Chapter 21—
Legal Liabilities

Introduction

Being sued is an occupational hazard in policing. American society is litigious, and the police are an attractive target because they wield power and are public employees. Most lawsuits against the police do not succeed, but some are high-profile cases that generate media attention and result in huge damage awards. The American public remembers the Rodney King case, the New York City cases, and the Detroit cases. In the Rodney King and New York City cases, huge damage awards were given to the plaintiffs. Suing the police sometimes pays. It does not come as a surprise that there is hardly any major law enforcement agency in the United States that has not been sued.

The police may be liable under state law and under federal law. These two types of liabilities may be sub-classified into three general categories: civil liabilities, criminal liabilities, and administrative liabilities. Plaintiffs usually prefer the civil liabilities route for a number of reasons. Civil cases are easier to win than criminal cases, they result in a monetary award, and they do not need the intervention of the prosecutor's office to file the case.

The Supreme Court has addressed a number of issues involving police liability. The issues range from who can be sued, when the police can be sued, who can be held liable and under what circumstances, for what specific acts police officers may be held liable, what defenses are available in police liability cases, and what level of negligence is required for police administrators and their employers to be held liable.

The cases briefed in this chapter represent the more significant cases decided by the Supreme Court on police civil liability. Among these decisions are:

1. Police officers enjoy absolute immunity from civil liability when testifying, even if the testimony is perjured;

2. Inadequate police training can lead to liability under federal law, but only if it amounts to deliberate indifference;

3. Neither the state nor state officials acting in their official capacity may be sued under federal law in state court;

4. State officials sued in their individual capacity are liable for civil rights violations; and

5. A municipality may be held liable for a sheriff's single negligent decision to hire an officer, but only if the hiring constitutes deliberate indifference, interpreted to mean that what happened was the plainly obvious consequence of the decision to hire the officer.

There are no indications that lawsuits against the police will abate soon. The law and case law on police liability are complex and constantly evolving.

The briefs below should be considered introductory, albeit leading, cases on the subject of police liability. Many more issues on police liability have been decided by lower courts, and even more issues remain to be decided.

The leading cases briefed in this chapter are *City of Canton v. Harris, Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, and *County of Sacramento v. Lewis*.

Owen v. City of Independence 445 U.S. 622 (1980)

CAPSULE: A municipality may be held liable in a § 1983 lawsuit and cannot claim the good faith defense.

FACTS: The City Council of Independence, Missouri, decided that reports of an investigation of the police department should be released to the news media and turned over to the prosecutor for presentation to the grand jury, and that the city manager take appropriate action against the persons involved in the wrongful activities. Acting on this, the city manager dismissed the chief of police. No reason was given for the dismissal. The chief of police received only a written notice stating that the dismissal was made in accordance with a specified provision of the city charter. The chief of police filed a Title 42 U.S.C. § 1983 lawsuit against the city manager and members of the city council, alleging that he was discharged without notice of reasons and without a hearing, thereby violating his constitutional rights to procedural and substantive due process. The district court decided for the city manager and council members.

ISSUE: Are municipalities and municipal officials entitled to the "good faith" defense if a right is violated while officials are following the provisions of a city policy or custom? NO.

SUPREME COURT DECISION: A municipality has no immunity to liability under § 1983 flowing from violations of an individual's constitutional rights and may not assert the "good faith" defense that is available to its officers.

REASON: "We believe that today's decision, together with prior precedents in this area, properly allocates these costs among the three principals in the scenario of the Section 1983 cause of action: the victim of the constitutional deprivation; the officer whose conduct caused the injury; and the public, as represented by the municipal entity. The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury. The offending official, so long as he conducts himself in good faith, may go about his business secure in the knowledge that a qualified immunity will protect him from personal liability for damages that are more

appropriately chargeable to the populace as a whole. And the public will be forced to bear only the costs of injury inflicted by the 'execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.'"

CASE SIGNIFICANCE: The *Owen* case makes clear that the municipality may be liable if a person's constitutional right is violated (in this case the right to due process prior to dismissal) by public officials who are acting in accordance with agency policy as contained in the city charter. Because they were acting in accordance with the provisions of the city charter, the city manager and members of the city council enjoyed a "good faith" defense, but the city did not. The implication is that municipalities must make sure that their policy does not violate individual rights. The fact that something is official policy does not mean that it is automatically valid. The Court said that individual blameworthiness is no longer the acid test of liability, substituting in its place the principle of "equitable loss-spreading," in addition to fault, as a fact in distributing the costs of official misconduct.

Briscoe v. LaHue
460 U.S. 325 (1983)

CAPSULE: Police officers enjoy absolute immunity from civil liability when testifying, even if the testimony is perjured.

FACTS: Briscoe was convicted in a state court of burglary. He then filed a Title 42 U.S.C. § 1983 suit in the District Court alleging that LaHue, a police officer, had violated his right to due process by committing perjury in the criminal proceeding leading to his conviction.

ISSUE: May a police officer be liable in a § 1983 case for giving perjured testimony? NO.

SUPREME COURT DECISION: Police officers enjoy absolute immunity from civil liability when testifying, even if the testimony is perjured.

REASON: "The common law provided absolute immunity from subsequent damages liability for all persons—governmental or otherwise—who are integral parts of the judicial process. . . . When a police officer appears as a witness, he may reasonably be viewed as acting like any witness sworn to tell the truth, in which event he can make a strong claim to witness immunity. Alternatively, he may be regarded as an official performing a critical role in the judicial process, in which even he may seek the benefit afforded to other governmental participants in the same proceeding. Nothing in Section 1983 language suggests that a police officer witness belongs in a narrow, special category lacking protection against damages suits."

CASE SIGNIFICANCE: This decision assures police officers that they cannot be held liable under 42 U.S.C. § 1983 (the usual type of civil liability cases filed against government officials) for giving false testimony against a defendant in a criminal trial. The Court gives two reasons for this absolute immunity. First, the officer is just like any other witness who is sworn to tell the truth, and therefore enjoys witness immunity. Second, the officer is a public official performing a critical role in the judicial process. The decision does not mean, however, that officers have complete freedom to tell falsehoods in court. The officer who does so may be held liable under the state penal code, usually for perjury. Note that only when testifying in court does an officer enjoy absolute immunity. In all other aspects of police work, an officer enjoys only qualified (good faith) immunity.

Malley v. Briggs
475 U.S. 335 (1986)

CAPSULE: A police officer is entitled only to qualified immunity, not to absolute immunity, in § 1983 cases.

FACTS: On the basis of two monitored telephone calls pursuant to a court-authorized wiretap, Rhode Island state trooper Malley prepared felony complaints charging Briggs and others with possession of marijuana. The complaints were given to a state judge, together with arrest warrants and supporting affidavits. The judge signed the warrants, and the defendants were arrested. The charges, however, were subsequently dropped when the grand jury refused to return an indictment. The defendants then brought an action under 42 U.S.C. § 1983, alleging that Malley, in applying for the arrest warrants, had violated their rights against unreasonable searches and seizures.

ISSUE: Is absolute immunity afforded a defendant police officer in Title 42 U.S.C. § 1983 actions when it is alleged that the officer caused the plaintiffs to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit that failed to establish probable cause? NO.

SUPREME COURT DECISION: A police officer is not entitled to absolute immunity, but only qualified immunity to liability for damages in § 1983 cases.

REASON: "Although we have previously held that police officers sued under Section 1983 for false arrest are qualifiedly immune, petitioner urges that he should be absolutely immune because his function in seeking an arrest warrant was similar to that of a complaining witness. The difficulty with this submission is that complaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held

liable if the complaint was made maliciously and without probable cause. Given malice and the lack of probable case, the complainant enjoyed no immunity. The common law thus affords no support for the petitioner."

CASE SIGNIFICANCE: Officer Malley argued that he be given absolute immunity because his function in seeking an arrest warrant was similar to that of a complaining witness. The Court said that complaining witnesses were not absolutely immune at common law. If malice and lack of probable cause are proved, the officer enjoys no absolute immunity. The Court also rejected the officer's argument that policy considerations require absolute immunity for the officer applying for a warrant, saying that, as the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law. The Court considered this protection sufficient because, under current standards, the officer is not liable anyway if he or she acted in an objectively reasonable manner. The *Malley* case, therefore, makes clear that under no circumstances will the Court extend the "absolute immunity" defense (available to judges, prosecutors, and legislators) to police officers. The only exception is when the officer is testifying in a criminal trial. This means that officers enjoy only qualified immunity, but that they will not be liable if they act in an objectively reasonable manner.

City of Canton v. Harris
489 U.S. 378 (1989)

CAPSULE: Inadequate police training may serve as the basis for municipal liability under Title 42 § 1983, but only if it amounts to "deliberate indifference."

FACTS: Harris was arrested and taken to the police station in a patrol wagon. Upon arrival at the station, Harris was found sitting on the floor of the wagon. When asked if she needed medical help, her reply was incoherent. Harris fell twice more during her stay at the station. She was ultimately left lying on the floor to prevent her from falling again. The officers did not offer medical assistance. When she was released an hour later, she was taken by an ambulance provided by her family to a hospital where she was diagnosed as having several emotional ailments and was hospitalized. Harris filed a 42 U.S.C. § 1983 lawsuit against the city for failure to provide her with adequate medical care while in police custody.

ISSUE: Can a municipality be held liable in a § 1983 suit for constitutional violations resulting from a failure to properly train municipal employees? YES.

SUPREME COURT DECISION: Inadequate police training may serve as the basis for municipal liability under § 1983, but only if the failure to train

amounts to deliberate indifference to the rights of persons with whom the police come into contact and the deficiency in the training program is closely related to the injury suffered.

REASON: "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by the municipality can the failure be properly thought of as actionable city 'policy.' … [T]he focus must be on whether the program is adequate to the tasks the particular employees must perform, and if it is not, on whether such inadequate training can justifiably be said to represent 'city policy.' Moreover, the identified deficiency in the training program must be closely related to the ultimate injury. Thus, respondent still must prove that the deficiency in training actually caused the police officers' indifference to her medical needs. To adopt lesser standards of fault and causation would open municipalities to unprecedented liability under Section 1983; would result in de facto respondeat superior liability, a result rejected in *Monell* [*v. New York City Department of Social Services*, 436 U.S. 658 (1978)]; would engage federal courts in an endless exercise of second-guessing municipal employee training programs, a task that they are ill-suited to undertake; and would implicate serious questions of federalism."

CASE SIGNIFICANCE: This case settles an issue that has long bothered lower courts: "can a municipality be held liable for failure to train?" The Court in this case answered "yes," but subject to strict requirements. These requirements are:

1. The failure to adequately train reflects a "deliberate" or "conscious" choice by the municipality;

2. Such inadequate training represents city policy; and

3. The identified deficiency in the training program must be closely related to the ultimate injury.

What this means is that not every injury caused by police officers leads to municipal liability for failure to train. It is only when the three requirements above are met that municipal liability ensues. These three requirements are usually difficult for plaintiffs in § 1983 cases to establish, hence discouraging the "deep pockets" approach (in which the municipality is involved in the lawsuit because of a greater ability to pay than the police officer) often used in civil rights liability cases. No liability on the part of the municipality for failure to train does not mean that the officer cannot be held liable. There are instances in which an officer may be liable even if the municipality is not liable for failure to train.

Will v. Michigan Department of State Police 491 U.S. 58 (1989)

CAPSULE: Neither the state nor state officials, acting in their official capacity, may be sued under § 1983 in state court.

FACTS: Will filed a Title 42 U.S.C. § 1983 lawsuit alleging that he was denied a promotion, in violation of his constitutional rights, because his brother had been a student activist and the subject of a "red squad" file maintained by the department. He named as defendants the Michigan Department of State Police and the Director of the State Police in his official capacity.

ISSUE: May state officials, acting in their official capacity, be sued under Title 42 § 1983 in a state court? NO.

SUPREME COURT DECISION: Neither the state nor state officials acting in their official capacity may be sued under § 1983 in a state court. A suit against state officials in their official capacity is a suit against the state itself and, therefore, will not succeed because a state cannot be sued under § 1983.

REASON: "Section 1983 provides a federal forum to remedy many deprivations of civil liabilities. The Eleventh Amendment bars such suits unless the State has waived its immunity.... Given that a principal purpose behind the enactment of Section 1983 was to provide a federal forum for civil rights claims, and that Congress did not provide such a federal forum for civil rights claims against States, we cannot accept petitioner's argument that Congress intended nevertheless to create a cause of action against States to be brought in State courts, which are precisely the courts Congress sought to allow civil rights claimants to avoid through Section 1983."

CASE SIGNIFICANCE: This decision has limited significance because it applies only to state law enforcement officials, not local police. Public officials can be sued either in their public or private capacity. If sued in their public capacity, the agency will most likely pay if the officer is held liable, as long as the officer acted within the scope of his or her authority. If sued in their private capacity, liability is personal with the officer so the agency will most likely refuse to pay. Plaintiffs prefer to sue officials in their public (official) capacity because of the "deep pockets" theory. The *Will* case says that state officials cannot be sued under § 1983 in their official capacity because the Eleventh Amendment exempts states from liability in such lawsuits, unless the liability is waived by the state. This decision extends state immunity to state public officials when sued in their official capacity on the grounds that such lawsuits are, in fact, lawsuits against the state. The following points need to be emphasized, however, in connection with this decision. These are:

1. Although state officials cannot now be sued in their official capacity in a § 1983 lawsuit, they can be sued in their personal capacity, although that approach is less attractive to plaintiffs;

2. State officials can be sued in their official or personal capacity in a state tort case because the *Will* case only applies to § 1983 cases;

3. The *Will* case applies only to state public officials. Most law enforcement officers are municipal or county officials and, therefore, may be sued in either their public or private capacity under § 1983. This is because the Eleventh Amendment grants immunity to states, not local government;

4. State officials have immunity from § 1983 cases in federal courts. The *Will* case says that they now have immunity in § 1983 cases filed in state courts. The problem, however, is that many states have waived sovereign immunity and, therefore, expose state officials to possible liability.

Hafer v. Melo
502 U.S. 21 (1991)

CAPSULE: State officials sued in their individual capacity are liable for civil rights violations.

FACTS: Hafer was elected to the post of Auditor General of Pennsylvania. As a part of her campaign platform, she promised to fire 21 employees of the Auditor General's office who allegedly secured their jobs through payments to a former employee of the office. After Hafer took office she did fire 18 people, including Melo. Melo and the others filed suit under 42 U.S.C. § 1983, seeking monetary damages. The District Court dismissed all claims, holding that such claims were barred under Will v. Michigan Department of State Police, which held that state officials acting in their official capacity are outside the class of "persons" subject to § 1983 claims. The Court of Appeals reversed the ruling of the District Court, holding that Will did not apply in this case because Hafer had acted under the color of law in firing the employees, but was being sued in her personal capacity.

ISSUE: Can state officials be held personally liable for damages under Title 42 U.S.C. § 1983 based upon actions taken in their official capacity? YES.

SUPREME COURT DECISION: State officials sued in their individual capacities are "persons" within the meaning of § 1983, and therefore may be held liable for civil rights violations.

REASON: "State officers sued for damages in their official capacity are not 'persons' for the purposes of the suit because they assume the identity of the government that employs them. By contrast, officers sued in their personal

capacity come to court as individuals.... [T]he phrase 'acting under official capacities' is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury."

CASE SIGNIFICANCE: In an earlier case, *Will*, the Court held that neither the state nor state officials acting in their official capacities may be sued under § 1983 because a suit against state officials in their official capacity is, in fact, a suit against the state itself; therefore, it will not succeed because a state cannot be sued under § 1983 unless immunity has been waived. *Will*, however, merely says that state officials cannot be sued in their official capacity in a § 1983 suit filed in a state court. It has long been settled that state officials cannot be sued in their official capacity in a § 1983 suit filed in a federal court. This case held that state officials could be sued in their personal capacity in a federal court.

In this case, the auditor general who fired the plaintiffs and was subsequently sued, maintained that she was acting within her official capacity and therefore could not be sued under § 1983 because such action fell within the authority of her office. The Court rejected that defense, saying that this lawsuit that was filed by plaintiffs who sought to hold the defendant liable in her personal capacity and not in her official capacity. The fact that she was acting within her official capacity when she fired the plaintiffs did not make any difference because she was not sued for having acted in that capacity but instead as an individual whose actions allegedly violated the due process rights of the plaintiffs. Thus, although public officials acting in their public capacity may be protected from lawsuits under § 1983 (civil rights violations), they can be sued as private individuals who can be held personally responsible for what they do.

Collins v. City of Harker Heights 503 U.S. 115 (1992)

CAPSULE: A city's failure to warn employees about known hazards in the workplace does not violate the due process clause of the Fourteenth Amendment.

FACTS: Collins, a sanitation department employee of Harker Heights, died of asphyxia after entering a manhole to unstop a sewer line. His widow brought suit against the city under 42 U.S.C. § 1983, alleging that Collins had a right under the Fourteenth Amendment due process clause to be "free from unreasonable risks of harm," and that the city had violated that right by not training its employees about the dangers of working in sewers and not providing safety equipment and training.

ISSUE: Did the city's alleged failure to warn or train its employees about known hazards in the workplace violate the due process clause of the Fourteenth Amendment? NO.

SUPREME COURT DECISION: The due process clause of the Fourteenth Amendment does not impose a federal obligation upon municipalities to provide minimum levels of and security in the workplace. Because the city's alleged failure to warn or train its employees about known hazards in the workplace did not violate the due process clause of the Constitution, it could not be the basis of a § 1983 lawsuit.

REASON: "Petitioner's submission that the city violated a federal constitutional obligation to provide its employees with certain minimal levels of safety and security is unprecedented. It is quite different from the constitutional claim advanced by plaintiffs in several of our prior cases who argued that the State owes a duty to take care of those who have already been deprived of their liberty. . . . Neither the text nor the history of the Due Process Clause supports petitioner's claim that the governmental employer's duty to provide its employees with a safe working environment is a substantive component of the Due Process Clause."

CASE SIGNIFICANCE: One of the elements of a § 1983 case is that there must have been a violation of a constitutional or federally protected right (the other being that the offending person must have been acting under color of law). Plaintiffs in this case alleged that failure on the part of the city to train and warn them about the dangers of the workplace constituted a violation of their right to due process and therefore could be the basis for a lawsuit against the city. The Court rejected that claim, saying that the due process clause did not impose an independent substantive duty on the city to provide certain levels of safety and security in the workplace. Moreover, the municipality's failure to train its employees or to warn them about known dangers was not so arbitrary or conscience-shocking as to be a violation of a constitutional right.

Had the Court's decision been otherwise, cities and municipalities would have been wide open to lawsuits stemming from failure to warn or train employees about the hazards of the workplace. This would have had a significant impact on the obligation of local government to train and to warn, as in policing. Under this case, such failure to warn or train about workplace hazards could still be the basis for a lawsuit as violative of due process rights, but only if such omission is "arbitrary or conscience-shocking."

Board of the County Commissioners of Bryan County, Oklahoma v. Brown 520 U.S. 397 (1997)

CAPSULE: A county cannot be held liable under § 1983 for a single hiring decision made by a county official.

FACTS: In the early hours of the morning, Brown and her husband approached a police checkpoint and then turned around to avoid it. Deputy Morrison and Reserve Deputy Burns pursued the vehicle for more than four miles at speeds in excess of 100 miles per hour. When the Browns stopped, Morrison pointed his gun at the truck and ordered them to raise their hands. Burns, who was unarmed, went to the passenger side of the truck and ordered Brown out of the vehicle. When Brown did not respond after the second request, Burns pulled Brown from the truck by the arm and swung her to the ground. The fall caused severe injuries to Brown's knees, possibly requiring knee replacement. Brown sued Burns, the county Sheriff, and the county for her injuries under 42 U.S.C. § 1983, claiming that the Sheriff had failed to adequately review Burn's background because he had a history of misdemeanor offenses, including assault and battery, resisting arrest, driving while intoxicated, and public drunkenness.

ISSUE: Can a county be held liable in a § 1983 case involving excessive use of force for a single hiring decision made by a county official? NO.

SUPREME COURT DECISION: County liability for a sheriff's decision to hire does not "... depend on the mere probability that any officer inadequately screened will inflict any constitutional injury. Rather, it must depend on a finding that this officer was highly likely to inflict the particular injury suffered by the plaintiff."

REASON: "Where a claim of municipal liability rests on a single decision, not itself representing a violation of federal law and not directing such a violation, the danger that a municipality will be held liable without fault is high. Because the decision necessarily governs a single case, there can be no notice to the municipal decision maker, based on previous violations of federally protected rights, that his approach is inadequate. Nor will it be readily apparent that the municipality's action caused the injury in questions because the plaintiff can point to no other incident tending to make it more likely that the plaintiff's own injury flows from the municipality's action, rather than from some other intervening cause" (520 U.S. at 408–409). "Where a plaintiff presents a § 1983 claim premised upon the inadequacy of an official's review of a prospective applicant's record, however, there is a particular danger that a municipality will be held liable for an injury not

directly caused by a deliberate action attributable to the municipality itself" (520 U.S. at 410).

CASE SIGNIFICANCE: This case relieves some pressure from counties for liability when hiring police officers. In *Canton v. Harris*, the Court ruled that § 1983 liability could be incurred from a single act of an officer if there was a finding of failure to adequately train the officer. The plaintiff in this case attempted to extend that theory to a single hiring decision made by the Sheriff. The Court ruled, however, that hiring is different from training. In training, there is "policy or custom" involved in how the municipality views effective training of officers. That view can also be traced directly to any possible constitutional injury. Hiring decisions are different. Failure to adequately screen an applicant may represent poor judgment on the part of the municipal official, but it does not rise to the level of "deliberate indifference" required for liability to arise. Municipalities and municipal officials can be assured, then, that as long as a hiring decision does not rise to the level of deliberate indifference that can be traced directly to the officer's future actions involving a constitutional violation, the municipality is free from liability.

McMillian v. Monroe County, Alabama 520 U.S. 781 (1997)

CAPSULE: Whether a sheriff is an agent of the county or of the state is determined by the state's constitution, laws, or other regulations. In this case, Alabama law indicates that sheriffs are agents of the state and not of the county.

FACTS: McMillian was convicted of murder and sentenced to death based on the testimony of a co-conspirator. His conviction was later overturned after a ruling that those involved in the investigation had suppressed statements from the co-conspirator that contradicted his trial testimony and other exculpatory evidence. McMillian then brought suit against the investigators, the County Sheriff and Monroe County under 42 U.S.C. § 1983. The case against the county was based on the assumption that the Sheriff was acting as an agent of the county when he and others intimidated the co-conspirator "into making false statements and suppress[ing] exculpatory evidence."

ISSUE: Is a sheriff in Alabama a representative of the county? NO.

SUPREME COURT DECISION: Whether a sheriff is an agent of the county or an agent of the state is determined by the state's constitution, laws, and other regulations. Alabama law indicates that sheriffs are agents of the state and not of the county.

REASON: "In determining a local government's § 1983 liability, a court's task is to identify those who speak with final authority for the local governmental actor concerning the action alleged to have caused the violation at issue. *Jett v. Dallas Independent School Dist.*, 491 U.S. 701, 703.... In deciding this dispute, the question is not whether ... sheriffs act as county or state officials in all of their official actions, but whom they represent in a particular area or on a particular issue. Ibid. This inquiry is dependent on the definition of the official's functions under relevant state law."

CASE SIGNIFICANCE: This case probably creates as many issues for law enforcement as it solves. The Supreme Court said in this case that a sheriff may be an agent of the county in some states and an agent of the state in other states; that issue being determined by the state itself. Additionally, the sheriff may be an agent of the county when performing certain tasks and an agent of the state when performing other tasks. This is important, because it determines who else, other than the sheriff, can be sued for what a sheriff does. The only time this will probably be an issue is when a county is sued for the actions of the sheriff. When that occurs, according to the Court, it is up to the courts to decide, based on the state constitution, laws, etc., whether the sheriff was acting in his or her official capacity as an agent of the county or the state.

County of Sacramento v. Lewis
523 U.S. 833 (1998)

CAPSULE: In high-speed vehicle pursuit cases, liability in § 1983 cases ensues only if the conduct of the officer "shocks the conscience." The lower standard of "deliberate indifference" does not apply.

FACTS: Deputy Smith and another officer responded to a disturbance call. Upon returning to their vehicles, the other officer observed a motorcycle (not related to the disturbance call) traveling at a high rate of speed. The officer attempted to stop the motorcycle by turning on his blue lights, shouting at the driver, and moving his patrol car closer to Smith's. The driver of the motorcycle did not stop, swerved between the two patrol cars and sped off. Smith then switched on his blue lights and began to pursue the motorcycle. The pursuit lasted for approximately 75 seconds as the two traveled a little more than a mile through a residential area at speeds in excess of 100 mph. The pursuit ended when the motorcycle overturned while attempting to make a sharp left turn. The driver of the motorcycle and Lewis, a passenger, were thrown from the motorcycle. Smith had been travelling at about 100 feet from the motorcycle and was unable to stop before hitting Lewis, knocking him about 70 feet down the road and inflicting massive injuries. Lewis was pronounced dead at the scene. Lewis' family filed suit under 42 U.S.C. § 1983, alleging a deprivation of Lewis' Fourteenth Amendment substantive due process right to life.

ISSUE: Does a police officer violate the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender? NO.

SUPREME COURT DECISION: Only "conduct that shocks the conscience" leads to liability under § 1983 in high-speed pursuit cases. "Only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." "... [H]igh-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983."

REASON: "The Fourth Amendment covers only 'searches and seizures,' U.S. Const., Amdt. 4, neither of which took place here. No one suggests that there was a search, and our cases foreclose finding a seizure." "Our cases dealing with abusive executive action have repeatedly emphasized that only the most egregious official conduct can be said to [rise to a Constitutionally objectionable standard]." "To this end, for half a century now we have spoken of the cognizable level of executive abuse of power as that which shocks the conscience."

CASE SIGNIFICANCE: This case fills a substantial void by clarifying the issue of a Fourth Amendment seizure versus a Fourteenth Amendment substantive due process violation when the police pursue a person suspected of a crime. Through the years, the Court has held that deadly force issues generally involve a "seizure" of the person; thus making these kinds of cases Fourth Amendment issues (see *Tennessee v. Garner*, 471 U.S. 1 [1985] and *Brower v. County of Inyo*, 489 U.S. 593 [1989]). But what is the prevailing Constitutional issue prior to the police "seizing" the person? In *California v. Hodari D.*, 499 U.S. 621 (1991), the Court ruled that a person was not "seized" unless some physical force was applied (also relying on a statement from Brower that there must be "a termination of freedom of movement through means intentionally applied"). There was dissension in the lower courts, however, concerning what represented "seizure" in instances of police automobile pursuits, and the proper standard to be applied for possible liability in these cases. This case settled both of those issues and set forth a flexible standard that, when a police pursuit in which no physical force or "means intentionally applied" occurs, there is not a "seizure"; and if no seizure occurs to bring the action to the level of a Fourth Amendment issue, then the Fourteenth Amendment standard applies, which is a standard of conduct shocking to the conscience. This set a high standard to be met by persons bringing § 1983 cases based on high-speed police pursuits that result in fatal injuries. With this decision, it is not enough that the officers may have acted recklessly or with indifference for life, the plaintiffs must prove that the officer

acted with "a purpose to cause harm unrelated to the legitimate object of arrest."

Saucier v. Katz
533 U.S. 194 (2001)

CAPSULE: A ruling on qualified immunity is not intertwined with a ruling on the violation of a constitutional right and should be made early in the proceedings so that, if established, the cost and expense of trial are avoided.

FACTS: The Vice President was to speak at a military base. Katz was concerned that a hospital at the base would be used for conducting experiments on animals, and planned to protest the speech. Katz brought a 4 x 3 foot sign to the speech and kept it concealed under his coat because he was aware that persons had been asked to leave the base in the past for certain behaviors such as distributing handbills. Katz sat in the front row, next to a waist-high fence that separated the seating area from the stage. As the Vice President began to speak, Katz began to unfold the banner and walk toward the fence. Two military police officers, who had been specifically warned about Katz, intercepted him and rushed him out of the area (partially dragging him). Katz argued that they then shoved him into a police van, causing him to fall. Katz was taken to a police station and then released. Katz brought suit claiming excessive use of force. The District Court held that "in the Fourth Amendment context, the qualified immunity inquiry is the same as the inquiry made on the merits," and, thus, is a decision to be made during the trial.

ISSUE: Is an officer's qualified immunity defense an issue that is to be decided separately from the issue of an actual violation of a constitutional right? YES.

SUPREME COURT DECISION: A ruling on the qualified immunity defense is not intertwined with a ruling on an actual constitutional violation (in this case the use of excessive force) and should be made early in the proceedings so that the cost and expense of trial are avoided.

REASON: "In a suit against an officer for an alleged violation of a constitutional right, the requisites of a qualified immunity defense must be considered in the proper sequence. Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Qualified immunity is 'an entitlement not to stand trial or to face the other burdens of litigation.' *Mitchell v. Forsyth*, 472 U.S. 511, 536 (1985). The privilege is 'an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously

permitted to go to trial.' Ibid. As a result, 'we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation" *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)."

CASE SIGNIFICANCE: This decision favors police officers who are sued in federal court under federal law (Section 1983) for alleged violations of constitutional rights. A popular defense is these cases is that the officer enjoys qualified immunity and therefore cannot be held liable. Qualified immunity under federal law provides that the officer is not held liable unless he or she violated a clearly established constitutional rule of which a reasonable person would have known. The Court in this case held that if qualified immunity is established early in the proceedings, then the case should be dismissed and the officer does not have to go through trial. The Ninth Circuit, from where this case was appealed, held that the issue of qualified immunity and the actual violation of a constitutional right were so intertwined that a dismissal of the case after a finding of qualified immunity was not proper. This would have prolonged the case. The Court disagreed, ruling that these two issues are different and that if qualified immunity is established by the officer early, then the case should be dismissed and the trial avoided. Thus qualified immunity, once established, immunizes the officer from trial and civil liability under Section 1983. This ruling is significant because it spares officers the burden of having to go through the whole trial once qualified immunity is established early in the case, usually in a motion to dismiss. Therefore, in a Section 1983 case filed in federal court, the case is to be dismissed if the defense establishes qualified immunity, meaning that the officer did not violate a clearly established constitutional right of which a reasonable person would have known.

Town of Castle Rock v. Gonzales
545 U.S. 748 (2005)

CAPSULE: The wrongful failure by the police to arrest a husband who violated a restraining order does not amount to a violation of a constitutional due process right under the Fourteenth Amendment and therefore does not result in civil liability under federal law (Section 1983).

FACTS: Pending a divorce, Gonzales obtained a restraining order against her estranged husband that required him to stay 100 yards away from the house where she lived with their three children, except for specified visitation. The order commanded all law enforcement officials to "… use every reasonable means to enforce this restraining order," and either to arrest or to seek an arrest warrant when there was "… information amounting to probable cause that the restrained person has violated or attempted to violate any provision of this order." Three weeks after the order was issued, the husband took his daughters from the front yard of their house without Gonzales's awareness or

permission. When Gonzales noticed the girls were missing she called the Castle Rock Police Department, which dispatched two officers. She showed them the restraining order, but the officers stated that there was nothing they could do about the order, and that she should call the police department again if her children had not been returned by that evening. Gonzales called her husband who said the children were at an amusement park with him. Gonzales called the police department again and asked that they have someone check for her husband's truck at the amusement park, or "put out an [all points bulletin]" for him. She was again told to wait until that evening to see if the girls were returned. Gonzales called the police department again at 10:00 P.M. and was told to call back at midnight. She called at midnight from her husband's apartment and was told to wait for an officer to arrive. No officer arrived, and at 12:50 A.M. she went to the police department and filed an incident report. The officer receiving the report took no action. At 3:20 A.M., the husband went to the police station, opened fire with a pistol purchased that evening, and was killed when police shot back. Police found in the husband's truck the bodies of his three daughters, who he had previously killed. Gonzales filed a Section 1983 suit against the city for failure to protect her children and to take action on the restraining order.

ISSUE: Is a town civilly liable under federal law (Section 1983) for having a custom or policy that tolerates non-enforcement by its police department of court restraining orders? NO.

SUPREME COURT DECISION: A town cannot be held civilly liable under federal law (Section 1983) for wrongfully and intentionally having a custom or policy that tolerates non-enforcement of court restraining orders. Such practice does not amount to a violation of due process rights and therefore do not result in civil liability.

REASON: The Court in this case relied on previous Supreme Court decisions. Such cases applied the due process clause of the Fourteenth Amendment through Section 1983 to determine what interests were protected in particular cases. The Court noted that the due process clause protects "property," so Gonzales was required to have a property interest in the enforcement of the restraining order for the due process clause to be applicable. Such property interests are enforced by federal law under the due process clause, but are created by state law. The court of appeals found in this case that Colorado had created such a property interest for persons like Gonzales by the using the language "shall arrest or … [shall] seek a warrant for the arrest of the restrained person" on the order. The Supreme Court rejected this logic because police officers traditionally had discretion not to enforce even "mandatory enforcement" laws. If the interest is one that government officials may grant or deny at their discretion, then under previous cases it is not a property interest. The Colorado statute had not specifically given or attempted to give Gonzales

a property right; but even if it had, it would have been an indirect benefit. The due process clause protects property rights in "direct benefits" such as money from Medicaid, but not an "indirect benefit" such as enforcement of standards of care in a nursing home. The Court concluded that because it had not found any property interest that could be protected by the due process clause, it did not have to evaluate whether the actions of police in this case constituted a custom or policy of the Town of Castle Rock.

CASE SIGNIFICANCE: This case is significant because it further clarifies when a government agency might be held civilly liable under federal law (Section 1983). Gonzales filed this case as a violation of the due process clause. The Court ruled that, to have a claim under the due process clause, a person must have a true property interest, not simply "an abstract need or desire," and the person must have "more than a unilateral expectation of it." The Court pointed out that "… the Due Process Clause does not protect everything that might be described as a benefit." In determining whether this case represented a benefit, the Court ruled that "our cases recognize that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." In examining the law in this case, the Court held that it did not appear that the state law made enforcement of court restraining orders mandatory. Because of these circumstances, Gonzales did not have a Section 1983 claim because her rights under the due process clause were not violated.