

Unanimous US Supreme Court insists on broad immunity for police

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On January 9, the US Supreme Court issued a unanimous summary ruling reversing a decision by the Tenth Circuit Court of Appeals and upholding qualified immunity for a police officer who shot and killed Samuel Pauly in an attempt to investigate a traffic incident near Santa Fe, New Mexico in October 2011.

Prior to the shooting, Samuel's brother Daniel was involved in a non-violent road-rage incident in which he stopped his car and confronted two women who he claimed had been tailgating him. Daniel subsequently drove home, where he lived with Samuel. Samuel was at home playing video games and had not been involved in the confrontation. Meanwhile, the occupants of the other vehicle called the police, who were able to locate the house where the brothers lived.

At that point, no crime had been committed and there was no legal justification to arrest anyone or to enter or search any house. While the frequency of "road-rage" incidents is not a healthy sign, they do constitute a fairly common occurrence in American social life.

According to Daniel, when two police officers arrived at the brothers' house they failed to identify themselves. Not realizing that it was the police, and believing that they were being burglarized, the brothers armed themselves with weapons. The brothers warned, "We have guns!" The encounter escalated and there was an exchange of gunfire in which no one was struck. Then a third officer arrived and, without warning, shot Samuel dead.

The phrase "qualified immunity" refers to a judge-made doctrine that has no basis in the text of the US Constitution, notwithstanding the claims by various Supreme Court justices to be handing down the Constitution's "original" meaning. In recent decades, this doctrine has quietly been built up to huge proportions within the judicial system, largely without

significant media commentary or public discussion. It now plays an important role in blocking civil rights cases and encouraging the ongoing epidemic of police brutality.

According to this authoritarian and anti-democratic doctrine, a judge can unilaterally decide a case in favor of a police officer—even if the officer's conduct violated the Constitution—if the judge determines that the police officer acted "reasonably" in light of previous Supreme Court decisions. If qualified immunity is awarded to the police officer, the case can be thrown out of court, never going before a jury, and costs can be imposed against the victim or the victim's survivors.

During American election campaigns, it is often claimed by liberal commentators that the election of a Democratic president is necessary to ensure that the Supreme Court is not stacked with ultra-right judges. The fact that the decision in the *Pauly* case was unanimous highlights the role of both official parties and the judiciary as a whole in the abrogation of democratic rights and the drive towards a police state.

The Tenth Circuit Court of Appeals declined to award immunity to the officers, instead opting to let a jury decide whether their conduct was appropriate. The Supreme Court reversed that decision in an unsigned eight-page opinion joined by all of the sitting justices, including Obama appointees Elena Kagan and Sonia Sotomayor. While the court normally has nine justices, the vacancy left by the death of Justice Antonin Scalia last year has not yet been filled.

The text of the Supreme Court's opinion underscores the stunningly irrational character of the doctrine of qualified immunity as it is applied in practice. The Supreme Court held that the officer who killed Samuel "did not violate clearly established law" because

“existing precedent” had not “placed the statutory or constitutional question beyond debate.”

In other words, there had not been a nearly identical case decided against a police officer in the past, so the conduct of the officer in this case could not be the subject of a lawsuit. However, since the doctrine of qualified immunity prevents *this* case from being decided on the merits, the Supreme Court’s Kafkaesque logic ensures that the outcome will be the same in every future case.

Moreover, the *Pauly* case has far more sinister implications than might be apparent from the facts of this particular case. In the written opinion, the justices went out of their way to complain that the lower courts were not granting qualified immunity to police officers often enough.

The justices noted bitterly, “In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases.” In other words, while the Supreme Court has been routinely granting immunity to police officers, some lower federal courts have not kept pace. The Supreme Court is signaling the lower courts that they must fall into line.

With the full support of the Obama administration, the Supreme Court over the past five years has routinely insisted on broad immunity for police officers in civil rights lawsuits based on police misconduct. In its May 2014 decision in the case of *Plumhoff v. Rickard*, the Supreme Court—once again unanimously—awarded immunity to three Arkansas police officers who fired 15 bullets at two unarmed people who were trying to escape in a car. Both the driver and the passenger were killed. (See: “Supreme Court issues unanimous decision defending police in fatal shooting”)

In November 2015, the Supreme Court granted qualified immunity in the case of a Texas trooper who climbed on an overpass and used a rifle to assassinate a motorist who was being pursued by other officers, even after his supervisor told him not to do it. (See: “US Supreme Court expands immunity for killer cops”)

After killing his victim, the Texas trooper boasted, “How’s that for proactive?”

In its decision last week in the *Pauly* case, the unanimous Supreme Court emphasized the significance of the doctrine of qualified immunity, writing, “The Court has found [that] qualified immunity is important

to society as a whole.”

While more than 1,050 people were killed by the police in America in 2016, the unanimous Supreme Court thinks it is “important to society” for the federal courts to ensure that more police officers enjoy immunity from legal actions that base themselves on fundamental democratic rights.



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