# Court Clog DA

## Notes

### Overall argument

If QI goes away or is limited that opens the floodgates for additional lawsuits. As most of you know by now, The way QI works is that there is this section of “US Code” (which are federal laws enshrined by congress that govern a large number of issues) called 1983. It allows government officials to be personally sued (I.E. I’m not suing “the LA Police department,” I’m suing officer Sachin Azbel of LAPD) for violations of rights (like being wrongfully imprisoned or something). QI allows a lot of those 1983 claims to be dismissed. The aff will say that it is bad to do that because those 1983 claims are good and police officers should get accountability or whatever.

The arg the DA makes is that allowing for a whole bunch of 1983 claims is bad because now there will be tons of more court cases. Additional court cases (lots of them, at least) are bad. Some knowledge: courts have to dissolve cases somehow, either by completing them or dismissing them. But the US legal system is complicated and takes a lonnnngggg time to do anything like complete a case. The basic problem is that there are far more people suing other people than there is time to make sure those cases go away. If there are too many cases, courts can’t rely ensure that any are really resolved. Example: you may sue somebody in 2016, but it might be 2017 before you even get a trial. That’s because there’s tons of cases ahead of you there were ALSO delayed.

Court clog is basically the idea that tons of random frivolous cases in our courts will push our court system to a breaking point where it can’t really be relied upon to do anything. If you sue somebody and nothing happens for 4 years, our legal system basically becomes useless. Imagine if random people were suing police across the country a ton of times and you couldn’t even get a murder trial to happen cause it took too long. That would suck.

There’s a uniqueness card that says that current caseloads are actually declining. It’s important that we make that arg otherwise they’ll just say the da is triggered by the squo since our caseloads will just inevitably collapse the judiciary.

The impact scenario is based on the “federal judiciary” (aka the court system that goes right to the Supreme Court) collapsing and no longer being able to do anything. That has a sort of weak to legitimacy internationally – our legal system is key to how we’re seen internationally as having a government that’s decent and should be followed, basically. Having a terrible court system looks really bad. We have a short card that says that the way we are perceived internationally affects America’s global power in the world. There’s a distinction between hard and soft power with respect to the way a country gets power internationally. Hard power is the deployment of troops or weapons or bombs or whatever; it’s the physical deployment of war resources. Soft power is diplomacy, perception, and “legitimacy” and the basic thing people say is that if everyone likes us more they’re more willing to listen to what we want them to do. The impact is hegemony, which is US power globally. The argument is that it is good that we are the superpower and if we ever weren’t then countries would feel emboldened to try to do a bunch of nasty things to gain power themselves, which will cause wars that could go nuclear.

So, if police can get sued by random people, that will overtax the US legal system and make us look bad, leading to world war III. Hey, it’s the best we’re gonna get on this topic.

### Strategic issues

#### UQ

This card is about the supreme court. This is the only way we were gonna get uniqueness cards because court caseloads are obviously high now. The problem is that our link cards are about lower court cases mostly. Lower courts meaning the cases where you have trials and eventually appeal up to the supreme court. The way supreme courts and laws work is that you try a case in local courts and then if you win you win, but if you lose you can try and appeal your case up into more big national courts. If you keep doing that you will eventually get to the supreme court.

The argument we want to make against that observation is that our argument is that the supreme court will be overburdened by lots of random cases once millions of more cases go to trial at the “lower court” level. Worst case scenario, we could assert that the ev talking about the supreme court is really also making arguments about lower courts; i.e. the reason that the supreme court dockets are low is that cases in lower courts must also be low. This is a lie, but if you assert it a lot of judges will go your way.

However, they might not have a uniqueness card and if they don’t it doesn’t matter that much.

#### Link

This card is great but some stuff to be aware of.

First it doesn’t say qi that much, just that 1983 claims are bad/constitutional court claims are bad. This is a bit of a bigger deal, but not by much. Limiting qi by definition means that 1983 claims increase and are more successful since all it does is easily dismiss those claims. Plus the whole article is about QI

Second, it isn’t specific to police. That’s true, but they’ll have to win a link turn to make that really work and there arg would have to be specific to police for it to matter.

#### IL

These cards aren’t great but they wouldn’t have counterclaims, really. Go for risk of offense on your stuff.

#### “Turns the case”

This arg isn’t great but if the aff cares about cases, for example other police brutality cases where QI may not even be an issue, it might not even get to trial if the aff explodes the number of cases

#### Impact

Heg is a good impact to have. It gives you access to a solves the case argument, which is that if we are really powerful no war would really escalate/happen because they fear us. This obviously only applies to aff war impacts, but should certainly be in the overview.

### Language

Caseloads: the total amount of cases that the courts have to deal with

Dockets: what cases are about to come before courts, in order

Backlog: the set of old cases that haven’t yet come to trial because of high caseloads.

### 2N Oveviews

You people aren’t really doing DA overviews. Here’s what they look like

General explanation

Impact explanation against util

Impact explanation against framework (this might be my finest work. I’ve had it kicking around in my head for a while. Jesus Christ it’s true, and I think if you make it very difficult for judges to vote against you on “no link to the framework.” Read it. It’s beautiful.)

## 1N

#### Caseloads low and declining, but could still ramp up, Roeder 16’

MAY 17, 2016 AT 9:00 AM “The Supreme Court’s Caseload Is On Track To Be The Lightest In 70 Years” By Oliver Roeder//LHP MS

In one sense, Monday was a noisy news day at the Supreme Court. It handed down decisions in six cases, including yet another challenge to Obamacare, which the court essentially punted, sending the challenge back to various federal appeals courts. But in another sense, it was a day as quiet as Clarence Thomas during oral argument. The court agreed to hear exactly zero new cases, continuing to set a sparse stage for its next term, which may see the lightest caseload in its already-light recent history. So far, only 12 cases are on the court’s docket for the October 2016 term, which runs through June 2017.1 That number is far below the pace that we averaged in the 1980s and ’90s. And if the first few months of the year are an indication, the upcoming court term may be the lightest in at least 70 years. The long, downward trend in the court’s caseload began around 1980, when it routinely heard over 150 cases a term. These days, it hears about half that many. In 2014, the court heard 71 cases, the fewest since at least World War II, according to the Supreme Court Database. Now that record looks in danger of falling. The court still has ample time to add cases to next term’s docket — indeed, it often adds many between May and October — but its pace of granting cases for next term is lagging, as the adjacent chart, based on data from SCOTUSblog’s Kedar Bhatia, shows. Over the past five terms, the court had added nearly 18 cases to the next term’s docket by this point in May, on average. Thus far this term, they’ve granted just 12.

#### Limiting QI clogs the courts – empirically confirmed – best study, Noll 8’

Noll, David L. "Qualified Immunity in Limbo: Rights, Procedure, and the Social Costs of Damages Litigation Against Public Officials." NYUL Rev. 83 (2008): 911. //MS

In the context of ordinary civil litigation between two private parties, the total (or “social”) cost of litigation is generally limited to the cost of litigating the claim, the cost to the public of providing a dispute resolution system, and the cost created by an incorrect decision.36 Damages litigation against public officers, however, implicates several additional costs.37 As the case law on qualified immunity suggests, these additional costs should be assessed when deciding how to adjudicate a claim against a government official for damages.38 Damages litigation gives rise to unique negative externalities. Consider a hypothetical, based loosely on Iqbal, in which a mid-level Justice Department lawyer, sued for her personal role in the development of an allegedly unconstitutional policy, is required to comply with discovery requests (depositions, responses to interrogatories, document productions, and so on). Discovery will produce several direct costs: The lawyer will not simultaneously be able to perform her primary responsibilities (a concern that assumes particular importance if she serves a critical public function);39 she will avail herself of government resources, such as legal and informal assistance from other government employees, that are unavailable to private litigants; 40 and, except in cases of clear illegal conduct, the government will most likely indemnify her for any eventual settlement or damages award.41 Beyond these direct costs, the case law recognizes four categories of indirect costs of damages litigation against public officials. In contrast to the opportunity costs of haling a government employee into court and indemnifying her against a judgment, these costs are far more difficult to measure. Moreover, they generally reflect the assumption on the part of the courts that negative systemic effects follow from allowing a “culture” of litigation against government officials to develop.42 The first indirect cost is the risk that the “fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties.”43 A leading statement of the problem was delivered more than a half century ago by Judge Learned Hand.44 He argued that in the abstract, there is no legitimate reason that an official “guilty of using his powers to vent his spleen upon others” should escape liability.45 But Hand noted that denying recovery may nonetheless be in the public interest: The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.46 Characteristically, Hand recognized that for the purposes of determining whether a particular class of claims should be allowed, the aggregate costs and benefits are what matters, not the justice of the individual case. The second indirect cost is the deadweight loss of nonmeritorious litigation, [is] a problem exacerbated by the disproportionate number of nonmeritorious constitutional tort claims.48 In the most comprehensive study of § 1983 litigation yet conducted, Professors Theodore Eisenberg and Stewart Schwab concluded that “constitutional tort plaintiffs do significantly worse than non-civil rights litigants in every measurable way.”49 One article by a former Justice Department lawyer reported that of the more than 12,000 Bivens actions filed between 1971 and 1986, only thirty had resulted in judgments for plaintiffs, only four of those judgments had been paid, and settlements were rare.50 To be sure, there are meritorious damages claims against public officials, and they may have social benefits surpassing the value of individual claims. Yet the perception that constitutional tort cases “flood the federal courts with questionable claims that belong, if anywhere, in state court”51 is supported at least by anecdotal evidence and has undoubtedly affected the development of the modern qualified immunity doctrine.53

#### That breaks the courts, Thomas 16’

Suja A. Thomas. “Frivolous Cases.” 2010. DePaul University. <http://via.library.depaul.edu/cgi/viewcontent.cgi?article=1180&context=law-review>

**There is a focus on frivolous cases because of cost. Frivolous cases may be costly to the court system and to litigants. Frivolous cases could consume court time when court resources are limited**, and defendants might need to devote significant resources to defend these cases. Government officials are of particular concern. The Supreme Court has stated that "firm application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits. '46 The Court has stated more generally that **even "a frivolous complaint that is withdrawn burdens 'courts and individuals alike with needless expense and delay."' 47 The Seventh Circuit has expressed its displeasure at frivolous cases because** they "clog court dockets and threaten to undermine the ability of the judiciary **to efficiently administer the press of cases properly before it."'** 48 Although he is not certain whether there is a serious problem with frivolous cases,49 Professor Robert Bone has concluded that "[f]rivolous **litigation** is problematic because it generates wasted litigation costs and unjustified wealth transfers. ' 50 Moreover, it also **"frustrate[s] settlement of legitimate suits. '51**

#### Turns case because legitimate 1983 or other claims don’t happen if the docket is clogged – outweighs on magnitude since there will be more delayed cases than current ones

#### Causes judiciary collapse, kills legitimacy, Oakley 96

John B. Oakley, Distinguished Professor of Law Emeritus US Davis School of Law, 1996 The Myth of Cost-Free Jurisdictional Reallocation

￼Personal effects: The hidden costs of greater workloads. **The** hallmark of federal justice traditionally has been the searching analysis and thoughtfulopinion of a highly competent judge, endowed with the time as well as the intelligenceto grasp and resolve the most nuanced issues of fact and law**.** Swollen dockets create assembly-line conditions, which threaten the ability of the modern federal judge to meet this high standard of quality in federal adjudication.No one expects a federal judge to function without an adequate level of available tangible resources: sufficient courtroom and chambers space, competent administrative and research staff, a good library, and a comfortable salary that relieves the judge from personal financial pressure. Although salary levels have lagged—encouraging judges to engage in the limited teaching and publication activities that are their sole means of meeting such newly pressing financial obligations as the historically high mortgage expenses and college tuitions of the present decade—in the main, federal judges have received a generous allocation of tangible resources. It is unlikely that there is any further significant gain to be realized in the productivity of individual federal judges through increased levels of tangible resources,13 other than by redressing the pressure to earn supplemental income.14 ￼On a personal level, the most important resource available to the federal judge is time.15Caseload pressures secondary to the indiscriminate federalization of state law are stealing time from federal judges**,** shrinking the increments available for each case. Federal judges have been forced to compensate by operating more like executives and less like judges. They cannot read their briefs as carefully as they would like, and they are driven to rely unduly on law clerks for research and writing that they would prefer to do themselves.16 If federal judges need more time to hear and decide each case, an obvious and easy solution is to spread the work by the appointment of more and more federal judges. Congress has been generous in the recent creation of new judgeships,17 and enlargement ￼of the federal judiciary is likely to continue to be the default response, albeit a more grudging one, to judicial concern over the caseload consequences of jurisdictional reallocation. Systemic effects: The hidden costs of adding more judges. Increasing the sizeof the federal judiciary creates institutional strains that reduce and must ultimately rule outits continued acceptability as a countermeasure to caseload growth. While the dilution of workload through the addition of judges is always incrementally attractive,in the long run it will cause the present system to collapse. I am not persuaded by arguments that the problem lies in the declining quality of the pool of lawyers willing to assume the federal bench18 or in the greater risk that, as the ranks of federal judges expand, there will be more frequent lapses of judgment by the president and the Senate in seating the mediocre on the federal bench.19 In my view, the diminished desirability of federal judicial office is more than offset by the rampant dissatisfaction of modern lawyers with the excessive commercialization of the practice of law. There is no shortage of sound judicial prospects will￼ing and able to serve, and no sign that the selection process—never the perfect meritocracy—is becoming less effective in screening out the unfit or undistinguished. Far more serious are other institutional effects of continuously compounding the number of federal judges. Collegiality among judges**,** consistency of decision, and coherence of doctrine across courts are all imperiled by the growth of federal courts to cattle-car proportions. Yet the ability of the system to tolerate proliferation of courts proportional to the proliferation of judges is limited, and while collapse is not imminent, it cannot be postponed indefinitely**.** Congress could restructure the federal trial and appellate courts without imperiling the core functions, but the limiting factor is the capacity of the Supreme Court to maintain overall uniformity in the administration and application of federal law. That Court is not only the crown but the crowning jewel of a 200-year-old system of the rule of law within a constitutional democracy, and any tinkering with its size or jurisdiction would raise the most serious questions of the future course of the nation.

#### Court legitimacy to Heg, Knowles 9

Assistant Professor, New York University School of Law. [Robert Knowles, American Hegemony and the Foreign Affairs Constitution, Arizona State Law Journal, Spring, 2009, 41 Ariz. St. L.J. 87]

Moreover, the post-Cold War world has provoked a crisis in realism. n9 The United States is a global hegemon. It is unrivaled in its ability to deploy force throughout the globe, and it provides "public goods" for the world - such as the protection of sea lanes - in exchange for broad acceptance of [\*91] U.S. leadership. n10 Although realism predicts counter-balancing, no great power or coalition has yet emerged to challenge America's predominance. And despite a new round of predictions about American decline, the U.S. is still projected to have by far the largest economy and the largest military for decades. n11 Political scientists have struggled to define this American-led system, but courts and scholars of constitutional law have largely ignored it. n12 Instead, most debates about special deference have simply accepted outmoded classic realist assumptions that became conventional wisdom in the 1930s and 40s. This Article offers a new model for assessing appropriate judicial deference in foreign affairs that takes account of American-led order. By maintaining consistent interpretation of U.S. and international law over time and providing virtual representation for other nations and non-citizens, U.S. courts bestow legitimacy on the acts of the political branches, provide public goods for the world, and increase America's soft power **- all of** which assist in maintaining the stability and legitimacy of the American-led hegemonic order.

#### Extinction and solves their impacts – heg means we can stop any conflict before it starts, but without it challengers will fire nukes, Blagden 15’

Blagden 15 (David, phD at the University of Oxford, the Adrian Research Fellow in International Politics at Darwin College, and a Research Associate with the Centre for Rising Powers in the Department of Politics and International Studies, both at the University of Cambridge, “Global multipolarity, European security and implications for UK grand strategy: back to the future, once again” International Affairs 91: 2, 2015, pg 340-342)

Third, a multipolar world of elevated Great Power security competition is likely to be one with considerable potential for military crises, which could embroil European states—either inadvertently, or because their vital interests are affected. Whereas under unipolarity, the United States could pacify all potential major power conflicts by threatening to defeat one or—if necessary—both sides, that is no longer the case under multipolarity. Indeed, the difficulty in predicting future international conflict suggests that European grand strategy should at least partially hedge against embroilment in such as yet unforeseen emergencies. There is considerable potential for military crises on the borders of NATO, as the events of 2008 and 2014 demonstrate, and any such crisis on Europe’s borders will be a pressing security concern for European states. Likewise, the Middle East is likely to remain a focal point of security competition and an arena of potential conflict embroiling European states, given its proximity to the European periphery, its economic importance to Europe, China and India, continuing civil wars in Syria and Iraq, the strength of regional revolutionary movements such as Islamic State/ ISIS, and the presence of several militarily capable regional powers with divergent interests, such as Israel, Iran, Saudi Arabia and post-revolutionary Egypt. There is also the risk of involvement in military crises further afield, particularly where key commercial or strategic interests are at stake. For example, threats to UK interests in the South Atlantic will increase as Latin American development proceeds, especially if the seabed around the Falkland Islands contains large-scale mineral deposits, and France could face similar challenges in Africa. Of course, this article cannot hope, and does not aim, to laundry-list all potential future conflict scenarios; the key point is thatin a world of general Great Power tension, the likelihood of serious militarized crises will increase. The fourth reason why a multipolar global environment may have an impact on the European strategic environment is that itmay increase incentives to acquire nuclear weapons—or at least, not to give them up. There are excellent reasons to suppose that nuclear weapons favour defence and make interstate conflict between possessors less likely.41 However, the likelihood of accidental, inadvertent or miscalculated nuclear use rises with the number of nuclear powers,particularly when that number includes states with weak administrative capacity and political systems with the potential to be dominated by non-representative militarist or radical factions.42 Multipolar Great Power competition will make many states feel vulnerable, and the best deterrent against coercion by those strong in conventional weapons is a nuclear arsenal. Likewise, in such a world, states are more likely to feel that they require a potent means of coercion to promote their interests. That being the case, a grand multilateral disarmament bargain is unlikely, and non-proliferation efforts may well continue to struggle in the coming years, with potentially negative consequences for the European security environment. Of course, it can be argued that there has been less nuclear proliferation than many analysts predicted in the 1950s and 1960s. Conversely, however, Ukraine has recently joined a list of countries, including Libya and Iraq, whose leaders presumably regretted surrendering the deterrent power of a weapons of mass destruction programme under the urgings of the major power(s) that subsequently attacked them. If America’s ability to pacify the globe does wane, moreover, plenty of nuclear-capable states under the US nuclear umbrella that currently choose not to develop nuclear weapons will feel compelled to revisit that choice (South Korea and Japan being obvious candidates). The fifth and final reason why a multipolar international system could threaten the European strategic environment connects to the point made above about potential embroilment in military crises elsewhere in the world. This is the potential for such crises to have negative impacts upon European states’ SLOCsand associated critical supply chains (for food, raw materials, energy, industrial inputs and so forth). Europe relies on uninterrupted flows of imports and exports, mainly via the sea, for economic well-being and strategic viability. European energy supplies rely heavily on the Middle East and Russia—both potential sources of diplomatic and strategic tension. The Indian Ocean, the Persian and Arabian Gulfs, and the Straits of Hormuz and Malacca, meanwhile, are all crucial to European seagoingcommerce as well as potential arenas of maritime Great Power contestation. Yet European states’ maritime capability to provide independent (non-US) influence over such SLOCs has been hollowed outby progressive waves of naval cuts. Meanwhile, the South Atlantic will remain an important theatre for the United Kingdom while London sustains its current resolve to retain possession of the Falklands, and all west European states should consider Russia’s increasing maritime assertiveness in the north-east Atlantic—the single most crucial SLOC for European powers, both commercially and strategically

## 2N overview

### General

#### Case burdens in the judicial system are lowering now because of supreme courts getting fewer cases, but Noll and Thomas say that limiting qualified immunity causes an huge increase in 1983 lawsuits which clog courts with tons of cases against police officers. That collapses the federal judicial systems which will buckle under the caseloads and become unable to function. Oakley and Knowles say that that creates perception of a faltering domestic scene that kills perception of America internationally, which is key to ensuring legitimacy of American foreign policy projects. Blagden says that sort of decline causes rising challengers that will cause violence at each other’s borders and cause accidental nuke war, extinction.

### Impact work (versus util)

#### I’ll do some impact work here – the impact is decline of American power globally – any of their harms are based on whether people are better off, but I have a huge war impact between china and india, with isis and Europe and increased likelihood of conflict among all other powers -

#### Couple of impact framing issues

#### First you conceded the thesis of Blagden which is that crises don’t escalate under heg because America can pacify and intimidate both parties to stop wars before they start. Treat this as a solves the case argument – high American power ensures that a) their conflict doesn’t start after a stern talking to from us or b) even if starts it never escalates because they’ll fear we will step in.

#### Second, all conflicts are more likely to start without American power, so even if they have an impact, however likely you think that impact is, that impact is just net more likely in their world

#### Third, the impact here is miscalculation and irrational war – all of their impacts can be solved long term as cooler heads prevail and people decide not to kill each other, but my impact accesses an irrationality component so it can’t be stopped by the same forces – treat this as a comparative status quo solves the case argument that makes my impact more likely

#### (Fourth, strength of link, you dropped it, so any risk of defense on your argument is a reason to doubt their whole link chain, but any small chance I have a link to my impact accesses a 100% extinction scenario)

### Impact work (non-util)

#### Before you consider voting aff, find a way to articulate their impacts in a way that wouldn’t be worse during a literal nuclear apocalypse – what good do they really produce if it we’re exploding or the skin is melting off of our bones in the few seconds before we all die? Actually what could any of their framework/rob arguments really justify that would be better if we we’re all choking on the soot that was our friends and family? Check the assumptions behind their arguments – just because they said role of the ballot or criterion doesn’t mean they don’t care about anyone – that’s precisely the point of those – they clarify in how exactly we’re supposed to care about what happens to people. But ignoring a nuclear apocalypse accesses all of their hidden assumptions – more capitalist but we’re all still here, more police violence but the earth isn’t a smoldering crater with ash floating into space where the criminal justice system used to be. Deciding to accept the apocalypse and vote aff on “case outweighs” is the most myopically stupid decision in all of human history. This isn’t a flow game – you are the decisionmaker. You have to decide what happens to humanity, something with you in it that affects all of your loved ones, and everything you’ve ever cared about in your life. You, as the judge, have your finger on the big red button of human annihilation, and if you push that button, you better be ready to tell me after the debate why we’re all better off dead.

### Turns Case

#### Extend that you chill other 1983 cases and other court claims that your aff cares about – you’ve conceded the DA turns your aff, and that it outweighs on magnitude because it affects more cases, so you basically lose – some more reasons it outweighs, a) the cases they want to bring to trial are never resolved anyway but this kills other cases they care about, b) they kill all cases of (((brutality/racism/queer violence/whatever they say))) not just 1983 QI claims which outweighs on scope since they affect more people, c) they also cause every area of oppression like (((groups the aff doesn’t talk about))).

## Extra Cards

### Link

**Qualified immunity protects officers from frivolous lawsuits. Callahan 16’**

Mike Callahan, 4-29-2016, "Protecting cops from frivolous lawsuits: Qualified immunity, explained," PoliceOne, <https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/>

The United States Supreme Court has demonstrated remarkable understanding of the very difficult and dangerous challenges that confront law enforcement officers on the streets of America today. The Court’s strong interest in protecting our nation’s domestic sentinels is displayed in decisions which recognize and support a “qualified immunity” legal defense for officers who must defend themselves in lawsuits arising out of life and death street confrontations. The Background and History of the Qualified Immunity Defense In [Harlow v. Fitzgerald](https://supreme.justia.com/cases/federal/us/457/800/),[[1]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22) the Supreme Court recognized the need for an objective qualified immunity defense to protect public officials, including law enforcement officers, from the often frivolous lawsuits that flow from their necessary official actions. The Court eliminated entirely any consideration of the subjective intent of the public official at the time of an alleged constitutional transgression and focused exclusively on the actual objective facts related to the official’s conduct. By eliminating consideration of an official’s (including a law enforcement officer’s) subjective intent, the Court made it much more difficult for a trial judge to refuse to dismiss the case against an officer prior to trial. The Court observed that the goal of the qualified immunity defense was to allow for the “dismissal of insubstantial lawsuits without trial.”[[2]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn2%22%20%5Co%20%22) The Court ruled “that government officials … generally are shielded from liability … insofar as their [objective] conduct does not violate clearly established … constitutional rights of which a reasonable person would have known.”[[3]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22) In [Mitchell v. Forsyth](https://supreme.justia.com/cases/federal/us/472/511/case.html),[[4]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn4%22%20%5Co%20%22) the Court observed that unless lawsuit allegations involve a claimed violation of clearly established constitutional rights, the defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. The Court made clear that the qualified immunity defense is an “immunity from suit rather than a mere defense to liability; and … it is effectively lost if a case is erroneously permitted to go to trial.”[[5]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn5%22%20%5Co%20%22) The Court also ruled that denial of a public official’s qualified immunity defense by a trial court judge” is an appealable ‘final decision’….”[[6]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn6%22%20%5Co%20%22) In so doing, the Court made clear that when a law enforcement officer’s claim of qualified immunity is denied by a trial court judge, that denial is subject to an immediate appeal to the appropriate court of appeals. The defendant law enforcement officer does not have to suffer the burdens of protracted discovery and trial before an appellate court can review the rejection of the qualified immunity defense. In [Anderson v. Creighton](https://supreme.justia.com/cases/federal/us/483/635/case.html),[[7]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn7%22%20%5Co%20%22) the Court observed that, “qualified immunity protects, ‘all but the plainly incompetent or those who knowingly violate the law’.”[[8]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn8%22%20%5Co%20%22) The Court stated, “We have recognized that it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude [for example] that probable cause is present, and we have indicated that, in such cases, those officials … should not be held personally liable.”[[9]](https://www.policeone.com/legal/articles/176707006-Protecting-cops-from-frivolous-lawsuits-Qualified-immunity-explained/%22%20%5Cl%20%22_ftn9%22%20%5Co%20%22) This statement makes clear that law enforcement officers are entitled to qualified immunity when they have a reasonable basis to believe that their conduct was constitutional, even if their actual conduct falls somewhat short of the constitutional standard.