



Two Supreme Court Decisions Grant Immunity to Police, Secret Service

Following the announcements on Monday of the Supreme Court's unanimous decisions in two "qualified immunity" cases, John Whitehead, president of the Rutherford Institute, [expressed dismay](#):



Not a day goes by without reports of police officers overstepping the bounds of the Constitution and brutalizing, terrorizing and killing the citizenry. Indeed, the list of incidents in which unaccountable police abuse their power, betray their oath of office and leave taxpayers bruised, broken and/or killed grows longer and more tragic by the day to such an extent that Americans are now eight times more likely to die in a police confrontation than they are to be killed by a terrorist.

This lawlessness on the part of government officials, an unmistakable characteristic of a police state, is made possible in large part by the courts, which increasingly defer to law enforcement and prioritize security over civil liberties. In so doing, the government gives itself free rein to abuse the law, immune from reproach, and we are all the worse off for it.

A closer look at the two cases to which Whitehead refers, however, reveals a court more inclined to look at the facts, rather than draw from an ideology favoring the imposition of a police state.

The doctrine of "qualified immunity" was created by the court to help it deal with cases such as *Wood v. Moss* and *Plumhoff v. Rickard* on which the court ruled, 9-0, that the officers involved not only acted reasonably but, in so doing, were also given immunity from liability for those actions. The doctrine looks at the facts of the case to determine the "reasonableness" of the officers' behavior under the circumstances.

In *Wood v. Moss*, two separate groups on opposite sides of a street in Jacksonville, Oregon, gathered to protest or to support President George W. Bush during a campaign stop in his run for reelection. He was planning to stay overnight on the evening of October 14, 2004 at a cottage outside the city. While on the way to the cottage, however, Bush decided on the spur of the moment to have dinner at the Jacksonville Inn.

Protestors saw their chance to move closer and crowded around the front door area of the restaurant, hoping to make their complaints about recent policies clear to the president. Within minutes Secret Service agents asked local police to move the anti-Bush group — numbering between 200 and 300 — away, "beyond gunshot range" as court documents noted. When the Secret Service agents determined that the crowd of protestors was still within view of the president, they were moved farther away.



Written by [Bob Adelman](#) on May 28, 2014

The group of protestors sued, claiming that their constitutional rights had been violated and that, furthermore, they had suffered “viewpoint discrimination,” as the group of Bush supporters hadn’t also been asked to move. In addition, none of the servers or patrons in the restaurant was asked to leave.

Under “qualified immunity” all that the court needed was some reasonable evidence that the president’s life might possibly be in danger, and such evidence was provided: At no time did the supporters have a line of sight view to the president while he sat at his table, while the protestors did, until they were moved.

The court cleared the defendants of charges that they were discriminating against the protestors, declaring that they acted within their proper spheres of responsibility in protecting the president. It also declared that, under the court’s own immunity definition, none of those charged were liable for damages. In *Wood v. Moss*, the opinion was written by Justice Ruth Bader Ginsburg, and there were no dissents.

The other case, *Plumhoff v. Rickard*, stemmed from a police chase in West Memphis, Tennessee, in 2004 where the driver of the car and his passenger died following the firing of 15 rounds by police into the runaway vehicle in order to end the chase. Rickard’s orphaned daughter brought suit against six officers and the chief of police, alleging excessive use of force in violation of the Fourth and 14th Amendments. The court ruled unanimously in favor of the police:

The chase in this case exceeded 100 miles per hour and lasted over five minutes. During that chase, Rickard passed more than two dozen other vehicles, several of which were forced to alter course. Rickard’s outrageously reckless driving posed a grave public safety risk. And while it is true that Rickard’s car eventually collided with a police car and came temporarily to a near standstill, that did not end the chase. Less than three seconds later, Rickard resumed maneuvering his car.

That’s when the officers began shooting. The court held that they were justified in doing so:

Under the circumstances at the moment when the shots were fired, all that a reasonable police officer could have concluded was that Rickard was intent on resuming his flight and that, if he was allowed to do so, he would once again pose a deadly threat for others on the road.

Rickard’s conduct even after the shots were fired — as noted, he managed to drive away despite the efforts of the police to block his path — underscores the point.

When lawyers protested that firing 15 rounds into Rickard’s Honda was excessive, the court responded:

It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.

The court then concluded that, because of the facts of the case, not only were the officers justified in their actions, they were as a result also shielded from liability under the court’s “qualified immunity” rule:

A defendant [police officer] cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official [standing] in the defendant’s shoes would have understood that he was violating it.

The majority opinion, in this case penned by Justice Samuel Alito, clearly expressed the unanimous opinion in the case:

Under the circumstances present in this case, we hold that the Fourth Amendment did not prohibit



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petitioners from using the deadly force that they employed to terminate the dangerous car chase that Rickard precipitated.

In the alternative, we note that petitioners are entitled to qualified immunity for the conduct at issue because they violated no clearly established law.

Whitehead's concerns, then, appear to be overstated as they relate to these cases, and the officers involved may take comfort that they will continue to be protected under the court's immunity definition.

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