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# Forcing the Issue

Activist veterinarian seeks rights for arrestees as well as animals

BY KATHRYN R. URBONYA

How police officers arrest suspects matters. Even guilty suspects may successfully sue police officers under the Fourth Amendment for using unreasonable force in seizing them.

Officers may have more leeway, however, if the U.S. Supreme Court rules for the government in *Saucier v. Katz*, No. 99-1977. At issue: When do officers enjoy qualified immunity for unreasonable force claims?

When the qualified immunity defense is successful, officers have a broad shield—they won't pay money for their constitutional violations and they will get out of the lawsuit as soon as possible.

The Supreme Court has said the Fourth Amendment is violated when police use force that is objectively unreasonable. The circuits are split, however, on whether that determination bars a finding of qualified immunity.

Some circuits have held that the qualified immunity defense and the Fourth Amendment have identical standards in excessive force cases. Once the jury finds a constitutional violation, damages follow.

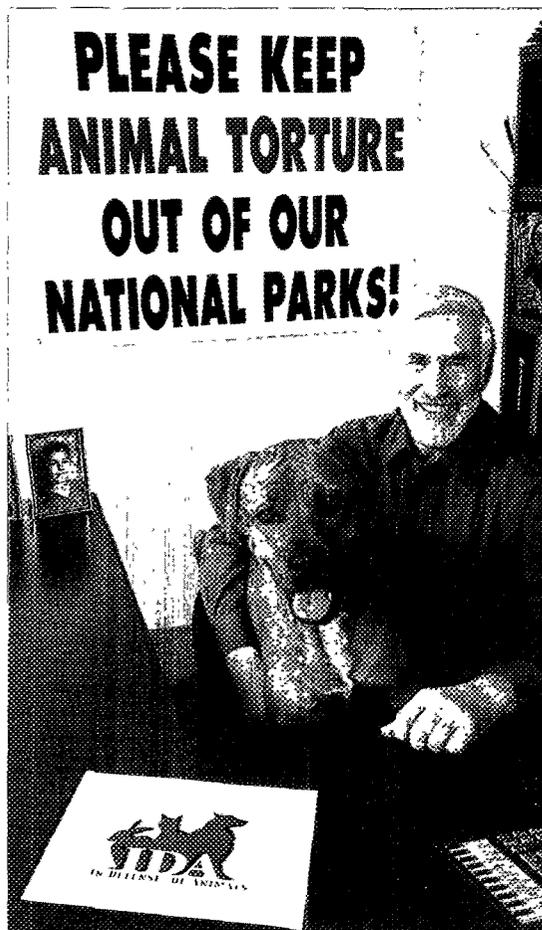
Other circuits, however, have viewed the qualified immunity defense as giving officers a second bite at the apple. Even if they erred in using reasonable force, these circuits say, case law may not have sufficiently warned them that they violated the Fourth Amendment.

## Unwelcome Message

Elliott M. Katz, a 60-year-old veterinarian, attended an event at the Presidio military base in San Francisco, commemorating its conversion into a national park.

When then-Vice President Al Gore addressed the crowd, Katz unfurled a banner reading "Please Keep Animal Torture Out of Our National Parks." Military police officer Donald Saucier, an army private, quickly intervened. He was

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ELLIOT KATZ, arrested after protesting at a military base, alleges unreasonable force by military personnel.

aided by an army sergeant.

Katz alleges that one officer grabbed him from behind while another snatched the banner. The officers then picked him up, rushed him to a military van and "violently threw" him inside, he claims. The parties disagree as to whether Katz resisted arrest. The officers handcuffed him and took him to the station, but they did not cite him with any violation.

Katz filed suit, alleging the officers used unreasonable force and did not have probable cause in making the arrest, in violation of the Fourth Amendment. He also claimed the officers violated his free speech rights under the First Amendment.

The District Court refused to grant summary judgment for officer Saucier on his assertion that he had qualified immunity for the un-

reasonable force claim. It ruled for him on the other claims, however.

On interlocutory appeal, the 9th U.S. Circuit Court of Appeals in San Francisco affirmed, agreeing that a jury must decide whether the officer had used reasonable force. It also rejected qualified immunity because it held that the objective reasonableness standards for the Fourth Amendment and qualified immunity were identical.

In prior cases, the Supreme Court has said reasonableness under the Fourth Amendment is an objective standard, one that does not require plaintiffs to prove that officers acted maliciously in using force. Factors to be weighed include the alleged crime, the danger posed by the suspect, and whether he or she resisted arrest.

In determining reasonableness for the qualified immunity defense, the Court has rejected examining the officer's state of mind.

Instead, the Court considers two issues: Did case law clearly establish a constitutional violation? Or, if case law clearly established only general legal principles, did the "contours" of the constitutional rights give the officers sufficient notice of a Fourth Amendment violation? If either is true, officers do not have immunity.

For the 9th Circuit, both the constitutional and immunity standards examine how a reasonable officer would have acted. It thus determined that a jury's verdict as to reasonableness would decide whether the officer had to pay damages.

If the Court agrees with the 9th Circuit, suspects are likely to file more civil rights lawsuits. If it sides with the government, many more officers will escape damages.

Either way, the Court's decision will define our Fourth Amendment right to personal security. ■