

STEVENS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 96–1337

COUNTY OF SACRAMENTO, ET AL., PETITIONERS v.
TERI LEWIS AND THOMAS LEWIS, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF PHILIP LEWIS, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 26, 1998]

JUSTICE STEVENS, concurring in the judgment.

When defendants in a §1983 action argue in the alternative (a) that they did not violate the Constitution, and (b) that in any event they are entitled to qualified immunity because the constitutional right was not clearly established, the opinion in *Siegert v. Gilley*, 500 U. S. 226 (1991), tells us that we should address the constitutional question at the outset. That is sound advice when the answer to the constitutional question is clear. When, however, the question is both difficult and unresolved, I believe it wiser to adhere to the policy of avoiding the unnecessary adjudication of constitutional questions. Because I consider this such a case, I would reinstate the judgment of the District Court on the ground that the relevant law was not clearly defined in 1990.

The Court expresses concern that deciding the immunity issue without resolving the underlying constitutional question would perpetuate a state of uncertainty in the law. *Ante*, at 7 n. 5. Yet the Court acknowledges, as it must, that a qualified immunity defense is unavailable in an action against the municipality itself. *Id.* Sound reasons exist for encouraging the development of new consti-

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tutional doctrines in adversarial suits against municipalities, which have a substantial stake in the outcome and a risk of exposure to damages liability even when individual officers are plainly protected by qualified immunity.

In sum, I would hold that Officer Smith is entitled to qualified immunity. Accordingly, I concur in the Court's judgment, but I do not join its opinion.