**Resolved: The United States ought to limit qualified immunity for police officers.**

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# Topic Analysis

With the recent murders of Philando Castile, Alton Sterling, and 5 officers in Dallas, Texas, the topic about police and their strategies in keeping order could not be more relevant. This topic is asking debaters to consider a few key issues. First, are their institutional practices in Law enforcement that justify acts of violence? Second, how should policy makers best address the growing attention of police brutality? And third, what roles does law enforcement play in communities? This topic, unsurprisingly, has a large amount of literature behind it. But what is unique to this topic, is it is a clash of legal history and present activist agendas. The debater can do one of two things, which is either outlined below or written out, either one, they role play as a policy maker to generate possible solvency to the issue or to take a more generalized approach of talking about what is happening and how the topic either discourages it or encourages it.

From legal standpoint, qualified immunity is understood to be “Qualified immunity immunizes an officer from liability and suit unless the officer’s conduct violated clearly

established law of which an objectively reasonable officer would have known. [An] officer’s qualified immunity defense when the officer can show that an objectively reasonable officer would have relied on the lawyer’s advice to conclude that her intended conduct would not violate clearly established constitutional law” (Dawson, 2016, p.2). Qualified immunity therefore allows for police officers to not be held liable for actions that they take while on duty. Though there is some gray area for some scholars about off-duty officers, many agree that police officers who qualify for this immunity ought to be on-duty.

However, what debaters should be more aware about the idea of qualified immunity is not the idea it prevents officers from being held accountable for their actions, but rather the language of “reasonableness.” The idea of reasonableness is extremely vague and is difficult to pin down the exact bright line of what is considered reasonable and unreasonable. In addition, “reasonableness” does not account for racist practices within either a police department or in an individual officer. If a debater can hone in on what it means to be reasonable and unreasonable, I think it will provide a more nuanced debate on how do certain practices become institutionalized.

The last thing that debaters should consider when thinking through the resolution is what does it mean to limit? For the affirmative the word limit could allow the affirmative to find instances in which qualified immunity causes harm and would remove the immunity for those cases. “Limits” in the resolution allows the affirmative to parametrize the affirmative. While debating on the negative, debaters should be aware of the possibility for the affirmative to be very specific to one issue. Debaters should develop answers to and possible contentions to specific away qualified immunity can be used.

For the affirmative side, there are several strategies that one could take. For this file, the affirmative takes a more traditional approach of human dignity, justice and ending discrimination. There has been a lot of research on the link between the idea of “reasonable nature” and racial practices, but for the affirmative it is imperative that the debater to delve more deep in the exact links between how “reasonableness,” effects communities at large. But something to possibly considered for the affirmative, is not only the issue of police violence, but also how qualified immunity might allow for police officers to ignore certain crimes and or not investigate crimes. However, the negative has a couple of different ways to approach the negative. Either the negative could either argue that qualified immunity helps police do their job more effectively or they can argue that police should be gotten rid of entirely. If you choose latter strategy the negative should be aware of the possible affirmative argues the negative is not clashing with the negative. However, it could present an interesting conversation is the necessary function of policing. When debating this topic, the negative should to be aware of how they structure their cases so it is not merely defensive. The negative approach in this file is to advocate that qualified immunities allow for better policing and de-escalation of violence.

There are a few sets of value and value criterion pairs that debaters can go for. But for more nuanced debates, debaters should try and stay away from the generic value and value criterions. Since this topic is more ground in real life events, the value and value criterion could be chances to be more specific. But the biggest question that the value and criterion on both sides of the debates need to be answering is how do we ensure public safety? Though some debates will come down to what is the most just thing to do, each debate will use the values to answer that fundamental question.

The biggest barrier for both sides of the debate will be the polarizing nature of the topic. Since police brutality is a large and highly discuss issue it makes it difficult for debaters to generate offense without others putting their own opinions into the mix. Debaters ought to be aware of both sides of the debate of police brutality and possible generate ideas on how to navigate them. For many debaters it maybe more accessible to not say that policing is always already bad, but rather to say that there could be some changes to address some cops. This type of language at least doesn’t turn away judges who are on either side of the spectrum, and at least gives both sides of the debate to be heard.

# Additional Readings

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Sheng, Philip., (2011-2012) "Objectivity Reasonable Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought under 42 U.S.C. Sec."BYU J. Pub. L. 99. Retrived from: <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1459&context=jpl>

# Value and Value Criterion

## Values:

### Retributive Justice:

**Stanford encyclopedia of philosophy '14** ( "Retributive Justice" Published Jun. 18th 2014. [http://plato.stanford.edu/entries/justice-retributive/)](http://plato.stanford.edu/entries/justice-retributive/%29)

The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles: (1) that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment; (2) that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and (3) that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers. The idea of retributive justice has played a dominant role in theorizing about punishment over the past few decades, but many features of it—especially the notions of desert and proportionality, the normative status of suffering, and the ultimate justification for retribution—remain contested and problematic.

The appeal for retributive justice as a value is the clear link it has to the topic. Both the affirmative and the negative could think through how either the use of or the limiting of qualified immunities allows for the fair distribution of justice, or proper responses to a crime. The affirmative can argue that qualified immunity does not allow for officers to be held accountable and or be punished for wrong doing. For the negative, you should think through what does it mean to respond to a crime? What is the difference between police officers and civilians.

### Morality

**Kant, ’59** (Preserving one’s life is a universalized moral duty. Immanuel, Foundations of the Metaphysics of Morals, trans. Lewis White Black, Professor of Philosophy, University of Rochester, 1959, pg 14)

On the other hand, it is a duty to preserve one’s life, and moreover, everyone has a direct inclination to do so but for that reason the often anxious care which most [people] take of it has no intrinsic worth, and the maxim of doing so has no moral import. They preserve their lives according to duty, but not from duty. But if adversities and hopeless sorrow completely take away the relish for life, if an unfortunate man, strong in soul, is indignant rather than despondent or dejected over his fate and wishes for death, and yet preserves his life without loving it and form neither inclination nor fear but from duty – then his maxim has a moral import.

For this case in particular, morality for some debaters may seem as an easy fit. But debaters should be very wary about using morality. Though the topic asks the debater to discuss what a government system should do which calls for morality, debaters on both sides should be willing to delve a little deeper into what it means to have legal morality. If the debater answers the question of what is the state morally obligated to do, it allows either the affirmative to argue that the state’s moral obligation is to citizens or the negative to argue that the state has an obligation to police officers first. This difference between the affirmative and negative view points of morality allows the debater to better choose who to focus their case on.

### Community safety

**Squires '1997** (Peter Squires. Professor of Criminology & Public Policy at the University of Brighton. "CRIMINOLOGY AND THE 'COMMUNITY SAFETY' PARADIGM: SAFETY, POWER AND SUCCESS AND THE LIMITS OF THE LOCAL" [http://www.britsoccrim.org/volume2/012.pdf)](http://www.britsoccrim.org/volume2/012.pdf%29)

The discourse on 'community safety' has been around for little over a decade. (SOLACE, 1986) Even so, it has become well established in a fairly short period of time, but this only begs a further question. We should not take them for granted. Use of the concept 'community safety' was developed by the GLC Police Committee Support Unit to describe a distinctly local government approach to crime prevention and related issues. More and more in local government circles the phrase 'crime prevention' has been reinterpreted to mean the promotion of community safety and the securing of improvements in the quality of life of residents by reference to a wide range of social issues, the tackling of certain risks and sources of vulnerability and development of policies on a broad range of fronts (ADC, 1990; Coopers and Lybrand, 1994). According to the Local Government Management Board, 'community safety is the concept of community-based action to inhibit and remedy the causes and consequences of criminal, intimidatory and other related anti-social behaviour. Its purpose is to secure sustainable reductions in crime and fear of crime in local communities. Its approach is based on the formation of multi-agency partnerships between the public, private and voluntary sectors to formulate and introduce community-based measures against crime' (LGMB, 1996). A survey into the community safety activities of local government by the Local Government Management Board in England and Wales, from which the above definition is derived, asked authorities to nominate their core priorities for the coming year. The specific priorities identified by the responding authorities were, in descending order: (1) young people, (2) substance misuse, (3) fear of crime, and (4) CCTV and town centre security (LGMB, 1996: 25.) Such a list of priorities will hardly be surprising though they reflect a variety of concerns and in some respects quite contrasting criminological perspectives. To some, no doubt, they will reflect a pragmatic, balanced and multi-layered response to problems of crime and community safety whilst to others it will appear more of a 'shotgun' approach - something might work - or perhaps just 'suck it and see'.

Community safety for this topic, could be a very interesting value for both sides of the debate. For the Negative side this could be the place where debaters can draw the most offense. The negative’s case should be centered around on what police officers should be doing. Though it may not always happens, the negative team needs to establish what value police officers do for communities. For the affirmative, debaters could establish that groups of people are at risk. Therefore, community safety in the affirmative’s case could argue that limiting qualified immunity could help certain communities.

## Criterions:

Next, below are a few ideas for possible criterions. For the most effective value criterion pairs, debaters should be considering which actor is their value geared towards. For values that are focused on individual choices, consequentialism might be a better fit etc.

### Consequentialism

Consequentialism is the idea, that in order to evaluate the morality of an action one must evaluate the outcomes or the consequences of an action.

Bok, 1998 (Sissela. Professor of Philosophy. Applied Ethics and Ethical Theory, Ed. David Rosenthal and Fudlou Shehadi

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake. For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

### Due Process

Due process is the theory that every individual ought to have fair treatment through the normal judicial system, especially as a citizen's entitlement.

**Blacks Law Dictonary, 2014** (Black's Law Dictionary. "Due Process of Law". Page 500. http://foundationfortruthinlaw.org/Files/Black's-Law-Dictionary-Due-Process-Definition.pdf)

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is. by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case.

### Reducing risks to individuals

Reducing risks to individuals is a basic concept in which we ought to reduce the harms that a community might face.

Office of the Instutional Review Board’ 16 (Guidance on Assessing and Minimizing Risk in Human Research. Feb. 29th 2016 UNM Office of the Institutional Review Board. [http://irb.unm.edu/sites/default/files/Guidance%20on%20Assessing%20and%20Minimizing%20Risk%20in%20Human%20Research.pdf)](http://irb.unm.edu/sites/default/files/Guidance%20on%20Assessing%20and%20Minimizing%20Risk%20in%20Human%20Research.pdf%29)

Risk is the probability of harm or injury (physical, psychological, social, legal or economic) occurring as a result of participation in a research study. Both the probability and magnitude (severity) of a possible harm may vary from minimal to significant. The magnitude of potential harm is the summative measure of its severity, duration and reversibility. Thus, a research protocol should lower probability of harm occurring.. Alternatively, a protocol with a high probability of harm occurring, but a low severity of harm, may be assigned minimal risk for participants (e.g. itchiness after electrode tape removal, or distress related to answering sensitive, personal questions). Federal regulations define only “minimal risk”. Minimal risk is where the “probability and magnitude of harm or discomfort anticipated in the research is not greater in and of themselves.

# Affirmative Case

## Top of case:

Roark and Deputy Amanda May went to Waldron’s home near 56th and Vine streets to arrest her grandson on a misdemeanor charge of disturbing the peace. Police had encountered Steven Copple before, including at least one time when he had a weapon. Roark and May said there was some indication Copple might try to commit "suicide by cop," according to court documents. The deputies said they saw him inside when they pulled up to the house. Roark knocked and then pushed his way past Waldron, saying he was a deputy sheriff and needed to see her grandson. In her lawsuit, Waldron said Roark ignored her request to see a warrant or badge. Believing Copple was in the basement, the deputies drew their guns and ran toward the stairs. May ordered Waldron to stay in the kitchen, but she went to the basement, yelled at deputies and threatened to call the police, documents say .At that point, records say, Roark threw Waldron to the ground, breaking her glasses, and placed a knee on her back and pulled her right arm back. She continued to resist by keeping her arm stiff, according to court documents. She told him she'd had shoulder surgery, but he persisted and tore her rotator cuff, she said. Judge Robert Otte said he is sensitive to Marilyn Waldron's accusations, but said any mistakes Deputy James Roark made during his encounter with her on Feb. 22, 2012, are protected under the law that gives him qualified immunity."The court does not condone any violation of rights by any officer of the law," he said in his order filed Friday. "However, (Waldron's) claims are balanced against other factors described."

**Johnson 2016** (Riley. Journalist for the Lincold Journal Start. July 8th 2016. "Judge dismisses lawsuit alleging deputy used excessive force" [http://journalstar.com/news/local/911/judge-dismisses-lawsuit-alleging-deputy-used-excessive-force/article\_0ab74656-9d40-57c3-86a9-7451bccdfde6.html)](http://journalstar.com/news/local/911/judge-dismisses-lawsuit-alleging-deputy-used-excessive-force/article_0ab74656-9d40-57c3-86a9-7451bccdfde6.html%29)

Because of the increasing risk of police violence, lack of regulation, and little accountability for police officers who hurt civians, I stand in affirmation Resolved: The United States ought to limit qualified immunity for police officers.

## Definitions:

Qualified Immunity is the removal of legal responsibility for civil lawsuits for Police officers.

**Schott '12** (Federal Bureau of Investigator "Qualified Immunity How It Protects Law Enforcement Officers." Sept. 2012 <https://leb.fbi.gov/2012/september/qualified-immunity-how-it-protects-law-enforcement-officers>)

While law enforcement officers recognize the inherent risks of their occupation, they should be comforted by the description given by the Supreme Court as to the effect of the qualified immunity doctrine on one of those inherent risks—that of being sued civilly. In *Harlow v. Fitzgerald,*the Court explained that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”4 The plaintiff in *Harlow,* A. Ernest Fitzgerald, sued, among others, President Richard M. Nixon and one of his aides, Bryce Harlow, alleging that he was dismissed from his employment with the Air Force in violation of his First Amendment and other statutory rights. The defendants sought immunity from the lawsuit. While ruling on the issue of immunity, the Supreme Court distinguished the president from his aide. First, the Court noted that its “decisions consistently have held that government officials are entitled to *some form*of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability.”5

Police officers are defined as those who have been employed by a specific state to protect a certain community.

Baton Rouge Police Department, 2015 (the Municipal Fire & Police Civil Service Board., “Duties & Responsibilities of Police Officers” [http://brgov.com/dept/brpd/pdf/police\_duties.pdf)](http://brgov.com/dept/brpd/pdf/police_duties.pdf%29)

This is general and varied duty police work in the protection of life and property through the enforcement of laws and ordinances. Work involves the responsibility for performing routine police assignments that are received from police officers of superior rank. Work normally consists of checking of parking meters for violations, routine patrol, preliminary investigation and traffic regulation, and investigation duties in a designated area on an assigned shift which involve an element of personal danger and employees must be able to act without direct supervision and to exercise independent judgment in meeting emergencies. Employees may receive special assignments which call upon specialized abilities and knowledge usually acquired through experience as a uniformed officer. In addition, employees of the class may be required to assist other personnel of the police department in conducting interrogations, searches, and related duties as assigned, involving female prisoners or suspects, as well as in escorting females and juveniles to and from designated points. Assignments and general and special instructions are received from a superior officer who reviews work methods and results through reports, personal inspection, and discussion.

## Value and Criterion

**The Value therefore is retributive justice.** Which is defined as the appropriate just actions taken in response to a crime.

**Stanford encyclopedia of philosophy '14** ( "Retributive Justice" Published Jun. 18th 2014. [http://plato.stanford.edu/entries/justice-retributive/)](http://plato.stanford.edu/entries/justice-retributive/%29)

The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles: (1) that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment; (2) that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and (3) that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers. The idea of retributive justice has played a dominant role in theorizing about punishment over the past few decades, but many features of it—especially the notions of desert and proportionality, the normative status of suffering, and the ultimate justification for retribution—remain contested and problematic.

And

Escaping punishment from the law denies judicial authority and, thus, is destructive to the institution of laws.

**Allen 1980** (R. E. Department of Philosophy and Classics, Northwestern University, Socrates and Legal Obligation, pg 85)

 The key lies in the nature of judicial authority. To escape is to deny, not by word but by deed, not by uttering negative statements, but by positive breach, the authority of the verdict and sentence. That sentence was rendered according to law and, as legal, owes its authority precisely to that source. To deny the authority of a given sentence so rendered is to deny authority to any sentence rendered; but this is to deny authority to law itself, since it is to deny authority to its application. Since the application of law is essential to the existence of law, to act in breach of a given application is – by so much – destructive of all law. Since law without application is not law, and a city without law is not a city, the Laws of Athens claim that Socrates, if he escapes, will attempt so far as in him lies to destroy the City and its laws. Aristotle remarks, presumably with the Crito in mind, “Judicial decisions are useless if they take no effect; and if society cannot exist without them, neither can it exist without the execution of them.” This account of judicial authority rests, then, on a universalization argument, found nowhere else in ancient philosophy. It explains why, if this judgment as judicially rendered is not authoritative, then no judgment as judicially rendered is authoritative. This principle, it is claimed, is fundamental to the existence of a legal system.

Since citizens are having their rights violated by officers and others, they ought to have access to retributive justice. Limiting qualified immunities is the only away to check back against bias insitutions and practices.

## Value Criterion:

**In order to ensure justice is accessible to victims, the value criterion is due process.** Due process is the theory that every individual ought to have fair treatment through the normal judicial system. Due process ensures that a victim is able to receive justice for the crime, but also holds criminals accountable for their actions.

**Blacks Law Dictonary, 2014** (Black's Law Dictionary. "Due Process of Law". Page 500. http://foundationfortruthinlaw.org/Files/Black's-Law-Dictionary-Due-Process-Definition.pdf)

Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution- that is. by the law of its creation-to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case.

Holding persons accountable for their actions better ensures prevention of harmful actions. Accountability is key to reforming. Therefore Punishment should be aimed at correction of habits, not as retaliation.

**Allen, ’98** (R. E. Department of Philosophy and Classics, Northwestern University, Socrates and Legal Obligation, pg 79)

The aim of just punishment is to make bad men better, to increase the measure of their human excellence, and thereby the measure of their happiness or well-being. Therefore, as it is better to suffer injustice than to do it, so it is also true that the unjust man, if he knew what is in his own interest, as he does not, would seek punishment for himself because of its medicinal value, for its effect of purifying the soul from the disease of wickedness. Punishment is imposed, when it is imposed rightly, not simply because of past wrongdoing, but for the sake of the soul of the wrongdoer – or if he is beyond cure, for the sake of himself and his fellows. This theory is distinct from the retributive theory in that it does not place positive as distinct form the instrumental value on human suffering as such, and does not measure the wickedness of an agent by the wickedness of his act.

## Observation 1:

### Qualified Immunity is based on reasonableness.

Therefore in order to limit the use of qualified immunity it is necessary to limit the reasonableness standard. The affirmative thus ought to defend what mechanisms

**Schott '12** (Federal Bureau of Investigator "Qualified Immunity How It Protects Law Enforcement Officers." Sept. 2012 <https://leb.fbi.gov/2012/september/qualified-immunity-how-it-protects-law-enforcement-officers>)

*6*Based on this reasoning, Harlow—Nixon’s aide—was entitled not to absolute immunity, but, rather, to qualified immunity. The Court then reexamined its earlier treatment of qualified immunity. Prior to this case, qualified or “good faith” immunity included both an objective and a subjective aspect. The subjective aspect involved determining whether the government actor in question took his “action *with the malicious intention*to cause a deprivation of constitutional rights or other injury.”7 This subjective determination typically would require discovery and testimony to establish whether malicious intention was present. Having to go through the costly process of discovery and trial, however, conflicted with the goal of qualified immunity to allow for the “dismissal of insubstantial lawsuits without trial.”8Recognizing this dilemma, the Court altered the test to determine whether qualified immunity was appropriate. The new test, as stated earlier, is that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”9 By applying the reasonable person standard, the Supreme Court established, for the first time, a purely objective standard to determine whether granting a government official qualified immunity was appropriate. While *Harlow* did not involve a law enforcement officer’s actions, the decision is significant because law enforcement officers are government officials who perform discretionary functions and may be protected by qualified immunity. This shield of immunity is an objective test designed to protect all but “the plainly incompetent or those who knowingly violate the law.”10 Stated differently (but just as comforting to law enforcement officers), officers are not liable for damages “as long as their actions reasonably could have been thought consistent with the rights they are alleged to have violated.”11 As protective as the language in these post-*Harlow*cases would suggest qualified immunity is, qualified immunity is not appropriate if a law enforcement officer violates a clearly established constitutional right.

## Contention 1: Qualified Immunities allow for police officers to be violent.

### Subpoint A: Qualified immunity doesn’t allow for victims to receive justice.

Qualified immunity allows for police officer’s to escape accountability when it comes to violent crimes.

**Sheng ‘12,** (Philip. Professor at BYU. An "Objectively Reasonable" Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S.C. § 1983, 26 BYU J. Pub. L. 99 Available at: [http://digitalcommons.law.byu.edu/jpl/vol26/iss1/5)](http://digitalcommons.law.byu.edu/jpl/vol26/iss1/5%29)

In Graham v. Connor, the United States Supreme Court announced for the first time that "all claims that law enforcement officers have used excessive force ... in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard." 1 In other words, "the question is whether the officers' actions [were] 'objectively reasonable' in light of the facts and circumstances confronting thcm." 2 Application of the "objectively reasonable" standard in the context of excessive force cases ought to be rather straightforward; after all, the standard is fundamental to the American legal system. For example, in tort law, juries arc routinely asked to place themselves in the shoes of medical doctors, lawyers, and other professionals in an effort to determine what conduct is objectively reasonable under a given set of facts. 3 Likewise, in criminal law, where a defendant raises self-defense in response to a charge of murder or battery, juries must determine whether the force used was objectively reasonable in response to the perceived threat.4 The inquiry is often fact intensive, and like all questions of fact, should be entrusted to the jury. 5 As this paper seeks to explain however, in excessive force cases brought under 42 U.S.C. § 1983,6 the role of juries has been essentially usurped by the doctrine of qualified immunity, such that judges are deciding what is reasonable and enabling law enforcement officers to escape liability through ambiguities in the law. The Supreme Court's attempt at harmonizing the doctrine of qualified immunity with its holding in Graham has only caused greater confusion, and the only solution appears to be eliminating qualified immunity from excessive force cases altogether.

Qualified Immunity allows for the justification of violence. And many victims receive no justice.

**Senkel 1999** ( Tara. Attorney in New York. Civilians Often Need Protection From the Police: Let's Handcuff Police Brutality 15 N.Y.L. Sch. J. Hum. Rts. 385 (1998-1999). <http://heinonline.org/HOL/Page?public=false&handle=hein.journals/nylshr15&page=385&collection=journals#)>

While victims of police brutality can bring an action under section 1983217 against the police officer and the municipality, the police officer and municipality are each subject to liability under two different theories.218 Police officers are found liable iUnder the statute if, "while acting under color of state law, their actions violate a person's constitutional rights. 219 Municipalities are not liable under the theory of respondeat superior, but may be found liable if the police officer's conduct follows an official policy or practice of the municipality.220 There are differences between an action brought against a police officer and an action brought against a municipality, such as the defenses that can be asserted.2 Once a victim brings an excessive force claim against a police officer under section 1983, the officer may assert a defense of qualified immunity.222 In Graham, the Supreme Court did not address the issue of qualified immunity in Fourth Amendment excessive force claims. 223 However, the Court did discuss the qualified immunity defense in Harlow v. Fitzgerald. 224 In Harlow, A. Ernest Fitzgerald sued Bryce Harlow and Alexander Butterfield, Richard Nixon's White House aides, alleging they had been involved in a conspiracy to violate his constitutional and statutory rights.225 The Court held that the aides were protected by a qualified immunity. 226 The Court stated that: [B]are allegations of malice should not suffice to subject governmental officials either to the costs of trial or to the burdens of broad-reaching discovery. We therefore hold that government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not clearly violate, established statutory or constitutional rights of which a reasonable person would have known. 227 The Court went on to state that by defining the limits of the qualified immunity doctrine in objective terms, it was not authorizing lawless conduct.228 Rather, the objective reasonableness of an official's acts protects the public interest by discouraging unlawful conduct and compensating victims. 229 If an official could be expected to know that an act would violate statutory or constitutional rights, the officer should not perform the act, and if a person was injured by the act, that person should have a cause of action. 230 However, if the official's duties require action be taken in which clearly established rights are not involved, "the public interest may be better served by action taken 'with independence and without fear of consequences.' 231 The objective reasonableness standard was also used in Anderson v. Creighton.232 In Anderson, FBI agent Russell Anderson was working with other law enforcement officers involved in a warrantless search of Robert Creighton's home.233 The search was performed because the FBI agent believed that a bank robbery suspect might be in the house.2 34 Creighton brought an action in state court against Anderson, asserting a Fourth Amendment violation.235 Anderson removed the suit to federal court and then filed a motion for summary judgment, contending the claim was barred by his qualified immunity.236 However, the Court of Appeals for the Eighth Circuit denied Anderson's motion, finding that Creighton demonstrated that Anderson violated Creighton's right to be protected from warrantless searches of his home. An exception from this constitutional right, the court noted, was if officers have probable cause or in situations where there are exigent circumstances.237

and

**Senkel 1999** ( Tara. Attorney in New York. Civilians Often Need Protection From the Police: Let's Handcuff Police Brutality 15 N.Y.L. Sch. J. Hum. Rts. 385 (1998-1999). <http://heinonline.org/HOL/Page?public=false&handle=hein.journals/nylshr15&page=385&collection=journals#)>

The U.S. Supreme Court reversed, stating that it was concerned about the test of "clearly established law"238 because if the test were applied to cases at this level of generality, it would not have any relationship to the "objective legal reasonableness., 239 The Court also stated that plaintiffs would be able to change the rule of qualified immunity "into a rule of virtually unqualified liability of government agents by alleging a violation of extremely abstract rights." 240 The right must be clear enough that a reasonable governmental official would know that his conduct violates that right. 241 The question that must be asked is an objective, albeit fact specific one, whether a reasonable officer would violate others rights or could find that Anderson's search was lawful, "in light of clearly established law and the information the searching officers possessed.' '242 The court found that Anderson's "subjective belief about the search were irrelevant." 243 Furthermore,. in Owens v. City of Independence,244 the Court held that a municipality cannot allege a qualified immunity defense. The Court stated that "many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good-faith defense." 245 Therefore, a municipality can only escape liability if it claims that a constitutional violation did not occur or that the police officer was not acting in good faith "pursuant to a policy, practice, or custom of the municipality. 246 Thus, if a police brutality victim brings an action against the police officer and municipality under section 1983, the Court will examine the claim under the Fourth Amendment and its reasonable standard to determine whether the police officer's conduct was excessive or unreasonable. Although police officers may assert a qualified immunity defense to the claim, municipalities are not afforded this defense.

Governmental accountability is key to democracy and justice. The status quo removes accountability causing the government to be illegitimate

Bogdanor, '07 ( Vernon. Professor of Government, Brasenose College, Oxford University. "Legitmacy, Accountability and Democracy in the European Union." [http://fedtrust.co.uk/wp-content/uploads/2014/12/FedT\_LAD.pdf)](http://fedtrust.co.uk/wp-content/uploads/2014/12/FedT_LAD.pdf%29)

The accountability of those who make political decisions to those who choose them is a fundamental part of democratic government. Indeed, it is part of a broader process of citizen control. Those who make decisions in a democracy need to gain the confidence of electors and convince them that they and their party are the right team. The voters pass judgement on the government, endorsing what it has done, or rejecting it in favour of the opposition. It is in this sense that politicians are accountable to the public. But, in addition, accountability is also exercised by directly elected representatives on behalf of the voters when they scrutinise the government of the day. For it is an important element of the democratic process that those who exercise power on the electorate’s behalf do so in a rational and transparent manner, with mistakes being publicised, discussed and punished where necessary. That, of course, is the case for freedom of information. Parliament, the media, civil society and interest groups all have a part to play in this continuing process of political accountability, which culminates in, but is by no means limited to, general elections every four or five years. Just as some might argue that the European Union is already legitimate because the Council of Ministers and the European Parliament are both directly elected, so also they might suggest that the Union is accountable since ministers of the member states are accountable to their national parliaments for the decisions they take in the Council of Ministers. The European Parliament, moreover, exercises oversight over the Commission, and it has been more vigorous in this regard in recent years. The Commission is in fact far from being the secretive organisation of popular myth. Indeed, interest groups in Brussels are often pleasantly surprised by the ease of access to civil servants and documents. The Council of Ministers has in the past met in private, with no official record of how member states vote on legislative proposals. But some member states regularly publicise their voting decisions and it has been rare for a government which is directly challenged about how it has voted on a particular issue to hide behind the veil of Council secrecy. Moreover, the Council has recently decided to hold its legislative sessions in public and this will certainly increase transparency for some aspects of its legislative work.

### Sub point B: Qualified immunity increases violence

The vagueness of reasonableness allows for police officers to not know the bright line of excessive force. This allows for police officers to be violent in their dealings with the public

**Alpert and Smith, 1994** ( Geoffrey P. Alpert William C. Smith. Professors at University of South Carolina. How Reasonable Is the Reasonable Man: Police and Excessive Force. Journal of Criminal Law and Criminology Volume 85 Issue 2 Fall. <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6818&context=jclc)>

The Commission Report discussed the need for scrutiny of the police and the need for reform.3 Unfortunately, no one attempted to define excessive force or explain situations that went beyond the necessary force needed to achieve the police mission. This lack of definition has created an unfortunate situation for both the police and the public. One possible consequence of this deficiency is the lack of national and state-wide statistics on police use of force or excessive force. The shortage of comprehensive statistical information on police use of force has been explained by police officials:4 [A]gencies did not require reports of their use [of force] from their officers. The categories of force for which such reporting as most likely to be mandated were those with the most potential for death or serious bodily harm, such as shootings.... A majority of the agencies within each type reported that they reviewed all use of force reports. The remaining departments either reviewed selected reports or reported that they did not review these reports at all.

And

**Alpert and Smith, 1994** ( Geoffrey P. Alpert William C. Smith. Professors at University of South Carolina. How Reasonable Is the Reasonable Man: Police and Excessive Force. Journal of Criminal Law and Criminology Volume 85 Issue 2 Fall. <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6818&context=jclc)>

Prior to 1989, most federal circuits followed the Fourteenth Amendment substantive due process "shocking to the conscience" standard enunciated by the Second Circuit in Johnson v. Glick. 0 UnderJohnson, the subjective mental state of the offending officer was relevant as a factor to help determine if an actionable injury had occurred.11 As a result, ambiguity existed in police misconduct cases regarding the standard of evaluation for claims of excessive force. With the United States Supreme Court's 1989 decision in Graham v. Connor,12 the significance of that intent gave way to the "objective reasonableness" standard of the Fourth Amendment in cases where "seizures" are deemed to have occurred. 13 One of the obvious problems created by a reasonableness standard is determining the appropriate level of reasonableness. Research results have indicated that police officers, especially street officers, are able to assess what is good police work and when force is excessive.' 4 This may explain why most accusations of excessive force are denied at the department level. Of course, it may also be that police officers band together, close ranks, and protect their fellow of ficers against accusations of excessive force. 15 In any case, it is not the police officer who will ultimately determine the reasonableness of another police officer's actions, as police officers will rarely be seated on a jury in a police misconduct case. Reasonableness may have several levels and several audiences. It is, however, the assessment of force by the civilian "reasonable person" that matters. And force may involve hands, batons, or other weapons if used appropriately and according to policy and training.16 Police officers escalate the use of force against a suspect-beginning with mere presence or verbal and visual commands, and concluding, if necessary, with the use of deadly force-in direct relation to the reason for which they must apprehend that suspect. To determine whether that force was justified, courts must analyze its necessity and reasonableness.' 7 It is precisely these terms that must be defined and understood. A definition of permissible and impermissible (excessive) force within Qualified immunity is necessary to stopping police violence. Current legal efforts to define the extent of officer qualified immunity serves as a starting point in the present effort to delineate reasonable standards of officer behavior in situations involving the use of force.

Police Violence is target communities of color.

**Hadden et. all '16** (Bernadette R. Hadden, MSW, PHD, is Assistant professor in the MSW program at Hunter College School of Social Work New York. Willie Tolliver, PhD. Associate Professor at Silberman School of Social Work. Fabienne Snowden PHD. Professor at Hunter College School of Social Work. & Robyn Brown Manning, PHD. Professor at Hunter College School of Social "An authentic discourse: Recentering race and racism as factors that contribute to police violence against unarmed Black or African American men, Journal of Human Behavior in the Social Environment" <http://www.tandfonline.com/doi/full/10.1080/10911359.2015.1129252#abstract)>

Police shootings of unarmed Black or African American men are occurring at alarming rates (Wihbey, 2014) and are indicative of a national trend of excessive force used by law enforcement agents on the bodies of people of color (American Civil Liberties Union [ACLU], 2014). These incidents are happening inside and outside of Black and Hispanic neighborhoods (Carroll & Gonzalez, 2014), to low-income and middle-class Blacks or African Americans (Jones-Brown, 2009), and are frequently the result of routine encounters (ACLU, 2014). One of several challenges in obtaining an accurate count of the number of the police shootings of unarmed Black or African American men in the United States is that there are no nationally consistent measures of collecting these data (Department of Justice, 2015). This lack of standardized reporting, accompanied by public outrage, civil unrest, and community activism, calls for investigations into, and law enforcement reporting of, fatal police shootings of unarmed Black or African American men. Suggestions of racial profiling in police shootings have been presented as an explanation of the phenomenon of the disproportionate shooting of unarmed Black or African American men by law enforcement agents (Amajor, Sandars, & Pitts, 1999). In 2007 researchers found that in 10 of the United States’s largest cities, Blacks or African Americans were overly represented among victims of police shootings (Lowerstein, 2007). These findings were most visible in New York City, Las Vegas, and San Diego (Lowerstein, 2007). At a 2010 hearing calling for the investigation of police-involved shootings in Oakland, California, the National Association for the Advancement of Colored People (NAACP) reported that from 2004 and 2008, 37 of the 45 police shootings in that city were at Black or African American suspects (Bulwa, 2010). A report from the New York City Police Department (NYCPD) illustrates that between 2000 and 2013, 97 Blacks or African Americans, 41 Hispanics, and 21 Whites were killed by NYPD police officers (NYCPD, 2014). In other words, from 2000 to 2013, more Blacks or African Americans were killed by NYCPD weapon discharges than Latinos and Whites combined. These reports identify and document the phenomenon of Black or African American men being shot and/ or killed by police officers, despite the limitations in data tracking police shootings (Graham, 2015). However, they do not inform us of the incidence or prevalence of this phenomenon

Violence towards communities of color codify their bodies as the other.

**Rembert et. All ’15** (David A. Rembert, Jackson State University, PHD in civil Law. Jerry Watson Professor at Jackson University in Political & Rickey Hill Ph.D Policital Science. Professor of Political Science at Jackson State University. “A trilogy of trepidation: Diverse perspectives on police violence targeting African American males” Journal of Human Behavior in the Social Environment, 26:2, 227-235, DOI: 10.1080/10911359.2015.1083506)

Whiteness codifies the Black body and being as demonic, monstrous, and criminal. Black people have not just become the “other,” they have become the “other-worldly,” subjected to preemptive strikes by a system of society that has rendered them subhuman. Philosopher George Yancy puts the matter quite aptly when he submits the Black body “Is that which is to be feared and yet desired, sought out in forbidden white sexual adventures and fantasies; it is constructed as a source of white despair and anguish, an anomaly of nature, the essence of vulgarity and immorality” (Yancy, 2008, p. xvi). The dominant White class deploys its political and social power as racist iconography to maintain power. Therefore, the Black body is not free and autonomous; it is imprisoned, from birth, by an ideology of racial domination and ontologically reduced to a criminal.

And Otherization is the internal link to other forms of violence.

**Bulter, ’04** (Professor at Berkley. Judith Bulter *Precarious life :the powers of mourning and violence*London. Print. )

I am referring not only to humans not regarded as humans, and thus to a restrictive conception of the human that is based upon their exclusion. It is not a matter of simple entry of the excluded into an established ontology, but an insurrection at the level of ontology, a critical opening up of the questions, What is real? Whose lives are real? How might reality be remade those who are unreal have, in a sense, already suffered the violence of derealization. What, then, is the relation between violence and those lives considered as "Unreal?" Does violence effect the unreality? Does violence take place on the condition of that unreality? If violence is done against those who are unreal, then from perspective of violence, it fails to injure or negate those lives since those lives area already negated. But they have a strange way of remaining animated and so must be negated again (an again). The derealization of 'Other' means that it is neither alive nor dead, but interminably spectral. The infinite paranoia that imagines the war against terrorism as a war without end will be one that justifies itself endlessly in relation to the spectral infinity of its enemy, regardless of whether or not there are established ground to suspect the continuing operation of terror cells with violent aims. How do we understand this derealization? It is one thing to argue that first, on the level of discourse, certain lives are not considered lives at all, they cannot be humanized, that they fit no dominant frame for human, and that their dehumanization occurs first, at this level, and that this level then gives rise to a physical violence that in some sense delivers the message of dehumanization that is already at work in the culture. It is another thing to say that discourse itself effects violence through omission.

### Sub point C: limiting qualified immunity is key to reducing violence

Wright, 2015 (Journalist and PHD in Law. "Want to Fight Police Misconduct? Reform Qualified Immunity." [http://abovethelaw.com/2015/11/want-to-fight-police-misconduct-reform-qualified-immunity/)](http://abovethelaw.com/2015/11/want-to-fight-police-misconduct-reform-qualified-immunity/%29)

In order to truly hold police accountable for bad acts, civilians must be able to bring, and win, civil rights suits themselves — not rely on the Department of Justice, or special prosecutors, or civilian review boards to hold officers accountable. And in order to both bring and win civil rights suits, civilians need a level playing field in court. Right now, they don’t have one. Instead, police officers have recourse to the broad protections of the judicially established doctrine of qualified immunity. Under this doctrine, state actors are protected from suit even if they’ve violated the law by, say, using excessive force, or performing an unwarranted body cavity search — as long as their violation was not one of “clearly established law of which a reasonable officer would be aware.” In other words, if there’s not already a case where a court has held that an officer’s identical or near-identical conduct rose to the level of a constitutional violation, there’s a good chance that even an obviously malfeasant officer will avoid liability — will avoid*accountability*. To bring about true accountability and change police behavior, this needs to change. And change should begin with an act of Congress rolling back qualified immunity. Removing the “clearly established” element of qualified immunity would be a good start — after all, shouldn’t it be enough to deviate from a basic standard of care, to engage in conduct that a reasonable officer would know is illegal, without having to show that that conduct’s illegality has already been clearly established in the courts?

Qualified Immunities allow for police officers to not be held accountable for violent offenses, increases their frequency, and causes otherization of communities of color. This decreases retributive justice for victims as well as denies their due process. The only way back to prevent this type of violence is by limiting qualified immunity. Therefore I stand in firm affirmation of the resolution.

# Negative Case

## Top of Case

With the recent murders of Philando Castile, Alton Sterling, and 5 officers in Dallas, Texas, policing and police officers have continually come under fire. Though some argue that the institution of policing is flawed, the unfortunate reality is the increase amount of violence within the United States. Police officers therefore play an important role in community safety standards. The FBI explains that

Law enforcement is a difficult profession. It presents many challenges and risks, as well as great rewards, to those who undertake it. One of the risks associated with law enforcement is the possibility of being sued civilly for an action taken in the course and scope of one’s employment. In an effort to mitigate the costs and burden of defending oneself from a lawsuit, government actors are entitled to assert immunity as a barrier to being sued. For law enforcement officers, the level of immunity available is qualified immunity. As the name implies, this type of immunity is protective, but is not an absolute guarantee against successfully being sued. It is comforting, though, to know that the purpose of qualified immunity is to protect all but “the plainly incompetent or those who knowingly violate the law.”61 As this article has demonstrated, the test to determine whether qualified immunity should be afforded officers has changed over the years, but the objective nature of the doctrine itself has remained unchanged for nearly 30 years. This objective determination often shields competent law enforcement officers from defending a suit itself, much less from being found liable at the conclusion of a suit.

**Schott '12** (Federal Bureau of Investigator "Qualified Immunity How It Protects Law Enforcement Officers." Sept. 2012 <https://leb.fbi.gov/2012/september/qualified-immunity-how-it-protects-law-enforcement-officers>)

Because of the necessity of police officers, I stand in negation of the resolution Resolved: The United States ought to limit qualified immunity for police officers.

## Value and Criterion

Value:

Because the increasing violence in the United States, my value for this round will be community safety. Defined as the standard of a community to protect one another.

**Squires '1997** (Peter Squires. Professor of Criminology & Public Policy at the University of Brighton. "CRIMINOLOGY AND THE 'COMMUNITY SAFETY' PARADIGM: SAFETY, POWER AND SUCCESS AND THE LIMITS OF THE LOCAL" [http://www.britsoccrim.org/volume2/012.pdf)](http://www.britsoccrim.org/volume2/012.pdf%29)

The discourse on 'community safety' has been around for little over a decade. (SOLACE, 1986) Even so, it has become well established in a fairly short period of time, but this only begs a further question. We should not take them for granted. Use of the concept 'community safety' was developed by the GLC Police Committee Support Unit to describe a distinctly local government approach to crime prevention and related issues. More and more in local government circles the phrase 'crime prevention' has been reinterpreted to mean the promotion of community safety and the securing of improvements in the quality of life of residents by reference to a wide range of social issues, the tackling of certain risks and sources of vulnerability and development of policies on a broad range of fronts (ADC, 1990; Coopers and Lybrand, 1994). According to the Local Government Management Board, 'community safety is the concept of community-based action to inhibit and remedy the causes and consequences of criminal, intimidatory and other related anti-social behaviour. Its purpose is to secure sustainable reductions in crime and fear of crime in local communities. Its approach is based on the formation of multi-agency partnerships between the public, private and voluntary sectors to formulate and introduce community-based measures against crime' (LGMB, 1996). A survey into the community safety activities of local government by the Local Government Management Board in England and Wales, from which the above definition is derived, asked authorities to nominate their core priorities for the coming year. The specific priorities identified by the responding authorities were, in descending order: (1) young people, (2) substance misuse, (3) fear of crime, and (4) CCTV and town centre security (LGMB, 1996: 25.) Such a list of priorities will hardly be surprising though they reflect a variety of concerns and in some respects quite contrasting criminological perspectives. To some, no doubt, they will reflect a pragmatic, balanced and multi-layered response to problems of crime and community safety whilst to others it will appear more of a 'shotgun' approach - something might work - or perhaps just 'suck it and see'.

### Value criterion:

In order to achieve community safety, it is necessary for police officers and community members to reduce risk of injury. Therefore, the value criterion is reducing risks to individuals. Reducing risks to individuals is a basic concept in which we ought to reduce the harms that a community might face.

Office of the Instutional Review Board’ 16 (Guidance on Assessing and Minimizing Risk in Human Research. Feb. 29th 2016 UNM Office of the Institutional Review Board. [http://irb.unm.edu/sites/default/files/Guidance%20on%20Assessing%20and%20Minimizing%20Risk%20in%20Human%20Research.pdf)](http://irb.unm.edu/sites/default/files/Guidance%20on%20Assessing%20and%20Minimizing%20Risk%20in%20Human%20Research.pdf%29)

Risk is the probability of harm or injury (physical, psychological, social, legal or economic) occurring as a result of participation in a research study. Both the probability and magnitude (severity) of a possible harm may vary from minimal to significant. The magnitude of potential harm is the summative measure of its severity, duration and reversibility. Thus, a research protocol should lower probability of harm occurring.. Alternatively, a protocol with a high probability of harm occurring, but a low severity of harm, may be assigned minimal risk for participants (e.g. itchiness after electrode tape removal, or distress related to answering sensitive, personal questions). Federal regulations define only “minimal risk”. Minimal risk is where the “probability and magnitude of harm or discomfort anticipated in the research is not greater in and of themselves.

### Contention 1: Qualified immunity increases police training.

**Diedrich '08** (Dawn M. Diedrich, Deputy Director of Legal Services and Special Agent, Georgia Bureau of Investigation, Decatur, Georgia. "Rigid Order of Battle': A Police Training Perspective on the Qualified Immunity Analysis" <http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008)>

In 2001, the Supreme Court stated in *Saucier* v. *Katz* that the “initial inquiry” for the court when deciding the question of qualified immunity is to determine whether the officer violated a constitutional right.[13](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#13) The Court explained that determining first whether a constitutional violation has occurred “serves to advance understanding of the law.”[14](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#14) Prior to the *Saucier* decision, courts sometimes concluded that the right was not clearly established without making the determination of whether the officer’s actions had violated the Constitution. After *Saucier*, the lower courts were obliged not to skip the first step in the qualified immunity analysis—hence the phrase “rigid order of battle.” From the perspective of police training, the *Saucier*-imposed rigid order of battle makes sense. A professional police officer must have an understanding of basic constitutional principles relating to arrest, search and seizure, and the lawful use of force in accordance with the Fourth Amendment.[15](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#15) One commentator explains, “The main aim of *Saucier* is to encourage the elaboration of constitutional law.”[16](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#16) Although this order may require judges and litigants to devote time to clarifying the issues, the results are “bright-line rules” that are easily imparted to officers during training. Such training enables officers to understand what the Constitution requires and prohibits A recent case illustrates this point. In *McClish* v. *Nugent*, a deputy went to McClish’s home with probable cause to arrest him for aggravated stalking but did not have an arrest warrant.[17](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#17) McClish answered the door and was standing inside the threshold of his house.[18](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#18) The deputy reached inside, grabbed McClish, and placed him under arrest.[19](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#19) The 11th Circuit Court of Appeals had to determine whether reaching through the doorway into McClish’s home violated the Fourth Amendment. The court concluded that it did as there was no consent, no exigent circumstance, and no warrant.[20](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#20) After determining that McClish’s constitutional rights had been violated, the court addressed the second inquiry and concluded that the right was not clearly established.[21](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#21) Hence, the deputy was entitled to qualified immunity and was dismissed from the suit. For a police trainer, this case gives clear guidance to officers and is actually a primer for Fourth Amendment issues relating to entry into a home. The Court gave a bright-line rule: “[W]e have made clear that any physical invasion of the structure of the home, ‘by even a fraction of an inch’ is too much.”[22](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#22) The court explained that it would have been lawful for the deputies to have asked McClish to step outside and then to have arrested him (as had occurred in a prior case).[23](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#23) As a result, officers have been trained on this point,[24](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#24) and by following their training, they will safeguard the constitutional rights of individuals. In contrast to the clear guidance that decisions following the *Saucier* analysis provide, one commentator suggests that the *Saucier*rigid order of battle should be jettisoned so that courts do not “glibly announce new constitutional rights in dictum.”[25](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#25) Instead, courts should “warn of the probable unconstitutionality—without taking a definitive position.”[26](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#26) Then officers who persist in such conduct are “either acting in bad faith disregard of the court’s warning or taking a calculated risk that their conduct will ultimately be vindicated.”[27](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#27) This analysis is problematic. First, “warnings” are not clearly established law. The requirement that the law be clearly established is long-standing qualified immunity jurisprudence and predates *Saucier* by almost 20 years.[28](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1551&issue_id=72008#28) How many such “warnings” are required before a court concludes that the law is now clearly established? Can the law ever be clearly established with warnings alone? Meanwhile, conduct that may in fact be unconstitutional continues to the detriment of the public.

Better training has reduces police violence overall.

**Klinger, '12** (David A. Klinger. Professor at Saint Louis University School of Law. POLICE TRAINING AS AN INSTRUMENT OF ACCOUNTABILITY. http://connection.ebscohost.com/c/articles/86247519/police-training-as-instrument-accountability)

The matter of how to hold police officers and agencies accountable to the public they are sworn to serve has been a perennial issue since local police departments first formed in the United States in the middle of the nineteenth century.1 American law enforcement during the formative years was not particularly responsive to the needs and wishes of the polity as many agencies were wracked with corruption, inefficiency, and low personnel standards.2 During the first phases of the police professionalism movement in the early twentieth century, training came to be viewed as a promising means to develop more responsible officers and agencies.3 Since that time, training has become a mainstay of American policing as it is believed that providing training to officers will enable them to carry out their duties in a fair, effective, and lawful manner. 4 Today, almost all officers start their careers by attending a monthslong police academy where they receive basic law enforcement training, then move on to serve an on-the-job apprenticeship wherein they patrol with experienced officers who provide additional “field” training for a few months, and then periodically attend various “in-service” training classes and courses throughout the rest of their careers.5 While much of the basic, field, and in-service training is directed at mundane topics such as how to properly operate department equipment and file reports, a good bit of the training that officers receive at various stages of their careers concern matters that are highly salient where public accountability is concerned.6 Officers receive training on many such topics. For example: how to properly investigate crimes (so that they can identify perpetrators, avoid arresting innocents, and, thus, help bring justice to victims),7 how to enhance’s public safety by preventing crimes from occurring in the first place,8 and how to abide by laws that govern their own behavior and behave judiciously as they carry out their duties.9 Instruction on lawful and judicious behavior addresses many topics including: avoiding corruption by neither taking nor soliciting bribes, treating all citizens equally by eschewing racial profiling, and avoiding the use of excessive force by using only that amount of force reasonably necessary to accomplish a legitimate police objective.

### Contention 2: Qualified Immunity is key to public safety

Qualified immunity therefore is necessary to increase public safety. Without qualified immunities officers will think twice about actions which decrease both the safety of police and the community. This makes it so the affirmative will always cause for more violence. Therefore the negative is necessary to upholding community safety

**Rosen '10** (Michael M. Rosen. Attorney of law, professor at University of San Deigo. A Qualified Defense: In Support of the Doctrine of Qualified Immunity in Excessive Force Cases, With Some Suggestions for its Improvement. Golden Gate University Law Review Volume 35 Issue 2. <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1899&context=ggulrev)>

This effect dovetails with a growing tendency toward "depolicing" that has become prevalent in several of America's urban cores.60 According to many officers, recent years have seen an increase in lawsuits and informal complaints brought against law enforcement, a correlate tendency in departments to steer officers away from necessarily risky conduct in do-ordie situations, and a concomitant decline in officer morale. 61 In 1981 in the State of California,"2 residents placed 8,686 complaints against peace officers, of which 1,552 or 18% were ultimately sustained.63 In 2000, Californians recorded 23,395 complaints, of which 2,395 or 10% were sustained. 64 This ballooning of claims - in particular unsuccessful ones65 - is as troubling as it is dramatic. The Oakland, California, Citizens Police Review Board ("CPRB") embodies this deterrent effect.66 This board provides an independent forum in which aggrieved citizens can register their complaints about police conduct. 67 At the same time, Detective Jesse H. Grant, who has had personal experience appearing before the CPRB, notes that complaints, more than 80% of which were not sustained in 2002, impose a serious deterrent effect on police conduct. 68 Officers now more than ever think twice and act conservatively - although not necessarily safely - when engaged in violent altercations with or apprehensions of dangerous suspects. 69 Ironically, the presence of entities like the CPRB undermines the justification for excessive force lawsuits to begin with: by providing an avenue for voicing grievances over police conduct, such boards obviate some of the need for civil actions. Moreover, they reflect the deterrent effect that wide-open public access to disciplinary bodies can breed. Thus, there exist significant reasons for the courts to grant some kind of immunity to law enforcement officials in order to ensure the continued quality of their work. By increasing the threat of litigation, frivolous lawsuits can serve to deter officers' reasonable conduct, thus imperiling public safety and upending the delicate balance society seeks between forcefully fighting crime and respectfully treating all citizens.

# Definitions of Qualified Immunity:

**Schott '12** (Federal Bureau of Investigator "Qualified Immunity How It Protects Law Enforcement Officers." Sept. 2012 <https://leb.fbi.gov/2012/september/qualified-immunity-how-it-protects-law-enforcement-officers>)

While law enforcement officers recognize the inherent risks of their occupation, they should be comforted by the description given by the Supreme Court as to the effect of the qualified immunity doctrine on one of those inherent risks—that of being sued civilly. In *Harlow v. Fitzgerald,*the Court explained that “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”4 The plaintiff in *Harlow,* A. Ernest Fitzgerald, sued, among others, President Richard M. Nixon and one of his aides, Bryce Harlow, alleging that he was dismissed from his employment with the Air Force in violation of his First Amendment and other statutory rights. The defendants sought immunity from the lawsuit. While ruling on the issue of immunity, the Supreme Court distinguished the president from his aide. First, the Court noted that its “decisions consistently have held that government officials are entitled to *some form*of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability.”5

**Schwartz '13** (Faculty at the Touro Law Center. "Supreme Court Fortifies Qualified Immunity for Law Enforcement Officers in Warrant Cases. <http://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1659&context=scholarlyworks)>

To accomplish this goal, it is necessary, for starters, to identify several basic principles of Fourth Amendment and qualified immunity law. Section 1983 Fourth Amendment claims challenging arrests, searches, and uses of force by law enforcement officers are normally governed by an objective reasonableness standard. For example, an officer has probable cause for an arrest when based upon the facts and circumstances known to the officer, a reasonably prudent person could have concluded that the suspect committed or is committing a crime.6 Probable cause is essentially a reasonableness standard.7 Similarly an officer’s use of force in carrying out an arrest or investigatory stop will comport with the Fourth Amendment if, under all of the circumstance facing the officer, it was objectively reasonable.8 Fourth Amendment objective reasonableness standards give substantial deference to the judgment of the law enforcement officer.9 Furthermore, an officer who violated the Fourth Amendment because she did not act in an objectively reasonable manner may still escape personal liability under qualified immunity. This is so even though the qualifed immunity standard itself is one of objective reasonableness.10 Thus, a law enforcement officer who violated the §1983 plaintiff’s Fourth Amendment rights will be shielded from liability unless those rights were clearly established when the officer acted. Liability will attach only if the officer violated the plaintiff’s clearly established Fourth Amendment rights. This means that a law enforcement officer sued under §1983 for violating the Fourth Amendment is effectively granted two levels of reasonableness protection, one under the Fourth Amendment and another under qualified immunity. To recover damages on a §1983 Fourth Amendment claim the plaintiff has to overcome both levels of reasonableness protection. This is because an officer found to have acted unreasonably for the purpose of the Fourth Amendment could nevertheless be found to have acted reasonably for the purpose of qualified immunity.11 To avoid the linguistic awkwardness of an officer having acted “reasonably unreasonably,” courts normally prefer different language, for example, that the officer had “arguable probable cause,” or made a “reasonable mistake,” or used force at the “hazy border” of reasonable and unreasonable force.12 Prior to its decision in Millender the controlling Supreme Court precedent on the immunity of officers who apply for warrants was Malley v. Briggs

# Affirmative Evidence

## A2: Public safety

Police are increasingly militarized. Militarizing of police is increasing violence. The negatives claims that the police force is protecting community is not true in the status quo. Militarizing makes conflict inevitable.

**ACLU '14** (American Civil Liberties Union. "War Comes Home The Excessive Militarization of American Policing." [https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf)](https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf%29)

American policing has become unnecessarily and dangerously militarized.10 For decades, the federal government has equipped state and local law enforcement agencies with military weapons and vehicles, as well as military tactical training, for the (often explicit) purpose of waging the War on Drugs. Not all communities are equally impacted by this phenomenon; the disproportionate impact of the War on Drugs in communities of color has been well documented.11 Police militarization can result in tragedy for both civilians and police officers, escalate the risks of needless violence, cause the destruction of personal property, and undermine civil liberties. Significantly, the militarization of American policing has been allowed to occur in the absence of public discourse or oversight. The militarization of American policing has occurred as a direct result of federal programs that use equipment transfers and funding to encourage aggressive enforcement of the War on Drugs by state and local police agencies. One such program is the 1033 Program, launched in the 1990s during the heyday of the War on Drugs, which authorizes the U.S. Department of Defense to transfer military equipment to local law enforcement agencies.12 This program, originally enacted as part of the 1989 National Defense Authorization Act, initially authorized the transfer of equipment that was “suitable for use by such agencies in counterdrug activities.”13 In 1996, Congress made the program permanent and expanded the program’s scope to require that preference be given to transfers made for the purpose of “counterdrug and counterterrorism activities.”14 There are few limitations or requirements imposed on agencies that participate in the 1033 Program.15 In addition, equipment transferred under the 1033 Program is free to receiving agencies, though they are required to pay for transport and maintenance. The federal government requires agencies that receive 1033 equipment to use it within one year of receipt,16 so there can be no doubt that participation in this program creates an incentive for law enforcement agencies to use military equipment.

And Militarism causes violence.

**LaForgia '11** (Rachel LaForgia Program Director, Peace and Security Funders Group. "Intersections of Violence Against Women and Militarism" Center for Women’s Global Leadership Rutgers [http://www.cwgl.rutgers.edu/docman/violence-against-women-publications/387-intersectionsvaw-militarism-pdf-1/file)](http://www.cwgl.rutgers.edu/docman/violence-against-women-publications/387-intersectionsvaw-militarism-pdf-1/file%29)

Militarism as an ideology creates a culture of fear and supports the use of aggression, violence and military interventions for settling disputes and enforcing economic and political interests. Militarism privileges violent forms of masculinity, which often has grave consequences for the safety and security of women, children, men, and society as a whole. Attacks on civilians participating in social movements, military interventions and ongoing conflicts exemplify the ways in which militarism influences how we view women and men, our families, neighbors, public life, and specific countries. A culture of militarism is built over time through the construction of the “enemy,” the indoctrination of children, and the creation of myths about the nation as well as “the other”. As a result, militarism is linked to nationalism. Feminist theory and action provide means of both analyzing and opposing militarism and its links to violence against women. It enables an analysis of the power relations that buttress militarism and exposes the ways in which male violence is constructed as a legitimate form of control. In addition to providing analytical tools for deconstructing militarism, feminism also challenges normative views of peace. For feminists, peace is the absence of all violence, including all forms of gender-based violence. Violence emanating from war, and everyday violence experienced by women and girls, are components of a broad spectrum of violence that occur throughout women’s lifecycles. Understanding the correlations between militarism and violence against women requires an appreciation of the psychological processes that enable violence to occur, the socio-cultural norms that legitimize the use of violence, and the structural hierarchies that perpetuate violence. These processes, norms and hierarchies are present during war and peace times. Violence prior to conflict may inform violence against women during conflict, and violence against women during conflict impacts violence against women in post conflict societies.

## A2: No police

Police officer can help protect the sanctity of life.

U.S Department of Justice, '03 ("Principles of Good Policing: Avoiding Violence Between Police and Citizens" Community Relations Service [https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf)](https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf%29)

Policy is a guide to the thinking and actions of those responsible for making decisions. Its essence is discretion. And policy serves as a guide to exercising that discretion. The development of policies to guide the use of discretion by police officers is key to the effective management of police organizations. It is also critical to the control of violence between the police and community. A primary consideration of policy development, then, is to build accountability into police operations. As stated in the opening chapter on values, the principle of police agency accountability to the citizens it serves is fundamental to the relationship. Police departments which that adopted values that uphold professionalism and integrity have consistently established policies that recognize the importance of accountability systems that build citizens’ trust in police agency programs and personnel. The importance of policy development has also been underscored by the Commission on Accreditation for Law Enforcement Agencies. Most of the commission’s standards require a written directive to provide proof of compliance with those standards. Almost all of the agencies that have been accredited, or are in the process of self-assessment, have commented on how the documentation of their policies and procedures has been improved. There are three policy areas of particular significance with respect to police violence concerns: policies dealing with firearms, citizen complaints, and public information. Use of Force and Alternatives. The appropriate use of force and the use of the least amount of force in effecting arrests are essential values which characterize a department that respects the sanctity of life. Officers and departments that fail to train in and demonstrate the use of appropriate force, not only create the potential for heightened racial conflict, but also raise high municipal liability risks for their communities. Officers who are skilled in conflict resolution will find ways to avoid higher levels of confrontation. Where conflict cannot be avoided, less than lethal force can be employed by law enforcement personnel in accord with changing community values. Citizen Complaints and Other Redress Systems. Even the best police department will receive complaints, and the absence of an effective complaint procedure has figured prominently in many cities troubled by allegations of excessive force. In fact, “Citizen complaints about police behavior, particularly the excessive use of force, is one part of the larger problem of relations between the police and racial and ethnic minority communities,” according to Samuel Walker and Betsy Wright Kreisel.15 As a result, police executives generally recognize the need for a trustworthy vehicle for citizens to seek redress of grievances involving alleged police misconduct. 16 Most police chiefs know that when a department conveys to the public that it accepts complaints and is willing to aggressively examine allegations of abuse, police officers can expect to win the citizens’ confidence needed to do their job more effectively. The department’s complaint procedure should be set forth in writing regardless of the size of the community or the department.17

The answer to any violence is not to remove police officers, but to better regulate them. The Affirmative accesses better training and accountability which is key to public safety.

**U.S Department of Justice, '03** ("Principles of Good Policing: Avoiding Violence Between Police and Citizens" Community Relations Service [https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf)](https://www.justice.gov/archive/crs/pubs/principlesofgoodpolicingfinal092003.pdf%29)

The best way to ensure that police officers conduct themselves properly in the performance of their duties is to set reasonable policies and then establish effective procedures for internal review and sanctions. But, as indicated above, the system for handling citizen complaints must be one in which all citizens have confidence. Nor can the principle be ignored that the police department is a public service agency which ultimately must be accountable to the citizens. An increasing number of cities in which citizens have lost confidence in the internal review process have tried various configurations of civilian oversight mechanisms or civilian overview boards with mixed results. A number of arguments are made both in favor of and against these mechanisms. For example, some observers hold that the police cannot objectively review themselves, that civilian review strengthens public confidence in the department, and that it ensures that police officers do not abuse the law. “Official data on citizen complaints consistently show that racial and ethnic minorities are overrepresented among persons alleging police misconduct,” according to Walker and Kreisel. This has resulted in a situation in which “the perceived failure of internal police complaint procedures has led civil rights groups to demand the creation of external, or citizen complaint review procedures,” Walker and Kreisel conclude.18 On the other hand, critics of civilian oversight or review maintain that civilians lack the knowledge and experience to evaluate the police, that such oversight inhibits officers’ use of force when it is warranted, and that such mechanisms are redundant, because police themselves review complaints against officers. When municipal officials attempt to establish a civilian oversight mechanism, police executives should anticipate strong resistance from rank and file officers. In fact, even some of the most progressive police officials do not favor civilian oversight mechanisms. While they agree that there is a need for public accountability, these officials point out that oversight groups are not panaceas and have had only mixed success. They also suggest that emotions aroused by establishment of civilian oversight mechanisms may themselves lead to insurmountable problems. Citizens who are chosen to serve can be briefed by police officials on policy, practices, and procedures and help them become more acquainted with the department’s operations so that they can serve better.

## A2: Qualified immunity prevents good policing

Lawsuits allow for police departments to create better policies.

**Schwartz '10** (Joanna C. Schwartz. Acting Professor of Law, UCLA School of Law. "WHAT POLICE LEARN FROM LAWSUITS" 33 CARDOZO L. REV. \_\_ (2010). http://law.stanford.edu/wp-content/uploads/sites/default/files/event/265497/media/slspublic/What\_Police\_Learn\_From\_Lawsuits.pdf )

For these departments, lawsuits are a valuable source of information about police misconduct allegations. Departments that do not gather lawsuit data rely on civilian complaints and use-of-force reports to alert them to possible misconduct. In the litigation-attentive departments in my study, lawsuits have notified officials of misconduct allegations that did not surface through these other reporting systems. For example, the Los Angeles Sheriff’s Department’s review of lawsuit claims revealed clusters of improper vehicle pursuits, illegal searches, and warrantless home entries.17 These vehicle pursuits, searches, and home entries did not appear in officers’ use-of-force reports because the events – while potentially serious constitutional violations – did not involve the application of force as defined by department policies and so did not trigger reporting requirements.18 The civilians involved in these lawsuits could have chosen to file civilian complaints but did not; people rarely file civilian complaints and may be particularly unlikely to do so if they are planning to sue.19 Even when a civilian complaint or use-of-force report is filed, the litigation process can unearth details that did not surface during the internal investigation. When, for example, a man died of blunt force chest trauma two hours after being taken into Portland police custody, a critical question was how much force the involved deputies had used to bring him to the ground.20 The night of the man’s death, the involved officer and deputy were videotaped at the Portland jail describing their confrontation.21 The audio portion of the tape was very scratchy, but Portland’s internal affairs investigators did nothing to improve the sound.22 Only during litigation did plaintiff’s counsel enhance the audio, at which point the involved officer’s statements were found to contradict his statement to internal affairs.2 Lawsuits filled critical gaps in police department internal reporting systems

## A2: Removing Police

Police are necessary but also there is not a reason to remove them

**Stone et All, '09** (Christopher Stone, Guggenheim Professor of the Practice of Criminal Justice Kennedy School of Government, Harvard University. Todd Foglesong, Senior Research Associate, Program in Criminal Justice Policy & Management Kennedy School of Government, Harvard University. Christine M. Cole Executive Director, Program in Criminal Justice Policy & Management Kennedy School of Government, Harvard University. "Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD" Havard Kennedy School Program in criminal Justice Policy and Management. [http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf)](http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf%29)

The fear of departmental discipline is not necessarily based in facts. As we discuss later in this report, the numbers of officers named in any complaint of misconduct has declined substantially over recent years, and the fraction that has been disciplined has not risen. Nevertheless, we must ask if the fear of punishment—whether or not connected to the consent decree—is holding the LAPD back from enforcing the law? The answer appears to be an emphatic no. When we turn to the actual use of police powers, we see that the LAPD has been increasing both the quantity and the quality of its enforcement activity. De-policing, in short, does not appear to be a problem in Los Angeles under the consent decree. Consider, for example, the use of pedestrian and motor vehicle “stops.” A stop occurs when a police officer temporarily detains an individual whom the officer reasonably suspects to have committed a crime or to be on the verge of doing so. The decision to make such a stop is highly discretionary, and it is one reason why the Department began in 2001 to consistently collect and record data about who it stops, as well as when, where, and with what consequences such stops take place.14

## Qualify immunity reduces reporting rates for domestic violence

Qualified immunity allows for police officers to ignore domestic violence.

Harper, '90 (Laura S. Harper is a Lawyer in Texas, Dallas."Battered Women Suing Police for Failure to Intervene: Viable Legal Avenues After Deshaney v. Winnibago County Department of Social Services." Cornell Law Review volume 75 issue 6 September 1990. <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3473&context=clr)>

Should a battered woman plaintiff proffer sufficient evidence of an equal protection or due process violation, municipal police officers can still assert a qualified immunity defense.47 Under the qualified immunity doctrine, state officers performing discretionary functions48 are immune from lawsuits for damages provided their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." 49 A municipality itself, however, cannot invoke the qualified immunity defense. 50 Thus, courts have allowed suits involving an unconstitutional policy or custom to proceed against a city even when qualified immunity shields the individual police officers who executed the challenged policy. 51 Because qualified immunity entitles an officer to "immunity from suit," a defendant-officer must assert the defense on a motion for summary judgment.52 If a plaintiff proffers evidence creating a

genuine and material issue of fact,53 this defense is lost and the case proceeds to trial.54 Courts will grant qualified immunity "if reasonable officials in the defendants' position at the relevant time could have believed, in light of clearly established law, that their conduct comported with established legal principles." 55 Based on this objective test, an officer's entitlement to qualified immunity depends on the clarity of the law as it existed when a defendant-officer acted or failed to act.56 "IT]he contours of the [constitutional] right must be sufficiently clear that a reasonable official would understand that what he is doing violates the law."' 57 Section 1983 litigation involving battered women represents an evolving area of law in which the Supreme Court has not ruled, lower courts have been inconsistent, and many court opinions have either gone unpublished or cases have been dismissed due to settlements between the parties.58 Thus, police officers can argue that the law was not "clearly established" as an authoritative guide to their conduct in responding to domestic violence situations. 59

Domestic Violence is a continued form of violence, allow it continuation forces victims to continually live in violence. This is a form of otherization.

**Peace, '09** ( Colleen Peace, professor at West Texas A &M. Ph.D. "The Impact of Domestic Violence on Society" Politics, Bureaucracy & Justice;2009, Vol. 1 Issue 1, p22. http://www.wtamu.edu/webres/File/Academics/College%20of%20Education%20and%20Social%20Sciences/Department%20of%20Political%20Science%20and%20Criminal%20Justice/PBJ/2009/1n1/1n1\_04Peace.pdf)

By definition, domestic violence is a pattern of abusive behavior in any intimate relationship that is used by one partner to maintain a sense of control over the other. Domestic violence is further defined as physical or sexual violence within the family. This includes sexual abuse of children and physical abuse of elderly parents (Etter & Birzer, 2007). Domestic violence occurs without regard to race, age, sexual orientation, religion, or gender. It matters not if one comes from upper-, middle-, or lower-class families. Domestic violence occurs in both same-sex relationships as well as opposite-sex relationships. It should also be noted that domestic violence affects other family members, friends, and co-workers (Office on Violence Against Women [OVW], n.d.). If a child grows up with domestic violence, he is, in effect, taught that violence is a normal way of life. A behavior inculcated by the very people who are supposed to provide him with love and comfort. This sets in motion a vicious cycle where children of abusers become abusers themselves. Unfortunately, domestic violence is very prevalent in our society. In the United States, it is estimated that between two to four million women are victims of domestic violence every year. It is probable that every 18 seconds someone is a victim of domestic violence. In one research study it was determined that approximately 80.8% of accused abusers were male as compared to 19.2% of female offenders. While females do abuse, most reported offenders are male (Etter & Birzer, 2007). There seems to be three main characteristics of men who batter their partners; frustration or stress, gender roles or learned behavior, and alcohol (Etter & Birzer, 2007). The excessive consumption of alcohol is a major contributor to domestic violence. Approximately 43.5% of State prisoners victimizing a family member and 53.8% victimizing nonfamily members were using drugs or alcohol when they committed the offense of domestic violence (U.S. Department of Justice [DOJ], 2005). Generally, when the subject of domestic violence is discussed, one thinks about physical abuse. However, there are many types of abuse that fall under the umbrella of domestic violence. The major areas of concern with respect to domestic violence are physical abuse, sexual abuse, emotional abuse, economic abuse, and psychological abuse.

# Negative Evidence

## A2: Filming police officers

Without qualified immunity police officers will prevent filming. The affirmative makes this worse.

**Klindera, '98** (Eve Klindera, B.A., Journalism, University of Maryland, 1996; J.D., The George Washington University Law School, ant. 1999. "Qualified Immunity for Cops (and Other Public Officials) with Cameras: Let Common Law Remedies Ensure Press Responsibility" 67 Geo. Wash. L. Rev.. <http://heinonline.org/HOL/Page?public=false&handle=hein.journals/gwlr67&page=399&collection=journals)>

This Note argues that although courts may not wish to decide that media observation of law enforcement activities is a positive addition to our popular culture, officials who allow such observation do not currently violate a "clearly established" constitutional right.38 Therefore, such officials should be entitled to qualified immunity from section 1983 or Bivens actions39 in these circumstances. Denying officials qualified immunity will cause the officials consistently to refuse to allow the media to observe official government activities. Although this denial of immunity may provide an effective way to secure privacy rights, it will also preclude the media from providing information to the public about the conduct of government actors in the field.40 Courts recognizing that real harm may occur as a result of media observation of official activities should rely instead upon common law remedies such as intrusion and trespass, and place the burden of the harm caused on the media, rather than on government actors. Plaintiffs who institute trespass and intrusion claims against the press have a real chance of success, especially because the First Amendment does not stand as an independent bar to such actions against the press.41 This Note concludes that, absent clearly established constitutional law on this difficult issue, tort law provides adequate deterrence and compensation for harmful media conduct

## A2: Qualified Immunity increases violence

Without qualified immunity officers would be afraid to do their job. The negative recognizes that there are problems with current police practices, but first the aff doesn’t establish the clear link between violence and qualified immunity. Two the negative argues that training increases with qualified immunities which solves back for increases in violence. But third, violence is inevitable, it is a question of reduction. Without police violence will only increase and without qualified immunities police officers will be deterred from their jobs.

**Chen, '94** (Alan K. Assistant Professor, University of Denver College of Law. B.A., 1982, Case Western Reserve University, J.D., 1985, Stanford Law School "THE BURDENS OF QUALIFIED IMMUNITY: SUMMARYJUDGMENT AND THE ROLE OF FACTS IN CONSTITUTIONAL TORT LAW" American University Law Review. [http://www.americanuniversitylawreview.org/pdfs/47/47-1/chen.pdf)](http://www.americanuniversitylawreview.org/pdfs/47/47-1/chen.pdf%29)

Both Congress and the Supreme Court have recognized that the enforcement of constitutional norms through damages actions is an important component of our legal system. Nonetheless, the Court established the qualified immunity doctrine to limit officials' exposure to such litigation in order to advance three policy considerations. First, the Court fears that it would be unfair to require public officials to compensate plaintiffs for all constitutional violations, given the sometimes unclear nature of constitutional law.5 Second, the Court speculates that public officials will be overdeterred in the performance of their duties if they anticipate that every official action they take may lead to a lawsuit.6 Finally, the Court believes that the litigation of constitutional torts may impose substantial costs on individual officials and on the government itself, even when the trial court ultimately finds that the officials are not liable.

And

**Chen, '94** (Alan K. Assistant Professor, University of Denver College of Law. B.A., 1982, Case Western Reserve University, J.D., 1985, Stanford Law School "THE BURDENS OF QUALIFIED IMMUNITY: SUMMARYJUDGMENT AND THE ROLE OF FACTS IN CONSTITUTIONAL TORT LAW" American University Law Review. [http://www.americanuniversitylawreview.org/pdfs/47/47-1/chen.pdf)](http://www.americanuniversitylawreview.org/pdfs/47/47-1/chen.pdf%29)

In both Wood and Scheuer v. Rhodes,0 the Court expanded the policy rationales underlying qualified immunity to include concerns about overdeterrence 1 . 7 The Court focused on the overdeterrence analysis in Scheuer, in which a state governor and other high-level state executive officials were sued for their role in ordering National Guard troops to control a student demonstration at Kent State University.2 After the troops shot and killed four students during the demonstration, the students' families filed a constitutional tort claim asserting that the defendants' actions in authorizing the use of troops deprived the students of their constitutional due process rights. 73 Scheuer held that, depending on the facts, the defendants might be entitled to qualified immunity.74 In doing so, the Court articulated the basis of the overdeterrence argument in some detail: Public officials... who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunity-absolute or qualified-for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all.75 The Court also used this reasoning in Wood, concluding that school board members would be overdeterred in pursuing their legitimate duties in the discipline process if immunity were not extended to them.76 Denying immunity to school officials, the Court argued, would deter them from exercising independent judgment in the best interests of the school and students.7 7 Subsequent cases have invoked the overdeterrence rationale in recognizing qualified immunity for other types of public officials as well. 78

## A2: Qualified immunity reduces accountability.

### Remove Absolute immunity.

Qualified immunity still holds officers accountable for their actions. The 1AC articulation is based on absolute immunity in which there is very little investigation. The negative argues for the removal of absolute immunity to standardize to qualified immunity is the only way to solve for the aff.

Center for Prosecutor Integrity '14 (CPI addresses prosecutor misconduct of all types, particularly misconduct associated with sexual assault cases. "Qualified Immunity: Striking the Balance for Prosecutor Accountability" [http://www.prosecutorintegrity.org/wp-content/uploads/2014/09/Qualified-Immunity.pdf)](http://www.prosecutorintegrity.org/wp-content/uploads/2014/09/Qualified-Immunity.pdf%29)

In contrast to absolute immunity, qualified immunity offers a weaker level of legal protection. The qualified immunity doctrine is designed to shield government officials from lawsuits “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”11 Police officers, for example, have long enjoyed this lesser degree of immunity from lawsuits brought against them. As discussed above, qualified immunity is the standard that protects police officers and other government officials from frivolous civil claims. Police officers have managed to accomplish their duties for years without the perception that they are hedging their law enforcement duties for fear of retaliatory litigation. The most promising strategy at this point is to pursue a legislative remedy to expand the scope qualified immunity to also apply to the prosecutorial advocative function. As drafted by the Center for Prosecutor Integrity, the Federal Prosecutor Integrity Act would remove absolute immunity from federal prosecutors, and restore them to the qualified immunity status of other public officials, as the plain language of 1983 enunciates

### Adding Attorney’s solves better

Removing qualified immunities causes for decreased training and decrease public safety. However, adding lawyers to conversations with police officer’s increases training on what constitutional actions are which solves the affirmative. But also holds them more accountable.

**Dawson ’16** (Edward c. Assistant Professor of Law, Southern Illinois University School of Law "QUALIFIED IMMUNITY FOR OFFICERS’ REASONABLE RELIANCE ON LAWYERS’ ADVICE" Vol. 110, No. 3. Retrieved from <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1236&context=nulr>)

Incorporating lawyers’ advice into qualified immunity analysis is also consistent with the balance of policy considerations driving the doctrine. The overall purpose of § 1983 is to remedy and deter abuses of power that violate constitutional rights.275 Within that framework, qualified immunity doctrine balances “the need to hold public officials accountable when they exercise power irresponsibly [against] the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”276 Considering lawyers’ advice in qualified immunity analysis serves all of these goals. If lawyers’ advice may support the qualified immunity defense, this will incentivize officers to seek advice before acting in uncertain situations.277 Police officials are actually aware of the cases allowing reliance on lawyers’ advice to support the immunity defense, and have advised officers to seek advice to take advantage of this rule.278 If officers more frequently seek advice, this should actually reduce the instances of abusive violations of rights because generally officers may be more likely than lawyers to make legal mistakes.