Boston College Law Review

Volume 59
Issue 9 *Electronic Supplement*

Article 17

4-11-2018

Cementing Good Law by Tolerating Bad Outcomes: Examining the Eighth Circuit's Commitment to Upholding the Defense of Qualified Immunity for Prison Officials in *Kulkay v. Roy*

Peter Diliberti
Boston College Law School, peter.diliberti@bc.edu

CEMENTING GOOD LAW BY TOLERATING BAD OUTCOMES: EXAMINING THE EIGHTH CIRCUIT'S COMMITMENT TO UPHOLDING THE DEFENSE OF QUALIFIED IMMUNITY FOR PRISON OFFICIALS IN *KULKAY v. ROY*

Abstract: On February 2, 2017, the U.S. Court of Appeals for the Eighth Circuit decided *Kulkay v. Roy* and affirmed the U.S. District Court for the District of Minnesota's dismissal of plaintiff's civil rights claims under the Eighth and Fourteenth Amendments. The plaintiff, a former inmate at a Minnesota correctional facility, sued the correctional facility and related officials for failing to install safety features on a piece of machinery and not providing him with adequate usage training after he suffered damage to his hand while operating the beam saw. The district court held that the plaintiff inmate failed to state a claim under the Eighth Amendment due to qualified immunity. The Eighth Circuit affirmed this decision, holding that the prison officials did not exhibit deliberate indifference and therefore were entitled to the defense of qualified immunity. The Eighth Circuit based this reasoning in the fact that the plaintiff failed to show that the prison officials acted with deliberate indifference towards his health or safety. This comment argues that the Eighth Circuit was correct in re-emphasizing its commitment to the standard of deliberate indifference because the underlying policy motivations for the defense of qualified immunity dictate that a few bad outcomes, such as plaintiffs not receiving damages for harm caused to them, be tolerated in order to cement an otherwise good law.

INTRODUCTION

The Eighth Amendment to the United States Constitution provides that a citizen of the United States should not be subjected to "cruel and unusual punishments."[1] The founders who wrote the Constitution thought this was of such paramount importance that they included it as one of the first ten amendments in the Bill of Rights.[2] Today, plaintiffs frequently assert claims of Eighth Amendment violations in the prison confinement context.[3] A subset of these

[1] U.S. CONST. amend. VIII.

[2] *See id.*; Arthur E. Wilmarth, Jr., *The Original Purpose of the Bill of Rights: James Madison and the Founders' Search for a Workable Balance Between Federal and State Power*, 26 AM. CRIM. L. REV. 1261, 1281 (1989) (discussing further the Founders' original intentions behind the Bill of Rights). George Mason wrote a letter at the Virginia Ratifying Convention in 1788 arguing that the Bill of Rights is needed because it is an important way to "secure the liberties and happiness of the people." 2 BERNARD SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 793 (1971).

[3] *See* Hudson v. McMillian, 503 U.S. 1, 4 (1992) (discussing the Eighth Amendment in relation to an allegation that a prisoner was beaten by several prison officials while being transported from his cell); Estelle v. Gamble, 429 U.S. 97, 99–101 (1976) (discussing the Eighth Amendment in relation to

claims specifically involves injuries that take place while inmates are participating in their prison work assignments.[4]

In *Kulkay v. Roy*, plaintiff Steven Kulkay, a former inmate at a Minnesota correctional facility, sued the correctional facility and several employees, asserting an Eighth Amendment violation after he was injured using a beam saw in his prison work assignment.[5] Kulkay argued that because the correctional facility never installed the beam saw's safety guard, or formally trained him on how to operate the saw, there was an "objectively serious risk of harm" and that the prison officials knew of this risk.[6] The case was ultimately dismissed on the basis of qualified immunity for the prison officials, because Kulkay failed to show that the prison officials' state of mind constituted deliberate indifference toward the health and safety of the inmate plaintiff.[7]

The defense of qualified immunity is a well-established doctrine that has multiple policy perspectives and impacts.[8] In order to defeat the defense of qualified immunity in the contexts of prisons, a plaintiff must meet the standard of deliberate indifference.[9] Part I of this Comment both explains the standard of deliberate indifference, and explains the technical and policy aspects of the defense of qualified immunity.[10] Part II of this Comment then discusses the

---

an allegation that a prisoner received improper medical care after sustaining an injury while in prison). Under the Eighth Amendment, prison officials are not only forbidden from physically abusing prisoners, they are also obligated to care for the basic needs of the prisoner (i.e. food, shelter, and clothing). *See* Farmer v. Brennan, 511 U.S. 825, 832 (1994).

[4] *See* Kulkay v. Roy, 847 F.3d 637, 640 (8th Cir. 2017); Franklin v. Kan. Dep't of Corr., 160 F. App'x 730, 733–36 (10th Cir. 2005); French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985).

[5] *Kulkay*, 847 F.3d at 641. Kulkay had been operating the beam saw without any formal training from prison officials for one month prior to his injury, which occurred on August 5, 2013. *Id.* A beam saw is a "large, stationary machine that uses computers to automatically move and cut wood beams." *Id.* at 640.

[6] *Id.* at 643.

[7] *Id.* at 644.

[8] *See, e.g.*, Forrester v. White, 484 U.S. 219, 223 (1988) (discussing the necessity for qualified immunity for public officials in order to allow them to perform the duties of their job); Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (reasoning that qualified immunity exists in order to limit the amount of litigation to which public officials are subjected); Harlow v. Fitzgerald, 457 U.S. 800, 807 (1982) (stating that one reason for qualified immunity is to encourage people to take jobs in public service by affording them greater protection from suit). Some of these policy perspectives include shielding public officials from liability and encouraging people to go into public service careers by affording them extra protection while performing their job duties. *See Forrester*, 484 U.S. at 223 (focusing on allowing public officials to perform their job duties free from suit); *Forsyth*, 472 U.S. at 526 (highlighting the non-monetary costs of exposing public officials to litigation). As an example of the interaction between qualified immunity and a public official that is not a prison official, one can look towards some scholarship on the defense's relation to the Vice President. *See generally* James D. Myers, *Bringing the Vice President Into the Fold: Executive Immunity and the Vice Presidency*, 50 B.C. L. REV. 897 (2009) (explaining that the Supreme Court has not explicitly ruled whether the Vice President can claim absolute immunity as a defense, or whether the Vice President is limited only to qualified immunity).

[9] *Farmer*, 511 U.S. at 834. The standard of deliberate indifference is essentially the equivalent of criminal law recklessness. *Id.* at 839–40.

[10] *See infra* notes 13–70 and accompanying text.

specific facts of *Kulkay v. Roy*, and how it is relevant to the standard of deliberate indifference.[11] Lastly, Part III illustrates the specifics surrounding the deliberate indifference standard in the prison context, and argues that it is necessary to uphold the underlying policy motivations of the defense of qualified immunity.[12]

I. The Technical Framework of Qualified Immunity and the Policy Motivations Behind the Defense

The defense of qualified immunity is well established in law, as are the policy motivations behind the existence of the defense.[13] Section A of this Part examines the more technical aspects of qualified immunity, including the deliberate indifference standard and how it is applied to prison officials.[14] Section B of this Part highlights several of the main policy reasons behind qualified immunity that help illustrate why courts have continually acknowledged it as a valid defense for various public officials, including prison officials.[15]

A. Legal Framework for Analyzing a Defense of Qualified Immunity

The common law defense of qualified immunity is available to certain public officials in an attempt to allow them to carry out their duties without fear of facing a lawsuit for exercising discretion.[16] This defense balances the competing interests of giving citizens a remedy for relief when their rights have been violated by the government, while also making it possible for officials to do their jobs without constantly facing the high burdens of litigation.[17] The defense of quali-

---

[11] *See infra* notes 71–95 and accompanying text.

[12] *See infra* notes 96–120 and accompanying text.

[13] *See* Pearson v. Callahan, 555 U.S. 223, 231 (2009) (describing the burdens of discovery and trial as the motivating factor behind qualified immunity for public officials); *Forrester*, 484 U.S. at 223 (discussing the necessity for qualified immunity for public officials in order to allow them to perform the duties of their job); *Forsyth*, 472 U.S. at 526 (reasoning that qualified immunity exists in order to limit the amount of litigation to which public officials are subjected); *Harlow*, 457 U.S. at 807 (stating that one reason for qualified immunity is to encourage people to take jobs in public service by affording them greater protection from suit).

[14] *See infra* notes 16–51 and accompanying text.

[15] *See infra* notes 52–70 and accompanying text.

[16] *Harlow*, 457 U.S. at 807. *Harlow* explains that officials with "complex discretionary responsibilities"—including prosecutors, governors, and governor's aides—need to be afforded a high level of protection from suit. *Id.* The original defense of qualified immunity was enacted by statute and only available to judicial officers under 42 U.S.C. § 1983 and was later developed to include other public officials through a number of cases. *See id.* at 818 (discussing the evolution of immunity, beginning with absolute immunity for judges and extending to qualified immunity for government officials); Mitchell v. Shearrer, 729 F.3d 1070, 1074 (8th Cir. 2013) (clarifying the defense of qualified immunity in a case where an arresting officer was not entitled to qualified immunity, but his assisting officers were).

[17] *See* Butz v. Economou, 438 U.S. 478, 504–05 (1978) (noting that the main problem with allowing officials to have immunity lies in the inability of damaged plaintiffs to recover for violations of their constitutional rights).

fied immunity is not an absolute defense and will only shield public and government officials if the qualified immunity defense analysis is satisfied.[18] In order to overcome a qualified immunity defense, the plaintiff must meet both prongs of a two-prong test.[19] First, a plaintiff must show that there has been a violation of a constitutional or statutory right.[20] Second, that right has to be clearly established at the time of the defendant's alleged misconduct.[21] If a plaintiff fails either of these prongs, the defendant will be entitled to qualified immunity.[22]

One particularly prevalent application of the qualified immunity defense is in the prison confinement setting, as inmates frequently sue prisons and their employees for civil rights violations.[23] To successfully state an Eighth Amendment claim, a common example of a civil rights violation inmates assert, an inmate must satisfy two standards: one objective and one subjective.[24] Regarding the objective standard, the inmate plaintiff must show that the alleged violation is "objectively and sufficiently serious" so as to be considered cruel and unusual punishment.[25] Courts have held that a violation is objectively and sufficiently serious if an inmate either experiences actual harm or is exposed to a likely risk of harm.[26] As for the subjective standard, an inmate plaintiff must demonstrate

---

[18] *See Harlow*, 457 U.S. at 818 (finding that "government officials performing discretionary functions [are generally] shielded from liability for civil damages . . ." if the qualified immunity test is satisfied); *Mitchell*, 729 F.3d at 1074 (clarifying that qualified immunity will be granted to a public official "unless the official's conduct violates a clearly established constitutional or statutory right of which a reasonable person would have known"). Absolute immunity is distinct from qualified immunity in that it is generally only available to legislators when acting in their legislative capacity or to certain executive officials, such as the President of the United States. *See Harlow*, 457 U.S. at 807 (discussing the defense of absolute immunity). Absolute immunity is a much more powerful defense, as it provides a complete immunity from suit, whereas qualified immunity only provides limited immunity. *See id.* (discussing the fundamental difference between absolute and qualified immunity).

[19] *Mitchell*, 729 F.3d at 1074.

[20] *Id.*

[21] *Id.*

[22] *See* Ransom v. Grisafe, 790 F.3d 804, 812 n.4 (8th Cir. 2015) (noting that because the court found that the police officers did not violate any constitutional rights of the plaintiff, the court need not make a ruling on whether the constitutional right was clearly established at the time of the incident).

[23] *See Hudson*, 503 U.S. at 4–5 (discussing the Eighth Amendment in relation to an allegation that a prisoner was beaten by several prison officials while being transported from his cell); *Estelle*, 429 U.S. at 99–101 (discussing the Eighth Amendment in relation to an allegation that a prisoner received improper medical care after sustaining an injury while in prison).

[24] *Farmer*, 511 U.S. at 834, 846. *Farmer* also focuses on an Eighth Amendment claim in the prison context. *Id.* at 829. The case involved a transsexual prisoner filing a claim against prison officials for being violently assaulted in prison. *Id.* at 829–31. *Farmer* helped clarify the test for deliberate indifference that is followed by all circuits today when evaluating a qualified immunity defense. *See id.* at 847 (finding that "a prison official may be held liable under the Eighth Amendment . . . only if he knows that inmates face a substantial risk of serious harm and disregards that risk").

[25] *Id.* at 834.

[26] *See id.* (finding that "the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm"). Examples of a substantial risk of serious harm include an inmate being assigned to a room with a second inmate who is known to have sexually assaulted other in-

that the public official acted with a "sufficiently culpable state of mind."[27] For the prison work assignment context, that state of mind is deliberate indifference.[28]

The underlying rationale for the deliberate indifference standard is that an Eighth Amendment violation should only be found when there is an "unnecessary and wanton infliction of pain."[29] But, prior to 1994, there was a disagreement between the circuits about what the term deliberate indifference meant.[30] In 1994, the U.S. Supreme Court in *Farmer v. Brennan* clarified that deliberate indifference meant a mens rea of something more than negligence and less than purposeful or knowing; namely, it required the equivalent of criminal law recklessness.[31] In recognizing that this definition leaves much to be desired in terms of specificity, courts identified two elements for deliberate indifference, requiring an inmate plaintiff to show (1) that an official had actual knowledge of a substantial risk to the inmate's health or safety, and (2) that the given official failed to respond as a reasonable person would have responded to the risk in that situation.[32]

The first element clearly requires that a given defendant official have actual knowledge of the risk.[33] Actual knowledge is separate and distinct from constructive knowledge because it requires an official to be conscious of a substantial risk, whereas constructive knowledge requires only that the official should

---

mates, a correctional officer making verbal death threats to an inmate, and multiple paraplegic inmates being placed in solitary confinement for more than a day without access to food or medical care. Nelson v. Shuffman, 603 F.3d 439, 447 (8th Cir. 2010) (discussing inmate's prior sexual assaults); Irving v. Dormire, 519 F.3d 441, 445 (8th Cir. 2008) (discussing verbal death threats); Simmons v. Cook, 154 F.3d 805, 806 (8th Cir. 1998) (discussing paraplegic inmates).

[27] *Farmer*, 511 U.S. at 834 (quoting Wilson v. Seiter, 501 U.S. 294, 297 (1991)).

[28] *Id.*

[29] *Wilson*, 501 U.S. at 297; *see* U.S. CONST. amend. VIII (stating that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted").

[30] *See* Young v. Quinlan, 960 F.2d 351, 360–61 (3d Cir. 1992) (finding that deliberate indifference requires that an actor know or should have known about a sufficiently serious danger, thereby lowering the bar to meet the deliberate indifference standard); McGill v. Duckworth, 944 F.2d 344, 349 (7th Cir. 1991) (finding that deliberate indifference involves a subjective standard of recklessness). This circuit split was resolved in *Farmer* in 1994. 511 U.S. at 839–40.

[31] *Farmer*, 511 U.S. at 835–40. The term "mens rea" refers to the mental state of a defendant when they are committing the act with which they are charged. *See* Morissette v. United States, 342 U.S. 246, 252 (1952) (providing a variety of descriptive phrases for mens rea and discussing more broadly the concept of mental culpability for crimes).

[32] *See* Young v. Selk, 508 F.3d 868, 873 (8th Cir. 2007) (setting out the two elements of deliberate indifference).

[33] *Id.* Again, this is based on the underlying reasoning that there must be a wanton infliction of pain in order to have an Eighth Amendment violation. *Wilson*, 501 U.S. at 297 (finding that "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment"); *Young*, 508 F.3d at 873 (requiring the standard of deliberate indifference based on the Constitution's requirement of an "unnecessary and wanton infliction of pain" in order to violate the Eighth Amendment).

be aware of such a risk.[34] In 2007, the U.S. Court of Appeals for the Eighth Circuit provided an example of what it means for an official to have actual knowledge of a substantial risk of harm in *Young v. Selk*.[35] There, the court held that when a prisoner told officials about threats he had received from another prisoner, the officials had actual knowledge of a substantial risk.[36] The court implicitly reasoned that a prison official that has a direct conversation with a prisoner about a potential risk has actual knowledge of it.[37]

The second element is that the official must have failed to respond as a reasonable person would have responded to the risk in that situation.[38] Looking again to *Young*, the court ruled that there was evidence to support a finding that the prison officials acted unreasonably.[39] There was some evidence suggesting that the officials did not take any action in response to the information provided by the prisoner.[40] The court held that even if it were true that the prison officials had told the prisoner to file a formal complaint about the threat, they knew full well that these complaints are processed slowly, thus leaving the prisoner open to harm in the meantime.[41]

Providing further detail and clarification to the context of prison work assignments, a prison official acts with deliberate indifference towards an inmate's health or safety when they ask an inmate to work on a job that they are incapable of doing or that both creates a danger to them and is particularly painful.[42] Additionally, the official's state of mind is considered at the time of the alleged violation and not from a later point in time.[43] Once time has passed and more information has appeared, the risk has clearly come to fruition and it is unfair to expect prison officials to predict the future with any degree of certainty.[44]

The standard of deliberate indifference in the prison work assignment context is one that has been discussed frequently by courts, both in the Eighth Circuit and elsewhere.[45] Within the Eighth Circuit, courts generally follow the de-

---

[34] *See* Spruce v. Sargent, 149 F.3d 783, 786 (8th Cir. 1998) (holding that constructive knowledge, referred to as the "should have known standard," does not overcome the standard of deliberate indifference that is required to find an Eighth Amendment violation in a prison setting).

[35] *Young*, 508 F.3d at 873–74.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 873.

[39] *Id.* at 874.

[40] *Id.*

[41] *Id.*

[42] Ambrose v. Young, 474 F.3d 1070, 1078–79 (8th Cir. 2007) (quoting Sanchez v. Taggart, 144 F.3d 1154, 1156 (8th Cir. 1998)) (holding that a prison official who instructed an inmate to put out a fire near a live, low-hanging power line that the official knew was dangerous amounted to deliberate indifference).

[43] Lenz v. Wade, 490 F.3d 991, 993 n.1 (8th Cir. 2007).

[44] *Id.* The element of deliberate indifference is to be evaluated "at the time in question, not with hindsight's perfect vision." Jackson v. Everett, 140 F.3d 1149, 1152 (8th Cir. 1998).

[45] *See Franklin*, 160 F. App'x at 733–36 (holding that negligence of prison officials does not constitute deliberate indifference); Warren v. Missouri, 995 F.2d 130, 130 (8th Cir. 1993) (upholding

liberate indifference standard when deciding whether or not a qualified immunity defense is available, including when the Eighth Amendment is involved.[46] There have been many cases in which government officials have been able to avoid liability for damages because the deliberate indifference standard was not met, and the defense of qualified immunity was granted.[47] In 1996, the Eighth Circuit in *Stephens v. Johnson* granted a defense of qualified immunity for the chief administrator of a prison work program.[48] The court reasoned that the official's failure to address unsafe work conditions that led to the injury of several prisoners was at most negligent behavior, and could not amount to deliberate indifference.[49] The Eighth Circuit has also consistently held that failure to install safety devices on prison work assignment devices does not amount to deliberate indifference.[50] In each of these instances, the Eighth Circuit has granted the defense of qualified immunity for a public official due to a plaintiff's failure to satisfy the standard of deliberate indifference.[51]

B. Policy Motivations for the Defense of Qualified Immunity

There have been a number of cases that discuss and explain the policy motivations behind the defense of qualified immunity for public officials and how they have evolved over time.[52] One of the original justifications behind the qual-

---

qualified immunity when a plaintiff failed to show prison officials exhibited deliberate indifference towards the prisoner's medical problems); Bibbs v. Armontrout, 943 F.2d 26, 27 (8th Cir. 1991) (holding that the negligence of prison officials does not satisfy the standard of deliberate indifference required to defeat qualified immunity).

[46] *See Franklin*, 160 F. App'x at 733–36; *Warren*, 995 F.2d at 130–31; *Bibbs*, 943 F.2d at 27. The U.S. Supreme Court has explicitly discussed the deliberate indifference standard and subsequently bound all circuit courts to apply this standard when evaluating a defense of qualified immunity. *See Farmer* 511 U.S. at 834 (holding that the standard of deliberate indifference in the prison context essentially amounts to criminal law recklessness); *Estelle*, 429 U.S. at 106 (holding that a prisoner making an Eighth Amendment claim must show that prison officials acted with deliberate indifference towards the prisoner's medical problems to defeat qualified immunity).

[47] *See* Stephens v. Johnson, 83 F.3d 198, 200–01 (8th Cir. 1996) (holding that the chief administrator of a prison work program did not exhibit deliberate indifference by failing to remedy unsafe work conditions that caused injuries to several prisoners, as it only amounted to negligence); *Warren*, 995 F.2d at 130–31 (holding that prison officials did not exhibit deliberate indifference by failing to install safety devices on a saw that caused injuries to a prisoner); *Bibbs*, 943 F.2d at 27 (holding that several prison officials did not exhibit deliberate indifference by failing to install safety devices on an ink machine that caused a prisoner damage to his fingers).

[48] *Stephens*, 83 F.3d at 200–01.

[49] *Id.*

[50] *See Warren*, 995 F.2d at 130–31 (holding that prison officials did not exhibit deliberate indifference by failing to install safety devices on a saw that caused injuries to a prisoner); *Bibbs*, 943 F.2d at 27 (holding that several prison officials did not exhibit deliberate indifference by failing to install safety devices on an ink machine that caused a prisoner damage to his fingers).

[51] *Stephens*, 83 F.3d at 200–01; *Warren*, 995 F.2d at 130–31; *Bibbs*, 943 F.2d at 27.

[52] *See, e.g.*, *Pearson*, 555 U.S. at 231 (describing the burdens of trial and discovery as motivating factors behind granting public officials the defense of qualified immunity); *Forrester*, 484 U.S. at 223 (holding that absolute immunity was denied for a state court judge accused of violating the Fourteenth Amendment rights of a probation officer by firing her based on sex); *Forsyth*, 472 U.S. at 526 (hold-

ified immunity defense is that it allows government officials to perform the duties of their job without fear of being sued.[53] In 1967, the Supreme Court first declared in *Pierson v. Ray* that law enforcement personal would be granted the defense of qualified immunity on the grounds that they needed protection from financial liability for their actions.[54] This sole justification for qualified immunity was later expanded to include several other policy motivations.[55]

In that case, one of the primary concerns the Court had with public officials is that they only have a limited amount of time and energy to spend on the public issues that are the main focus of their jobs.[56] It is well established that government officials are charged with making numerous decisions at any given time, and these decisions can impact a large number of people.[57] As such, the Court reasoned it would not be advantageous for public officials to constantly grapple with the distractions that are associated with a lawsuit.[58] In 1997, the Court backtracked slightly on its motivations behind qualified immunity in *Richardson v. McKnight*, when it explained that the mere chance that a public official might be distracted by a lawsuit is not sufficient by itself to warrant the defense.[59]

Fortunately, the Supreme Court later clarified the motivations behind the defense of qualified immunity through several cases in 2009.[60] The Court explic-

---

ing that qualified immunity was granted for the Attorney General accused of violating federal rights of a plaintiff by intercepting telephone calls). Although some of these cases are discussing absolute immunity for judges and executive officials (i.e. President of the United States), the underlying policy motivations are the same for qualified immunity for prison officials. *See Pearson*, 555 U.S. at 231 (discussing the broad policy motivations behind qualified immunity and implying that it applies to any public official); *Forrester*, 484 U.S. at 223 (discussing the policy motivations behind absolute immunity for various executive officials).

[53] *See Forrester*, 484 U.S. at 223; *Forsyth*, 472 U.S. at 526. Two popular counterarguments to qualified immunity are that lawsuits are intended to (1) repay victims for some harm they experienced and (2) act as a deterrent for a certain, unfavorable type of behavior. *Forrester*, 484 U.S. at 223. If government officials have protection against suit, there will be no way for victims of some harm to obtain monetary damages from the government official who caused the harm. *See id.*; *Forsyth*, 472 U.S. at 526.

[54] *See* Pierson v. Ray, 386 U.S. 547, 555 (1967) (noting that a fundamental motivation behind qualified immunity is to protect officials from financial liability).

[55] *See Harlow*, 457 U.S. at 807 (expanding the underlying policy motivations for the defense of qualified immunity).

[56] *See id.* (reasoning that public officials often have "pressing public issues" to attend to, and that subjecting them to the burdens of litigation would inhibit their ability to focus on those issues).

[57] *See Forrester*, 484 U.S. at 223.

[58] *Id.* The burdens of litigation, particularly discovery, are well known, and alleviating public officials from them in all but those cases where the official acted with deliberate indifference is better for society. *See Forsyth*, 472 U.S. at 526 (discussing the burdens and costs of litigation on public officials and implying that qualified immunity is necessary in order to avoid those costs); *Harlow*, 457 U.S. at 816 (discussing the "substantial costs" of exposing public officials to litigation).

[59] *See* Richardson v. McKnight, 521 U.S. 399, 411 (1997) (reasoning that private prison guards who might be distracted by the possibility of a lawsuit against them did not warrant the granting of a defense of qualified immunity).

[60] *See* Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009) (discussing the "heavy costs" associated with litigation and finding that public officials might be better served by spending their time and energy

itly named the burdens of discovery and trial as the key motivating factors behind the defense of qualified immunity.[61] In doing so, the Court reasoned that because public officials only have a limited amount of time and energy to spend on issues that impact a great number of people, leaving them open to a great number of lawsuits would not result in an efficient allocation of their resources.[62]

A slightly less prevalent policy motivation behind qualified immunity is that without this protection, people would be discouraged from taking jobs as public officials.[63] If public officials were not afforded the defense of qualified immunity, they would face a great deal of liability because of the discretionary nature of their job.[64] These policy motivations are particularly evident in the context of law enforcement, specifically with prison officials, as they are charged with the difficult task of watching numerous inmates and ensuring their safety.[65] If the job duties of an official include protecting the safety of the public, either by apprehending criminals or by keeping them in custody, it is important for those officials to have the utmost protection.[66] Without the protection of qualified immunity, it would be difficult to find people to perform the duties of

---

elsewhere); *Pearson*, 555 U.S. at 231 (describing the burdens of discovery and trial as the motivating factor behind qualified immunity for public officials).

[61] *See Iqbal*, 556 U.S. at 685 (discussing the burdens of litigation and the impact they can have on public officials); *Pearson*, 555 U.S. at 231 (describing the time and energy of litigation as the primary reason behind the defense of qualified immunity).

[62] *See Iqbal*, 556 U.S. at 685 (explaining that public officials might be better served by not having to spend their time and energy on litigation); *Pearson*, 555 U.S. at 231 (clarifying the policy motivations behind the defense of qualified immunity).

[63] *See Forsyth*, 472 U.S. at 526 (discussing the possibility that without the protection of qualified immunity, people might be dissuaded from taking a job as a public official).

[64] *See Harlow*, 457 U.S. at 807 (discussing the importance of providing executive officials "who are required to exercise their discretion" with "greater protection than those with less complex discretionary responsibilities").

[65] *Correctional Officer Job Bulletin*, RICE COUNTY, MINN. (Jan. 24, 2017), http://agency.governmentjobs.com/rice/job_bulletin.cfm?JobID=1640133 [https://perma.cc/NA6T-62SR] (stating the job duties required of a correctional officer); *see also Pearson*, 555 U.S. at 227 (holding that a police officer who entered the residence of a suspected drug dealer without a warrant was entitled to qualified immunity); Wilson v. Layne, 526 U.S. 603, 605–06 (1999) (holding that police officers who brought reporters along on the execution of a search warrant were entitled to qualified immunity). Both *Pearson* and *Layne* were decided on the grounds that the alleged violations of a constitutional right were not clearly established at the time of the incident. *Pearson*, 555 U.S. at 243–44; *Layne*, 526 U.S. at 605–06. In ruling this way, the Supreme Court placed an emphasis on giving law enforcement officers the benefit of the doubt and more freedom to carry out the duties of their job. *Pearson*, 555 U.S. 243–44; *Layne*, 526 U.S. 605–06.

[66] *See Pearson*, 555 U.S. at 231 (granting the defense of qualified immunity for police officers in an alleged Fourth Amendment violation); *Layne*, 526 U.S. at 615–16 (upholding the defense of qualified immunity for police officers). In affording the protection of qualified immunity, the Court in *Layne* spent a great deal of time explaining its reasoning and seemed to take great measures to ensure that the police officers were afforded this protection. *See* 526 U.S. at 615–16 (narrowing the question to whether a police officer at this exact point in time would have believed it was reasonable and indicating that this is a difficult question in order to afford the officers the utmost protection).

various public officials as they would likely face numerous lawsuits and constantly be subjected to the significant time burdens of discovery and trial.[67]

It is important to understand the broad policy motivations behind the defense of qualified immunity because it helps explain why the defense exists in the first place, namely to afford protection to public officials and allow them to perform the duties of their job free from the extra burdens of litigation.[68] It also clarifies the establishment of the standard of deliberate indifference as a means to ensure that protection to officials.[69] Finally, it follows logically that the standard of deliberate indifference is ultimately necessary to protect public officials because if the bar were any lower, it would result in more litigation against public officials for simply performing their job duties.[70]

II. Examining *Kulkay v. Roy* and Its Application of the Standard of Deliberate Indifference

Courts have faced many difficult decisions regarding whether or not to grant the defense of qualified immunity for public officials, particularly when an inmate suffers bodily harm while under the supervision of a prison official.[71] This Part begins by discussing the decision made by the U.S. Court of Appeals for the Eighth Circuit in *Kulkay v. Roy*.[72] Next, it provides more information on the relevant facts of *Kulkay* that the Eighth Circuit used to come to its decision.[73] This Part concludes by explaining how the Eighth Circuit ap-

---

[67] *See Pearson*, 555 U.S. at 231 (naming explicitly the burdens of discovery and trial as the key motivations behind the defense of qualified immunity); *Forrester*, 484 U.S. at 223 (explaining that public officials bear the burdens and costs of litigation); *Forsyth*, 472 U.S. at 525–26 (discussing the burdens and costs of litigation on public officials and implying that qualified immunity is necessary in order to avoid those costs); *Harlow*, 457 U.S. at 816 (discussing the significant costs of exposing public officials to litigation).

[68] *See Pearson*, 555 U.S. at 231 (discussing the policy motivations behind qualified immunity); *Forrester*, 484 U.S. at 223 (explaining that the importance of qualified immunity lies in providing protection to officials performing the duties of their job); *Forsyth*, 472 U.S. at 526 (reasoning that keeping public officials focused on their job duties and not having them distracted by a lawsuit is an important justification for qualified immunity).

[69] *See Farmer*, 511 U.S. at 834 (explaining that the standard of deliberate indifference is the state of mind required of prison officials in order for qualified immunity to be defeated); *Young*, 508 F.3d at 873 (noting that the motivation behind the standard of deliberate indifference is consistent with the idea that only an "unnecessary and wanton infliction of pain" violates the Eighth Amendment).

[70] *See Farmer*, 511 U.S. at 834 (explaining the standard of deliberate indifference); *Forrester*, 484 U.S. at 223 (explaining that the importance of qualified immunity lies in not exposing public officials to the burdens of litigation).

[71] *See, e.g.*, Pearson v. Callahan, 555 U.S. 223, 231 (2009) (granting qualified immunity for police officers accused of violating a plaintiff's Fourth Amendment rights); Farmer v. Brennan, 511 U.S. 825, 838 (1994) (granting qualified immunity for prison officials and explaining the deliberate indifference standard); Kulkay v. Roy, 847 F.3d 637, 645 (8th Cir. 2017) (granting prison officials qualified immunity for alleged Eighth Amendment violations).

[72] *See infra* notes 75–80 and accompanying text.

[73] *See infra* notes 81–85 and accompanying text.

plied the deliberate indifference standard before granting the prison officials a defense of qualified immunity.[74]

In 2017, the Eighth Circuit decided *Kulkay v. Roy*, and held that showing that there were unsafe prison work conditions does not, on its own, prove that prison officials acted with deliberate indifference with regard to inmate health or safety.[75] The court found that there were no facts asserting that the prison officials had actual knowledge of the risk to Kulkay and therefore upheld the dismissal of the case based on the defense of qualified immunity.[76]

The Eighth Circuit joined several other circuits in establishing a similar precedent.[77] Kulkay brought claims against the prison officials alleging violations of his Eighth Amendment rights, Fourteenth Amendment rights, and claims of negligence based on allegations that there were no safety guards on the beam saw and that he never received proper training on how to operate it.[78] Procedurally, the U.S. District Court for the District of Minnesota granted the prison officials' motion to dismiss the claims on the grounds that Kulkay failed to state a claim for which relief could be granted.[79] Kulkay appealed, arguing that the district court erred in dismissing his Eighth Amendment claims and the Eighth Circuit affirmed.[80]

The facts of *Kulkay* are relatively straightforward.[81] Steven Kulkay was working in the Faribault, Minnesota correctional facility's industrial workshop and was tasked with operating a beam saw.[82] After just one month of operating the beam saw, Kulkay completely severed three of his fingers and partially severed a fourth finger, sustaining full and permanent damage to his three fingers and partial damage to the fourth finger.[83] He brought claims under 42 U.S.C.

---

[74] *See infra* notes 86–95 and accompanying text.

[75] *Kulkay*, 847 F.3d at 645.

[76] *Id.* at 644, 646.

[77] *See id.* at 645 (upholding qualified immunity for prison officials because the standard of deliberate indifference was not met); Franklin v. Kan. Dep't of Corr., 160 F. App'x 730, 733–36 (10th Cir. 2005) (holding that mere negligence of prison officials does not amount to deliberate indifference for the purposes of defeating a qualified immunity defense); French v. Owens, 777 F.2d 1250, 1257–58 (7th Cir. 1985) (holding that a prison not in compliance with ideal safety precautions does not amount to an Eighth Amendment violation and awarding the prison officials qualified immunity).

[78] *Kulkay*, 847 F.3d at 641.

[79] *Id.* at 640. The applicable rule used by the prison officials to make this argument is Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Id.*

[80] *Id.* at 640, 646.

[81] *See id.* at 640–41. Kulkay was incarcerated for first-degree burglary of an occupied dwelling house and offering a forged check. *Minnesota Public Criminal History*, MINN. BUREAU CRIM. APPREHENSION, https://cch.state.mn.us (Mar. 14, 2018) (follow "Begin Search" hyperlink; then search for Kulkay, Steven, DOB: 02/17/1981). The facts are straightforward insofar as the events were apparent and relatively uncontested at the trial court level and the prison officials' main argument is that Kulkay's claims were barred by qualified immunity. *See Kulkay*, 847 F.3d at 641.

[82] *Kulkay*, 847 F.3d at 640.

[83] *Id.* at 641. Kulkay alleged that he was injured because the prison officials never installed the safety guards on the beam saw. *Id.* Doctors were not able to undo the damage and reattach Kulkay's severed fingers. *Id.*

§ 1983 against the prison officials for violating his civil rights, specifically violating the Eighth and Fourteenth Amendments.[84] The prison officials filed, and the trial court granted, a motion to dismiss on the grounds that any Fourteenth Amendment claims could only be brought as Eighth Amendment claims, and that the Eighth Amendment claims were barred because the prison officials were entitled to the defense of qualified immunity.[85]

The U.S. District Court for the District of Minnesota found that Kulkay failed to state an Eighth Amendment violation based upon the doctrine of qualified immunity.[86] On appeal, the Eighth Circuit did not discuss the merits of whether or not the harm that Kulkay faced was objectively and sufficiently serious.[87] Instead, the court operated under the assumption that asking Kulkay to operate a beam saw without any safety guards or formal training was "objectively and sufficiently serious," and instead decided the case based on the second showing requirement.[88] The Eighth Circuit held that Kulkay failed to allege facts indicating that the prison officials' state of mind amounted to deliberate indifference.[89] The court found that the mere fact that there were state and federal safety regulations in place that required guards on the beam saws was not enough to establish deliberate indifference.[90]

The Eighth Circuit followed a similar line of reasoning established by the Supreme Court in 1994, in *Farmer v. Brennan*, holding that it is not enough of an error to amount to a violation of a constitutional right if a prison official fails to remove a risk that the prison official should have known about.[91] The two-prong test for qualified immunity requires that there be both a violation of a constitutional right and that the right be clearly established.[92] In *Kulkay*, the Eighth Circuit held that there was no violation of the Eighth Amendment's protection

---

[84] *Id.* Section 1983 holds any person who deprives another person of a constitutional right liable for civil damages. 42 U.S.C. § 1983 (2012). Kulkay also brought negligence claims against the prison officials, but these claims are not part of the key holding and will not be discussed. *Kulkay*, 847 F.3d at 641.

[85] *Kulkay*, 847 F.3d at 641. The Fourteenth Amendment incorporates the Eighth Amendment when dealing with state, not federal actions. Malloy v. Hogan, 378 U.S. 1, 3–4 (1964). Therefore, any claims Kulkay had concerning the rights protected by the Eighth Amendment could only be made under that amendment, and not the Fourteenth Amendment. *Kulkay* 847 F.3d at 641. Kulkay's negligence claims were barred by Eleventh Amendment immunity. *Id.*

[86] *Kulkay*, 847 F.3d at 64.

[87] *Id.* at 644.

[88] *Id.* at 644–45. The court was clear in its opinion that by assuming the risk of harm the plaintiff faced was objectively and sufficiently serious, it in no way made any binding decision as to this matter. *Id.*

[89] *Id.* at 644.

[90] *Id.* at 645. Here, Kulkay failed to allege any facts that established that the prison officials acted with deliberate indifference towards his health or safety by failing to instruct him how to operate the beam saw or by failing to install the safety guards on it. *Id.* at 646.

[91] *See Farmer*, 511 U.S. at 838 (granting qualified immunity for prison officials and explaining the deliberate indifference standard); *Kulkay*, 847 F.3d at 645 (granting qualified immunity for prison officials).

[92] Mitchell v. Shearrer, 729 F.3d 1070, 1074 (8th Cir. 2013).

against cruel and unusual punishment, and therefore did not go on to determine whether this right was clearly established at the time of the incident.[93] On appeal, Kulkay argued that there were a number of possible Eighth Amendment violations and that, when examined in concert with one another, a qualified immunity defense should not be allowed.[94] The Eighth Circuit dismissed Kulkay's claims because he was not able to show that the prison officials had actual knowledge of the dangers posed by the alleged violations, and thus those prison officials did not act with deliberate indifference.[95]

III. The Deliberate Indifference Standard Defended in Light of the Policy Motivations Behind the Defense of Qualified Immunity

The deliberate indifference standard can result in prison officials avoiding punishment for harms that prisoners endure under their supervision.[96] This Part begins by focusing on the deliberate indifference standard and its application in *Kulkay v. Roy*, focusing on the fact that this standard makes it less likely that prisoners will receive justice from the prison officials charged with their safekeeping.[97] After briefly reiterating the policy motivations behind qualified immunity, this Part argues that the deliberate indifference standard is necessary in order to ensure that the defense of qualified immunity is upheld by the support of its underlying policy motivations.[98]

In *Kulkay v. Roy*, the immediate result of the deliberate indifference standard was that prison officials were not held liable for Kulkay's debilitating injuries, despite being responsible for overseeing inmate safety and well-being at the prison.[99] Because Kulkay failed to show that the prison officials had actual knowledge of the risks of using the beam saw without the safety guard, the U.S. Court of Appeals for the Eighth Circuit dismissed the case for failure to state a claim, and he was denied legal recourse for his injuries.[100] Although this result

---

[93] *Kulkay*, 847 F.3d at 645. There are a number of cases that establish that if one of the prongs of the qualified immunity analysis is not met, the court need not be concerned with the other. *See* Ransom v. Grisafe, 790 F.3d 804, 812 n.4 (8th Cir. 2015) (citing *Pearson*, 555 U.S. at 236; Fields v. Abbott, 652 F.3d 886, 894 (8th Cir. 2011)).

[94] Appellant's Reply Brief at 5, *Kulkay*, 847 F.3d 637 (No. 16–1801), 2016 WL 3755732, at *5. The alleged violations included: (1) no safety guards on the beam saw; (2) Kulkay not receiving formal training; (3) the prison officials being aware of similar injuries; and (4) these conditions violating state and federal regulations. *Id.* The essence of Kulkay's argument is that when all of these violations are considered together, the prison officials acted with deliberate indifference towards his health and safety. *Id.*

[95] *Kulkay*, 847 F.3d at 644, 646.

[96] *See* Kulkay v. Roy, 847 F.3d 637, 645 (8th Cir. 2017) (allowing prison officials to claim qualified immunity on the grounds that the plaintiff did not meet the standard of deliberate indifference).

[97] *See infra* notes 99–107 and accompanying text.

[98] *See infra* notes 108–120 and accompanying text.

[99] *Kulkay,* 847 F.3d at 645–46.

[100] *Id.* at 644–46.

may at first appear counterintuitive to the purpose of Eighth Amendment claims, which would otherwise grant recourse to plaintiffs in similar situations, the underlying policy motivations behind the defense of qualified immunity make it apparent that the standard of deliberate indifference is necessary to give the defense the weight it was intended to have.[101]

The standard of deliberate indifference is undoubtedly high, but it affords officials the protections that the defense intended to provide in the first place.[102] Without the greater protection afforded by the standard of deliberate indifference, it would be much easier to prove that a violation is serious enough to warrant an Eighth Amendment violation, and thus officials would constantly be forced to face the high burdens of litigation.[103] This would result in increased risk of financial liability for officials, which the defense of qualified immunity seeks to prevent.[104] Additionally, without the high standard of deliberate indifference, public officials would become preoccupied by the time and energy burdens associated with discovery and trial.[105] Public officials are tasked with making important decisions for a number of people at one time and they cannot afford to be distracted by the time and effort associated with defending a lawsuit.[106] Having the standard of deliberate indifference in place makes it more

---

[101] *See* Farmer v. Brennan, 511 U.S. 825, 834, (1994) (explaining the standard of deliberate indifference and implying that it makes it more difficult for a public official to be found liable); Forrester v. White, 484 U.S. 219, 223 (1988) (explaining that the main policy motivation behind qualified immunity is to allow officials to continue to perform the duties of their job without the distraction of a lawsuit); Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (implying that without the defense of qualified immunity, officials would be more likely to face lawsuits and be distracted from their job duties); Imbler v. Pachtman, 424 U.S. 409, 432–33 (1976) (White, J., concurring) (explaining that the main reason behind an Eighth Amendment claim is to provide a means for an injured party to receive monetary damages). *Forrester* and *Forsyth* illustrate the key policy motivations behind the defense of qualified immunity, primarily the need to afford protection to public officials in order to allow them to perform their job duties. 484 U.S. at 223; 472 U.S. at 524.

[102] *See supra*, note 101 and accompanying text.

[103] *See Farmer*, 511 U.S. at 834 (discussing the standard of deliberate indifference in greater detail); Young v. Selk, 508 F.3d 868, 873 (8th Cir. 2007) (clarifying the motivation behind the standard of deliberate indifference as remaining consistent with the idea that only an "unnecessary and wanton infliction of pain" violates the Eighth Amendment, and implying that this is a higher bar to defeat qualified immunity); LAWYERS FOR CIVIL JUSTICE ET AL., LITIGATION COST SURVEY OF MAJOR COMPANIES 1, 2–4 (2010) (discussing the numerical costs of litigation and the burden this imposes on litigants). Although this survey looks at company litigation costs and not an individual plaintiff's costs, it still provides some idea of how costly litigation can be. LAWYERS FOR CIVIL JUSTICE, *supra*, at 2–4. The study found that the average company from 2006–2008 paid at least $621,880 in discovery costs alone per case. *Id.*

[104] *See* Pierson v. Ray, 386 U.S. 547, 555 (1967) (explaining that an underlying policy motivation for qualified immunity is to avoid exposing public officials to financial liability).

[105] *See* Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009) (explaining the significant costs that accompany litigation and noting that public officials have more important tasks to spend their limited time and energy on); Pearson v. Callahan, 555 U.S. 223, 231 (2009) (highlighting the burdens of discovery and trial and finding that these burdens are the grounds that support the defense of qualified immunity for public officials).

[106] *See Pearson*, 555 U.S. at 231 (reasoning that exposing public officials to increased litigation would result in the officials having less time to spend accomplishing the more important tasks of their

difficult for a plaintiff to overcome the defense of qualified immunity, which in turn allows public officials to remain focused on their duties.[107]

It is particularly important to have this standard of deliberate indifference for a qualified immunity defense in the context of prison officials.[108] Being a prison official is not a glamorous job—it often involves working odd hours and dealing with difficult circumstances related to prisoners.[109] For example, a job posting for a correctional officer at a facility in Faribault, Minnesota, requires that applicants be available to work rotating shifts twenty-four hours per day, seven days a week.[110] Additionally, the yearly salary of these prison officials can be as low as $41,080.[111] The difficulties that accompany this job necessitate the protections afforded by the standard of deliberate indifference; otherwise, there may not be people willing to take on the job.[112]

The Eighth Circuit has continuously made rulings granting a defense of qualified immunity, grounded in the standard of deliberate indifference.[113] One could argue these rulings are a bad outcome, because plaintiffs who endure some harm do not receive damages from the official who indirectly harmed them.[114]

---

job); *Forrester*, 484 U.S. at 223 (discussing that the nature of the jobs of public officials warrants the defense of qualified immunity).

[107] *See Pearson*, 555 U.S. at 231 (reasoning that qualified immunity protects public officials from the great time burdens that come with defending a lawsuit); *Farmer*, 511 U.S. at 834 (explaining the standard of deliberate indifference and implying that it makes it more difficult for a public official to be found liable); *Kulkay*, 847 F.3d at 646 (showing an example of prison officials being granted qualified immunity when the standard of deliberate indifference was not met).

[108] *See Farmer*, 511 U.S. at 834 (discussing the standard of deliberate indifference and implicitly reasoning that this standard makes it more difficult for a plaintiff to defeat the defense of qualified immunity); Franklin v. Kan. Dep't of Corr., 160 F. App'x 730, 733–36 (10th Cir. 2005) (finding that a prison official received qualified immunity when the plaintiff failed to satisfy the standard of deliberate indifference); Warren v. Missouri, 995 F.2d 130, 130 (8th Cir. 1993) (stating that the standard of deliberate indifference is applied to prison officials); Bibbs v. Armontrout, 943 F.2d 26, 27 (8th Cir. 1991) (holding that the standard of deliberate indifference was not met by showing the negligence of prison officials).

[109] *See* Alysia Santo, *16-Hour Shifts, 300 Inmates to Watch, and 1 Lonely Son*, THE MARSHALL PROJECT (Dec. 22, 2014, 12:41 PM), https://www.themarshallproject.org/2014/12/22/16-hour-shifts-300-inmates-to-watch-and-1-lonely-son. Some prison guards in New Hampshire frequently have to work multiple sixteen-hour shifts in a week. *Id.*

[110] *Correctional Officer Job Bulletin*, *supra* note 65 (stating the hours required of a correctional officer).

[111] *Id.* This number is based on the minimum hourly salary listed at $20.54 and the assumptions that a typical prison official will work a forty-hour week, fifty weeks per year. *See id.*

[112] *See Farmer*, 511 U.S. at 834 (explaining the standard of deliberate indifference and implying that it makes it more difficult for a public official to be found liable); Santo, *supra* note 109 (noting that a prison official often has to face the difficulties of working sixteen-hour shifts and may be forced to deal with rapists and insults from inmates).

[113] *See* Stephens v. Johnson, 83 F.3d 198, 200–01 (8th Cir. 1996),(holding that the defendant prison officials were entitled to qualified immunity); *Warren*, 995 F.2d at 130–31 (granting defendant prison officials qualified immunity); *Bibbs*, 943 F.2d at 27 (upholding qualified immunity for prison officials because the standard of deliberate indifference was not satisfied).

[114] *See Stephens*, 83 F.3d at 200; *Warren*, 995 F.2d at 130–31; *Bibbs*, 943 F.2d at 27. In these three cases, the 8th Circuit found for the defendants and thus the plaintiffs did not receive monetary damages for his claims. *See Stephens*, 83 F.3d at 200; *Warren*, 995 F.2d at 130–31; *Bibbs*, 943 F.2d at 27.

An allowance for this outcome seemingly contradicts the original intent of 42 U.S.C. § 1983, which was to provide injured plaintiffs a legal means to recovery for a violation of a constitutional right.[115] If public officials are granted qualified immunity, as a result of the greater protection afforded by the standard of deliberate indifference, those plaintiffs seeking medical or other damages will not be made whole for their injuries indirectly caused by the officials.[116]

Ultimately, the Eighth Circuit has recognized that in some instances, a bad outcome, such as injured inmates not receiving justice from prison officials, may need to be tolerated in order to further establish a commitment to what is otherwise a good law.[117] In *Kulkay*, the Eighth Circuit correctly adhered to the standard of deliberate indifference, despite the fact that it meant Kulkay was denied monetary damages from the prison officials.[118] In doing so, the court properly tolerated this seemingly bad outcome in order to cement its commitment to upholding the defense of qualified immunity.[119] As a result, prison officials in the Eighth Circuit are able to continue to perform their job duties and serve the public without exposure to frivolous lawsuits and the great time burdens of discovery and trial.[120]

CONCLUSION

Qualified immunity is a defense that is available to various public officials in order to afford them an added layer of protection from lawsuit. The standard

---

[115] *See Imbler*, 424 U.S. at 432–33 (White, J., concurring) (discussing the intent behind § 1983 claims).

[116] *See* Butz v. Economou, 438 U.S. 478, 504–05 (1978) (discussing the fact that plaintiffs may not be able to recover monetary damages if officials are granted immunity).

[117] *See Stephens*, 83 F.3d at 200–01 (holding that the standard of deliberate indifference was not met and prison officials were therefore entitled to qualified immunity); *Warren*, 995 F.2d at 130–31 (granting qualified immunity to prison officials on the grounds that the plaintiff did not satisfy the standard of deliberate indifference); *Bibbs*, 943 F.2d at 27 (discussing the relationship between the standard of deliberate indifference and qualified immunity as they pertain to prison officials). These outcomes are bad because they result in injured plaintiffs not receiving monetary damages from the officials that caused the harm. *See Butz*, 438 U.S. at 504–05 (highlighting the point that plaintiffs do not receive monetary compensation if a defendant official is granted immunity). Ultimately, society needs these outcomes in order to allow public officials to perform the duties of their job to the highest standard. *See Forrester*, 484 U.S. at 223–24 (stating that the purpose behind qualified immunity is to allow public officials to perform the duties of their job without fear of a lawsuit); *Forsyth*, 472 U.S. at 526 (explaining the risks of exposing a public official to litigation and justifying affording them qualified immunity).

[118] *Kulkay*, 847 F.3d at 645–46.

[119] *See Pearson*, 555 U.S. at 231 (discussing the underlying reasons and motivations behind qualified immunity and implying a commitment by the Court to uphold the defense); *Kulkay*, 847 F.3d at 645–46 (showing a case where prison officials were entitled to qualified immunity, which resulted in an injured plaintiff not receiving monetary compensation).

[120] *See Forrester*, 484 U.S. at 223–24 (discussing how qualified immunity allows public officials to perform the duties of their job with "full fidelity to the objective and independent criteria that ought to guide their conduct"); *Forsyth*, 472 U.S. at 526 (explaining that qualified immunity permits public officials to continue to perform their job duties free from the distractions of a lawsuit); *Kulkay*, 847 F.3d at 644.

of deliberate indifference required to defeat qualified immunity in the prison work assignment context is one that undeniably has some downfalls. There are times when an injured prisoner will not receive monetary damages from the official who either caused the harm or did not take steps to prevent it from occurring. Nevertheless, courts have chosen to adopt this standard for the qualified immunity defense in the prison context and have repeatedly made rulings that establish it as the law. The courts have relied heavily on several underlying policy motivations of qualified immunity in doing so, and have made it clear that a prisoner needs to show that the official had actual knowledge of the risk of harm in order to recover monetary damages. If the high standard of deliberate indifference is not met, the prison official will not be liable for the harm. In short, the courts have correctly chosen to allow instances where prison officials escape liability for injuries endured by prisoners in order to ensure that public officials are not overly subjected to the burdens of discovery and trial.

PETER DILIBERTI

Preferred Cite: Peter Diliberti, Comment, *Cementing Good Law by Tolerating Bad Outcomes: Examining the Eighth Circuit's Commitment to Upholding the Defense of Qualified Immunity for Prison Officials in* Kulkay v. Roy, 59 B.C. L. REV. E. SUPP. 297 (2018), http://lawdigitalcommons.bc.edu/bclr/vol59/iss9/297.