



Skin in the game

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Ryan Partridge (center) with his parents, Shelley and Richard, at their home in Boulder. Ryan blinded himself during a psychotic episode at the Boulder County Jail in 2016. A judge has said the Sheriff's Office is not liable for Ryan's injuries due to qualified immunity, a legal defense that many police reform advocates say offers too much protection to officers.

As Ryan Partridge was held in the Boulder County Jail over the course of nine months in 2016, his mental health quickly deteriorated. Previously diagnosed with schizophrenia, he was admittedly paranoid and delusional, distrustful of the jail deputies and mental health staff. On several occasions, he says, he was tased, left in a restraint chair for hours, and held in solitary confinement or "discipline" for days, even weeks, at a time. It all culminated on Dec. 16 of that year, when in the throes of a psychotic episode, he gouged out his eyes with his fingernails.

Boulder Weekly first wrote about Ryan a few years ago (see "Silent Screams," Feb. 8, 2018), when his family initially brought a civil lawsuit against the Boulder County Sheriff's Office and more than a dozen of its jail employees. Filed in federal district court in Denver, the Partridges claim the agency violated Ryan's constitutional rights by using excessive force, being deliberately indifferent to his serious mental illness and failing to provide medical care and treatment on 13 specific incidents while he was in custody.

But in March 2019, most of the case was dismissed by a judge, who ruled that the Sheriff's Office and its employees were not liable for Ryan's injuries due to the legal defense of qualified immunity, (although a handful of excessive force claims are still being litigated). It's a doctrine that's been thrust into the national conversation about police accountability, as it often protects government officials from being held personally liable in federal court for violating people's civil rights, including interactions with the police.

"I feel a lot of empathy for other people who are going through this and who are protesting," says Ryan's mother, Shelley. "It's one of these things where until it happens to you, you don't believe it, you don't notice it, you don't pay attention. And now you're very hyper-attentive to it all. And none of it is good news."

Qualified immunity is "a judge-created principle and defense," says Suzette Malveaux, professor of civil rights and constitutional law at CU-Boulder. The ability to sue state officials for monetary damages in cases of civil rights violations dates back to 1871 and Section 1983 of the Civil Rights Act, a Reconstruction-era law that sought to protect African Americans from Ku Klux Klan violence. But for more than a century, Malveaux says, the courts interpreted the law

in such a narrow way that it was hardly ever used. That is until the 1960s, when lawyers began using Section 1983 aggressively to challenge civil rights violations, often winning their cases.

“You started having claims and people were actually able to get the deterrent of a Section 1983 claim where you actually have a government official who is on the hook financially for violating somebody’s constitutional right,” she says.

In an effort to stymie “frivolous” lawsuits against government officials, the defense of qualified immunity was used and, through a series of court decisions, strengthened to favor government officials. In essence, “The standard has changed over time,” Malveaux says.

Now, arguing against a qualified immunity defense can be difficult, if not impossible. First, the defense is brought in early in the case, allowing judges to absolve law enforcement well before the facts of a case can be established.

When agencies claim qualified immunity, the courts have to decide if a constitutional violation occurred and determine what was clearly established legal precedent at the time to decide if a reasonable officer knew they were violating the law. But over time, the judicial system has set the bar so high that it can be almost impossible to find a previous case to use as an argument against qualified immunity. Any slight difference in a case, like whether a person was lying down or sitting up, or whether the officer was using their fists or a baton, can result in a qualified immunity determination.

Plus, what constitutes an “objectively reasonable” officer has been used very broadly in the past, allowing for such arguments like the officer felt threatened in the moment, which can allow for unconscious bias to seep in.

The result is that a qualified immunity defense works more often than not.

“The reasonable officer standard is [often] too broad in terms of interpretation. And then what was clearly established law at the time is too narrow,” Malveaux says. “So, the frustration is how do we get those standards to make sense? Because at this point, the case law is quite skewed, to the point where people are thinking, well, this is almost absolute immunity, let’s call it like it is.”

In excessive force lawsuits for example, an investigation by Reuters found that police officers won based on qualified immunity in 56% of cases from 2017-2019, up from 43% the three years prior.

It’s even more difficult to beat in First Amendment cases, deliberate indifference to medical needs cases and false arrest cases, says David Lane, a prominent civil rights attorney who is representing the Partridges, “which makes it really hard to develop any sort of case law.”

The doctrine of qualified immunity has drawn the ire of both the right and the left, as conservative groups like the libertarian think-tank Cato Institute have joined forces with groups like the NAACP and the ACLU in challenging it. Progressives tend to argue that it encourages police misconduct and prevents relief for those injured by law enforcement. Conservatives tend to argue against the way it came about, developed through the courts and not by an act of Congress. The Supreme Court’s position on qualified immunity, and its refusal to revisit the issue in recent years, has drawn dissents from both Justice Sonia Sotomayer, seen by many as the most liberal justice, but also Clarence Thomas, easily the most conservative member of the judicial body.

Congress could also explicitly prohibit qualified immunity, but the body has historically declined to do so. Although there are a few federal bills currently being considered in the wake of George Floyd's death and the ensuing national protests in support of Black Lives Matter, many think they are unlikely to pass. All of which has frustrated police reform advocates, as it leaves very little recourse for people who believe their civil rights have been violated.

In Colorado, however, the new Enhance Law Enforcement Integrity Act, signed into law by Gov. Polis on June 19, explicitly eliminates qualified immunity defense in state court, bypassing the federal standard altogether. Although it doesn't take effect until 2023, under the new law officers can be sued for individual misconduct and liable up to \$25,000 or 5% of a civil judgement, whichever is lower, if it's found they violated the bill of rights in the Colorado Constitution or failed to intervene when those rights were being violated. Officers can also have their certification permanently revoked if they are found civilly liable for using excessive force. As Lane puts it, the new law "gives the cops some skin in the game."

"Now the Colorado statute is better by far than the federal statute, so we are going to be filing cases throughout the state of Colorado now and ignoring federal court in many, many instances," he says.

The law also bans the use of chokeholds, requires the use of body cameras and enacts limits on when police are allowed to use force on a fleeing suspect, among other things.

Boulder County Sheriff Joe Pelle testified in front of both the Colorado House and Senate in regards to the new law, in an effort to make sure it didn't go too far. (Although he declined to comment specifically on the Partridge case, he says it's standard practice for his office to claim qualified immunity for any civil litigation his department faces.)

When first introduced, the bill made officers liable for up to \$100,000 and didn't allow them to take out any type of liability insurance. (At the time, Pelle said he would resign immediately if those conditions were accepted.) Early language also didn't clearly define acceptable officer standards or include a clause that would allow officers to avoid liability if they acted in good faith.

"The work that police officers do is tricky, split-second decisions, difficult situations, loaded with emotion," he says. "If you take away qualified immunity and you strip limitations [to the amount of damages], you have to give [law enforcement] something in regards to what's acceptable behavior because otherwise the standard is perfection and that's not attainable. We're dealing with human beings, who are dealing with human beings, so perfection isn't going to happen."

Pelle says the new law will increase accountability for law enforcement officers, which he sees as a good thing, but that it could also discourage people from becoming cops in the first place. Just last week, he says he had five retirements and two resignations in the Sheriff's Office, although they aren't necessarily attributable to the new police reform bill.

"We can unfortunately legislate away the will and the desire for anybody to want to be a peace officer," he says. "And that's a huge part of the solution is the ability to recruit diverse, well-educated, young people to be our next generation of cops and right now the atmosphere is really demoralizing."

Other states have limited qualified immunity through state courts, but Colorado is the first state to outright eliminate the defense for state constitutional claims (although it only applies to peace officers and not other government officials.) It's a big step forward for police reform advocates, and a step many hope other states will follow through their own legislative process.

"I think the states are trying to do what the federal government won't, which is create somewhat of a just, relatively not horrifyingly oppressive society. So I think the states are trying to fix what the current administration and courts and the federal bench being appointed by the Trump administration is doing," says Erica Grossman, a Denver-based attorney who argued against the use of qualified immunity in a wrongful death lawsuit for years before the 10th District Court of appeals dismissed the qualified immunity defense in March 2019.

In that case, a Thornton police officer shot, and killed, a man in his driveway just seconds after asking him to drop the bat he was holding. The man's wife had called the police for help, because her husband was "acting crazy" and was most likely on drugs. After the 10th Circuit dismissed the qualified immunity claims, Grossman says they settled the case.

But that case is fairly limited in establishing any sort of precedent, she says. And while there's momentum around police accountability related to the current Black Lives Matter protests, there's still a long way to go with reform efforts related to how the police interact with the mentally ill.

When it comes to Ryan Partridge, the qualified immunity defense has essentially "gutted" his case, according to Lane. Although most of the excessive force claims still stand, the judge has ruled that the Sheriff's Office and its mental health workers can't be held responsible for Ryan's injuries.

"The main thrust of the case is that they failed to do anything about his psychosis, which led him to pluck out his own eyeballs," Lane says. "That's gone from the case. All we've got now are a bunch of guards going one-on-one with a large psychotic inmate, and these guards are kind of in a catch-22: they've got to control the guy and they've gotta use force to do it."

Although Lane has filed a motion to reconsider the qualified immunity ruling after he deposed some of the mental health workers, "motions to reconsider are few and far between [in terms of] being granted, so we'll see what happens," he says.

If the judge dismisses that motion to reconsider, the case will proceed with the excessive force claims against a handful of individual officers. Only after that is all settled will the Partridges be able to appeal the qualified immunity ruling at the 10th District Court.

"There's just no accountability," Shelley says. "Until there is accountability, they can dance around this all they want. They're going to incentivize not using force. They're going to ask people to not use chokeholds. They're going to try to not do no-knock warrants. That's not going to do anything. They know they don't have accountability."

It's been three and half years since Ryan blinded himself. Still the case against the Sheriff's Office could take several more years to resolve as it slowly makes its way through the process. Shelley is exhausted. Ryan's father, Richard, is angry and frustrated. Ryan is surprised more than anything, he says.

“It’s not something we were taught in like a government class in high school that [law enforcement] would not be prosecuted or sued if they violated the law,” he says. “You would think that there would be a check and balance on some level.”

A lot of the time, he just withdraws: “I put my head in the sand a bit if you will,” he says. He sleeps a lot and it can be difficult for him to just make it through the day. Although many days are hard, Ryan is taking medication and his schizophrenia is relatively stable.

He goes on hikes with his parents several times a week and even has gone camping with his friends a few times this summer. And he’s hopeful — hopeful that he could win the appeal, hopeful that the national attention around qualified immunity might help his case, hopeful that he’s in “the final leg of the journey.”

His parents are hopeful, too. They’re hopeful that Ryan may be able to one day see again. With scientific advancements, the use of prosthetic eyes is gaining traction and there’s even talk about the possibility of eye transplants in the not-so-distant future.

“They’re making great advances all around the world... So, we have a lot of hope that on some level you’ll be able to see some day,” Richard tells Ryan.

“But,” Shelley adds, “you know all of that takes money too.”