attempt and mother interfered; community caretaking capacity).

Hardwick v. Cnty. of Orange, 844 F.3d 1112 (9th Cir. 2017) (social worker not entitled to qualified or absolute immunity in suit alleging fabricated evidence and false statements were used in a dependency petition in order to remove child from mother's custody).

Kirkpatrick v. Cnty. of Washoe, 843 F.3d 784 (9th Cir. 2016) (en banc) (social worker immunity; law was not clearly established that social workers could not remove two-day old child from mother who had long history of drug abuse and whose two other children were in state custody; issue of face a Monell claim against county for failure to train on the need for obtaining warrant before removing children from parental custody).

A.K.H. v. City of Tustin, 837 F.3d 1005 (9th Cir. 2016) (affirming denial of qualified immunity to officer who shot and killed plaintiffs' decedent during investigatory stop; decedent did not pose any threat and simply brought his hand out of his sweatshirt pocket when he was shot by officer; "It has long been clear that "[a] police officer may not seize an unarmed, nondangerous suspect by shooting him dead." (quoting *Garner*)).

Brooks v. Clark County, 828 F.3d 910 (9th Cir. 2016) (courtroom marshal had qualified not absolute immunity for removing plaintiff from courtroom per judge's direction; plaintiff alleged amount of force was excessive).

Cooley v. Leung, 637 Fed.App. 1005 (9th Cir. 2016) (officers lacked reasonable suspicion for stopping late-model vehicle with temporary registration in an area known for drug trafficking; officers not entitled to qualified immunity because the law was clearly established at the time of the unlawful stop).

Garcia v. County of Riverside, 817 F.3d 635 (9th Cir. Feb. 3, 2016) (recognizing Due Process claim for individual who was wrongfully incarcerated based on a warrant issued on a suspect with a similar name with the same date of birth; no qualified immunity because the law was clearly established that officers cannot ignore evidence of mistaken identity and then fail to conduct further investigation).

Armstead v. Fields, 638 Fed.App. 601 (9th Cir. 2016) (denial of qualified immunity was appropriate where officials may have violated African-American prisoner's Eighth Amendment rights by placing him in a cell with an Hispanic gang member who had expressed that he could not be placed with blacks because of an ongoing feud).

Reza v. Pearce, 806 F.3d 497 (9th Cir. 2015) (state senator may have violated clearly established First Amendment by ordering arrest of plaintiff and barring him from the senate; plaintiff was critical of the senator and the senator asserted he had disrupted a legislative hearing; officers who arrested plaintiff at senator's direction were entitled to qualified immunity).

Jones v. County of Los Angeles, 505 F.3d 1006 (9th Cir. 2015) (child abuse investigation by physician at UCLA Medical Center; jury determines whether the parents' and child's constitutional rights were violated as unlawful seizure due to Dr. Wang's actions in not allowing child to be taken home; jury may also determine whether exigent circumstances existed; prior case law involving unlawful seizure by social worker provided fair warning that detaining child would violate the Constitution).

Carrillo v. County of Los Angeles, 798 F.3d 1210 (9th Cir. 2015) (due process right to disclosure of exculpatory material).

King v. Garfield County Public Hospital Dist. No. 1, 641 Fed. Appx. 696 (9th Cir. Dec. 24, 2015) (officials who terminated plaintiff after a positive drug test were entitled to qualified immunity; the fundamental requirement of due process is the opportunity to be heard at a meaningful time and a meaningful place and does not require the decision-maker to reach the plaintiff's desired outcome).

Sjurset v. Button, 810 F.3d 6508 (9th Cir. 2015) (officers did not violate clearly established law when removing children without court order pursuant to a child-welfare officials' protective-custody determination).

Collender v. City of Brea, 605 Fed.Appx. 624 (9th Cir. 2015) (fact issues existed as to whether suspect posed immediate threat to officer who shot him; video did not clearly show that suspect's hand reached for gun).

C.B. v. City of Sonora, 769 F.3d 1005 (9th Cir. 2014) (en banc) (officer and police chief were not entitled to qualified immunity after handcuffing 11 year old student when student was compliant and did nothing more than sit quietly and resolutely in the school playground).

Tarabochia v. Adkins, 766 F.3d 1115 (9th Cir. 2014) (state fish and wildlife officers were not entitled to qualified immunity from claim of unreasonable search and seizure).

Terebesi v. Torresco, 764 F.3d 217 (9th Cir. 2014) (officials who planned deployment of tactical team were not entitled to qualified immunity).

Powell v. Slemp, 585 F. App'x 427 99th Cir. 2014) (officer entitled to qualified immunity when he actually shot plaintiff while attempting to take her into custody with his gun drawn).

Demers v. Austin, 746 F.3d 402 (9th Cir. 2014) (administrators at state university would not have understood that their alleged conduct in retaliating against associate professor for writing and distributing accreditation plan violated First Amendment and were entitled to qualified immunity).

Peralta v. Dillard, 744 F.3d 1076 (9th Cir. 2013) (en banc) (court may consider the resources available to a prison official who lacks authority over budgeting decisions).

Armstrong v. Asselin, 734 F.3d 984 (9th Cir. 2013) (officers had a reasonable belief that warrants were supported by probable cause and were entitled to qualified immunity).

Barnard v. Theobald, 721 F.3d 1069 (9th Cir. 2013) (officers' reasonable perception of resistance did not entitle officer to qualified immunity).

Ellins v. City of Sierra Madre, 710 F.3d 1049 (9th Cir. 2013) (police officer not entitled to qualified immunity for retaliation against another officer for union activities).

Ford v. City of Yakima, 706 F.3d 1188 (9th Cir. 2013) (officers were not entitled to qualified immunity from motorist's First Amendment retaliation claim; motorist complained that officers stopped him because of his race).

Mueller v. Auker, 700 F.3d 1180 (9th Cir. 2012) (police officers were entitled to qualified immunity after separating mother from her infant daughter while medical procedures were performed).

Lavan v. City of Los Angeles, 693 F.3d 1022 (9th Cir. 2012) (within district court's discretion to find likelihood of success on homeless individual's due process claim against city).

Henry A. v. Willden, 678 F.3d 991 (9th Cir. 2012) (county and state officials were not entitled to qualified immunity in lawsuit claiming due process violation brought by foster children, but ad litem provisions of the child abuse prevention and treatment act did not create privately enforceable rights under § 1983).

Conner v. Heiman, 672 F.3d 1126 (9th Cir. 2012) (the district court erred by reserving the question of qualified immunity for jury because based on the facts known to them the officers could have reasonably concluded that plaintiff had committed theft at casino).

Hydrick v. Hunter, 669 F.3d 937 (defendants were entitled to qualified immunity for claims brought by committed persons who claimed that their confinement pursuant to California Sexually Violent Predators Act violated their constitutional rights; there was no allegation of specific policy or custom that caused constitutional deprivations and no specific allegation regarding each defendant's purported knowledge of deprivations).

Farnan v. Capistrano Unified School District, 654 F.3d 975 (9th Cir. 2011) (teacher was entitled to qualified immunity from liability for allegedly expressing hostility toward religion in the classroom).

Ammons v. Washington Department of Social and Health Services, 648 F.3d 1020 (9th Cir. 2011) (former female patient at state run residential psychiatric children's hospital claimed that the department failed to protect patient from sexual molestation by male staff member; administrator did not depart from accepted professional judgment and was entitled to qualified immunity).

Garcia v. County of Merced, 639 F.3d 1206 (9th Cir. 2011) (officer is entitled to qualified immunity after arresting attorney based on "jailhouse informant" and participating in smuggling contraband).

Bardzik v. County of Orange, 635 F.3d 1138 (9th Cir. 2011) (sheriff was not entitled to qualified immunity for retaliating against lieutenant for his support of sheriff's opponent in election challenge).

Liberal v. Lastrada, 632 F.3d 1064 (9th Cir. 2011) (officer not entitled to qualified immunity; officer violated Fourth Amendment rights of driver and passenger who were stopped without reasonable suspicion by officer who claimed that windows that were rolled down were rolled up and tinted; avoidance alone does not give rise to reasonable suspicion).

Bryan v. MacPherson, 630 F.3d 805 (9th Cir. 20100 (use of stun gun was excessive but officers did not violate clearly established law).

Ewing v. City of Stockton, 588 F.3d 1218 (9th Cir. 2009) (with respect to advising police, prosecutors are entitled to qualified not absolute immunity).

McSherry v. City of Long Beach, 584 F.3d 1129 (9th Cir. 2009) (probable cause defeated action against individual officers and city; officer was entitled to immunity even if he provided false testimony during trial; conviction overturned with DNA

evidence).

Johnson v. Walton, 558 F.3d 1106 (9th Cir. 2009) (even if a warrant lacks probable cause, the good faith exception under *United States v. Leon*, 468 U.S. 897 (1984), qualified immunity is lost "only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable").

Cuevas v. Deroco, 531 F.3d 726 (9th Cir. 2008) (entry into home searching for parolee; discusses protective sweep; deputy not entitled to qualified immunity when he opened drawer).

Del Camp v. Kennedy, 517 F.3d 1070 (9th Cir. 2008) (private company contracting with district attorney for services related to California bad check diversion program was not an arm of the state entitled to sovereign immunity).

Beltran v. Santa Clara County, 514 F.3d 906 (9th Cir. 2008) (social workers who allegedly fabricated evidence in child dependency and custody petitions were not entitled to absolute immunity).

KLR v. Estate of Moore, 512 F. 3d 1184 (9th Cir. 2008) (when a constitutional violation occurs, law enforcement officers are entitled to qualified immunity if they act reasonably under the circumstances; when reasonable minds could differ as to the existence of probable cause, approval of a warrant by a government attorney and ratification by a neutral and detached magistrate usually establishes objectively reasonable reliance).

Bias v. Moynihan, 508 F.3d 1212 (9th Cir. 2007) (officers entitled to qualified immunity for detention of plaintiff for psychiatric evaluations).

Phillips v. Hust, 477 F.3d 1070 (9th Cir. 2007) (*pro se* action against prison librarian; librarian violated prisoner's right of access to the court by refusing to allow the prisoner to bind his petition to Supreme Court and was not entitled to qualified immunity).

Burrell v. McIlroy, 423 F.3d 1121 (9th Cir. 2005) (clearly established law would not have put officers on notice that they could not conduct search prior to the physical delivery of warrant).

Baldwin v. Placer County, 418 F.3d 966 (9th Cir. 2005) (false statements made in

application for warrant (and same statements used in applying for warrants of other homes for alleged marijuana growing); officers used excessive force by pointing guns and physically forcing homeowners to ground without reasonable basis to do so).

Serrano v. Francis, 345 F.3d 1071 (9th Cir. 2003) (conditions of administrative segregation for disabled inmates not clearly established).

Meredith v. Erath, 342 F.3d 1057 (9th Cir. 2003) ("At the time of the search, July 10, 1998, it was not clearly established in this (or any other) circuit that simply handcuffing a person and detaining her in handcuffs during a search for evidence would violate her Fourth Amendment rights...Our decision today makes it clear that such conduct, absent justifiable circumstances, will result in a Fourth Amendment violation. ..[A] reasonable agent in Erath's position would have known, in July 1998, that to place and keep Bybee in handcuffs that were so tight that they caused her unnecessary pain violated her Fourth Amendment right to be free from an unreasonable seizure.").

Martinez v. City of Oxnard, 337 F.3d 1091, 1091, 1092 (9th Cir. 2003) ("We return to this case following remand from the United States Supreme Court. In 2001, we affirmed the district court's granting of summary judgment denying qualified immunity to Sergeant Ben Chavez. *Martinez v. City of Oxnard*, 270 F.3d 852 (9th Cir. 2001) ('*Martinez 1*'). We entertained at that time only the interlocutory appeal from the district court's denial of qualified immunity to Chavez. The Supreme Court reversed our holding Chavez was not entitled to qualified immunity because Martinez had a Fifth Amendment right against self-incrimination regardless of whether his statements were used against him in criminal proceedings, *Chavez v. Martinez*, 123 S.Ct. 1994, 2001, 2007 (2003); however, the Court left open the possibility that Chavez's coercive interrogation of Martinez violated his then clearly established due process rights under the Fourteenth Amendment. *Id.* at 2008. We hold that, if the facts alleged are proven true, it did. Accordingly, Chavez is not entitled to qualified immunity on Martinez's Fourteenth Amendment substantive due process claim. . . . If Martinez's allegations are proven, it would be impossible not to be shocked by Sergeant Chavez's actions. A clearly established right, fundamental to ordered liberty, is freedom from coercive police interrogation.").

Miller v. Gammie, 335 F.3d 889, (9th Cir. 2003) (en banc) (discussing immunity for family-service social services after Supreme Court renders decision inconsistent with prior Ninth Circuit precedent).

Ganwich v. Knapp, 319 F.2d 1115 (9th Cir. 2003) ("It may be argued that judges should not expect police officers to read United States Reports in their spare time, to study arcane constitutional law treatises, or to analyze Fourth Amendment developments with a law professor's precision. We do not expect police officers to do those things. We do, however, expect officers to think twice before embarking on a course of conduct, such as the one here, that is unusual, unfair, and unduly coercive. When the officers seized the plaintiffs, with no probable cause to arrest them, and then used the threat of continued incommunicado detention to coerce them to submit to police interrogation, the officers exceeded the generous leeway that the qualified immunity doctrine allows.").

Galbraith v. County of Santa Clara, 307 F.3d 1119 (9th Cir. 2002) (allegations against coroner for falsifying autopsy report).

Fairley v. Luman, 281 F.3d 913 (9th Cir. 2002) (warrant procedures constituted policy; mistaken identity of twin brother).

Groten v. California, 251 F.3d 844 (9th Cir. 2001) (officials' alleged ministerial acts in refusing to allow appraiser to apply for temporary and reciprocal licenses were not shielded by qualified immunity).

Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 1999)(police officers removed children from home for examinations based upon mental patient's statement that father intended to sacrifice children).

Lytle v. Wondrash, 182 F.3d 1083 (9th Cir. 1999) ("Because Pickering's analysis as to whether a public employee's expression is constitutionally protected requires a fact-sensitive, context-specific balancing of competing interests, 'the law regarding such claims will rarely, if ever, be sufficiently clearly established to preclude qualified immunity under *Harlow* and its progeny.'").

Ellis v. City of San Diego, 176 F.3d 1183 (9th Cir. 1999) (doctor who allegedly catheterized plaintiff against his will at request of law enforcement to obtain urine sample was not entitled to qualified immunity).

Trevino v. Gates, 99 F.3d 911 (9th Cir. 1996) (qualified immunity issue regarding indemnity for punitive damages; policy of indemnifying punitive damage awards that is implemented in bad faith may give rise to liability under §1983).

Hervey v. Estes, 65 F.3d 784 (9th Cir. 1995) (officers who made false statements in obtaining warrants not entitled to qualified immunity).

III. Articles

The following articles clarify the immunity doctrine in § 1983 litigation:

Caryn J. Ackerman, *Fairness or Fiction: Striking a Balance Between the Goals of § 1983 and the Policy Concerns Motivating Qualified Immunity*, 85 OREGON LAW REV. 1027 (2006).

Barbara Armacost, *Qualified Immunity: Ignorance Excused*, 51 VAND. L. REV. 581 (1998). Argues criminal notice paradigm to define qualified immunity.

William Baude, *Is Qualified Immunity Unlawful?* 106 CALIF. L. REV. 45 (2018).

Jack Beermann, *Qualified Immunity and Constitutional Avoidance*, 2009 SUP.CT. REVIEW 139 (2009).

Karen M. Blum, *Qualified Immunity: A User's Manual*, 26 IND. L. REV. 187 (1995)

Qualified Immunity: Further Developments in the Post Pearson Era, 27 TOURO L.REV. 243 (2011).

Qualified Immunity Developments: Not Much Hope Left for Plaintiffs, 29 TOURO L. REV. 633 (2013).

Susan Bendlin, *Qualified Immunity: Protecting "All But the Plainly Incompetent" (And Maybe Some of Them, Too)*, 45 J. MARSHALL L. REV. 1023 (2012).

Karen M. Blum, *Qualified Immunity: Time to Change the Message*, 93 NOTRE DAME L. REV. 1997 (2018).

Mark R. Brown, *Correlating Municipal Liability and Official Immunity Under § 1983*, 1989 U. ILL. L. REV. 625 (1989). Discusses *Canton v. Harris* and argues against a fault-based analysis. Article correlates municipal liability with official immunity, and presents a persuasive argument for a model of municipal liability which would prevent the doctrines of municipal liability and official immunity from avoiding accountability.

A. Allise Burris, Student Note: *Qualifying Immunity in § 1983 & Bivens Actions*, 71 TEXAS L.REV. 123 (1992). Presents the common law history and analysis of immunity issues. Good article for its basic outline and structure of immunity.

Michael Catlett, Student Note: *Clearly Not Established: Decisional Law and the Qualified Immunity Doctrine*, 47 ARIZ. L. REV. 1031 (2005) Argues for a proposed standard that would ask (1) whether the particular constitutional right had been announced in binding precedent, (2) if not, has a consensus of cases (more than one or two) from federal circuit courts or the pertinent court of last resort announced the particular constitutional right, and (3) how recently was the right pronounced.

Alan Chen, *The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law*, 47 AM. U. L. REV. 1 (1997). Criticism of qualified immunity analysis and fact dependent inquiry. *The Facts About Qualified Immunity*, 55 EMORY L.J. 229 (2006). Highlights difficulties with applying qualified immunity and continued criticism of Court's approach.

The Intractability of Qualified Immunity, 93 NOTRE DAME L. REV. 1937 (2018).

David Cleveland, *Clear as Mud: How the Uncertain Precedential Status of Unpublished Opinions Muddles Qualified Immunity Determinations*, 65 U. MIAMI L.REV 45 (2010).

Timothy Coates, *Covering the Bases: Tips for Litigating Qualified Immunity on Summary Judgment*, THE MUNICIPAL LAWYER, May 1, 2019.

Kevin R. Cole, Student Note: *Civil Rights: A Call for Qualified Legislative Immunity for City Council Members Under 42 U.S.C. § 1983*, 66 WASH. L. REV. 169 (1991). Argues for qualified and against absolute immunity of local governmental legislative officials.

Katherine Mims Crocker, *Qualified Immunity and Constitutional Structure*, 117 MICH. L. REV. 1405 (2019).

Nicholas Davies and Phillip Davis, Professional Article: *Qualified Immunity and Excessive Force: A Greater or Lesser Role for Juries?*, 47 N.M.L. REV. 291 (2017).

Edward C. Dawson, *Qualified Immunity for Officers' Reasonable Reliance on Lawyers' Advice*, 110 NW. U. L. REV. 525 (2016).

Amanda Eaton, *Optical Illusions: The Hazy Contours of the Clearly Established Law and the Effects of Hope v. Pelzer on the Qualified Immunity Doctrine*, 38 GA.L.REV.

661 (2004).

Richard H. Fallon, Jr., *Asking the Right Questions about Officer Immunity*, 80 FORDHAM L. REV. 479 (2011).

Gary S. Gildin, *The Standard of Culpability in § 1983 and Bivens Actions: The Prima Facie Case, Qualified Immunity and the Constitution*, 11 HOFSTRA L.REV. 557 (1983).

Richard B. Golden and Joseph Hubbard, *Section 1983 Qualified Immunity Defense: Hope's Legacy, Neither Clear Nor Established*, 29 AM. J. TRIAL ADVOC. 563 (2006).

John Jeffries, *In Praise of the Eleventh Amendment and § 1983,* 84 VA. L. REV. 47 (1998).

Reversing the Order of Battle in Constitutional Torts, 2009 SUPREME. CT. REV. 115.

What's Wrong With Qualified Immunity? 62 FLORIDA L.REV. 851 (2010).

Nancy Leong, *The Saucier Qualified Immunity Experiment: An Empirical Analysis*, 36 PEPP. L. REV. 667 (2009).

Kit Kinports, *The Supreme Court's Quiet Expansion of Qualified Immunity*, 100 MINN. L. REV. HEADNOTES 62 (2016). Discusses the past 15 years of Supreme Court defendant-friendly decisions and expansion of qualified immunity. Compares qualified immunity analysis with Fourth Amendment.

Qualified Immunity in § 1983 Cases: The Unanswered Questions, 23 GA. L.REV. 597 (1989). Discusses immunity history and doctrine arguing against the expansion of the qualified immunity standard in *Harlow v. Fitzgerald* and provides a clear and reasonable articulation of what courts should consider when faced with the immunity defense.

Tal J. Lifshitz, *"Arguable Probable Cause": An Unwarranted Approach to Qualified Immunity*, 65 U. MIAMI L. REV. 1159 (2011).

Richard H. McAdams, *Close Enough for Government Work? Heien's Less-than-Reasonable Mistake of the Rule of Law*, 2015 SUP. CT. REV. 147 (2015) (criticizing

Heien v. North Carolina and arguing that legislature enact legislation clearly enough that reasonable officers should know what the law is and ignorance of the law should not excuse police misconduct).

John D. McCann, *The Interrelationship of Immunity and the Prima Facia Case in Section 1983 and Bivens Actions*, 21 GONZ. L. REV. 117 (1986).

Molly McColly, *The Supreme Court Grants City Council Members Absolute Immunity from § 1983 Liability for Hiring and Firing Decisions in Bogan v. Scott-Harris: An Isolated Decision or a Change in Immunity Jurisprudence*, 32 CREIGHTON L. REV. 1433 (1999).

Aaron L. Nielson & Christopher Walker, *A Qualified Defense of Qualified Immunity*, 93 NOTRE DAME L. REV. (forthcoming 2018). Argues against the criticism in recent articles by Will Baude and Joanna Schwartz who question the basis for qualified immunity and its effectiveness. Article is part of a symposium on qualified immunity.

Clay J. Pearce, Student Note: *The Misapplication of Qualified Immunity: Unfair Procedural Burdens for Constitutional Damage Claims Requiring Proof of the Defendant's Intent*, 62 FORDHAM L. REV. 1769 (1994).

James E. Pfander, *Resolving the Qualified Immunity Dilemma: Constitutional Tort Claims for Nominal Damages*, 111 COLUMBIA L. REV. 1601 (2011).

John F. Preis, *Qualified Immunity and Fault*, 93 NOTRE DAME L. REV. 1969 (2018).

Teresa Ravenell, *Hammering in Screws: Why the Court Should Look Beyond Summary Judgment When Resolving §1983 Qualified Immunity Disputes*, 52 VILLANOVA L. REV. 135 (2007).

Blame it on the Man: Theorizing the Relationship Between Section 1983 Municipal Liability and the Qualified Immunity Defense, 41 SETON HALL L.REV. 153 (2011).

Alexander Reinert, *Qualified Immunity at Trial*, 93 NOTRE DAME L. REV. 2065 (2018).

Stephen Reinhardt, *The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Courts Ever Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particular Unfortunate Consequences*, 113 MICH. L. REV. 1219 (2015).

Jenny Rivera, *Extra! Extra! Read All About It: What a Plaintiff "Knows or should Know" Based on Official's Statements and Media Coverage of Police Misconduct for Notice of a § 1983 Municipal Liability Claim,* 28 FORDHAM URB. L.J. 505 (2000).

Colin Rolfs, *Qualified Immunity After Pearson v. Callahan*, 59 U.C.L.A. L. REV. 468 (2011).

Chaim Saiman, *Interpreting Immunity*, 7 U. PA.J.CONST. L. 1155 (2005). Reviews early and present qualified immunity cases.

Richard B. Saphire, *Qualified Immunity In Section 1983 Cases and the Role of State Decisional Law*, 35 Ariz. L. Rev. 621 (1993).

Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018); *How Qualified Immunity Fails*, 127 YALE L.J. 2 (2017).

Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure, Policy Analysis* CATO Institute, September 14, 2020.

Stephen J. Shapiro, *Public Officials' Qualified Immunity In § 1983 Actions Under Harlow v. Fitzgerald and its Progeny: A Critical Analysis*, 22 U. MICH. J.L. REF. 249 (1989). Excellent analysis of immunity and the appropriateness of the *Harlow* standard, i.e., protection from liability insofar as conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Phillip Sheng, *An "Objectively Reasonable" Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S. Code § 1983,* 26 BYU JOURNAL OF PUBLIC LAW 99 (2011).

Fred Smith, *Local Sovereign Immunity*, 116 COLUM. L. REV. 409 (March 2016).

Formalism, Ferguson, and the Future of Qualified Immunity, 93 NOTRE DAME L. REV. 2093 (2018).

Michael Solimine, *Are Interlocutory Qualified Immunity Appeals Lawful*, 94 NOTRE DAME L. REV. ONLINE 169 (2019).

David B. Sweet, Annotation, *Supreme Court's Views as to Application or Applicability of Doctrine of Qualified Immunity in Action Under 42 USCS § 1983, or in Bivens*

Action, Seeking Damages for Alleged Civil Rights Violations, 116 L. Ed. 2d 965; *Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCA 1983 or Bivens actions for damages where claim for equitable relief is also pending – post Harlow cases*, 105 A.L.R. Fed. 851.

Kathryn R. Urbonya, *Interlocutory Appeals from Orders Denying Qualified Immunity: Determining The Proper Scope of Appellate Jurisdiction*, 55 WASH. & LEE. L. REV. 3 (1998).

Benjamin Vetter, Student Note: *Habeas, § 1983, and Post-Conviction Access to DNA Evidence*, 71 U. CHI. L.REV. 587 (2004).

Andrew Weis, *Qualified Immunity for "Private" § 1983 Defendants after Filarsky v. Delia*, 30 GA. ST. U. L. REV. 1037 (2014).

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James Wrenn, *Passing the Buck: The Supreme Court's Failure to Clarify Qualified Immunity Doctrine to Protect Public Officials from Frivolous Lawsuits*, 22 HARV. J.L. & PUB. POLICY 1031 (1998).

Wesley Kobylak, Annotation, *Immunity of Public Officials from Personal Liability in Civil Rights Actions Brought by Public Employees Under 42 USCS § 1983*, 63 A.L.R. Fed. 744.

David T. Oliveiri, Annotation, *Defense of Good Faith in Action for Damages Against Law Enforcement Official Under 42 USCS § 1983, Providing for Liability of Person Who, Under Color of Law, Subjects Another to Deprivation of Rights*, 61 A.L.R. Fed. 7.