Best of American Case Law
Civil Jury Trials, Summary Judgment, and Employment Discrimination, July 30, 2020
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The Seventh Amendment to the United States Constitution provides for a jury trial in civil cases where the plaintiff—the person bringing the case—requests monetary damages from the defendant for harm caused by the defendant.

Read the text of the Seventh Amendment:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Despite the presence of the Seventh Amendment in the U.S. Constitution and similar provisions in state constitutions, juries decide less than one percent of the civil cases that are filed in federal and state court. Courts dismiss some cases before trial using Rule 56—a procedure called summary judgment. Usually it is the defendant who requests that the judge order summary judgment on one or more of the plaintiff's claims in a case. If a motion for summary judgment is filed, it is typically filed after discovery—the exchange of documents and other information—is completed.

Read this edited excerpt of Rule 56:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

In 1986, the Supreme Court considered three cases (the trilogy) regarding the interpretation of Rule 56. In the cases, the Court established the standard for when courts should grant summary judgment. In one case that you will read, *Anderson v. Liberty Lobby*, the Court stated that summary judgment shall be granted for the moving party when a reasonable jury could not return a verdict for the non-moving party. In the case, the Court stated that a court should not use its own opinion of the evidence in deciding whether a case should be dismissed on summary judgment. In a different opinion, the Court stated that summary judgment should be granted if the claim is factually insufficient.

In the *Anderson* case, plaintiffs Liberty Lobby and Carto brought a lawsuit claiming that a magazine had written false and derogatory articles against them. The magazine defendants requested summary judgment in their favor. They argued that plaintiffs had failed to show the required actual malice of defendants (that they knew what they wrote was false or acted with reckless disregard of whether it was false) by clear and convincing evidence—a tougher standard to meet than the usual preponderance of the evidence standard used in civil cases. In the different opinions, the Court and the dissenters discuss what the appropriate standard for dismissing a case under summary judgment should be. This will be the focus of our discussion in class—not the clear and convincing evidence standard.

Read this edited excerpt from *Anderson v. Liberty Lobby*:

106 S.Ct. 2505
Supreme Court of the United States

Jack ANDERSON, et al., Petitioners
v.
LIBERTY LOBBY, INC. and Willis A. Carto.

No. 84–1602.

Argued Dec. 3, 1985.

Decided June 25, 1986.

[text omitted]

WHITE, J., delivered the opinion of the Court, in which MARSHALL, BLACKMUN, POWELL, STEVENS, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, *post,* p. ———. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C.J., joined, *post,* p. ———.

David J. Branson, Washington, D.C., for petitioners.

Mark Lane, Washington, D.C., for respondents.

Justice WHITE delivered the opinion of the Court.

[text omitted]

I

Respondent Liberty Lobby, Inc., is a not-for-profit corporation and self-described "citizens' lobby." Respondent Willis Carto is its founder and treasurer. In October 1981, The Investigator magazine published two articles: "The Private World of Willis Carto" and "Yockey: Profile of an American Hitler." These articles were introduced by a third, shorter article entitled "America's Neo-Nazi Underground: Did *Mein Kampf* Spawn Yockey's *Imperium,* a Book Revived by Carto's Liberty Lobby?" These articles portrayed respondents as neo-Nazi, anti-Semitic, racist, and Fascist.

Respondents filed this diversity libel action in the United States District Court for the District of Columbia, alleging that some 28 statements and 2 illustrations in the 3 articles were false and derogatory. Named as defendants in the action were petitioner Jack Anderson, the publisher of The Investigator, petitioner Bill Adkins, president and chief executive officer of the Investigator Publishing Co., and petitioner Investigator Publishing Co. itself.

Following discovery, petitioners moved for summary judgment pursuant to Rule 56. In their motion, petitioners asserted that because respondents are public figures they were required to prove their case under the standards set forth in *New York Times*. Petitioners

also asserted that summary judgment was proper because actual malice was absent as a matter of law. In support of this latter assertion, petitioners submitted the affidavit of Charles Bermant, an employee of petitioners and the author of the two longer articles. In this affidavit, Bermant stated that he had spent a substantial amount of time researching and writing the articles and that his facts were obtained from a wide variety of sources. He also stated that he had at all times believed and still believed that the facts contained in the articles were truthful and accurate. Attached to this affidavit was an appendix in which Bermant detailed the sources for each of the statements alleged by respondents to be libelous.

Respondents opposed the motion for summary judgment, asserting that there were numerous inaccuracies in the articles and claiming that an issue of actual malice was presented by virtue of the fact that in preparing the articles Bermant had relied on several sources that respondents asserted were patently unreliable. Generally, respondents charged that petitioners had failed adequately to verify their information before publishing. Respondents also presented evidence that William McGaw, an editor of The Investigator, had told petitioner Adkins before publication that the articles were "terrible" and "ridiculous."

In ruling on the motion for summary judgment, the District Court first held that respondents were limited-purpose public figures and that *New York Times* therefore applied. The District Court then held that Bermant's thorough investigation and research and his reliance on numerous sources precluded a finding of actual malice. Thus, the District Court granted the motion and entered judgment in favor of petitioners.

On appeal, the Court of Appeals affirmed as to 21 and reversed as to 9 of the allegedly defamatory statements. Although it noted that respondents did not challenge the District Court's ruling that they were limited-purpose public figures and that they were thus required to prove their case under *New York Times,* the Court of Appeals nevertheless held that for the purposes of summary judgment the requirement that actual malice be proved by clear and convincing evidence, rather than by a preponderance of the evidence, was irrelevant: To defeat summary judgment respondents did not have to show that a jury could find actual malice with "convincing clarity." The court based this conclusion on a perception that to impose the greater evidentiary burden at summary judgment "would change the threshold summary judgment inquiry from a search for a minimum of facts supporting the plaintiff's case to an evaluation of the weight of those facts and (it would seem) of the weight of at least the defendant's uncontroverted facts as well." The court then held, with respect to nine of the statements, that summary judgment had been improperly granted because "a jury could reasonably conclude that the ... allegations were defamatory, false, and made with actual malice."

II

A

Our inquiry is whether the Court of Appeals erred in holding that the heightened evidentiary requirements that apply to proof of actual malice in this *New York Times* case need not be considered for the purposes of a motion for summary judgment. Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. This materiality inquiry is independent of and separate from the question of the incorporation of the evidentiary standard into the summary judgment determination. That is, while the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs. Any proof or evidentiary requirements imposed by the substantive law are not germane to this inquiry, since materiality is only a criterion for categorizing factual disputes in their relation to the legal elements of the claim and not a criterion for evaluating the evidentiary underpinnings of those disputes.

More important for present purposes, summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. In *First National Bank of Arizona v. Cities Service Co.,* we affirmed a grant of summary judgment for an antitrust defendant where the issue was whether there was a genuine factual dispute as to the existence of a conspiracy. We noted Rule 56(e)'s provision that a party opposing a properly supported motion for summary judgment " 'may not rest upon the mere allegations or denials of his pleading, but ... must set forth specific facts showing that there is a genuine issue for trial.' " We observed further that

> "[i]t is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial."

We went on to hold that, in the face of the defendant's properly supported motion for summary judgment, the plaintiff could not rest on his allegations of a conspiracy to get to a jury without "any significant probative evidence tending to support the complaint."

Again, in *Adickes v. S.H. Kress & Co.,* the Court emphasized that the availability of summary judgment turned on whether a proper jury question was presented. There, one of the issues was whether there was a conspiracy between private persons and law enforcement officers. The District Court granted summary judgment for the defendants, stating that there was no evidence from which reasonably minded jurors might draw an inference of conspiracy. We reversed, pointing out that the moving parties' submissions had not foreclosed the possibility of the existence of certain facts from which "it would be open to a jury ... to infer from the circumstances" that there had been a meeting of the minds.

Our prior decisions may not have uniformly recited the same language in describing genuine factual issues under Rule 56, but it is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for

trial. As *Adickes,* and *Cities Service,* indicate, there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.

That this is the proper focus of the inquiry is strongly suggested by the Rule itself. Rule 56(e) provides that, when a properly supported motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is a genuine issue for trial."[5] And, as we noted above, Rule 56(c) provides that the trial judge shall then grant summary judgment if there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law. There is no requirement that the trial judge make findings of fact. The inquiry performed is the threshold inquiry of determining whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

[text omitted]

The Court has said that summary judgment should be granted where the evidence is such that it "would require a directed verdict for the moving party." And we have noted that the "genuine issue" summary judgment standard is "very close" to the "reasonable jury" directed verdict standard: "The primary difference between the two motions is procedural; summary judgment motions are usually made before trial and decided on documentary evidence, while directed verdict motions are made at trial and decided on the evidence that has been admitted." In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.

B

Progressing to the specific issue in this case, we are convinced that the inquiry involved in a ruling on a motion for summary judgment or for a directed verdict necessarily implicates the substantive evidentiary standard of proof that would apply at the trial on the merits. If the defendant in a run-of-the-mill civil case moves for summary judgment or for a directed verdict based on the lack of proof of a material fact, the judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict—"whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed."

[text omitted]

Just as the "convincing clarity" requirement is relevant in ruling on a motion for directed verdict, it is relevant in ruling on a motion for summary judgment. When determining if a genuine factual issue as to actual malice exists in a libel suit brought by a public figure, a trial judge must bear in mind the actual quantum and quality of proof necessary to support

liability under *New York Times*. For example, there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence.

Thus, in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden. This conclusion is mandated by the nature of this determination. The question here is whether a jury could reasonably find *either* that the plaintiff proved his case by the quality and quantity of evidence required by the governing law *or* that he did not. Whether a jury could reasonably find for either party, however, cannot be defined except by the criteria governing what evidence would enable the jury to find for either the plaintiff or the defendant: It makes no sense to say that a jury could reasonably find for either party without some benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards.

Our holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions does not denigrate the role of the jury. It by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.

In sum, we conclude that the determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case. This is true at both the directed verdict and summary judgment stages. Consequently, where the *New York Times* "clear and convincing" evidence requirement applies, the trial judge's summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant. Thus, where the factual dispute concerns actual malice, clearly a material issue in a *New York Times* case, the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not.

[text omitted]

IV

In sum, a court ruling on a motion for summary judgment must be guided by the *New York Times* "clear and convincing" evidentiary standard in determining whether a genuine issue of actual malice exists—that is, whether the evidence presented is such that a reasonable jury might find that actual malice had been shown with convincing clarity. Because the Court of Appeals did not apply the correct standard in reviewing the District Court's grant of summary judgment, we vacate its decision and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice BRENNAN, dissenting.

The Court today holds that "whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case." In my view, the Court's analysis is deeply flawed, and rests on a shaky foundation of unconnected and unsupported observations, assertions, and conclusions. Moreover, I am unable to divine from the Court's opinion *how* these evidentiary standards are to be considered, or what a trial judge is actually supposed to do in ruling on a motion for summary judgment. Accordingly, I respectfully dissent.

To support its holding that in ruling on a motion for summary judgment a trial court must consider substantive evidentiary burdens, the Court appropriately begins with the language of Rule 56(c), which states that summary judgment shall be granted if it appears that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The Court then purports to restate this Rule, and asserts that "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." No direct authority is cited for the proposition that in order to determine whether a dispute is "genuine" for Rule 56 purposes a judge must ask if a "reasonable" jury could find for the non-moving party. Instead, the Court quotes from *First National Bank of Arizona v. Cities Service Co.*, to the effect that a summary judgment motion will be defeated if "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial," and that a plaintiff may not, in defending against a motion for summary judgment, rest on mere allegations or denials of his pleadings. After citing *Adickes v. S.H. Kress & Co.,* for the unstartling proposition that "the availability of summary judgment turn[s] on whether a proper jury question [is] presented," Court then reasserts, again with no direct authority, that in determining whether a jury question is presented, the inquiry is whether there are factual issues "that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." [text omitted]

Having thus decided that a "genuine" dispute is one which is not "one-sided," and one which could "reasonably" be resolved by a "fair-minded" jury in favor of either party, the Court then concludes:

> "Whether a jury could reasonably find for either party, however, cannot be defined except by the criteria governing what evidence would enable the jury to find for either the plaintiff or the defendant: It makes no sense to say that a jury could reasonably find for either party without some benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards."

As far as I can discern, this conclusion, which is at the heart of the case, has been reached without the benefit of any support in the case law. Although, as noted above, the Court cites *Adickes* and *Cities Service,* those cases simply do not stand for the proposition that in ruling on a summary judgment motion, the trial court is to inquire into the "one-sidedness" of the evidence presented by the parties. [text omitted]

As explained above, and as explained also by Justice REHNQUIST in his dissent, I cannot agree that the authority cited by the Court supports its position. In my view, the Court's

result is the product of an exercise akin to the child's game of "telephone," in which a message is repeated from one person to another and then another; after some time, the message bears little resemblance to what was originally spoken. In the present case, the Court purports to restate the summary judgment test, but with each repetition, the original understanding is increasingly distorted.

But my concern is not only that the Court's decision is unsupported; after all, unsupported views may nonetheless be supportable. I am more troubled by the fact that the Court's opinion sends conflicting signals to trial courts and reviewing courts which must deal with summary judgment motions on a day-to-day basis. This case is about a trial court's responsibility when considering a motion for summary judgment, but in my view, the Court, while instructing the trial judge to "consider" heightened evidentiary standards, fails to explain what that means. In other words, how does a judge assess how one-sided evidence is, or what a "fair-minded" jury could "reasonably" decide? The Court provides conflicting clues to these mysteries, which I fear can lead only to increased confusion in the district and appellate courts.

The Court's opinion is replete with boilerplate language to the effect that trial courts are not to weigh evidence when deciding summary judgment motions:

> "[I]t is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter...."
>
> "Our holding ... does not denigrate the role of the jury.... Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."

But the Court's opinion is also full of language which could surely be understood as an invitation—if not an instruction—to trial courts to assess and weigh evidence much as a juror would:

> "When determining if a genuine factual issue ... exists ..., a trial judge must *bear in mind the actual quantum and quantity* of proof necessary to support liability.... For example, *there is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quality* to allow a rational finder of fact to find actual malice by clear and convincing evidence."
>
> "[T]he inquiry ... [is] whether the evidence presents a *sufficient* disagreement to require submission to a jury or whether *it is so one-sided* that one party must prevail as a matter of law."
>
> "[T]he judge must ask himself ... whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

I simply cannot square the direction that the judge "is not himself to weigh the evidence" with the direction that the judge also bear in mind the "quantum" of proof required and consider whether the evidence is of sufficient "caliber or quantity" to meet that "quantum."

I would have thought that a determination of the "caliber and quantity," *i.e.,* the importance and value, of the evidence in light of the "quantum," *i.e.,* amount "required," could *only* be performed by weighing the evidence.

If in fact, this is what the Court would, under today's decision, require of district courts, then I am fearful that this new rule—for this surely would be a brand new procedure—will transform what is meant to provide an expedited "summary" procedure into a full-blown paper trial on the merits. It is hard for me to imagine that a responsible counsel, aware that the judge will be assessing the "quantum" of the evidence he is presenting, will risk either moving for or responding to a summary judgment motion without coming forth with *all* of the evidence he can muster in support of his client's case. Moreover, if the judge on motion for summary judgment really is to weigh the evidence, then in my view grave concerns are raised concerning the constitutional right of civil litigants to a jury trial.

It may well be, as Justice REHNQUIST suggests, that the Court's decision today will be of little practical effect. I, for one, cannot imagine a case in which a judge might plausibly hold that the evidence on motion for summary judgment was sufficient to enable a plaintiff bearing a mere preponderance burden to get to the jury—*i.e.,* that a prima facie case had been made out—but insufficient for a plaintiff bearing a clear-and-convincing burden to withstand a defendant's summary judgment motion. Imagine a suit for breach of contract. If, for example, the defendant moves for summary judgment and produces one purported eyewitness who states that he was present at the time the parties discussed the possibility of an agreement, and unequivocally denies that the parties ever agreed to enter into a contract, while the plaintiff produces one purported eyewitness who asserts that the parties did in fact come to terms, presumably that case would go to the jury. But if the defendant produced not one, but 100 eyewitnesses, while the plaintiff stuck with his single witness, would that case, under the Court's holding, still go to the jury? After all, although the plaintiff's burden in this hypothetical contract action is to prove his case by a mere preponderance of the evidence, the judge, so the Court tells us, is to "ask himself ... whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." Is there, in this hypothetical example, "a sufficient disagreement to require submission to a jury," or is the evidence "so one-sided that one party must prevail as a matter of law"? Would the result change if the plaintiff's one witness were now shown to be a convicted perjurer? Would the result change if, instead of a garden-variety contract claim, the plaintiff sued on a fraud theory, thus requiring him to prove his case by clear and convincing evidence?

It seems to me that the Court's decision today unpersuasively answers the question presented, and in doing so raises a host of difficult and troubling questions for which there may well be no adequate solutions. What is particularly unfair is that the mess we make is not, at least in the first instance, our own to deal with; it is the district courts and courts of appeals that must struggle to clean up after us.

In my view, if a plaintiff presents evidence which either directly or by permissible inference (and these inferences are a product of the substantive law of the underlying claim) supports all of the elements he needs to prove in order to prevail on his legal claim, the plaintiff has made out a prima facie case and a defendant's motion for summary judgment must fail regardless of the burden of proof that the plaintiff must meet. In other words, whether evidence is "clear and convincing," or proves a point by a mere preponderance, is for the factfinder to determine. As I read the case law, this is how it has been, and because of my concern that today's decision may erode the constitutionally enshrined role of the

jury, and also undermine the usefulness of summary judgment procedure, this is how I believe it should remain.

[text omitted]

After the *Anderson* case, the Supreme Court continued to issue decisions on summary judgment. *Scott v. Harris* is an important, recent Supreme Court case in which the Court reviewed and reversed a Court of Appeals' decision not to grant summary judgment. The case concerned a chase by the police of a car that was speeding. The police ultimately bumped the speeding vehicle resulting in serious injury to the person driving the speeding car. The Supreme Court viewed a videotape of car chase and used it to decide that summary judgment should be granted. Justice Stevens and the lower courts had different opinions of the video.

Read this edited excerpt from *Scott v. Harris*:

127 S.Ct. 1769
Supreme Court of the United States

Timothy SCOTT, Petitioner,
v.

Victor HARRIS.
No. 05–1631.

Argued Feb. 26, 2007.

Decided April 30, 2007.

[text omitted]

Justice SCALIA delivered the opinion of the Court.

We consider whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

I

In March 2001, a Georgia county deputy clocked respondent's vehicle traveling at 73 miles per hour on a road with a 55–mile–per–hour speed limit. The deputy activated his blue flashing lights indicating that respondent should pull over. Instead, respondent sped away, initiating a chase down what is in most portions a two-lane road, at speeds exceeding 85 miles per hour. The deputy radioed his dispatch to report that he was pursuing a fleeing vehicle, and broadcast its license plate number. Petitioner, Deputy Timothy Scott, heard

the radio communication and joined the pursuit along with other officers. In the midst of the chase, respondent pulled into the parking lot of a shopping center and was nearly boxed in by the various police vehicles. Respondent evaded the trap by making a sharp turn, colliding with Scott's police car, exiting the parking lot, and speeding off once again down a two-lane highway.

Following respondent's shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and nearly 10 miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique ('PIT') maneuver, which causes the fleeing vehicle to spin to a stop." Having radioed his supervisor for permission, Scott was told to " '[g]o ahead and take him out.' Instead, Scott applied his push bumper to the rear of respondent's vehicle. As a result, respondent lost control of his vehicle, which left the roadway, ran down an embankment, overturned, and crashed. Respondent was badly injured and was rendered a quadriplegic.

Respondent filed suit against Deputy Scott and others under Rev. Stat. § 1979, 42 U.S.C. § 1983, alleging, *inter alia,* a violation of his federal constitutional rights, viz. use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The District Court denied the motion, finding that "there are material issues of fact on which the issue of qualified immunity turns which present sufficient disagreement to require submission to a jury." On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's decision to allow respondent's Fourth Amendment claim against Scott to proceed to trial. Taking respondent's view of the facts as given, the Court of Appeals concluded that Scott's actions could constitute "deadly force" under *Tennessee v. Garner*, and that the use of such force in this context "would violate [respondent's] constitutional right to be free from excessive force during a seizure. Accordingly, a reasonable jury could find that Scott violated [respondent's] Fourth Amendment rights." The Court of Appeals further concluded that "the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers 'fair notice' that ramming a vehicle under these circumstances was unlawful." The Court of Appeals thus concluded that Scott was not entitled to qualified immunity. We granted certiorari, and now reverse.

II

In resolving questions of qualified immunity, courts are required to resolve a "threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry." If, and only if, the court finds a violation of a constitutional right, "the next, sequential step is to ask whether the right was clearly established ... in light of the specific context of the case." Although this ordering contradicts "[o]ur policy of avoiding unnecessary adjudication of constitutional issues, "we have said that such a departure from practice is "necessary to set forth principles which will become the basis for a [future] holding that a right is clearly established." We therefore turn to the threshold inquiry: whether Deputy Scott's actions violated the Fourth Amendment.

III

A

The first step in assessing the constitutionality of Scott's actions is to determine the relevant facts. As this case was decided on summary judgment, there have not yet been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. When things are in such a posture, courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing the [summary judgment] motion." In qualified immunity cases, this usually means adopting (as the Court of Appeals did here) the plaintiff's version of the facts.

There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question. There are no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened. The videotape quite clearly contradicts the version of the story told by respondent and adopted by the Court of Appeals. For example, the Court of Appeals adopted respondent's assertions that, during the chase, "there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle." Indeed, reading the lower court's opinion, one gets the impression that respondent, rather than fleeing from police, was attempting to pass his driving test:

> "[T]aking the facts from the non-movant's viewpoint, [respondent] remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. He did not run any motorists off the road. Nor was he a threat to pedestrians in the shopping center parking lot, which was free from pedestrian and vehicular traffic as the center was closed. Significantly, by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of police blockades of the nearby intersections."

The videotape tells quite a different story. There we see respondent's vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury.

At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. As we have emphasized, "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts .... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' " (footnote omitted). "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." When opposing parties tell two different

stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.

That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.

B

Judging the matter on that basis, we think it is quite clear that Deputy Scott did not violate the Fourth Amendment. Scott does not contest that his decision to terminate the car chase by ramming his bumper into respondent's vehicle constituted a "seizure." "[A] Fourth Amendment seizure [occurs] ... when there is a governmental termination of freedom of movement through means intentionally applied." The question we need to answer is whether Scott's actions were objectively reasonable.

[text omitted]

2

In determining the reasonableness of the manner in which a seizure is effected, "[w]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Scott defends his actions by pointing to the paramount governmental interest in ensuring public safety, and respondent nowhere suggests this was not the purpose motivating Scott's behavior. Thus, in judging whether Scott's actions were reasonable, we must consider the risk of bodily harm that Scott's actions posed to respondent in light of the threat to the public that Scott was trying to eliminate. Although there is no obvious way to quantify the risks on either side, it is clear from the videotape that respondent posed an actual and imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase. See Part III–A, *supra*. It is equally clear that Scott's actions posed a high likelihood of serious injury or death to respondent—though not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head, or pulling alongside a fleeing motorist's car and shooting the motorist. So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did.

But wait, says respondent: Couldn't the innocent public equally have been protected, and

the tragic accident entirely avoided, if the police had simply ceased their pursuit? We think the police need not have taken that chance and hoped for the best. Whereas Scott's action—ramming respondent off the road—was *certain* to eliminate the risk that respondent posed to the public, ceasing pursuit was not. First of all, there would have been no way to convey convincingly to respondent that the chase was off, and that he was free to go. Had respondent looked in his rearview mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture. Perhaps the police knew a shortcut he didn't know, and would reappear down the road to intercept him; or perhaps they were setting up a roadblock in his path. Given such uncertainty, respondent might have been just as likely to respond by continuing to drive recklessly as by slowing down and wiping his brow.

Second, we are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down a more sensible rule: A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

* * *

The car chase that respondent initiated in this case posed a substantial and immediate risk of serious physical injury to others; no reasonable jury could conclude otherwise. Scott's attempt to terminate the chase by forcing respondent off the road was reasonable, and Scott is entitled to summary judgment. The Court of Appeals' judgment to the contrary is reversed.

It is so ordered.

[text omitted]

Justice STEVENS, dissenting.

Today, the Court asks whether an officer may "take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders." Depending on the circumstances, the answer may be an obvious "yes," an obvious "no," or sufficiently doubtful that the question of the reasonableness of the officer's actions should be decided by a jury, after a review of the degree of danger and the alternatives available to the officer. A high-speed chase in a desert in Nevada is, after all, quite different from one that travels through the heart of Las Vegas.

Relying on a *de novo* review of a videotape of a portion of a nighttime chase on a lightly traveled road in Georgia where no pedestrians or other "bystanders" were present, buttressed by uninformed speculation about the possible consequences of discontinuing the chase, eight of the jurors on this Court reach a verdict that differs from the views of the

judges on both the District Court and the Court of Appeals who are surely more familiar with the hazards of driving on Georgia roads than we are. The Court's justification for this unprecedented departure from our well-settled standard of review of factual determinations made by a district court and affirmed by a court of appeals is based on its mistaken view that the Court of Appeals' description of the facts was "blatantly contradicted by the record" and that respondent's version of the events was "so utterly discredited by the record that no reasonable jury could have believed him."

Rather than supporting the conclusion that what we see on the video "resembles a Hollywood-style car chase of the most frightening sort," the tape actually confirms, rather than contradicts, the lower courts' appraisal of the factual questions at issue. More importantly, it surely does not provide a principled basis for depriving the respondent of his right to have a jury evaluate the question whether the police officers' decision to use deadly force to bring the chase to an end was reasonable.

Omitted from the Court's description of the initial speeding violation is the fact that respondent was on a four-lane portion of Highway 34 when the officer clocked his speed at 73 miles per hour and initiated the chase. More significantly—and contrary to the Court's assumption that respondent's vehicle "force[d] cars traveling in both directions to their respective shoulders to avoid being hit,"—a fact unmentioned in the text of the opinion explains why those cars pulled over prior to being passed by respondent. The sirens and flashing lights on the police cars following respondent gave the same warning that a speeding ambulance or fire engine would have provided. The 13 cars that respondent passed on his side of the road before entering the shopping center, and both of the cars that he passed on the right after leaving the center, no doubt had already pulled to the side of the road or were driving along the shoulder because they heard the police sirens or saw the flashing lights before respondent or the police cruisers approached. A jury could certainly conclude that those motorists were exposed to no greater risk than persons who take the same action in response to a speeding ambulance, and that their reactions were fully consistent with the evidence that respondent, though speeding, retained full control of his vehicle.

The police sirens also minimized any risk that may have arisen from running "multiple red lights," In fact, respondent and his pursuers went through only two intersections with stop lights and in both cases all other vehicles in sight were stationary, presumably because they had been warned of the approaching speeders. Incidentally, the videos do show that the lights were red when the police cars passed through them but, because the cameras were farther away when respondent did so and it is difficult to discern the color of the signal at that point, it is not entirely clear that he ran either or both of the red lights. In any event, the risk of harm to the stationary vehicles was minimized by the sirens, and there is no reason to believe that respondent would have disobeyed the signals if he were not being pursued.

My colleagues on the jury saw respondent "swerve around more than a dozen other cars," and "force cars traveling in both directions to their respective shoulders," but they apparently discounted the possibility that those cars were already out of the pursuit's path as a result of hearing the sirens. Even if that were not so, passing a slower vehicle on a two-lane road always involves some degree of swerving and is not especially dangerous if there are no cars coming from the opposite direction. At no point during the chase did respondent pull into the opposite lane other than to pass a car in front of him; he did the latter no more than five times and, on most of those occasions, used his turn signal. On

none of these occasions was there a car traveling in the opposite direction. In fact, at one point, when respondent found himself behind a car in his own lane and there were cars traveling in the other direction, he slowed and waited for the cars traveling in the other direction to pass before overtaking the car in front of him while using his turn signal to do so. This is hardly the stuff of Hollywood. To the contrary, the video does not reveal any incidents that could even be remotely characterized as "close calls."

In sum, the factual statements by the Court of Appeals quoted by the Court were entirely accurate. That court did not describe respondent as a "cautious" driver as my colleagues imply, but it did correctly conclude that there is no evidence that he ever lost control of his vehicle. That court also correctly pointed out that the incident in the shopping center parking lot did not create any risk to pedestrians or other vehicles because the chase occurred just before 11 p.m. on a weekday night and the center was closed. It is apparent from the record (including the videotape) that local police had blocked off intersections to keep respondent from entering residential neighborhoods and possibly endangering other motorists. I would add that the videos also show that no pedestrians, parked cars, sidewalks, or residences were visible at any time during the chase. The only "innocent bystanders" who were placed "at great risk of serious injury," were the drivers who either pulled off the road in response to the sirens or passed respondent in the opposite direction when he was driving on his side of the road.

I recognize, of course, that even though respondent's original speeding violation on a four-lane highway was rather ordinary, his refusal to stop and subsequent flight was a serious offense that merited severe punishment. It was not, however, a capital offense, or even an offense that justified the use of deadly force rather than an abandonment of the chase. The Court's concern about the "imminent threat to the lives of any pedestrians who might have been present," while surely valid in an appropriate case, should be discounted in a case involving a nighttime chase in an area where no pedestrians were present.

What would have happened if the police had decided to abandon the chase? We now know that they could have apprehended respondent later because they had his license plate number. [text omitted] In any event, any uncertainty about the result of abandoning the pursuit has not prevented the Court from basing its conclusions on its own factual assumptions. The Court attempts to avoid the conclusion that deadly force was unnecessary by speculating that if the officers had let him go, respondent might have been "just as likely" to continue to drive recklessly as to slow down and wipe his brow. That speculation is unconvincing as a matter of common sense and improper as a matter of law. Our duty to view the evidence in the light most favorable to the nonmoving party would foreclose such speculation if the Court had not used its observation of the video as an excuse for replacing the rule of law with its ad hoc judgment. There is no evidentiary basis for an assumption that dangers caused by flight from a police pursuit will continue after the pursuit ends. Indeed, rules adopted by countless police departments throughout the country are based on a judgment that differs from the Court's. [text omitted]

Whether a person's actions have risen to a level warranting deadly force is a question of fact best reserved for a jury. Here, the Court has usurped the jury's factfinding function and, in doing so, implicitly labeled the four other judges to review the case unreasonable. It chastises the Court of Appeals for failing to "vie[w] the facts in the light depicted by the videotape" and implies that no reasonable person could view the videotape and come to the conclusion that deadly force was unjustified. However, the three judges on the Court of Appeals panel apparently did view the videotapes entered into evidence[7] and described a very different version of events:

> "At the time of the ramming, apart from speeding and running two red lights, Harris was driving in a non-aggressive fashion (i.e., without trying to ram or run into the officers). Moreover, Scott's path on the open highway was largely clear. The videos introduced into evidence show little to no vehicular (or pedestrian) traffic, allegedly because of the late hour and the police blockade of the nearby intersections. Finally, Scott issued absolutely no warning (e.g., over the loudspeaker or otherwise) prior to using deadly force."

If two groups of judges can disagree so vehemently about the nature of the pursuit and the circumstances surrounding that pursuit, it seems eminently likely that a reasonable juror could disagree with this Court's characterization of events. Moreover, under the standard set forth in *Garner*, it is certainly possible that "a jury could conclude that Scott unreasonably used deadly force to seize Harris by ramming him off the road under the instant circumstances."

The Court today sets forth a *per se* rule that presumes its own version of the facts: "A police officer's attempt to terminate a dangerous high-speed car chase *that threatens the lives of innocent bystanders* does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death." (emphasis added). Not only does that rule fly in the face of the flexible and case-by-case "reasonableness" approach applied in *Garner* and *Graham v. Connor,* but it is also arguably inapplicable to the case at hand, given that it is not clear that this chase threatened the life of any "innocent bystande[r]." In my view, the risks inherent in justifying unwarranted police conduct on the basis of unfounded assumptions are unacceptable, particularly when less drastic measures—in this case, the use of stop sticks or a simple warning issued from a loudspeaker—could have avoided such a tragic result. In my judgment, jurors in Georgia should be allowed to evaluate the reasonableness of the decision to ram respondent's speeding vehicle in a manner that created an obvious risk of death and has in fact made him a quadriplegic at the age of 19.

I respectfully dissent.

Law Professors Dan Kahan, David Hoffman, and Donald Braman showed the video in *Scott v. Harris* to over one thousand individuals. The professors found differences of opinion on whether the police's actions were reasonable. There were differences based on the characteristics of the people viewing the videotapes. We will be talking about the general results only. You are not expected to understand the statistics in any detail.

Skim the edited excerpt from the *Whose Eyes Are You Going to Believe*? Scott v. Harris *and the Perils of Cognitive Illiberalism*, 122 Harv. L. Rev. 837 (2009):

D. Results

We present the results of our study in two steps. First, we offer preliminary analyses of the reactions of our subjects, overall and across different groups, to the Scott tape. Second, we use statistical simulations to explore more systematically how individuals bearing combinations of characteristics that endow them with identities consistent with the aleph

and bet cultural styles would view the facts the tape reveals.

1. Preliminary Analyses: Main Effects and Group Differences.--A preliminary examination of the data reveals two conclusions. The first is that a relatively large majority formed perceptions of the Scott tape consistent with that of the Supreme Court majority. The second is that there are nevertheless marked differences in perceptions across identifiable subgroups.

As reflected in Figure 2 and Figure 3, overall perceptions of the key risk issues are highly consistent with those of the Court in Scott. Solid majorities agreed either "strongly" or "moderately" that Harris's driving posed a deadly risk to the public, and additional subjects "slightly" agreed with those statements. The subjects were more equivocal about the decision of the police to pursue Harris; 45% agreed (28% either "strongly" or "moderately") that the chase was not worth the risk it posed to the public, and another 13% only "slightly" agreed that the chase was worth the risk. Still, 74% of the subjects judged Harris to be either "much more" or "slightly more" at fault for the risk to the public.

[text omitted]

On the ultimate question (Figure 4), approximately 75% agreed and 26% disagreed that the use of deadly force was warranted. Reflecting some equivocation, however, nearly a quarter agreed or disagreed only slightly.

[text omitted]

Table 1 illustrates the mass of individual variation tucked into the main effects illustrated in Figures 2 through 4. That table reports group means on the individual response items and on the composite "Agree with Court" scale, which reflects the average of the response to all of the items. As predicted, African Americans took a significantly more pro-plaintiff stance across all items. So did Democrats relative to Republicans, liberals relative to conservatives, and Egalitarians relative to Hierarchs. Communitarians were significantly more pro-plaintiff than Individualists for every item except risk to the public. Women were also generally more pro-plaintiff, although statistically the difference between the sexes was only marginally significant ($p = 0.07$ for "Agree with Court"; $p = 0.09$ for "Deadly Force Justified").

Table 1 also reveals some additional sources of variation. Lower-income subjects were consistently more pro-plaintiff than were higher income ones. Nevertheless, less educated subjects were overall more pro-defendant than were more educated subjects. So, unexpectedly, were married subjects.

Older subjects were more inclined than younger ones to view the chase as not worth the risk it imposed on the public and the use of deadly force as not justified by the risk Harris posed. However, contrary to Justice Stevens's hypothesis, elderly subjects did not perceive Harris's driving to be less risky to either the public or the police.

One might have surmised that urban dwellers would react differently from non-urban ones. But our results detected no such effect.

The impact of various individual characteristics relative to each other is reflected in the ordered logistic regression analyses reported in Table 2. A multivariate regression model

shows how much variance in any explanatory or "independent" variable (here race, gender, cultural worldview, and so forth) affects a quantity of interest (in our case, subjects' answers to our response measures) when the impact of every other independent variable in the model is held constant. The models in Table 2 demonstrate that being African American (as opposed to white) exerts the largest effect across the various response measures. How hierarchical or egalitarian subjects' worldviews are also exerts a relatively large (and statistically significant) independent effect across all measures except the perceived risk of Harris's driving to the public. Being from the Northeast likewise had a relatively large (and statistically significant) effect across all but two of the measures. Income had a significant but relatively small effect on three of the five measures as well.

Table 1. Mean Responses

	Agree with Court	Relative Culpability	Chase Not Worth Risk		Harris Posed Lethal Risk	Deadly Force Justified
				to Public	to Police	
Scale	1-6	1 (police) to 5 (Harris)	← 1 (strongly disagree) to 6 (strongly agree) →			
Female	4.37	4.18	3.25	4.92	4.61	4.37
Male	4.48	4.28	3.09	5.04	4.64	4.52
Difference	0.11	0.10	0.16	0.12	0.03	0.15
Black	3.70	3.57	3.87	4.42	3.83	3.51
White	4.50	4.32	3.04	5.03	4.69	4.55
Difference	0.80	0.75	0.83	0.61	0.86	1.04
< $35,000/yr	4.23	4.05	3.35	4.66	4.53	4.25
≥ $50,000/yr	4.52	4.30	3.09	5.15	4.69	4.54
Difference	0.29	0.25	0.26	0.49	0.16	0.29
≤ HS degree	4.50	4.30	3.17	5.02	4.75	4.61
≥ BA degree	4.24	4.07	3.33	4.89	4.44	4.10
Difference	0.26	0.23	0.16	0.13	0.31	0.51
18-36 yrs old	4.44	4.19	2.96	4.89	4.57	4.50
> 53 yrs old	4.28	4.17	3.46	4.84	4.58	4.28

Difference	0.16	0.02	0.50	0.05	0.01	0.22
Unmarried	4.24	4.10	3.28	4.72	4.47	4.22
Married	4.58	4.34	3.08	5.20	4.77	4.64
Difference	0.34	0.24	0.20	0.48	0.30	0.42
Urban	4.44	4.23	3.02	4.92	4.61	4.48
Nonurban	4.41	4.23	3.20	4.99	4.63	4.44
Difference	0.03	0.00	0.18	0.07	0.02	0.04
Northeast	4.23	4.13	3.37	4.78	4.40	4.20
South or West	4.51	4.28	3.04	5.02	4.72	4.58
Difference	0.28	0.15	0.33	0.24	0.32	0.38
Democrats	4.16	4.00	3.55	4.85	4.44	4.07
Republicans	4.72	4.51	2.70	5.14	4.84	4.82
Difference	0.56	0.51	0.85	0.29	0.40	0.75
Liberals	4.13	4.01	3.45	4.74	4.35	4.01
Conservatives	4.67	4.44	2.87	5.15	4.85	4.80
Difference	0.54	0.43	0.58	0.41	0.50	0.79
Egalitarians	4.21	4.05	3.52	4.90	4.51	4.14
Hierarchs	4.62	4.40	2.84	5.05	4.74	4.73
Difference	0.41	0.35	0.68	0.15	0.23	0.59
Communitarians	4.28	4.09	3.38	4.94	4.52	4.23
Individualists	4.56	4.37	2.96	5.02	4.74	4.65
Difference	0.28	0.28	0.42	0.08	0.22	0.42

Bolded text indicates difference in means of paired groups significant at $p \leq 0.05$.

[text omitted]

Other studies have found that summary judgment is granted more often in certain types of cases, including employment discrimination cases. One study by the Federal Judicial Center found that where employers make motions for summary judgment in employment discrimination cases, courts grant the motion in whole or in part over 70% of the time.

In class, some findings from Unequal: How America's Courts Undermine Discrimination Law (Oxford Univ. Press 2017) will be discussed. My recent, co-authored book (with Sandra Sperino) shows how courts dismiss many factually-intensive, employment discrimination cases on summary judgment.