a minor, along with two babysitters. The child was taken to the bar in her pajamas and photographed as if she were a bar patron. Because of the size and ferocity of the raid, many of the employees thought that they were being robbed by armed gunmen. The Doublets and their employees were charged with various offences, including allowing persons aged between 18 and 21 into the club. The Doublets brought a 42 U.S.C. §1983 action against a number of the officers, claiming a violation of their First, Fourth, Fifth, and Fourteenth Amendment rights. The district court rejected the defendants' claim of qualified immunity for most of the claims, and the officers appealed.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part and reversed in part. "[W]e conclude that defendants are not entitled to qualified immunity for their entry and search of Club Retro because the unreasonable scope and manner of Operation Retro-Fit violated Club Retro, L.L.C.'s clearly established constitutional rights to be free from unreasonable searches and seizures." Under *Pearson v. Callahan*, 129 S. Ct. 808 (2009), "[t]he doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." In the absence of a warrant, consent, or exigent circumstances, law enforcement officers act "unreasonably and thus unconstitutionally when they enter a commercial property to conduct a search for contraband or evidence of a crime." In response to the defendants' argument that this situation was akin to an administrative search, the court responded that "inspection statutes and ordinances do not grant law enforcement officers unfettered discretion to conduct searches ... and do not provide notice to bar owners that [they] are subject to armed S.W.A.T. team raids, physical assault, threats at gunpoint, and prolonged detention." However, the court reversed the district court's denial of qualified immunity on the plaintiffs' First Amendment claim. The plaintiffs had argued that, by shutting down the nightclub and telling patrons that they should not come back to the club, the officers imposed a prior restraint on their First Amendment rights. The Fifth Circuit disagreed, finding that the officers' statements were not a prior restraint, as patrons "were free to attend and did attend [subsequent club events]." The Fifth Circuit also reversed the district court's order denying qualified immunity on the Fourteenth Amendment equal protection claim. In support of this, the plaintiffs had alleged that they had been discriminated against because Mr Doublet was a Creole and the club's clientele was mixed-race. They pointed to the officers' use of racial profanity during the raid and detention, and the fact that a similar, but white-owned, nightclub close by had never been raided. While strongly condemning the use of racial epithets, the court here held that the usage was not probative of disparate treatment or discriminatory intent, in the absence of any indication or statement by the officers that the club was targeted because it was minority-owned and attracted a mixed-race or mixed-ethnicity crowd. *Club Retro LLC v. Hilton*, 568 F.3d 181 (5th Cir. 2009).

Schools
Title IX

Plamp was a high-school student. During her junior year, she took a course taught by Tate. Tate engaged in inappropriate behavior, such as complimenting Plamp on her "knockout body" and asking her to bring pictures of herself wearing limited clothing. Near the end of Plamp's junior year, she told her parents about Tate's conduct and they contacted the superintendent. Tate was immediately suspended and was eventually terminated from his position. Plamp filed suit against the school district and Tate, asserting, among other things, a civil rights claim under 42 U.S.C. section 1983 and a Title IX discrimination claim. Title IX provides that "[n]o person ... on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." In prior rulings, the U.S. Court of Appeals for the Eighth Circuit held that, for a school to incur liability under Title IX, it had to have been deliberately indifferent to known acts of discrimination that occurred under its control. Further, liability would not be found unless "an appropriate person" had "actual knowledge of discrimination." At trial, Plamp introduced evidence that, a few years prior to the incidents involving her, an anonymous individual had approached the school guidance counselor claiming that Tate had engaged in inappropriate behavior. Plamp also introduced statements from other students and a teacher that discussed Tate's inappropriate and harassing behavior. Nonetheless, the district court ruled that the school officials did not have actual knowledge of the harassment, and that the guidance counselor and teachers were not "appropriate persons" within the meaning of Title IX.

On appeal, the Eighth Circuit affirmed on both the Title IX and Section 1983 claims. No "appropriate" school official had knowledge of Tate's discriminatory actions, and the school district did not act with deliberate indifference once it became aware of his actions. The school principals possessed the power to institute corrective measures and stop Tate's discrimination during their respective tenures by seeking to reprimand, further supervise, suspend, or even fire Tate, but the evidence fell short of establishing that they possessed actual knowledge. Neither the counselor nor the teachers had "remedial authority" regarding sexual harassment claims. Summary judgment in favor of the school district regarding the 42 U.S.C. section 1983 claim was also appropriate. Although a school district could be liable for civil rights violations under Section 1983 (the Due Process Clause protected the liberty interest of a child in public school from sexual abuse), Plamp failed to produce enough evidence to raise more than a "suspicion of sexual harassment," and there was no evidence of "continuing, widespread, persistent patterns of unconstitutional misconduct generally." *Plamp v. Mitchell School District No. 17-2*, 565 F.3d 450 (8th Cir. 2009).

continued on page 36