PennState Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 126 | Issue 3

Spring 2022

How in the World Could They Reach That Conclusion?

Hon. Carlton Reeves

Transcription

How in the World Could They Reach That Conclusion?

Honorable Carlton W. Reeves*

JUDGE REEVES: After those comments, I could just sit down and wait to hear these other people, this panel. I want to first thank the Law Review for inviting me to come here; and on this particular topic it is one that I know that we all have been talking about, at least in the last couple three or four years.

I've been talking and I've been serving and I've been attending symposiums sponsored by the State of Washington Supreme Court, for example, the Fellow Bar Association has done one, the Eastern District of Michigan. Everybody seems to be talking about this notion of qualified immunity.

And in some of these talks I even have learned—I'm not a Jon Bon Jovi fan, I mean, I didn't know his music, but he had a song that came out after the George Floyd thing, "American Reckoning."

And the first sentence says, "America's on fire, there's protests in the street, her conscious has been looted and her sole is under siege, another mother's crying as history repeats I can't breathe."

---

* The Honorable Carlton W. Reeves is a current sitting District Judge in the Southern District of Mississippi. These remarks were transcribed from his speech at the *Dickinson Law Review's* 2022 Symposium: *Qualifying Qualified Immunity: Yesterday, Today, and Tomorrow.*

And then it goes on. I encourage you to listen—I'm not going to try to sing it, I'm not going to give you all the stanzas, but I encourage you all to look it up and look at those words; it connects with what you all have put on here today.

I was told that, you know, we need to talk about, a little bit about what the law is in qualified immunity and what—and I'm going to leave the details to the scholars and the practitioners, as someone mentioned, because I'm not a scholar and I'm no longer a practitioner; I'm a man who has to follow the law as given to me.

But in any event, 1983—for the law school students and the professors, I'm going to give you, I guess, the law school version or the manual, or whatever they use right now, the ones that the teachers don't want you to look at because you get—you know, as you study, you know, your case notes methods—this is for the students—the books that you get all talk about, they're really mostly cases from the Supreme Court in this area.

I know in your torts, in your contracts classes, most of the case books that you see come from opinions from the state's highest courts and, in this instance, in your Federal Court, most of them come from the Supreme Court. But I want to tell you there are other courts out there.

So just to, again, just to get to the small frame of things, 1983, every person who has been deprived of a constitutional right they should have a federal remedy against that state government official who has violated that particular constitutional right.

And you're going to hear more about it but I just want to touch on just a couple of things. Qualified immunity, according to the case law, is the law, so that's the default position basically because it gives these state actors the breathing room to make mistakes; that's the other thing.

And the only way you sort of, you know—the right that you are accused of violating must be clearly defined and that clearly defined right is not some broad thing but some narrowly-tailored thing.

Qualified immunity does not apply to those who clearly violate what the law is. It's going to get complex today and it's going to—you're going to—at some point you will probably be scratching your head today.

You put a group of people in a room, a group of state actors in a room, basically the law says that if they can disagree about what the law is, then qualified immunity applies. So, you know, we look in this room here; if there's just a few of you who can disagree

about what the law is, you know, there's a chance that qualified immunity might apply to the situation.

If the law is clearly established, then a reasonably competent official should know what the governing law is. If the clearly competent public official should know that governing the conduct, that the governing conduct is violated, then the defense should fail and, if the law is clearly established, the immunity defense should fail.

Again, sticking to the, sort of, law school for dummies sort of version, it does not, remember, it does not protect those who violate the clearly established law. And for you students, I know you, most of the decisions that you read and when you're taking a legal writing you do the IRAC method, I guess, Issue, Rule, Analysis, Conclusion, and you see opinions talk about the facts first and then, you know, maybe the jurisdiction facts and then talk about what the law is, but I'm going to spend my time talking about the facts of a case.

And now that I've given you just a CliffsNotes version of the thing, I want you to just think about how could they, how could anyone come up with the ruling that there ought to be qualified immunity for any of these officials.

It all started with 14 Lortab pills. Prisoner was in jail already, 14 Lortab pills, they thought maybe he was trying to commit suicide, so he needs help. As I mentioned earlier—this case is *Taylor v. Riojas*. Tiffany Wright could tell you all about that case, but it's about *Taylor v. Riojas*.

This guy's in state prison in Texas. He take these 14 Lortab pills, he threatens suicide, he is put on the suicide watch in these two different cells.

And the cells that he is placed in—well, first of all, the target date, this is September the 14th, 2013, that's one of the important things. This is when he, this is the date that he takes the Lortab pills. So after that point he files a lawsuit. Of course, he's in prison, you know he's filed the lawsuit *pro se*, he's in prison, he's fighting on his own because this is what his claims are: He says, well, I took these Lortab pills, I'm told that I have to go into this particular unit here because I'm on the psychiatric watch, and they gave him psychiatric treatment.

Now, part of his suit is about they forced me into some psychiatric treatment without telling me—well, first of all, I consented to it but then I withdraw my consent, I withdrew my consent but they gave it to me anyway and the way that they gave it to me, they took me to these cells and the cell that they put me in, it was not the cleanest cell in the world; in fact, it was a cell covered by feces.

And I say Tiffany Wright would know all about this case because in her amicus brief she notes that—and I tell you, this is how smart people do the thing: They couch it in the terms, this is not just his waste that's in the cell, it's other people's waste. And when I say it's in the cell, it's all over the cell; the walls, the faucet that's in the cell, it's covered with other people's waste, other people's feces, it's packed up in there so he can't drink out of the water.

There's nothing there but a bed, a cot. He's on suicide watch, right, so he has nothing but a suicide blanket. A suicide blanket is a nylon blanket. It's not a cotton blanket, it's not a blanket to keep you warm; it's a blanket to keep you protected from being able to hang yourself. So that's all he has; no clothes, he's naked.

There's a drain there, it emits sewage; so in order for him to even try to get some rest, he has to lie down on the floor in other people's waste, in other people's waste, not his own, stuff coming from the sewage. I mean, nobody wants to be in their own waste, right, but he's in other people's waste.

So this goes on. I mean, I mentioned that we all hear cases about the Supreme Court. But for this case here you need to read the Magistrate Judge's opinion because that's where you finding all of these facts. The U.S. Supreme Court's case is just about two or three pages long. You need to go back and read the Magistrate Judge's opinion, not the District Judge's opinion, the Magistrate Judge's opinion; she had a *Spears* hearing.

And as you lawyers will know, the *Spears* hearing gives inmates the opportunity to call people in to sort of prove up their case because, you know, most cases are dismissed but for prisoners in the PL—it's so many good nuggets in this case, the PLRA and all that kind of stuff, so many great little things.

But they had a *Spears* hearing to see, let's flesh out what the evidence is. And you'll learn that in qualified immunity positions that once you assert qualified immunity, that ends whatever type of discovery you might get.

You don't get the opportunity to try to get to the truth, you don't get to use those Rules of Civil Procedure, you don't get the Rule 26, you don't get the Rule 35, you don't get to the depositions, you don't get to the Requests for Admissions, you don't get to the Request for Production of Documents, you don't get there because when you raise the opportunity of, when you assert the defense of qualified immunity, that shuts everything down, shuts everything down, you don't have the right to seek to get to the truth.

And I mentioned the 2013 date for that reason because this prisoner who is representing himself suing 47 defendants—because

all of them, everybody in the correctional unit; the doctors, the nurses, the correctional officers, all of them saw, smell, heard, heard his cries, because he was crying at times, they saw it, they smelled it, they heard it, they touch—they didn't touch it but they saw it.

And he sued all of these people and he had different claims against all of these people. He's *pro se*; how's he supposed to get to the truth? The State Attorney General's Office represented these 47 people. They filed motions to dismiss against this *pro se* guy; he has to fight all of these motions to dismiss.

So the facts get even worse because he tells the doctors. The doctors tell him, there's nothing I can do, I'm only here to treat you for your psychiatric needs, what's going on in your unit is going on in your unit. That's what he tells the nurses, that's what he tells the doctors; they say we can't help.

He tells the correctional officer, please take me to the bathroom, I haven't used the bathroom in 24 hours. She says, I can't because I'm not a male, I can't take you to use the bathroom, I mean, I'll find someone who can. Needless to say, she never found anyone who could.

Others laughed at him. One officer said, that's just shit all over the walls. I mean, that's the testimony, you know, that excre—I think one of the judges changed the word and put excrement.

But the officer himself said, I'm sorry, it's just everywhere, we will send somebody in there at one point in time, we'll send somebody in there to clean it up. And they did, they cleaned off the floor, but it was on the ceiling. They also said, we're sorry and there's nothing we can do about it.

They did let him take a shower a couple of different times. They did tell him at one point in time, you can clean it up yourself, here's a towel, a dry towel so that, I guess, so he could smear the stuff all, wherever he wanted to smear it. No disinfectant, no anything, but this goes on for days. This is not just a one-off, this is not just a few hours here, a few hours there, this is on a 24-hour cycle, this is going on for days.

Nobody can stand up for 24 hours and not fall asleep and, if you're going to fall asleep, you're going to have to sit down, you're going to have to lie down, you're going to have to do something.

Nobody can hold their urine—and as he said, he said, I need to pee. He said it. I mean, go back and look at the Magistrate Judge's opinion. And, guess what, that Magistrate Judge's opinion goes to the District Judge on an R&R and the District Judge looks at the facts. And, guess what, the District Judge said, well, I'm bound by

what the Fifth Circuit says so, you know, I have to grant qualified—you know, some of these claims cannot even go forward because it's on a motion to dismiss filed by the Attorney General, some of these claims cannot go forward. And then from there it goes to the Fifth Circuit. The Fifth Circuit says, well, District Judge, you looked at that particular claim with respect to the forced psychiatric treatment, you sort of missed the ball on that particular claim but the other stuff, it's all good. So it went back to the District Court, and I just want to—and I know I just have a few minutes left.

So it goes back to the District Court. I want to keep highlighting this point: This is a prisoner who's representing himself. One portion of the opinion talks about him begging and pleading and the doctors tell him, well, you need to do a sick call request.

He said, sick call request; I'm on suicide watch, I don't have a pen, I don't have a piece of paper, what am I supposed to write on, I'm on sui—you all, I only have a suicide blanket, I am totally naked, I have nothing so how am I supposed to do a sick call. Sorry.

So these issues are fleshed out in that Magistrate Judge's decision. That case does not, that case is not—it's here, because it goes to the Fifth Circuit. After the District Judge looks at this idea of whether or not this forced psychiatric treatment is one that, you know, is, you know, if that claim might move forward along with the other things, then it goes back to the Fifth Circuit.

The Fifth Circuit looks at the psychiatric treatment claims, the Fifth Circuit looks at these other claims where you're talking about the descriptions that I've given to you, which don't even touch on what the—go back to the Magistrate Judge's decision, Students, go back to the person who's finding the facts, go back to the person who hears all the facts. When it gets to the appellate level, you're really looking at the facts as found by the Trial Judge and you're looking at applying those facts to the particular law.

And at that point the Fifth Circuit says, well, when you apply to the particular law as we've announced it here, the clearly established law does not suggest that this guy's constitutional rights have been violated; he was there for six days, we have a case on-hand in this circuit where it was seven days, I think, but seven ain't six; in our world of jurisprudence, seven ain't six; in our world of qualified immunity, seven ain't six so, therefore, all 47 of these law officers, correctional officers, doctors, everybody who saw, smelled, touched this guy, saw what was going on in his cell room, some of whom were laughing at him while he was crying, some of whom—somebody punched him with some sort of baton.

Obviously that was clearly established; you can't just use excessive force on somebody but you can subject them, according to the opinion, you can subject him to six days of this type of treatment because these folk did not know that if you put somebody through those type of conditions that you might be violating their constitutional rights. That's what qualified immunity gets us.

But it gets to the U.S. Supreme Court and the Supreme Court says, hold on, wait, now, I know we've said some stuff and I know you all might be confused but there's this case of *Hope v. Pelzer* that we ruled a long time ago, now; now, I want to remind you all, District Judges, Circuit Court Judges, I want to remind you all that *Hope v. Pelzer* is a case that we decided a long time ago, I think 2007, or something, we decided that case awhile back and this is the type of stuff that just clear on its face you just cannot do; now, mind you, this is the first time we're reminding you of what *Hope v. Pelzer* says, this is the first time since we ruled on it that this, we remind you that this is the first one.

And I think, I think, I think this might be the first case that the Court took up on qualified immunity and actually reversed in more than a decade, and right on the heels of that they reversed another Fifth Circuit case per curiam.

Where does that take us with qualified immunity now? I am not sure where it takes us because you heard the facts, and my general topic is how in the world could they reach that particular decision.

Just think about it; somebody having to sleep in someone else's waste, can't drink water because the faucet is clogged with other people's waste, you can't use the bathroom because you don't want to—they tell you, the correctional officers tell you, oh, you can use the bathroom, there's a drain right there.

You can't use that drain because the drain is filled with waste. And he says, if I pee in that drain, that waste plus my urine is going to be all over the floor, on the floor that I have to sleep on because I'm here for six days.

When you look at facts like that, how could you come to that particular decision? Qualified immunity gets you to that particular decision. And you're going to hear folk today talk about those type of things and you're going to wonder does our constitution, should our constitution be read to condone, to allow, to allow for that type of decision-making, should we. Just think about it. Just think about it.

So I would encourage you to not only look at those cases—you can get the debates from the Supreme Court decisions, the Court of

Appeals' decisions, you can get the debates because you might have altering views and people touching on what the debate is but I encourage you to look at the facts, and those facts are fleshed out in the District Court opinions, in these Magistrate Judges' opinions and you look at those facts as litigators and you do whatever you can do to make sure that you develop your record in a way.

The only thing that I will close with is that *Taylor v. Riojas*, 141 Supreme Court, 2020—you heard me, 2020. This man took 14 Lortab pills in 2013. As of 2020 he has not had his discovery, he has not subjected these people to depositions, to Request for Admissions, to Request for Production of Documents because he's not entitled to discovery, because once you assert the defense of qualified immunity, you cannot even be subjected to the tools that get you to the truth.

2020, 2013, and I hope Tiffany will tell us how they got, how they learned of the case and how they got on the side of this guy, this particular prisoner because, guess what, believe it or not I don't believe that Mr. Taylor was the first one to be in that particular cell and I stand to believe that that person was not sophisticated enough to care for his claims and arguments as Mr. Taylor was.

He stood up against the Attorney General of the State of Texas. Everybody does not have that wherewithal. There's so many people in prison now who cannot maintain those claims, cannot advocate for themselves, but this man here advocated for himself.

But, again, 2013, 14 Lortab pills, 2020, U.S. Supreme Court. What has happened in between? Qualified immunity, a definitive ruling on qualified immunity came seven years later.

I don't know where Mr. Taylor is now, I don't know what Mr. Taylor is doing, but we do know that these raises all the points that we'll be talking about today with these scholars, these practitioners, particularly these practitioners because even though Ms. Wright and others are doing the great work, they can't do every case, they can't do every case, and so that means the work is not getting done.

And I'll just leave you—I'll leave a minute or two for a question, I guess. But, again, I thank you all, and I just wanted to share that one with you; how in the world could they reach that conclusion. *Taylor v. Riojas*. You wouldn't believe that that happened in America.

Thank you, Madelyn. Thank you, Ms. Murtha. Any questions, I guess?

CLAIRE MURTHA: So, Judge, I'll start it off with a question from one of our on-line participants.

In-person, if you have any questions, just feel free to raise your hand. We have some mics going around. And for those who are online, please feel free to use the Chat or Q&A feature.

So the question is, You mentioned the clearly established standard from *Harlow v. Fitzgerald*. When defendants challenge criminal statutes as void for vagueness, the Court has construed that concept very narrowly.

Should qualified immunity be available only if the Supreme Court's rulings on constitutional rights are also, themselves, void for vagueness; in other words, if criminal liability can rest some statutes that are not void for vagueness, why shouldn't officials' liability rest on constitutional rulings that are not void for vagueness?

ANSWER: That's a question to be left to all the practitioners. So write that down, Practitioners. The way that the qualified immunity has been sort of gradually increased, if you will—I mean, because at one time it wasn't a clearly established law; it was a—there appears to be, over the years, several different modifiers that have come out of the courts' opinions and have been interpreted by the courts of appeals and then the district courts.

All of these qualifiers have sort of narrowed the rights for persons to be able to challenge. So I think it will be tough to—you can go through analyzing it through void for vagueness but, again, I think that gets you down the briar patch of trying to figure out what every different case would then fall on its specific facts, I think. So I'm not sure if the Court will ever accept a void for vagueness challenge.

I hope that answers the question that the person asked.

QUESTION: Hi. Thank you for that. You mentioned that once a assertion of qualified immunity is raised discovery stops. I've only done these cases in the Middle District and Eastern District of Pennsylvania. But here it does not stop, it continues. You know, the Courts sometimes address a 12b motion but sometimes they just push it off until summary judgment as well.

I was wondering, you know, is that, like, an exception to the rule, you know, are most other district courts, once a 12b motion's filed on qualified immunity, you're prohibited discovery?

ANSWER: Right, because the doctrine, itself, says you should not be put at the burden of risk of even having to respond to the suit, period. In my district, once the motion for qualified immunity is filed, technically that stays the case until that qualified immunity issue is resolved on the law.

You have to understand also, it's not the Plaintiff that was—again, for you civil procedure students, aficionados, you know, you talk about summary judgment, whose burden of proof it is and all that kind of stuff.

Well, it's somewhat flipped on the qualified immunity analysis, you know, the Plaintiff is the one that's going to have to show that what they've alleged actually violated the clearly established law. In most instances, you know, the Defendant files a Motion for Summary Judgment and you accept all the other facts as true, blah, blah, blah. Well, it's a little bit different from qualified immunity. But basically the Supreme Court has said, though, that once the defense is raised, that officer should not have to even be burdened to do anything other than raise that defense. So all the tools that they give every other practitioner, all the tools that they give you to find the truth are unavailable; you cannot do a Request for Production of Documents, you cannot even submit an interrogatory request, you cannot do a Request for Admission, no discovery. And, until that is ruled upon, nothing's supposed to happen, at least in our circuit, nothing happens in the case.

And, you know, some courts, some judges might allow some discovery on a narrow issue about what that qualified immunity motion, itself, has argued, maybe whether it is clearly established law, but technically—this is the other thing about it: When a court says qualified immunity does not exist or does not apply, that state officer—again, civil procedure people, that state officer has a right to an immediate appeal. That's just not given to you in many contexts and only a very few subset of cases or rules are you allowed to appeal immediately.

And, again, you are entitled to appeal all the way to the U.S. Supreme Court to get a ruling on whether or not you are entitled to qualified immunity; thus you have the 14 Lortab pills in 2013 and a Decision by the U.S. Supreme Court seven years later.

I don't see any more questions, I don't think, and thank you so much. You all are going to have a wonderful day today; you got some fabulous people here. It's going to be great.