



'Qualified Immunity': A Doctrine That Made It Much Harder To Sue The Police

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All right. Now to a legal doctrine that has made it much harder to sue police officers for violating your civil rights - it is called qualified immunity. Today Democrats in Congress rolled out a package of police reform legislation that includes new restrictions on the rule. NPR's Martin Kaste reports on why such changes might improve American policing.

MARTIN KASTE, BYLINE: Clark Neily thinks qualified immunity is a monstrous doctrine.

CLARK NEILY: I describe it as the cornerstone of our near zero accountability policy for law enforcement.

KASTE: He's with the libertarian think tank the Cato Institute. It's been campaigning against qualified immunity, which is basically a series of legal precedents that say you can't sue an officer for doing something wrong unless another court in your part of the country already had a case just like yours and ruled that that action was illegal. Neily says it's become, quote, "a get out of accountability free card."

NEILY: And I think that has really undermined public confidence in and support for law enforcement. And I think it's a huge contributing factor to the outrage that we've been seeing.

(SOUNDBITE OF PROTEST)

UNIDENTIFIED PROTESTERS: (Chanting) No justice, no peace - (unintelligible) the police.

KASTE: That's certainly what you're hearing now from some of the protesters in Minneapolis. This is Tony Miles, an African American in his 30s.

TONY MILES: What we need to do is look at qualified immunity for police officers. That seems to me to be the thing that keeps getting them off whenever they kill black people and just people in general.

KASTE: The people pushing for this change say the Supreme Court has tightened qualified immunity so much in recent decades that it's become nearly impossible for courts to recognize even blatant examples of police misconduct as illegal. But police see things very differently. For them, qualified immunity has become a necessary safe harbor in a fast-paced, often dangerous job.

TIM TALBOT: It does give them some measure of confidence to act without fear of being sued.

KASTE: Tim Talbot is a lawyer who specializes in defending officers in California.

TALBOT: If the doctrine is eliminated to the point where there is no threshold and every case goes forward and a jury decides for itself, then, yeah, I could see where many officers would say, why would I subject myself to that?

KASTE: Some police think it'll be harder to recruit enough officers without the protection of qualified immunity. Others predict that cops will start to hang back and avoid risky situations, even if it means criminal behavior goes unchallenged. But retired police officer Diane Goldstein doubts that that would really happen.

DIANE GOLDSTEIN: I never once thought in the back of my head - oh wow, I have or I don't have qualified immunity; I should or I shouldn't be doing that.

KASTE: Goldstein now chairs a reform group called the Law Enforcement Action Partnership. She supports limiting qualified immunity, not because she thinks it'll change the legal calculus that cops make in the heat of the moment but because she thinks the threat of lawsuits will pressure their departments.

GOLDSTEIN: It will force government entities and agencies to properly train their officers, and that's badly needed.

KASTE: There is also a theory that ending qualified immunity will bring market forces into the mix. The University of Chicago Law School's John Rappaport has studied the influence of insurance companies over policing.

JOHN RAPPAPORT: You could arrive at a system where the bad officers get priced out of the market - their insurance becomes so expensive that it's just not worth it anymore and they find another job.

KASTE: But for this to work, he says cities would have to stop indemnifying their police, so individual officers would have to buy their own insurance and feel the pain of rising premiums. So he's skeptical.

RAPPAPORT: In terms of actually changing the behavior of officers on the street, I don't think it's on the top of my list.

KASTE: Rappaport just did a study on officers who are fired from one department and find work at another. For him, bad cops getting rehired is a more urgent problem. But he also admits that ending qualified immunity might have what he calls a significant emotional and symbolic effect by signaling to people that the system is not rigged against them.

Martin Kaste, NPR News.