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

mark" when they looked at his stomach but the officers said they saw nothing that might prevent them from following their usual practice of handcuffing behind the back. They felt that Hunt would not be injured by doing so. When Hunt protested they said they couldn't do it as he requested. At which point, Mr. Hunt sought to resist the behind the back handcuffing and a bit of a struggle ensued for which he was charged with resisting arrest and assault and battery on a police officer.

When Hunt complained of pain at the police station he was taken to the hospital examined and released on his own recognizance. The hospital report concluded that nothing could have been damaged during the altercation because Hunt's recent surgery was a laparoscopic lysis of adhesions. Ultimately, Hunt was tried for the events that occurred during his arrest and he was found not guilty. That verdict led rather quickly to this lawsuit. Hunt sued for various injuries on several theories that included violation of his constitutional rights as protected under Section 1983 for being subjected to excessive force and for federal malicious prosecution and state law claims of malicious prosecution and assault and violations of the Massachusetts Civil Rights Act (MCRA).

The First Circuit concluded that the lower court erred in not granting qualified immunity to the officers for excessive force, and the state law claims involving assault and the MCRA, but found that disputed facts prevented the officers from succeeding in their qualified immunity claim for malicious prosecution. In concluding the officers were not entitled to qualified immunity for the malicious prosecution claims, the court noted that the facts remained in dispute as to why the officers believe that their charge of assault and battery on a police officer was valid when there appeared to be no evidence that Hunt had struck any of the officers as he resisted arrest.

With respect to the excessive force claim, the court narrowed the issue to: "whether Hunt had a clearly established right to have his hands cuffed in front of him due to an alleged injury despite the officers' judgment call to the contrary." Succinctly, the court concluded that there "is no such clearly established right. Instead, First Circuit precedent makes clear that the officers' decision to handcuff an arrestee according to standard police practice is a judgment call that must be analyzed based on the totality of the circumstances."

The Court discussed how qualified immunity analysis should be performed in excessive force cases. Recognizing that the law has for a long time been clearly established that an officer must not use excessive force, the court described the more narrow analysis required: "We must analyze whether the law is clearly established "'in light of the specific context of the case, not as a broad general proposition."' *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (quoting *Saucier*, 533 U.S. at 201); see also *al-Kidd*, 131 S. Ct. at 2084 ("We have repeatedly told courts . . . not to define clearly established law at a high level of generality.")." Using that analysis the First Circuit narrowed the issue to the question of whether the law was clearly defined that it constituted excessive force to handcuff a person with their hands behind them when there was no objective reason to believe that doing so would be injurious to the arrestee.

In advising police departments, a word to the wise would be to make sure that officers be attuned to the arrestee's situation and where cuffing the person with hands behind would injure the person or cause more than the normal pain, rethink doing so and have available well articulated reasons for using the technique employed.

http://media.ca1.uscourts.gov/pdf.opinions/14-1379P-01A.pdf (last accessed Dec. 17, 2014)

Curley v. City of North Las Vegas – ADA, retaliation, termination

This case involves a claim by an employee that his termination constituted retaliation for filing EEOC claims and for seeking protection under the ADA. The facts of the case paint a different picture and remind those of us who advise HR professionals and employers that some employees can be difficult. Mr. Curley worked for the City of North Las Vegas (based on the facts using the term "work" may be an overstatement, but he was employed there). His duties included cleaning out sewers to protect against blockages. Apparently, Mr. Curley had difficulty hearing and sought accommodations under the ADA filing complaints with the EEOC on two occasions. In his last effort for accommodation he asked the city to relieve him from having to be around trucks with loud engines. As the City could not accommodate that request, it denied it. Not long after, another employee tried to communicate with Mr. Curley on the job, but Mr. Curley was wearing ear protectors and could not hear him. As the court described the incident "The coworker asked Curley to remove his hearing protection so that the two of them could communicate about a work-related task. In response, Curley began swearing and asking the coworker whether he thought he was a doctor. The incident prompted the City to place Curley on administrative leave and to launch an investigation into his behavior."

The investigation revealed a number of troubling facts. Mr. Curley had repeatedly threatened his coworkers and their families. He "threatened to put a bomb under a car, insinuated that he had mafia connections, and talked about giving a "blanket party"—which would involve throwing a blanket over a person's head and beating him. One coworker reported that Curley threatened to kick his teeth out if the coworker did not join a union. On another occasion, Curley threatened to shoot his supervisor's children in the kneecaps." The City also discovered that Curley "regularly conducted personal business while at work, sometimes spending up to three hours on his cell phone;" and "that he was operating an ADA consulting business" on the job. Based on these facts, Mr. Curley was discharged.

The Ninth Circuit concluded that the City's description as to why Mr. Curley was discharged was not pretextual and further concluded that Curley could not show that the reasons were pretextual. In discussing Curley's claim that the City's tolerance of his bad conduct over the years coupled with the temporally close decision to discharge him after an ADA complaint, the Court found that the city's investigation disclosed to it new