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Qualified Immunity: How Mississippi's District Courts Have Shown Why The Doctrine Should Be Done Away With

by

Hannah Elizabeth Sawyer

A Thesis
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ABSTRACT

Qualified immunity is a legal doctrine created by the Supreme Court that has allowed police officers to violate people's rights without fear of consequences. This doctrine protects all but the completely incompetent or those who violate people's rights knowingly. The original intent of the Supreme Court was to prevent overdeterrence of police officers because of insubstantial lawsuits from being brought against them. This has backfired and now it seems that officers are under deterred because they are often simply placed on administrative leave with little to no consequences. The United States has seen numerous protests in just the last year in response to police killing innocent, unarmed black people. These preventable killings have gone largely unpunished, with the most common consequences being that officers are put on administrative leave which is hardly a consequence. If an officer does end up in court in a civil suit they can avoid being personally liable for their actions by asserting a qualified immunity defense – another of the few simple consequences officers may face. Qualified immunity allows officers to escape financial responsibility in civil suits and is almost always granted (Chung, Hurley, Botts, Januta, & Gomez 2020). This research will examine qualified immunity in the district courts of Mississippi to support the argument that the doctrine should be dismantled by the Supreme Court.

Keywords: qualified immunity, excessive force, unlawful arrest, wrongful death, objective reasonableness, subjective, constitutional rights, good faith, summary judgment, plaintiff, defendant, clearly established

DEDICATION

Mom, Dad, & Dr. Kate Greene for always supporting me and guiding me during this process. Also, my dog Damian for the emotional support. Lastly, this is dedicated to all of those who have lost their lives at the hands of police officers including: Daunte Wright, Rayshard Brooks, Daniel Prude, George Floyd, Breonna Taylor, Atatiana Jefferson, Aura Rosser, Stephon Clark, Botham Jean, Philando Castile, Alton Sterling, Freddie Gray, Janisha Fonville, Eric Garner, Michelle Cusseaux, Akai Gurley, Gabriella Nevarez, Tamir Rice, Michael Brown, Tanisha Anderson, Adam Toledo, Trayvon Martin, Tyree Davis, Atatiana Jefferson, Sandra Bland, Pamela Turner, Yvette Smith, Miriam Carey, and so many more.

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LIST OF ABBREVIATIONS

BLM	Black Lives Matter
DMV	Department of motor vehicles
ED	Eastern District
MD	Middle District
NAACP	National Association for the Advancement of Colored People
NAACP-LDF	National Association for the Advancement of Colored People Legal Defense Fund
ND	Northern District
POC	Person of color
QI	Qualified immunity
SD	Southern District
SJ	Summary judgment

CHAPTER I: INTRODUCTION

In the last year, the United States has seen mass protests for many human rights issues. Many of these have been in support of Black Lives Matter (BLM), a social and political movement whose advocates are fighting for fundamental changes to law enforcement in the United States because of the unjust killings of and brutality towards African Americans by law enforcement officers. Many of the victims killed by law enforcement officers have become memorialized in the Black community and by allies (white allies and other people of color [POC]). There are thousands of POC who have lost their lives because of the poor judgement, racist profiling, or complete disregard that law enforcement officers have for someone else's life. While there are too many cases to list here, names like Breonna Taylor and George Floyd have become world renowned and synonymous for the complete disregard that law enforcement seems to demonstrate towards POC (McCarthy 2020). Both of these murders are what sparked nationwide protests that lasted months and even a few in other countries (Booker, 2020). These murders of POC including those below and protests during the summer of 2020 inspired this thesis. Watching the life of a defenseless man being taken from him by an officer with seemingly no remorse, hearing about a woman being killed in her own bedroom, and participating in the protests in support of BLM led to the desire to learn more about the systems in place that have allowed police officers to continuously murder those they have sworn to protect, one of these protections being qualified immunity.

Breonna Taylor was a 26-year-old emergency medical technician in Louisville, Kentucky and was fatally shot during a no-knock warrant on March 13, 2020. There were "multiple search warrants in connection to a drug investigation that involved Taylor's ex-

boyfriend, Jamarcus Glover… [who] was already in custody at the time of the shooting" (Yang et al. 2020). There are many speculations about what happened that night but the facts that are known are Breonna and her boyfriend, Kenneth Walker, were asleep in her apartment when they heard what sounded like someone breaking in. What they did not know was the "intruders" were Louisville Metro Police Department (LMPD) officers executing a no-knock warrant. Walker grabbed a firearm in self-defense and shot once which was returned with 32 shots by three officers. Six of those bullets hit Breonna and she died within minutes after receiving no medical attention. Walker was arrested for attempted murder because the warning shot he fired hit one of the officers in the leg. Multiple reports and interviews of Walker report him saying that he never heard the officers identify themselves as police, which they contradict in arguing that they did announce themselves multiple times before ramming the door. However, in a 911 call from that night which was released to the public Walker tells the operator that he did not "even know what [was] happening. Somebody kicked in the door and shot my girlfriend" (Yang et al. 2020). The results of this were two of the officers being placed on administrative leave and the other was fired. Then in September 2020 the officer who had been fired was charged with three counts of wanton endangerment for the shots he fired into a neighboring apartment (Wallace & Ruiz 2020). While these charges are a step towards accountability, the individuals considered as endangered in this charge are those in surrounding apartments and not Taylor or Walker. This shows no regard for the lives of Taylor or Walker by not only the officers but also the courts.

Another case of police brutality that resulted in the death of a POC which could have been avoided happened in May 2020. The victim was George Floyd. This time

police were called because Floyd had used a counterfeit $20 bill. When police arrived, Floyd was in his car and they asked him to get out so they could hand cuff him. Surveillance video then shows the officers walking him to their police cruiser and Floyd stumbling but not resisting. Suddenly Floyd is on the ground with a cop pinning him down with a knee to his neck for 8 minutes and 15 seconds which a court argued in April of 2021, resulted in his death. Before he died bystander video captures him pleading for his life and saying multiple times that he cannot breathe but the officers did not stop or move. The "method" used by the officer, placing his knee Floyd's neck to restrain him was the opposite of what police officers are trained to do. Even the Minneapolis Police Chief said that what the officer did was murder and he "knew what he was doing because he had taken specific training on preventing positional asphyxiation, or suffocation" which was Floyd's cause of death (Parks, 2020). All four officers involved were fired four days later and were charged "with aiding and abetting second-degree murder" which is what Derek Chauvin, the officer whose knee was on Floyd's neck, was charged with (Hill et al., 2020). As of October 2020, these charges have not been dropped but all four officers have made bail including the officer charged with second-degree murder whose bail was set at $1 million (Booker, 2020). None of these officers were in jail until the trial of Derek Chauvin began in April 2021. In the trial of Derek Chauvin, he was found guilty on all counts and his sentencing was set for June 2021. The other three officers remain free with trials pending.

These are just two of the many examples of black Americans dying with little or no consequences for the police officers taking those lives. The disregard law enforcement officers have for human life is a pressing issue as well as the prevalence of officers not

being charged for their misconduct. The reasons that contribute to these actions going unpunished includes a legal defense law enforcement officers have available to them. Qualified Immunity and is one of the legal obstacles for those who try to pursue a lawsuit against an officer. Qualified immunity is the doctrine that protects law enforcement from being personally liable for any lawsuits brought against them. This doctrine was created by the Supreme Court in 1967 because officers do need some protection for cases in which they have to make a split-second decision. The only ones that are not be entitled to this protection are those who knowingly violate a constitutional right that is clearly established.

An example of a law enforcement officer asserting this defense is a recent case that made it to the Supreme Court – *Taylor v. Riojas* (946 F. 3d 211, 218). After losing in the lower courts the plaintiff appealed to the Supreme Court which ended up reversing the ruling that the lowers courts reached. In this case the plaintiff, Taylor, had been in prison and was left in a cell that was covered in human feces which led him to not eat or drink for 4 days because he was afraid of contamination. He was moved to another cell but all that was in it was a drain (that was clogged so nothing got through), no toilet or bed. He tried to keep from using the bathroom for this reason but after 24 hours he could not hold it anymore and that caused the drain to overflow, and sewage backed into the cell. Since there was no bed and Taylor had not been given clothes he was left in the sewage. Taylor sued the corrections officers for violating his 8th amendment right to be free from cruel and unusual punishment but the district court and The U.S. Court of Appeals for the 5th Circuit dismissed the case. They said that the officers were not in the wrong because there “wasn’t [a] clearly established [law] that prisoners couldn’t be

housed in cells teeming with human waste … for only six days" (Chemerinsky, 2021.) However, the Supreme Court said that the officers were not entitled to Qualified Immunity because any reasonable person would have known that the conditions Taylor was kept in were not constitutional.

Sadly, this is not the outcome of most cases. Showing why this happens and how horrible some of these cases can be and not have the outcome of *Taylor v. Riojas* (946 F. 3d 211, 218) is what makes this so important and relevant. Frequently officers or other officials like corrections officers are granted qualified immunity because it is on the plaintiff to prove that a clearly established law/constitutional right was violated. But as can be seen in the reasoning of the lower courts to do this there has to be an almost identical or a specific law already existing for the plaintiff to win. Some would say this doctrine should remain as it is because law enforcement will be deterred from doing their jobs in fear of being sued but many scholars, judges, and even Supreme Court Justices agree that the doctrine needs to be changed or done away with (Schwartz 2020). Many argue that qualified immunity has done the opposite and made some individuals less concerned with not violating people's rights. Cases brought against officers are with claims of peoples 4th, 8th, or 14th constitutional rights being violated like excessive force, wrongful arrest, and wrongful death. It has become undeniable in the last year that the criminal justice system and law enforcement across the country needs to change drastically. This is not something that has just started happening, but it is just starting to get a fraction of the acknowledgment it deserves.

Section 1983 is a part of the civil rights act of 1871 and is what allows for citizens to sue law enforcement when their civil rights have been violated (Section 1983). This section states that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The most common claims brought up under this section are for false arrest, malicious prosecution, and unreasonable or excessive force (including wrongful death by police). The defendant in these cases (law enforcement officers) use qualified immunity as a defense. Qualified immunity was made to protect law enforcement officers from being held financially responsible in a lawsuit because of "the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably" (LII 2020). This defense is very hard for a plaintiff to beat because they have to argue that a clearly established right was violated that has been established in a previous case (Rivera 2020). Furthermore, plaintiffs are also tasked with gathering enough evidence to support their claims which "can be expensive to bring because a lot of evidence must be secured" (FindLaw 2017).

There does need to be a doctrine or standard in place so that officers do have some protection for split second decisions. However, the current doctrine has allowed many officers to get a free pass. A badge is not a free pass to get away with murder that

could have been avoided with proper judgement and basic humanity. This thesis will be an analysis and comparison of federal court cases in the Northern and Southern districts of Mississippi in the United States Court of Appeals examining qualified immunity in two time periods – 2009 to 2014 and 2017 to 2021. Current academic literature regarding qualified immunity questions its legality and calls for either removal or reform of the doctrine. Much research has gone into this divisive topic and this study will add a new perspective of the types of constitutional violations claimed by plaintiffs against law enforcement officers where the officers raised a qualified immunity defense.

CHAPTER II: LITERATURE REVIEW

What is Qualified Immunity?

Qualified immunity was created by the Supreme Court in 1976 in *Pierson v. Ray* 386 U.S. 547 and its purpose is to shield government officials from being held personally liable in any civil suits in which the plaintiff claims that one of their constitutional rights have been violated. All current academic literature on qualified immunity includes a history of this doctrine, which many of its critics use to support their claims against it. The doctrine of qualified immunity was created in response to fear brought on by the ability of citizens to file a lawsuit against government officials given to them by 42 U.S. Code § 1983. Section 1983 "makes liable state actors who violate constitutional or other legal rights" (Baude 2018, 49). The current definition of this Section in the U.S. Code states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The qualified immunity defense was created because of the fear that this Section would be abused by citizens and lead to the overdeterrence of police officers from doing their job because they would be worried about being sued. In *Pierson v. Ray* 386 U.S. 547 (1967) the Court held that "[Section] 1983 'should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions…

[the Court held] that the defense of good faith and probable cause" was enough to afford them immunity (Baude 2018, 53). An officer is granted qualified immunity as long as "their conduct does not violate clearly established … constitutional rights of which a reasonable person would have known" (Chen 2006, 229). The two criteria that were used to determine this are "an objective requirement of reasonable grounds for believing one's conduct lawful and a subjective requirement of actual good-faith belief in the legality of that conduct test" (Jeffries 2010, 2). Since then, the Supreme Court has further defined what is and is not protected.

The Supreme Court revisited qualified immunity in *Harlow v. Fitzgerald* 457 U.S. 800 in 1982 where the Court decided "whether general members of the executive branch received absolute immunity or qualified immunity" (Duckett 2016, 414) and in the process focused on the problem of too many cases that were not substantiated or "lack[ed] merit" being brought before the courts, costing more money and take away time and energy from government officials. (Chen 2006, 237). The Court also moved away from their previous criteria for determining if an official had immunity or not which was a subjective "malicious intent" standard. The Court decided "to eliminate the subjective component of qualified immunity" (Hassell 2009, 123) because it found that this standard was counterintuitive to its desire to move these cases through the courts quickly because this "standard also led to 'broad-ranging discovery and the deposing of numerous persons…" which was "disruptive of effective government" (Duckett 2016, 415). With the Court having done away with the subjective criteria the objective reasonableness standard was left. In this case the "clearly established" standard was established, and officials could be granted qualified immunity as long as they had not violated a clearly

established law. Therefore, defendants would be entitled to qualified immunity "wherever there happens to be no binding precedent precisely on point," putting the burden of proof on the plaintiff which makes it difficult for them to win (Jefferies 2010, 13). The standard set in *Harlow v. Fitzgerald* "created the modern versions of the defense" (Reinert 2018, 2070). However, the Court continued to modify the defense.

The next time the Supreme Court altered the definition of qualified immunity was in 1986. The Court added in *Malley v. Briggs* 475 U.S. 335 that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law" (Hassel 2009, 124). The next year in *Anderson v. Creighton* 483 U.S. 635 the Supreme Court "discussed the distinction between a substantive liability defense and an immunity from pretrial litigation," which had become the Court's desire – to push cases through quickly by not just making officers immune from suit but also not requiring them to go to trial at all (Chen 1997, 22). In these cases (respectively) "an official allegedly violated the fourth amendment by arresting individuals pursuant to an invalid warrant," and an official "alleged[ly] violat[ed] a warrantless search unsupported by probable cause and absent exigent circumstances" (Urbonya 1989, 82). In both of these cases the standard set in *Harlow v. Fitzgerald* was used and it was determined that the officials actions were "unreasonable under the fourth amendment," but "could be objectively reasonable for the purpose of granting qualified immunity" (Urbonya 1989, 82). Now as long as an officer reasonably believed their actions were lawful they would be granted qualified immunity thus expanding the defense and adding to the difficultly faced by plaintiffs. However, the Supreme Court's reasoning in *Anderson v. Creighton* 483 U.S. 635 confused the lower

courts and left them "deeply divided on how to apply the reasoning," so the Court revisited qualified immunity again in 2001 (Duckett 2016, 419).

The most recent Supreme Court cases involving qualified immunity are *Saucier v. Katz* 533 U.S. 194 (2001) and *Pearson v. Callahan* 555 U.S. 223 (2009). In *Saucier v. Katz* the Court attempted to clarify its reasonings by establishing a two-step process. This process said that the first step in analyzing qualified immunity is to determine if the defendant violated a constitutional right and the second step is to determine if the right was clearly established. This "decision shifted the burden [of proof] towards plaintiffs to find and argue a more fact-specific case on point to make a showing that the law was clearly established," at the time of the alleged violation (Davis 2017, 299). Then in *Pearson v. Callahan* 555 U.S. 223 the Court "concluded that Saucier's two-step process was not mandatory" (Schwartz 2017, 17) and gave the lower courts discretion in how to apply the tests for qualified immunity but it was only a "temporary fix to the problem by allowing courts to forego a constitutional analysis and focus only on qualified immunity" (Hassel 2009, 140). The Court again expressed its desire to shield government officials from going to trial so as not to burden them and distract from their duties.

According to Chen, even though this doctrine has been highly contested since its creation both the Supreme Court and Congress have credited their support of it and its necessity to three factors. In "*The Burdens of Qualified Immunity*" (1997) the three reasons he gives for the need for qualified immunity are:

"First, the Court fears that it would be unfair to require [officers] to compensate plaintiffs for all constitutional violations, given the sometimes-unclear nature of constitutional law. Second, the Court speculates that public officials will be overdeterred

in the performance of their duties if they anticipate that every official action they take may lead to a lawsuit. Finally, the Court believes that the litigation of constitutional torts may impose substantial costs on individual officials and on the government itself, even when the trial court ultimately finds that the officials are not liable." (Chen 1997, 3-4).

Chen's claim of the Court's fear that officers might become "overdeterred" from doing their jobs without qualified immunity is support by Baude in *"Is Qualified Immunity Unlawful*?" (2018). Baude questions the legality of qualified immunity by asking if having this protection means officers do not have "adequate incentives" to not violate peoples' constitutional rights. Baude also gives three justifications that the Supreme Court has given for this doctrine. These justifications are the "common-law "good faith" defense,… that it compensates for an earlier putative mistake in broadening the statue, … [and] that it provides "fair warning" to government officials" (Baude, 2018, 45). Baude goes on to question the legality of qualified immunity questioning if having this protection means officers do not have "adequate incentives" to not violate peoples' constitutional rights.

Critiques of Qualified Immunity

A qualified immunity defense is frequently raised in civil rights cases and is one reason the doctrine has been challenged so often. Many believe that qualified immunity violates peoples civil rights because in many cases where it has been granted the actions of the defendant can be viewed even by a judge as wrong, but because of the standards set by the Supreme Court that the lower courts have to follow it will be granted. Therefore, even in cases where the plaintiff has clearly been wronged they often lose their cases and officers are not held accountable for their misconduct, so it continues to happen. Among those who challenge qualified immunity are the American Civil Liberties

Union (ACLU) and the National Association for the Advancement of Colored People Legal Defense Fund (NAACP LDF), which are both legal organizations whose purpose is to ensure that individuals civil rights are not violated. Both organizations have spoken out about this, specifically "the NAACP Legal Defense Fund has explicitly called for '"re-examining the legal standards governing…qualified immunity'" (Baude 2018, 48). These organizations are also joined by scholars and even judges on the Supreme Court. One of the staunchest critics of the doctrine is Supreme Court Justice Sotomayor who has said that it '"renders the protections" of the Constitution "hollow" (Schwartz 2018, 1814). This claim warrants a deeper analysis of how the doctrine can be improved.

The overwhelming majority of scholars argue that qualified immunity allows violations of peoples constitutional rights which say that people have a right against "unreasonable searches and seizures" (Fourth Amendment), to due process of law (Fifth Amendment), to a speedy and public trial by jury (Sixth Amendment), and no cruel or unusual punishments (Eight Amendment). An example of why plaintiffs file their suits based on violations of their rights is in cases of police officers use of excessive force which has "a nearly impenetrable defense" (Hassel 2009, 118). One such case with a claim of excessive force and the Supreme Courts tendency to grant immunity to officers is *Graham v. Connor* 490 U.S. 386 where "the Supreme Court resolved any doubt about the appropriate standard to be applied when assessing the constitutionality of the use of force during a stop or arrest" (Hassel 2009, 120). In this case a man was trying to help his friend, the plaintiff, who was a diabetic and was having a bad reaction to his insulin by getting him something from a store. Seeing the line was too long he left in a hurry drawing suspicion from an officer who then followed the plaintiffs in their car and pulled

them over to investigate and called for backup. Ignoring the explanation of the plaintiff's diabetic problems, he was handcuffed and, in the process, suffered multiple injuries. The Supreme Court ruled that the officers acted in good faith. In the Court's decision they affirmed that the standard to be used in cases of whether a person's Fourth Amendment rights were violated by the use of excessive force would be an "objective reasonableness" standard which is "based upon the information the officers had when the conduct occurred" (MacFarlane 2018, 56). This standard requires a person to judge based off their belief of what a reasonable person would have done in the situation presented to them and is a grey area that tends to give "the benefit of the doubt [to] the defendant police officer" (Hassel 2009, 122). The Supreme Court and lower courts have created an "insurmountable barrier to recovery created by excessive reasonableness" (Hassel 2009, 119) and "if there is any way [an officers] actions could have been believed to be a reasonable response," then he or she will be entitled to qualified immunity. Even if a plaintiff can show a fourth amendment right was violated, it is not enough to "satisfy prong two in excessive force cases" (Davis 2017, 298) and this can result in qualified immunity being denied only in cases where there is "the most extreme and most shocking misuses of police power" (Hassel 2009, 124). However, there are more critiques of it than just that the doctrine has perpetuated peoples civil rights being violated.

A critique many scholars have of qualified immunity is that the fact-based nature of constitutional violation lawsuits contradicts the Supreme Court's desire to push qualified immunity cases through the courts quickly. Using the reasonableness test requires a thorough analysis of facts which accordingly takes a long time, especially when the material facts are disputed between the plaintiff(s) and defendant(s), and

"makes it difficult to end lawsuits prior to trial" (Hassel 1999, 150). This contradiction has led to either the doctrine failing to keep its promise of protecting officers from trial or to judges ignoring the facts in order to push the case through. Alan Chen (1997) theorizes that "recognition of th[is] inherent factual nature of 'qualified' immunity may assist courts, policymakers, and scholars in understanding, implementing, and perhaps reforming the doctrine" (Chen 1997, 8). Until that happens qualified immunity will continue to be granted and cases dismissed because the Supreme Court has made clear that it wants them settled as early as possible. The Court has given judges in the lower courts discretion on which prong to use from the two-step test created in *Saucier v. Katz* 533 U.S. 194. Davis concludes that this discretion has created the tendency of judges "to address the 'clearly established law' second prong of the qualified immunity question first, all too often [allowing] defendant officers [to] prevail on that prong alone" (Davis 2017, 316). The ironically described "clearly established law" is one of if not the most difficult hurdles of the defense that plaintiffs have to overcome and by the courts only answering the second prong of the Saucier test "the law remains unclear" and "because courts retain the discretion" to answer the second prong first "all too often defendant officers prevail on that prong alone" (Davis 2017, 316). The Court has also given judges the discretion to rule on summary judgment to avoid going to trial, but they cannot do that if a material fact is disputed. For summary judgment to be granted a judge must "'examine whether the law under which the plaintiff claimed relief was "clearly established" at the time of the defendants actions [and i]f the law was not clearly established, the defendant's summary judgment motion would be granted'" (Chen 2006, 238). Therefore, while it may be true that disputes of facts can entangle officers in

litigation, it can be difficult for a plaintiff to argue a substantial dispute of fact. This shows how qualified immunity has been expanded to not just protect officers from being financially liable but also from going to trial, meaning potentially skirting real legal consequences for their actions.

In the article "*What's Wrong With Qualified Immunity*" (2010), Jeffries sheds light on the tendency of the Supreme Court to "give a pass" to police officers. The clearly established standard has become an issue because of the "generality [or] the level of abstraction" of what rights are clearly established has made it unreasonably difficult to overcome the defense because one must prove that there was a precedent that officers knew their actions would be outside of their powers (Jeffries 2010, 4). Not only has the Supreme Court created a way for officers to almost always be granted qualified immunity, but they also have "created immunity from trial as well" (Jeffries 2010, 2). The Court under the guise of "minimizing the social costs of constitutional tort litigation," instructing the lower courts quickly pushed qualified immunity cases through by "adjudicate[ing] those claims on summary judgement" (Chen 1997, 4). By doing this they are "ensur[ing] that qualified immunity is an 'immunity from suit' rather than a mere defense to liability" (Chen 1997, 4). Schwartz suggests that the Supreme Court has provided no "empirical evidence to support its views," that trial puts too heavy a burden on government officials and is therefore minimizing social costs (Schwartz 2017, 18). By catering to officers, the Supreme Court and lower courts have helped perpetuate the cycle of misconduct and abuse of power by police officers. With qualified immunity having been expanded to avoiding trial at all there is no accountability and therefore nothing deterring officers from breaking this cycle.

This cycle has contributed to the broken judicial system that has historically impacted POC. Many studies have proven that African Americans "are disproportionately killed by the police and that there are vast racial disparities in arrest and incarceration" and even though there is ample evidence to support this there has been no successful reforms made (Butler 2019, p. 83). A 2018 study found that in the United States between 2013-2015 "Blacks were shot by police at a rate 3.1 times higher than Whites, and unarmed Blacks were shot at a rate 4.5 times higher" (Mesic et al. 2018, p. 109). Allowing this unjust system to continue knowing that POC are disproportionately affected by this system suggests that the legal system does not value their lives. Perhaps the biggest culprit of this is the Supreme Court having "sanctioned racially unjust criminal justice practices, creating a system where racially unjust police conduct is [lawful]" (Butler 2019, p. 82). Therefore, it can be argued that the system is not broken but it is exactly "how the system is supposed to work" and "why some reforms efforts are doomed" (Butler 2019, p. 81).

The policies and practices of police departments across the country have put in place a "police culture and training [that] contribute[s] to police violence" (Carbado 2016, p. 1528). There are many aspects of law enforcement training that have engrained racial stereotypes into how officers police. Carbado in *"Blue-on-Black Violence"* (2016), presents six theories that he says contribute to African Americans being exposed to police violence more than their Caucasian counterparts. He suggests that people should "view police violence against African-Americans as a structural phenomenon and not simply as a product of rogue police officers who harbor racial animus against black people" (Carbado 2016, p.1482). Carbado focused his research on the Ferguson Police

Department, known for the murder of Michael Brown. During this research Carbado found that there are many methods of policing that contribute to the over-exposure of African Americans to law enforcement. Some of the tactics he discovered were the broken windows policing where officer patrol "neighborhoods at the tipping point" where they hyper focus on low-level crimes more so than they would in a gated community. He highlights how "blacks are more likely to be arrested for [these] low-level crimes than whites" and uses the example of an officer being "more likely to view three black teenagers on a street corner as a sign of disorder than he is to so view three white teenagers on a street corner" (Carbado 2016, p. 1486). Carbado is not the only one to point out these implicit biases in policing and environments which increase the likelihood of police interactions faced by the black community. In *"An Abolitionist Horizon for Police Reform"* (2020) Amna Akbar examines the recent social movements calling to defund and/or dismantle the police. In this article Akbar outlines the reasoning behind this discourse including a discussion of the racial and class targeting by police which has been of Black people in particular (Akbar 2020, p.1797). Akbar notes that policing has become a way for states to profit off the money made off of tickets and fines issued by police (p. 1793). The quickest and easiest way for police officers to do this is by hyper focusing on low-level crimes which happen in poor communities which have been largely black because of systemic racism as pointed out by Carbado. Mesic et al. (2018) present their research on how this system racism has led to the "racial disparities in police shootings" (Mesic et al. 2018, p. 107) which are perpetuated by "policies [in policing], laws, and institutional practices that systematically disadvantage Blacks" (Lukachko,

Hatzenbuelher, & Keyes 2014, p. 44). As conclusions to each of these articles the authors offer their suggestions on how to remedy these problems.

Solutions and Suggestions

Scholars have not focused their research just on the history of qualified immunity in the courts and criticizing it. Another aspect of their studies is offering solutions for how to fix or replace the doctrine. Those who would opt for just changing the doctrine suggest ways to make the standards for judging it clearer. Jeffries suggests that the question judges ask should change from "whether the defendant violated a 'clearly established' right" to asking if "the defendant's conduct was ' clearly unconstitutional" (2010, 18). This would solve more than one problem with the doctrine. Not only would it clarify what the judge should look for, it would also help plaintiffs because it would be "less tied to precedent" (Jeffries 2010, 18).

A solution by Schwartz is for the Supreme Court to "broaden its definition of clearly established law" and give the lower courts the ability to establish law generally "recognizing obvious constitutional violations… without reference to an analogous case" (Schwartz 2018, 1834). As has already been stated, clarifying clearly established law aids not only the courts but also plaintiffs who would have a lighter burden of proof. Schwartz also suggests that if the Supreme Court were not willing to make changes to the doctrine the lower courts should do it themselves by doing two things: "interpret[ing] Supreme Court precedent 'reasonably' but 'more narrowly'" and by refusing to consider a qualified immunity defense "when defendants file frivolous interlocutory appeals of qualified immunity denial," which would set a precedent and deter other officers from trying the same thing (Schwartz 2018, 1836). By doing these things the lower courts

would not be greatly changing qualified immunity which would temporarily fix the issue of the defense being overly granted until the Supreme Court takes on the responsibility of fixing the doctrine.

Other scholars have added another aspect to their solutions by coming up with possible alternative routes that may make a way for plaintiffs to succeed in court against officers. Pfander offers that one solution is for plaintiffs to file a claim for nominal damages (2011). Filing a claim for nominal damages is a type of lawsuit that is different from a Section 1983 in that the monetary amount is much smaller and the qualified immunity defense cannot be used. This holds that the plaintiffs rights were violated by an official's abuse of their power or misconduct. Although this is very similar to what a plaintiff does in cases where qualified immunity defense arises, in this type the claims would be easier for a plaintiff to prove and win because of "the routine availability of nominal damages [being awarded by the courts] suggests that plaintiffs can pursue such an award for most constitutional violations" (Pfander, 2011, 1622). While these monetary awards are not as large as in 42 U.S.C Section 1983 claims, it would further define what the legal expectations are for law enforcement officers, clarifying things for judges in qualified immunity cases and making it easier for a plaintiff to find a pre-existing case to use in their arguments (Pfander, 2011).

The calls for the qualified immunity doctrine to be changed have not come from just the academic world. The illegitimacy of it has been recognized by judges such as District Judge Carlton Reeves. He is a judge for the Southern District of Mississippi and has offered strong opinions and condemnations of qualified immunity. This case will be discussed below.

So, while scholars and judges have offered significant arguments against and solutions to qualified immunity, in-depth reviews into how it is applied in a single state have not been done or compared with national data. A look into the two U.S. District Courts of Mississippi offers a unique perspective prompting several questions. How often do these districts grant or deny qualified immunity? How often are Section 1983 lawsuits filed? What types of claims are brought against officers? Lastly, what are the factors at play in the results of these questions? It is not enough to just answer these questions, they must be compared with data from more than one district, state, and circuit. Comparing this data with that of Joanna Schwartz (2017) allows for a unique perspective that illustrates the transition of qualified immunity to absolute immunity.

CHAPTER III: METHODOLOGY

Sample

The data for this thesis is from Mississippi's Northern and Southern districts in the United States Court of Appeals for the 5th Circuit which includes Louisiana, Mississippi, and Texas. The cases researched from these districts were taken from two time periods – 2009 to 2014 and 2017 to 2021. The cases included were those where police officers claimed a qualified immunity defense in Section 1983 suits where the plaintiff claimed excessive force was used against them, unlawful or illegal arrest, or wrongful death. This data was compared with Joanna Schwartz's data from her article *"How Qualified Immunity Fails*" (2017).

Procedures

The goal of this study is to illustrate that the doctrine of qualified immunity has become so broad that plaintiffs suing police officers using 42 U.S. Code Section 1983 almost never win their cases and the officers are not held accountable for their misconduct. This study is a replication of research done by Joanna Schwartz and builds onto it by determining the types of claims filed where qualified immunity is raised as a defense, how the 5th Circuit has changed in its rulings in two different time periods, and lastly how that compares to the two districts in Mississippi. The data for this study was gathered from Nexis Uni. This database has federal and state court cases. The search parameters allow you to choose which circuit you want and the timeline. (For example, the parameters can be set to the 6th circuit between 2009-2012 and include or exclude terms like excessive force, false arrest, wrongful death, etc.) For this study, the search results were limited to federal cases in the 5th Circuit Court of Appeals where a qualified

immunity defense was raised. There are four categories these cases were divided into – the Northern district of Mississippi from 2009-2014, the Northern district of Mississippi from 2017-2021, the Southern district of Mississippi from 2009-2014, and the Southern district of Mississippi from 2017-2021. From each of these cases it was determined whether the plaintiff's claim was of excessive force, unlawful or illegal arrest, wrongful death, and in some cases a combination of them.

To do this I looked through each case the search results brought up to see how often qualified immunity was granted, how often summary judgment was granted, how many cases were dismissed or closed, and how often the defendant(s) motion(s) were denied. The frequency of these were compared between years and districts to determine the difference or similarities of the 5th Circuit Court of Appeals Mississippi Northern and Southern Districts when ruling on qualified immunity and summary judgment.

This data was then compared with a study done by Joanna Schwartz who has done the "largest and most comprehensive stud[ies] to date of the role qualified immunity plays in constitutional litigation" (Schwartz, 2017.) Her study began with 3,748 civil rights cases and narrowed it down to 1,183 42 U.S.C. Section 1983 lawsuits brought by civilians against law enforcement officers. These lawsuits were limited to those that were filed between 2011 and 2012 in five districts in five different states. This study was used to determine how often law enforcement officers are granted qualified immunity across the five states and the district within that state that she researched which were the Southern District of Texas, the Middle District of Florida, the Northern District of Ohio, the Northern District of California, and the Eastern District of Pennsylvania. To get her

data she searched through Bloomberg Law which provides access to court dockets. While reviewing these dockets she focused on eight things:

> "whether the plaintiff(s) sued individual officers and/or the municipality, the relief sought by the plaintiff(s), whether the law enforcement defendant(s) filed one or more motions to dismiss on the pleadings or for summary judgment, whether and when the defendant(s) raised qualified immunity, how the court decided the motions raised by the defendant(s), whether there was an interlocutory or final appeal of a qualified immunity decision, and how the case was ultimately resolved" (Schwartz 2017, 23).

The purpose of her research was to determine what role qualified immunity plays in how a case turns out and how often it protects officials from their case going to trial or discovery like the Supreme Court intends for it to do.

The goal of comparing the two studies is to see if these results would reflect her findings across multiple districts across the country. Her expectations were to find that the different circuits would adjudicate qualified immunity and Section 1983 cases differently based on the range of judges in different parts of the country leaning more conservatively and others more liberally. One of the districts analyzed by Schwartz was also in the 5th Circuit but was in Texas, not Mississippi. Though since they are in the same circuit it was my expectation that our results would be very similar for this part since the 5th Circuit is seen as a more conservative circuit.

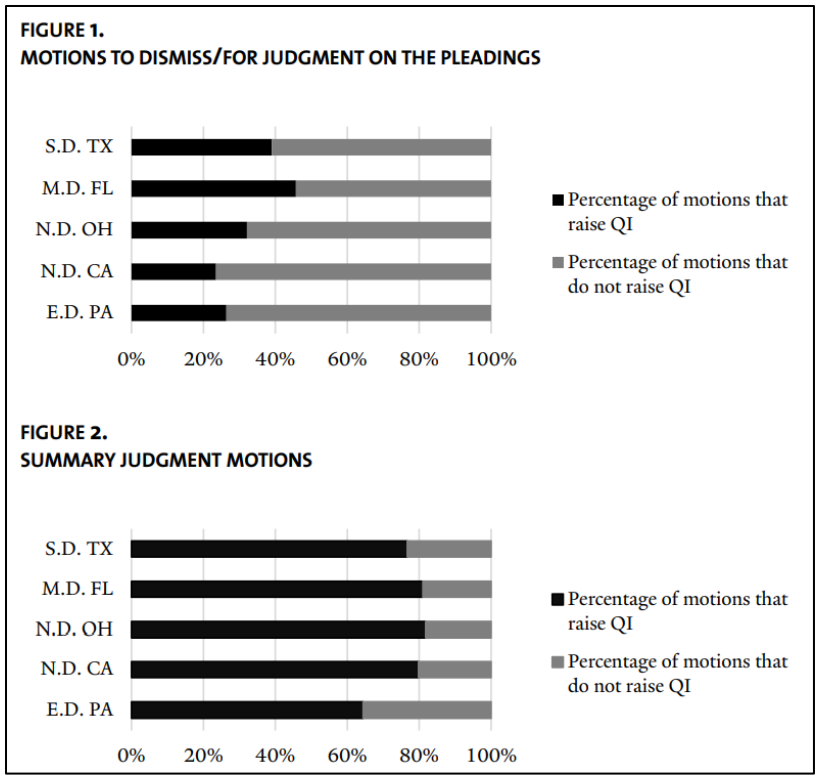
CHAPTER IV: RESULTS

The Supreme Court has done a good job at fulfilling one of its original intentions when creating the doctrine of qualified immunity – preventing police officers from being overdeterred from doing their jobs. This immunity has been under fire by scholars and judicial officials for years now and with the enormous spike in coverage of police brutality going unchecked even in the most absurd cases, regular citizens have discovered what is allowing it to go unchecked – qualified immunity. To grasp a better understanding of how this has played out in the courts and why it has allowed officers to continue acting violently without fear of punishment, research was done that focused on Mississippi's district courts in the U.S. Circuit Court of Appeals. The objectives were finding answers to the following questions: How often do these districts grant or deny qualified immunity? How often are Section 1983 lawsuits filed? What types of claims are brought against officers? Lastly, what are the factors at play in the results of these questions?

The two main objectives of this research were to determine how the Northern and Southern Districts of Mississippi in the 5th Circuit Court of Appeals approach qualified immunity and summary judgment and to compare the findings with the data from Schwartz to determine the similarities showing support for my research and adding to her study. The data used to add to this research examines the trends in the types of claims brought against officers in the cases where they raised a qualified immunity defense in the districts in Mississippi. The most relevant data to this thesis from Schwartz that was

used to compare both studies findings can be found in Figures 1 & 2, Table 1, and Table 2.

Figure 1 & 2



Schwartz, J. C. (2017). How Qualified Immunity Fails. *Yale LJ*, *127*(2), 35.

Figure 1 shows the percentages of cases where qualified immunity was and was not raised in motions to dismiss or for judgment on the pleadings in each district. Figure 2 shows the percentages of cases where qualified immunity was and was not raised as well but in motions for summary judgment. Her point here is to show that defendants raise a qualified immunity defense in motions for summary judgment much more than in motions to dismiss or judgment on the pleadings. The Southern District of Texas was one of the ones she researched which is in the same circuit court as the districts in Mississippi. Her findings for this district were that defendants raised qualified immunity

over two times as much in summary judgment than motions to dismiss with 33.3% in motions to dismiss and 79.8% in summary judgment motions. Looking at all of her data, "defendants filed 374 motions for summary judgment, and 283 (75.7%) of those motions included" a qualified immunity defense (Schwartz 2017, 35). The implications of these results are that qualified immunity is brought up more in motions for summary judgment which means that the defense of qualified immunity is relied on more often in defendants motions because they know that the Courts desire is to adjudicate these cases quickly. Therefore, by doing this defendants are more likely to win their cases because summary judgment is more appealing to judges.

Table 1: Rulings on Summary Judgment Motions That Raised Qualified Immunity

	S.D. TX	M.D. FL	N.D. OH	N.D. CA	E.D. PA	Total
I denied	9 (19.6%)	15 (29.4%)	23 (42.6%)	23 (34.3%)	21 (32.3%)	**91 (32.2%**
I granted part	5 (10.9%)	5 (9.8%)	5 (9.3%)	3 (4.5%)	1 (1.5%)	**19 (6.7%**
I granted	12 (26.1%)	13 (25.5%)	3 (5.6%)	9 (13.4%)	2 (3.1%)	**39 (13.8%**
I in the alterna-e/fails 1st step	4 (8.7%)	9 (17.6%)	7 (13.0%)	8 (11.9%)	11 (16.9%)	**39 (13.8%**
ant (not on QI)	4 (8.7%)	2 (3.9%)	10 (18.5%)	7 (10.4%)	13 (20.0%)	**36 (12.7%**
ant (reasoning clear)	2 (4.3%)	0	0	0	1 (1.5%)	**3 (1.1%**
P (not on QI or I in alt.)	2 (4.3%)	0	0	5 (7.5%)	3 (4.6%)	**10 (3.5%**
ot decided	8 (17.4%)	7 (13.7%)	6 (11.1%)	12 (17.9%)	13 (20.0%)	**46 (16.3%**
tal motions	**46**	**51**	**54**	**67**	**65**	**283**

Schwartz, J. C. (2017). How Qualified Immunity Fails. *Yale LJ*, *127*(2), 39.

The data in Table 1 shows that in the 1,183 cases she reviewed there were a total of 283 motions for summary judgment where qualified immunity was raised. The findings were that roughly just one-third (32.3%) of defendants motions for summary judgment based on qualified immunity were denied. The remaining categories in this table are cases where qualified immunity was granted in part, granted, fails the first step of the test (but summary judgment was granted) used by judges, summary judgment is granted not based on qualified immunity, summary judgment is granted with no clear reason, GiP (granted in part) not based on qualified immunity, and not decided. Her findings were that qualified immunity was granted in full or in part 20.5% of the time, summary judgment was granted in full or part (or without clear reasoning) 17.3% of the time, summary judgment was granted in cases where qualified immunity failed the first step in the test judges use 13.8% of the time, and the judges did not make a decision on summary judgment in 16.3% of the cases. This data shows that motions for summary judgment were granted, including cases where qualified immunity was granted and those where it was not, in 51.6% of the 283 cases. Of these grants for summary judgment 39.7% of the were decided on qualified immunity grounds. This supports my findings found in Table 3 & 4.

Table 2: Success of Motions Raising Qualified Immunity

	S.D. TX	M.D. FL	N.D. OH	N.D. CA	E.D. PA	Total
QI denied	15 (21.7%)	33 (29.7%)	27 (38.0%)	30 (33.0%)	34 (34.7%)	**139 (31.6%)**
QI granted in part	7 (10.1%)	7 (6.3%)	6 (8.5%)	5 (5.5%)	1 (1.0%)	**26 (5.9%)**
QI granted in full	16 (23.2%)	18 (16.2%)	3 (4.2%)	11 (12.1%)	5 (5.1%)	**53 (12.0%)**
QI in the alternative/fails 1st step	5 (7.2%)	12 (10.8%)	11 (15.5%)	9 (9.9%)	13 (13.3%)	**50 (11.4%)**
Grant (not on QI)	7 (10.1%)	13 (11.7%)	12 (16.9%)	13 (14.3%)	17 (17.3%)	**62 (14.1%)**
Grant (reasoning unclear)	2 (2.9%)	2 (1.8%)	0	0	5 (5.1%)	**9 (2.0%)**
GiP (not on QI or QI in alt.)	4 (5.8%)	6 (5.4%)	2 (2.8%)	8 (8.8%)	6 (6.1%)	**26 (5.9%)**
Not decided	13 (18.8%)	20 (18.0%)	10 (14.1%)	15 (16.5%)	17 (17.3%)	**75 (17.0%)**
Total motions	**69**	**111**	**71**	**91**	**98**	**440**

Schwartz, J. C. (2017). How Qualified Immunity Fails. *Yale LJ*, *127*(2), 36.

The data in Table 2 shows that in the 1,183 cases she reviewed there were a total of 440 motions where qualified immunity was raised in the five districts. The findings show that almost one-third (31.6%) of defendants motions for qualified immunity were denied. The remaining categories in this table are cases where qualified immunity was granted in part, granted, fails the first step of the test (but passes the second) used by judges, motion is granted not based on qualified immunity, qualified immunity is granted with no clear reason, GiP (granted in part) not based on qualified immunity, and not decided. Her findings show that qualified immunity was granted in full or part 29.3% of the time, granted with unclear reasoning 2.0% of the time, in 11.4% of the motions the judge said "that the plaintiff had not met her burden of establishing a constitutional violation and either declined to reach the second step of the qualified immunity

analysis… or granted qualified immunity, (Schwartz, 2017, 37). With this data she noted the differences between the five districts. The Southern District of Texas which is in the 5th Circuit, granted qualified immunity more than the other districts denying it in only 21.7% of the cases. When it came to granting qualified immunity, this district did so in 33.3% of cases while "in contrast, courts in the Eastern District of Pennsylvania granted only 6.1% of the qualified immunity motions in whole or part on qualified immunity grounds" (Schwartz 2017, 37). This is reflected in the data obtained for this thesis and can be found in Tables 6 & 7.

Comparison of Both Studies Results for Section 1983 Cases between 2011-2012

Table 3: Section 1983 cases filed per million people in 2011-2012

District	§1983 cases per million
SD of Texas	15
MD of Florida	21
ND of Ohio	30
ND of California	32
ND of Mississippi	36
ED of Pennsylvania	80
SD of Mississippi	85

* based on population

To better compare this study with Schwartz data, the total number of Section 1983 cases filed against a government official were divided per million people in each district. These cases were found from between 2011-2012 because this is the time period Schwartz got her data from. To do this the population of each district was calculated and the total number of motions was divided by that number. The population of each district in order of the list in the above table as determined by the United States census in 2010 were: 8,857,326 (SD of TX), 10,752,801 (MD of FL), 5,796,825 (ND of OH), 7,783865

(ND of CA), 1,103,653 (ND of MS), 5,145,815 (ED of PA), and 1,862,754 (SD of MS). Each of these numbers were simplified respectively to 8.9, 10.8, 5.8, 7.8, 1.1, 1.9, and 5.1. Then the number of Section 1983 cases filed in each district was divided by that number to get the data shown in Table 3. These findings show that there were less cases per million in the states where the courts are considered more conservative, meaning they are more likely to favor the defendant and grant qualified immunity. There are multiple factors that Schwartz claims influence whether a Section 1983 case is filed. She coined the term "civil rights ecosystem" which she defines as "collections of actors (including plaintiffs' attorneys, state and federal judges, state and federal juries, and defense counsel), legal rules and remedies (including state tort law, § 1983 doctrine and defenses, and damages caps), and informal practices (including litigation, settlement, and indemnification decisions" (Schwartz 2020, 1539). In a state where judges are less likely to favor defendants and to grant qualified immunity, such as Pennsylvania, there are more Section 1983 cases filed because there is a greater chance of beating the qualified immunity defense, therefore attorneys are more likely to take the case. Schwartz discovered this tendency in her focus on Philadelphia in a recent article which showed that because of the difference in how courts interpret and apply standards in judging the actions of police officers. Therefore, in a state where judges interpret standards in a light more favorable to defendants they tend to grant qualified immunity more often and so there are not as many cases because plaintiffs either do not bother filing a case or they cannot find an attorney to take the case because they both know the likelihood they will beat the defense is not very high and it would be a risk to try. These states would be Texas, Florida, Ohio, and Mississippi. These trends between the courts are highlighted in

Schwartz 2020 article “Civil Rights Ecosystem” which analyzes how “the variation in federal circuit court precedent” (1560). However, this data shows that Mississippi was an exception. This is surprising because judges very rarely deny qualified immunity therefore it would be logical to assume plaintiffs and attorneys would not file Section 1983 cases as often. A possible explanation for this is that because there tends to be more police misconduct in southern states where racial divisions are more tense. The Southern District of Mississippi had an extremely high number of cases per million, 85/million, which could be because the district is the more racially diverse compared to the Northern District and police misconduct tends to be more prevalent against POC. The racial and ethnic demographics of Mississippi are illustrated in Appendices A and B. Another explanation could be that the different sources used for this study and in Schwartz study had an effect on the findings. The data for this thesis came from NexisUni and the data for the Schwartz study came from Bloomberg Law. Although both studies set the same search parameters the databases could have brought up different results.[1]

[1] In this study the Bloomberg Law database was not an available option for researching cases or else it would have been used.

Table 4: Qualified Immunity Cases Per Year in Mississippi

Year	Southern District	Northern District	Total/year
2009	53	8	**61**
2010	67	20	**87**
2011	44	13	**57**
2012	72	25	**97**
2013	87	20	**107**
2014	67	25	**92**
2017	9	33	**42**
2018	52	21	**73**
2019	47	20	**67**
2020	36	21	**57**
2021	5	4	**9**

The results of this study show that the Southern District of Mississippi had more cases in which qualified immunity was used as a defense for both time periods examined. From 2009-2014 the Northern District had just 111 (22.16%) cases that involved a police officer asserting the defense while the Southern District had 390 (76.62%). From 2017-2021 the Northern District had 99 (35.61%) cases that involved a police officer asserting the defense and the Southern district had 179 (64.39%) cases. These findings are illustrated in Table 4. The large difference in the number of cases between the districts can be attributed to the population size of the districts. The counties in the Southern District make up 1,862,754 of the population and the Northern District has 1,103,653 of the population. The Southern District contains the larger more urban areas and cities such as Jackson, Hattiesburg, Meridian, and the Gulf Coast. While the Northern District has smaller cities like Tupelo and Greenwood. Therefore, while the Southern District appears to have much more qualified immunity cases compared to the Northern, population is a

likely factor. What is interesting about this data is that the Northern District, even though it had less cases, did not decrease as drastically as the Southern District. Between the time periods studied (2009-2014 & 2017-2021) the Southern District decreased by over 50% (54.1%) while the Northern District decreased by only 10.8%. A possible explanation for this sharp decline is that both plaintiffs and attorneys recognized how rarely qualified immunity was denied in these conservative districts and therefore, plaintiffs stopped bringing cases against officers or they were unable to find an attorney to take the case. Schwartz notes "there are few attorneys who regularly bring civil rights cases" and if a plaintiff's case is rejected by one attorney "the chance of them ever finding another lawyer is zero because there's just a couple [of lawyers] that even do this" (Schwartz 2020, p. 1588). She reached this conclusion after interviewing multiple attorneys including one from the Middle District of Florida and another from the Southern District of Texas. This trend is a common occurrence in the courts that are more likely to grant qualified immunity and Mississippi is no exception.

The rulings that were made in each of the cases on qualified immunity and summary judgment in the Northern and Southern Districts of Mississippi are illustrated in Tables 4 & 5 (summary judgment) and 6 & 7 (qualified immunity). The types of rulings in these cases are as follows: "yes", "n/a", "no", "yes/no", "claims dismissed", "reopened", or "case dismissed" (n/a refers to cases where the plaintiff(s) did not have enough evidence to prove a constitutional violation even occurred and yes/no refers to cases with multiple defendants with only some being granted qualified immunity or summary judgment and dismissed from the case).

Table 5: Summary Judgment Rulings from 2009-2014

2009-2014	Southern District	Northern District	Total
SJ granted	264	63	**327**
	75.2%	19.3%	**65.3%**
n/a	32	19	**51**
	62.7%	37.3%	**10.2%**
SJ denied	20	15	**35**
	57.1%	42.9%	**7%**
went to discovery	2	1	**3**
	66.6%	33.3%	**0.6%**
case dismissed	32	1	**33**
	97%	3%	**6.6%**
goes to trial	3	0	**3**
	100%		**0.6%**
granted in part	37	12	**49**
	75.5%	24.5%	**9.8%**
Total motions	**390**	**111**	**501**

In Table 5 the findings illustrated are the rulings on summary judgment in each of the districts between 2009 - 2014. The findings for the Southern District show that of the 390 cases summary judgment was granted in 264 (67.69%), 37 motions (9.48%) were granted in part, the motion was denied in 20 (5.13%), and the findings were “n/a” in 32 motions (8.21%). The findings in the Northern district show that from 2009-2014 and 2017-2021. The findings show that of the 111 cases between 2009 and 2014, in 63 (56.76%) summary judgment was granted, 12 (10.81%) of the motions were granted in part, only 15 (13.51%) were denied, and in 16 (14.41%) the findings were “n/a” (no constitutional violations proven, and qualified immunity was not needed since there was no case).

Table 6: Summary Judgment Rulings from 2017-2021

2017-2021	Southern District	Northern District	Total
yes	81	52	**133**
	61.0%	39.0%	**47.8%**
n/a	34	21	**55**
	61.8%	38.2%	**19.8%**
no	18	10	**28**
	64.3%	35.7%	**10%**
went to discovery	0	4	**4**
	0.0%	100.0%	**1.4%**
case dismissed	12	9	**21**
	57.1%	42.9%	**7.6%**
goes to trial	0	0	**0**
granted in part	34	3	**37**
	91.9%	8.1%	**13.3%**
Total motions	**179**	**99**	**278**

Table 6 illustrates the findings on the rulings on summary judgment for the districts between 2017-2021. For the Southern district, of the 179 cases summary judgment was granted in 81 (45.25%), 34 motions (18.9%) were granted in part, only 18 motions (10.06%) were denied, and in 34 (18.9%) the findings were "n/a." The findings for the Northern District in the cases between 2017 and 2021 show that of the 99 cases summary judgment was granted in 52 (52.53%), 2 (2.02%) of the motions were granted in part, only 10 (10.1%) were denied, and in 21 (21.21%) the findings were "n/a."

Table 7: Qualified Immunity Rulings During 2009-2014

2009-2014	Southern district	Northern district	Total
QI granted	142	45	**187**
	75.9%	24.1%	**37.3%**
n/a	163	46	**209**
	78.0%	22.0%	**41.7%**
QI denied	18	15	**33**
	54.5%	45.5%	**6.6%**
QI granted in part	11	2	**13**
	84.6%	15.4%	**2.6%**
went to discovery	3	0	**3**
	100%		**0.6%**
claims dismissed	50	2	**52**
	96.2%	3.8%	**10.4%**
goes to trial	3	1	**4**
	0.75	0.25	**0.8%**
Total motions	**390**	**111**	**501**

In Table 7 the findings illustrated are the rulings on qualified immunity in each of the districts. The findings for the Southern District from 2009-2014 show that of the 390 cases, qualified immunity was granted in 142 (36.41%) of the cases, “n/a” in 163 cases (41.79%), and in only 18 (4.62%) cases qualified immunity was denied. The findings for the Northern District are that of the 111 cases between 2009 and 2014, qualified immunity was granted in 45 (40.54%) of them, the findings were “n/a” in 43 (38.74%) of cases, and in just 15 (13.51%) cases qualified immunity was denied.

Table 8: Qualified Immunity Rulings During 2017-2021

2017-2021	Southern district	Northern district	Total
QI granted	56	44	**100**
	56.0%	44.0%	**36.0%**
n/a	60	25	**85**
	70.6%	29.4%	**30.6%**
QI denied	17	8	**25**
	68.0%	32.0%	**9.0%**
QI granted in part	9	4	**13**
	69.2%	30.8%	**4.7%**
went to discovery	3	5	**8**
	38%	62.5	**2.9%**
claims dismissed	30	13	**43**
	69.8%	30.2%	**15.5%**
goes to trial	4	0	**4**
	100%		**1.4%**
Total motions	**179**	**99**	**278**

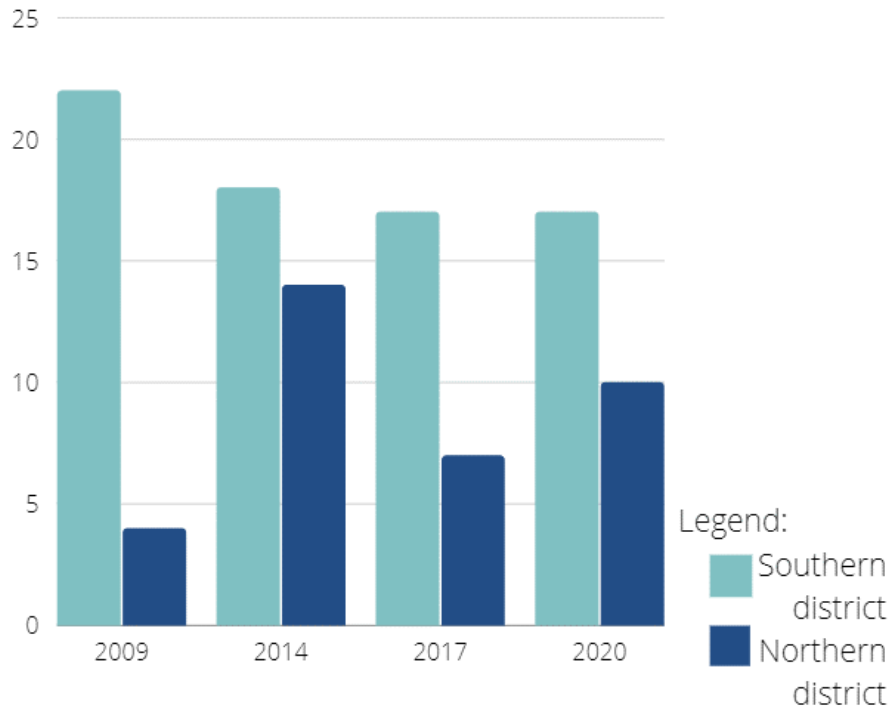
In Table 8 the findings illustrated are the rulings on qualified immunity in each of the districts. The findings for the Southern District from 2017-2021 show that of the 179 cases qualified immunity was granted in 56 (31.28%), in 60 (33.52%) the findings were "n/a", and in only 17 (9.5%) cases qualified immunity was denied. The findings for the Northern District from between 2017 and 2021 show that of the 99 cases, qualified immunity was granted in 44 (44.4%), the findings were "n/a" in 25 cases (25.25%), and in only 8 (8.08%) cases qualified immunity was denied.

Types of Claims

Another aspect of this study was classifying the types of claims in each of these cases to determine what types were the most prevalent. The types of claims include excessive force, wrongful death, unlawful arrest, excessive force & wrongful death, and

excessive force & unlawful arrest. The results of this research are depicted in the next 3 graphs.[2]

Figure 3: Excessive Force Claims



Excessive force claims were the majority of claims brought against police officers in Section 1983 lawsuits. The distribution of these cases involving excessive force for each district for the beginning and end of the two time periods researched (2009, 2014, 2017, and 2020) is depicted in Graph 1. In each year, the Southern District had more cases than the Northern District. This inconsistency could be due to the higher numbers of Black Americans in the Southern District (refer to the map of the racial demographics of Mississippi in Appendix A and B). In 2009 the Southern District had 22 cases and the Northern had 4. In 2014 the Southern District decreased in the number of cases involving

[2] The study done by Schwartz did not include this type of data so no comparison will be made here.

claims of excessive force with 18 and the Northern increased to 14. By 2017 both districts decreased. The Southern District to 17 and the Northern District to 7. In 2020 the Southern District remained at 17 while the Northern District increased to 10. As illustrated in Graph 1, the Southern District did not change in the amount of excessive force claims over the last 5 years. Conversely, the Northern District increased within the last 5 years. Studies strongly suggest that the reason for this is that police use of excessive force increased because there were no consequences because judges rarely deny qualified immunity.

Figure 4: Make up of types of claims made by plaintiffs in the SD 2009-2014

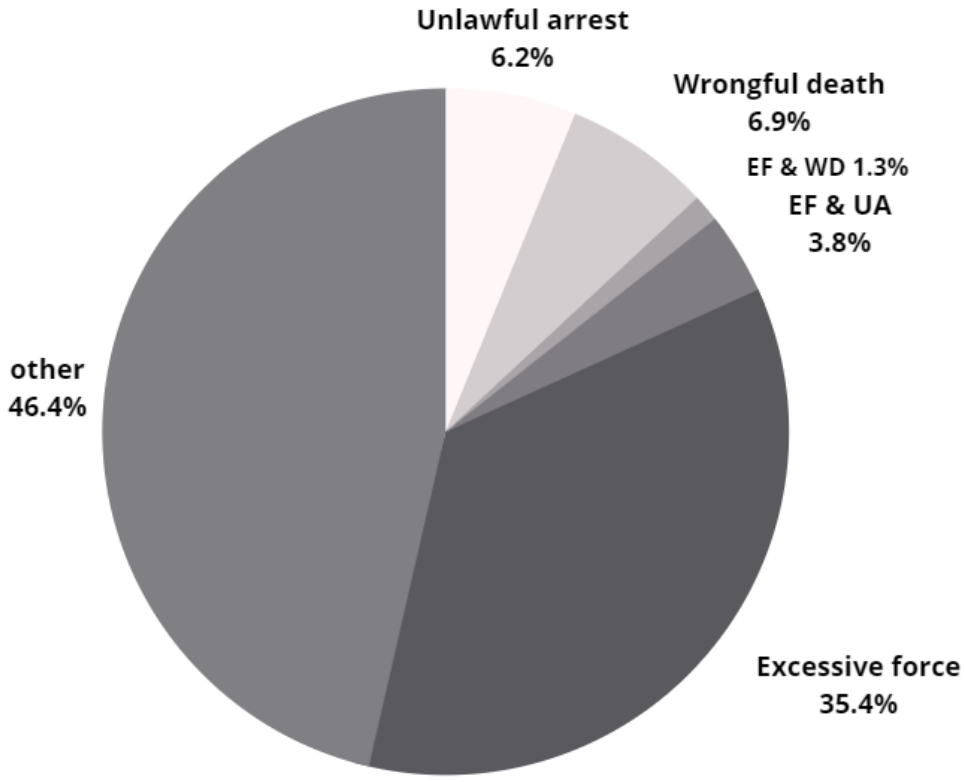
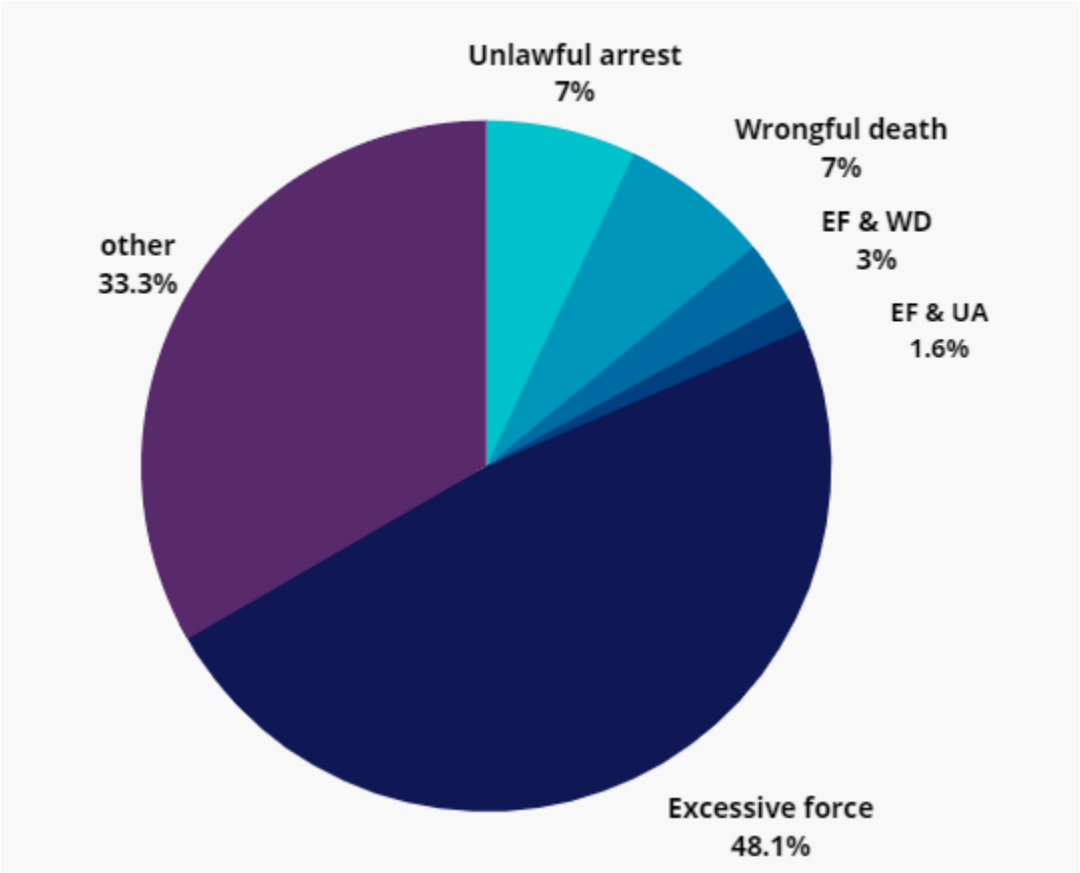


Figure 5: Make up of types of claims made by plaintiffs in the SD 2017-2021



The demographics of the types of claims brought by plaintiffs against officers in the Southern District of Mississippi for 2009-2014 is illustrated in Graph 2 and for 2017-2021 in Graph 3. The types of claims included in these graphs include excessive force, wrongful death, unlawful arrest, excessive force & wrongful death, excessive force & unlawful arrest, and "other" which can include a combination of all three or other rights violations which were not the focus of this study. The results for the two time periods researched show that excessive force (exclusively) increased from making up a little over a third of all cases to almost half of them. All but two other categories increased. The claim that increased the most after excessive force, were those where plaintiffs brought

claims of excessive force & wrongful death. The two that decreased were claims of excessive force including unlawful arrests and other. Overall, the most important observation from this is that claims of the use of excessive force increased in the Southern District from 2009-2014 to 2017-2021.

Figure 6: Make up of types of claims made by plaintiffs in the ND 2009-2014

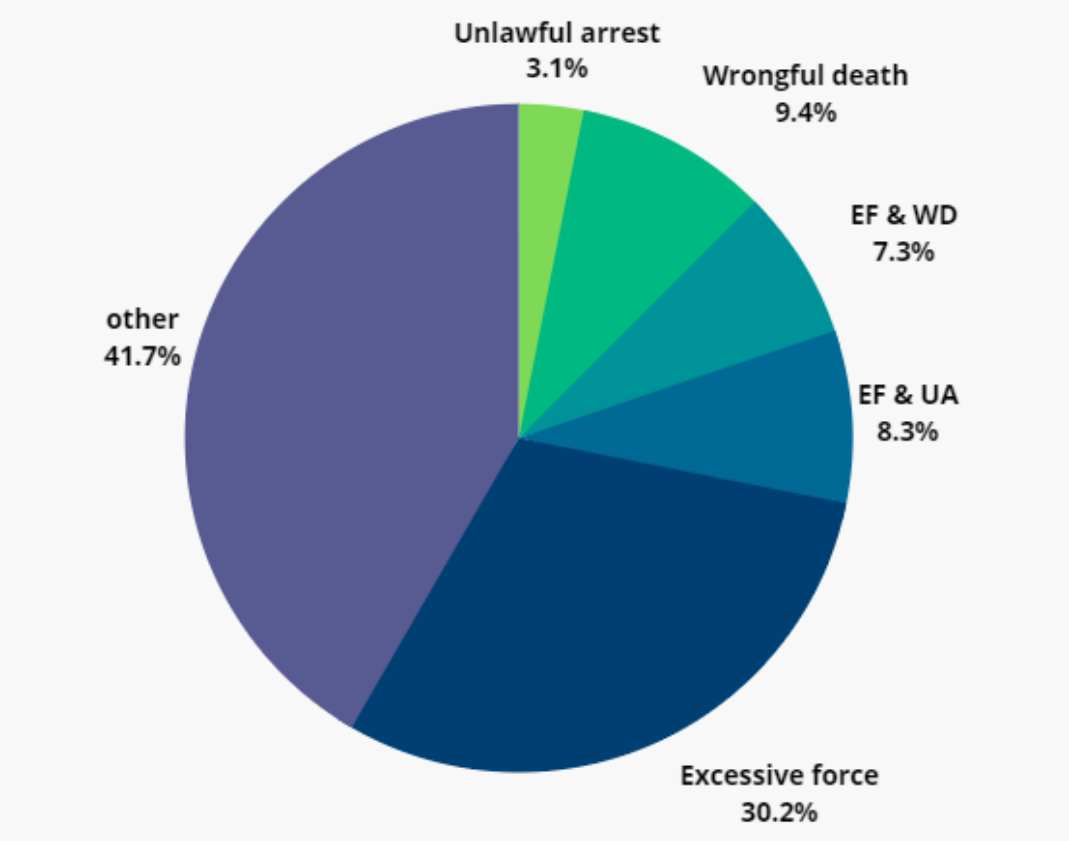
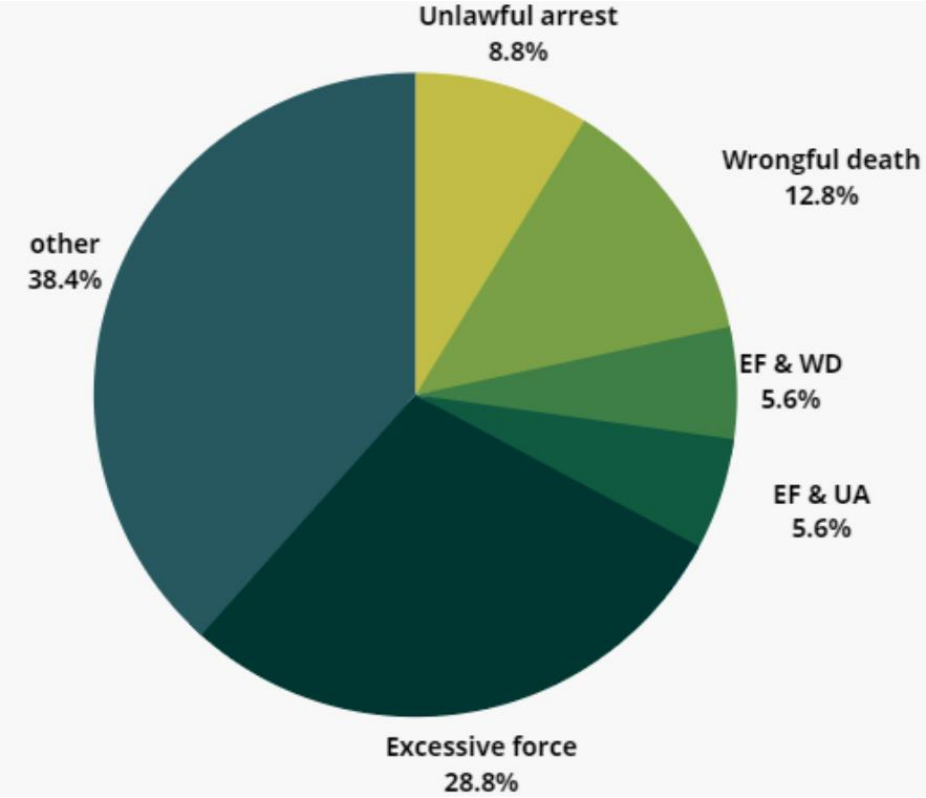


Figure 7: Make up of types of claims made by plaintiffs in the ND 2017-2021



The distribution of the types of claims in the Northern District during the two time periods studied are shown in Graphs 4 and 5. These findings show that all claims decreased except for wrongful death and unlawful arrest. Claims of unlawful arrest increased the most from 3.1% to 8.8% and then wrongful death claims increased from 9.4% to 12.8%. These findings suggest that plaintiffs stopped filing Section 1983 cases based on claims of excessive force because of how difficult it is to win in those cases (MacFarlane 2018, 48). These are significant findings because at first glance it would seem that the problem of police misconduct is decreasing but upon further investigation the problem has not disappeared but instead another problem has arisen. The problem being that the high likelihood of judges granting qualified immunity and the severe lack of plaintiffs winning their cases has discouraged people from ever filing claims. This only

perpetuates police officers violating peoples' rights because they are facing less consequences than they already were with "qualified immunity provid[ing] police an almost insurmountable defense" that "protect[s] police power and insulate[s] police violence from review and consequence" (Akbar 2020, p. 1792). The standards for adjudicating Section 1983 cases and qualified immunity by the courts have created a hostile environment for plaintiffs resulting in losing their cases or never even filing one.

CHAPTER V: DISCUSSION

Qualified immunity is an incredible problem within the justice system. All too often it is granted even in the most absurd cases where a person's rights were clearly violated but because it was not "clearly established" in a previous case immunity is granted. These egregious offenses against citizens have gone on without consequence for too long and this has perpetuated police misconduct and abuse of power. This study will illustrate how rarely the defense is denied to officers. The goal of this research was to recreate, add to, and compare to a study done by Joanna Schwartz who reviewed almost 1200 Section 1983 cases filed in five district in five states between 2011-2012. To recreate the study, research was done on 779 cases where a qualified immunity motion was raised in the state of Mississippi between 2009-2014 and 2017-2021.

The results from recreating the study show that the defense of qualified immunity is only denied in approximately one-third of cases and this has remained the case for both time periods. The difference between the years were the number of cases that were brought against officers. However, this does not mean that the number of incidents has decreased. In fact, this could be evidence that the excessive granting of immunity has greatly discouraged would be plaintiffs from filing claims and even if people do try to file Section 1983 claims, they may be unable to find an attorney to take the case. The instances the qualified immunity defense being raised decreased by over 50% between 2009-2014 and 2017-2021, therefore the number of Section 1983 cases must have decreased since the defense was not needed as often.

In addition to recreating her study, this one also reviewed the types of claims that were brought against officers. These claims included ones of unlawful or illegal arrests,

wrongful deaths, and or excessive force being used against the plaintiff.[3] The findings show that the majority of plaintiffs' claims were of excessive force for each district and for both time periods which shows that excessive force is the main form of misconduct police officers participate in. Excessive force is not always the same and the standards judges use do not always make it clear what actions entitle officers to immunity which has led to them favoring defendants for the sake of getting through these cases quickly. This research shows that Mississippi judges are no exception to this trend. The last goal of this thesis was to compare these results to Schwartz.

The best data from this study to compare to Schwartz are the cases from 2011-2012. These show that from 2011-2012 Mississippi had many more Section 1983 cases per capita than in the states that she researched. Each district she looked at had at the least two times the population of the entire state of Mississippi, not just the districts, but Mississippi had almost four times as many cases per capita. In an article by Schwartz two years after she completed this research she coined the phrase "civil rights ecosystem" and in it she explains that there are many things that determine whether a Section 1983 case is filed. These include the attitude of the court the claim would be filed in and the experience of the attorneys. She says that if a court is more conservative and rarely denies qualified immunity this can greatly deter people from filing claims because they assume they will not win the case and that it would be a waste of time, money, and effort (Schwartz 2020, 1559). If a person does decide to pursue a Section 1983 case they have to be able to find an attorney that will take it. In districts where the court is conservative

[3] These did not make up all of the 779 cases reviewed so the data includes a category for "other" which could include all three claims or others which were not the focus of this study.

attorneys are not as likely to take the case, especially if they are not as experienced. Both of these issues are rooted in the granting of qualified immunity.

However, this makes the results of Mississippi's cases per capita surprising. The 5th Circuit is considered a conservative court, so it does not make sense using Schwartz reasoning. These unexpected results could be because of different methodologies, a greater number of police misconduct incidents, or something not considered in this research. This limitation warrants the need for further research to determine if this was because of methodology or if Mississippi is a red herring as well as if there are other districts that are like Mississippi and were not in Schwartz study.

Another interesting finding in this study was the difference in the number of cases in the districts in Mississippi. The Southern District had almost two times the number of cases than the Northern District did. Upon further research this large difference was logical because of the population sizes and demographics of the districts. The Southern District contains 63% of Mississippi's population is much more diverse than the Northern District. The largest urban cities in Mississippi are in the Southern District as well and contains the counties with the highest percentage of African Americans. The racial demographics is an important aspect to consider in cases about police violence. It is not an unknown thing that black people are disproportionally affected by police misconduct and is what inspired this study.

Much of the academic research on qualified immunity has focused on its history and what is wrong with it but there is not a large amount that has suggestions on how to fix the doctrine or what to replace it with. The Supreme Court was close to possibly creating something beneficial to both sides when it first created qualified immunity, when

it had both a subjective and objective part of the test for judges to use. It did away with the subjective because of its fear that it would mean a surplus of frivolous lawsuits that overdeterred officers from doing their jobs. However, this was not and is not the case. In fact, the opposite has happened. Officers are under deterred from respecting people's rights because of the precedent that their actions will not have consequences and they will be protected by qualified immunity. Secondly, people rarely attempt to bring a claim against officers because they assume, as statistics demonstrate, that they will not win because of qualified immunity. The Supreme Court took the easy route when it did away with the subjective test because if it remained the facts of the case would have to be considered and go to trial which went against their wishes for officers to be protected even from trial.

If the Supreme Court does not wish to find a way to fix the doctrine then it must be abolished and replaced with something else that can achieve the original intent of the Court when it created qualified immunity – protecting officers when they have to make a split-second decision but balancing it with the need for the public good or people's rights being kept intact.

CHAPTER VI: CONCLUSION

The recent events in the United States have made clear the need for change in the criminal justice system in regard to policing. The doctrine of qualified immunity plays a large part in the problem. While it was created by the Supreme Court to protect officers from being overdeterred from doing their jobs in fear of being sued it has gone too far. Today the doctrine protects even the most absurd rights violations and there is no accountability in policing. The arguments of scholars about the doctrine can be summed up as it is confusing, inconsistent, contradictory, unstable, and needs to be rewritten or in some opinions done away with completely. Some scholars suggest that instead of doing away with or redefining qualified immunity, plaintiffs should avoid filing claims of excessive force since these are the hardest to prove and defendants can easily sway the judge to determine there was no other actions the officer could have taken in an altercation and using the reasonableness doctrine to "translate police violence into justifiable force" (Carbado 2016, p. 1518). Pfander suggests that plaintiffs should file for nominal damages which would award smaller monetary amounts but are more advantageous not just for the plaintiff since there would be "no immunity defense to overcome" but also for the courts because this would "secure a determination of their constitutional claims in a world of legal uncertainty" (Pfander 2011, p. 1618). MacFarlane proposes another remedy for plaintiffs which is to argue their claims based on the proximate clause which for example in an excessive force claim where the plaintiff was injured they would be required to prove that an officer's actions proximately caused their injuries (MacFarlane 2018 p. 51). The problems discussed by these scholars have led to the over expansion in its protections and plaintiffs rarely see their Section 1983

lawsuits win in court. This study replicated one done by Joanna Schwartz, a respected scholar on qualified immunity, and the findings show that in Mississippi's district courts in the 5th Circuit Court of Appeals, qualified immunity is rarely denied, and the majority of the time plaintiffs' claims fail because of the difficult to almost impossible burden of proof. Until the Supreme Court reconsiders the standards of qualified immunity and what rights are clearly established judges will continue to defer to the defendants and misconduct will continue to be an issue among police departments.

Qualified immunity is a nationwide problem and Carlton Reeves, Judge for the U.S. District Court (5-MS), in *Jamison v. McClendon* (476 F. Supp. 3d 386) highlights one of the dilemmas facing judges in the U.S. In *Jamison v. McClendon* (476 F. Supp. 3d 386) he granted an officer qualified immunity although Reeves did not believe the officer's actions should have been protected. In this case a black man was pulled over because of an allegedly folded temporary tag. The officer conducting the stop, without any probable cause accused the plaintiff (Jamison) of having drugs in the car and conducted a 110 minutes of "badgering him, pressuring him, lying to him, and then searching his car top-to-bottom for drugs. Nothing was found" (Reeves 2020). During the search there was thousands of dollars of damage done to the car, so Jamison filed a lawsuit. In the trial Reeves began his decision by listing the legal and mundane actions of many victims of police violence experienced by Black Americans in recent years. He says that the plaintiff did not do any of these, just that he "was a Black man driving a Mercedes convertible" (476 F. Supp. 3d 386). Judge Reeves acknowledged that Mr. Jamison was lucky to have walked away with his life after that stop, unlike so many others that he references in the beginning of his ruling. Reeves noted that the justice

system in the United States has failed an unspeakable number of people and an unproportionate number of these victims are Black. Begrudgingly Judge Reeves had to rule in favor of the defendant and grant him qualified immunity because of the current legal standard set by the Supreme Court. He says that this "immunity is not exoneration" illustrating his personal belief that the officer's actions should not have been covered by immunity. However, precedent says that a right must be clearly established and in this case it was not "clearly established that an officer who has made five sequential requests for consent to search a car, lied, promised leniency and placed his arm inside of a person's car during a traffic stop while awaiting a background check" (476 F. Supp. 3d 386). He argues that the defense can no longer qualify as qualified immunity because "it operates like absolute immunity" (476 F. Supp. 3d 386). Judge Reeves is witness to the cases used for the research presented here and with those cases in mind, he notes at the end of his decision that qualified immunity needs to be overturned because even in cases where the officers' actions obviously wrong the legal jargon prevents judges from being able to decline qualified immunity. This is one of the most recent examples of how judges have come to loudly express their disapproval of the doctrine but that they are left little choice but to follow the rules set by the Supreme Court.

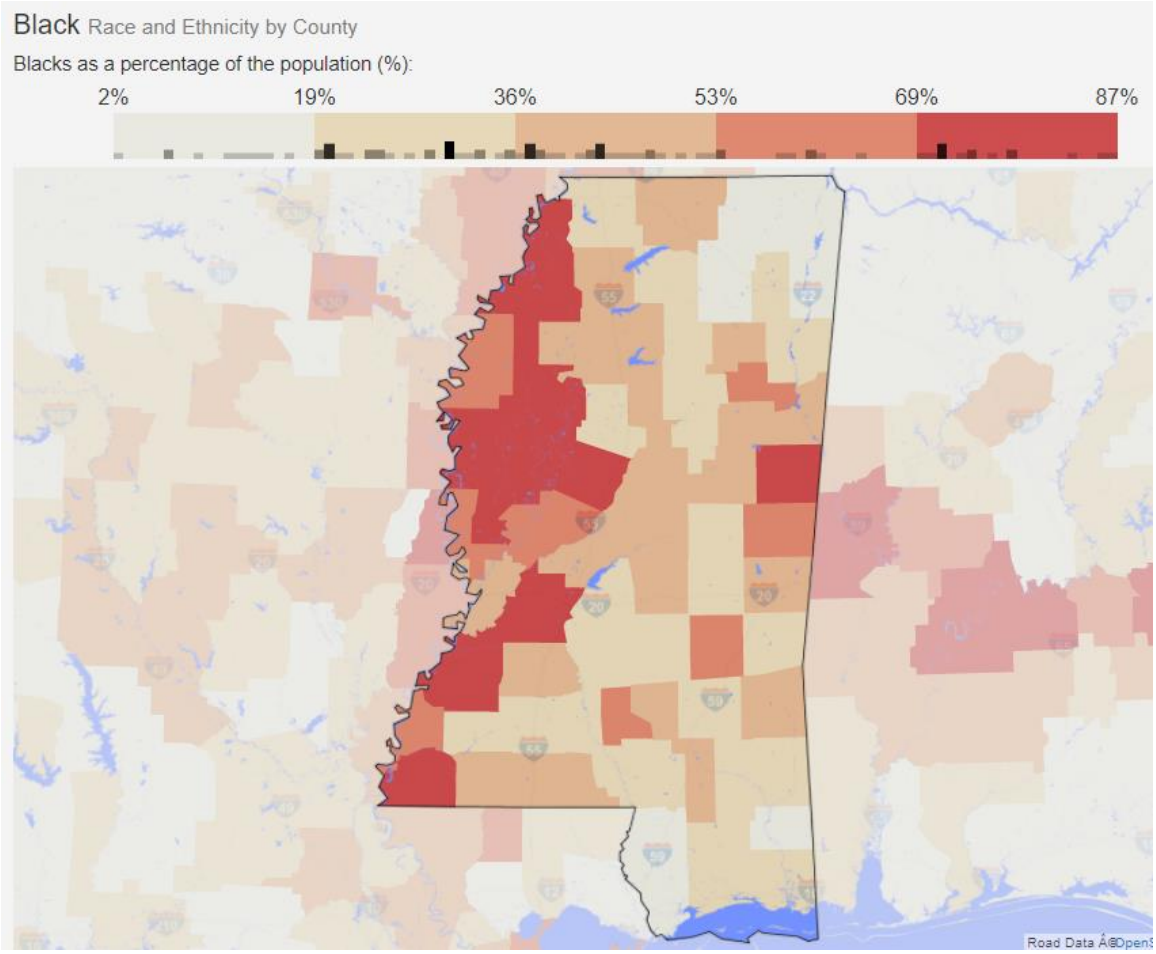
Just days before this submission a young black man was murdered by a police officer just miles from where the trial of Derek Chauvin who killed George Floyd in May 2020 was taking place. Daunte Wright was 20 years old, and his crime was having an air freshener hanging from the rear-view mirror and an expired tag in a city where the DMV was backed up and it was taking months for people to get their tags – something the police chief was aware of. Daunte's last minutes were spent trying to get his insurance

information over the phone. He was then told to get out of the car but given no explanation for why he was being hand cuffed and then resisted and as he got back in the driver's seat he was shot. The officer supposedly made a mistake grabbing her gun and not her taser (Vera, Hanna, Broaddus, & Holcombe 2021). This case will most likely end up in criminal court or at the least civil court, and if it is the later the officer will undoubtedly raise a qualified immunity defense. In Derek Chauvin's case his trial was in criminal court and he was found guilty by the jury on all three counts – second-degree unintentional murder, third-degree murder, and second-degree manslaughter. The judge also granted the prosecutions motion to remand Chauvin to jail and deny him bail. This is a landmark case in the fight against police brutality going unpunished, but this decision was not justice because justice would be that George Floyd was still alive. Instead, the Minnesota attorney general Keith Ellison said that he "would not call [the guilty] verdict justice, however, because justice implies true restoration. But it is accountability, which is the first step towards justice" (Ellison 2020). There is still a long way to go to get to justice and there needs to be much more accountability which starts with the Supreme Court addressing the problems caused by qualified immunity.

The Supreme Court has a difficult task in front of it and must attend to it quickly so that those that commit police brutality face some accountability and victims like George Floyd, Daunte Wright, Breonna Taylor, and those that have not happened yet can get justice. Qualified immunity has too long allowed police officers to get away with their violent and unconstitutional treatment of those they are sworn to protect. Failure to address these issues only continues the cycles of abuse that POC – especially the Black community – are faced with on a daily basis. No one should have to live with the fear that

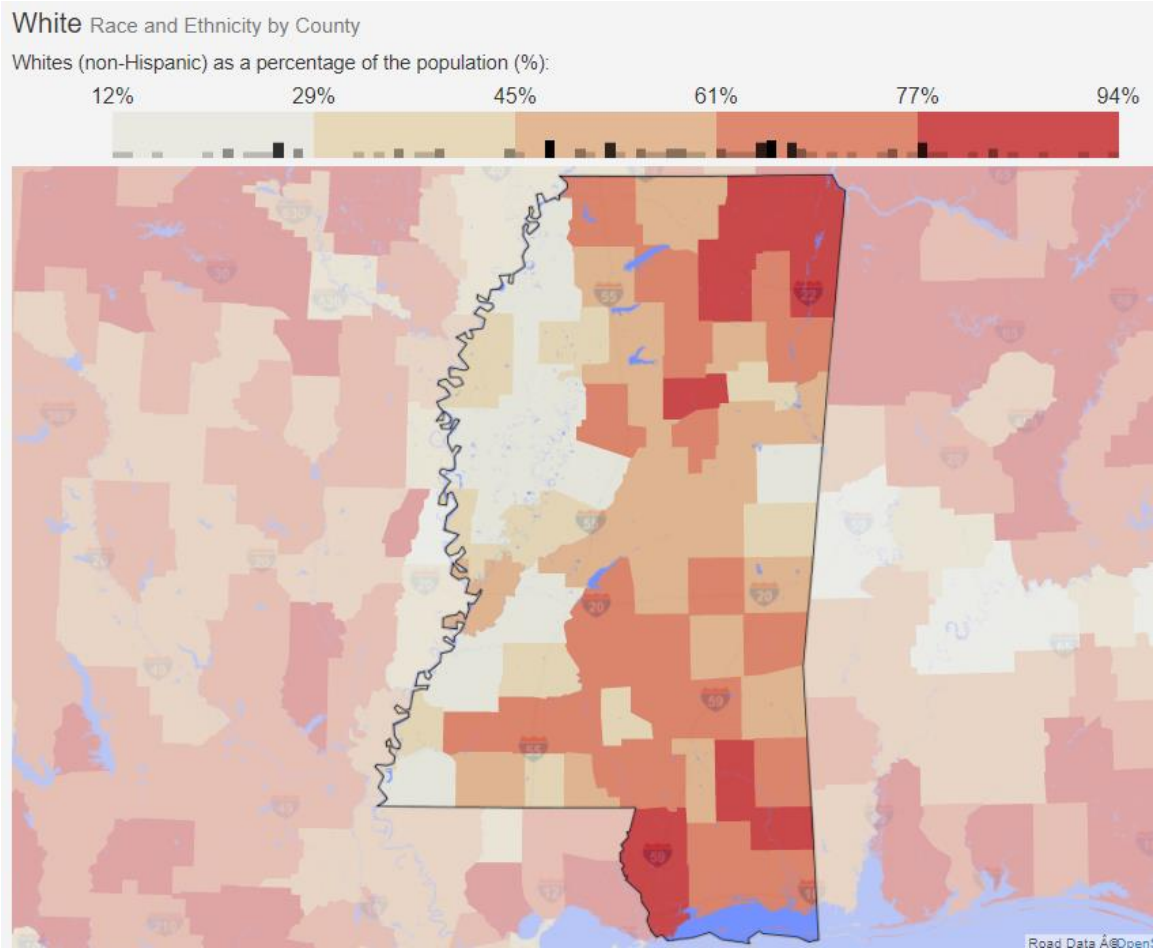
they will be killed for something as simple as an air freshener hanging from their rear-view mirror but that is the reality for those who are not born with white skin. Likewise, no one should be able to take the life of someone's father, mother, brother, sister, cousin, aunt, uncle, or significant other without any consequences. The police should not get to be judge, jury, and executioner but because there has been no accountability to put a stop to their brutality they have assumed those roles. We have to do better. People's lives are at stake.

APPENDIX A: MISSISSIPPI COUNTY DEMOGRAPHICS (AFRICAN AMERICAN POPULATION)



Retrieved from: [The Demographic Statistical Atlas of the United States - Statistical Atlas]

APPENDIX B: MISSISSIPPI COUNTY DEMOGRAPHICS (CAUCASIAN POPULATION)



Retrieved from: [The Demographic Statistical Atlas of the United States - Statistical Atlas]

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