At that point, a woman came out of the house and asked what was happening. The officers explained that they were looking for a suspect in a car theft. She told them her name, that she and her husband were the occupants of the home and identified the man the police had first encountered as her husband and told the officers that the suspect was not there. The officers asked for permission to search the house for the suspect and she consented. The officers searched the house, but did not find the suspect and left. The Carmans were not charged with any crimes. The Carmans later sued Officer Carroll in Federal District Court under 42 U. S. C. §1983. The Carmans alleged that the officer unlawfully entered their property in violation of the Fourth Amendment when he went into their backyard and onto their deck without a warrant.

The Third Circuit concluded that the officer was not entitled to immunity. The Supreme Court discussed immunity and reminded us that for a court to deny immunity the law must be clearly established, saying "Here the Third Circuit cited only a single case to support its decision that Carroll was not entitled to qualified immunity—*Estate of Smith v. Marasco*, 318 F. 3d 497 (CA3 2003). Assuming for the sake of argument that a controlling circuit precedent could constitute clearly established federal law in these circumstances, see Reichle v. Howards, 566 U. S. ___, ___ (2012) (slip op., at 7), *Marasco* does not clearly establish that Carroll violated the Carmans' Fourth Amendment rights." As the Supreme Court pointed out, the Third Circuit's reliance on language in Marasco that "entry into the curtilage after not receiving an answer at the front door might be reasonable" converted a discussion of reasonableness to a requirement that officers must first go to the front door. The Supreme Court found no basis for the Third Circuit reaching that conclusion found the officer should be entitled to immunity but did not decide whether police must first go to the front door for the "knock and talk" exception to apply.

http://www.supremecourt.gov/opinions/14pdf/14-212_c07d.pdf (last accessed Dec. 17, 2014)

Heien v. North Carolina – probable cause, mistake of law

In *Heien v. North Carolina*, the court concluded that an officer's reasonable mistake of law can support reasonable suspicion to make a traffic stop. In the case, the officer believed that a North Carolina law requiring vehicles to maintain rear lights in factory installed condition meant that the rear brake lights had to be in working order. The officer saw a driver who appeared to be acting suspiciously and followed him. When the driver slowed, the officer noticed that only one brake light operated and the officer pulled the vehicle over. After a few minutes talking with the occupants, the officer asked if he could search the vehicle and was granted permission and found a bag of cocaine. The occupants were arrested and challenged the search, but the lower court found the search reasonable and did not exclude the evidence. Heien agreed to plead guilty but reserved his right to appeal. On appeal, the North Carolina intermediate appellate court concluded that the law only required one brake light to be in working order, so when the officer stopped a vehicle with one brake light working, but the other not, the officer was

mistaken. Thus, the court held that the search was not reasonable. The state appealed the decision on the search but not the decision on the requirement that a vehicle have only one brake light. The North Carolina Supreme Court held that despite the mistake of law, the search was objectively reasonable.

The Supreme Court granted certiorari and affirmed. The Court described the question as whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. It concluded that the officer's mistake in believing the car's lack of two working brake lights violated the law was 'reasonable' and satisfied the requirements of reasonable suspicion. Discussing the Court's cases that discussed mistakes of facts the Court explained that the Fourth Amendment deals with "reasonableness" and that police officers when stopping or arresting a person do so based on their understanding of the facts and the law and that they may be mistaken as to either or both. The question is whether they are reasonably mistaken and when a law is ambiguous or arcane, the officers' reasonable understanding of the law as applied to the facts under consideration determines whether the officers violate the Fourth Amendment.

In responding to the argument that the decision validates sloppy police work, the court described the test to be applied to mistakes of law: "Contrary to the suggestion of Heien and amici, our decision does not discourage officers from learning the law. The Fourth Amendment tolerates only reasonable mistakes, and those mistakes—whether of fact or of law— must be objectively reasonable. We do not examine the subjective understanding of the particular officer involved."

http://www.supremecourt.gov/opinions/14pdf/13-604_ec8f.pdf (last accessed Dec. 17, 2014).

Hunt v. Massi – arrests, qualified immunity

As most readers will attest, one of the greatest joys of being a local government attorney and defending the police can be dealing with imaginative concepts of what the law should be. In *Hunt v. Massi*, ___F.3rd ___, No. 14-1379 (1st Cir. Dec. 10, 2014), the question arose as to whether the law clearly established that an arrestee must be handcuffed with hands in front rather than behind.

A court issued a warrant for Mr. Hunt for being a traffic citation scofflaw; albeit erroneously. The officers knew that Mr. Hunt had been arrested a couple of months before for being involved in a major cocaine distribution ring in Cape Cod. Four officers went to Mr. Hunt's home at around 6:30 in the morning to arrest him. Mrs. Hunt let them in and took them to the bedroom where Mr. Hunt was sitting on the bed. When informed that he was under arrest, Hunt readily submitted but requested that he be handcuffed with his hands in front of him. He explained that he had undergone surgery on his stomach the week before, and claimed that he could not be handcuffed with his hands behind him. One of the officers, Massi, asked Hunt to lift his shirt, and then looked at his stomach. According to Hunt the officers would have seen a "big, long, red