

# Protecting Justice or Depriving Rights? How Police Misconduct Legislation Disproportionately Benefits Law Enforcers

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“It used to be that a man could keep out of trouble if he behaved himself. Now he will only keep out of trouble if he behaves himself, the police behave themselves, and court behaves itself.”

- Agona Apell<sup>18</sup>

**A**re police above the law? This common question is complicated by the regulations surrounding police misconduct lawsuits. In the past years, the issue of police misconduct has returned to the forefront of human rights protests and modern media. The misbehavior of individual officers has tarnished the reputation of our law enforcement and distressed our citizens. However, police officers are granted immunities from prosecution when alleged of misconduct. Despite high reported rates of police misconduct, these immunities result in only 25.8% of lawsuits against police departments and individual officers having adverse consequences for the officers involved.<sup>1</sup> So, unfortunately, police are indeed above the law. Officers are meant to protect the rights of citizens, but immunities allow officers to take these rights away. To study the magnitude of this injustice, I have examined a multitude of police misconduct cases, researched the statutes that guide the matter, and referenced a variety of academic sources. In this paper, I will present to you my findings. Upon exposure to the statistics and facts surrounding the matter, the need becomes apparent for law enforcement to be held to the same legal and

ethical standards as the rest of society. Therefore, citizens must be protected through stricter discipline and accountability for officers' actions; a decrease in tort reform must happen to allow individuals to take civil action against police.

In this paper, I will first discuss what constitutes police misconduct and explain the federal statute that guides misconduct lawsuits—Section 1983 of the Civil Rights Act. Second, I will then analyze the faults with the legal process, most of which stem from officers' qualified immunity. Third, the strengths of misconduct legislation and the bases of a successful litigation process will be evaluated. Fourth, I will examine the opposition to misconduct lawsuits. Concluding, I will propose remedies for the difficulties of misconduct lawsuits.

## II. THE BASIS OF MISCONDUCT LEGISLATION

In general, police officers have broad power to carry out their duties. According to a law authority, qualified immunity is often extended to officers in misconduct lawsuits in order to prevent legal prosecution from inhibiting officers' jobs of enforcing the law.<sup>2</sup> However, victims of police misconduct may take action against

an officer if they can prove that the actions of an officer were unreasonable, infringed on their constitutional rights, and gave injury or damages to them.<sup>2</sup> The following section will explore how § 1983 is enforced in states, the contents of the statute, constitutional violations prosecutable under §1983, and the most common types of police misconduct.

## A. Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment applies this federal statute to the states. This amendment secures civil liberties to United States citizens, protecting them against interference of the government. According to the text of the amendment, “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>5</sup> While this element of the Constitution was constructed to protect citizens, it does not give an individual the right to sue the government. So, §1983 was enacted as a vehicle under which individuals can pursue constitutional law claims.<sup>4</sup>

## B. Elements of Section 1983

The Equal Protection Clause of the Section 1983 of the Civil Rights Act of 1871 was established to outline the civil action that may be taken for deprivation of rights. This federal statute makes it illegal for anyone under the authority of the state, like police officers, to deprive a person of their rights that have been guaranteed by the Constitution or federal law. Although the statute is brief, the elements of §1983 have been expanded in an analysis by a qualified authority to reveal their intended purposes.

First, only “persons” may be prosecuted under the statute, meaning that the state cannot be sued, but an officer may be. Further, local governments and municipalities are considered “persons” and may be sued for damages and prospective relief, which proactively remedies future conduct but does nothing to account for events that have already occurred.<sup>4</sup> The Supreme Court held that no limit may exist on victims’ damages if they can be proven; the purpose of the statute is to compensate victims of misconduct, however much that may be.

Second, officers must be acting under the color of the law. Acting under the color of the law means that officers have exercised the power given to them and made possible by their position under virtue of the state.

For example, officers have the power to arrest under the color of the law, but are committing a violation under § 1983 if they used excessive force or other misconducts during that arrest.<sup>4</sup>

To file a suit, the actions of the officer must be unreasonable. The explanation of § 1983 states that an act of an officer is not objectively reasonable if an arrest was made but a crime was not committed.<sup>3</sup> For instance, individuals may not be arrested or indicted for disorderly conduct if they did not disturb a considerable amount of people. Furthermore, if a reasonable officer would know that an action entailed excessive force, the acting officer is not immune from civil prosecution under § 1983. Unreasonableness is determined by judges rather than juries.<sup>3</sup>

Additionally, a causal link must exist between the actions of the defendant officer and the harm caused to

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the victim. Likewise, in order to sue a local government, the harm to the individuals must be the result of a policy, ordinance, regulation, or position implemented by the government and adopted by officers.<sup>4</sup> Furthermore, a policy may be considered a constitutional violation, and thus not protected under § 1983, if supervisors fail to properly train employees to make the right decisions. A policy is also deemed unconstitutional if the unlawful actions of a subordinate have been approved by or are the result of an order or decision made by a “final policymaker”.<sup>4</sup> In the following section, I will the case of—For example, in *Floyd v. The City of New York*, plaintiffs brought a punitive class action suit against the city in order to deter officers from racial profiling ethnic minorities for stop and frisk searches—a practice which the plaintiffs had been victims of. They argued that the city had committed constitutional violations and thus were liable under §1983; the city’s policy violated their Fourth Amendment rights to be free from unreasonable search and Fourteenth Amendment rights to equal protection of the law. The judge held that the city’s practices depended on racial classifications and that these policies were so widespread that they had the force of law. Additionally, the judge held that city officials “demonstrated deliberate indifference to equal protection violations”, and “ignored the need for better monitoring, training, and discipline.” Finally, it was determined

that officers had violated the plaintiffs' Fourth and Fourteenth Amendment rights.<sup>6</sup>

### C. Constitutional Violations

The rights guaranteed to individuals are defined in the Constitution, not in § 1983. However, the method for pursuing action for right violations is included in § 1983. Analysis of misconduct cases shows that one of the most common constitutional provisions utilized is the Due Process Clause of the Fourteenth Amendment.<sup>5</sup> Due process requires that "a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case." Although this clause is an important basis of violations under § 1983, "the Supreme Court has held that the Due Process Clause was not intended to supplant tort law."<sup>4</sup>

One case that exemplifies the concept of due process as well as causal link is Rogers v. City of Little Rock, Arkansas.<sup>7</sup> The plaintiff attempted to sue a police officer, police chief, and the city of Little Rock after she was raped by a police officer. After she was unable to produce proof of insurance during a traffic stop, the plaintiff was followed home by a police officer that then entered her home. Factual findings showed that the officer then mentally coerced the plaintiff into non-consensual sex, using his power under the color of the law. Because of this, the plaintiff brought a due process violation suit under § 1983. The plaintiff also brought suit against the police chief because she believed that he was deliberately indifferent to the sexual misconduct of the officer in previous incidents. Further, she included the city in the suit because she alleged that her harm was the consequence of an unconstitutional policy. The Court of Appeals held that the plaintiff's claim was indeed a violation of her substantive due process rights to bodily integrity. She was awarded \$100,000 in damages. Regarding the police chief, the court found no evidence that he was deliberately indifferent to the actions of the officer, as would be required to uncover under § 1983. Two prior incidents of sexual misconduct alleged

plaintiff's rape allegation, the chief decided to terminate the officer. In addition, the court also held that the woman failed to show how an unconstitutional city policy led to her assault. Earlier allegations of sexual misconduct were investigated by the city and did not show a pattern leading to the plaintiff's harm.

Analysis indicates that proving a claim of due process violation is uncommon. Negligent, random, and unauthorized conduct by an officer, does not always constitute a violation of due process under § 1983, even if intentional. An individual may be the victim of a procedural due process violation if the law was administered or enforced in an unconstitutional manner. In addition to procedural due process, an individual may be the victim of substantive due process violations. In a police misconduct case, in order to state a claim of substantive due process violation, a victim must demonstrate that an officer engaged in unconscionable conduct in a constitutional sense. A plaintiff may also state a claim of violation of one or more of the fundamental rights of the Bill of Rights.<sup>4</sup> For example, in the case against the City of Little Rock, the plaintiff alleged the following violations: Fourth Amendment unreasonable search, Fifth Amendment due process, Sixth Amendment right to counsel, Eighth Amendment right to a fair trial, and Fourteenth Amendment right to due process and equal protection of the law.<sup>5</sup> It was the duty of the court to decide which of these amendment violations were appropriate to the case.<sup>7</sup>

### D. Types of Misconduct

False arrest, malicious prosecution, failure to intervene, and excessive force are the most common rights violations under § 1983.<sup>2</sup> Yet, these misconducts still have elements of cause of action that must be met to be considered police misconduct in the court.

Plaintiffs who bring a claim of false arrest are asserting that their Fourth Amendment right against unreasonable seizure has been violated. This right was applied to states by the Fourteenth Amendment.<sup>5</sup> However, if the officer has probable cause, the arrest is reasonable, even if the officer relied on false information or a misdemeanor was not committed in their presence. In order to win a false arrest claim, the victim must prove that the officer had no probable cause to make the arrest.<sup>2</sup> For example, in Chaparro v. Powell, plaintiff Chaparro sued individual officers after he was allegedly arrested because he attempted to photograph his car in an impound lot. He asserted that he had a right to photograph his car, so he committed no crime. In court, the plaintiff alleged that

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against the officer were cited by the police chief, one of which led to a 10-day suspension. After investigating the

defendant officers arrested him without probable cause, violating his right to be free from unreasonable seizure under the Fourth Amendment.<sup>8</sup> Due to procedural inadequacies on the part of the plaintiff, the claim was dismissed.

A number of terms must also be met for a malicious prosecution claim. To win this type of lawsuit, the victim must show that the defendant police officer commenced a criminal proceeding, that the criminal proceeding ended with no conviction, that there was no probable cause, and that the proceeding was brought with malice against the victim.<sup>2</sup> The term probable cause originates from the Fourth Amendment and means that an officer has a reasonable belief that a suspect has committed a crime considering the surrounding facts and information obtained prior to the arrest.<sup>5</sup> So, if the officer does not have sufficient reason to believe an individual is guilty, the officer may be sued in court.<sup>2</sup>

Claims of excessive force are the most public, and perhaps the most complicated. Excessive force is difficult to determine because it depends on the surrounding facts and circumstances. The research referenced on violations of § 1983 cites that the intention of the officer in these cases is irrelevant; if the amount of force was reasonable, it does not matter if the officer had ill intentions. Furthermore, if the amount of force was unreasonable, the intentions of the officer are irrelevant and he or she may lose the lawsuit.<sup>2</sup>

Another common violation of § 1983 is failure to intervene; though, the circumstances of this claim are much less complicated. Officers have a duty to protect individuals from constitutional violations by other officers. So, even if an officer did not partake in misconduct, if he or she witnessed another officer violating the rights of a citizen and failed to intervene, they may still be liable.<sup>2</sup>

Section 1983 is extensive and complicated, but the limitations, terms, and immunities of it are crucial to know going forward in a discussion of police misconduct.

### III. THE IMPEDIMENTS TO WINNING A LAWSUIT UNDER § 1983

Now that the basis for police misconduct and its regulations has been established, the subsequent section of findings will illustrate why § 1983 rarely grants victims the win that they may deserve. Plaintiffs' failures to favorably settle police misconduct lawsuits result from the immunities granted to officers by § 1983, and the excessive rules and litigation to affirm police misconduct,

the lack of attorneys willing to take cases, and a lack of objectivity in records.

#### A. Qualified Immunity

The biggest impediment to settling police misconduct lawsuits is qualified immunity. Qualified Immunity “shields individual officials who are performing discretionary activities unless their conduct violates ‘clearly established statutory or constitutional rights of which a reasonable person would have known.’”<sup>4</sup> According to Ian D. Forsythe, this definition means that an officer is entitled to qualified immunity unless his or her action “is so obviously wrong, in the light of preexisting law, that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing.”<sup>4</sup> Under § 1983, in order to prove that an action is unreasonable, a plaintiff may reference similar cases to show that an officer’s behavior is unlawful and that another officer would know that it was unconstitutional.<sup>3</sup> Further, if public officials disagree on reasonableness, qualified immunity will be extended. Forsythe also explains that even if the rights of the plaintiff are clearly defined so that a reasonable officer would have known they were violating them, qualified or good faith immunity can still bar a police misconduct lawsuit if it was objectively reasonable for an officer to believe he was not violating an individual’s rights. Additionally, if rights were not clearly established at the time of action and a reasonable officer may not know what entails a violation, immunity will be granted. Officers are also granted qualified immunity when they mistakenly assume probable cause or when they mistakenly commit a constitutional violation. Section 1983 extends protection to officials, but impedes justice for private victims of misconduct.

In the case of *Pearson v. Callahan*<sup>17</sup>, the plaintiff brought § 1983 action against officers, alleging that they violated his Fourth Amendment rights by entering his home without a warrant. The plaintiff distributed drugs to an undercover informant whom he voluntarily admitted into his home. Afterwards, police officers entered his home and conducted a warrantless search. It is noted that some courts adopted a “consent-once-removed” doctrine that allows police to enter a home without a warrant if an undercover police officer was voluntarily admitted into the house and witnessed contraband in plain view. However, this is not a “consent-once-removed” case. No undercover officer entered the plaintiff’s home, only an *informant*. The court referenced a similar case where it was held that

officers “could not reasonably have believed that their conduct was lawful because they knew that (1) they had no warrant; (2) respondent had not consented to their entry; and (3) his consent to the entry of an informant

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could not reasonably be interpreted to extend to them.” However, the court still granted the officers qualified immunity. First, they officers claimed that they would have reasonably believed that the doctrine extended to them. Furthermore, the court held that the officers should receive immunity because “although issue had not been decided in officers' circuit, “consent-once-removed” doctrine had been accepted by three Federal Courts of Appeals and two State Supreme Courts.” So, the court held the officers' claim of reasonableness, and they were immune from prosecutions for their unintentional misconduct.

## **B. Legal Process**

It may also be concluded that the demanding litigation process further diminishes plaintiffs' chances of winning police misconduct lawsuits, and likely discourages victims from filing one at all. According to Forsythe in his analysis of § 1983, the burden of proving misconduct falls on the plaintiff and their attorney.<sup>4</sup> In order to overcome a defendant's qualified immunity, the plaintiff must cite specific facts of the incident in question and compare them with analogous cases. This obligation arose from the decision in a previous case that “public officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases.”<sup>4</sup> For instance, in order to show that a defendant officer's actions constitute unreasonable search, a plaintiff must cite a previous comparable case where the court found the officer's search to be unreasonable. Also, as discussed earlier in this paper, a plaintiff must find a causal link between a city or department policy and the harm caused to them by officers. Failure to completely meet these rigorous standards often results in lawsuits being lost by victims or dismissed.

The burden of proof is exemplified in the case of

*Igartua v. Toledo*.<sup>9</sup> The plaintiffs alleged violations of the Fourth, Fifth, and Fourteenth Amendments after police allegedly punched, kicked, and beat them with nightsticks in their home. The plaintiffs brought a substantive due process claim under the Fifth Amendment; that is, they asserted that their life, liberty, or property was violated by a government actor without due process.<sup>5</sup> However, this claim was dismissed because the Fifth Amendment only applies to the federal government, of which the defendants were not employed. The plaintiffs needed to assert their claim under the Fourteenth Amendment, which applies to state actors. The plaintiffs also alleged that the defendants deprived them of due process under the Fourteenth Amendment, but once again, their claim was dismissed. The court found that this due process claim was actually a claim of excessive force, which is contained in the Fourth Amendment, not the Fourteenth. Thus, the claim was dismissed.<sup>5</sup> Unfortunately, procedural errors impeded the plaintiffs from attaining the outcome they may have deserved.

Many cases have outcomes similar to this one, like *Chaparro v. Powell*. In the case, which I discussed previously, the plaintiff was arrested while taking photographs of his car. He attempted to sue the City of Chicago and the Chicago Police Department, claiming that his harm was a product of a custom of the city and department. He alleged that misconducts are custom and tolerated such as “abuse of authority, use of excessive force, failure to discipline officers for misconduct, concealing police misconduct, failure to properly investigate or remedy police misconduct, failure to provide training to prevent misconduct, and arresting citizens who photograph cars inside city impound lots.” However, he was unable to adequately prove a causal link between each of these misconducts and his treatment by officers. Consequently, all of his claims against the city and department were dismissed.<sup>8</sup> The arduous structure of police misconduct litigation is no means for meeting a fair outcome. The burden put on victims of police misconduct bars them from meeting the justice that is owed to them.

## **C. Lack of Attorneys**

An unfortunate result of tort reform and plaintiffs' excessive responsibilities in filing a suit is a decrease in attorneys who are willing to work on police misconduct cases. The CATO Institute's National Police Misconduct Statistics and Reporting Project reported that between May 2009 and February 2010, only 33% of lawsuits

resulted in an award for the victim. Furthermore, of these cases, 74% were settled out of court and only 26% had a favorable judgment for the victim.<sup>10</sup> Additionally, because victims are likely already in debt from medical bills, loss of employment, and criminal charges that result from the police misconduct, attorneys can usually only take cases on a contingency basis, meaning that they only make money if they win the lawsuit.<sup>10</sup> Unfortunately for attorneys and victims, the risks of losing outweigh the potential rewards of winning, so many cases are not litigated at all.

#### **D. Accountability**

Finally, victims of police misconduct often lose their cases because they are not capable of proving the wrongdoings of the defendants. If the incident is not caught on a police dash camera, judgment falls on the victim's word against the word of the police officer. Furthermore, in retaliation of misconduct reports made against them, police officers have been known to file accusations against victims to claim that plaintiffs' reports are actually false. This malicious practice is so common that in *Zanders v. Swanson*, Communities United Against Police Brutality took action in representation of their members who were indicted after officers challenged their claims of police brutality as false. In an attempt to counter polices' intentional deceitfulness, the plaintiffs brought a § 1983 challenge against the state statute that makes it illegal to knowingly file a false report of police misconduct. This action seems odd, but it is essential to ensure that citizens would be able to take action against police without being indicted. The group asserted First Amendment and other constitutional violations. However, Zander's action was dismissed because the plaintiffs did not face a credible threat of prosecution or injury required by their First Amendment challenge; ironically, their suit was also dismissed because they could not prove that polices' claims against them were actually false.<sup>11</sup>

Research of misconduct cases reveals that false accusations against plaintiffs are unfortunately common. Even in *Igartúa v. Toledo*, discussed previously, the defendant officers submitted allegedly false accusations against the plaintiffs and arrested them.<sup>7</sup> The lack of objectivity in records combined with police's greater credibility in court denies citizens of their due process rights and adds to polices' invulnerability in committing misconducts. By challenging plaintiffs' claims and making false accusations, officers abuse their power to shift judgment in their favor.

In conclusion, excessive immunities, litigation regulations, a lack of attorneys, and false accusations make it difficult to pursue or win a police misconduct lawsuit. Without action, victims of police wrongdoing will never attain the outcome that they should be granted.

#### **IV. OVERCOMING THE LIMITATIONS OF § 1983**

While it may seem now that it is impossible to win a police misconduct lawsuit, research demonstrates how on rare and properly litigated occasions, victims receive the justice that they deserve. For example, a Brooklyn man was awarded \$16,600,000 in 2010 after a detective crushed his legs with a police cruiser, causing him to lose a leg. The man was running from the officer, who was attempting to arrest him for a misdemeanor.<sup>19</sup> The court decided that the detective acted with malice and intent while arresting the man.<sup>1</sup> While not all cases of misconduct are as extreme and costly as this one, all have a chance of awarding the plaintiff justly. After analyzing research and civil misconduct cases, one can deduce that reaching success in misconduct lawsuits relies on properly litigating, overcoming qualified immunity, reaching the qualifications of misconduct, and criminal prosecution.

*Allen v. Thompson* is a case that clearly demonstrates how terms of § 1983 may be met in order to overcome qualified immunity. Plaintiff Brewer was pulled over for excessively tinted windows. His body was searched by an officer who then entered his vehicle without permission three times. Brewer's girlfriend, Allen, arrived on the scene and stood two car lengths away and recorded the defendant officer with her cell phone. The officer then approached her, immediately demanded the cell phone, twisted her arm, threw her into a fence, and

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forcefully pulled the phone away when she refused. The defendant then proceeded to his vehicle, turned the audio recording device off, called his sergeant, and upon learning that his seizure of the cell phone was not allowed, he deleted the video. Plaintiff Allen asserted two Fourth Amendment violations, unlawful seizure of her cell phone and deletion of video, and excessive force.

The other plaintiff, Brewer, also asserted two claims for violations of his Fourth Amendment rights, unlawful seizure and detention and unreasonable search. The officer's entry into the vehicle was found to be a violation of the right to be free from unreasonable search of which a reasonable officer would be aware. Therefore, the officer was not entitled to qualified immunity. Further, seizure of Allen's phone was found to be unreasonable, as she did not pose a threat to officer safety. Deleting the video and turning the audio off in the police vehicle was also unreasonable. Thus, the officer did violate the Fourth Amendment illegal search and seizure claim. Additionally, the officer was not entitled to qualified immunity from excessive force and positively violated the Fourth Amendment right to be free from excessive force. The motion of the plaintiffs was partially granted, and partially denied due to fact issues.<sup>12</sup> Despite a lack of complete success, this case is a great illustration of how the legislation system can handle cases of misconduct with procedural justice.

While individual government actors are usually

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entitled to qualified immunity, local governments do not receive this benefit. Local governments have no immunity from damages for their constitutional violations and cannot use good faith as a defense. So, if a plaintiff can find a connection between the actions of officers and policies of a local police department, they may be able to successfully sue.<sup>4</sup>

Criminal action is the ideal solution for victims of police misconduct. These individuals are likely outraged by the justice that has been torn from them by the people who were supposed to protect it. Most victims want criminals to pay for what they have done. But, when officers are the criminals, who protects the victims? This unfortunate complication is likely why most file

civil action. The criminal justice system did not protect them, so they have to seek out justice in other sources.

## **V. THE OPPOSITION OF CIVIL LAWSUITS AS A REMEDY TO POLICE MISCONDUCT**

Section 1983 was implemented to secure justice for victims of police misconduct. Although upholding the intentions of this statute is difficult, when victims of misconduct are rewarded, the lawsuit is costly for taxpayers. Additionally, even those successful lawsuits fall short of deterring future misconduct in police departments. Furthermore, misconduct taints citizen's perceptions of law enforcement and makes interactions more tense and complicated. Opponents of police misconduct lawsuits cite these as disadvantages of the legal process.

Richard Emery and Ilann Margalit Maazel explain these drawbacks in their review of § 1983. They conclude that the fault of misconduct lawsuits is a result of indemnification, the compensation from the city to award victims of misconduct. While indemnification executes its purpose of rewarding the winning party and freeing officers from personal liability, it comes at the expense of the taxpayer. Taxpayers pay millions of dollars ever year to fund this indemnification. In New York City between 1994 and 1996, seventy million dollars was funded by the taxpayers for the processes and settlement of police misconduct lawsuits.<sup>13</sup>

Emery and Maazel deduce that plaintiffs in misconduct cases bring suit because they are outraged, are seeking punishment for the officers who deprived their rights, and want to affect a systematic change that will deter misconduct. Unfortunately, plaintiffs have to settle for a monetary reward that affects no actual punishment for officers or systemic progress. The best resolution for appeasing victims' outrage would be "criminal prosecution, better police training and counseling, and civil litigation that actually forces guilty police officers to pay the settlements and judgments against them."<sup>13</sup>

Another unfortunate ramification of police misconduct and subsequent lawsuits is a decrease in trust towards police that prevents officers from enforcing effectively. Media coverage of misconduct continuously tarnishes the reputation the police force for the actions committed by negligent or misbehaving officers. In his research of trust between police and communities, Andrew Goldsmith cited legitimacy as the determination of trust towards police. Legitimacy is the judgment by citizens of police's rightfulness in performing their jobs,

as well as the effectiveness of the parties who hire and supervise officers. According to Goldsmith, “when the public views police as legitimate, public co-operation with police in ways that assist effectiveness is more likely.”<sup>14</sup> It is apparent that misconduct lawsuits develop a mistrust of police that prevents law from being easily upheld. This research suggests that distrust of police creates a cycle of misconduct because interactions with officers are tainted with suspicion that impedes cooperation by both parties.

While police misconduct can have a detrimental effect on victims, the civil process has an equally destructive impact on communities who fund the lawsuits and police departments that continue a pattern of misconduct due to a lack of repercussions and a suspicion towards police that complicates interactions. Civil lawsuits fall short of providing justice for victims, punishing officers, and deterring delinquency; other devices may be used, such as prosecution, training, and career or monetary punishment for officers that can close the gap between the current ineffective monetary compromise and the systematic change needed to deter further misconduct. Some of these alternative remedies to misconduct will be discussed in the subsequent section.

## **VI. CREATING A CLIMATE OF BETTER BEHAVIOR AND ACCOUNTABILITY**

Steps must be taken to decrease misconduct in the police force and increase officers’ accountability for their actions. Many factors lead to the inefficiencies with law enforcement and misconduct lawsuits. Research on police reform suggests that improvements in hiring and training, discipline, §1983 regulations, and objectivity in records could potentially create an environment absent of the misconduct that currently plagues our police departments and justice system.

### **A. Hiring and Training**

The first phase of creating a just system is to eliminate the causes of delinquency among police officers. Purging of these behaviors may be achieved through a stricter hiring basis and increased training within the police system. The hiring process will aid in the creation of the right police department that will maintain the ethical and legal conduct expected of them. Factors like applicants’ past education, substance abuse, and misbehaviors must be weighed greater in the decision of whether they will be able to justly protect their communities.<sup>15</sup> These are all aspects that

can significantly impact officers’ high-stakes decision making. It is critical that law enforcement is able to react to situations in a manner that reflects their integrity and the ethics expected by their communities. Furthermore, an evaluation of racial prejudices can reveal whether candidates are capable of performing their jobs without racial profiling, an infamous cause of further misconduct. John Tyler Clemons stated that, “the most insidious form of racial bias is actually implicit and subconscious,” but however is “capable of affecting conscious behavior.” In fact, these subconscious biases are ones that officers rely on when making high-stakes judgments about an individual’s criminality and violence. Disturbingly, many empirical studies have found that implicit racial biases influence police’s decisions on whether they will use deadly force. To weed out these dangerous biases, an Implicit Association Test can be used to measure individual’s implicit associations with certain demographics of people.<sup>16</sup> If these tests were implemented into the hiring process, much of the racially based misconduct would be eliminated. Choosing the right officers for a police force is of the utmost importance to establishing a network of correct and ethical behavior.

Effective training will help officers understand the expectations of the police department and teach them the correct on-the-job procedures. Inadequate training must no longer be an excuse for misconduct. Supervisors are liable for the behavior of their subordinates, so they must properly train their employees to perform the job expected of them. Furthermore, it may be concluded that increasing the emphasis on training will transform the objective reasonableness requirement. What was found reasonable by another officer should not be the standard when determining whether an action constitutes misconduct. All officers should be performing according to the regulations they were trained upon, so a pattern of misconduct should not be the benchmark of certain scenarios.

### **B. Discipline**

Discipline both by the police department and civil court proceedings is instrumental to deterring officers from committing acts of misconduct. In his review of police discipline, Darrel Stephens analyzed current discipline techniques and their limitations. Police executives have criticized the current departmental process of disciplining officers because it is both lengthy—taking months to years—and often ineffective in deterring negative behaviors.<sup>15</sup> According to

Stephens, there is a consensus among citizens, police officers, and unions that current discipline has fallen short of its objective of holding officers accountable for their actions and encouraging good behavior.<sup>15</sup> One disciplinary aspect that must be amended is the process of dealing with officers who repeatedly commit misconduct. Most officers refrain from misconduct; a study found that 2% of officers accounted for about 50% of misconduct complaints. It is obvious that this small group of delinquent officers must receive harsher and more effective punishment that will deter and eliminate their misbehavior. To determine punishment, many departments reference a discipline matrix that determines discipline based on the class of offense, and how many times and officer has committed an offense. One matrix shows repercussions for offenses

**"Taking action against the police should not be an impossible procedure."**

scaling from class one to class seven. On the y-axis is the frequency that an officer has committed an offense, ranging one to three times. In the matrix, first time offenders receive nothing beyond a written reprimand until a class 5 offense is committed, at which time an officer must receive a 1-day suspension. Termination is not enforced until a first offender commits the highest class of offense. A third-time-offender is only terminated once he or she commits a class 5 offense.<sup>15</sup> From analyzing this chart, it may be deduced that those who once commit misconduct could refrain from becoming repeat offenders if their punishment was more harsh and effective for their individual transgressions.

### **C. Decrease in Tort Reform**

Furthermore, a decrease in requirements to civilly indict officers must be implemented in order to provide victims of misconduct the outcome that they deserve. As I have documented, officers receive wide immunity, which protects them from lawsuits. However, after researching, it may be concluded that these immunities are often unwarranted and disproportionately favor the officer over the victim. These immunities not only erase accountability, but they also uphold a mentality of invulnerability that affects the discretion of officers while performing their jobs. In order to reverse the tort reform that is § 1983, the window of requirements for qualified

immunity must be decreased. This adjustment would encourage good behavior on the job and successfully discipline officers who do not act to the expectations of the community, police department, or law.

### **D. Accountability**

Finally, accountability of officers can be significantly increased through the use of body cameras. Previously, I cited the case of Zanders v. Watson where a community organizations was attempting to reform the policies of their city by decriminalizing the act of filing false accusations against the police.<sup>11</sup> The reason for their motion was that they had seen a trend of police denying misconduct reports and indicting the victims that made them. This act of retaliation is also observable in the Igartua v. Toledo case, where the acting police officers denied the punching and kicking claims made by the plaintiffs.<sup>9</sup> Unfortunately, in instances like these, the truth is almost entirely determined by the officer's word against the plaintiffs. Because plaintiffs' accusations are nearly impossible to prove, little action may be taken against the defendants. However, the use of body cameras would entirely eliminate the discretion between accounts. In Floyd v. New York, the judge spoke on the need for body cameras and their potential in law enforcement. The judge discussed how currently, records of accounts are often inaccurate, since months may pass between the incident and deposition, and inherently one sided, as both plaintiffs' and defendants' accounts are colored by their own self-interest. So, arguably, the biggest advantage of implementing body cameras would be that they provide an objective record of an encounter for both officers' supervisors and the court. Additionally, as all exchanges would be recorded, body cameras would encourage lawfulness and respect for both police and civilians.<sup>6</sup> Furthermore, accusations that authorities are more likely to believe the police would be completely eliminated and therefore trust would be built towards law enforcement. The implementation of body cameras would be extremely beneficial to citizens who would be able to prove their claims and police who would be able to show that accusations of misconduct against them are false.

### **VII. CONCLUSION**

In this paper, I have discussed the components of police misconduct and Section 1983, the statute that guides law suits for these wrongdoings. I analyzed the shortcomings of the litigation process that impede favorable outcomes for victims, the biggest of which is qualified immunity. I also explored the strengths of

the misconduct litigation and the necessary process to achieving justice in the court. The negative consequences of police misconduct lawsuits were also explained. Finally, I proposed methods to lesson police misconduct and remedy the litigation process.

Taking action against the police should not be an impossible procedure. To procure the justice promised to citizens in the constitution, the enforcers of the law must be held accountable for their transgressions. When individuals' rights to liberty have been impeded, they must be procured by form of criminal or civil proceedings against the offenders. Section 1983 was created as a means to pursue action when citizens' rights have been deprived. However, the nature of civil proceedings hinders this section from serving its intended purpose. It is evident that a reform is crucial to deliver victims the justice that police officers are meant to protect. Without the proper systems to penalize delinquent officers, misconduct will never be eliminated and will thrive neglected in our criminal justice and legal systems.

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<sup>1</sup>Packman, David. "2009 NPMSRP Semi-Annual Police Misconduct Statistics Report -UPDATED." *PoliceMisconduct.net* CATO Institute, 12 Jan. 2010. 19 April 2017. <<https://www.policemisconduct.net/2009-npmsrp-semi-annual-police-misconduct-statistics-report-updated/>>

<sup>2</sup>"Police Misconduct and Civil Rights" – *FindLaw*. Web. 08 Oct. 2016 <<http://civilrights.findlaw.com/civil-rights-overview/police-misconduct-and-civil-rights.html>>

<sup>3</sup>42 U.S.C.A. § 1983

<sup>4</sup>Forsythe, Ian D. "A GUIDE TO CIVIL RIGHTS LIABILITY UNDER 42 U.S.C. § 1983: AN OVERVIEW OF SUPREME COURT AND ELEVENTH CIRCUIT PRECEDENT." *Constitution Society*. Web. 03 Dec. 2016. <[http://www.constitution.org/brief/forsythe\\_42-1983.htm](http://www.constitution.org/brief/forsythe_42-1983.htm)>.

<sup>5</sup>US Const. amend. IV, V, VI, VIII, XIV

<sup>6</sup>Floyd c. City of New York. United States District Court, S.D.N.Y. 12 Aug 2013. WL 4046209

<sup>7</sup>Rogers v. City of Little Rock, Ark. United States Court of Appeals, Eighth Circuit. 10 Aug 1998. 152 F.3d 790

<sup>8</sup>Chaparro v. Powell. United States District Court, N.D. Illinois, Eastern Division. 2 Jan. 2009. WL 68683

<sup>9</sup>Igartua v. Toledo. United States District Court,

District of Puerto Rico. 29 March 2010. 698 F. Supp.2d 274

<sup>10</sup>Packman, David. "The Truth About Police Misconduct Litigation." *PoliceMisconduct.net*. CATO Institute, 25 Nov. 2016. 02 Dec. 2016. <<https://www.policemisconduct.net/the-truth-about-police-misconduct-litigation/>>.

<sup>11</sup>Zanders v. Swanson. United States Court of Appeals, Eight Circuit. 20 July 2009. 573 F.3d 591

<sup>12</sup>Allen v. Thompson. United States District Court. W.D. Kentucky. 9 April 2009. 14 F.Supp.3d 885

<sup>13</sup>Emery, Richard. "Why Civil Rights Lawsuits Do Not Deter Police misconduct: The Conundrum Of Indemnification And A Proposed Solution." *Fordham Urban Law Journal* 28. (2000): 587. Web. 27 Nov. 2016. <<https://pdfs.semanticscholar.org/52ed/fb8e47951dc3ab21a083dd596acad513ec28.pdf>>

<sup>14</sup>Goldsmith, Andrew. "Police Reform And The Problem Of Trust." *Theoretical Criminology* 9.4 (2005): 443-470. *PsycINFO*. Web. 3 Dec. 2016.

<sup>15</sup>Stephens, Darrel W. Police Discipline: A Case For Change. New Perspectives in Policing: *Harvard Kennedy School Program in Criminal Justice Policy and Management*; Washington, DC: *National Institute of Justice*, [2011], 2011. Web. 27 Nov. 2016. <<https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>>

<sup>16</sup>Clemons, JT. "BLIND INJUSTICE: THE SUPREME COURT, IMPLICIT RACIAL BIAS, AND THE RACIAL DISPARITY Ln THE CRIMINAL JUSTICE SYSTEM." *American Criminal Law Review* 51.3 (n.d.): 689-713. *Social Sciences Citation Index*. Web. 27 Nov. 2016.

<sup>17</sup>Pearson v. Callahan. Supreme Court of the United States. 21 Jan. 2009. 172 L.Ed.2d 565

<sup>18</sup>Appell, A. (2013). *The Success Genome Unraveled: Turning Men from Rot to Rock*. CreateSpace.

<sup>19</sup>Riley, John. "Lawsuit: Long Beach Man Says Cop Ran Over Legs." *Newsday*. 16 Feb. 2010. <<http://www.newsday.com/long-island/nassau/lawsuit-long-beach-man-says-cops-ran-over-legs-1.1765040>>