

## Piercing Qualified Immunity

By: Brett A. Purtzer; June 2002

Part of our practice includes representing individuals who have had their civil rights violated by law enforcement. These cases are very difficult because of the positive image most jurors have of law enforcement and the usual lack of independent witnesses to verify a civil rights violation. Nevertheless, individuals' civil rights are violated by law enforcement officers, and with that in mind, when contemplating a civil rights case under 42 USC § 1983, the practitioner must be cognizant of the Supreme Court case of Saucier v. Katz, 121 S.Ct. 2151, 533 U.S. 194, 150 L.Ed.2d 272 (2001).

Saucier was an excessive force case where the plaintiff, Katz, protested Vice President Gore's speech at a San Francisco army base. During the protest, Katz was forcibly removed by military police officer Saucier. Upon being sued for excessive force, the defense asserted qualified immunity. The trial court denied the defendant's motion to dismiss on qualified immunity grounds, and the Ninth Circuit Court of Appeals affirmed. The Supreme Court, however, reversed the lower court's decisions, holding that the officer was entitled to a dismissal on qualified immunity grounds.

The significance of Saucier is not the result, but how one must analyze a potential civil rights case under the Fourth Amendment to determine whether it will survive summary judgment. Saucier provides insight as to how a court determines qualified immunity.

Initially, before a claim can go forward, the trial court must determine whether the allegations give rise to a constitutional violation when viewing the facts in the light most favorable to the non-moving party. If no constitutional violation exists, there is no need for further inquiry into qualified immunity. If, however, a constitutional right violation is sustainable, the next question is to determine whether or not the constitutional right that was violated was clearly established. Under the specific circumstances, the court must determine whether it would be clear to a reasonable officer placed in the same circumstances that such conduct was unlawful. Unless the court determines that any reasonable police officer would know that the conduct was unlawful, qualified immunity will be a bar to the litigation.

Saucier instructs that both inquiries must be separate because the qualified immunity inquiry allows for reasonable mistakes to be made by a police officer when responding to a

situation, yet still be entitled to qualified immunity. Importantly, the court stated as follows with respect to the qualified immunity inquiry:

The qualified immunity inquiry, on the other hand, has a further dimension. The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all of the relevant facts but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

Because of Saucier, which attempted to clear the muddy water surrounding qualified immunity, one must review whether any potential civil rights action will succeed summary judgment. Although qualified immunity is something that is expected to be decided early on in a case, oftentimes such determination does not occur until significant discovery has occurred. Further, if the court rules against the law enforcement defendant, you can virtually assure yourself of an appeal on the same grounds, often by way of an interlocutory appeal. Accordingly, Saucier v. Katz, must be reviewed by all practitioners contemplating a civil rights case so that one can avoid potentially fruitless, and costly, litigation.

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