

Gateway Journalism R E V I E W

Founded 1970 as St. Louis Journalism Review



Pulitzer Center

**LEGAL ROADBLOCKS
TO POLICE
ACCOUNTABILITY**

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POLICE**

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CONTRIBUTORS

PUBLISHER WILLIAM H. FREIVOGEL

William H. Freivogel is a former editorial page deputy editor for the St. Louis Post-Dispatch and contributes to St. Louis Public Radio. He is a member of the Missouri Bar.

EDITOR JACKIE SPINNER

Jackie Spinner is an Associate Professor at Columbia College in Chicago; freelance independent journalist specializing on the Middle East; former Baghdad Bureau Chief Washington Post.

DESIGN CHIEF ABBEY LA TOUR

Abbey La Tour is a copy editor and paginator at for Paxton Media Group. La Tour is a graduate of SIUC where she studied journalism and communication design. You can find her on Twitter @LaTourAbbey.

ARTIST STEVE EDWARDS

Steve Edwards is a professional artist at Steve Edwards Studio.

GJR FOUNDER CHARLES L. KLOTZER

Charles Klotzer is the founder of the St. Louis Journalism Review.

STUDENT MANAGING EDITOR

EMILY COOPER

Emily Cooper is a first-year master's student at SIUC from Wisconsin. She is studying Professional Media and Media Management. You can follow her on Twitter @coopscoop.

ADMINISTRATIVE ASSISTANT

ENOLE DITSHEKO

Enole Ditsheko is a doctoral student at SIUC, author of "Wrestling Botswana Back from Khama," a 2019 journalistic polemic about the state of democracy in his homeland of Botswana.

NEWSLETTER AND SOCIAL MEDIA EDITOR CLARISSA COWLEY

Clarissa Cowley is a second-year master's student at SIUC from Chicago. She is studying professional media and media management with a focus in multimedia journalism. Her research interests are environmental and racial justice.

COPY EDITOR PENNY FOLGER

Penny Folger is a recent Columbia College graduate and Los Angeles native. Her work has been published in the Columbia Chronicle and ChicagoTalks.

SOJOURNER AHEBEE

Sojourner Ahebee is a health equity reporter at WHYY, Philadelphia's NPR Member Station. She is a recent graduate of Stanford University.

JOHN CARLTON

John Carlton is a former St. Louis Post-Dispatch reporter and editorial writer whose editorials on health care were a finalist for a Pulitzer Prize in 2010.

KALLIE COX

Kallie Cox is a reporter for the Southern Illinoian and can be reached at coxkallie@gmail.com or on Twitter @KallieECox. She is a former editor-in-chief of The Daily Egyptian, the student newspaper of SIUC.

EMILY GROSS

Emily Gross is a graduate of Washington University in St. Louis.

FELICIA HOU

Felicia Hou is a reporting fellow from Stanford University where she studied science, technology, and society.

MEREDITH HOWARD

Meredith Howard is a senior at Baylor majoring in journalism with a minor in political science.

KAREN KUROSAWA

Karen Kurosawa is a reporting fellow from Stanford University.

ISABEL MILLER

Isabel Miller is a photojournalist based in southern Illinois. She attended Medill's graduate program in summer 2021.

BRIAN MUNOZ

Brian Munoz is a photographer for St. Louis Public Radio and former editor of the Daily Egyptian, where he photographed the 2017 Black Lives Matter protests in St. Louis.

ZORA RAGLOW-DEFRANCO

Zora Raglow-DeFranco is a juris doctor and masters in social administration dual-degree candidate at Case Western Reserve in Cleveland, Ohio.

ORLI SHEFFEY

Orli Sheffey is a sophomore studying political science at Washington University in St. Louis. She is currently a senior news editor at Student Life, the university's independent newspaper.

MARANIE RAE STAAB

Maranie Staab is a freelance photojournalist and Pulitzer Center fellow.

ELIZABETH THARAKAN

Elizabeth Tharakan is a PhD student at Southern Illinois University Carbondale. She is also an attorney licensed in Missouri, Colorado, New York and the District of Columbia.

PAUL WAGMAN

Paul Wagman is a former Post-Dispatch reporter and FleishmanHillard executive who now is an independent writer and communications consultant. He covered the death of Thomas Brown in the Maplewood Police Headquarters in 1977.

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School of Journalism College of
College of Arts and Media
Olusegun A. Ojewuyi,
Interim Dean
Jan Thompson, Director

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Police dodge punishment through legal roadblocks to accountability

by William H. Freivogel

In 1971, the St. Louis police explanation for the death of Joseph Lee Wilson — who died in police custody on Aug. 25 of that year — was that he had fallen off of a bar stool.

Mike Royko, the late Chicago columnist, quipped that the barstool must have been on top of the John Hancock building.

This was 50 years ago, about the time I first walked into the Post-Dispatch newsroom as a 22-year-old rookie reporter. Wilson's death was one of my first big assignments from Executive City Editor Charlie Prendergast.

Royko wasn't the only one skeptical about the police explanation. Just about everyone knew that St. Louis police officers from the 3rd District, within sight of the Anheuser-Busch brewery, had kicked Wilson to death in his jail cell.

Both the state prosecutor, Circuit Attorney Brendan Ryan, and the federal prosecutor, U.S. Attorney Daniel Bartlett, had investigated. Both told me they had no doubt that the police officers killed Wilson.

One of the prosecutors told me the imprint of a shoe was visible in the physical damage to Wilson's chest, and he thought he knew the officer who belonged to that shoe. He just couldn't prove it because of the "blue wall of silence."

On the fifth anniversary of Wilson's death, the Board of Police Commissioners voted unanimously to close the case as "not sustained." It refused to release the internal police investigation and the state courts upheld that refusal in 1979, saying that the internal report contained hearsay.

Chicago Riot, Fred Hampton killing and Jon Burge's Torture Squad

During this same era, the police in Royko's Chicago gained a national reputation for brutality. Critics saw the 1968 Democratic National Convention as more of a police riot than a student riot.

A mentor of mine, James C. Millstone, was covering the convention for the Post-Dispatch. He told me about the night Chicago police forced him and protesters through a plate glass window and into a bar — a scene that was captured in the recent movie about the Chicago Seven.

Then there was the 1969 killing of Black Panther leader Fred Hampton in a fusillade of 90 bullets. Cook County State's Attorney Edward V. Hanrahan organized the raid and claimed the Panthers had opened fire, which they hadn't. Later Hanrahan was indicted for lying to the grand jury about the raid. He was acquitted. The city eventually paid out a \$1.8 million civil settlement.

In 1972 Commander Jon Burge's homicide squad began its two-decade run of torturing bogus confessions out of more than 100

suspects. As an editorial writer, I wrote about the many unjust murder convictions that resulted from coerced confessions in Illinois. From 2000-2010, the governor and Illinois courts released some of those wrongfully convicted. Eventually, U.S. Attorney Patrick Fitzgerald convicted Burge on federal charges and he was sentenced to 4 years in prison.

Roots of journalism review

When I recently told Charles Klotzer, the founder of the St. Louis Journalism Review, that we were publishing a special edition on police accountability, he said the media's inaccurate coverage of police brutality was one impetus behind the founding of the Chicago Journalism Review and later the St. Louis Journalism Review.

In fact, Focus Midwest, a sister publication that Klotzer published, carried its own special report on police brutality. So this issue stands on the shoulders of the publication that Klotzer founded 51 years ago.

News organizations have not always been known for reporting on police brutality, partly because reporters are dependent on police officers for information about big stories.

Every Saturday night as a young reporter I had the job of calling around to all the police stations in the St. Louis area to see if there were any late breaking crimes. My in-depth reporting technique consisted of one probing question: "Anything happenin'?" I always hoped the answer was no and it almost always was.

ArchCity Defenders, a civil rights advocacy group that gained prominence during the Ferguson protests of 2014, released a report earlier this year based on content analysis from 115 news stories on officer killings in St. Louis. The report found that news reports almost always emphasized the police version of the killing and why it was justified: by the victim resisting arrest or because the suspect "looked like he was reaching for a gun."

Two incidents of brutality — the murder of George Floyd in Minneapolis and the brutal beating of Officer Luther Hall, a Black undercover police officer in St. Louis — illustrate the unreliability of police reports of brutality.

The Minneapolis police report after the Floyd murder:

Man Dies After Medical Incident During Police Interaction

May 25, 2020 (MINNEAPOLIS) On Monday evening, shortly after 8:00 pm, officers from the Minneapolis Police Department responded to the 3700 block of Chicago Avenue South on a report of a forgery in progress. Officers were advised that the suspect was sitting on top of a blue car and appeared to be under the influence.

Two officers arrived and located the suspect, a male believed to be in his 40s, in his car. He was ordered to step from his car. After he got out, he physically resisted officers. Officers were able to get the suspect into handcuffs and noted he appeared to be suffering medical distress. Officers called for an ambulance. He was transported to Hennepin County Medical Center by ambulance where he died a short time later.

At no time were weapons of any type used by anyone involved in this incident.

All of that was factual, but it wasn't the complete truth. It didn't describe the scene that horrified the world: the video of Floyd's murder under Derek Chauvin's knee.

In the Hall case, St. Louis police filed an injury report that sounded as if Hall had just fallen down:

"As officers were making arrests, Officer Hall was knocked to the ground, striking the concrete."

A trial in federal court this year showed that a group of white officers — enthusiastic about the prospect of beating Black demonstrators — didn't realize Hall was an undercover officer and beat him brutally, leaving a hole in his lip and severe head and neck injuries.

St. Louis police have killed more civilians in the past five years than any department of its size in the country. But they release less information than ever before. They don't name officers and details are scant.

'Pick a number' — Russian roulette in the Maplewood Police Station

There was no question about the cause of Thomas E. Brown's death in the Maplewood police station on Jan. 8, 1977. A bullet from Officer Kenneth Pool's .45 caliber revolver struck Brown in the head.

Maplewood police said Pool was unloading his pistol when the gun accidentally discharged killing Brown, a 38-year-old man who was intellectually disabled, mumbling and fidgety.

Bobby Duncan, the friend who was arrested with Brown in connection with a stolen money order, told a different story of how the gun discharged. He said Pool took him and Brown into an interrogation room. A court record recounts what Duncan saw next: "Pool then accused Brown of stealing the money order during which time Pool was handling his gun. Pool emptied his gun's cartridges onto the table then asked Duncan and Brown to each pick a number. Brown said 'one', Duncan said 'ten' or 'seven', then Pool 'pointed the gun right at Tom, straight and shot him.... Tom get (sic) shot and fall, fall back, and



Photo by Maranie Rae Staab via AP

In this Aug. 8, 2020 photo, Portland, Ore., police officers in riot gear stand guard near the Portland police union building. Despite passage of a 2020 Oregon law tracking decertified officers statewide, most complaints of misconduct remain closed.

he was dead.”

It turned out pointing guns at suspects’ heads and playing one-sided Russian Roulette was not an uncommon interrogation technique in the Maplewood department. During an ensuing criminal investigation there was evidence that Lt. Joseph Sorbello often used the technique.

Pool eventually pled guilty to manslaughter, Sorbello was fired and Maplewood paid \$25,000 to Brown’s mother. The Maplewood department was cleaned out, partly because of the brave whistleblowing of Lt. Donald H. Reece, who spoke up about the brutality of the police techniques.

Sorbello was soon hired by another police department, Bridgeton Terrace, and, while off duty, killed a man in Maplewood who was stealing his car.

That a Russian Roulette-playing officer fired from Maplewood could land a job as an officer a few miles away in Bridgeton Terrace amazed Saint Louis law professor Roger Goldman. Goldman launched what became a national crusade to stop bad cops from wandering to a new department to again abuse citizens.

‘Hands up, don’t shoot’

No credible witness saw Michael Brown raise his hands in surrender or heard him say don’t shoot. That was the finding of a meticulous Justice Department’s investigation

of the Officer Darren Wilson’s killing of Brown on Aug 9, 2014.

But much of the world believed “Hands Up, Don’t Shoot” because of the power of millions and millions of Tweets.

“Hands Up, Don’t Shoot” was a myth created in the social media environment that sprang to life within hours of Brown’s death on Canfield Drive in Ferguson. “Eyewitness” accounts on Twitter, cable news and elsewhere turned out to have been based not on what people had themselves witnessed, but on what they had read on Twitter or heard from neighbors.

Yet “Hands Up” was a powerful myth because it arose from a disturbing truth: Too many Black men are stopped for minor law violations - Brown was initially stopped for jaywalking - and too many end up injured or dead.

Wilson was legally justified in shooting Brown after Brown reached in his patrol car and tried to wrestle away his service revolver and fire it. But Wilson had opportunities to de-escalate the encounter and possibly avoid the killing.

The cluster of high profile deaths in 2014 from Brown in Ferguson, to Tamir Rice in Cleveland and Eric Garner in New York illustrated the importance of de-escalation techniques advocated in model police codes.

Those model codes and Justice

Department guidance also advise against dangerous policing techniques that lead to civilian deaths - shooting into cars, shooting from police cars, high speed police chases, chokeholds, no-knock warrants.

One person a day is killed as a result of a police chase. About 400 unarmed civilians have been killed over the past five years when police tried to make minor traffic stops and ended up shooting into cars.

The Supreme Court goes along with most of these police techniques and that acquiescence has erected multiple legal roadblocks to holding police accountable for civilian deaths.

An awakening

The murder of George Floyd from a knee on the neck together with the killing of Breonna Taylor in a botched no-knock raid brought an awakening to the problem of police misconduct and an uprising of protests meant to bring about change.

GJR, with the financial and editorial support of the Pulitzer Center on Crisis Reporting, assembled a diverse team of about 20 student journalists and law students in addition to professional journalists to investigate the legal roadblocks to accountability - filing FOIA requests, pulling

Continued on next page



together police misconduct laws from all 50 states and D.C. and reporting on cases of misconduct across the country.

The professional journalists who helped included Paul Wagman, with whom I'd written Maplewood stories, and John G. Carlton, my former colleague on the P-D editorial page whose passionate editorials on health care were a Pulitzer Prize finalist in 2010.

Legal experts added their expertise, explaining the origins of legal roadblocks to accountability and how they could be reformed.

Among the legal experts are Wayne C. Beyer, who has been lead counsel in more than 300 police misconduct cases, David Harris, a University of Pittsburgh law professor whose most recent book is *A City Divided: Race, Fear and the Law in Police Confrontations*, Trevor Gardner II, a Washington University law professor specializing on race and police confrontations, Roger Goldman, emeritus professor at Saint Louis University Law School who has written and spoken extensively on licensing police and Emanuel Powell, a attorney for ArchCity Defenders in St. Louis.

Here's a thumbnail sketch of the stories in this special edition. Earlier versions of some of the stories have run on the AP wire, St. Louis Public Radio and the Missouri Independent. We think this final report is the most comprehensive journalistic explanation of the state of police reform in America. You will read about:

- The status of police reform nationwide. Most reform bills have failed.
- "Wandering" cops who are abusive in one department, but keep their badges and get

jobs in another department where they often reoffend.

- One law professor's 40-year crusade to improve state licensing laws and take away badges from officers who repeatedly abuse citizens.
- Closed police misconduct records in 31 states plus D.C. make it hard to keep officers with records of misconduct from getting police jobs.
- The failure of post-Ferguson reforms in St. Louis where race lies at the core of the problem.
- Two St. Louisans who died from dangerous police practices - prisoner restraints and a no-knock raid - and whose lawsuits have challenged St. Louis' reform politicians to stop defending those police practices in court.
- A midnight vote on the last day of the May session of the Missouri Legislature enacting a Law Enforcement Officers' Bill of Rights that introduces new legal roadblocks to police accountability by giving officers more rights than civilians. Most of the media entirely missed the story.
- The lax police disciplinary process in Chicago, where officers who lost their badges had been accused of an average of 21 prior offenses. Illinois passed a police reform bill earlier this year, but the Pulitzer investigation found a loophole that closed the statewide registry of police misconduct.
- Union-required arbitration in Chicago and Philadelphia that blocks the firing of

officers with long records of misconduct and expunges old records.

- The ugly history behind some of the legal doctrines that weaken enforcement of federal civil rights laws to protect Black citizens from abuse.
- A law professor's advice for how a Black motorists should respond to a police stop - do's and don'ts.
- The prominent role abusive police practices play in unjust convictions that have locked up innocent men decades. Police misconduct led to about 1,000 of the wrongful convictions unearthed since 1989.
- How poor police training fails to prepare officers for responding to mentally and emotionally unstable people. About 200 of the 1,000 citizens killed by police each year fall into this category.

There are mixed signals about how much progress the nation has made as a result of the uprising that followed the deaths of Floyd and Taylor.

Chauvin's murder conviction and Louisville's ban of chokeholds were steps toward accountability. A few states passed laws opening police misconduct records, licensing police officers and knocking down some roadblocks to accountability.

But most legal roadblocks remain standing in most states. The George Floyd Justice in Policing Act died in Congress. And calls to "defund" or "abolish" police backfired on reformers.

For the time being, the momentum toward greater police accountability is stalled.



LEGAL ROADBLOCKS TO POLICE ACCOUNTABILITY

1. OBJECTIVE REASONABLENESS

Judge and jury see the case through the officer's eyes instead of the civil rights victim's.

2. QUALIFIED IMMUNITY

Even if the police officer violated the citizen's rights, the officer still isn't responsible if the right wasn't clearly established in prior court decisions with nearly identical facts.

3. SHOOTING AT CARS

The Supreme Court has approved officers shooting into moving cars even though model police policies recommend against it.

4. HIGH-SPEED CHASES

The Supreme Court permits high-speed chases of suspects even though model police policies recommend against chases for minor offenses. A person a day dies in a high-speed police chase.

5. CLOSED MISCONDUCT RECORDS

32 states, including D.C., have closed or mostly closed police misconduct records. A national repository of 31,000 cases of police misconduct is closed to the public and seldom checked by departments making new hires.

6. NO-KNOCK RAIDS

The Supreme Court permits no-knock raids even though model police policies recommend limited use; 94 people died in no-knock raids between 2010 and 2016.

7. FAILURE TO DE-ESCALATE

The Supreme Court does not require officers to de-escalate confrontations even though model police policies call for de-escalation.

8. CHOKEHOLDS

Police Departments continue to use chokeholds - 134 people died from them in the past 10 years - even though the Justice Department warned against prone restraint 25 years ago.

9. LAW ENFORCEMENT BILL OF RIGHTS

Police unions have won extra rights for accused police in many states, rights beyond those citizens enjoy. Questioning of officers is delayed, allowing them to get their stories together.

10. UNION ARBITRATION

Arbitrators often reverse dismissals of officers fired by police departments for misconduct.

11. UNION CONTRACTS

Some union contracts automatically expunge records of officer wrongdoing.

12. WILLFUL INTENT

This high legal standard makes it hard to win federal criminal convictions against officers because prosecutors have to prove police intended to deny a suspect a right and acted with a bad purpose.

13. ASSET SEIZURE

Law enforcement officers can legally seize large amounts of cash from motorists and keep the money for their department even when there is no criminal prosecution of the motorist.

Roots of the Journalism Review lie in 60s police brutality

by Charles L. Klotzer

Written more than a year before the 1968 Democratic National Convention in Chicago, an editorial in FOCUS/Midwest (later merged with the St. Louis Journalism Review) warned that the expected legitimate protest movement will be met by a police force of such numbers and such ferocity by the then Mayor Richard Daley that all resistance will collapse. The warning appeared in an issue dedicated to police conduct in Missouri and Illinois cities.

The confrontation made news worldwide. When local reporters, many of them also beaten up by the police, read in their papers that it was a "student riot" and not a "police riot" as they had reported, they organized the Chicago Journalism Review (CJR) to correct the misinformation. When we in St. Louis received the CJR, it didn't take long to organize reporters from the St. Louis Post-Dispatch and the now defunct St. Louis Globe-Democrat to publish the St. Louis Journalism Review (SJL). The first issue appeared in September 1970.

The massive and violent confrontation in 1968 was not the only concern of the F/M issue, it was also dedicated to police conduct in 14 Missouri and Illinois cities. Seven were judged "guilty," five "not guilty," and five "on parole."

The F/M issue cited the conduct of the police and the violence emanating from the police, the blatant enforcer of white racism and of dual law enforcement.

To highlight and correct such behavior President Lyndon B. Johnson had established the National Advisory Commission on Civil Disorder. Under the direction of Illinois Gov. Otto Kerner a 426-page report was published. It was bought by two million people. The report warned that America is a split society, one Black and one white with special privileges. Who remembers the report? Does this sound any different then editorials about Ferguson 56 years later?

ILLINOIS DEPARTMENTS

CHICAGO (Verdict: Guilty. Racism marks Chicago police)

The five-page report detailed the many misdeeds by the police.

The accusations are best summarized in one paragraph by Jay A. Miller, then the executive director of the Illinois ACLU, the author of the report.

"Any three young men standing on a corner on a hot night ... will invariably be chased off by a passing policeman. If they don't move fast enough they will likely be lined up over the squad car or a brick wall and searched. They also know that if they are

stupid enough or humiliated enough to object to the procedure (even though they know that kids in 'better' neighborhoods can stand on any corner with impunity), they are likely to be pistol whipped and arrested for their big mouth."

Unwarranted killings by police are common. The F/M report cites incidents where young teenagers were shot in the back (one of them with his hands up facing a brick wall) and in all cases "the homicide division investigated and within 24 hours declared that the killing was justified." No eye witnesses were ever interviewed.

A blue-ribbon Citizen Committee established by Mayor Daley was asked to study police-community relations. A 10-month study was a complete whitewash. Indeed, investigations by the police that rarely found anything amiss were praised.

CARBONDALE, ILLINOIS (Verdict: On Probation. Residents expect a change.)

"Before Mayor David Keene took office in the spring of 1967, 'the favorite pastime of the southern-style police department was to harass blacks in their homes in the so-called Northern section.' The new mayor hired a professionally-trained Director of Public Safety who undertook the job of firing undesirables from the police force."

CAIRO, ILLINOIS (Verdict: Guilty. Residents were arming for summer)

"The Chief of Police, a former butcher, is without any police training. The state's attorney was appointed after he organized a White Citizens Committee to augment the police force. Mayor Lee Stenzel represents the old-time segregationist element.

"The city has a population of 9,000 half of which was Black. Numerous violations of law by the police are common. Black homes are illegally entered and persons are illegally arrested. Posting immediate bond is often denied. Black youngsters have been picked up, detained and questioned without legal counsel or the knowledge of their parents."

EAST ST. LOUIS, ILLINOIS (Verdict: Guilty. The city is a bitter community)

"Community groups have asked in vain for Mayor Alvin G. Fields, who totally controls the city, to fire Russell T. Beebe, Commissioner of the Police Department. He also refused to name a citizen police review board.

"The community was incensed by Beebe's order to the police to shoot on sight anyone seen throwing a fire bomb. The city had a population of 80,000 and estimates of the Black population ran as high as 60 percent."

FREEPORT, ILLINOIS (Verdict: Guilty, Dual system of law)

"Whites committing crimes against whites and blacks committing crimes against whites are prosecuted. However, 'blacks committing crimes against blacks' are ignored, even murders. A ten o'clock curfew for children is enforced in white areas but not in 'black areas.' The Illinois Commission on Human Relations is trying to set up a human relations department within the police. The city has passed an open housing law."

GALESBURG, ILLINOIS (Verdict: Not Guilty, Excellent relations with minorities)

"During protest marches, the police cooperated with the NAACP and issued statements that the marchers have every right to air their views. The statement was backed by exemplary conduct by the police. Complaints are heard by a civilian review board."

PEORIA, ILLINOIS (Verdict: Not guilty. Administration improves relations)

"Outside of Chicago, it is the only city to have a community relations department with a civilian director. In spite of police opposition, it is attempting to change police attitudes and behavior."

SPRINGFIELD, ILLINOIS (Verdict: Not guilty. Police promotes full integration)

"Black police officers are assigned to leadership positions. Over the protests of the Policeman's Benevolent Association, two-man squad cars were integrated by the Police Chief."

WAUKEGAN, ILLINOIS (Verdict: Guilty. Police insensitive to public demands)

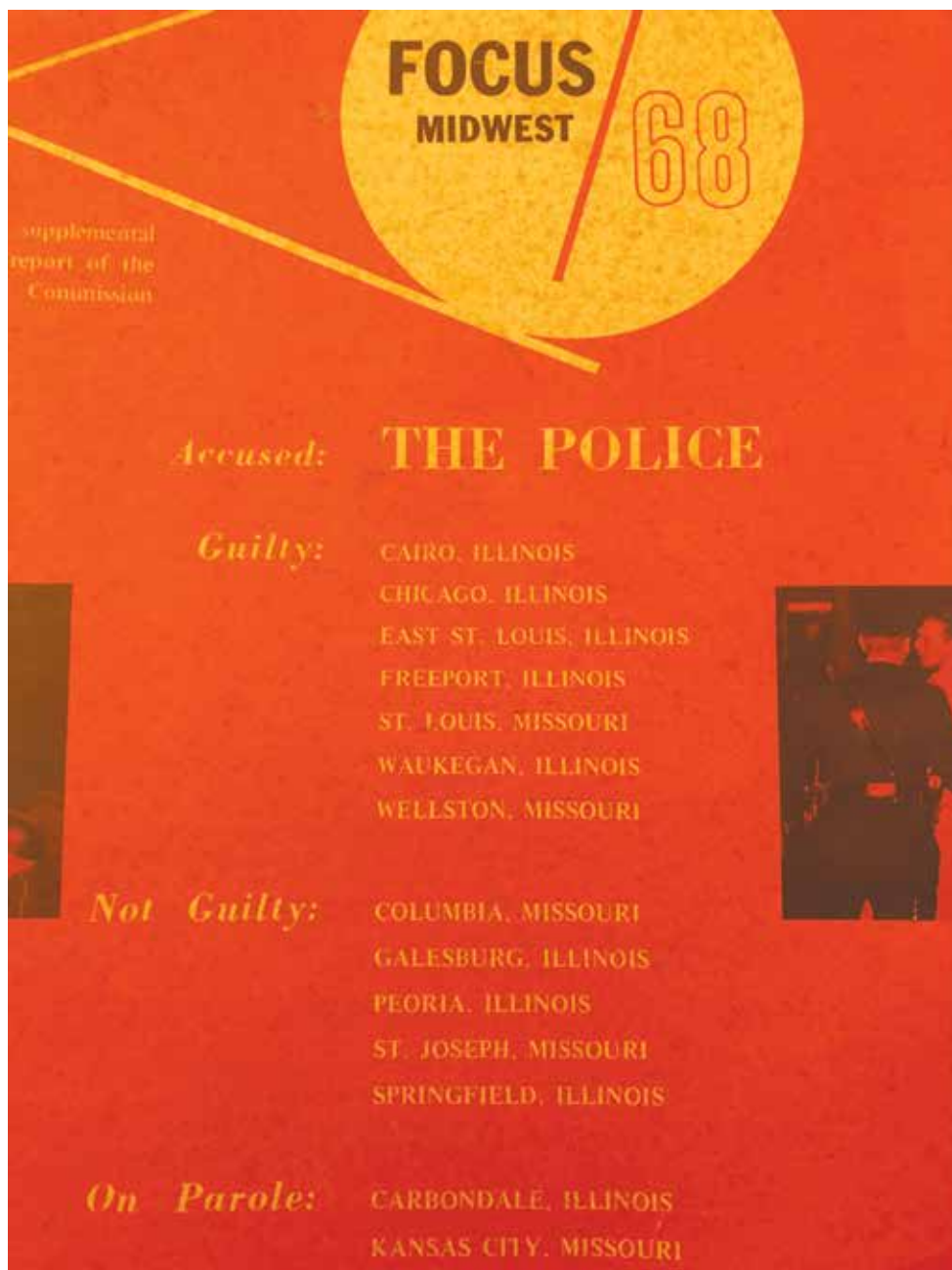
"When Stokely Carmichael was a guest speaker, policemen were seen on rooftops with rifles. Following disturbances after a football game the Mayor declared that he had ordered the police to put away their billy clubs and use guns instead. A high school girl was arrested because she appeared to be the leader of youngsters who chanted 'Black Power.'

"An insensitive city administration and mayor, a careless police, and a tense black community portends trouble for the city in the months ahead."

MISSOURI DEPARTMENTS

ST. LOUIS, MISSOURI (Verdict: Guilty. Police plays politics with law)

In the 1960s, it was common for the authorities to order police to disrupt rallies which were called to protest visits by political leaders. In 1964, 87 were arrested when President Lyndon B. Johnson visited and in 1967 nine, who supported U.S. Sen. Eugene



J. McCarthy for president, were arrested during Vice President Hubert H. Humphrey visit. They were released after a few hours but were interrogated during their detention, "What organization do you belong to? Are you a member of NAACP or CORE?"

Jules B. Gerard, then professor of law at Washington University, authored a nine-page report, which revealed that the police made groundless arrests known as "rousting" to force individuals out of a geographical area. "The primary purpose is to sweep the streets clean of people the police look upon as troublemakers, although its secondary purpose is never far beneath the surface."

Percy Green, then the chairman of ACTION (Action Council to Improve Opportunities for Negroes), organized a Black Veiled Prophet event and a Black Queen at the time when the official Veiled Prophet event was held at Kiel Auditorium. The Black Veiled Prophet, his queen and a white minister crossed the street in front of the Kiel Auditorium when a police

officer stopped them before they reached the curb, "That's far enough," he said. When they attempted to return, the officer stopped them. "You are not going back. You are going to the holdover." When asked on what charge, he replied "I will tell you." A van took them to jail.

Typically, on a court date, the police didn't show up. The case was continued for six weeks when the charges were withdrawn for insufficient evidence. An expensive procedure for defendants. Bail, hiring an attorney, missing a day of work. Before the disposition of the case, they live under the threat of going to jail if they publicly object to what happened to them.

St. Louis was not the scene of major riots at the time.

Nevertheless, it failed to protect the First Amendment rights of peaceful protesters. Whenever protesters assembled, the police followed their rules of prompt show of force and arresting the leaders, whether or not any crime had been committed. Paradoxically,

St. Louis was known throughout the country for not having had any riots and of having a successful a police community relations program that other cities, such as San Francisco, studied and copied. Still the city failed to address misdeeds by its police.

The St. Louis Civil Liberties Committee, local affiliate of the ACLU, condemned the "unconstitutional abuses of the Metropolitan Police Department."

KANSAS CITY, MISSOURI (Verdict: On parole. Police reform rules undone)

"After two years, the Inspection Bureau composed of civilians to hear complaints against the police, was abolished and called "inept." The establishment of the Bureau, reported Sidney L. Willens, attorney and a recipient of an ACLU award, had caused "a feeling of pride sweeping through the community and more particularly the long-tormented minority groups, who saw for the first time that the police department had the regenerative power to correct itself."

"The new board, an Internal Affairs Bureau with similar duties, was created under a new command, civilians were replaced by police."

ST. JOSEPH, MISSOURI (Verdict: Not Guilty. Distinguished by cooperation between races)

"The city was the first in the country to sustain a public accommodations ordinance on a referendum. No misconduct by police was known. No anti-Vietnam or other protests have taken place. The police department has one black police officer. About 2,500 to 3,000 of the population, about 3%, are Black."

COLUMBIA, MISSOURI (Verdict: Not guilty. City has professional police force)

"The city police department is integrated. The Mayor and civic leaders support an open housing law. However, the police has cooperated with the Missouri University administration in trying to suppress an independent student newspaper."

WELLSTON, MISSOURI (Verdict: Guilty. Police resent interest of citizens)

"Repeated requests by community groups to work with the police were rejected. 'This is police work and we will run our police department in the way we feel is best,' declared Police Major John Hetley. The 23-man police force has two black officers."

"The city has no community relations program, no civilian police review board, no health facilities, and no practicing physician. The city borders on St. Louis with a population of about 7,800 of which about 80 to 85% are black. The 12-member City Council is all white.

The only black administration employee is illiterate.

"The city has refused permit for voter registration drive and denied funds for a summer recreation program for deprived children.

The police were witnessed when they urged two white criminals to leave town rather than prosecute them for assaulting a black. Many similar cases have been observed."

Abusive police officers evade punishment through an array of legal roadblocks to accountability

by William H. Freivogel

Police officers who abuse citizens usually escape punishment because of an array of legal doctrines that stack the law in an officer's favor.

That was true before the murder of George Floyd and killing of Breonna Taylor and it's true after the uprising that those events caused.

The guilty verdict and stiff sentence for Derek Chauvin, Floyd's murderer, felt like a watershed moment to many Americans. President Biden called the verdicts a "giant step toward justice" and the 22.5 year sentence "appropriate."

But a look at police accountability nationwide shows that little has changed. In most places, the long-standing legal roadblocks to police accountability remain unaltered.

In the past 18 months, 35 states have defeated bills to eliminate or weaken qualified immunity — a big legal roadblock — and 33 states still allow no-knock raids like the one that led to Taylor's killing.

The George Floyd Justice in Policing Act of 2021 — which would have eliminated many roadblocks — died in Congress. A few states and cities passed limited police reforms, but most reform bills failed. Some states, such as Missouri, went the opposite direction and erected new legal roadblocks to accountability. "Defunding the police" became the political poison that hurt Democrats in the 2020 election and resulted in the big defeat of a Minneapolis ballot measure to replace the police department.

"There has been change since Ferguson but some of the fundamentals remain stuck," says David A. Harris, a law professor at the University of Pittsburgh and expert on law enforcement.

Consider the welter of legal impediments to accountability:

Qualified immunity. Willful intent. Objective reasonableness. The Law Enforcement Officers' Bill of Rights. Union arbitration. Closed misconduct records. An ineffective and closed national database of police misconduct. "Wandering cops" who misbehave and move to a new department where they will often offend again. A "blue wall of silence" where officers refuse to testify against one another. Union arbitration that protects abusive and untruthful officers from punishment.

All are escape hatches that allow the portion of officers who are abusive to keep their badges despite sexual assaults, excessive force, false reports, cover-ups and perjury.

At times an abusive officer gets the benefit of the doubt, on top of the benefit of the doubt, on top of the benefit of the doubt.

Here are some of ways the legal system helps abusive police officers:

The Law Enforcement Officers' Bill of Rights allows an accused officer to get his story straight before questioning, which gives police rights that citizens don't have.

The "objective reasonableness" standard that applies in most cases of abuse requires the jury to see the facts through the officers' eyes rather than second-guessing them.

Qualified immunity means that even when an officer is found to have violated a citizen's rights, the case is almost always thrown out. If the violation has not been clearly established in the law — which it almost never has been — the case is dismissed.

Police unions fight accountability. If a police department disciplines an officer, police friendly arbitrators often throw out the punishment — as they have done so in Chicago and Philadelphia. Union negotiated contracts in some cities automatically expunge records of misconduct.

Willful intent makes it hard for the Justice Department to win criminal civil rights convictions against officers because prosecutors have to prove that the officer acted with "bad purpose."

Most of these special rights for police are not required by the Constitution. Judges, legislators and union negotiators have created them, stacking the deck in favor of accused officers and against abused citizens.

Some judicially created doctrines run counter to the laws they interpret. A post-Civil War Congress passed the Ku Klux Klan Act, now codified as Section 1983, to protect newly freed slaves from the violence of officers acting under color of law. But qualified immunity and objective reasonableness give the officer the benefit of the doubt over the victim the law was written to protect.

Courts allow deadly police practices

Dangerous police policies — which the International Association of Chiefs of Police (IACP), Police Executive Research Forum (PERF) or Justice Department recommend against — continue to be commonplace and are upheld in the Supreme Court:

- High-speed police chases. One person dies every day as a result of a high-speed police chase, even though most chases start with minor traffic stops, and one-third of those killed are innocent civilian bystanders. At least 13,000 people were killed during pursuits between 1979 and 2017. The Supreme Court has supported police in chase cases, but the IACP recommends against high-speed chases for traffic violations.
- Chokeholds. Across the nation, 134 people have died from "restraint asphyxia" over the past 10 years, even though the Justice

Department warned 26 years ago that bound suspects could die if not rolled off their stomachs.

- No-knock raids. 94 people were killed during no-knock raids from 2010 to 2016. The Justice Department recommends against no-knock raids unless an officer's safety is at risk. It would halt no-knock raids that are based solely on the prospect that drugs could be destroyed after a knock.
- Shooting at moving cars. The Supreme Court allows police to shoot into moving cars even though the IACP recommends that police should almost never shoot at or from a moving vehicle.
- Failing to de-escalate. The Supreme Court does not require police to de-escalate confrontations that could become deadly. But the IACP and the Justice Department recommend de-escalation. The IACP recommends "taking action or communicating verbally or nonverbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat."
- Shooting at mentally ill suspects. One-fourth to one-third of the 1,000 people killed by police every year are having a mental crisis or are emotionally disturbed. Many officers are poorly trained for these situations. Police typically get 58 hours of firearms training contrasted to 8 hours for de-escalation tactics and 8 hours for handling medical emergencies.
- Seizing millions in cash on the nation's highways. Police regularly seize tens of thousands of dollars from cars they stop on the road, even though the motorist is not arrested for a crime. Police departments keep the money taken in these civil asset forfeitures.
- Misconduct leading to false convictions. Coercive interrogations, faulty identification techniques and failure to turn over exculpatory evidence have led to false convictions and long jail sentences served by people who were wrongfully convicted. About 1,000 of the 2,900 people exonerated since 1989 had been wrongfully convicted based on police misconduct.

Few prosecutions, few convictions

Abusive police are seldom prosecuted and those prosecuted usually aren't convicted. Police kill about 1,000 people each year, according to a Washington Post database, but few go to prison or lose their jobs.

Philip M. Stinson, a cop turned criminal justice professor at Bowling Green State University, keeps the statistics. Since 2005, 121 officers have been charged with murder or manslaughter in nonfederal cases involving



Photo by Maranie Rae Staab via AP

Members of the press are hit with pepper spray, teargas and a wide range of “less-lethal” munitions while covering nightly protests in Portland, Oregon. Both indiscriminate and targeted attacks have been recorded.

killings on-duty. Of the 95 cases that have concluded, fewer than half — 44 — resulted in convictions and then often to lesser charges.

Federal prosecutions and convictions for violating a citizen's civil rights also are rare and often unsuccessful because of a high burden of proof — “willful intent” to violate a citizen's constitutional right.

Between 1990 and 2019, federal prosecutors filed criminal civil rights charges against an average of 41 officers a year — even though they get referrals 10 times greater, reports the Transactional Records Access Clearinghouse at Syracuse University.

In recent years, federal prosecutors declined to file charges in the deaths of Eric Garner in Staten Island, Michael Brown in Ferguson and Tamir Rice in Cleveland.

One of the Justice Department's most prominent prosecutions this year ended badly for the government despite strong evidence. A group of white officers brutally beat a Black undercover officer during Black Lives Matter street protests in St. Louis in 2017. Two of those involved turned state's evidence. And racist emails showed the officers relished the opportunity to beat Black protesters.

But defense lawyers portrayed the federal prosecutors as carpetbaggers from Washington. After two trials only one officer was convicted by a jury and he was sentenced to only a year

and a day in prison — even though federal sentencing guidelines called for 10 years and his own lawyers recommended two. In an attempt to drum up sympathy for their client, the defense lawyers portrayed their client as a victim of a department “where being cavalier about violence, particularly racial violence, was far too prevalent.”

During the Trump administration, the Justice Department refused to use one of its most potent legal weapons against police misconduct, pattern-or-practice suits. After the Rodney King beating in 1991, Congress gave the Justice Department the power to conduct investigations of local police departments to look for patterns of unconstitutional policing. When they found them, as they did in Ferguson in 2015, they entered into consent decrees to force reform. President Obama's Justice Department initiated a record number of 25 pattern-or-practice cases.

But former President Donald Trump and former Attorney General Jeff Sessions strongly opposed that kind of federal interference into local law enforcement. There was only one such case during his entire administration. “There was probably no stronger opponent in Congress to this tool than Sessions,” says Harris, the law professor and police expert at the University of Pittsburgh.

Attorney General Merrick Garland reversed the Trump policy in announcing after the Chauvin verdict that he was starting a pattern-or-practice

investigation of the Minneapolis police and would revitalize that legal tool in other cities.

Little accountability

A year-long investigation of police misconduct sponsored by the Pulitzer Center on Crisis Reporting employed a team of 15 college journalists who filed dozens of Freedom of Information requests nationwide. They found:

- Most states — 32 including D.C. — keep records of police misconduct secret or difficult to access, although the number of states opening records has increased recently with New York, California, Massachusetts and Illinois opening up.
- A national database that keeps track of about 31,000 officers who have lost their badges doesn't release the information to the public.
- In Illinois, 81 Chicago police officers lost their badges in the past two decades, but only after they were investigated for 1,706 prior complaints — 21 per officer on average.
- In New York, the repeal of a law blocking access to past complaints opened records to a whopping 323,911 complaints of abuse over the past 35 years.
- In Philadelphia, two-thirds of the 170 officers the police department wanted to fire for misconduct in recent decades stayed on the force through union arbitration. Former

Continued on next page

Police Commissioner Charles Ramsey said, "I've had people that I've had to fire more than once" because union arbitration got them rehired.

- In St. Louis, the police unions are effectively segregated, white officers have gotten away with assaulting black colleagues, police used unconstitutional "kettling" techniques to trap and assault demonstrators and misbehaving officers often get jobs with forgiving suburban departments that welcome aggressive tactics like high-speed chases.
- In Portland, a federal court found that federal agents targeted journalists and court observers last summer in what it described as a "shocking pattern of misconduct" that violated First Amendment rights.
- In California, an investigation found that 630 people who had been officers since 2008 had been previously convicted of a crime. The convictions of these and other officers were not known because California did not decertify officers for misconduct until a reform law passed over union opposition this fall. Meanwhile, in Los Angeles, a new progressive prosecutor is reviewing more than 340 police killings over the past decade.
- In Florida, considered a model of police accountability, about 1,500 officers are on the street each year despite having been fired previously by Florida agencies. These officers are more likely than rookies to offend, according to a Yale Law Journal article on wandering officers who misbehave in one place and get hired in another.

A few bad apples?

Police are popular and police unions stress that only a few bad apples abuse citizens.

Wayne C. Beyer, a national expert on civil rights suits against police, says a tiny fraction of police stops and arrests ends up in a successful civil rights lawsuit.

There is only one successful civil rights lawsuit out of every 1,000 arrests and every 23,000 calls for service, he says.

Of all citizens stopped, 60 percent say the stop was justified and 81 percent say the police behaved properly. Of U.S. residents who had contact with police, 5.2 percent of Blacks said use of force was threatened, while 2.6 percent of whites said it was threatened.

"This idea of widespread police misconduct is misleading," said Beyer.

But reformers say that databases show that bad apples are counted in the tens of thousands, especially when counting officers who stand by silently during brutality.

When New York's misconduct records finally were opened to the public this spring, the database included 323,911 records involving 81,550 current or former New York Police Department officers. About 20,000 had five or more substantiated cases. Yet only 12 of the 20,000 were forced out of the department.

In addition, the national database of officers who lost their badges is 31,000-plus, although the names are secret.

Harris, the Pitt law professor, says the release of police misconduct records is a key to reform. "You can't have real accountability with the public unless you are willing to share information with the public," he said.



Photo by Maranie Rae Staab via AP

Members of the press are hit with pepper spray, teargas and a wide range of "less-lethal" munitions while covering nightly protests in Portland, Oregon. Both indiscriminate and targeted attacks have been recorded.

Defunding and abolition backfire

During the summer of 2020, after the deaths of Floyd and Taylor, Black Lives Matter protesters and civil rights advocates called for defunding or abolition of the police.

Police reform proposals that had emerged from Ferguson were suddenly too moderate. Campaign Zero apologized for not going far enough. Brittany Packnett, a Ferguson leader, said at the time, "Divestment from the institution of policing — and reinvestment in Black communities — is the necessary central strategy of this moment."

But the defund/abolish movement backfired politically when Trump used defunding as a political cudgel against Democrats. Exit polls showed the attack was effective. The crushing defeat of the Minneapolis "defunding" proposal in 2021 illustrated that calls for defunding or abolition of police departments had lost support.

Efforts to end qualified immunity — the big legal roadblock to accountability — failed almost everywhere. 35 bills to end qualified immunity lost in state legislatures over the past 18 months. New Mexico, Connecticut, Massachusetts and Colorado passed bills initially written to restrict qualified immunity, but once unions finished lobbying, only Colorado's actually accomplished that purpose.

The most successful police reforms passed since the Floyd and Taylor cases have been restrictions on police chokeholds and no-knock raids, says police expert Beyer.

Before Floyd's murder, only Tennessee and Illinois had bans on hold techniques. Now 17 states have enacted laws that ban or restrict holds and 48 cities have implemented changes in the use of neck restraints — including Los Angeles, Sacramento, San Diego, Denver, Washington, Miami, Boston, Minneapolis, New York, Austin, Dallas, Houston, Salt Lake City and Seattle.

In addition, the Biden Justice Department issued a new policy on Sept. 13, 2021, prohibiting "chokeholds" and "carotid restraints" unless the officer has a reasonable belief that the subject of such force poses an imminent

danger of death or serious physical injury to the officer or to another person." But the policy applies only to federal law enforcement officers — not the cop on the street.

Meanwhile, five states passed laws prohibiting or restricting no-knock warrants — Oregon, Florida, Virginia, Utah, and Maine.

In addition, 15 cities, including Orlando, Louisville, Santa Fe, and Indianapolis have passed no-knock warrant bans or severe restrictions.

Still there are 33 states that allow no-knock warrants either by law or court decision, Beyer says.

The Justice Department announced on Sept. 13, 2021, that federal law enforcement agents would be required to limit the use of "no-knock" entries. "[A]n agent may seek judicial authorization to conduct a 'no-knock' entry only if that agent has reasonable grounds to believe at the time the warrant is sought that knocking and announcing the agent's presence would create an imminent threat of physical violence to the agent and/or another person. . . ."

This means federal agents can't justify no-knock raids based solely on the possibility that evidence, like drugs, will be destroyed by knocking.

In other important reforms, Illinois passed a law ending cash bail and increasing accountability for repeat police offenders. Massachusetts and California overcame police union opposition to pass police decertification laws that could take badges from misbehaving officers.

In addition, four states gave their attorneys general the power to investigate patterns or practices of police misconduct, much like the Justice Department does. Those states are Illinois, Colorado, Virginia and Massachusetts.

Pro-police measures passed in some redder states. Florida has stiffened penalties for crimes during demonstrations, such as mob intimidation and defacing property and monuments. Iowa, which unanimously restricted the use of chokeholds after Floyd's death, is

considering a Law Enforcement Officers' Bill of Rights and Missouri passed one.

The U.S. House passed the Floyd bill but it died in the Senate when negotiations between Sens. Tim Scott, R-S.C., and Cory Booker, D-N.J., broke down this fall.

Harris, the Pitt police expert, said "that bill would be extraordinarily good across the board. It beefs up what the government can do with pattern or practice. It cuts into qualified immunity that really has to go because it lets really cruel police actions go unpunished when there hasn't been a prior court ruling about that particular cruel practice."

But Harris adds, "There can be change even if it's not national." If Congress can't pass a federal law, he says, it will be up to state and local governments to pass reforms that limit police use of force, increase transparency and improve accountability.

In the Chauvin trial, Minnesota required the jury to apply the tough "objective reasonableness" standard that makes it hard to convict officers. That standard requires a judge or jury to see the police action "from the perspective of a reasonable officer on the scene." They can't second-guess a decision made in the heat of the moment.

That objective reasonableness standard comes from the 1989 U.S. Supreme Court decision *Graham v. Connor*. What many people don't realize is that states and municipalities can adopt new use of force standards that hold police to a higher standard of conduct. A few jurisdictions have done that in the past year but not many.

One thing states and cities can do is "raise the bar for the use of force," Harris said in an interview. "What people forget is that the Supreme Court set a minimum standard for the protection of citizens from state action by police. While states can't give citizens less protection, they can create more. In the last year we've seen some movement in that direction."

As long as the objective reasonableness standard remains in place, says Harris, few officers will be convicted. "At the end of the trial, the jury is told the officer feared for his life, the suspect was reaching for a gun and don't second guess him," says Harris. "And it takes only one person to hang the jury."

Progressive prosecutors v. Unions

Police unions became common and powerful in the 1970s in reaction to the civil rights movement, which often targeted police brutality. The police unions have argued that the nation's 700,000 police should have due process protections when they are accused of wrongdoing; only few "bad apples" abuse citizens, they say, but the honest officer often suffers from frivolous complaints.

One big victory for the police unions in New York was passage of a 1976 provision of the New York Civil Rights Act, 50a, which closed records of police misconduct. The argument was that the law protected the civil rights of police officers by shielding them from harassment for frivolous complaints.

In another victory in 1973, Maryland became the first of 16 states that adopted a Law Enforcement Officers' Bill of Rights, extending

procedural protections to officers that made it difficult to discipline them. Typically these bills of rights delayed internal investigations, expunged old records of misconduct and required that officers instead of civilians investigate complaints. The bill of rights was blamed for hindering the 2015 investigation of the death of Freddie Gray who suffered a spinal injury in police custody in Baltimore.

Both New York's 50a and the Maryland Law Enforcement Officers' Bill of Rights were repealed after the Floyd murder.

Harris says one impetus toward police reform is the election of so-called "progressive prosecutors" around the country, from Philadelphia, Baltimore and Boston to St. Louis, Chicago and Kansas City, Missouri, to San Francisco to Los Angeles.

"What they want to do," says Harris, "is limit using cash bail, reduce prosecution of minor offenses like drugs and sex work, increase the use of diversion programs and establish conviction integrity units" to uncover wrongful convictions.

Many of these progressive prosecutors have ended up in pitch battles with police unions, often controlled by white officers.

One practice in particular has led to conflict — the so-called Brady lists of officers whose prior conduct and untruthfulness in investigations prevent them from testifying. St. Louis has a list of 55. Baltimore's list of problem officers is about 300.

Philadelphia's District Attorney Larry Krasner found a "damaged goods" file of tainted officers when he took over four years ago. Now the DA's Conviction Integrity Unit Police Misconduct Disclosure Database has 750 officers, many of whom prosecutors will not call to testify.

Krasner has complained that the Police Department has failed to turn over important documents on misconduct and redacts some of them so they are impossible to make out. Last summer he went to court asking that the department be held in contempt for withholding the information. "The only people being helped by the system are the small number of dirty cops," he said.

The head of the Fraternal Order of Police in Philadelphia complained of "lost wages, damages to reputation and professional harm" when prosecutors release names of officers they will not call to the stand. "Are they going to be vilified forever, are they going to be blackballed forever?" asked John McNesby, the union president. McNesby referred to Krasner supporters as a "lynch mob" of criminals. Krasner won re-election this year despite stiff union opposition.

In St. Louis, Police Officers Association business manager Jeff Roorda has called progressive St. Louis prosecutor, Kim Gardner, the worst prosecutor in the country. He said she should be removed either "by force or by choice." St. Louis police who beat demonstrators during a 2017 protest sent each other texts with highly offensive racial slurs directed at Gardner and the demonstrators.

In November, one of the progressive prosecutors, Jean Peters Baker in Jackson County, Missouri, won Kansas City's first conviction of a white officer for killing a Black

citizen. A judge found Eric DeValkenaere guilty of second degree involuntary manslaughter and armed criminal action for shooting Cameron Lamb in his pickup truck as he backed out of his garage. DeValkenaere did not have a search warrant to confront Lamb in his home, the judge said.

"Justice was gotten today," Baker said.

Another progressive prosecutor, St. Louis County Prosecuting Attorney Wesley Bell, also had a success in November using a "restorative justice" approach to settle a prosecution of a Ladue, Missouri, police officer who accidentally shot a suspected grocery store shoplifter in the back in 2019. The officer, Julia Crews, said she meant to use a taser but pulled her pistol instead. Crews apologized on Zoom to Ashley Hall, who forgave her and accepted a \$2 million payment from the city. Prosecutor Bell dropped the felony assault charge against Crews.

Bell imported the increasingly popular restorative justice approach from Washington, D.C., which has used it in 150 cases. Said Bell, "This is an example of accomplishing the ideal, which is healing and justice."

The initial batch of a dozen progressive prosecutors has grown to about 70, according to Fair and Just Prosecution, a national legal group supporting their reforms. Some prosecutors have boldly reopened investigations of police shootings where their predecessors had cleared officers of wrongdoing.

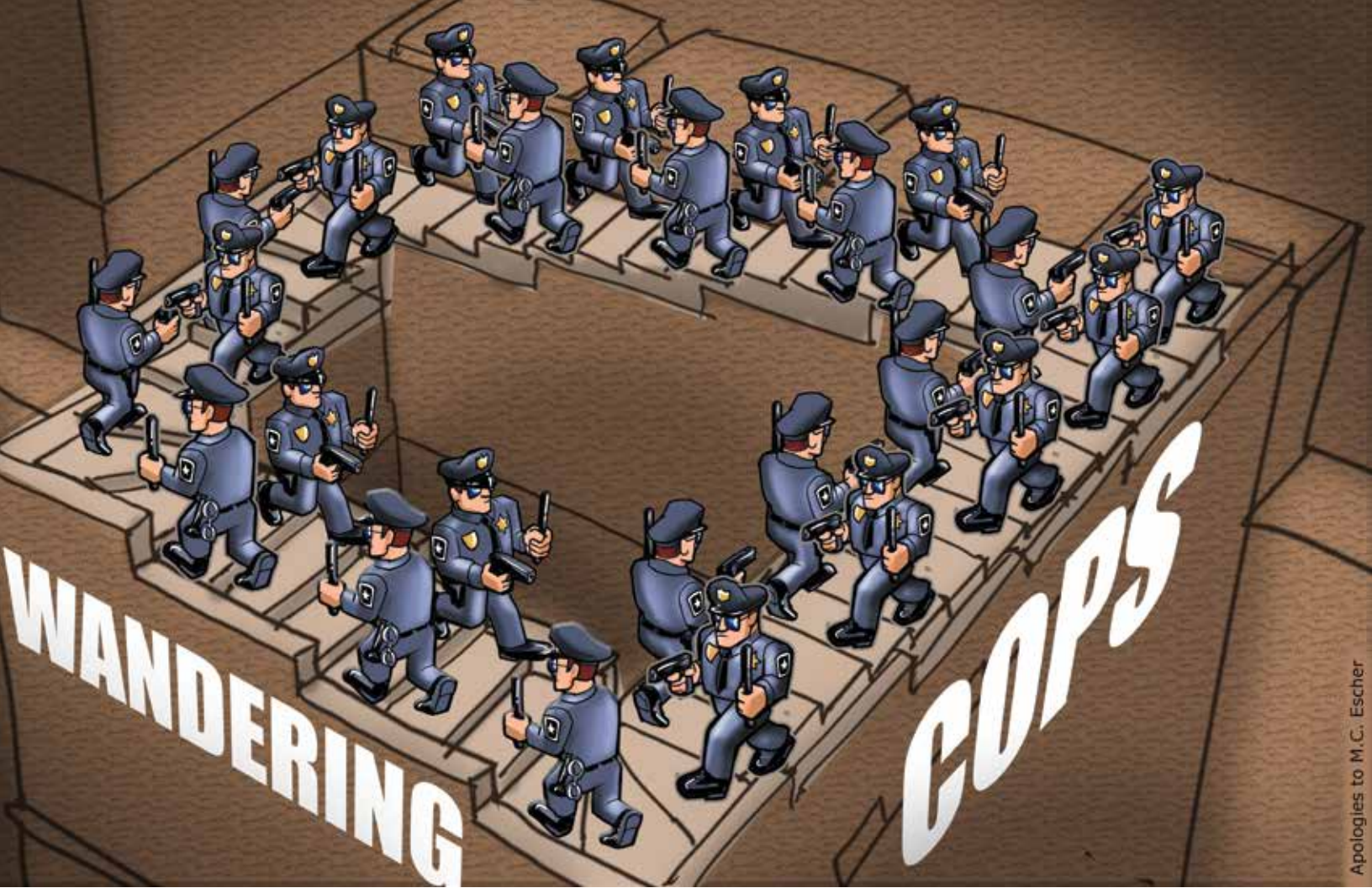
Los Angeles District Attorney George Gascón, elected in 2020, promised to reopen four police shooting cases during his campaign. Now he has brought together legal experts, community leaders and law students to review more than 340 police killings over the past decade where his predecessor had cleared police of wrongdoing.

José Garza, the elected district attorney in Austin, Texas, was a public defender before he was elected as prosecutor. He has obtained indictments in two recent police killings from 2019 and 2020, including the death of Jose Ambler II, who died after having been repeatedly tasered after fleeing a traffic stop.

Not all reviews end up in prosecution, however. Bell, the St. Louis County prosecutor who replaced veteran law-and-order prosecutor Bob McCulloch, reviewed the Ferguson shooting death of Michael Brown and decided — as McCulloch and federal prosecutors had — that there wasn't enough evidence to file criminal charges against former Officer Darren Wilson.

Bell put it this way: "Although this case represents one of the most significant moments in St. Louis's history, the question for this office was a simple one: Could we prove beyond a reasonable doubt that when Darren Wilson shot Michael Brown he committed murder or manslaughter under Missouri law? After an independent and in-depth review of the evidence, we cannot prove that he did."

Pulitzer Center student reporting fellows Kallie Cox, Sojourner Ahebee, Felicia Hou and Karen Kurosawa contributed to the reporting. Cox, from Southern Illinois University reported on Illinois. Ahebee, Hou and Kurosawa, from Stanford University, reported on Philadelphia, New York and California.



Apologies to M.C. Escher

Wandering cops shuffle between departments, abuse citizens

by William H. Freivogel and Paul Wagman

Timothy Loehmann wanted to be a police officer like his dad. The Independence, Ohio, police department hired him but the chief found that Loehmann “could not cope” with firearms and showed a “dangerous lack of composure.” Independence allowed Loehmann to quietly leave the department. But nearby Cleveland hired Loehmann without checking his background. So it was Loehmann who responded to 12-year-old Tamir Rice playing with a toy gun in a park and gunned the boy down.

The Cleveland department’s failure to check Loehmann’s background is an example of one of the biggest roadblocks to police accountability — “wandering cops” who lose their jobs in one place only to be rehired and to kill or abuse citizens in another.

In case after case, officers are allowed to keep their badges after repeated misconduct, either wandering to nearby departments or lingering at their home department and getting second chance

after second chance.

Derek Chauvin, who murdered George Floyd in Minneapolis, had 18 prior complaints against him, two of which led to discipline. But he was still an officer in good standing when he put his knee on Floyd’s neck.

Jason VanDyke had been investigated for 25 citizen complaints in the 14 years before murdering Laquan McDonald on a Chicago street in 2014.

Daniel Pantaleo had seven citizens’ complaints in the five years before Eric Garner died from his chokehold in 2014.

Michael Robbins, who shot Kenneth Ross Jr. in the back as he fled through a park in Gardena, California, had shot three people under questionable circumstances in his previous job in Orange County.

The Ross killing had consequences. State Sen. Steven Bradford, D-Calif., who grew up near the park where Robbins chased Ross, called Robbins’ rehiring in Gardena an example of the “wash, rinse, repeat” cycle of problematic officers who

repeat their abusive policing in new places with tragic results.

It took an intense, two year legislative fight for Bradford to overcome opposition from the state’s powerful police unions and pass the Kenneth Ross Jr. Police Decertification Act of 2021, which seeks to stop abusive officers from wandering from department to department, only to abuse again.

In September, California Gov. Gavin Newsom signed a new law, which resurrects license decertification after a three decade hiatus. That leaves only three states — Hawaii, New Jersey and Rhode Island — without decertification mechanisms that can stem the flow of wandering cops.

Nationwide decertification of abusive officers would be an important step toward police accountability, experts say, but the decertification process still doesn’t work well even with 47 states having passed laws. The reason is that records of police officers losing their licenses are mostly kept secret and are seldom reviewed before hiring.

National decertification index

There is a straightforward solution to wandering officers, experts say:

- A national database open to the public with the names of all officers decertified for misconduct.

- A requirement that all law enforcement agencies check that database before hiring.

But that solution has proved elusive. Most states keep the names of disciplined officers secret, and the vast majority of departments do not fully investigate the background of an officer they are hiring. Police chiefs, who have found it difficult to rid their departments of problem officers, generally support stronger laws. Police unions oppose them, arguing that past allegations — many of them denied — shouldn't follow officers throughout their careers.

The International Association of Directors of Law Enforcement Standards and Training, an Idaho-based nonprofit, has created a national response to the problem of wandering cops: the National Decertification Index (NDI). Forty-seven states provide records of misconduct on about 31,000 officers so that states can check the NDI database to see if an officer applying for a job has had previous problems.

But experts say the NDI database is badly flawed. For one thing, most departments don't check it before hiring. For another, the names in the database are not public. For a third, a few big states, such as New Jersey, are not in the system.

The NDI database has another flaw. It omits police misconduct that is not serious enough for an officer to be decertified. In many states, only conviction of a felony leads to decertification. So serious misbehavior that falls short of a felony is not included in the database.

The nation takes a much more rigorous approach to its regulation of health care practitioners, who also deal in life and death but don't carry guns, says Roger Goldman, professor emeritus at Saint Louis University School of Law and expert on police licensing. Goldman has waged a four decade crusade to expand decertification nationwide.

The President's Task Force on 21st Century Policing, commissioned by President Barack Obama after a series of police killings in 2014, called for the federal government via the Department of Justice to follow Goldman's recommendation to partner with and beef up the NDI database — making it truly national. Police unions, however, opposed this recommendation as unfair to officers who face false allegations. The reform hasn't happened.

"It's a real mess for chiefs of police departments," says David A. Harris, a law professor at the University of Pittsburgh and police expert. "You go to any chiefs of police conference and every table has the same discussion: 'I fired this guy and we got him back because it was overturned in union arbitration.'"

The NDI database publishes a public brochure, illustrating the potential of an

"You go to any chiefs of police conference and every table has the same discussion: 'I fired this guy and we got him back because it was overturned in union arbitration.'"

— David A. Harris

effective database. It features the case of Sean Sullivan, who was caught in 2004 kissing a 10-year-old girl on the mouth in Coquille, Oregon. He was convicted on two counts of harassment and ordered to surrender his Oregon police officer certification and never work as a police officer again. The state of Oregon entered his name into the NDI database.

But that didn't stop Sullivan. First he tried to get a job in Klawock, Alaska, claiming he had never been convicted of a crime. Then he not only got a job as a police officer but as the police chief of Cedar Vale, Kansas. There he was investigated for a relationship with a 13 or 14-year-old girl. She refused to cooperate with the investigation, however, and Sullivan was eventually convicted of the lesser charges of burglary and criminal conspiracy. When the NDI database record from Oregon came to light, Sullivan was fired from police work. He later ended up in prison in Washington state for drug crimes.

"Second Chance PD" — McFarland, California

Sixty-two years ago, California led the nation in decertification. But strong police union opposition defanged the law in the 1990s and dismantled it in 2003.

The consequences of lacking decertification for decades became clear when California passed Senate Bill 1421 in 2018, requiring the release of records of officers convicted of habitual sexual abuse and use-of-force violations. A media consortium found that 80 officers in the state had been convicted of crimes. All told, 630 convicted criminals had been officers in the decade from 2008-2018.

One department in California, in McFarland, epitomized the problem. It earned the title "Second Chance PD."

In the two years after the department was created in 2009, it hired 13 officers who had been forced out of previous positions across the country. Chief David Oberhoffer, a veteran of the department in San Francisco, hired most of them: including Ron Navarreta, who had been fired from the Inglewood Police Department because of a child pornography investigation. Police records showed he admitted to viewing pictures of naked children, but his computer could not be located and no charges had been filed.

Chief Oberhoffer said he knew about

the investigation when he hired Navarreta, but wasn't convinced by the evidence and thought Inglewood might have had a grudge against him.

Other officers hired in McFarland included an officer accused of having sex with a teen Police Explorer Scout; an officer accused of threatening to put women in jail if they didn't have sex with him; an officer involved in a Los Angeles Police Department burglary ring; an officer who filed a bogus insurance claim for a car he dumped in Mexico; and an officer convicted of pulling a gun on his stepdaughter's friends.

After Oberhoffer, the city promoted Gregory Herrington whose record included a DUI conviction in Georgia and being fired for dishonesty in Banning, a Riverside County department. Herrington, a former Marine, came in vowing to improve the department's reputation, which he described as being "in the toilet bowl." But he ended up hiring three of his buddies from Banning who were also involved in dishonesty.

Leonard Purvis — the police chief who cleaned out Banning — couldn't believe eight of his dishonest officers ended up in McFarland, two as chiefs. He wrote to the toothless state Peace Officer Standards and Training office. It replied: "The decision whether to appoint an individual as a peace officer rests with the agency head. Differences of opinion can exist regarding whether or not an individual should be appointed as a peace officer."

The Muni-Shuffle — St. Louis to St. Ann, Missouri

In St. Louis, wandering police are so common that there is a name for this phenomenon: "the Muni-Shuffle."

St. Ann, a small suburb of about 14,000 near the St. Louis airport, is the refuge of many officers who have shuffled their way out of bigger departments in nearby St. Louis and St. Louis County.

One was Eddie Boyd III, who as a St. Louis officer pistol-whipped a 12-year-old girl in the face in 2006. He said it was an accident. In 2007, he struck another child in the face with his gun and handcuffs before falsifying a police report, according to Missouri state decertification records. Boyd faced a state decertification order, but a jury ruled in his favor in a lawsuit involving one

Continued on next page

of the pistol-whipping incidents, and he was allowed to keep his badge.

The St. Ann department hired Boyd. From there Boyd shuffled his way to nearby Ferguson in 2012. He was on the force there when Michael Brown was killed by another Ferguson policeman in 2014. A Ferguson woman sued Boyd, saying he arrested her for asking for his name at the scene of a traffic accident. The Justice Department also cited Boyd in its finding of a pattern of unconstitutional policing by the Ferguson department.

Boyd issued nine citations in Ferguson to Fred Watson, an employee of the National Geospatial-Intelligence Agency. Watson had just finished playing a pick-up game of basketball and got into his car when Boyd arrived to cite him for not wearing a seat belt and a host of other unfounded violations. Watson said Boyd drew his gun and pointed it at Watson's head for using his cell phone. Ferguson police responded that they only hire officers after they "undergo extensive investigation."

Another St. Louis police officer who found refuge in St. Ann was Christopher Tanner, who shot Black former St. Louis Officer Milton Green at Green's home in 2017. A police chase sped into Green's neighborhood while he was off duty working on his car in his driveway. A white officer arrived and ordered Green to the ground, forcing him to drop his service revolver. No sooner had that officer allowed Green to get up and retrieve his gun than Tanner arrived, told him to drop his pistol and immediately shot him. Green sued the city in 2019.

Tanner was soon joined in St. Ann by Jonathan Foote, who resigned from the St. Louis Police Department after a traffic stop led to a crash in which a bystander was killed. Then there was Christopher Childers, fired from the St. Louis department after assaulting another officer by firing a stun gun at her in her patrol car. He had also initiated a chase that resulted in the death of a bystander. St. Ann fired Childers recently for overdosing on opioids.

St. Ann's elected Police Chief Aaron Jimenez also hired Officer Ellis Brown III after he was forced out of the St. Louis Police Department and his state certification was suspended. Brown had lied about a 2016 incident in which he had tailed a car, which accelerated, crashed and started burning. Instead of calling for help, Brown fled the scene and then claimed in a report that he hadn't been there. Brown was also one of two officers who shot Kajieme Powell to death in St. Louis after responding to a shoplifting complaint in 2014. Brown said he acted in self-defense because Powell had a knife, but the killing led to street protests. Finally, 19 of Brown's questionable search warrants were thrown out because he used the same language in each.

After being hired by St. Ann, Brown was convicted in June 2021 in federal court for violating the civil rights of a suspect by beating him after a chase. Bank video captured Brown repeatedly kicking the suspect, who lay prone after attempting to flee on foot at the end of a 20-minute vehicle

“ There is one chase a week in St. Ann and one crash every two weeks, sometimes with deadly consequences, the Post-Dispatch reported.”

pursuit. A federal judge sentenced Brown to six years in prison this past November.

In 2017, the St. Ann department hired Mark Jakob, one of two St. Louis County police officers fired for lying about a high-speed chase that resulted in two deaths. The officers initially claimed not to have been involved in the chase, but an activist group released video showing they were.

Chief Jimenez's department favors aggressive tactics such as police chases. Despite its small size, St. Ann police conduct as many high-speed chases as the nearby St. Louis and St. Louis County departments, which are 20 times bigger. Jimenez has said publicly that he checks officers' backgrounds, but that he hired officers like Tanner and Brown because they hadn't been fired.

There is one chase a week in St. Ann and one crash every two weeks, sometimes with deadly consequences, the Post-Dispatch reported.

Finally, St. Ann hired ex-Iraqi war veteran Joshua Daniel Becherer, a member of the St. Louis Police Department SWAT team that in 2017 killed Isaiah Hammett in a controversial no-knock raid. Later that year, Becherer resigned from the St. Louis department after his arrest for domestic assault: for pointing a loaded rifle at a woman's face and threatening to kill her.

Becherer is a good example of how an officer's past misdeeds are kept secret from the public.

None of this information about Becherer was released by the Peace Officer Standards and Training (POST) office in Missouri. In fact, the only things about police officers that are open to the public under Missouri's Sunshine law are the names of officers, license status and the law enforcement agencies where officers are employed.

Wandering cops are widespread

How prevalent are wandering officers?

A recent study in the Yale Law Journal last year by Ben Grunwald, an assistant professor at Duke University School of Law, and John Rappaport, assistant professor at the



Police block protesters progress Sept. 25, 2020 in Louisville

University of Chicago Law School, provided the first systematic answer: Wandering officers are prevalent and often run into disciplinary problems after they are rehired.

The professors studied data in Florida, a state that took important steps to impose accountability on police officers after riots in Liberty City in 1980 left 18 people dead. Those riots followed the acquittal of officers prosecuted for the death of Arthur McDuffie, a 33-year-old Black salesman beaten by police after they chased him for traffic violations while he tried to get away on his black and orange Kawasaki motorcycle. The four officers tried had 47 previous citizen complaints against them.

Partly as a result, Florida enacted a strong police decertification law in 1980 in order to prevent officers with discipline



Photo by Isabel Miller

lle.

problems from moving from department to department.

Despite that law, many officers fired in one department are rehired and run afoul of police discipline again, the Yale study found. It concluded:

"In any given year over the last three decades, an average of roughly 1,100 full-time law enforcement officers in Florida walk the streets having been fired in the past — and almost 800 having been fired for misconduct, not counting the many who were fired and reinstated in arbitration. These officers ... are subsequently fired and subjected to 'moral character' complaints at elevated rates relative to both officers hired as rookies and veterans with clean professional histories."

Decertification not always the answer

A recent police decertification dispute in Texas is a reminder that decertification is no panacea. Officers in that state who engage in wrongdoing have sometimes used their police licenses to bargain themselves out of prison time. They surrender their license for reduced charges or probation.

An investigation by KXAN-TV found that in 245 cases from 2015 to 2018, officers had "used their licenses to leverage a lesser sentence in a plea bargain. More than 30 officers surrendered their licenses in lieu of prosecution or to halt an investigation."

One such officer was Larry Linley, a DA investigator in Fort Bend County. He

was originally charged with four counts of sexual assault for repeated instances of improperly touching an 11-year-old and taking pornographic videos. In 2017, he pleaded guilty to a reduced charge of one count of injury to a child in return for surrendering his license. He received no additional jail time.

Legislation designed to give the Texas decertification board more power was introduced, but the strongest proposals were bottled up. The Combined Law Enforcement Associations of Texas (CLEAT) testified against the bills, stating, "All of the legislation we see this session is a direct attack on working cops and is punitive in nature."

One law professor's long crusade to stop 'wandering' cops

by Paul Wagman and William H. Freivogel

Forty-one years ago this past March, two bullets from a police officer's revolver tore through the body of an alleged car thief in a parking lot behind a store at 7170 Manchester Boulevard in Maplewood, Missouri. The shots killed the alleged thief, but they triggered an epiphany for a still youthful St. Louis University law professor.

The dead man, Roy Wash, and the man who shot him, the late Joseph D. Sorbello, have both likely been forgotten by all but their families. But the law professor turned his epiphany into a lifelong mission to create and strengthen police accountability by decertifying abusive police officers like Sorbello. That mission has made the professor a national figure in the circles of law enforcement, especially so in the aftermath of George Floyd's murder 19 months ago by a Minneapolis police officer.

The New York Times, a month after Floyd's killing, offered up the professor's words as its "Quote of the Day." The Boston Globe, The Atlantic, the Yale Law Journal and CNN, among other outlets, have interviewed him or cited his writings. State legislators and reporters and law enforcement and civil liberties groups all over the country have sought his insights and recommendations.

Roger L. Goldman, now 80, and the Callis Family Professor of Law Emeritus at Saint Louis University, has been having a moment.

An epiphany

Goldman had his epiphany on March 21, 1980, when he read the account in the St. Louis Post-Dispatch of Wash's shooting the day before. The story reported Sorbello as saying that after he surprised the alleged thief in the act of stealing his car, Wash had reached inside his waistband as if for a gun, but no gun had been found. It also reported that the .45 caliber weapon Sorbello had used to kill Wash had been his by dint of his employment as a part-time officer in the police force of Bridgeton Terrace. Finally, it reported that Sorbello had been fired in 1977 from his full-time job at the Maplewood Police Department after allegations that he had lied to a grand jury, tampered with evidence and brutalized prisoners.

Sorbello's own former colleague had testified he had seen him stick the muzzle of his gun in a prisoner's mouth and order him to suck on it. While questioning at least two other prisoners, one a 16-year-old boy, Sorbello had allegedly pointed his gun at their heads and pulled the trigger in a one-way game of Russian Roulette.

Later, another Maplewood police officer, engaging in the same sport, shot another prisoner, Thomas Brown, to death in the headquarters, leading to indictments and a

housecleaning of the abusive department.

How was it, Goldman wondered, that Bridgeton Terrace would have hired someone with that kind of record? How could he have still been certified to be a policeman under Missouri law? Other professions, Goldman knew — from medicine to the law to cosmetology — took steps to decertify bad actors. Yet the police, who have life and death power over all of us, did not?

Checking Missouri law, he found, no, they did not. Once someone had been certified or licensed — the two terms are synonymous -- to be a policeman in Missouri, the state had no law that provided for the withdrawal of that license, even if the person had subsequently committed a felony. The state did have the authority under its regulations to withdraw licenses, but it exercised that authority only rarely.

The upshot: Although Department A in Missouri might fire a policeman for misdeeds, Department B only a mile or two down the road had every right to hire him -- even if it knew about the person's record. And, Goldman soon learned, Department B might think it was even justified in hiring him, because it wouldn't have to pay for the officer's certification training, it could put him to work immediately, and it could pay him on the cheap.

Goldman realized he was on to something. He went to Florida, which, he had learned, did decertify police officers for misconduct, and he began to dig.

And dig. It took until 1987 for the first fruit to appear — a law journal article by Goldman and Steven Puro, a St. Louis University political science professor. The two professors were identifying an issue that no one until that point had thoroughly examined.

Thirty-seven states, the article reported, already had procedures for decertifying police officers. But many of them only provided for these procedures under regulations, as in Missouri, or on limited grounds, such as a felony conviction.

Regardless, few of the 37 were exercising their power to decertify with any frequency. "In our survey of the states with decertification authority since 1980," the authors wrote, "twelve out of twenty-one responding averaged less than five decertifications in the years 1980 through 1984." By contrast, Florida, which in 1980 passed a law allowing decertifications for misdeeds that did not necessarily involve a felony conviction, had decertified 112 officers during that period.

Other methods for trying to weed out unfit police officers simply did not work, the article found. Civil damage suits were

mainly futile. So were internal police disciplinary procedures — a point The New York Times made again in a story last year about how New York City police routinely ignore the recommendations of the city's Civilian Complaint Review Board.

In words that have proved prophetic, Goldman and Puro noted: "criminal prosecution of police officers for public, official misconduct is rare and largely ineffectual. Prosecutors are reluctant to proceed ... Furthermore, juries often sympathize with the officer ..."

The article's conclusion: "Decertification offers perhaps the best chance for states to take responsibility for removing unfit police officers from the profession."

Reform in Missouri

Armed with this analysis, Goldman did something that few other law professors do, said Michael Wolff, Dean Emeritus of the St. Louis University School of Law and former Chief Justice of the Missouri Supreme Court. He launched a campaign.

"Most authors of a brilliant law review article stand back and wait for the world to respond," Wolff said. "But it rarely does. Roger perceived that you not only have to have the intellectual construct -- you have to sell it. He bridged the gap between ideas and policy. And in that regard, and in his persistence, he deserves to be described with a word that usually annoys me, but which fits in his case -- unique."

Goldman started his campaign in his home state. Working with the late Sheila Lumpe, who represented University City in the state legislature, he helped draft a bill and enlisted the support of Clarence Harmon, a former head of Internal Affairs for the St. Louis Police Department and future Chief of Police and Mayor. In legislative hearings, Harmon testified that as many as 90 percent of officers who leave the St. Louis department under a cloud simply apply for new jobs with municipalities in St. Louis County. Most of them, he said, are able to get hired.

The new Police Officer Standards and Training (POST) Law passed and took effect in 1988. In a June 29, 1988 article in the Post-Dispatch, Lumpe and Harmon said "their interest in the legislation had been sparked by Roger L. Goldman, who said he had been studying procedures for revocation of certification in other states for years."

The Missouri law has proved valuable. Since 1988, Goldman estimates, the state has decertified about 1,000 officers. In 2015, according to figures from a survey conducted by a Seattle University researcher, Missouri revoked 53 licenses -- more than all but seven other states in the



Photo by Isabel Miller

Louisville resident Dylan O'Donoghue waves a BLM flag while standing on a dump truck that the Louisville Police department used for a barricade Sept. 26, 2020, in Louisville, Kentucky.

country that year.

Despite that record, Goldman says, the Missouri law still needs work, including an expansion to cover not only police officers, but also prison guards, probation and parole personnel, and other corrections officers. And just a year ago, the state's POST Commission recommended several new steps to make it harder for officers who run into problems in one police department in Missouri to move along to another in the state.

But Missouri marked only a start. Goldman next went to Illinois, where he persuaded Jay Hoffman, a former student who had become a state legislator, to take up the cause; then to Indiana, where he persuaded the state's Law Enforcement Training Academy to advocate for it. Both states now have their own new laws.

Along with Missouri, Goldman's success in both those states reflected his ability for bringing on allies in his crusade. "He has been a sparkplug for making this happen," Wolff said. "He has drawn people in.

"He is very logical. He is not confrontational. He doesn't make people who disagree with him feel stupid – far from it. He's a good Socratic teacher who makes his listener feel smart by the end of the exchange."

By 1992, Goldman's efforts had brought

him a national reputation. NBC's "Dateline" featured him in a long piece about a man in West Palm Beach, Florida who had been beaten to death by two policemen who, it turned out, had concealed previous abuses in their jobs at other police departments – one in a nearby Florida community, one in Tennessee – with the help of those very departments. "Gypsy cops,"

Dateline called the department-hopping officers; "wandering cops" is the preferred term today. Regardless, the situation highlighted the need for better protection against both intrastate wandering – as had happened with Sorbello and one of the West Palm Beach officers – and interstate wandering, as had happened with the other West Palm Beach officer.

What happened in West Palm Beach, Goldman told "Dateline" viewers, "was avoidable and I'm afraid we're going to have many more avoidable deaths like this until we in society say it's time to take this problem seriously."

Twenty-two years would have to go by until that next reckoning.

From Abu Ghraib to Ferguson

During those two decades, Goldman kept pressing on the police licensing and decertification issue. He met with interested state representatives while on vacations. He gave talks and appeared

on panels for law enforcement and civil liberties groups around the country. He wrote op-eds for newspapers and articles for police publications. He spoke at law schools, encouraging law students and their professors to get involved. Mostly, however, he just used his computer and his office telephone. All of it – all these various efforts – were aimed at a single goal: to build support for what he refers to himself as his "mission."

Over the years, he also expanded the scope of his mission. In 2013, for example, Goldman explained to *The American Prospect* that absent adequate criteria for decertifying officers, the mere existence of decertification authority did little to regulate the quality of policing. About a third of states that had decertification authority only used it, he noted, in cases where an officer was convicted of a crime. But because most police misconduct was never even prosecuted criminally, that standard was far too low. And despite what had happened in West Palm Beach, he observed, the only shield against interstate wandering was still only a voluntary, privately managed database which was called the National Decertification Index but which wasn't really national. Only about two-thirds of the states participated in it.

In other words, what started as a fight

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Photo courtesy of Saint Louis University

Saint Louis University law professor Roger Goldman has crusaded for decades to stop wandering cops.

to get all 50 states to weed out bad officers by legislating decertification authority grew into a broader battle to professionalize American policing. Goldman was now advocating for certification and decertification procedures that were comprehensive – “that represented an entire strategy,” in his words – and that had teeth, as they do in healthcare and many other professions.

He wanted states to decertify officers for cases of misconduct that did not necessarily rise to the level of a crime, such as filling out false timesheets. He wanted higher minimum standards for initial training as well as requirements for continuing education – including training on dealing with racial biases and the mentally ill.

He wanted the laws to cover not only full-time police officers, but also part-time reservists, who sometimes have little or no training. He wanted them to cover other categories of peace officers too, such as probation and parole officers, juvenile detention officers and prison guards; one of the military police who committed abuses at the Abu Ghraib prison in Iraq, he noted, had been accused of abuse while serving as a prison guard in Pennsylvania.

Then, on July 17, 2014, Eric Garner died from a policeman’s chokehold in New York, his last words, “I can’t breathe.” And a few weeks later, on August 9, 2014, and just a few miles from Goldman’s office, Ferguson police officer Darren Wilson killed Michael Brown.

The awakening

In a way he had never experienced before, Brown’s death brought Goldman’s crusade back into the spotlight.

“When the Ferguson uprising happened,” Wolff said, “the timing was extraordinary because he had laid the groundwork in so many places. So many people around the country were searching for solutions, and here was this guy who was out there pursuing an agenda that fit right in.”

The protests in Ferguson and the blossoming of Black Lives Matter elevated the entire issue of police abuse to a new level, bringing national attention to stories that might earlier have received only local coverage. The police killings of 12-year old Tamir Rice in Cleveland (Nov. 22, 2014) and Walter Scott in North Charleston, S. C. (April 4, 2015) – both unarmed and both Black – dominated national news coverage for days.

Both of those cases highlighted the kinds of problems that Goldman had been describing. In the Rice case, Cleveland had hired Tim Loehmann, the officer who shot him, without having checked the publicly available records from his previous employer. Had Cleveland bothered, it would have found a letter from the deputy chief of police in Independence, Ohio describing Loehmann as emotionally unprepared to cope with the job and as suffering a “dangerous loss of composure” during firearms training, during which he became “distracted” and “weepy.” Loehmann, the deputy chief wrote, “could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun

performance was dismal.” In recommending that Loehmann resign, which he ultimately did, the deputy chief added: “I do not believe time, nor training, will be able to change or correct the deficiencies.”

Cleveland obviously could have averted Rice’s death by simply checking with Loehmann’s previous employer. But a change in the state’s law would have done the trick too. Ohio was one of the many states that would not decertify an officer unless he or she had been convicted of a felony. Loehmann had not. And partly because of that, he was able to keep his certification and “wander.”

In the Michael Brown case, Officer Wilson, who killed Brown, had worked for the police department in the small St. Louis County community of Jennings before that department folded and policing in the community was taken over by St. Louis County. Shortly thereafter, many of Wilson’s colleagues in Jennings joined the large, well-funded St. Louis County Police Department, but Wilson went to work for Ferguson.

This history highlighted a related issue Goldman had also begun raising. States, Goldman had begun to say, needed to consider decertifying not only individuals, but whole departments, because many of them lack the resources, financial and otherwise, to operate professionally. Of the 18,000 police departments across the country, Goldman says, the median number of police officers is 10; in several Missouri departments, there is exactly one. St. Louis County, with its more than 50 municipal departments, is a prime example

of this fragmentation, although Ferguson, with more than 50 officers at the time of the Brown killing, was actually among the county's larger municipal forces.

Regardless, the proliferation of small departments can not only foster unprofessional police work, but also lead to deliberate municipal policies to target residents with fines to collect much-needed revenues. That is exactly what the Department of Justice found was happening in Ferguson, and which was part of the underlying community hostility toward the police there.

In any event, more than two decades after his appearance on NBC Dateline, the cases of Eric Garner, Tamir Rice, and above all Michael Brown brought Goldman back into the national spotlight. That became clear when the President's Task Force on 21st Century Policing, which had been commissioned by President Barack Obama after these police killings, it adopted one of Goldman's recommendations in its Final Report.

The recommendation called for the Federal Government, through the Department of Justice, to partner with and beef up the only thing approaching a national database of decertified officers – the National Decertification Index (NDI). The NDI is currently maintained by an Indiana-based nonprofit, the International Association of Directors of Law Enforcement Standards and Training (IADLEST).

But besides the fact that it's voluntary and that in 2015 more than a dozen states were not participating, the NDI's value is undercut in another way. It lists decertifications only, omitting any negative information short of that – even though that information might well be crucial to another department's decision whether to hire that individual. So at present, the NDI still would not flag a man like the Tennessee police officer who left the force in Chattanooga only to go on to West Palm Beach and help kill a prisoner. That man had been forced to resign in Chattanooga after running into drug problems and accusations of brutality. But he was allowed to keep his license, so he still wouldn't be listed in the NDI.

The nation takes a much more rigorous approach, Goldman notes, to its regulation of healthcare practitioners, who also deal in life and death but don't carry guns. The Congressionally mandated National Practitioners Data Bank is truly national, and far more informative. It contains such information as any malpractice judgment or settlement; loss of staff privileges at a hospital for more than thirty days; and any adverse action taken by the medical board. The NDI should reflect analogous information for police, Goldman argued in a 2016 research paper for the Saint Louis University School of Law.

Police unions, however, have opposed this recommendation. And despite the inclusion of Goldman's recommendation in the Task Force report, there is still no 50-state NDI with government support.

Meanwhile, after Ferguson, Goldman was also busy being interviewed by or writing pieces for news organizations around the country.

Two of the more noteworthy news projects were the articles by the AP and the Minneapolis StarTribune.

The AP stories appeared in 2015 and, two years before the advent of the #MeToo movement, brought significant new understanding to the nature of police abuse. After Michael Brown's death, the AP contacted Goldman to talk about police misconduct in general. Goldman suggested the wire service examine the decertification issue, and, remembering a notable finding from his research in Florida in the 1980s, suggested sexual misconduct might be a major issue.

The AP investigation found it was: From 2009 to 2014, some 1,000 of the 9,000 officers who lost their licenses nationwide had been disciplined for sex-related offenses. These included "rape, pat-downs that amounted to groping, and shakedowns in which citizens were extorted into performing favors to avoid arrest. ...Overall, the victims were overwhelmingly women and included some of society's most vulnerable – the poor, the addicted, the young."

Two years later, the StarTribune ran a four-part series about "a state licensing system [in Minnesota] that is failing repeatedly to hold officers accountable for reckless, sometimes violent, conduct." The stories quoted Goldman as one of the critics. Less than three years later, Minneapolis Officer Derek Chauvin, who had a long record of citizen complaints against him, squeezed the life out of the unarmed George Floyd, triggering protests for social justice across the globe.

Recent progress

Floyd's killing brought Goldman's 41-year crusade to a climax. Police reform was suddenly again a top national issue, and Goldman the nation's leading expert on officer licensing. From his office in his Parkview home in University City, Mo. Goldman helped educate reporters and legislators all over the country about how police officer standards can be improved and enforced.

Since Goldman began his crusade, the number of states with some sort of decertification mechanism has grown to 47 from 37. The progress is better, however, than those numbers indicate. That's in part because many of the 37 have strengthened and continue to strengthen their laws in various ways. Colorado and Connecticut, for example, now bar the kinds of nondisclosure agreements that can keep one department from notifying another that a policeman had been fired in cases where that officer has not been decertified – a not uncommon situation in states where the decertification threshold is set at a criminal conviction.

Major progress also arrived when New

York, Massachusetts and most recently California joined the list. Last New Year's Eve, Massachusetts Governor Charlie Baker signed a sweeping new law that establishes a statewide Peace Officer Standards and Training Commission with the power to certify officers for the first time in state history, oversee investigations into officer misconduct, and revoke an officers' license for a range of misconduct. And in September, California Gov. Gavin Newsom signed the Kenneth Ross Jr. Decertification Act of 2021, bringing decertification back to that state after a three decade hiatus.

Meanwhile, New York, the nation's second-largest state, still hasn't passed a law, but in 2016 it added regulations that enable decertification.

Goldman played a role in the progress in both New York and Massachusetts, traveling several times over the years to both Albany and Boston to advocate for reform.

Ironically, however, among the states that still lack laws is one of the bluest and biggest in the country – New Jersey. The list is rounded out by two smaller blue states, Rhode Island and Hawaii. Hawaii not long ago passed a law that it has not yet begun to carry out. Only in Rhode Island is there no activity.

These states have lagged because their police unions are so strong, Goldman says. But in the aftermath of the Floyd killing, the ice is beginning to crack even in their state capitals.

With this sort of progress, it appears that more balance may soon be brought to the way decertifications have been distributed among the states. In the most recent survey, covering the year 2015, Georgia, with 562, and Florida, with 399, alone accounted for 52 percent of the decertifications in the 44 states which at that time had the authority to make them.

Not anti-police but pro good-cop

Yet there is much more work to be done, and Goldman is still up to the challenge. "No, I really don't get tired of it," he says. "I actually feel an obligation to keep going on it, because to me it's so obvious that cops who do terrible things shouldn't be allowed to keep doing them."

And part of the satisfaction of doing this work, he points out, is that it is not really adversarial. "My work is not anti-cop," he notes. "It's pro-good cop." And because of that, both law enforcement organizations and civil liberties groups can find common ground in it.

In its June 24, 2020 "Quote of the Day," The New York Times reported Goldman as saying: "If the state can take away the license of a barber for misconduct, surely it should be able to do so for a police officer."

He'd been saying it for four decades. Finally, everyone was listening.



Police misconduct records secret, hard to access

by Kallie Cox and William H. Freivogel

Police misconduct records are either secret or difficult to access in a majority of states — 32 of them including Washington, D.C. But the breeze of openness is blowing. Six big states have opened records in recent years — California, New York, Illinois, Colorado, Massachusetts and Maryland.

Nineteen states now have laws that allow these records to be mostly available to the public — up from 12 a few years ago.

Legal experts say transparency of police misconduct records is one of the keys to police reform. David Harris, a law professor at the University of Pittsburgh, put it this way: "One thing that has changed is greater transparency. We have seen a number of jurisdictions enhancing and changing the way police misconduct records have been handled. You can't have real accountability with the public unless you are willing to share information."

The modest uptick in openness is the result of a combination of court decisions and reform laws passed since the murder of George Floyd. New York, Massachusetts, Colorado, Oregon and Maryland enacted laws in the past year opening records that were previously closed. California passed a law opening some records in 2018 and came back

with a broader open records law this past fall.

In Illinois, the Invisible Institute won a court decision in 2014, *Kalven v. City of Chicago*, granting public access to misconduct records by striking down exemptions law enforcement agencies had claimed when denying public record requests.

New York state repealed Section 50-a of the state's civil rights law last year and this year made more than 300,000 police misconduct records public. Indiana passed a bipartisan police reform bill this year that publishes the names of officers decertified for misconduct.

However, there are still tall barriers to accountability, even in some of the states that have begun to open up.

In Illinois, a widely touted police reform law passed this year included a provision that closed the state Professional Conduct Database of officers who resigned, were fired or were suspended for violating department policy. Not only are the names withheld but also the supporting documents. To get statewide records, a person would have to contact each of the almost 900 police departments and request these misconduct records individually.

In Pennsylvania, Gov. Tom Wolf signed a

bill into law in 2020 that created a database to track police misconduct statewide and force agencies to check the database before hiring an officer. But the legislature closed the database to the public.

Indiana's bipartisan law passed this spring required an online listing of the names of all officers disciplined, but closed the much more plentiful investigations that don't end in punishment. Colorado opened records but its law was not retroactive. Oregon created a database of officers disciplined but did not open records of investigations that didn't lead to discipline.

In New York the repeal of 50-a seemed to throw open the window to a new era of transparency. But police departments and police unions — with the assistance of local judges — have been slamming the window shut again.

Police departments across New York have maintained that unsubstantiated complaints of misconduct — in other words complaints that can't be proven true or false — should be closed records because their release would violate officers' privacy. Most complaints of misconduct fall in the unsubstantiated category.

Police departments and police unions

19 states have open or mostly open records for police misconduct



Photo by Brian Munoz

Cori Bush (with bullhorn) leads protests in St. Louis after the acquittal of Jason Stockley in 2017. Bush went on to be elected to Congress in 2020.

Post-Ferguson police reform stalls among racial divisions

by William H. Freivogel and Orli Sheffey

ST. LOUIS — Ferguson became the Selma of the 21st century after Officer Darren Wilson killed Michael Brown seven years ago. Protests transformed Black Lives Matter from a hashtag into the nation's leading civil rights movement and forged a potent political coalition that elected Black reformers to top St. Louis offices, from prosecutor to congresswoman to mayor.

Yet Ferguson reforms have faltered and Missouri is moving backward. This summer, Missouri became the only state since George Floyd's murder to enact a "Law Enforcement Officers' Bill of Rights." The passage of the law, drafted by a lawyer for state police unions, got scant public notice. But it ties police accountability in knots, closes police misconduct records and allows courts to block the kinds of police budget cuts proposed by St. Louis Mayor Tishaura Jones.

Even as the nation was consumed by Floyd's murder in Minneapolis and the killing of Breonna Taylor in Louisville, Kentucky, St. Louis paid little attention to similar deaths that occurred here involving "prone restraint" and mistaken "no-knock" warrants.

Nicholas Gilbert died of asphyxiation in a St. Louis police holdover in 2015 under prone-restraint, with six officers on top of him while he was handcuffed and his legs were shackled. And Don Ray Clark, a 63-year-old Army veteran, was killed in 2017 during a SWAT team's no-knock raid on his Dutchtown home based on a warrant application painting him as a criminal even though he had never been charged with a crime.

The city of St. Louis has continued to defend these police actions in court, even though the killings are similar to the Floyd and Taylor killings criticized publicly by city officials.

But that may be changing. When Jared Boyd, the mayor's chief of staff, was asked to explain the disconnect between the city's legal position and the mayor's public statements, he told St. Louis Public Radio that Jones is appointing a new city counselor who will reconsider the city's legal position in police cases. And the mayor appointed Sheena Hamilton, who became the first Black female city counselor in September.

The change is part of a larger police reform in the works in which the mayor is proposing an Office of Public Accountability that would employ civil service investigators with subpoena power to investigate serious allegations of police wrongdoing. The civilian investigators would "wall off" the police from involvement in these probes, Boyd said.

The proposed reform is intended, he said, to address weaknesses in post-Ferguson reforms.

The situation:

Here is evidence the Ferguson reforms have fallen short:

- St. Louis police kill more civilians per capita than any other big city department, yet no St. Louis-area police officer has ever been convicted of murdering a civilian.
- St. Louis-area officers killed 132 people between 2009 and 2019, according to an ArchCity Defenders report. Yet few of the names of the officers involved in the killings were reported in the media or released publicly.
- Three-fourths of the 79 St. Louis-area police officers known to have killed people between 2009 and 2017 were never publicly identified in the media or by police. Almost half remain active as police officers, according to state records.
- The St. Louis Civilian Oversight Board, set up as a post-Ferguson reform, didn't review any of the 21 police killings in the City of St. Louis from 2016 through 2019, nor has it heard 96% of non-lethal police abuse cases filed by citizens.
- The post-Ferguson creation of the Force Investigation Unit in the St. Louis Police Department has resulted in less, not more, public information about police killings. Officers' names aren't released nor are details. And there have been no prosecutions.
- Circuit Attorney Kim Gardner, elected by Ferguson reformers, has not issued prosecutorial judgments on the score of police killings on her desk, civil rights lawyers say.
- Racism has infected police misconduct. White officers badly beat a Black colleague at a Black Lives Matter protest in 2017 in downtown St. Louis because they thought he was a protester. The officers sent racist texts to each other before and after the assault expressing their enthusiasm for beating Black people and their racial hatred for Gardner, the Black prosecuting attorney. Only one officer was convicted by a jury — partly because the federal criminal civil rights law has an especially high level of proof: a prime roadblock to police accountability.
- At the same 2017 protest, white officers "went rogue", the city admits, and illegally "kettled" 125 Black Lives Matter protesters and downtown residents by closing them into a city block, spraying them with pepper spray and arresting them in what a judge found to be a violation of their rights.
- Gardner has identified about 60 officers who are not honest enough to testify in trials, yet the police union defends them.
- The police unions still are effectively segregated, with the predominantly white Police Officers' Association warring against the city's first Black prosecutor, while the Black Ethical Society of Police defends her.
- Officers forced out by the St. Louis and St. Louis County police departments for wrongdoing wander to suburban departments such as St. Ann, where they often reoffend.

“ After Brown's death in 2014, police reform made modest advances. But for every step forward there have been two back.”

Elections don't translate into reforms

The killing of Brown on a suburban Ferguson street in the summer of 2014 created a potent political coalition of young Black people and white progressives.

No one predicted either outcome when Brown crashed onto the pavement of Canfield Drive after Ferguson's Officer Wilson fired 10 shots at him.

Four Black leaders have won top offices with the backing of the reform coalition born on the Ferguson streets and led by Ferguson protest leaders such as Kayla Reed. Gardner became the first Black prosecutor in St. Louis in 2017 — one of the first of a nationwide group of progressive prosecutors stretching from Boston, Philadelphia and Baltimore to St. Louis, Kansas City and Chicago and on to San Francisco and Los Angeles.

Then Wesley Bell pulled off a political miracle defeating Bob McCulloch, the St. Louis County prosecutor and slain police officer's son who decided not to prosecute Wilson. Rep. Cori Bush ended the father-son dynasty of William and Lacy Clay in North St. Louis last November and Jones won the election this spring as St. Louis' first Black female mayor, with police reform at the top of her agenda.

After Brown's death in 2014, police reform made modest advances. But for every step forward there have been two back.

The Justice Department's pattern-or-practice investigation in Ferguson found entrenched unconstitutional policing and negotiated a consent decree requiring reforms.

The Missouri Legislature and Supreme Court discouraged municipalities from using traffic stops to fund their treasuries.

But ironically, a series of post-Ferguson reforms intended to bring more accountability in the City of St. Louis — the Force Investigation Unit, Civilian Oversight Board, and Gardner's review of police killings — have brought less accountability.

The Force Investigation Unit has released far less information about police killings than police released before it was created. The Civilian Oversight Board has investigated none of the 21 police killings from 2016 to 2019. And Gardner's office hasn't made any prosecutorial

determinations.

But this spring, when Jones became the first Black female mayor, it became clear how ineffective the Civilian Oversight Board had been. Jones' Executive Order No. 1 required the police department to begin using the joint complaint form that had been intended to make sure the Civilian Oversight Board would see all complaints.

The executive order was necessary because the police department had sidelined the Civilian Oversight Board, using old complaint forms that weren't forwarded to the board. An investigation by the Missouri Independent and Reveal from The Center for Investigative Reporting found the board had received just 125 complaints while the police department had received 3,000. That means only 4% of all complaints were actually reported to the board.

None of the 27 deaths of civilians shot by police since 2015 had come before the Civilian Oversight Board. In a report this spring, the board blamed a bureaucratic maze for blocking its investigations.

Part of the post-Ferguson reform created that maze: a multi-layered review process that delays shooting investigations for years as they wend their way from a Force Investigation Unit to a review in Gardner's office, then back to the police department's Internal Affairs Bureau, on to the police chief and finally the Civilian Oversight Board.

Less transparent, not more

When St. Louis Police Chief Sam Dotson unveiled the Force Investigation Unit in 2014, he said that a mandatory review of all cases by prosecutors would ensure impartiality. He also promised that the name of every officer involved in a shooting would be publicly revealed, once it was considered safe to do so.

But a review of media coverage and department incident reports found that officers' names were less likely to be made public following this post-Ferguson reform.

Emanuel Powell, a lawyer with ArchCity Defenders, confirmed in an interview that the unit created "a more secretive system," making it more difficult for the public to access information related to police killings.

Before the unit was created, incident reports would include an approximately eight-paragraph-long police narrative detailing what happened before, during and after a police killing. Since then, incident reports have been only one or two sentences long, and most no longer include officers' names.

Between 2015 and 2019 nearly 30 St. Louis Metropolitan Police Department incident reports omitted the names of officers who killed civilians on the job, a review of those reports disclosed.

The Force Investigation Unit commented in an email that it withholds the names of police shooters before a charging decision just as it does the names of civilian shooters.

The investigation from the Force Investigation Unit goes on to Gardner for a prosecutorial determination, but Gardner has yet to make a single determination. The Intercept reported this spring that more than 20 police

Continued on next page



GOV. EX. 5

Government exhibit 56 in the federal prosecution of St. Louis police officers who brutally beat undercover Officer Luther Hall during the September 2017 protests following the acquittal of former Officer Jason Stockley. The exhibit shows the extent of Hall's injuries and has a picture of the officers standing over him.

shooting cases have not received a final legal determination from Gardner's office, including a controversial 2019 case in which Cortez Bufford was shot to death by an officer in a gangway in the Carondelet neighborhood after a police chase.

Some blame Gardner for the holdup. They say Gardner is herself a Ferguson reformer who has failed, as her poorly managed office fails to act on police shootings and holds prisoners in jail for months before trial.

Gardner counters that investigations by the Force Investigation Unit have been inadequate for making prosecutorial decisions and she has not received the funds necessary for her reviews. She also points out that she has been the target of an all-out assault from the police union and the white power structure — a racial assault she unsuccessfully challenged in a Ku Klux Klan Act lawsuit last year.

Boyd, Mayor Jones' chief of staff, says the mayor's plan for an Office of Public Accountability is directly aimed at addressing the weaknesses of the Force Investigation Unit and Civilian Oversight Board. The mayor's office has been working with senior members of the Board of Aldermen's Public Safety Committee to come up with new legislation, he said.

ArchCity's Powell, who has been working with the families of those killed, says relatives of the dead civilians say "the whole system is bad." Ferguson reforms have done more harm than good, he says.

St. Louis' complicated process is at odds with the best practices for police shootings in big cities — based on the recommendations of the national Police Executive Research Forum. It recommends simultaneous administrative and criminal reviews.

"Rogue" police actions with racist overtones

Two high-profile prosecutions of St. Louis officers have faltered since Ferguson and continue to reverberate today with racial

overtones. The story of these two entwined cases illustrates additional legal roadblocks to police accountability and the racist policing found in St. Louis law enforcement.

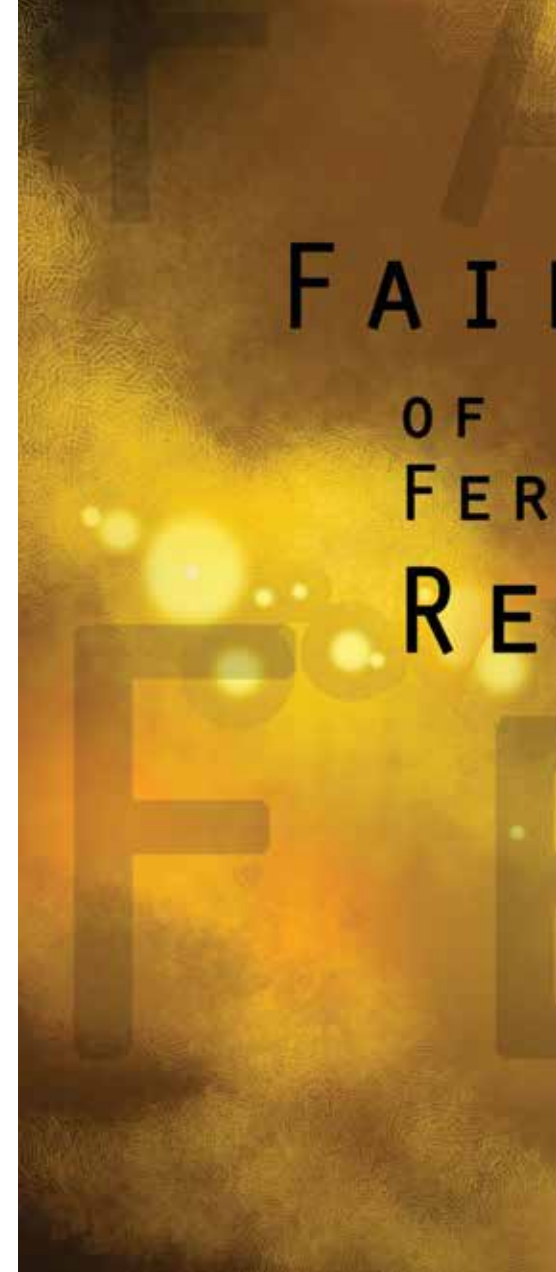
In 2017 a state judge acquitted Jason Stockley, a former St. Louis officer who, according to prosecutors, said during a car chase that he would kill the fleeing suspect, Lamar Smith. "Going to kill this mother... don't you know it." Stockley killed Smith at the end of the chase, claiming Smith had pulled a gun. No prints from Smith were found on the gun, just Stockley's.

But Circuit Judge Timothy Wilson bent over backwards to accept Stockley's story, writing that his threat to kill Smith might have been "a means of releasing tension" and that his 30 years on the bench caused him to doubt that a heroin dealer like Smith wouldn't have had a gun.

On Sept. 17, after the verdict, frustration boiled over among Black Lives Matter protesters on downtown St. Louis streets — in the shadow of the Old Courthouse where Dred and Harriet Scott once sued for their freedom and where, in 1836, Francis McIntosh became St. Louis' first official lynching victim.

A group of white police officers — who the city later admitted "went rogue" — beat Black undercover Officer Luther Hall, whom they mistook for a demonstrator. In the words of a federal court, the "text messages between abusive officers revealed a plan to beat protesters and suggested that if they had beaten a real protester rather than an undercover detective, they would not be in any trouble."

The police department's initial injury report — which hasn't been widely published — is reminiscent of the misleading police report initially filed in Minneapolis in the Floyd murder, obfuscating police responsibility with the use of the passive voice. The Hall report said, "As officers were making arrests, Officer Hall was knocked to the ground, striking the concrete." Actually, police brutally beat Hall, leaving a hole in his lip and severe head and neck injuries.



A few hours later and a couple of blocks away, dozens of other abusive officers used what a federal judge found to be unconstitutional "kettling" techniques to surround a group of about 125 protesters and residents in the middle of downtown, moving in from the edges to arrest, pepper spray and beat the crowd.

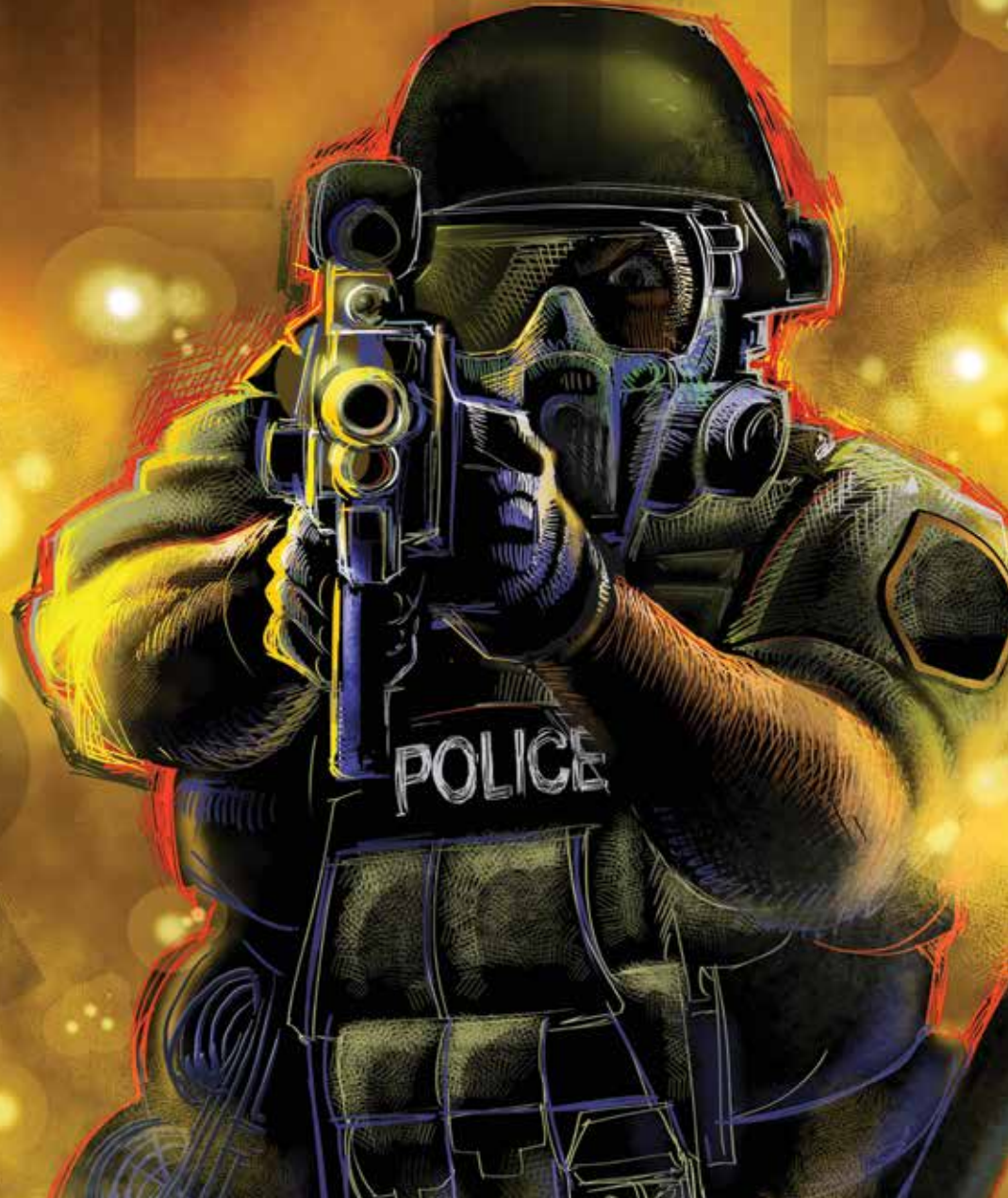
U.S. District Judge Catherine Perry was convinced by 18 witnesses that demonstrators did not hear the police declare an illegal assembly and could not exit the block that the police closed off before arresting and macing them. All the charges against the protesters were dropped.

Two St. Louis police officers pleaded guilty to violating Hall's civil rights. Two others were found not guilty by a federal jury. Another, Dustin Boone, was convicted in a second trial.

The difficulty of winning convictions illustrates another legal roadblock in criminal federal civil rights cases — the difficulty of proving "willful intent." In other words, proving beyond a reasonable doubt that the officer meant to take away a clearly protected constitutional right.

One reason Boone may have been convicted in the second trial but not the first is that federal

LURE GUSON FORMS



prosecutors introduced racist texts from Boone and others at the second trial. The officers also sent racist text messages before, during and after the brutal beating. Those texts helped prosecutors prove "willful intent."

Boone wrote a few months before the attack, "There r n----- running wild all across the city and even if/when we catch them... they don't get in any trouble because there are plate lips running the CAO!" CAO is a reference to the Circuit Attorney's Office, run by Gardner, St. Louis' first Black prosecutor.

Boone attached a video camera to his uniform so he could livestream the beating of Hall to his girlfriend, now wife, Ashley Marie Ditto, who texted back, "That was SOOOOOO COOL!!!!"

Christopher Myers texted fellow officers "let's whoop some a--," two days before the beating. Boone texted on the night of the beating, "A lot of cops gettin hurt but its still a blast beating people that deserve it." He called protesters "animals."

Boone, the only officer convicted by a jury, was sentenced in November to a year and a day by U.S. District Judge E. Richard Webber, even though prosecutors asked for the 10 years called for in federal sentencing guidelines.

Boone's own lawyers suggested 2 years, painting him as a victim of a department "where being cavalier about violence, particularly racial violence, was far too prevalent."

Racism runs through it

There is also a strong racial element to the battle between Gardner, the first Black prosecutor, and Jeff Roorda, the business manager of the St. Louis Police Officers' Association, who himself lost a police job in Arnold, Missouri, for alleged dishonesty. Roorda said about Gardner, "This woman needs to go, she's a menace to society," adding that she must be removed "by force or by choice."

The St. Louis Police Officers' Association blames Gardner for high crime rates, just as the Philadelphia Fraternal Order of Police blames that city's reform prosecutor, Larry Krazner. (Krazner grew up in St. Louis.) The St. Louis Association put it this way: "This is a prosecutor who has declared war on crime victims and the police officers sworn to protect them. She's turned murderers and other violent criminals loose to prey on St. Louis' most vulnerable citizens and has time and time again falsely accused police of wrongdoing. The streets of

this city have become the killing fields as the direct result of Gardner's actions and inaction."

The Police Officers' Association is the bargaining unit for all St. Louis officers, but it is controlled by white officers. Black officers have long relied upon the separate Ethical Society of Police, who believe Roorda and the main union group have engaged in racial discrimination against Gardner.

Gardner has put 60 to 70 officers of the St. Louis department on the "Brady list" of officers she will not call to the stand because of past dishonesty, criminal convictions or racist statements on social media. Brady v. Maryland is the 1963 Supreme Court decision requiring the government to turn over evidence that might help clear a defendant.

Seven years after Michael Brown's killing, St. Louis has pro-reform public officials firmly in place, but police accountability is weaker than ever with the failure of post-Ferguson reforms and new barriers to accountability posed by the Law Enforcement Officers' Bill of Rights.

Two centuries after the Missouri Compromise, Missouri remains divided by race and living with unhappy bargains.

Most St. Louis police officers who kill civilians are hidden from the public eye

by Orli Sheffey and William H. Freivogel

Most of the 79 St. Louis area police officers who killed people in recent years have escaped public scrutiny, going unnamed both in media and department incident reports. Nearly half of them still are active officers today.

In addition, public knowledge of police killings has significantly decreased, despite increased attention to police killings nationwide. In the City of St. Louis, almost all details of police killings are inaccessible to the public.

Those are the findings of a Pulitzer Center on Crisis Reporting investigation based on public records and documents that ArchCity Defenders obtained and made accessible to the investigation. ArchCity is a nonprofit civil rights law organization that gained national attention during and after the Ferguson protests.

The St. Louis Metropolitan Police Department kills more people per capita than any big city police department in the country, according to an ArchCity report. The department declined to comment on this finding.

Three-fourths of the 79 St. Louis area police officers known to have killed people between 2009 and 2017 were never publicly identified, according to a Pulitzer review of media reports and court records.

In 2010, SLMPD officers Marc Wasem and Joseph Busso attempted to arrest Normane Bennett, a 23-year-old Black man they believed possessed drugs. When Bennett tried to escape, Wasem fatally shot Bennett seven times, according to the department's incident report. Although Wasem and Busso were named in the department's incident report, they were not named in media reports until two years later when Bennett's father filed a federal lawsuit against Wasem. Wasem and Busso are both still employed as SLMPD officers.

Some of the officers who were not publicly identified at the time of their first fatal shooting went on to kill civilians in later confrontations. In 2009, SLMPD officers Chris Lovelady-Armstrong and Kyle Chandler fired six shots and killed Antonio Hogans, a 40-year-old Black man who may have believed he was firing a shot at an intruder. After they killed Hogans, the media referred to "two police officers."

Chandler went on to fire the fatal

shot that killed Black 18-year-old Mansur Ball-Bey in 2015 after Ball-Bey allegedly pointed a gun at officers executing a search warrant. Chandler's name again was not included in media coverage at the time of killing, although he garnered media attention when Circuit Attorney Jennifer Joyce announced that he would not face charges and when Ball-Bey's father filed a wrongful death lawsuit nearly three years later.

Approximately 60 St. Louis area police officers from 2009 to 2017, whose names were obtained through incident reports or court records, went unnamed in the media immediately following killings. Six of those officers — Matthew Karnowski, Kyle Chandler, Rich Berry, Jason Chambers, Charles Woodcock and Mark E. McMurry — killed more than one person. Karnowski and Woodcock are still employed by the SLMPD.

According to a media analysis of 115 St. Louis Post-Dispatch articles from 2009 to 2019, only eight articles named the officers in coverage immediately following police killings. The articles covering police shootings in 2019 and 2020 do not appear to name a single officer.

The St. Louis Metropolitan Police Department wrote in a statement to the Pulitzer Center that officer names will not be released unless criminal charges are brought against the officer, but "the age, gender, race, and years of service for the officer involved in the incident are provided for public release, as well as a brief synopsis of the incident."

Before 2015 most officers were not named in the media, but officers were named in SLMPD incident reports, which are accessible under the Sunshine Law.

This was true in the case of Jordan Walls, a 19-year old Black man who was killed in 2012 by a group of six SLMPD officers: Matthew Wieczorek, Franklin Derby, Thomas Mayer II, Ryan Murphy, Mark McMurry and Charles Woodcock. Responding to a call of a shooting by someone allegedly driving a gold car, the officers chased down Walls and another man. When the six officers saw that the two men were armed, the officers, saying they feared for their safety, started shooting, killing Walls and injuring the other man in the car. All of the involved officers except

McMurry work at the SLMPD today.

The six officers were not named in the media following the killing of Walls. Avoiding public scrutiny, two of the six officers went on to be involved in other killings.

In 2013, McMurry joined five SLMPD officers in killing 34-year-old Damon C. Hall; the officers said they feared for their safety after Hall pointed a weapon at them.

The same year, Woodcock joined another officer in shooting 37-year-old Terence Anderson several times before Anderson fatally shot himself. Anderson had been fleeing the scene after killing his estranged girlfriend and wounding her daughter, according to the incident report.

79 St.

Drew Werninger (SLMPD)
Jason Brandhorst (SLMPD)*
Matthew Karnowski (SLMPD)*
Joseph Niemera (SLMPD)
Christine Miller (Sunset Hills PD)
Mark Sorocko (SLMPD)
Joshua Becherer (SLMPD)
Paul Platchek (SLMPD)
Lamont Aikens (Uplands Park PD)
Janet Riley (Uplands Park PD)
Chris Lovelady-Armstrong (SLMPD)
Kyle Chandler (SLMPD)
Andrew Ringeisen (Overland PD)
Marc Wasem (SLMPD)*
Joseph Busso (SLMPD)*
Rich Berry (Hazelwood PD)
Raymond Mandle (SLMPD)*
John Perry (US Marshals)
Theodore Abegg (US Marshals)
William Helbling (SLMPD)

The two officers were again not named in the media in connection with the killings. But they were named in the SLMPD incident reports and details such as the officers' names, badge numbers and a timeline of events were included. Based on the Pulitzer review of incident reports on file with ArchCity, these details were commonly included in department records prior to 2015.

But in 2015, the reports' police narratives were reduced from several paragraphs to one or two sentences. Instead of detailing what happened, the reports simply mentioned that an "Officer Involved Shooting" occurred, omitting the officers' names.

For example, in the police killing of 33-year-old Jaime Robinson in his home in 2017, the incident report simply said "On Friday, May 26th, at

11:00 p.m., the Force Investigation Unit (FIU) was requested to [Robinson's address] relative to an 'Officer Involved Shooting.'"

Nearly 30 reviewed incident reports, acquired by ArchCity and made available to the Pulitzer investigation, had a similar one or two sentence police narrative, with five reports having no narrative included at all.

Although officers were named in incident reports prior to 2015, SLMPD Public Information Officer Evita Caldwell wrote in a statement to the Pulitzer Center that "names of officers involved in officer-involved shootings are not released unless criminal charges are issued for the incident."

"This is the same protocol as with any other shooting incident in which a suspect is not named/identified until charges are issued by the Circuit

Attorney's Office," Caldwell wrote.

While the public can still request incident reports under the Sunshine Law, SLMPD incident reports no longer include the names of officers' or the details of the fatal interaction.

Instead, the details are included in FIU investigative reports, which are more difficult to obtain. Investigative reports are automatically closed to the public until the investigation is complete, per the Sunshine Law, and investigations have been staying open for years.

Powell said that the lack of details in incident reports is "wrong" and prevents the public from holding officers accountable.

"What we're seeing isn't a redaction of names; there's just literally no information," Powell said, adding that it is "a more secretive system."

Louis Area Police Officers Involved in Fatal Killings (2009-2017)

Marco Christlieb (SLMPD)
Daryl Anthony Hall (SLMPD)
Brian Kaminski (Ferguson PD)
James Little (Beverly Hills PD)
Jason Stockley (SLMPD)
Jason Chambers (SLMPD)
Brandon Johnson (SLMPD)
Rachel Capps (SLMPD)
Matthew Wieczorek (SLMPD)*
Franklin Derby (SLMPD)*
Thomas Mayer II (SLMPD)*
Ryan Murphy (SLMPD)*
Charles Woodcock (SLMPD)*
Mark E. McMurry (SLMPD)
Hammad Ahmad (SLMPD)*
Torey Phelps (SLMPD)
Angela Hawkins (SLMPD)
Andrew Wilson (SLMPD)*
Brandon Moore (SLMPD)*
Jonathan James Ambrose (SLMPD)

Stephen Applebaum (SLMPD)
Sheresa Absher (SLMPD)
Patricia Vineyard (SLMPD)
James Sieve (Hazelwood PD)*
Lieutenant McKeon (Hazelwood PD)
Bernard Hensen (SLMPD)
Michael Allen Blanks (SLMPD)*
John Stewart (SLMPD)
Matthew Mayer (SLMPD)
Timothy Mcnamara (SLMPD)*
Steven Pinkerton (SLMPD)
Joan Glover-Straughter (SLMPD)*
David Christensen (SLMPD)*
Steven Gori (SLMPD)
Frederick Stith (SLMPD)
Lafeal Lawshea (SLMPD)
Timothy Boyce (SLMPD)*
David Wilson (SLMPD)*
James Daly (SLMPD)
Michael Mueller (SLMPD)*

Brandon Wyms (SLMPD)*
Kenneth Allen (SLMPD)*
Kristopher Clark (SLMPD)
Daniel Chamblin (SLMPD)
Orlando Morrison (SLMPD)*
Joseph Bell (SLMPD)*
Ellis Brown (SLMPD)
Nicholas Shelton (SLMPD)*
Jason Flanery (SLMPD)
Michael Jones (SLMPD)
Candra Burnett (SLMPD)
Don McGhee (SLMPD)
Cameron Jackson (SLMPD)*
Evan Alexander (SLMPD)*
PO McIntosh (Hazelwood PD)
Joshua Little (Hazelwood PD)*
Shane Parrish (Hazelwood PD)*
Josh Lasley (SL County PD)
Austin Patton (SLMPD)*

**Denotes officers confirmed to be still employed by the same police force
Officer names appear in order of involvement in first known killing
Officer names and incident reports provided by ArchCity Defenders*



Photo by Brian Munoz

Protesters fill the streets of St. Louis "Delmar Loop" in September 2017 to protest the acquittal of former St. Louis police officer Jason Stockley in the shooting death of Anthony Lamar Smith. The city later admitted that "rogue" officers kettled protesters in a city block to arrest them and white officers beat an undercover Black officer, mistaking him for a protester.

Two St. Louis police killings similar to George Floyd and Breonna Taylor deaths

by William H. Freivogel

ST. LOUIS — Five years before George Floyd died of "asphyxia-restraint" on a Minneapolis street, 27-year-old Nicholas Gilbert died in a St. Louis police holdover cell with six officers on top of him. He was handcuffed with his legs shackled while gasping, "It hurts. Stop."

Three years before Breonna Taylor was killed by police in a flawed "no-knock" raid in Louisville, Kentucky, a St. Louis SWAT team killed Don Ray Clark, a 63-year-old Army veteran known as "Pops," in his Dutchtown neighborhood. The SWAT team of 17 officers, acting on a no-knock warrant based on sketchy evidence, broke down the door and tossed a flashbang into the front room where Clark was sleeping. Police

opened fire and Clark, who never had been charged with a crime, was shot nine times by Officer Nicholas Manasco.

Floyd's and Taylor's deaths were huge news events that brought worldwide attention to police killings. But Gilbert's and Clark's deaths only got passing attention. There were no national news stories or protests in the streets. But their deaths highlight both the banality and lack of accountability for such police actions.

Death from "asphyxia-restraint" and no-knock raids are the leading causes of police killings both in St. Louis and nationwide. Across the nation, 134 people have died from "asphyxia-restraint" in the past 10 years with 94 people killed during no-knock

raids from 2010 to 2016.

Now the families of Gilbert and Clark have brought attention to the killings of their loved ones by suing St. Louis and its police officers for violating their civil rights.

The lawsuit by Jody Lombardo, Gilbert's mother, has taken on national significance because the U.S. Supreme Court took notice in a surprising June opinion that could eventually make it harder for police nationwide to dodge accountability.

Until now, there has been a disconnect between the city's legal position on prone restraint and the public statements of its mayors. The City of St. Louis has continued to argue in court that St. Louis police did nothing wrong, even as Mayor Tishaura



Photo courtesy of the family of Nicholas Gilbert

Nicholas Gilbert as a boy. At age 27 Gilbert died in a police lockdown, handcuffed and legs shackled and with six police officers on top of him.

Jones and her predecessor Lyda Krewson criticized Floyd's murder and advocated for police reform.

The Gilbert family's lawyer, Kevin M. Carnie Jr., said in an interview that he had been astonished by the disconnect between the mayors' statements and the city's strident position in court. "I've been shocked that the city has continued to pursue the case. They say they are shocked by George Floyd but they are not upset about what happened in their own backyard."

But that is changing. When Mayor Jones' chief of staff, Jared Boyd, was asked about this disconnect in an interview on Sept. 7, he said the mayor was taking steps to reconsider the city's legal position. The mayor appointed a new city counselor to review the city's legal position in police abuse cases, with less consideration for the financial loss such cases might mean for the city. The new city counselor is Sheena Hamilton, the first Black woman to hold the job.

Already the city has gone to court to challenge the Law Enforcement Officers'

Bill of Rights passed on the last day of the legislative session in May. That law creates a new legal roadblock to police accountability by giving officers extra legal protections that citizens don't enjoy.

The change in the City Counselor's office is part of a larger reform in which the mayor is proposing an Office of Public Accountability to put civilians with subpoena power in charge of police misconduct investigations, Boyd said.

Carnie, the lawyer, said he was glad to hear the city is reconsidering its legal position. "My client is happy to hear that the city is taking a fresh, closer look at this case. Hopefully the city will implement a much needed change in policy and training as a result."

Two common legal roadblocks

The Gilbert case highlights two of the steepest roadblocks to police accountability: objective reasonableness and qualified immunity. Objective reasonableness bars judges and juries from second-guessing the officer on the scene. Qualified immunity protects an officer from

being held accountable for illegal practices if the courts have not clearly determined them to be illegal.

The two doctrines together give officers across the country the benefit of the doubt in cases of alleged police abuse and killings.

The City of St. Louis has argued in court that both doctrines should protect the officers involved in Gilbert's killing.

In characteristically proactive language in the city's legal brief last year, Deputy City Counselor Robert H. Dierker calls Gilbert's mother's arguments to the Supreme Court "agitprop" designed to "use published reports regarding the death of George Floyd as a cudgel to try to browbeat this Court into reviewing a case that is a straightforward application of basic Fourth Amendment principles. The only things in common between this case and the reports regarding George Floyd are drug use and heart disease."

But Carnie, the Gilbert family's lawyer, said the nation's horrified response to the death of Floyd under a police officer's knee shows that police can't be given the discretion to "put a handcuffed person face-down on the ground and push into him until he suffocates."

Just before Christmas 2015, police found Gilbert in an abandoned home and discovered that he had failed to appear in court on a traffic violation. They arrested him. In the police holdover cell, Gilbert seemed to be putting something around his neck. Fearing a suicide attempt, officers piled into the 7-by-9-foot cell and were met with a struggle from the 5 feet 3 inch, 160 pound 27-year-old. They handcuffed him, manacled his legs and then pushed him into the floor.

Gilbert tried to lift himself up and yelled pleas for help, according to court records.

"It hurts. Stop." Those were his last statements. After 15 minutes, during which six officers weighing a combined total of 1300 pounds were on top of him, he stopped breathing. The officers couldn't find a pulse.

An autopsy found a fractured sternum and contusions and abrasions on his shoulders and upper body. A medical report stated that the "cause of death was forcible restraint inducing asphyxia," while methamphetamine and heart disease were "underlying factors."

A district court judge agreed that Gilbert had died from asphyxiation, but threw out the lawsuit based on qualified immunity: that no court had clearly ruled that it was illegal for police officers to put hundreds of pounds of pressure on a prone suspect who was shackled and resisting. Because the officers couldn't be held accountable, neither could the city, the judge ruled.

The 8th U.S. Circuit Court of Appeals in St. Louis took it a step further. It said it didn't even have to get to the qualified immunity issue. Applying the "objective reasonableness" standard, it found that

Continued on next page



Photo courtesy of ArchCity Defenders

Don Ray Clark, a veteran, was killed in a no-knock drug raid at his home. He was sleeping in the front room so his daughter could have the bedroom.

no reasonable jury could decide that the officers used unreasonable force.

The U.S. Supreme Court, at the end of its session in June, disagreed with the 8th Circuit and told it to take another look. It cited a “well-known police guidance recommending that officers get a subject off his stomach as soon as he is handcuffed” because of the risk of suffocation.

“Struggles of a prone suspect may be due to oxygen deficiency, rather than a desire to disobey officers’ commands. Such evidence, when considered alongside the duration of the restraint and the fact that Gilbert was handcuffed and leg shackled at the time, may be pertinent” to how much of a threat could be “reasonably perceived by the officers.”

“Having either failed to analyze such

evidence or characterized it as insignificant, the court’s opinion could be read to treat Gilbert’s ‘ongoing resistance’ as controlling as a matter of law. Such a per se rule would contravene the careful, context-specific analysis required by this Court’s excessive force precedent,” the court said.

In other words, the Supreme Court is saying that courts can’t say police are always acting reasonably when they apply

pressure to a prone suspect who appears to be resisting. It was remarkable the court took the action without even hearing oral arguments.

Justices Joseph A. Alito Jr., Clarence Thomas and Neil M. Gorsuch — the three most conservative justices — disagreed with the Supreme Court's action. Alito wrote that the court should give the appeals court the benefit of the doubt in its opinion — which would amount to giving the benefit of the doubt to a court interpretation that was already giving the benefit of the doubt to police. The benefit of the doubt on top of the benefit of the doubt.

Significantly, Chief Justice John G. Roberts Jr. didn't agree with Alito even though he did the last time the court resolved a similar case — the 2015 Kingsley decision involving a pretrial detainee in Wisconsin who had been handcuffed, tased and allegedly knocked into a concrete bunker. In Kingsley, Roberts had joined the late Justice Antonin Scalia's dissent, which stated, "The Constitution contains no freestanding prohibition of excessive force." Even the infliction of "objectively unreasonable harm" by officers does not violate the Constitution, he said, accusing the majority of being "tender hearted."

Not only did Roberts desert the conservatives in the Gilbert decision, but two new conservative justices — Brett M. Kavanaugh and Amy Coney Barrett — joined him in agreeing with the three liberal justices that cases of prone restraint needed more court scrutiny. Roberts is a savvy chief justice and most likely didn't want to be opening the door to police abuse in prone restraint cases just as a jury in Minnesota was determining Floyd's death to be murder.

Lombardo, Gilbert's mother, says the only difference between her son's death and Floyd's was that St. Louis police "weren't videoed." Former St. Louis Police Chief Sam Dotson backed his officers but did take steps to introduce video in the holdover cells.

Lombardo said in an interview that she is angry that the police "smeared" her son's name. "Why when the police kill do they have to attack his character?"

Lombardo acknowledges her son had drug problems but says he wasn't homeless, as police claimed. "Nick was a happy, young man and full of life. He was funny and a jokester. His little sister, 10 years younger, struggles every day about losing her brother. He was learning flooring from his dad and his uncles. They say he was homeless, but they knew my address.

"If Nick's case had gotten notoriety ... it could have saved (Floyd) and could have saved a lot of other people. ... I can't even watch the George Floyd video. I think of my own son."

Even if the 8th U.S. Circuit Court of Appeals agrees that police acted unreasonably, the court would then have to consider qualified immunity. Because the 8th Circuit Court itself thought the officers'

actions were reasonable before, it's hard to see how it could conclude they should have known they were illegal.

But Carnie points out that the Justice Department issued guidance in 1995 to all law enforcement officers to avoid pressing on prone suspects who were restrained for fear of suffocation. He argues that because this guidance is 26 years old, officers in St. Louis should have known it.

In a court filing this August, Carnie pointed to multiple federal appeals courts that have ruled that the law against putting force on a bound, prone prisoner has been "clearly established" and therefore should not allow officers to escape through the qualified immunity loophole.

Dierker's response for the city was that the Supreme Court had actually "found no fault" with the 8th Circuit's decision — even though it had sent it back to the appeals court with an opinion expressing disagreement. Dierker said the appeals court shouldn't spend any more time on arguments before it "put(s) an end to this case."

The 8th Circuit Court's final action in the Gilbert case could affect whether Floyd's family can collect from Minneapolis police because Minnesota is in the 8th Circuit.

A flash-bang and then 9 bullets

No-knock drug raids date back to the Nixon administration's war on crime in the 1960s. Local officials also began to use the tool of obtaining a no-knock warrant from a judge that enabled officers to break down the door without knocking. The tactic was supposed to be used in "exigent" circumstances where suspects were armed or might flush drugs before officers could seize them. One purpose was to safeguard officers from armed suspects.

A nationally notorious no-knock raid occurred in 1973 in Collinsville, across the river from St. Louis. Twelve law enforcement officers were indicted for a series of raids on 12 different homes, conducted without enough evidence of wrong-doing on the part of the accused.

Clark's family and lawyers say the fatal Feb. 21, 2017, no-knock raid on Clark's home was based on false information.

The no-knock warrant obtained by Officer Thomas Strode was the 27th no-knock warrant of the year, all approved by a judge. Many of Strode's applications used the same boilerplate language claiming unidentified — and unverified — confidential sources said guns and weapons were in the home so it was too dangerous to knock on the door and execute a search warrant.

The warrant in Clark's case portrayed the 63-year-old veteran in a way his children, Donald Ray Clark Jr. and Sherrie Clark-Torrence, didn't recognize.

In a video about their father, they spoke of an Army veteran who was a disciplinarian who worked in security before multiple health problems diminished his eyesight and hearing and he required a cane. Clark had recently moved into his daughter's

house so that a younger daughter, 8, could have her own bedroom. Clark went to bed around 8 p.m. every evening on a couch in the front room. Worried about crime, he put extra screws into the front door to strengthen it. Clark had never been charged with a crime.

In contrast, the no-knock warrant portrayed Clark as being central to a three-home drug ring on California Avenue: Clark's house at 4023 and his neighbors' at 4025 and 4029.

After searching 4025 and 4029, more than 17 heavily armed officers of the SWAT team lined up to enter Clark's home, where he was asleep after a difficult day riding the bus to doctor appointments.

The officers broke down the door and Officer Ronald Mueller threw a "diversionary device" into the front room where Clark slept. It went off with a loud flash and bang, disorienting Clark. Police did not identify themselves as they piled in, according to the lawsuit.

Moments later, Officer Nicholas Manasco opened fire with an assault rifle, hitting Clark with a hail of nine bullets. Manasco said he was responding to gunfire, but the lawsuit says Clark was unarmed. Clark fell to the floor and mumbled a few words. Manasco and Officer James Zwilling stood over Clark, pointing their weapons at him while other officers rushed by and searched the house, the lawsuit alleges. None of the officers immediately called for medical assistance. When Clark Jr. got to his father's house, police wouldn't tell him what had happened or where his father had been taken. He and his family didn't receive word of their father's death until the following day.

Manasco said Clark had fired at him and police said they had found drugs. The lawsuit claims Clark didn't have a gun and the drugs were brought into the house from a nearby house. Chief Dotson cleared his officers of wrongdoing.

Officer Manasco has killed two other civilians — including Isaiah Hammett a few months later in another SWAT raid for which he and the city were sued. Police entered Hammett's residence with a flashbang and fired 93 shots, hitting Hammett 24 times. In 2011 Manasco killed Carlos Boles, took pictures of his bullet-ridden body and showed them to another officer. An investigation was announced, but the Boles episode did not remove Manasco from the SWAT team. Manasco retired from the department earlier this summer.

Last fall, Missouri legislators heard testimony from across the state about the abuses of no-knock warrants. But the Missouri Sheriffs' Association and Missouri State Troopers' Association, which have powerful voices in the Legislature, claimed they are used so rarely that there is no need for regulation.

Five other states voted to restrict no-knock warrants in response to Breonna Taylor's death in Louisville, Kentucky.

St. Louis mayor plans shift to civilian control of police misconduct investigations

by William H. Freivogel

Mayor Tishaura Jones is proposing the creation of a new Office of Public Accountability, run by civilians with subpoena power who would investigate all major cases of abuse and misconduct by police and corrections officers.

The mayor's chief of staff, Jared Boyd, and communications director, Nick Desideri, outlined the proposal in a series of interviews and emails with St. Louis Public Radio this fall. They were responding in part to a story on the failure of the reforms put into place after the Ferguson protests of 2014.

In addition to the Office of Public Accountability, the mayor's police reform plan included appointing a new city counselor, Sheena Hamilton. She will review the legal position the city has taken in a number of civil rights suits against the city for the behavior of its police and corrections officers. In particular, the city will consider changing its defense of the officers involved in the 2015 death of Nicholas Gilbert in a St. Louis police holdover cell where six officers pressed him down while he was bound and shackled.

Turning police investigations over to civilians is part of a larger effort by the mayor's office to put civilians in charge of police functions in cases where civilians could do the job better, Boyd said. The broken 911 emergency call system — widely criticized for its slow response times — is another area where this may be the case, Boyd said. The mayor's office has been working with senior members of the Board of Aldermen Public Safety Committee on the changes.

"For the last two or three months we've been talking to senior aldermen to start an Office of Public Accountability to address some of the shortcomings you (St. Louis Public Radio) identified with the Force Investigation Unit and Civilian Oversight Board," said Boyd. "The office will be set up with an eye to have it walled off from police," he added.

The Office of Public Accountability would employ civilian civil service investigators to lead investigations into misconduct by police and corrections officials. When the investigators needed the help of law enforcement



Photo by Brian Munoz

Protesters fill the street of St. Louis "Delmar Loop" in September 2017 to protest the acquittal of former St. Louis police officer Jason Stockley in the shooting death of Lamar Smith. The city later admitted that "rogue" officers kettled protesters in a city block to arrest them and white officers beat an undercover Black officer, mistaking him for a protester.

officers, they could bring them into the process, Desideri said. But the office would have to be careful that the officers brought in to help execute search warrants or other law enforcement tasks did not know the officers under investigation or have conflicts of interest. The civilian investigators from the Office of Public Accountability would continue to direct the investigations, he said.

The Civilian Oversight Board would oversee the Office of Public Accountability. The Oversight Board was set up after the 2014 events in Ferguson to provide more civilian involvement in investigations, but it had fallen short. It did not review any of the 21 police killings in the City of St. Louis from 2016 through 2019, nor has it considered 96% of non-lethal police abuse complaints filed by citizens.

In fact, Mayor Jones had to issue an executive order at the start of her term this spring to make sure the complaints filed with the police department got to the Civilian Oversight Board. Previously, most had not.

Even though the board officially has subpoena power, Desideri said, it has no mechanism for using that power, nor has it exercised that power a single time since it was created.

The mayor's office wants to

make sure that both the Office of Public Accountability and the Civilian Oversight Board have functional subpoena power, he said.

A new board consisting of civilians would be established to oversee the Office of Public Accountability's investigations of corrections officers, Desideri said. That new board would also have subpoena power.

The Internal Affairs Unit would remain in place at the police department, Desideri said, to handle complaints primarily of an administrative nature. "But all complaints would go to the Office of Public Accountability first, which has the discretion to delegate evaluation of minor administrative complaints to Internal Affairs."

Reconsidering the city's legal positions

One case that has sparked a reconsideration of the city's legal stands in police civil rights cases is the asphyxiation death of Gilbert in a police holdover cell under prone restraint. Six officers piled on top of him while he was handcuffed and his legs were shackled.

The case has similarities to George Floyd's death in Minneapolis, which brought worldwide attention and criticism, including statements of condemnation from Jones and

other St. Louis public officials. But out of sight, the city was taking a strong legal stand by defending police tactics in a civil rights suit filed by Gilbert's mother, Jody Lombardo.

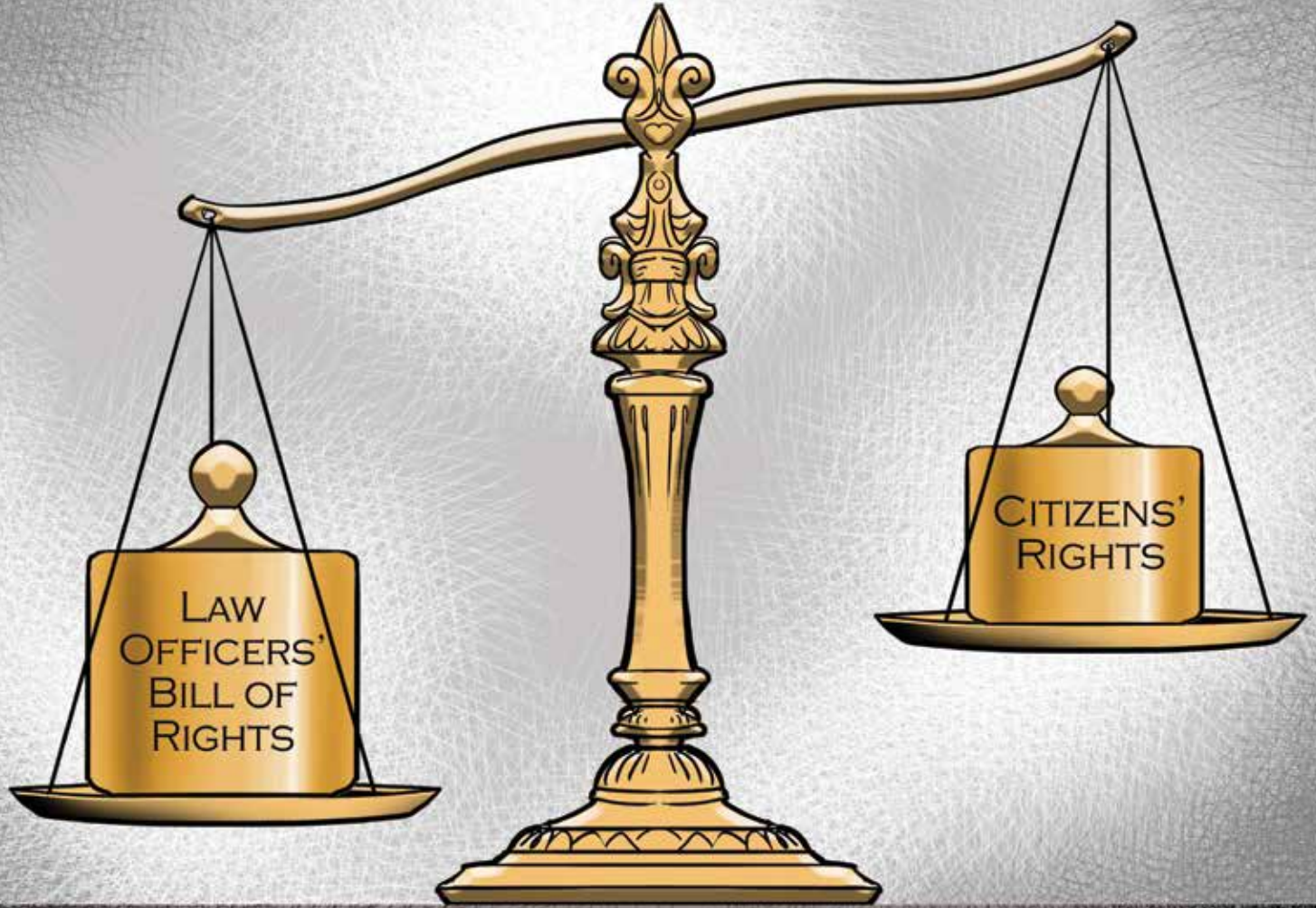
That disconnect attracted attention when Derek Chauvin was convicted this spring of murdering Floyd. Then the U.S. Supreme Court issued a decision on Gilbert's behalf stating that resistance wasn't enough to justify officers pressing down on a prone, restrained prisoner.

Boyd said that case and others led the mayor's office to appoint a new city counselor — Sheena Hamilton — to reconsider the city's legal position and make it consistent with the policies advocated by public officials. Already the city has gone to court to challenge the new Law Enforcement Officers' Bill of Rights passed on the last day of the Legislature this year. That measure throws up a multitude of additional hurdles to police accountability.

In cases where the city is being sued, the new city counselor will look at "what winning looks like," said Boyd. "A new city counselor is going to be given a mandate to do this. It's not to say we shouldn't be cognizant of city resources, but that can't be the only thing," as it has been traditionally.

Gilbert's lawyer, Kevin M. Carnie Jr. of the Simon Law Firm, said in an interview that he had been astonished by the disconnect between the mayors' statements and the city's strident position in court. "I've been shocked that the city has continued to pursue the case. They say they are shocked by George Floyd but they are not upset about what happened in their own backyard."

Upon hearing from a reporter about the plans for the new city counselor to reconsider the city's legal position, Carnie said he was glad to hear the city is recalibrating: "My client is happy to hear that the city is taking a fresh, closer look at this case. Hopefully the city will implement a much needed change in policy and training as a result."



Midnight passage of police 'bill of rights' gives officers 'special privileges'

by Orli Sheffey and William H. Freivogel

A little after midnight on the last day of its spring legislative session, the Missouri Legislature passed a Law Enforcement Officers' Bill of Rights that gives officers special legal protections, closes files to police misconduct and allows courts to block major cuts in police budgets.

Passage of the bill and Gov. Mike Parson's signature in July got almost no attention, but civil rights lawyers say it poses a major roadblock to police accountability. And it comes at a time when other states around the country are moving in the opposite direction, repealing or weakening their Law Enforcement Officers' Bills of Rights.

The little-noticed Missouri measure — written by a lawyer for the police unions — was far more significant, civil rights lawyers say, than the two modest police reforms that passed this year. Those two measures limit the use of chokeholds by officers — unless a suspect is resisting — and make it illegal for an officer to have sex with a suspect, which only applies if the victim is in custody.

But the new wide-ranging bill of rights legislation gives officers far more due process rights than even civilians have.

After the Pulitzer investigation brought attention to the Bill of Rights and to other city legal positions that interfered with police accountability, the city went to court to challenge the law's constitutionality. The city alleges the Bill of Rights is an unfunded mandate and creates two classes of city employees, the police and every other public-safety employee. The suit also says the new law violated the state constitution's "single subject" requirement because too many disparate topics were stuffed in the bill.

Brian Millikan, the police attorney who wrote the bill, said officers deserve due process protection because they are held to a higher standard than other occupations. But critics say the law enables an abusive police officer to get his or her story together before interrogation.

In the wake of the murder of George Floyd, a number of state legislatures went the opposite direction, passing bills to

address systemic racism in policing and remove barriers to disciplining officers for misconduct.

In April 2021, Maryland became the first state to repeal its Law Enforcement Officers' Bill of Rights after Democratic lawmakers overrode the governor's veto. Lawmakers in Rhode Island have proposed similar legislation for a full repeal. In Delaware, lawmakers have proposed significant reforms to the state's Law Enforcement Officers' Bill of Rights, including opening police misconduct records to the public, forming civilian review boards and striking key provisions that shield police officers from discipline.

Missouri opposes national trend

Missouri is the only state to adopt a Law Enforcement Officers' Bill of Rights following Floyd's death, according to legislative records compiled by the National Conference of State Legislatures.

The Bill of Rights provides that 24 hours prior to any interview or



A protester holds up a sign, "Protestin' ain't no crime" during a demonstration outside of the Multnomah County Sheriff's office in Portland, Oregon.

interrogation, a police officer accused of misconduct is informed in writing of the nature of the allegation. The person complaining must submit an affidavit with personally identifying information that outlines the allegations. The affidavit is disclosed to the officer, even if the person complaining is a fellow officer. The officer accused is also informed of the name, rank and command of the officers conducting the investigation.

Samuel Walker, a professor at the University of Nebraska Omaha who is a

leading expert on police accountability, said that the 24-hour waiting period is "a real invitation to undermining discipline."

"It creates a window here in which the officer can get his story together and talk to other officers [and] come up with a narrative that will exonerate him," Walker said in a phone interview.

Prior to an interrogation, police officers accused of misconduct and their attorneys would have the opportunity to review any audio or video in the possession of the police investigators.

The officer may only be questioned or interviewed while on duty and may not be questioned by more than two investigators at a time.

The officer may not be "threatened, harassed or promised rewards to induce them into answering any question," according to the law. Although an accused police officer can be compelled to give a statement to their employer, that statement cannot be used against them in any criminal case brought against the officer — a result of the Supreme Court



Photo by Maranie Rae Staab via AP

ruling *Garrity v. New Jersey* (1967).

According to the bill, employers would be required to “defend and indemnify law enforcement officers from and against civil claims made against them in their official and individual capacities if the alleged conduct arose in the course and scope of their obligations and duties as law enforcement officers.” Employers would not have to defend an officer “in the event the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of the same conduct.”

Walker argues that provisions in the Law Enforcement Officers' Bill of Rights “put together represent a whole set of special privileges — special privileges for police officers — privileges that people in other occupations do not enjoy.” He added that there is already an “unfair power imbalance” with a “natural preference to the views of the officer” in internal investigations.

Millikan, a former police officer for the St. Louis Metropolitan Police Department and an attorney for multiple Missouri police unions, says the bill doesn't give officers special privileges but ensures due process.

“Police officers are held to a higher standard from just about any other job I can think of, and that's fine — I don't have any problem with that,” Millikan said. “But at the same time, because they're so highly scrutinized, there should be a set of due process procedures in place to make sure it's fair.”

Every department has different rules and procedures, he added, and the new law “basically just uniforms it across the state.”

Closing police records, blocking defunding

While police officers accused of misconduct and their attorneys would have full access to evidence, all records from police misconduct investigations would be closed to Sunshine Law requests, except by court order or lawful subpoena. In other words, the records would be kept almost entirely secret from the public.

Millikan defended the closure of misconduct records to the public.

“It's no different than any other employment record; employment records are considered personnel matters. That's not just for police officers, but that's for really anybody,” Millikan said in a phone interview. “The reason for that is what you do at your job is really not meant for public consumption.”

But Walker said that keeping investigative records closed prevents the public from holding police officers and departments accountable.

“Let's say there was an excessive force case and that part of it was covered in the news media. The press cannot report and the public cannot find out whether that officer was disciplined, and if so, what the discipline was,” Walker said. “So we don't know whether the department is lax and very soft on excessive force cases or whether they have strict standards.”

In addition to the Law Enforcement Officers' Bill of Rights, the new law explicitly protects the police budgets of municipalities. This comes amid growing calls to defund the police over the past year, including proposals from St. Louis's newly elected mayor, Tishaura Jones.

If a municipality decreases its law enforcement budget by “more than twelve percent relative to the proposed budgets of other departments of the political subdivision over a five year aggregate amount,” any taxpayer may initiate a legal action to stop the cut. The funds would

then be returned to the law enforcement budget in question, according to the law.

That makes it practically impossible for local governments to defund police departments by significant amounts, experts say.

Mayor Jones' \$4 million cut in police overtime pay this summer would not have triggered the new law because it was less than the 12% threshold. In any event, the Board of Aldermen more than restored the cut with a \$5 million bump for overtime pay.

Chokeholds and sexual assaults

Sara Baker, a lobbyist for the American Civil Liberties Union of Missouri, praised two reforms passed by the Missouri Legislature.

One banned chokeholds unless used in self-defense or the defense of another person. The self-defense loophole is a big one, lawyers say, pointing out that Officer Derek Chauvin, who murdered George Floyd, justified his knee to Floyd's neck based on Floyd's resisting arrest.

The other reform law passed by the Missouri Legislature makes it a felony for an officer to engage in “sexual conduct with a detainee or prisoner who is in ... custody.”

The latter reform passed at a time when the Associated Press was reporting that Republican lawmaker Rep. Chad Perkins had sex with a young woman when he was a Bowling Green, Missouri police officer in 2015. Emily Orf, 26, told AP that Perkins had sex with her when she was 20 — while he was on duty and she was drunk.

But the new law would not make Perkins' action a crime because Orf was not in Perkins' custody. Nor would the reform have affected the sexual misconduct in Webster Groves two decades ago: when three officers were forced out of the department after getting in hot tubs with teens while on duty.

Nor is it clear that the new law would have had an effect on the sexual assault ring uncovered this spring within the St. Louis Police Department. It involved two officers — Lafeal Lawshea and Torey Phelps — who allegedly raped multiple women, including police employees. But in a number of cases the women were not in their custody, so the new law would not have applied.

The ACLU's Baker agreed that the Law Enforcement Officers' Bill of Rights passed by the Legislature was a blow to accountability, but pointed out that the law could have been worse — as earlier versions criminalized some protest activities.

In the broader scheme of things, said Emanuel Powell, an attorney with ArchCity Defenders, passage of the Law Enforcement Officers' Bill of Rights was a much bigger setback for police accountability than the gains achieved by the laws on chokeholds and sexual assault.

St. Louis law professor gives best advice for what to do when police stop you

by William H. Freivogel and Zora Raglow-DeFranco

The lights are flashing in the rear-view mirror. What are my rights? What should I do?

A person stopped by police could exercise the fullest extent of their rights. That person could rummage through their pants pockets for a cell phone; take video out the window of the officer; invoke the right to remain silent; tell their passengers they can leave; accuse the officer of racial profiling; demand the reason for the stop; and immediately demand the officer's name and badge number.

But an aggressive assertion of rights during a police stop is more likely to get the citizen in trouble than a more low-key assertion of rights aimed at collecting information for a formal civilian complaint after the encounter.

That is the view of Trevor Gardner II, a law professor at Washington University in St. Louis, who researches how Blacks and other people of color should best react during a police encounter.

"It is very important for people to know their rights," he said in an interview, "But that's not the same as saying a person should chastise the officer. I think you should assert your rights as part of holding officers accountable after the encounter. Don't try to hold the officer accountable in the moment of the encounter. That is when things spin out of control. ... The person subject to the encounter should collect the information they need and do it in the most civil, non-confrontational way possible.

"People get very upset and want to hold police accountable at that moment of time. That is when risk escalates. We can strike the balance between police accountability and risk by concentrating on collecting information. You are giving information so you can be identified and you are collecting information so the police officer can be identified. The real pursuit of accountability occurs after the encounter is over."

Here is what Gardner and other experts recommend as the best practices for a citizen facing a stop:

- **Stay calm.** Immediately pull to the side of the road. If you're close to home, DO NOT try to get home before stopping. That could be considered a crime.

Gardner said he "heard police officers say that what they find most irritating is when people don't pull over right away. I think it's that people are not recognizing their authority. I think you need to pull over at your earliest convenience."

- **Make it clear you are not reaching for a weapon.** Possibly put your hands at "10 and 2" on the steering wheel. But at least make sure your hands are visible so it doesn't look like you are reaching for a weapon.

"A lot of officers are mistaking cell phones for weapons," he said. "If you are moving your hands around to get the cell phone and it's a dangerous place, that is going to increase the level of risk."

- **Don't greet an officer while taking video with your cell phone.** You have a First Amendment right to record, videotape, or photograph a police



Photo courtesy of Washington University

Trevor Gardner II is a Washington University law professor who specializes in police-civilian confrontations.

officer performing duties in public. But you do not have the right to interfere with or obstruct police officers performing their duties. Doing so can result in your arrest. If an officer says your recording is obstructing the stop, it is best to politely disagree but stop recording. An officer cannot legally confiscate your recordings if you are not obstructing the stop but they can take your phone if you're arrested.

Gardner said it might be best to leave it to a passenger or pedestrian on the street to record the encounter. "But a driver holding up a camera to record? I don't think it's great advice. Keep in mind that choosing to film can lead to increased tension, which could lead to your harm or your arrest. While being impolite and exercising your rights should not subject you to harm, it may be safer to be respectful and follow directions."

"To be perfectly honest with you," Gardner added, "if I were in a compromising situation and thought the chance of being assaulted was high, I would probably turn on my camera. If I were in a routine traffic stop I would probably not record."

If you or your property were harmed during the traffic stop, take pictures of the scene and of your injuries.

- **Be civil.** Being rude or argumentative can't help. You can ask why you have been stopped, but avoid an argument.

"Minorities who choose to hold police accountable should follow all police instructions," said Gardner. "Everything they tell you to do, you should do it. You should be collecting information that will help you file a complaint at the back end. Remember, Black people are stopped tens of thousands of times each week without incident.

"One thing I would emphasize is that as a rule you should not physically resist police and should follow police orders — although you should feel comfortable clarifying if the police are issuing an order or a request."

- **When the officer asks for your ID, provide it.** You are required to identify yourself if you

are driving. Present your identification, as well as registration and proof of insurance. But wait for the officer to come to the window to ask for them. Don't reach into the glove compartment or your back pocket while the officer is approaching your car because they might wonder if you are reaching for a weapon.

"The officer has the right to ask the basic administration questions and to expect that you are going to provide registration and license," said Gardner. "That doesn't compromise your right to remain silent."

- **You have the right to remain silent.** You should state this right out loud. Everyone in your car also has the right to remain silent. You also have the right to remain silent about your citizenship, nationality and place of birth unless near international borders, airports, or traveling in the United States on a nonimmigrant visa.

Gardner said it is important to assert the right to remain silent in connection with investigative questions seeking to extract information that could be used in a prosecution. But it is not important to assert that right in connection with administrative questions.

"It might not be that easy in the moment to distinguish an investigative from an administrative question," he added. "If officers are just asking you to ID yourself, you need to respond in a way that the officer can identify you. But if the officer is investigating a crime, you want to assert the right to remain silent."

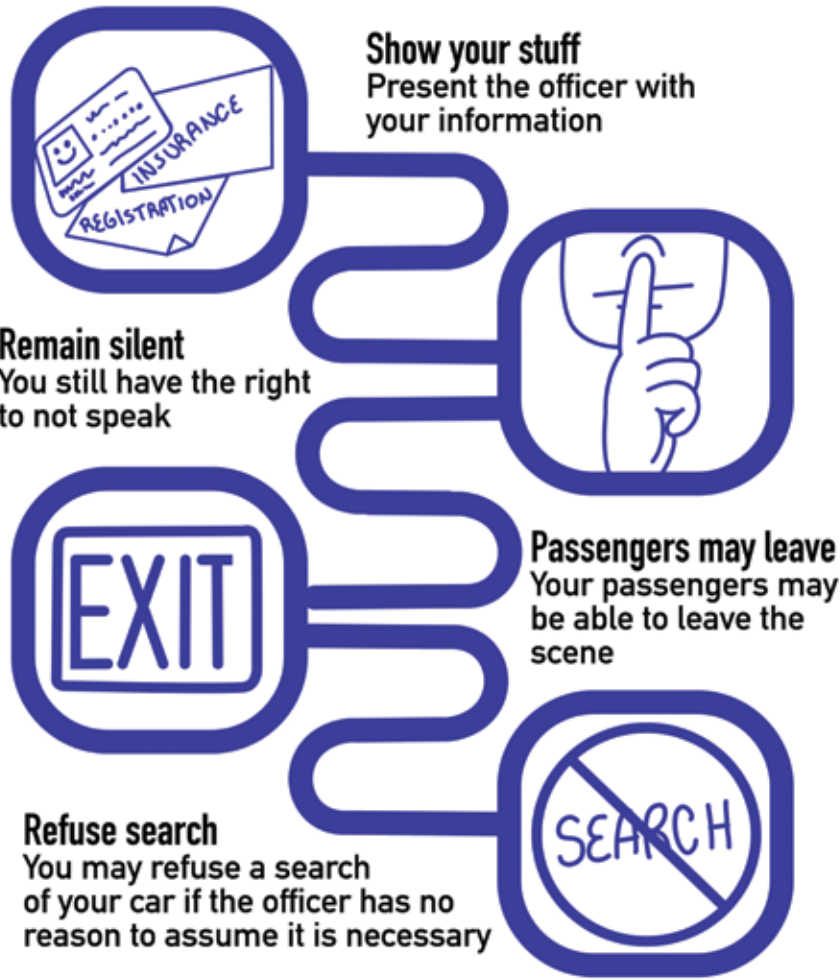
- **Passengers can leave the scene, but it might not be a good idea.** Passengers in the car arguably have the right to leave the scene. Passengers may ask the officer for permission to leave, and if granted, they may leave silently. If the officer thinks passengers may be involved in suspected criminal activity however, the officer can require the passengers to remain.

Gardner recommends against passengers getting out of a car and trying to leave without asking first.

"I'd say that's a bad idea. Maybe you have the right to do it but I don't think officers are aware they cannot detain passengers in the absence of suspicions about the passengers. I think that if you just get up and leave they will think you are in violation."

- **Motorists have lesser expectations of privacy in a car than in a home.** Officers may conduct a patdown search of the driver if the officers have a reasonable suspicion that the driver is dangerous or has contraband, such as drugs. The officer may also conduct a patdown of passengers if there is reasonable suspicion about them. An officer may search the glove compartment and underneath seats within reach of occupants to check for weapons. Otherwise, the officer must have probable cause to search a car, although a warrant is not required. The officer may also search the car after an arrest. Police may seize any contraband or suspicious objects within view. Luggage and closed containers in

Pulled over? Here's what to do



Erin Douglas

the car — whether the driver's or passengers' — may be searched without a warrant, but probable cause is required.

• **If an officer asks for permission to search,** you don't have to give it, although many people do so on the mistaken assumption that it will make them appear less guilty.

"If you don't consent, they are going to make it very inconvenient for you," said Gardner. "I know friends, African American lawyers, who say no to consent. Police officers then make it hard for you and bring out more squad cars and drug dogs. I know a friend who missed a flight because he was not going to give in to a search where there was nothing to hide.

"I think it is a good idea to say no unless you are pressed for time and can't afford the inconvenience. They have to establish the level of suspicion to order you out of the car. If they are asking for your consent that usually means they don't have the level of suspicion they need for a search without consent. ... Some people will say, 'I have nothing to hide, why not let them search?' It is a question of your objective. If your objective is to leave the police encounter with as little static as possible, letting them do it is probably OK."

• **If you think your rights are being violated, write down the officer's name, badge number and department and immediately file a complaint.** Collect as much information as you can during

the encounter. If the officer was in a police car, try to write down the car's license plate number as well. In most states you have the right to know the identity of the police officer, and officers must give their identity when asked. If there were witnesses to the incident, get their contact information.

Try to write down any details you remember, such as: any weapons that were used, any verbal insults or verbal abuse by the officer or directed at the officer, and how many officers were present.

Go immediately to the police department that employs that officer and file a complaint, said Gardner. Complaints will likely go through the agency's internal affairs division or through a civilian complaint board. If you fear reprisals, you can also sometimes file anonymously.

If you are arrested, you have the right to:

- **Make a local phone call.** If this call is to a lawyer, you have the right not to be overheard by the officer.
- **Retain an attorney.** If you cannot afford an attorney, you can request that the state assign you one attorney.
- **To remain silent.** It is in your best interest to not speak or sign anything without a lawyer present.
- **If you are suspected of drunk driving,** you have the right to refuse taking a breathalyzer test. However, many states have implied

consent laws where you automatically consent to taking a breathalyzer test when you get your driver's license. In these states, if you refuse to take the test, you can be arrested and charged with driving under the influence. You have the right to reject a field sobriety test. But if officers think you are unfit to drive, they can arrest you regardless of whether you take a field sobriety test, breathalyzer test, or none of the above. If officers suspect you of being under the influence, they will likely take you to their police station or to the hospital to take the tests. If you fail the tests, or if you refuse to take them, your driver's license may be suspended, and your car may be seized. If the police have you in custody, — including arresting you to take a breathalyzer tests, — they can seize your vehicle and conduct an inventory search.

- **At fixed checkpoints,** police do not require any justification for stopping you to check for drunk driving, drugs or immigration violations. You must provide your identification.
- **If you are a pedestrian, you generally don't have to identify yourself.** There is no law that requires individuals to carry identification — except when operating a vehicle or in certain situations when traveling, situations (like on a commercial flight).
- **When police have reasonable suspicions that you are participating in a crime —** say a bulge in a pocket that might indicate drugs or a weapon — they can stop you and pat you down. This is called a Terry stop — named after the Supreme Court decision that authorizes it — and it does not require probable cause. Police can generally can require pedestrians to show proof of identification when they have a reasonable suspicion of criminal activity. If you refuse to identify yourself when an officer has reasonable suspicion, it can result in your arrest. You can clarify if a police officer has reasonable suspicion by asking, "Am I free to go?" If the officer says you can go, you have the right to leave without identifying yourself.
- **If you are a witness of police misconduct,** exercise your right to record a video of the incident as it is occurring. You should not break laws while recording, nor obstruct the police officers' actions. Make it obvious and visible that you are recording. If an officer attempts to take away your recording device or asks you to stop recording, you can respond that you have the right to continue to record.

Gardner stressed the importance of filing a formal complaint after a police encounter if the police abused your rights. He said that much of the friction inof police/citizen encounters could be minimized by police regularly providing their names and badge numbers during stops.

If the officer simply gave out a business card to the citizen, — providing information on how to follow up, — much of the tension would be defused, said Gardner.



Photo by Emily Gross

Police and protesters clashed in Chicago when Black Lives Matter protesters tried to pull down the Columbus statue.

81 Chicago police officers, 1,706 reports of misconduct, two dead wives

by Kallie Cox and William H. Freivogel

Eighty-one Chicago police officers lost their badges over the past 20 years, but only after being investigated for 1,706 previous offenses — an average of 21 accusations per officer.

One-third, 28, of these Chicago officers were investigated for domestic altercations or sexual misconduct. Two murdered their wives.

That statistical picture emerges from records obtained by the Pulitzer Center on Crisis Reporting under the Illinois Freedom of Information Act.

The records show that before the passage of a new criminal justice reform law earlier this year, Illinois largely failed to hold police accountable for their misconduct over the previous two decades. And even though that new reform law strengthens accountability, a major loophole — buried at the end of the law — closes statewide records of police misconduct. Major media outlets haven't reported the loophole.

Overall, from 2000-2020, law enforcement officers in Illinois kept their badges even if they engaged in domestic abuse, sexual harassment, racism, perjury, most misdemeanors and other offenses unbecoming of a police officer.

Over the entirety of 2020, Illinois decertified two officers: one for theft and the other for an offense labeled "other" — an ambiguous category occasionally used in the state's decertification records.

From Jan. 1, 2000, to Jan. 1, 2021, Illinois

decertified 347 officers, an average of fewer than 17 a year.

All told, police accountability measures in Illinois have been no match for a Chicago police force that developed a reputation for brutality: from the 1968 Democratic National Convention; to the 1969 killing of Black Panther leader Fred Hampton in a fusillade of 90 bullets; to the torture of up to 200 suspects by Commander Jon Burge's homicide squad; to Jason Van Dyke's murder of Laquan McDonald in 2014. Nor have new laws been a match for Chicago's powerful police union, which has had great success in blocking accountability.

A recent report by the City of Chicago Office of Inspector General confirmed that picture. It found that even when complaints of police misconduct are sustained by the police department, officers are usually able to avoid serious punishment through union arbitration. Settlements often result in violations being expunged from officers' records.

Between 2014 and 2017, fewer than a quarter of the 370 officers who contested their discipline in sustained cases of misconduct ended up serving their full suspensions. The rest of the officers who engaged in misconduct — 289 — had their suspensions reduced; more than 100 of them had them reduced by 91%-100%

In all 21 cases where an officer made a false report, the sustained charge was removed from

the officer's record after the union negotiated arbitration.

In addition, arbitration is opaque, the Inspector General reported. Arbitration awards are not published. Investigative findings are not disclosed. How discipline changed during arbitration is not disclosed, nor is the arbitrator's rationale.

On July 21, the Chicago City Council took a step toward accountability: by passing a new ordinance creating a seven-person commission to increase civilian oversight of the Chicago Police Department by recommending policy changes. Advocates of police accountability say the new process will give activists a prominent platform. But they point out that the commission has no authority over discipline decisions on police misconduct.

Below are some of the Chicago abuse cases based on news accounts, court documents, Chicago police disciplinary histories and official records of the Illinois Law Enforcement Training and Standards Board (ILETSB) — the state body charged with maintaining high standards of conduct for law enforcement officers. The Chicago Police Department refused to respond to repeated requests for comment.

Jason Van Dyke

Investigated for 25 complaints since 2000. Complaints have included searches without warrants, illegal arrests, unnecessary physical

contact while on duty and excessive use of force. One case led to a \$350,000 jury verdict when Van Dyke used excessive force during a traffic stop involving a Black man who said he was handcuffed so violently that he wound up needing surgery. In addition, a 2013 complaint was categorized as "racial/ethnic."

Van Dyke still had his badge on October 20, 2014, when he shot and killed McDonald, a 17-year-old Black teenager, after firing at him 16 times, hitting him with nine rounds.

Police initially ruled the killing justifiable because Van Dyke said McDonald was facing him with a knife. But a video released under a court order a year later showed McDonald walking away. Van Dyke was later charged with first-degree murder, convicted of second-degree murder and sentenced to 6.5 years in prison. His decertification report says he was decertified for a felony on Nov. 30, 2015.

James Chevas

Investigated for 52 offenses, including 12 "domestic altercations," and suspended from the department twice.

In 2004, Chevas was investigated for rape/sex offenses, but the final category of these offenses was changed to "miscellaneous" and they were not sustained, according to Chicago Police Department records.

In 2005, just a year after Chevas was first investigated for sex offenses, university lecturer Robin Petrovic accused Chevas of beating her after he was called to assist her when a bouncer hit her on the head with a flashlight at the Funky Buddha Lounge — a nightclub in Chicago where she and her girlfriends had gathered to drink lemon drops, court records say.

When officers arrived to help Petrovic, they asked her to sign a blank complaint against her assailant but she refused, according to the Chicago Reporter. When the officers refused to let her provide the narrative portion of her complaint, she asked for their names and badge numbers.

Some officers refused and others gave her their information. She was attempting to leave herself a phone message with the officers' information, when they attacked her. Here is the Chicago Reader's account:

"The officers struck her on the head, threw her against a car and on the ground, hit her and choked her. She was handcuffed and put in a police vehicle, where Officer Chevas threw her onto the ground of the vehicle face first. He began kicking and hitting Petrovic in the head and between her legs, calling her a 'cunt.' The officers took Petrovic to a police station, refusing Petrovic's request to go to a hospital for 10 hours. Petrovic was charged with battery, but the charge was later dismissed. As a result of the incident, Petrovic's eyes were swollen and black, and her body was covered in bruises."

Petrovic sued and won \$261,000 in damages.

Chevas kept his badge after beating Petrovic, but resigned from the department after being caught on tape using credit cards stolen from a suspect in police custody — for which he was sentenced to 30 months probation, according to CNN. The state decertified him for theft related felony in 2007.

Michael Clifton: Investigated for misconduct 80 times.

In 2006 Clifton was investigated for sexual harassment and in 2016 for groping and forcibly kissing a woman while on duty. He pleaded guilty to a reduced misdemeanor on the 2016 assault charge, according to the Chicago Tribune.

The woman he assaulted had come to the police station seeking a warrant for the arrest of the person who had beaten her. Clifton, who was working as the warrant officer, asked her to enter his office alone, shut the door and said he was "turned on" by her. Then he sexually assaulted her, according to the Tribune.

Clifton's attorney, Timothy Grace, claimed Clifton had an exemplary record. Clifton entered a plea agreement reducing the felony charges to a misdemeanor. He gave up his certification and spent two years on a conditional discharge.

Authorities allowed Clifton to keep his firearms, including his service weapons. The woman he sexually assaulted sued Clifton and the city in federal court, claiming that the department had ignored the patterns of abuse of its officers, according to the Tribune. The city settled just five weeks later, paying the woman \$100,000.

The state decertified Clifton in March 2018 over what state records list as "other."

Norberto Rodriguez

Investigated for misconduct 18 times.

Rodriguez held on to his police license for almost a decade after he went to prison on a 52-month sentence for transporting four kilos of heroin. The state decertification board said that Chicago officials failed to notify them of the conviction.

Chicago police investigated Rodriguez for domestic abuse three times during the 1990s and he was suspended or asked to take an unpaid leave for a total of 48 days. In 1992, the department investigated him for assault and battery, an allegation the department sustained.

In 1997 prosecutors charged him with the attempted murder of his wife, Irma, after he shot her during an argument. The charges were dropped, but the department fired him.

In 2001, Irma filed a protective order against him and also sought protection for her daughter and their son, according to NBC Chicago.

In 2002, a federal judge sentenced Rodriguez to 52 months in prison after he pleaded guilty to possession of heroin after being charged with transporting four kilos of the drug to Los Angeles, according to NBC. He kept his police license.

Rodriguez killed his wife Irma in 2009 and in 2017 a jury found him guilty of first-degree murder.

The Chicago police department fired Rodriguez for domestic abuse, attempted murder and the federal drug conviction, but he kept his law enforcement certification in Illinois until 2011 — two years after he murdered his wife — according to state records.

John Keigher, the chief legal counsel for the state board, said in an interview that it is the duty of the agency and the officer to notify the board of a decertifying offense upon arrest and that this is how decertifying misconduct is usually caught. But he said that given how complicated things are in Cook County it doesn't surprise him

that the city of Chicago, or someone else, forgot to tell the board about the 2002 drug offense.

"Something like that if it had happened downstate, somewhere where the agency did have a lot more interaction with the board, it is more likely that that would have been caught right away," Keigher said. "We do subscribe to services that inform us whenever there is a news article or something along the line of a ... officer who's been arrested or prosecuted for something serious. Again, in Chicago I don't know if that kind of drug felony would even make the papers. It doesn't excuse it, but it just shows our system wasn't perfect."

Rafael Balbontin: Investigated for misconduct three times.

Balbontin was decertified in 2007 for a felony. Prior to this, Chicago police had investigated him for murder/manslaughter, which the department later changed to "domestic altercation," before firing him.

The domestic altercation was in 2005 when Balbontin stabbed his wife, Arcelia, to death in her home. He was later convicted of murder and sentenced to 25 years in prison.

This wasn't the first time Balbontin had killed. In 2002 while off duty, he shot 14-year-old Juan Salazar who had broken into Balbontin's parents' house with a 26-year-old to steal the cologne Balbontin's father sold at the local flea market, according to the Chicagoist.

Following Salazar's death, the Chicago City Council awarded a \$2.5 million wrongful death settlement to his family.

Broderick Jones: aka "Dink" and "Thirsty" was investigated for misconduct 92 times before the state decertified him in 2008 — when the FBI discovered he was part of a ring of corrupt cops who were robbing drug dealers. He was investigated the most times out of all 81 cops in the investigation, but most accusations against him were considered "unsubstantiated" or "not sustained."

Alongside officers Darek Haynes (investigated 28 times) and Eural Black (investigated 26 times), Jones would rob the drug dealers they arrested or pulled over on the South Side and extort them for money, weapons and narcotics according to the FBI and subsequent investigations.

The majority of the offenses were for searches without warrants, unnecessary use of force, displays of their weapons and illegal arrests.

A major reform

The state's new criminal justice reform law — passed after an all-night legislative session during the January 2021 lame-duck session of the General Assembly — creates a more accountable decertification process, experts agree.

Under the new law, a court conviction is not required for decertification and a broader array of misconduct is decertifiable, including moral turpitude and other misdemeanors. Officers can also be suspended in lieu of decertification or pending an investigation.

Roger Goldman, a Saint Louis University law professor who has studied police decertification for 44 years, said in an interview that the most important part of the new law is the expanded grounds for decertification.

Continued on next page



"Most states that decertify don't require conviction of a felony. They just require commission of an act," Goldman said.

The fact that an officer can be decertified for committing an act, even if there is no court conviction, and the broad language associated with "moral turpitude" put Illinois in line with most other states, Goldman said.

Background checks required

The new law also implements background checks for officers. Before the new law passed, the state board assumed no legal responsibility for background checks and departments often failed to confirm the certification status of the officers they hired.

In response to a FOIA request, the board acknowledged that it had no record of a local department requesting the certification status of an officer from 2000 to 2019.

Lya Ramos, a FOIA officer for the board, said that more recently law enforcement agencies have had the ability to request misconduct information from the Professional Misconduct Database, created in November, 2019. This database was used 48 times in its first year of operation but as of December 2020 never by the Chicago Police Department, according to a FOIA request.

The 2021 law strengthens the board's Professional Conduct Database. Before it passed, departments were required to notify the board when an officer was fired or resigned under investigation for "willful violation of department policy." The new law requires additional reporting. It also requires departments to report extended suspensions and actions that could lead to an official investigation for violating government policy.

In other words, the new database contains alleged officer misconduct that did not

lead to decertification, so it is much more comprehensive than simply a list of decertified officers.

Before the 2021 law passed there was no requirement for a department to check the database. Now there is.

"We have this misconduct database (under the old law), but there (was) no requirement that departments have to use it when they look to even hire someone as part of that background check," Sen. Elgie Sims, D-Chicago, a sponsor of the new law said in an interview. "Now you have to look to that database to check if there's misconduct, or an individual resigned while there was an investigation going on. So those types of things, those updates are necessary; they are long overdue."

A loophole

But even though the 2021 law expanded the information in the misconduct database and required local departments to check it, a last-minute amendment closed the database to the public and courts.

That loophole is on Page 669 of the text. It reads: "The database, documents, materials or other information in the possession or control of the Board that are obtained by or disclosed to the Board pursuant to this subsection shall be confidential by law and privileged, shall not be subject to discovery or admissible in evidence in any private civil action."

Sam Stecklow, a journalist with the Invisible Institute, said this provision in the bill creates a lack of transparency, despite court decisions the Invisible Institute has won in Illinois saying the public should have access to these records.

A spokeswoman for the attorney general, said the reason the statewide database was not open was that information was available from each police department. But she acknowledged

that anyone seeking statewide misconduct data would have to contact the almost 900 departments in the state instead of getting it all in one place.

Closing the database on a statewide basis is a blow because it includes the broadest amount of police misconduct information, Stecklow said. He and other reformers are working with the attorney general to eliminate the loophole.

Anti-police?

Attorney General Kwame Raoul rejects the law enforcement criticism that the new law is anti-police. He said in an interview that he works with law enforcement, civil rights and civil liberties groups to lift law enforcement up and improve their reputations.

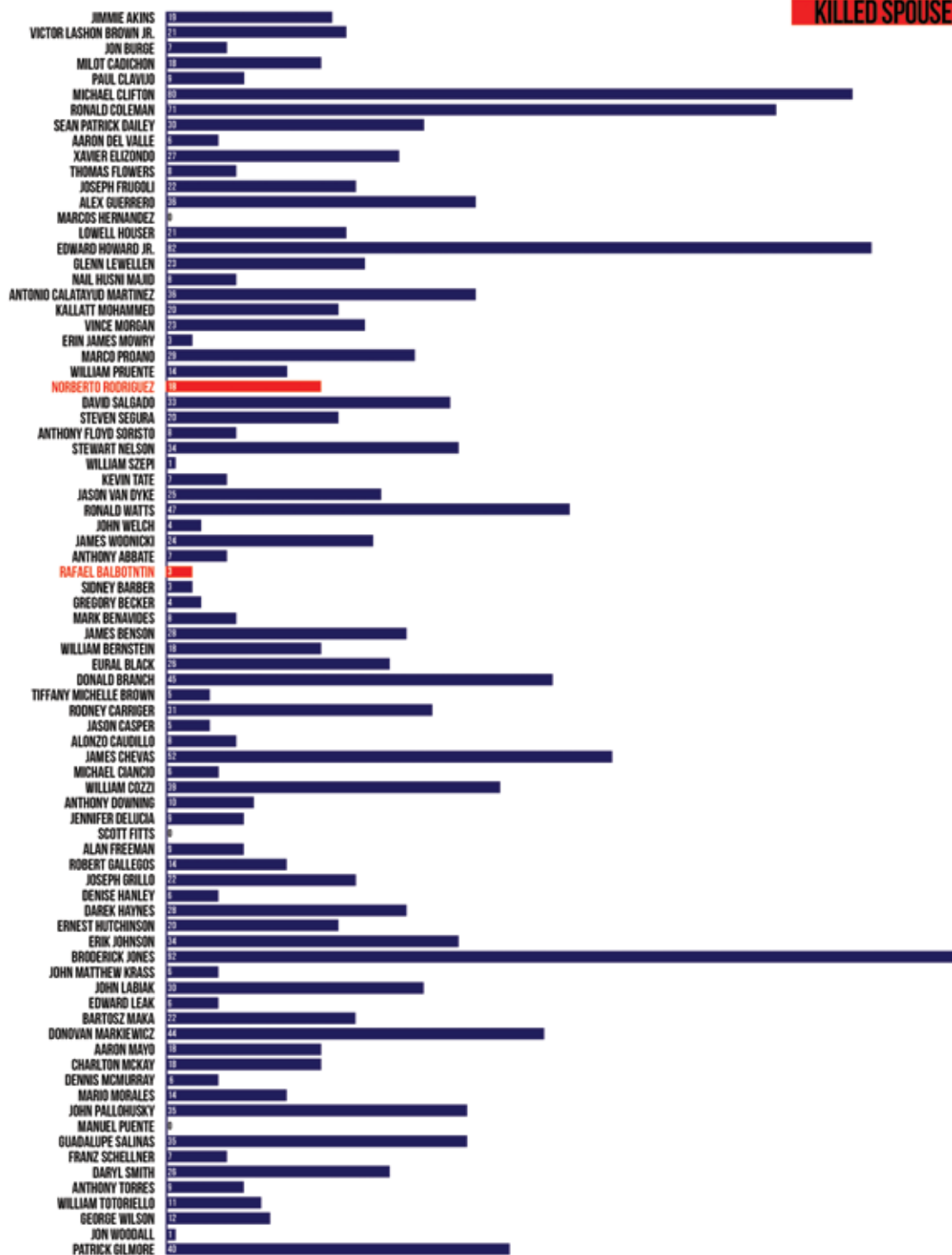
"The vast majority of law enforcement officers certainly try to do their job honorably. They put their lives on the line and their reputation sometimes gets stained not by their acts, but acts of some of their fellow officers," Raoul said. "So we look at this as something that lifts up law enforcement. Lifts up the reputation of law enforcement and takes a step towards restoring some public trust in law enforcement (on) the heels of some of these events that have been seen nationally, and internationally for that matter."

Goldman noted that the law provides a layer of protection for officers by providing hearings.

"In the past there was never a hearing once you were convicted of a felony or one of those misdemeanors that was listed," Goldman said. "The decertification was automatic. So in this way there is an opportunity for a hearing if the officer wants it and that's how most other states do it. So that's a positive too. It gives some due process to the officer that wants to have a hearing."



TOTAL INVESTIGATIONS/ACCUSATIONS OF MISCONDUCT



Illinois' historic criminal reform flawed by loophole closing database

by Kallie Cox and William H. Freivogel

SPRINGFIELD — Illinois' historic criminal justice reform law, hailed as a national model, contains a little noticed loophole that seals statewide records of police misconduct and hides them from the courts and the public.

The new law requires the Illinois Law Enforcement and Training Standards Board to maintain a statewide database of police misconduct. But the same law that requires a statewide database then denies access to it.

A spokesperson for Attorney General Kwame Raoul's office defended the provision by saying the misconduct information remains an open record at individual police stations. The reason the state database was closed, the spokesperson said, is "the records are available to anyone who wants them" from the individual departments.

The spokesperson acknowledged that anyone seeking statewide data on police misconduct would have to file FOIA requests with each of the almost 900 Illinois law enforcement agencies.

The 2021 law strengthens the board's Professional Conduct Database. Before it passed, departments were required to notify the board when an officer was fired or resigned under investigation for "willful violation of department policy." The new law requires additional reporting. It also requires departments to report extended suspensions and actions that could lead to an official investigation for violating government policy.

In other words, this new database contains alleged officer misconduct that did not lead to decertification, so it is much more comprehensive than simply being a list of decertified officers.

Before the 2021 law passed there was no requirement for a department to check the database. Now there is.

"We have this misconduct database (under the old law), but there (was) no requirement that departments have to use it when they look to hire someone as part of that background check," Sen. Elgie Sims, D-Chicago, a sponsor of the new law said in an interview. "Now you have to look to that database to check if there's misconduct, or an individual resigned while there was an investigation going on. So those types of things, those updates are necessary; they are long overdue."

But at the same time the 2021 law expanded the information in the misconduct database and required local departments to check it, a last minute amendment closed the database to the public and the courts.

That loophole is on Page 669 of the text. It reads: "The database, documents, materials or other information in the possession or control of the Board that are obtained by or disclosed to the Board pursuant to this subsection shall be confidential by law and privileged and shall not be subject to discovery or admissible in evidence in any private civil action."

Sam Stecklow, a journalist with the Invisible



Institute, said this provision in the bill creates a lack of transparency despite decades of court decisions in Illinois saying the public should have access to these records.

"When this bill came out the Attorney General's office was like 'well this is super transparent' and what they were talking about was it encourages communication between law enforcement agencies; that was the transparency we are talking about. It's not actual public transparency where the public has access to this information," Stecklow said.

Stecklow wrote a piece for Injustice Watch about the reform bill and the loophole that can be viewed here.

Marie Dillon, policy director for the Better Government Association in Chicago, is leading the effort to amend the reform bill and make the database accessible.

Dillon said that while there is no question police misconduct records in Illinois are public information, the new law makes the centralized database inaccessible to the public and forces requesters to go elsewhere to find information.

"That's what we're arguing with them about right now, trying to get them to pass a trailer bill. We want language that specifically says that those documents are not redacted," Dillon said. "We want to make sure the underlying records are FOIA-able which we believe they are under the law."

The attorney general's office wrote the portion of the bill that deals with certification, Dillon said. She said they are working with her to fix the language.

"They, you know, said they did not intend to keep records from anybody. That was not their intent and they have been working with us on this language. So you know, I'm hopeful that we're going to get it fixed. They have a pretty good record for being on the side of transparency. And as I said, they quickly said, 'Hey, we'll work with you,' and we've had meetings with them, so I hope they're

going to clean the language up," Dillon said.

Dillon said she doesn't understand why this language was placed in the law. But she believes it is partially due to a fundamental misunderstanding between requesters like her and the attorney general's office.

"They didn't understand, you know, why it's important to us to feel like we should be able to get it. I feel like a public document in the hands of any public body is public," Dillon said. "If it's in your possession and it's a public document I should be able to get it under FOIA, you know? They were more like, 'Well you can still get it from the police department. You can still get it from the police force.' So that's kind of a fundamental difference of opinion here. But again, they are working with us, so."

Nothing has been filed to amend the bill in the current legislative session, as of publication deadline.

"Because the criminal justice bill was so big and, you know, they passed it in lame-duck session, so it was really fast too. There's a lot to clean up in it," Dillon said. "My understanding is that (it) will be an omnibus bill which means you know we won't see it till right at the end again, and it will roll all the fixes into one thing."

A representative from the attorney general's office said the reason the Professional Conduct Database was made private/inaccessible via FOIA was because of "pushback" and "give and take."

The office declined to blame one particular group for the pushback and instead said it was part of the overall negotiations involving all of their partners on the bill.

When asked whether or not the attorney general's office planned to fix the loophole and make the database accessible to the public, all the representative would say is that there have been "conversations" about it, but that ultimately it is up to the legislators.

Union arbitration blocks punishment of Philadelphia officers

by Sojourner Ahebee and William H. Freivogel

Eds: Warning to readers — offensive racial slurs in the form of "n word" contained in some quotes.

PHILADELPHIA — In Pennsylvania the odds that misbehaving police officers will lose their badges is vanishingly small. Of the 24,000 police officers in Pennsylvania, only an average of four a year lose their licenses, records show.

The Philadelphia Police Department finds it especially hard to fire officers who committed serious misconduct because of roadblocks erected by the police union.

More than two-thirds of the 170 Philadelphia police officers who engaged in misconduct over the past decade escaped punishment because of arbitration procedures unions have won in contracts with the city, records show.

Arbitrators — mostly white, male laymen — ruled in favor of officers whom the department wanted to discipline or fire.

"The biggest obstacle to reform in Philadelphia is the collective bargaining agreement," said former Police Commissioner Charles Ramsey at a Penn Law program last summer on police reform. "It makes it very difficult to hold officers accountable. I've had numerous incidents where I took action against an individual only to have it overturned during arbitration. I think the union's gotten far too strong, too powerful."

"I've had people that I've had to fire more than once or for different offenses," Ramsey said. "Not the same offense. I fired him on one. He came back, did something just as bad again. I fired him again. One of them came close to coming back a third time."

The rarity of police decertification in Pennsylvania and the inability of the Philadelphia Police Department to rid itself of officer misconduct are the key findings of an investigation by the Pulitzer Center on Crisis Reporting in conjunction with the Associated Press.

Records obtained by Right-to-Know requests show that in a state with over 24,000 police officers, only 78 have had their law enforcement licenses suspended by the Municipal Police Officers' Education and Training Commission since 2000. That's fewer than four per year.

Four out of 24,000. Those are long odds.

Philadelphia is a place with a reputation for police brutality. Frank Rizzo — the former commissioner and mayor who once urged citizens to "vote white" — was a symbol of police brutality, as was the 1985 bombing of the MOVE home. Rizzo's statue came down from its honored place across from City Hall during the George Floyd protests last summer. But protesters and critics of police accountability stress that systemic racism is the problem, not just some bad apples.

The public debate about police conduct and honesty was especially hot during the renomination campaign in which progressive

District Attorney Larry Krasner won a big victory on May 18 against a candidate backed by the police union. Krasner has stressed throughout his four-year term that he is attacking systemic issues of policing and racism.

One systemic issue is dishonesty among police officers. After Krasner came into office, he found a file folder labeled "Damaged Goods" — a list of officers whose honesty was in so much doubt that they could not be called to the stand to testify. Krasner's misconduct database of current and former police officers has grown to 700 officers in the past four years.

The union — the Fraternal Order of Police Lodge 5 — counters that Krasner disrespects officers and is responsible for the city's high crime rate.

Two years ago the Plain View Project found hundreds of racist, sexist or otherwise discriminatory posts on social media made by police. Fifteen Philadelphia officers were forced off the job and dozens of others suffered lesser punishment. The objectionable Facebook posts were cataloged in a public database.

Now arbitrators are putting some of these fired officers back to work — officers such as Christian Fenico who was recently reinstated with full back pay despite his posts calling one suspect "a scumbag" and saying refugees should starve to death. The arbitrator claimed Fenico could still be a useful officer.

A recent example of the failure of arbitration to weed out troublesome officers was the appointment of Michael Paige as deputy chief in the Philadelphia Sheriff's Office. This is the same Michael Paige the police department has spent much of three decades trying to fire.

The Philadelphia Inquirer reported that in the 1990s, Paige's supervisor twice tried to fire him: once for sleeping on the job and another time for lying in a criminal investigation.

In 2007 Paige was finally fired for forcing another man to give him oral sex. He was acquitted in court despite DNA evidence supporting the claim by the alleged victim, James Harris. Harris won a \$165,000 court ruling against Paige for the assault. But Paige got his job with the police department back through arbitration, with the support of the union. Now, as deputy chief in the Sheriff's Office he is earning \$100,000 a year — but he hasn't paid any of the \$165,000 towards the court ruling.

Arbitration: where complaints go to die

Philadelphia Police Officer Edward Sawicki is one of the officers who escaped punishment through arbitration. News accounts and the official arbitration record give this description of events leading to a trial, a firing and a reinstatement:

Sawicki had just finished a meal with his girlfriend at Pat's King of Steaks on October 20, 2013, when he got into his car and backed right

into Lamar Fouse's knee. Fouse, who is Black, tapped on Sawicki's trunk to get his attention. Sawicki jumped out of his car, pulled up his shirt to reveal his gun and said "N---, I'll smoke you."

With Sawicki's hand still holding his gun holster, Fouse hurried to remove his shirt to show the off-duty officer that he was unarmed.

"Make a scene n--- and I'll fucking kill you out here," Sawicki added. Police were called to the scene and confiscated Sawicki's city-issued firearm, according to the prosecution.

Sawicki was charged and tried but was acquitted on the most serious charge. A jury of nine white people and three Black people acquitted him on charges relating to racial epithets and the murder threat, but was hung on the lesser charges of assault. Sawicki, the son and nephew of police officers, was fired before trial but rehired and named Officer of the Year in 2018.

How officers dodge consequences

Arbitration is where complaints against police officers go to die. It is where the attempt to discipline Sawicki died.

Most arbitrators aren't lawyers. Eighty-eight percent of them are white. More than 75% are men. Arbitration hearings are supposed to be open, but the locations are often not publicized. It's almost impossible to overturn arbitration decisions once they go in favor of the accused officer.

Sawicki's case is just one in a sea of 170 plus police arbitration settlements in Philadelphia dating from 2011 to 2020. An analysis conducted by the Pulitzer Center on Crisis Reporting shows that arbitrators overturned or reduced police discipline in cases more than two-thirds of the time.

The encounter between Sawicki and Fouse led to an Internal Affairs investigation, where Sawicki, Fouse and an eyewitness were interviewed. A notice of dismissal from the Philadelphia Police Department was issued to Sawicki, who was discharged on April 21, 2014. But then he got his job back.

Following Sawicki's termination from the department, the Fraternal Order of Police (FOP) filed a grievance which provides officers the option to challenge disciplinary action they believe lacks just cause and present the case to an arbitrator selected from the American Arbitration Association (AAA).

During arbitration proceedings, the FOP argued that Sawicki did nothing wrong, citing his acquittal from the criminal trial as proof of that claim. On the contrary, the city and the police department asked the arbitrator to uphold the discipline, maintaining, "(Sawicki) uttered a racial epithet directed to Mr. Fouse" and showed "a citizen his gun ... (which) is not permitted by a police officer."

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Robert E. Light, the arbitrator presiding over the case, decided to overturn Sawicki's dismissal: granting Sawicki his job back with full back pay. According to Light, the absence of testimony from Fouse — who didn't attend the hearing — along with the judicial outcome of the criminal trial left Light unable to credit Fouse's version of events. Light wrote, "The arbitrator therefore is presented with a situation where really the only competent testimony is that of (Sawicki) who, while (I) carefully observed his behavior and demeanor at the hearing, must find him credible."

Hans Menos is the former executive director of Philadelphia's Police Advisory Commission, an organization that helps oversee some misconduct complaints. He said in an interview that the threshold for disciplining police is too high.

"It's not easy ... when a police department goes through the really rigorous process to even get the officer disciplined," says Menos. "You can frankly get away with a lot of stuff as a police officer."

So when an officer finally goes through that process and their "peers and supervisors and the top admins have determined that (their) behavior is so problematic that (they) need to either be fired or disciplined," some kind of exceptional misconduct has clearly occurred, says Menos.

'The arbitrator is the king and queen of the castle'

Sozi Tulante served as Philadelphia's city solicitor from 2016 to 2018. As the city's lawyer, he represented the department in arbitration proceedings. He said in an interview that arbitrators are all powerful and that their powers are ill defined.

Act 111, the Pennsylvania state law that authorizes collective bargaining, isn't specific enough about how arbitrators should apply the legal standard of proof when reviewing police grievances, Tulante says.

Grievance arbitration places the burden of proof on the city and the police department.

Tulante says that's backwards for how an appeal usually works. The burden should really be on the union to show the police commissioner didn't have just cause.

"But what ends up happening is that you have the arbitrator substituting his or her judgment for the police commissioner and deciding on their own whether this is a good idea or bad idea," Tulante says. "And that's been so problematic."

The vast majority of arbitrators aren't attorneys, and according to the American Arbitration Association's official criteria, arbitrators just need 10 years of senior-level business experience, strong writing skills and a judicial temperament to qualify.

Then there's the issue of diversity. According to the AAA's 2019 Annual Report, only 26% of the Arbitration Association's national roster is made up of "minorities and women." And according to self-reported demographic information published on AAA's website, as few as 3.9% of arbitrators from the national pool identify as Black while only 3.7%



identify as Hispanic. That's in contrast to the 88% of arbitrators who identify as white.

"(We need to) use other arbitrating groups where there's more diversity, where they're drawing arbitrators from all the political subdivisions," said Tulante.

Grievance arbitration is a binding contractual obligation, which means arbitrators get the final say despite the fact that critics say they lack adequate legal training. "The arbitrator is the king and queen of the castle," says Tulante. Yet no one knows who they are and there isn't a list of arbitrators made available to the public.

"At every step of the proceeding it's sort of set up so that police can't be disciplined."

'Arbitrators make factual mistakes'

Tulante says rehiring cops like Sawicki is not the exception — it's the rule. In 2012, the department suspended Philadelphia officer Keith Baynes for grabbing a prisoner by the throat and shoving him against a police wagon

during an arrest. According to video footage of the incident, the detainee was not violent, did not resist arrest and was not a danger to any of the officers on the scene. Nevertheless, Baynes' suspension was overturned by an arbitrator.

In 2016, Philadelphia officers Sean McKnight and Kevin Robinson were rehired through arbitration after the police department permanently dismissed them from duty for beating and falsely prosecuting a Philadelphia resident in the Fairhill neighborhood who had fled from the officers on his motor scooter during a traffic stop. A video captured a police beating that left the man with a broken eye socket, with seven stitches and eight staples needed to repair his wounds.

Overtaking an arbitration decision is next to impossible, says Tulante.

"The General Assembly has a really narrow standard for reviewing what arbitrators did," he says. "My position as the city is this narrow standard is far too onerous, it's far too strict," said Tulante. "Even if the arbitrators made factual mistakes, it's not enough to get it overturned."

Police investigating themselves

It's hard to get to the facts when the officer who is being investigated is in the same collective bargaining unit as the officers reviewing the case, says Tulante.

"This is a fellow union member. They're paying for that guy's lawyer," Tulante says through frustrated laughter.

In the past, all investigations have been handled by the police department's own Internal Affairs division. Philadelphia is one of many cities that hasn't had independent investigators — separate from local police departments — to examine allegations of police misconduct. And it's a common complaint from oversight boards, such as Menos' Police Advisory Commission, that the ability to access records and data from police departments is severely limited.

"We've had investigations that we felt were important and we waited over a year to start getting information that we felt was relevant (to our work)," Menos says. "And in other cases we've just been told no and there's no repercussions."

Transparency has been absent, he adds. The Police Board of Inquiry hearing schedules are increasingly difficult to locate and are not published online.

"They've been public for over 40 years," he says. "And the fact that they're not accessible and you can't even understand when they occur is shameful ... and it's reasonable for people to conclude that it's purposeful."

Menos says it's common to hear anecdotal stories about people trying to access public Police Board of Inquiry hearings and being turned away by police officers at the door.

"When you arrive there ... you're questioned about how you learned about the hearing, why you're there. You're asked for a subpoena, ID — multiple forms — and in some cases told the hearings are not public even when they are," says Menos.

And once a complaint reaches the arbitration stage, arbitration hearings lack the same kind of transparency.

"It may be open as a matter of law, but (the

hearing schedule) is not posted anywhere," Tulante says. "I'm not aware of anyone ever attending an arbitration hearing, other than a participant or witness."

Menos says there's hope though. During the 2020 general election 509,933 Philadelphians — over two-thirds of those who voted — said yes to a ballot question that will replace the chronically underfunded Police Advisory Commission with a new Citizen Police Oversight Commission (CPOC).

Under the reformed, citizen-led oversight commission, investigative powers could include the ability to issue subpoenas, conduct independent investigations, reopen investigations closed by Internal Affairs and direct access to internal police files such as body-worn camera footage, personnel records and discipline records.

Police reform at center of DA election

Police reform was on the ballot on May 18 when Krasner won the renomination as district attorney. A coalition of liberal and Black voters carried Krasner to a big victory.

The reform prosecutor has not tiptoed toward police reform. He barged ahead from day one, addressing systemic issues. He ended minor drug prosecutions, released more suspects without bail, fired assistant prosecutors he didn't trust and expanded the police misconduct database of dishonest officers.

The misconduct database grows out of the 1963 Brady v. Maryland case in which the Supreme Court required prosecutors to turn over exculpatory evidence — evidence that might lead to dismissal of criminal charges.

The 55 names that Krasner initially found in the "Damaged Goods" file have now expanded to a reported 700. These are officers who lied during investigations, posted racist epithets on social media or engaged in crimes or misconduct that could lead to the impeachment of their testimony. Progressive prosecutors in other cities, such as St. Louis and Baltimore, have similar lists.

John McNesby, the head of the Fraternal Order of Police in Philadelphia, complained of "lost wages, damage to reputation and professional harm" when prosecutors release names of officers who they will not call to the stand. "Are they going to be vilified forever? Are they going to be blackballed forever?"

The union went all out to beat Krasner. It spent \$122,000 to elect Krasner's opponent, Carlos Vega, one of the approximately 30 prosecutors Krasner fired at the start of his term four years prior. The union even parked a Mister Softee ice cream truck outside Krasner's office to illustrate its claims that Krasner is soft on crime. Krasner won the primary and reelection in November in this highly Democratic city. Vega's loss is viewed as a sign that McNesby and the police union's political influence has diminished.

Last summer Krasner released a report on 21 wrongfully convicted people his Conviction Integrity Unit freed from prison during his first term. Police misconduct was at the root of many of those wrongful convictions.



New York's 'civil rights law' covered up civil rights abuses by 35,000 police for 45 years

by Felicia Hou and William H. Freivogel

NEW YORK — When New York's police unions won passage of section 50-a of the New York Civil Rights law in 1976, they said they needed it to protect the civil rights of police officers, shield them from harassment, and protect their safety.

Rather than a step forward for civil rights, it was a step back. 50-a represented the police union's successful response to the growing power of the Civil Rights Movement, which saw police as the army of the status quo that abused Blacks in protests and on the street.

For the past 45 years, 50-a has been a principal roadblock to police accountability in New York because it has kept secret the names of abusive cops.

A lot of abusive cops.

324,000 misconduct complaints have been filed against 85,000 different NYPD officers in the past 35 years.

The extent of the misconduct was revealed after the George Floyd protests prompted the legislature to repeal 50-a in the spring of 2020.

But 18 months after the repeal went into effect, police departments and police unions across the state have mounted a legal counterattack to shut down release of the records. Their lawsuits have won court rulings that close records that are "unsubstantiated" — in other words can't be proven or disproven.

That's the vast majority of the records.

The unions also have won court rulings denying retroactivity, therefore closing all records of misconduct before June 2020.

The anti-civil rights — civil rights law

Police were already fed up in the mid-1960s with the new rights the U.S. Supreme Court was recognizing for suspects and with the big civil rights and anti-war demonstrations where they faced verbal and physical abuse.

When Mayor John Lindsey proposed adding civilians to the board that reviewed police wrongdoing, the Patrolman's Benevolent Association rose up in opposition.

"I am sick and tired of giving in to minority groups, with their whims and their gripes and shouting," John Cassese, president of the Police Benevolent Association told a crowd. "Any review board with civilians on it is detrimental to the operations of the police department."

The union's campaign against civilian oversight went a step farther with a scare campaign warning New Yorkers how important it was to defeat the civilian oversight proposals. "Your life may depend on" it, the union said. The union won.

50-a was written not only as a response to the civil rights movement but also to counter

the new Freedom of Information Law.

Legislators who passed 50-a in 1976 said their purpose was to protect officers from harassment, particularly from defense lawyers looking to free clients.

But year by year, the reach of the law expanded. First, the legislature expanded it to corrections guards in 1981 and then a 1999 court decision cut off access by the press and public.

A chartered bus with off-duty Schenectady officers celebrating a bachelor party threw raw eggs at two people in a car. They were disciplined and the local newspaper wanted the details. The court said 50-a blocked disclosure to the press and public. An appeals court opened records a bit but said everything should be redacted that could lead to litigation or that would "degrade, embarrass, harass or impeach the integrity of the officer."

Police denied Freedom of Information requests for the disciplinary records of Daniel Pantaleo who had put Eric Garner in a chokehold shortly before Garner died.

It turned out though, that police disciplinary summaries had been posted outside the police press office for decades. When a Freedom of Information request was made for the disciplinary summaries, the department denied the request based on a novel interpretation of 50-a. It also removed

40 years of the summaries from its archives.

After 50-a was repealed the records on Pantaleo came out. He had 17 complaints against him, two of which had been substantiated, as was the complaint in the Garner case.

Floodgates open and close

The repeal of 50-a followed directly upon the murder of George Floyd and the national protests that ensued. Gov. Andrew Cuomo signed the repeal in June, 2020.

At first there was a burst of information. Even though the New York Police Department held back on the release of information the New York City Civilian Complaint Review Board did not. The board is an independent body with civilians who investigate complaints against police.

ProPublica created a database that unveiled the names of NYPD officers with the most allegations — Matthew Reich and Daniel Sbarra, tied for 75 complaints each — as well as cases in which officers received little to no punishment for misconduct and returned quickly to the force.

It found that 4,000 of the 36,000 officers then in the department had at least one sustained complaint against them.

The database also revealed 2,000 complaints from minors, most Black or Hispanic children where police receive slaps on the wrist.

Lt. Paul Gaglio escaped discipline despite a video showing him using a chokehold on an 11-year-old girl.

Yvonne Baex who had two substantiated complaints for abuse of authority and use of force against two 12-year old Hispanic boys, having pointed her gun at them.

Paul Robinson, Gesner Charles, and Mark Kistoo each with multiple substantiated sexual misconduct allegations. All returned to work shortly after a lax internal punishment.

Just days before ProPublica published its database, a federal judge temporarily halted the further release of disciplinary records in response to a suit by the Police Benevolent Association, the largest police union representing police officers in New York City.

Union officers called the suit a “battle to protect the safety and due process rights of public safety officers and police,” arguing that unproven or false allegations may tarnish reputations or threaten their personal safety.

The federal court action delayed release of a larger trove of data by the New York Civil Liberties Union, but in August, 2020 a federal court opened the way for the ACLU branch to publish a database with about 323,911 complaints against about 81,155 different officers. Almost 20,000 officers were named in five or more complaints.

“History has shown the NYPD is unwilling to police itself,” said Christopher Dunn, legal director of the NYCLU.

Even though the New York Police Department continues to limit its release of complaint data, the independent Civilian Complaint Review Board in March of this year released complaint data on all 34,811 active police officers and 48,218 retired officers.

That data revealed how officers were able to not only avoid punishment for repeated

offenses, but thrive despite them — Carlos Fabara of the 100th Precinct was promoted to captain in late September after accruing 57 complaints, the highest among the NYPD's 77 commanding officers. Osvaldo Nuñez has 50 complaints, but was promoted to Deputy Inspector in 2018.

The NYC database on still-active officers includes:

Numael Amador - two substantiated chokehold complaints. As punishment he forfeited his vacation days.

Thomas Woods - 7 abuse of authority charges including frisk and search of person. As punishment for each he forfeited two vacation days.

David Leonardi - 23 total complaints and 3 strip search charges. As punishment for each he forfeited 18 vacation days.

David Grieco - a sergeant with a history of wrongful arrests and abuse of authority. Known as NYPD's most sued officer who, he is accused in a lawsuit of having held a woman hostage in her apartment for 16 hours.

Rear-guard legal efforts

Over the past eight months, rear guard legal actions by police unions around the state have been successful stopping the release of new information on police misconduct.

Last spring, state Supreme Court Justice Ann Marie Taddeo issued an order agreeing with the Brighton Police Patrolman Association that the repeal of Section 50-a was not retroactive. The order would close all misconduct records before the summer of 2020. Two other Supreme Court justices in other parts of the state have ruled it is retroactive, so a decision of the state Court of Appeals may be required.

Also last spring, a state court judge upheld the Syracuse Police Department's decision to turn over only records in cases where the citizen complaint was “sustained.” That would mean most records would remain closed because police departments reject most citizen complaints unless there is overwhelming proof.

On Long Island, Nassau and Suffolk County police departments have refused to turn over complaints that were not sustained and Nassau redacted much of the information it turned over to Newsday. Whole pages of documents were almost entirely black. Newsday is suing.

The New York Police Department also has limited the release of misconduct information to sustained cases and the New York Civil Liberties Union is suing the department for the vast majority of cases that the department classifies as not-sustained because the complaint can't be proven or disproven.

The public records group MuckRock filed a public record request for police misconduct records from the Town of Manlius Police Department and was told to pay \$47,504 to see them, an amount it considered excessive.

Beryl Lipton, former projects editor at MuckRock said, “In New York the police unions have done solid work of trying combat the release of materials, with many agencies

refusing to release records while those court battles played out; still others have claimed that the law does not apply retroactively to existing records, and the courts have landed on either side of that point.”

Nor has the release of the data suddenly led to enlightened policing, critics say.

In December, 2020, the city's Department of Investigation released a report on the NYPD's response to civilian protests following the death of George Floyd in the summer. They concluded that the aggressive tactics that officers used ultimately violated protesters' First Amendment rights — officers used maneuvers such as kettling, where protesters are encircled with no exit and officers charge in and make arrests. Videos circulated on the internet of officers responding violently to largely peaceful protests, whether it be shoving civilians into sidewalks, spraying them with pepper spray or swinging batons onto large crowds.

The report concluded that these failures in appropriate police responses “went beyond poor judgment or misconduct by some individual officers,” but was rather part of a larger systemic issue regarding police behavior. Some of the recommendations included creating new police units, modifying officer training methods, and altering the structure of NYPD investigation.

Organizations such as Human Rights Watch argued that change needed to occur at a larger scale, advocating for a redesign of New York's Civilian Complaint Review Board to make it “a truly independent community oversight body, with full access to police records, subpoena power, authority to conduct investigations, and the power to discipline officers and command staff.”

The New York Police Department continues to try to hide its worst actors.

In 2009 NYPD Officer Danny Acosta claimed that from ten-feet away, he shot at a teen suspect who had been holding a gun to his female partner's head. The city later paid a half-million-dollar civil settlement to the teen.

But while Acosta recounted his story to a grand jury during the civil lawsuit, court documents years later revealed that he had actually shot into the teen's lower back at point-blank range. Acosta admitted his lie to a Law Department lawyer, wrongly thinking the admission would be covered by lawyer-client privilege.

Acosta was indicted in October 2018 on six counts of perjury, six counts of official misconduct, three counts of obstructing governmental administration and tampering with public records.

The New York Post reported that Acosta told his Law Department lawyer that he was straddling the suspects' back when he put the muzzle of his gun to the suspect's back and fired at “point-blank” range. Acosta denied making the admission to the lawyer but went on to tell the Post “The f-king corporation counsel lawyer f-ked me.”

The NYPD and the Bronx district attorney never announced Acosta's indictment. Nor did the department announce his firing this fall, after he had been paid for three years while on suspension. His partner who corroborated his story was not punished.

Qualified immunity: A get out of court free card for abusive police

by William H. Freivogel and Zora Raglow-DeFranco

Eds: Warning to readers — This story contains graphic descriptions of abuse.

Police officers almost always avoid legal liability for abusing citizens because of the doctrine of qualified immunity. The doctrine has its roots in ugly chapters of American history — from enforcement of racial segregation at a lunch counter in Mississippi; to the National Guard killings of students at Kent State; to President Nixon's firing of a whistleblower; to Attorney General John Ashcroft's roundup of Middle Eastern men after 9/11.

"Qualified immunity is one of the most legally dubious and heavily criticized doctrines in the history of the Republic," says Jay Schweikert, a research fellow from the Cato Institute.

Justices from the right and left of the Supreme Court — from Clarence Thomas to Sonia Sotomayor — have strongly criticized the doctrine. But the support of the majority of the court appears solid, experts say.

Qualified immunity is a "get out of court free card" for police. Actually, it's better than that. It's a never come to court card. The case is thrown out before ever going to trial.

If an officer's conduct does not violate clearly established law, the officer is immune from lawsuits. The only conduct that does violate "clearly established law" is an action that "every reasonable" police officer would know was illegal the moment it occurred. That may require a prior Supreme Court decision involving almost identical facts.

This immunity creates a vicious circle: Because so many cases are thrown out before trial and before fact-finding, less new "clearly established law" about police misconduct is created, so fewer officers are held accountable.

The court itself wrote that qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law."

Wayne C. Beyer, who has been lead counsel in more than 300 police misconduct cases, summarizes the criticisms of qualified immunity coming from groups as disparate as the liberal ACLU and the libertarian Cato Institute:

- Qualified immunity is judge-made, without any statutory basis.
- The defense deprives citizens of civil rights, which is what the Ku Klux Klan Act of 1871 — now codified as Section 1983 — provided.
- Because misconduct goes unpunished, the public's confidence in law enforcement is eroded.
- The threat of liability doesn't deter police misconduct because officers are usually indemnified by their cities. In other words the city pays the bill, not the officer. Chicago has paid hundreds of millions of dollars for the brutality of their police officers.

The Supreme Court's explanation for providing this extra legal protection for officers



Photo courtesy of St. Barnabas Church Newark, N.J.

The Rev. Robert L. Pierson was one of those arrested for walking into a White Only coffee shop in a Trailways Bus Terminal in Jackson, Miss. Police noted he was the son-in-law of Gov. Nelson Rockefeller and one officer said being related to a "big shot" might matter in the North "but I don't guess that makes any difference down here.

and other public officials is "to protect public officials from undue interference with their duties and from potentially disabling threats of liability."

An officer on the street who hesitates too long while considering whether or not an action is unconstitutional could end up getting shot.

The Ku Klux Klan Act of 1871

Congress passed the Civil Rights Act of 1871 — the Ku Klux Klan Act — to protect the newly freed Black citizens from the violent attacks of the KKK and other armed bands immediately after the Civil War — attacks that law enforcement officers in the South ignored or abetted.

The law is now codified as Section 1983 and is the legal basis of most civil lawsuits that abused citizens file against police officers. It authorizes suits against any person "who under color of any statute, ordinance, regulation, custom or usage" subjects "any citizens ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws."

Congressmen were explicit about their purpose in speeches on the floor of Congress.

Rep. David P. Lowe of Kansas said, "While murder is stalking abroad in disguise, while whippings and lynchings and banishment have been visited on unoffending American citizens,

the local administrations have been found unwilling or inadequate to apply the proper corrective. Combinations, darker than the night (which) hides them, conspiracies, wicked as the worst felons could devise, have gone unwhipped of justice."

Rep. John Beatty, R-Ohio, said, "Men were murdered, houses were burned, women were outraged, men were scourged and officers of the law shot down; and the State made no successful effort to bring the guilty to punishment or afford protection or redress to the outraged and innocent. The State, from lack of power or inclination, practically denied the equal protection of the law to these persons."

Congress' high intentions were ignored for 90 years. Then, in 1961, the Supreme Court quoted the congressmen's speeches in *Monroe v. Pape* which for the first time applied Section 1983 to police officers for brutality.

The case resulted from an abusive and illegal raid by 13 Chicago police officers on a Black family who were manhandled and forced to stand naked while their home was ransacked. Here's what happened that evening in 1958, according to Monroe's legal complaint:

At 5:45 a.m. while investigating a murder case, 12 Chicago officers along with Deputy

Chief of Detectives Frank Pape broke through two doors into the Monroe family home without bothering to get a search warrant. Pape was a legendary Chicago cop known for battling hoodlums and bragging that the only time he fired his gun was to kill. At gunpoint Pape and the other officers forced the Monroes and their six children out of bed and into the middle of the living room where they stood naked. Pape struck Monroe several times with a flashlight and called him “n---” and “black boy.” Officers pushed Mrs. Monroe and several of the children while dumping out the contents of drawers and closets and ripping open mattresses. After finding nothing incriminating the officers took Monroe to the police station and held him for 10 hours, refusing to let him call his lawyer. Pape was vocal in Chicago for his complaints that the Supreme Court tied the hands of the police.

Justice William O. Douglas wrote the court’s opinion holding that Section 1983 was intended to protect civilians from law enforcement officers who violate the law while acting under color of law. Separately, the court ruled that Monroe could not sue the city of Chicago.

Frank Pape’s illegal raid on the Monroes’ home revolutionized civil rights lawsuits against police — which went from a dribble to a torrent of lawsuits that now fill volumes of law books.

Qualified immunity emerges from ‘White Only’ Mississippi coffee shop

On Sept. 13, 1961, a group of 15 ministers, including three Black priests, arrived at the Jackson, Mississippi, Trailways bus terminal planning to travel to Chattanooga. They called themselves “the Prayer Pilgrimage” and were among hundreds of Freedom Riders in Mississippi that summer who challenged segregation in the South.

Around noon they tried to get lunch in a small coffee shop in the bus terminal with a sign that said: “White Waiting Room Only — By Order of the Police Department.” Two police officers stopped them. The priests prayed for the people of Mississippi and the police arrested them when the prayer was over.

A policeman — who found out that the Rev. Robert L. Pierson was the son-in-law of then Gov. Nelson Rockefeller — remarked, “His father-in-law may be a big shot up there, but I don’t guess that makes any difference down here.”

At the station house the officers feverishly ran background checks on each of the ministers to try to link them to Castro’s Cuba. During later court proceedings the state’s lawyers asked the priests on the witness stand to explain why their views on racial justice were the same as the Communist Party’s views.

The ministers were charged with disturbing the peace, even though they were quiet and prayerful, by all accounts.

The police justified the peace disturbance charge on their claim that a crowd of about 20 segregationists had gathered and was threatening the ministers. The ministers said there was no crowd.

Chief Justice Earl Warren wrote in a 1967 opinion that if the police were actually enforcing a peace disturbance law that they had every

reason to believe was constitutional, then they were acting in “good faith.”

He wrote that common law — judge made law — gave law officers immunity from lawsuits when they acted in good faith and had probable cause.

“We agree that a police officer is not charged with predicting the future course of constitutional law,” Warren wrote.

This was the birth of qualified immunity — giving Jackson police immunity based on what was apparently a false claim about a segregationist crowd that didn’t exist.

Legal experts say that Warren was simply wrong in saying that the common law in 1871 provided good faith immunity for state officials. That weak legal basis is one reason Justice Thomas opposes qualified immunity. He is an originalist who stresses interpreting legal doctrines consistent with the times in which they are written.

Protecting officials in tumultuous times

Three disparate cases from tumultuous times solidified the doctrine of qualified immunity.

• **Kent State killings:** The Supreme Court rejected absolute immunity for Gov. James Rhodes and National Guard Commanders in the killing of four students during protests at Kent State in May 1971, after the Nixon invasion of Cambodia. But the court claimed the officials deserved qualified immunity that protected the latitude of their decision-making. The court said: “In common with police officers ... officials with a broad range of duties and authority must often act swiftly and firmly at the risk that action deferred will be futile or constitute virtual abdication of office. Like legislators and judges, these officers are entitled to rely on traditional sources for the factual information on which they decide and act. When a condition of civil disorder in fact exists, there is obvious need for prompt action and decisions must be made in reliance on factual information supplied by others.”

A \$46 million lawsuit against state officials ended in a \$675,000 settlement and statement of regret from Ohio officials. The families of the dead students received \$15,000 each.

• **Nixon whistleblower:** The Supreme Court protected two senior White House aides from paying damages for their involvement in the firing of a famous whistleblower, Ernest Fitzgerald. Fitzgerald angered Richard Nixon by testifying in 1968 that Lockheed’s C-5A transport program might cost \$2 billion more than its original \$3 billion price tag. The White House taping system left no doubt about Nixon’s reaction. “I said get rid of that son of a bitch,” he said. The Supreme Court ruled White House aides had qualified immunity from a suit by Fitzgerald, who was laid off from his job. The president could expect loyalty, the court said.

The court worried about “social costs (that) include the expenses of litigation, the diversion of official energy from pressing public issues and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible

(public officials) in the unflinching discharge of their duties.”

• **Ashcroft roundup of Middle Eastern men:** Attorney General John Ashcroft used the material witness law to roundup Middle Eastern men after 9/11, even though there was no evidence that they were involved in a crime nor any intention to call them as witnesses.

One of those detained was Abdullah al-Kidd. Al-Kidd was born in Wichita, Kansas, and was a football star at the University of Idaho where he converted to Islam. The FBI was suspicious of an acquaintance of his who had worked with an Islamic charity.

Al-Kidd was arrested at Dulles Airport and detained for 16 days, during which time he was repeatedly strip-searched and transported between jails in handcuffs and leg irons, yet he was never charged with a crime. Nor did agents ever question him as a material witness.

Ashcroft admitted shortly after the Sept. 11, 2001, terrorist attacks that using the “material witness” law was a tactic to take “suspected terrorists off the street.” But Justice Antonin Scalia said the court generally does not allow lower courts to inquire into the “subjective” purpose for seeking an arrest warrant. Lacking such a precedent, there was no established law and Ashcroft was entitled to immunity.

Scalia wrote: “Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions. When properly applied, it protects all but the plainly incompetent or those who knowingly violate the law. Ashcroft deserves neither label.”

Supporters of qualified immunity say officials need legal protections to make tough decisions in perilous times. Critics ask: Should officials who made bad decisions be protected from the consequences?

Officers almost always win in the Supreme Court

For 16 years, from 2006 to 2020 no suspect or prisoner had won a qualified immunity case in the Supreme Court. Here’s what it took for Trent Taylor to win against the state of Texas last year.

After a suicide attempt, Taylor was transferred to the Montford Psychiatric Facility Unit in Lubbock, Texas. Prison officials stripped Taylor naked and placed him in a cell where almost every surface — including the floor, ceiling, windows and walls — was covered in “massive amounts” of human feces belonging to previous occupants. Taylor was unable to eat because he feared that any food in the cell would become contaminated, and feces “packed inside the water faucet” prevented him from drinking water for days. The prison officials laughed at Taylor’s predicament and said he was, “Going to have a long weekend.”

Four days later, they moved Taylor to a different seclusion cell named “the cold room” by other inmates because it was so frigid. The cell had no toilet, water fountain or furniture, but had a drain on the floor — which was clogged — leaving a standing pool of raw sewage in the cell. There was no bed. Taylor had to sleep on

Continued on next page

the floor, naked and soaked in sewage, with only a "suicide blanket." Taylor was locked in this cell for three days and never allowed to use a restroom. He attempted to avoid urinating on himself and developed a distended bladder requiring catheterization.

The Supreme Court said, "No reasonable correctional officer could have concluded that, under extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time."

But this past fall the Supreme Court dispelled hope that the Taylor decision meant it was reconsidering qualified immunity. It ruled in favor of officers in two cases, emphasizing that "clearly established law" requires prior cases with very similar facts.

In one of the cases a woman called police to her house because her husband was drunk. The husband went to the garage, picked up a hammer and approached police refusing to put it down. The police shot and killed him. The 10th U.S. Circuit Court of Appeals denied the officers qualified immunity citing its precedents that an officer can't claim immunity if his own recklessness leads to a shooting death. But the Supreme Court said that the case was not similar enough.

An example of an excessive force case

where an officer was able to avoid accountability using qualified immunity is *Dukes v. Deaton*.

During a home search for marijuana, an officer threw a flashbang explosive device into Ms. Dukes' bedroom which resulted in her being badly burned. While the use of the flashbang device constituted excessive force under the Fourth Amendment, and the officer did not inspect the room beforehand like he was supposed to, he was found not responsible under qualified immunity. Not every reasonable police officer would have known throwing the flashbang would be considered excessive force, the court said.

A 2009 decision by the Supreme Court made qualified immunity an even more potent defense for abusive officers. The court decided in *Pearson v. Callahan* that courts could skip past the initial question of whether or not a police action violated the Constitution. It allowed the courts to jump instead to whether or not the law violation, if proved, was clearly established law. If not, then the case was tossed out before the legality of the officer's actions was determined.

The Catch-22 is that the change resulted in fewer court determinations of what was illegal and therefore less clearly established law and therefore more cases being tossed out on qualified immunity.

A Reuters investigation in 2020 found that an increasing number of cases are being thrown out

without the court considering the lawfulness of the police use of excessive force.

Reuters noted that in 2009 the 11th U.S. Circuit Court of Appeals threw out a case in which a man who was found disoriented along the side of the road died after police hogtied him. The court did not evaluate the constitutionality of this frowned on police tactic but instead immediately granted qualified immunity.

Four years later, police in Phenix City, Alabama, found Khari Illidge wandering naked along a road, apparently after using drugs. An officer stunned him 14 times while he was handcuffing him. He fully hogtied him by attaching the handcuffs to leg irons holding his ankles. A 385 pound officer lay on Illidge until he went limp. He died of cardiac arrest.

When the same Court of Appeals took up the case, there was no clearly established law because it hadn't considered the constitutionality of hogtying in the first case.

Schweikert from Cato sums things up by explaining that even if an officer is convicted of murder — as was Derek Chauvin — the officer can still avoid liability under qualified immunity. "There's a ton of police misconduct that does fail to meet constitutional standards, but which nevertheless gets excused under the doctrine of qualified immunity."

Gruesome 1943 beating by a sheriff in Georgia made it hard to convict abusive police

by William H. Freivogel and Zora Raglow-DeFranco

The gruesome story of the 1943 beating death of Robert Hall by Sheriff Claude Screws on the courthouse square in Newton, Ga. illustrates the strict constitutional limits that the U.S. Supreme Court has placed on the federal criminal civil rights prosecutions of police brutality.

The case has two conflicting legacies. It determined that an 1866 civil rights law could be used to prosecute brutality by law enforcement officers and it made it very hard to convict them.

Screws, sheriff of Baker County, Ga., in the isolated southwest corner of the state, got drunk and, despite the bartender's advice, sent deputies to Hall's house to arrest him for supposedly stealing a tire.

Screws had known Hall all of his life. He called him a "biggety negro" — a description that was close to a death sentence in the South.

The thief in this story actually was Screws. One of his deputies had taken a pearl-handled pistol from Hall and Screws refused to give it back. Hall didn't let the matter drop. He appeared before a grand jury to complain and hired a lawyer to pursue its retrieval. The

grand jury asked for an explanation and Screws angrily told them "if any of these damn negroes think they can carry a pistol, I'll take them."

On the night of Jan. 29, 1943 — in the middle of World War II — Screws sent two of his officers to arrest Hall at his home for the alleged tire theft. The officers handcuffed Hall and took him to the courthouse in Newton, the county seat of Baker County. Screws was waiting.

Many of the 300 residents of the town lived in homes within sight and sound of the square and they watched and heard the brutal beating that Screws and his deputies administered to the handcuffed Hall using their fists and a two-pound blackjack. The beating lasted about 30 minutes, by most accounts, and left Hall with the back of his skull crushed and lying in a 3x4 foot pool of blood.

Federal judge Paul J. Watford, in a careful retelling of the killing, writes that Screws could be heard telling his deputies, "Hit him again, hit him again."

Screws ordered his deputies to drag Hall to a jail cell, leaving a trail of blood into the courthouse for all

to see the next morning. Screws said Hall had reached for a gun, but the court noted he had been handcuffed.

Georgia refused to prosecute Screws. Most big newspapers didn't print a word about the crime, including *The New York Times*, *Boston Globe*, *Chicago Tribune* and *Christian Science Monitor*.

Screws was convicted in federal court under the post-Civil War Civil Rights Act passed to protect the Blacks from violence. The law — Title 18, U.S.C., Section 242 — made it a crime for a person acting "under color of law" to deprive a citizen of a civil right. However, Screws contended that it was his rights that were violated, not Hall's.

Screws' argument went this way: Due process of law requires that criminal laws specify precisely what conduct is criminal. But the federal civil rights act does not do that. It makes it a crime to violate a person's civil rights. That is not a precise description of a crime because there is so much debate about the boundaries of statutory and constitutional rights.

The sharply divided Supreme Court took up the case. It deplored

Screws' conduct but agreed that the federal law did not make it clear what was and wasn't a crime.

Justice William O. Douglas, one of the court's most ardent liberals, constructed an elaborate way to save the law from being declared unconstitutional. The law states that guilt requires the officer to act "willfully" to deprive a person of a right. Douglas said requiring proof that the officer had the "specific intent" to violate a well-recognized civil right — one about which there was no debate or uncertainty — would create the specificity required by a criminal law.

To prove specific intent prosecutors have to show the officer acted willfully, meaning with a bad purpose and with reckless disregard for the right. If an officer shows his/her actions were by mistake, due to fear, misperception, poor judgment, or ignorance of the law, they are not considered willful actions and thus not prosecutable under this statute. The willful intent standard is to prevent that law from becoming a 'trap' for law enforcement officers acting in good faith who make a mistake.



Phil Foster

"A mind intent upon willful evasion is inconsistent with surprised innocence," the court said.

This is a very high standard and one that rules out federal prosecution in the vast majority of police brutality cases. It also accounts for the low rate of federal convictions.

Between 1990 and 2019, federal prosecutors filed criminal civil rights charges against an average of 41 officers a year — even though they get referrals 10 times greater, reports the Transactional Records Access Clearinghouse at Syracuse University.

Screws' lower court conviction was overturned, and he was tried again under the new willfully standard. A jury acquitted him and he went on to be elected to the state legislature.

Judge Watford agrees that the Supreme Court's Screws decision continues to make it hard to win convictions for police brutality. But he says it may be more important that Douglas pulled together a majority to uphold the federal law. If he hadn't, the federal government wouldn't have had a role in fighting police brutality in the South. There would never have been prosecutions like those for 1964 murders of three young civil rights activists—James Chaney, Andrew Goodman,

and Michael Schwerner—outside Philadelphia, Mississippi.

Is there a way around Screws high legal standard?

Marcia McCormick, a professor at Saint Louis University law school says there is. The law "could fairly easily be changed to make it easier to convict police by being more explicit about what conduct is prohibited.

"The problem with it as drafted was that it might make a crime out of action that may depend on court interpretation — due process is a vague concept, and its contours have changed over the years. The Court was worried that in a trial, a court might decide after the fact that an officer had violated the due process rights of a person. But that conclusion might not have been obvious when the officer acted.

"As long as there has been some judicial declaration (or statutory declaration) that particular rights exist and particular conduct violates those rights, then the concept won't be so vague that the officer wasn't on notice before he acted that his action would violate a person's civil rights," she said.

"Federal law could say that police officers may not use deadly force in particular

circumstances, and there would likely not be a due process problem because that construction would not be vague as long as the circumstances were fairly clear," she said.

Objective reasonableness — evil intentions not enough

Another big legal barrier to police accountability is the court's "objective reasonableness" standard, which basically means the courts have to look at things through the officers' eyes.

In 1989 the court decided *Graham v. Connor*, which had facts similar to the 2014 Eric Garner case in New York. Instead of involving an asthmatic like Garner, Dethorne Graham was a diabetic. He was having an insulin reaction and went to a drug store to get orange juice. When he saw the long lines he immediately left. A policeman seeing the quick exit was suspicious and detained him while he checked with the store.

Chief Justice William H. Rehnquist, a staunch conservative, described the rough treatment Charlotte, N.C., police administered.

"One officer said, 'I've seen a lot of people with sugar diabetes

that never acted like this. Ain't nothing wrong with the M. F. but drunk. Lock the S. B. up...' Several officers then lifted Graham up from behind, carried him over to (a police) car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal that he carried. In response, one of the officers told him to 'shut up' and shoved his face down against the hood of the car. Four officers grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to let him have it. Finally, Officer Connor received a report that Graham had done nothing wrong at the convenience store, and the officers drove him home and released him."

Graham filed a civil Section 1983 lawsuit for money damages claiming he had been left with a ringing noise in his ear. An appeals court ruled against him but the Supreme Court said he should get another trial.

Even though Graham got a new trial, the court set the legal standard for civil rights lawsuits against police that was forgiving for the officer.

Rehnquist wrote: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. ... Not every push, even if it may later seem unnecessary in the peace of the judge's chambers, violates the Fourth Amendment.

"The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving.... An officer's evil intentions will not make a Fourth Amendment violation of an objectively reasonable use of force."

Rehnquist also added that the application of the test "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

Continued on next page



Phil Foster

The objective reasonableness standard protects officers who use bad judgment, act recklessly or follow risky police procedures that most model police codes recommend against. High speed police chases are a good example. Model codes recommend against high speed chases in many instances, but the Supreme Court has not reined them in.

In 2014 the court issued a 9-0 decision in *Plumhoff vs. Rickard*, where most of the justices emphasized how much leeway police officers have in confrontations with suspects.

In this case, police chased a car from Arkansas into

Tennessee at speeds of more than 100 miles an hour. Police managed to box in the car, but the driver kept trying to escape. Officers fired 15 shots killing the driver and a passenger.

Justice Samuel Alito Jr., writing for seven members of the court, said, "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."

Alito, reiterated Rehnquist's allowance "for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense,

uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation."

At least 13,100 people were killed in police chases from 1979 through 2017, based on National Highway Transportation Safety Administration data compiled by the nonprofit news organization FairWarning. That averages 336 deaths a year.

At least 2,700 of those killed were innocent bystanders — pedestrians and people in vehicles that were hit by a fleeing suspect or police.

The death toll is increasing. At least 1,594 deaths in police

chases occurred from 2014 through 2017 — an average of 399 a year. Nearly 300 of those killed from 2014 through 2017 were bystanders.

Maj. Travis Yates of the Tulsa Police Department told FairWarning, "If you had those numbers [of deaths] from any other use of force, there would be congressional hearings. There would be hell to pay in this profession. But because it's a car, because it's not high-profile, it goes on for year after year."

Other legal roadblocks to accountability

ABSOLUTE IMMUNITY FOR TESTIMONY. If a police officer perjures himself or herself putting an innocent person in prison, he can't be sued because he has "absolute immunity" for court testimony. As the name suggests, absolute immunity is stronger than qualified immunity, which already presents a roadblock to accountability.

LIMITED MUNICIPAL LIABILITY. Not only is it hard to sue police officers, it also is hard to sue a municipality for the abuse of its law enforcement officials.

At the same time that the Supreme Court opened the door to Section 1983 civil lawsuits against police for brutality in *Monroe v. Pape*, it closed the door on municipal liability for the wrongful acts of particular officers.

The court said Congress didn't intend to include municipalities when it passed Section 1983 and points out the law applied to persons, which did not include municipalities.

In 1978 the court reversed this part of *Monroe* and ruled municipalities could be held liable for policies, even if they were not responsible for the bad acts of their individual employees.

Jane Monell, a New York school teacher became pregnant and the New York Board of Education required her to take unpaid leave before it was medically necessary. The court agreed she and other pregnant women in her position should receive back pay because the policy discriminated against women.

In real life, even though municipalities cannot be sued for police brutality by individual officers, they often end up indemnifying officers who lose Section 1983 cases. The Chicago Police Department has paid more than \$200 million in attorneys fees alone defending its officers.



Photo by Maranie Rae Staab/Associated Press

A Portland police officer wields a billy club against a protester amidst a cloud of teargas outside of the North precinct in Portland, Oregon.

Kettling protests and targeting journalists undermines 1A

by William H. Freivogel

The right to assemble is as American as apple pie. It is written in the First Amendment — “the right of the people to peaceably assemble.” The American Revolution followed on high-spirited protests in the colonies.

But legal experts say that police tactics at mass demonstrations are threatening the right to assemble. Kettling protesters, spraying them with chemicals, mass arrests, targeting journalists — all are tactics that have become commonplace.

They happened in St. Louis during the September, 2017 protests after a former police officer was acquitted of murder. It happened in the blocks around Lafayette Park across from the White House during the Black Lives protests after the murder of George Floyd. It happened too in the Bronx, Brooklyn, Charlotte, N.C., Portland, Chicago, Dallas.

In 2002 D.C police used the tactic on anti-war, anti-globalization protesters; in 2003 Chicago police used them against 800 anti-war protesters; in 2011 New York police surrounded Occupy Wall Street protesters; in 2017 and 2021 Portland police surrounded

protesters and snapped photos of all of those trapped in the kettle.

Picture the scene. Protesters march and shout, sometimes yelling obscenities at public officials and the police officers. The officers, wearing militaristic uniforms, stand at the ready.

Then comes the moment when police decide to declare an illegal assembly. A constitutionally protected right has suddenly become a crime.

Police have the authority to declare an assembly illegal if there is lawbreaking — if the protesters are blocking highways, breaking windows, burning shops or cars, or throwing rocks and water bottles.

But police have to make sure the crowd hears the declaration of an illegal assembly and that people have a chance to leave before police close in.

Kettling tactics employed in big protests in St. Louis, Washington, D.C. and New York didn't adequately inform protesters or allow people to leave the area as police moved in.

Journalists targeted in Portland

Over the past year, Maranie Staab has been repeatedly roughed up by specific officers who targeted her at Portland protests.

Over that time she has seen some pretty amazing things through her lens, such as pro-Trump demonstrator pointing a gun at her from a passing car. She has been shot by rubber bullets and tear-gassed. And she was told by Jan. 6 insurrectionists in D.C. that she and other reporters were communists and scum.

When the young independent photo-journalist arrived in Portland on July 26, 2020, she was a seasoned journalist. But her experience had not prepared her this experience.

She went out on the streets the night she arrived. “I was tear gassed immediately...it's horrific,” she said in an interview. “It acts as a chemical weapon. It is banned in international warfare. It is not a matter of toughness.....I was rendered unable to function. I couldn't see or breathe. It was terrifying.

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"I've been covering protests for years whether in Pittsburgh or Syracuse...Usually I would just dress normally. Now standard attire is a helmet, eye protection, long sleeves, a press vest so I'm clearly identified..... Protesters carry umbrellas or home-made shields. Now I will not go to a protest without a gas mask.....i didn't wear a press vest when I first came. It's now always on."

Staab's complaint that journalists and court observers have been targeted by police, has been vindicated in federal court. The 9th U.S. Circuit Court of Appeals reimposed an emergency order directing federal agents to stop retaliating against journalists exercising their First Amendment rights.

The decision cited attacks by federal agents on three photojournalists - Jungho Kim, Amy Katz and Daniel Hollis. All wore large letters identifying them as press. Kim and Hollis were shot with less-lethal projectiles. Katz was shoved away by agents when she tried to photograph the arrest of a demonstrator who had been pushed down a flight of steps by agents.

A fourth journalist, Brian Conley, presented film footage showing federal agents spraying pepper spray point blank into the faces of peaceful demonstrators.

The four were among 45 journalists who testified in federal court about the attack by federal agents. The appeals court said their testimony was compelling proof of what it called "shocking pattern of misconduct" retaliating against journalists exercising their First Amendment rights.

Here the footnotes from the court's opinion, which describe what happened to each of the journalists exercising their First Amendment free press right to cover the demonstrators who were exercising their First Amendment right to assemble.

_ On July 29, plaintiff Brian Conley was wearing a photographer's vest marked "PRESS," a helmet marked "PRESS," and was carrying a large camera with an attached LED light and telephoto lens....Conley was filming a line of federal officers moving down the street pepper spraying peaceful protesters—including spraying a woman in the face at point blank range who was on her knees in the middle of the street with her hands up—when, without warning, a federal officer pepper sprayed Conley at point blank range.

_ On the night of July 19, Jungho Kim, a photojournalist, was wearing a neon yellow vest marked "PRESS" and a white helmet marked "PRESS" on the front and rear. The district court found that Kim was standing alone, about 30 feet from federal agents, taking photographs, when suddenly and without warning, Kim was shot in the chest, just below his heart with a less-lethal munition. A photograph submitted with Kim's declaration shows that he was shot where the word "PRESS" was printed on his vest.

_ On the night of July 26, Daniel Hollis, a videographer, was wearing a press pass and a helmet marked "PRESS" in bright orange tape, and carrying a large, professional video-recording camera. Hollis was filming a group of federal agents massed outside the federal

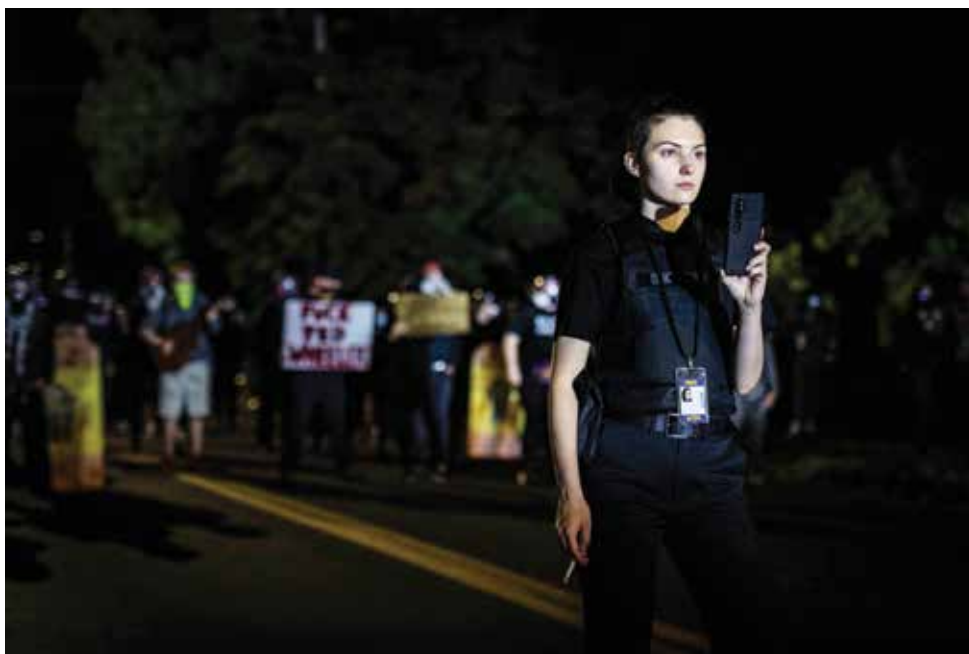


Photo by Maranie Rae Staab/Associated Press

Members of the press have been hit with pepper spray, teargas and a wide range of "less-lethal" munitions while covering nightly protests in Portland, Oregon. Both indiscriminate and targeted attacks have been recorded.

courthouse. "Almost immediately," the federal agents shot at him, striking him just left of his groin. He turned and began to run away, but was shot again in the lower back.

_ On July 27, Amy Katz, a photojournalist, was wearing a hat and tank top marked "PRESS" and carrying a camera with a telephoto lens while covering the protests. Katz was photographing a federal agent who pushed a man down a flight of stairs while arresting him. Another federal agent physically blocked Katz and tried to stop her from photographing the arrest. Katz stepped to the side to continue photographing the arrest, and the federal agent physically shoved her away.

Ferguson: First Amendment applies at night too

John Inazu, a Washington University law professor, has written about the diminishing protection in America today for the freedom of assembly.

He argues that "contemporary understandings of unlawful assembly cede too much discretion to law enforcement" while ignoring the way the law traditionally treated assemblies.

Inazu cited the 2014 arrest of Antonio French on Aug. 13, 2014 as an example. French was a leading citizen journalist during Ferguson and one of the most active and accurate sources of news from the protest. He had joined a protest that soon faced police with armored vehicles, high-powered rifles and a helicopter flying overhead. (The St. Louis County police had bought its military equipment using money seized in asset-forfeiture stops, heavily criticized by civil libertarians.)

Missouri law, Inazu points out, states that a person commits unlawful assembly "if he knowingly assembles with six or more other persons and agrees . . . to violate . . . the criminal law. . . with force or violence." But police arrested

French "without even bothering to specify what offense he had allegedly conspired to commit or the identities of his alleged co-conspirators.

"Nor did they suggest that French was planning to use force or violence to break the law," Inazu wrote. "There was, in other words, little indication that police had sufficient evidence that French had met the material elements of unlawful assembly necessary to arrest him for that crime."

Inazu added that, "Antonio French is not the only casualty of these laws. In fact, unlawful assembly restrictions target citizens across the political spectrum, including civil rights workers, antiabortion demonstrators, labor organizers, environmental groups, Tea Party activists, Occupy protesters, and antiwar protesters."

During the Ferguson protests, police used an array tactics that violated constitutional rights of protesters and journalists. They banned nighttime protests until a judge told them they couldn't. They required protesters to keep moving, until U.S. District Judge Catherine Perry said that wasn't constitutional. They set up a pen for journalists, far removed from the protests, and arrested a Getty photographer who strayed. They arrested two journalists in a McDonalds.

Lee Rowland, senior staff attorney for the ACLU, summarized it this way: "Tear gas, rubber bullets, and assault weapons; free speech zones, gags, and press pens: This is the arsenal of the police state. Some of these tactics are physical. The other ones—all the more pernicious for their quiet coercion—impose a veil of silence over the actions of law enforcement. And each of these weapons has been unleashed on the people of Ferguson, Missouri, since the killing of Michael Brown."

Kettling and the acquittal of Jason Stockley

Downtown St. Louis — within blocks of the Old Courthouse where slaves were sold and Dred and Harriet Scott sought their freedom and within

sight of the place where Francis McIntosh was burned to death for killing a policeman — was the scene of vigorous Black Lives Matter protests in Sept., 2017 after former St. Louis Officer Jason Stockley was acquitted of murder in the killing of a fleeing suspect.

St. Louis Police kettled protesters in a city block and arrested them. Also a group of white officers beat an Black undercover colleague after exchanging texts expressing excitement about beating Blacks. The white officers had not realized they were beating a fellow officer.

Mario Ortega, who was a Washington University scientist at the time, was one of those arrested. He said he was watching the protest when he got caught in a “kettle” police used to trap protesters in a block near the intersection of Washington Ave. and Tucker Blvd. He said in a lawsuit that he was pepper sprayed, punched, kicked, dragged and slammed into a building.

A 2021 court decision in Ortega’s case describes what happened.

“...a line of officers extended across the street and sidewalk on Washington one block west of Tucker. Another line of officers extended across the street and sidewalk on Tucker one block north of Washington. A third line of officers extended across the street and sidewalk on Tucker one block south of Washington. All three lines of officers wore military-like tactical dress, including helmets. They carried long wooden batons and full-body riot shields. A fourth line of officers extended across the street and sidewalk on Washington one half block east of Tucker. The four lines began to approach Washington and Tucker.”

Ortega said that “without instruction or warning, officers surrounded residents, business patrons, protestors, observers, and members of the press, cutting off all exits, and preventing the people inside the area from leaving. As they approached, officers began banging batons against their riot shields and the street. Citizens approached officers and asked to be let past. Officers responded by screaming, “Get back!”

Magistrate David C. Noce, who was hearing Ortega’s case, continued the account: “The officers trapped everyone who was within a one-block radius of Washington and Tucker. This is a tactic known as ‘kettling.’ Officers kettled a wide variety of innocent citizens, including self-admitted protestors, residents who live in the area, people visiting businesses, reporters, documentarians, and homeless persons. The officers even grabbed an African American male who was outside of the kettle and threw him into the kettle.

“Individuals in the kettle approached the line of bicycle officers with their hands up. The bicycle officers jabbed at the individuals, using their bicycles as battering rams. Some supervisors, including Sgt. (Matthew) Karnowski and Lt. (Bill) Kiphart, used pepper spray against peaceful citizens who were complying with police orders, to the extent any orders were given. Their actions caused plaintiff Ortega to be very fearful.

“At the start of the kettle, a few people in the crowd peacefully stood with their hands up in front of the officers. Sgt. Karnowski used pepper spray against them. At no time was Sgt. Karnowski in any danger because he was standing safely with a line of bicycle officers between him and the citizens. All of his actions

were documented on a video camera strapped to his helmet. Sgt. Karnowski’s actions gave tacit approval to other officers to engage in the same behavior. This created a domino effect of the use of force on Ortega and others arrested that evening.

“Almost instantly after being pepper sprayed, individuals in the kettle put their hands in the air as a sign of peaceful surrender. Many laid prostrate on the ground. Others sat down. Those who could not sit down, because of how many people were inside the kettle, got as close to the ground as possible. Video evidence shows none of the individuals inside the kettle acted violently or aggressively, and yet, officers repeatedly doused them with chemical agents without warning.

“Lt. Kiphart attacked a journalist holding a camera with pepper spray from a ‘fogger’ which he also sprayed indiscriminately into the crowd. Moments later, Officer (Matthew) Burle deployed another fogger blast towards the same journalist and those sitting near him, hitting the journalist in the face with pepper spray.

“Sgts. (Randy) Jemerson and (Brian) Rossomanno, and other supervisors, were within arms-length of officers pepper spraying and beating peaceful and compliant citizens. Rather than instructing those officers to stop, they took control of the situation and directed the officers’ actions. Officers used hard, plastic zip ties to arrest all of the individuals. Months later, individuals continued to suffer from pain and numbness in their hands due to the tightness of the zip ties.

“Over 100 people were arrested that night. During and after the arrests, officers were observed high-fiving each other, smoking celebratory cigars, taking selfies on their personal phones with arrestees against the arrestees’ wills, and chanting, ‘Whose Streets? Our Streets!’ An anonymous person posted a celebratory photo of police officers on Twitter that night.

“...The next day, Lt. Col. O’Toole, the SLMPD Acting Chief, reinforced the City’s ratification of the defendants’ actions when he said, ‘I’m proud to say the City of St. Louis and the police owned the night,’ while standing next to St. Louis Mayor Lyda Krewson. Mayor Krewson further validated the defendants’ actions when she thanked the officers ‘for the outstanding job they have been doing over the last three days.’ She added that she fully supported the actions of the officers.”

New York investigation criticizes 2021 kettling

The New York Police Department was not prepared for the widespread protests that occurred in multiple parts of the city after the murder of George Floyd, according to an after-action report by the Department of Investigation.

Partly as a result, the department relied on mass arrests often following kettling tactics — or encirclement tactics as the NYPD prefers to call them.

The report concluded: NYPD’s use of force on protesters—encirclement (commonly called “kettling”), mass arrests, baton and pepper spray use, and other tactics—reflected a failure to calibrate an appropriate balance between valid public safety or officer safety interests and the

rights of protesters to assemble and express their views. The inconsistent application of the curfew similarly generated legitimate public concerns about selective enforcement. NYPD use of force and crowd control tactics often failed to discriminate between lawful, peaceful protesters and unlawful actors, and contributed to the perception that officers were exercising force in some cases beyond what was necessary under the circumstances.”

The report said that rather than concentrate on facilitating First Amendment expression, the department focused on managing crowds and fell back on mass arrests to do it.

The report pointed out that the department relied on its Strategic Response Group team, which is composed of 700 highly trained officers designed as a counterterrorism squad.

The after-action report said that when the SRG was created in 2015, there was “internal discussion within NYPD as to the propriety of using SRG, a unit specially trained for serious disorder and counterterrorism, to respond to First Amendment activity such as protests. Nonetheless, the SRG has since been a primary resource for the NYPD’s response to large-scale protests.”

The New York Civil Liberties Union leaves no doubt about what it thinks about using the SRG on First Amendment protests. It wants to disband the group, saying: The SRG is a notoriously violent rapid response unit. Despite promises from the department that the unit would not be deployed at protests, the SRG has consistently threatened, attacked, and arrested protesters. Time and time again, when SRG arrives on the scene, officers escalate situations and injure New Yorkers who are exercising their First Amendment rights.”

That’s what happened on June 4, 2020 when SRG strictly enforced the 8 p.m. curfew in the Bronx, even though it had not been enforced strictly in other parts of the city. Here is how the report describes what happened.

“Shortly before the 8:00 p.m. curfew took effect, NYPD Strategic Response Group (SRG) bicycle squad officers blocked the path of the protest group at Brook Avenue and East 136th Street. Simultaneously, another group of NYPD personnel approached from behind the protest group to enclose a larger portion of the group on a block with parked cars lining either side. Many protesters at the scene reported that officers blocked their movements leaving no opportunity to exit or disperse voluntarily. At around 8:00 p.m., officers began executing mass arrests for curfew violations, which were accomplished in part by using physical force against protesters, including striking them with batons. Among those arrested were identified legal observers, mainly from the National Lawyers Guild, and identified “medical volunteers.”

The report expressed surprise that top brass in the department had not learned lessons from the protests. “When DOI asked NYPD officials whether, in retrospect, the Department could have done anything else differently and made any further changes to improve its response to the protests, with few exceptions, officials offered none. While some difference in views is to be expected, the wide gap between the apparent views of the Department’s most senior officials and the views of members of the public who participated in the protests is troubling.”

Poorly trained police dragged to front lines of mental health crises

by John G. Carlton

On the evening of April 17, 2015, Charlene McCarroll called 911. Her 23-year-old son Thaddeus was suicidal and acting irrationally. She wanted help getting him treatment.

A dispatcher summoned the St. Louis County Police tactical operations team to McCarroll's home. It arrived in an MRAP, a mine-proof vehicle built for American soldiers fighting in Iraq and Afghanistan. Three and a half hours later, Thaddeus McCarroll lay dead on his side yard, shot 15 times by two members of the SWAT team.

Officers said he was moving toward them with a knife when they fired. Neither of the officers faced repercussions for the shooting. "I've looked at this thing a bunch of different ways," then-county Police Chief Jon Belmar told a reporter two years after McCarroll's death. "I don't know what else we could have done."

People with mental illness are more likely to be the victim of a crime than the perpetrator. But the risk of victimization becomes much greater when they encounter the police.

People with untreated mental illness are 16 times more likely to be killed by police than members of the general public, according to the nonprofit Treatment Advocacy Center in Virginia.

Those with mental illness make up "a minimum of" 25 percent of all deaths at the hands of police, the organization estimates. Roughly 10 percent of all police calls for service involve someone with a mental illness. One-in-five jail or prison inmates have a mental health diagnosis; jails and prisons have for decades been the largest providers of mental health care in the country.

How did we get to a place where police officers and courts — largely untrained about mental illness — have been dragged onto the front lines of America's mental health crisis?

More mentally ill on the streets

Beginning in the 1960s, states started "deinstitutionalizing" people with mental illness. The idea was to use a new generation of antipsychotic drugs to deliver care in the "least restrictive setting." As patients were discharged, the number of hospital beds for psychiatric patients declined by about 90 percent from the 1950s to 2019, the Treatment Advocacy Center estimates.

The promise of deinstitutionalization rested on creation of community mental health services. That didn't happen; outpatient mental health care remains difficult to obtain in many states and communities, even for people who want it and have good insurance.

For people lost in untreated mental illness, it is even harder to find. What happened after deinstitutionalization was a surge of homelessness and the now familiar sight of people — many with mental illness — panhandling



Photo by J.B. Forbes

A convoy of St. Louis County tactical vehicles in Ferguson on Wednesday, Aug. 13, 2014. A similar vehicle was used by police responding to Thaddeus McCarroll.

"I've looked at this thing a bunch of different ways. I don't know what else we could have done."

— then-County Police Chief Jon Belmar

and sleeping on the streets of American cities.

Policing was already a difficult job. Adding homeless people with mental illness to the drugs and weapons already circulating on the street made a bad situation worse.

Police are poorly trained to deal with people in mental health crisis, and they lack the resources needed to do the job. What's more, the kind of approaches that work well with violent offenders don't work on people with mental illness. But with inadequate community mental healthcare, police are often the only resource available to troubled family members and friends of those with mental illness when their loved one is in crisis.

Given the difficulty of the job, it's understandable that many are reluctant to criticize an officer forced into an unwinnable situation. But accountability is crucial, especially when an officer uses deadly force. And especially when they continue to find themselves in similar situations that end with the death of a person with mental illness. Clearly, significant barriers to improve accountability remain across the country.

Start with the barriers to accountability

described elsewhere in this report, such as qualified immunity for police officers. Add in the culture in many police departments, which have been quick to arm themselves with surplus military equipment like the MRAP that responded to Thaddeus McCarroll's house on that April evening. Soldiers occupying a foreign country need mine-resistant, ambush protected armored vehicles. Local police trying to get a mentally ill, 23-year-old Black man into treatment don't need military hardware.

"They didn't have to call SWAT," a friend of McCarroll's who witnessed his death said later. "To bring the SWAT team for someone who doesn't even have a gun? They didn't have to light him up."

There's an old saying that runs equally true for weekend homeowner projects and local policy makers: "When you're holding a hammer, everything looks like a nail." Police are a hammer for local leaders; they're available 24/7 to answer any call.

But police aren't trained or equipped



Photo By David Carson

Thaddeus McCarroll (center) takes part in a protest on West Florissant Avenue in Ferguson on Sunday, Aug. 17, 2014. McCarroll was fatally shot during a standoff with police on Friday, April 17, 2015. Police say they tried to subdue McCarroll with a rubber bullet, but opened fire after he rushed at them with a knife.

to handle mental health emergencies. The amount of training a typical officer receives in handling mental health situations is a fraction of the training on weapons.

A new approach

Some communities have begun a new approach. Beginning next month, police in Oklahoma City, OK, will answer mental health crisis calls with a team of mental health workers. In Albuquerque, NM, police aren't even dispatched to calls involving people with mental illness. Instead, two-person teams of behavioral specialists and counselors are dispatched alone.

In case you're wondering, both Oklahoma City and Albuquerque have been involved in high-profile shootings of mentally ill subjects, which helped inspire the changes.

Despite former St. Louis County Police Chief Belmar's comments, there were a lot of other things his officers could have done in the McCarroll case. In fact, there was a program in the St. Louis County Police Department specifically designed to avoid officer-involved shootings of people with mental illness.

It's called the "Crisis Intervention Team," or CRT. It was developed in Memphis, TN after an incident that eerily mirrors Thaddeus McCarroll's killing. In the Memphis case, a suicidal man with a knife told police he wanted to say goodbye to his mother. As he walked across a plaza toward his mother, officers repeatedly shot him. He died while his mother looked on helplessly.

Officers selected for CIT receive extensive training in de-escalating potentially violent situations. They have classroom time to learn about the types of mental illness and how they manifest themselves. And they get to know the institutions and practitioners whose mission is to help the mentally ill, and family members and friends of people with mental illness.

The CIT program was a huge success in Memphis when it debuted. It went on to be

widely adopted throughout the country, including by St. Louis County. But in practice, it hasn't worked as well in many communities as it did in Memphis during the 1990s.

You can see a major reason in the McCarroll case. Because although the St. Louis County Police Department had a CIT program that handles 40 to 50 calls a week, it didn't have a CIT officer working the night Charlene McCarroll called 911.

When no CIT officers are available, others on duty have to pick up the slack. In this case, those officers worked for the tactical team. They attempted to use a non-lethal "rubber bullet" on McCarroll. Three seconds later, they unleashed the fatal 15-shot barrage that killed him.

A few hours of training

Nationally, police departments spend thousands of hours and millions of dollars every year training for situations that rarely occur. Exhibit A for that criticism is police SWAT teams, which have grown and thrived nationally despite the limited number of situations they are equipped to resolve.

But training on mental illness is generally limited to a few hours of instruction at the police academy. The result is that new officers are often unprepared to deal with calls for service involving people with mental illness.

Departments are currently rethinking their use of force policies after the deaths of George Floyd in 2020. The "National Consensus Policy on Use of Force," developed by the International Association of Chiefs of Police and 10 other policing groups, says that deadly force should "not be used against persons whose actions are a threat only to themselves and property," those who are, for example, threatening suicide. The policy calls for officers to use de-escalation techniques "whenever possible."

The Police Executive Research Forum (PERF), a policing think tank based in Washington, D.C.,

has issued a report called "Guiding Principles on Use of Force." Like the National Consensus Statement, it calls on officers to refrain from using deadly force against individuals with mental illness or developmental disabilities.

The PERF report acknowledges "two types of police encounters" — one involving criminal subjects and the second involving people with mental illness, substance abuse or developmental disabilities. In the second category, the report says, officers should keep a safe distance from the subject, use de-escalation techniques and above all keep talking with and listening to the subject.

Legal standards ill-suited for mental health calls

Traditional police use-of-force training involves what are known as "Graham factors," named after a court case in which they were outlined. They include the severity of the alleged crime; whether the subject remains a threat to the officer or others; and whether the subject is attempting to flee or evade police. These are not well suited to situations where an officer is taking someone who hasn't been charged with a crime into custody for a mental health evaluation or treatment.

Improved training and the availability of trained officers should reduce the number of people with mental illness who are killed each year by police. But there is another big reason why CIT alone won't solve the problem and it has nothing to do with policing. It is health insurance.

During the 1990s, Tennessee had a unique Medicaid program. People who didn't have Medicare or private insurance were automatically enrolled in a program called TennCare. Because of that, hospitals knew they would be paid for treating any patient brought in by CIT officers. They were able to have sufficient staff and patient rooms to stabilize people with mental illness when they were in crisis.

That meant CIT officers would spend little or no time at the hospital when they dropped off someone needing care, and could return quicker to their patrol duties. In other jurisdictions, they could spend half a day or more filing reports and providing information before they could drop off the patient and get back to work. That was true even for patients who theoretically qualified for programs like Medicare because of their disability.

Hospitals are left on the hook for many of the people brought in by police in mental health crisis. Because of that, they lack the certainty to add mental health treatment beds or hire additional psychiatric staff. As a result, there aren't enough hospital beds or psychiatric staff to handle the numbers of people in crisis today in many American cities.

While all this plays out, thousands of people like Charlene McCarroll are left alone to face the wreckage caused by flawed policies and inadequate training. Raising a son with mental illness is difficult; burying him was even harder.

"I feel guilty because I just wanted to get him help," she told reporters shortly after Thaddeus' death. "They didn't need to kill him."

Police misconduct biggest single cause of 2,900 wrongful convictions

by Elizabeth Tharakan

Police misconduct is a leading cause of wrongful convictions in the United States. Just over 2,900 people have been exonerated in the U.S. since 1989 according to data from the National Registry of Exonerations. That amounts to 25,900 lost years for those stuck behind bars.

Over 37% of those cases involve police misconduct, and over half of all exonerations involve misconduct by prosecutors or police.

That means police and prosecutor misconduct is responsible for over a thousand documented wrongful convictions unearthed in the United States since 1989.

The police misconduct includes shoddy police work, coerced confessions, use of unreliable jailhouse informants, misleading lineups and photo arrays and a failure to turn over exculpatory evidence as required by law.

People of color represent over 64% of those wrongfully convicted nationally, and disproportionately experience police misconduct. 72% of all instances of police misconduct that lead to wrongful conviction in the U.S. imprison people of color, mostly Blacks.

"There's a problem with some police all over the country," said Ken Otterbourg, researcher at the National Registry of Exonerations. "The two most common types of police misconduct are probably misconduct during interrogations and also failing to disclose exculpatory evidence." He based that assessment on the Government Misconduct and Convicting the Innocent report on the National Registry of Exonerations website.

Police and prosecutor misconduct high in Midwest

Police misconduct accounts for an even higher percentage of wrongful convictions in the Midwest than the rest of the country.

In Illinois 75% of all wrongful convictions since 1989 involved police misconduct. In Missouri, Kansas, and Nebraska, the statewide rate of police misconduct among wrongful convictions is also high — Missouri (49%), Kansas (57.1%), Nebraska (66.7%).

The Exoneration Project, based in Chicago, and the Midwest Innocence Project, based in Kansas City, Missouri, lead the efforts in those states to exonerate those wrongfully convicted.

In Missouri there were 15 total exonerations for murder where the cause of the wrongful conviction was official misconduct, according to the National Registry. That was half of the 31 murder exonerations. All told, there have been 51 exonerations on all charges in Missouri.

Two wrongful convictions in Missouri have grabbed headlines in recent months — Kevin Strickland from Kansas City and Lamar Johnson from St. Louis. Strickland finally was released just before Thanksgiving after 43 years in prison, the longest period of wrongful imprisonment in Missouri history.

Lamar Johnson is not so lucky; he's still incarcerated.



Photo courtesy of Midwest Innocence Project

Lamar Johnson is still in prison for a St. Louis murder he says he didn't commit. St. Louis' prosecutor, Circuit Attorney Kim Gardner, says he is innocent but Missouri Attorney General Eric Schmitt has blocked his release. A police detective and prosecutor are accused of misconduct by Gardner.

Attorney General Eric Schmitt has tried to keep both men in prison even though the prosecutors' offices that had convicted them had reviewed the evidence and concluded they were not guilty.

Kevin Strickland: police manipulate eyewitness

Strickland, wrongfully convicted in 1979, was released on November 23, 2021. From the beginning no physical evidence linked Strickland to the crime scene of a triple murder. Moreover a convicted gunman said Strickland was innocent and the only eyewitness recanted her identification.

Strickland, who is Black, was initially tried by a jury that included 11 whites and 1 Black. All 11 white jurors voted to convict, but the Black juror refused. The prosecutor reportedly told Strickland's attorney he had been "careless" allowing a Black on the jury and wouldn't make that "mistake" again. He didn't. The prosecutor used peremptory challenges to strike the last four Blacks from the jury pool in the second trial. The all-white jury took one hour to return a guilty verdict.

The conviction resulted from a mistaken eyewitness identification by the key witness, Cynthia Douglas, who was shot and left for dead at the murder scene.

The night of the murder, Douglas said she could only identify two men, both of whom were convicted of the murders. Strickland wasn't one of them.

Douglas picked out Strickland from a lineup the next day. Douglas later recanted her testimony, explaining that police manipulated her into selecting Strickland from a lineup.

Douglas's friends and family said at a recent hearing that not long after Strickland was convicted, Douglas realized she had the wrong guy. For years she tried to get people to listen without success.

In 2009, she wrote an email to the Midwest Innocence Project saying, "I am seeking info on how to help someone that was wrongfully accused, this incident happened back in 1978. I was the only eyewitness and things were not clear back then, but now I know more and would like to help this person if I can."

Douglas died in 2015, but eventually Jackson County's progressive prosecutor, Jean Peters Baker became convinced of Strickland's innocence.

At a court hearing this fall, Douglas' mother, Senoria Douglas, recalled her daughter saying, "Mother, I picked the wrong guy!"

Attorney General Schmitt's office claimed in court that Douglas' email might not have been authentic and that Strickland had spent 40 years "dodging" accountability for the murders. Strickland countered that he was not going to take accountability for murders he had not committed, even though the men who had pled guilty already had been released from prison.

On November 23, presiding Judge James Welsh ruled that Douglas's recantation was credible and the conviction could not stand. Strickland was released under a new law that made it possible for prosecutors to seek the release of prisoners their office had wrongfully convicted.

Still, Strickland won't receive any money from the state since Missouri only compensates those exonerated by DNA evidence.

"Kevin's case is just one example of how much the system values finality over fairness, and how, even when we change the system, the system fights back," tweeted Tricia Rojo Bushnell, executive director of the Midwest Innocence Project. "But as hard as the fight is, it is worth it."

Lamar Johnson: police and prosecutor paid \$4,000 to eyewitness

St. Louis Circuit Attorney Kim Gardner has tried since 2019 to get Lamar Johnson a new trial after 26 years behind bars for the murder of Marcus Boyd. Two gunmen wearing "Ninja" ski masks that showed only their eyes shot Boyd dead on his front porch in 1994. The shooters had accused Boyd of keeping more than his share of profits from drug deals. Greg Elking was the one witness to the shooting.

Here is the police and prosecutor misconduct detailed in Gardner's filings and briefs filed by the Midwest Innocence Project:



Photo courtesy of Midwest Innocence Project

Kevin Strickland left prison last month after 43 years, the longest wrongful imprisonment in Missouri history. Police manipulated a lineup and influenced a witness to identify Strickland. The witness recanted and a gunman convicted of the murder said Strickland was not involved.

- Elking at first said he could not identify either of the killers because of the masks. Later, the lead detective on the case, Joseph Nickerson, told Elkin that police knew Johnson was the killer and that the state could help Elking with moving expenses if he cooperated with the prosecution. Elking initially failed to identify Johnson in a series of lineups. Elking later said the failed lineup put Det. Nickerson in a "foul" mood and Elking felt like he had "let everyone down." Elking and Nickerson got into an elevator and Elking asked Nickerson to tell him the lineup position numbers of the men that Nickerson believed killed Boyd. Nickerson then told Elking the men were in position #3 and position #4. That implicated Johnson.
- Det. Nickerson and Assistant Circuit Attorney Dwight Warren arranged to pay more than \$4,000 to Elking but failed to disclose the payments to the defense. In a letter to the Rev. Larry Rice several years after the conviction, Elking wrote, "The detectives and me had a meeting with the Prosecutor Dwight Warren and convinced me, that they

could help me financially and move me & my family out of our apartment & relocated use (sic) in the County out of harms (sic) way. They also convinced me who they said they knew murdered Marcus Boyd."

- Nickerson authored four different false police reports based on the statements of four different witnesses. Years later, all four witnesses reviewed the reports and swore under oath that they never said what Nickerson had attributed to them.
- The two actual killers have filed affidavits saying Johnson was not involved in the murder.
- A jailhouse informant, William Mock, was essential to the conviction, but he lied in court about his criminal record, his motivations and whether he had ever before testified as a jailhouse informant. Prosecutors knew he was lying.

Mock testified that he had heard Johnson incriminate himself in a nearby cell in City Jail after he was arrested by police. But Mock left out important parts of his 60-page arrest record, left out the help he expected from prosecutor

Warren, and failed to disclose he had given testimony as a jailhouse informant in a Kansas City murder case only two years earlier.

Mock had written to prosecutor Warren in June 1994, "I don't believe that anyone in the legal system will disagree with the value of my testimony in this trial as opposed to the conviction that I am now serving. I am willing to testify as long as I don't have to return to the Department of Corrections once I testify. I can't live in protective custody or any institution after I testify. I am serving a five year sentence for CCW, which I have been serving since 1993. I feel my testimony is worth a pardon by Mr. Carnahan or a reduction in my sentence...I will uphold my end of the situation as I am certain you will fulfill your obligations to me."

Despite evidence of innocence, Johnson remains behind bars. The Missouri Supreme Court ruled that state law did not permit a prosecutor to move for a new trial for a person their office had convicted. The Missouri Legislature has since passed a law permitting the prosecutor to take those steps — the law that helped Strickland get out of prison — but the law has not been applied to Johnson.

"There is no doubt that Lamar Johnson is innocent," Midwest's Bushnell tweeted. "And no one is arguing he is not. But still, he languishes."

Black clergy and St. Louis' Black police union called last summer for Nickerson to be fired from his current police job in St. Louis County because of his role in the Johnson case.

Nickerson calls Gardner's allegation about him "baloney" and says he still thinks Johnson is guilty. Prosecutor Warren also maintains Johnson is guilty and says the \$4,000 in payments to the eyewitness were for witness protection.

In Chicago exonerations come in the dozens

In Chicago, unjust convictions are not just isolated cases but are uncovered in the dozens from the work of corrupt police squads. Sgt. Ronald Watts' tactical unit at Ida B. Wells apartment has reached 115 exonerations and counting. CPD Detective Reynaldo Guevara framed about 50 mostly young Latino men on the city's northwest side. And Burge's homicide squad tortured hundreds of mostly Black suspects from the 1970s-90s before he was stopped.

Illinois has had 363 total exonerations since 1989, with 271 of them having grown out of police misconduct. 177 of the exonerations were murder cases and 133 of those grew out of police misconduct.

Illinois courts have recently thrown out 115 unjust convictions based on the fabricated police work of a tactical team headed by disgraced Sgt. Ronald Watts. It is one of the biggest police scandals in Chicago history.

Mayor Lori Lightfoot has called Watts "the Burge of our time," a reference to Chicago Commander Jon Burge whose homicide squad physically tortured Black men into making false confessions.

The Exoneration Project calls the Watts scandal "nothing short of a decade-long criminal conspiracy of extorting drug dealers, stealing narcotics, planting evidence, and falsifying charges."

Continued on next page

“ Sadly, dozens more innocent Guevara victims remain incarcerated for crimes they didn’t commit. We will not rest until every single one of them is exonerated.”

— Russell Ainsworth

Watts and his crew terrorized the Ida B. Wells housing project for the decade leading up to 2012, but the ramifications of that streak of police misconduct are still playing out in Chicago courtrooms. Another 83 cases will go before a judge for possible exoneration in January, 2022.

Ben Baker spent 9.5 years in prison on drug charges for a crime he did not commit. While exculpatory FBI documents were available during Baker’s trial, they were hidden from his lawyers, causing him to be wrongfully convicted in 2006. He was exonerated in 2016.

Joshua Tepfer, Baker’s attorney at the Exoneration Project, tweeted, “There is no one more corrupt in Chicago history than Ronald Watts.” “Ben is just one of...I don’t think it would be exaggeration to say hundreds of people that are victims of this corrupt crew.”

“It was Watts law, not Illinois law,” Baker said of Watts’ crew in an interview with the Exoneration Project. “Either you pay, or you went away. That was the rule.”

In 2012, Watts and another officer were indicted by federal authorities for taking a bribe from an informant and later pleaded guilty. Documents have since revealed that Watts and members of his team were running a “protection racket” for more than a decade, planting evidence and fabricating charges against Black Southside housing project residents while facilitating their own drug and gun trade.

The Illinois Appellate Court said Watts and his team were “corrupt police officers,” perjurers, and “criminals.” It criticized the city’s police disciplinary bodies for failing to do anything “to slow down the criminal” police officers during a decade of corruption.

Now, three years after the mass exonerations started, the City’s latest police oversight board—the Civilian Office of Police Accountability (COPA)—has failed to act and has retained a dozen officers tied to the dismissed case as active members of the police force.

Tepfer said that in Baker’s case, “The judge accepted the testimony of four sworn police officers over a black man.” To this day, all three officers who backed up Watts in Baker’s trial remain on the force.

50 more people framed

CPD Detective Reynaldo Guevara is accused of framing 50 innocent people for murder, mostly young Latino men from the city’s Northwest Side. Twenty have already been exonerated and the investigation of 30 other cases continues. Guevara pressured eyewitnesses to crimes to make false identifications and beat false confessions from suspects, investigations have shown.

Jose Montanez is one of Guevara’s victims. He spent 23 years incarcerated for a crime he did not commit. He and his co-

defendant Armando Serrano were wrongfully convicted for murder and each sentenced to 55 years in prison.

Neither man confessed, and there is no physical evidence tying them to the crime. The sole piece of evidence against the two was the false testimony from a jailhouse informant coerced by Guevara.

The jailhouse informant later recanted, stating “My false testimony was given as a result of threats, intimidation, and physical abuse by Detective Reynaldo Guevara.” Moreover, prior to their exoneration, a 2015 report on a review conducted by the Cook County State’s Attorney’s Office found that Montanez and Serrano were “more likely than not actually innocent.”

“This was no mistake; Detective Guevara framed these innocent men,” Russell Ainsworth, Montanez’ attorney at the Exoneration Project, said in a statement. “Sadly, dozens more innocent Guevara victims remain incarcerated for crimes they didn’t commit. We will not rest until every single one of them is exonerated,” Ainsworth said.

Last year the Cook County State’s Attorney’s Office announced it was conducting a “comprehensive review” of all convictions connected to Guevara.

Burge’s midnight crew

John Burge, the former Commander of the “Midnight Crew” tortured over a hundred Blacks in the 1970s and 1980s, forcing many to give false confessions through beatings, electrical shocks, and more.

The Crew was known to point guns in the mouths of victims, smother them with plastic typewriter covers, and burn them with cigarette lighters. 118 Black victims have been documented, with many more still unidentified. Only in 1993, ten years after his crew’s rampant misconduct was first brought to light, was Burge fired from the CPD. Federal prosecutors later sent him to prison.

James Kluppelberg spent 24 years in prison for an alleged arson and 6-person homicide on the South Side of Chicago that he did not commit. He was tortured in 1984 by detectives working under Burge.

According to the Chicago Police Torture Archive, a self-described human rights documentation of Burge’s violence against over one hundred Black people from the 1970s - 1990s, Kluppelberg was tortured into giving a false confession and beaten to the point that his kidney was lacerated and he urinated blood.

“They laid me face down on the floor and they started punching me in my back and using the heel of their feet in the back kidney area,” Kluppelberg said. “They knew what they were doing. And they did it anyway for their own personal gain,” Kluppelberg said of the officers

who tortured him in a video produced by the Invisible Institute. “They used my case to build their careers,” he said.

While Kluppelberg was convicted of arson and murder, CPD ultimately concluded that the fire was an accident. Still, Kluppelberg spent 24 years behind bars.

Biggest problem in the criminal justice system

Bushnell, director at the Midwest Innocence Project, the organization that represents wrongfully convicted prisoners in Missouri, said in an interview that she sees police misconduct as the biggest problem in the criminal legal system, referring to it as a kind of “open secret.”

Sean O’Brien, who has represented many men who have been wrongfully convicted in Missouri, said in an interview that one cause of unjust convictions in Missouri is that the “rural public defender system has been exceedingly weak in terms of quality of representation.” Missouri has an underfunded legal representation system: it ranks 49th in the country, according to National Legal Aid and Defender Association statistics.

O’Brien also said more independence is needed to look into prison homicides and prison violence to avoid corruption: “Prison guards are not well-trained or well-compensated. They are vulnerable to corruption so investigations need to be done by outside agencies and individual officers from outside agencies should be screened for independence from connections to the corrections complex.”

The 15 exonerations in murder cases that flow from police misconduct include coerced confessions, unreliable use of lineups and photo arrays, failure to disclose exculpatory evidence, reliance on self-interested confidential sources and failure to follow up on alibi evidence.

Here is a link to the 15 exoneration cases:

<https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=Crime&FilterValue1=8%5FMurder&FilterField2=ST&FilterValue2=MO&FilterField3=OM%5Fx00-20%5FTags&FilterValue3=OF>

Here is the comparable list for Illinois where 133 murder exonerations are linked to police misconduct.

<https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=IL&FilterField2=OM%5Fx0020%5FTags&FilterValue2=OF&FilterField3=Crime&FilterValue3=8%5FMurder>



Photo by Isabel Miller

A protester reacts after the Louisville Police Department fired flashbangs into the crowd of protesters Saturday, September 25, 2020. Chief Robert Schroeder said during a press conference the police used flashbangs to get the crowd's attention to provide direction on how to disperse.

32 states, including D.C. close most police misconduct records

by Kallie Cox and William H. Freivogel

Nineteen states have open or mostly open police misconduct records. Thirty-two states, including the District of Columbia, have closed or restrictive laws that keep most police misconduct secret. This nationwide roundup is based on an analysis of statutes and court opinions as well as interviews with experts. To stay up to date with the rapidly changing laws, visit the bill tracking database of the National Conference of State Legislatures.

ALABAMA: RESTRICTED

Police disciplinary records are available to the public, but agencies can require that requesters state the reason for their request.

A 1995 opinion by then Alabama Attorney General Jeff Sessions opened the door to agencies withholding documents, said Sam Stecklow, a journalist with the Invisible Institute,

a nonprofit journalistic group focused on public accountability.

Under the opinion, agencies can deny requests because the release of the records "could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public." Stecklow also points out that the law does not address release of misconduct records where there is no punishment.

Alabama enacted a law this spring to create a statewide database of police misconduct to help police departments avoid hiring officers with problems. But the law closes the database to the public. The legislature also failed to fund creation or maintenance of the database.

A recent Alabama Supreme Court decision closed access to investigatory files of police

criminal investigations, and it also could have an impact on internal investigations of officers.

ALASKA: MOSTLY CLOSED

Police misconduct records in Alaska are generally not available because state employees' personnel and disciplinary records are exempted from the Alaska Public Records Act (A.S. 39.25.080). There is also no database that tracks shootings or use of force in the state.

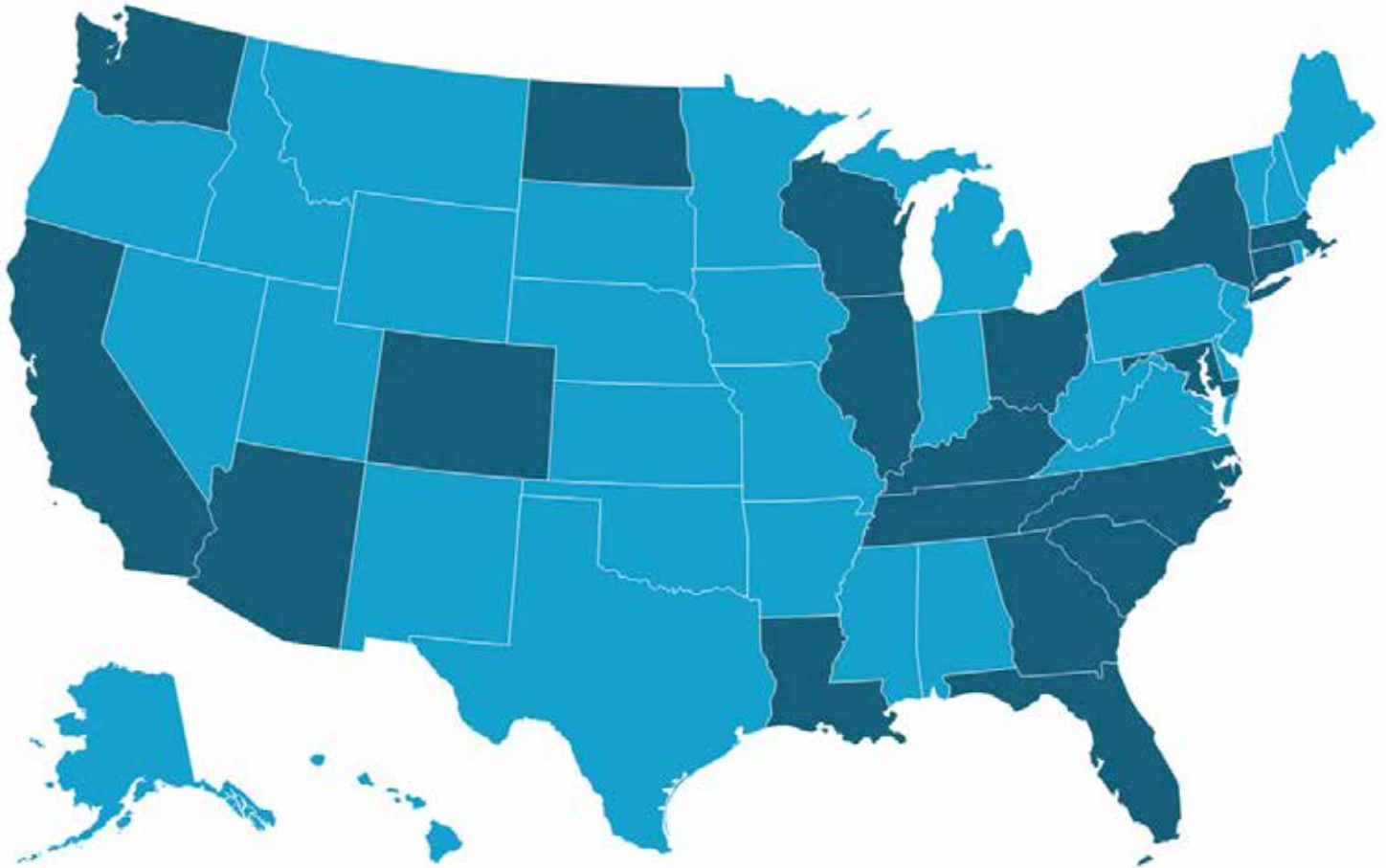
The Alaska Supreme Court ruled last year that disciplinary records for Alaska State Troopers are confidential. Alaska has come under fire from local media organizations and the Reporter's Committee for Freedom of the Press for this exception.

When a police department fires or disciplines an officer for serious misconduct, it must report the discipline to the Alaska Police Standards

Police misconduct record availability

19 states have open or mostly open records for police misconduct

■ closed/restricted ■ open/mostly open



Map: Isabel Miller

Council. If the disciplined officer does not contest the action, the information is confidential. If the officer contests the action, there is a public hearing process.

Dozens of police officers with criminal records have worked in Alaska's cities, despite a state law that should have disqualified them, an investigation by the Anchorage Daily News and ProPublica found. One of these officers was Nimeron Mike, a registered sex offender who spent six years in prison and was convicted of assault, domestic violence and other crimes.

ARIZONA: MOSTLY OPEN

Police misconduct records are generally available to the public as long as any investigation concerning the misbehavior has been completed, according to Arizona Statute 39-128. Local Arizona TV station ABC15 compiled "Brady lists" from all the counties: lists of officers not considered honest enough to testify in court. The lists totaled 1,400 officers. The station found that prosecutors often failed to disclose that an officer was on the list.

The Arizona House passed a bill this year,

supported by the Phoenix Law Enforcement Association, that would have closed the list. It hasn't passed the Senate.

Another investigation conducted by the Arizona Republic discovered that Phoenix police frequently purge officers' records to keep police misconduct a secret.

Arizona also provides an "integrity bulletin" to the National Decertification Index on the International Association of Directors of Law Enforcement Standards and Training's website but it doesn't disclose the names of officers disciplined in the bulletin. Arizona is one of 11 states that provide this public bulletin.

ARKANSAS: RESTRICTED

Police misconduct records are not available to the public unless one can prove a compelling public interest, and they deal with an officer's official suspension or termination. Personnel records are not eligible to be requested to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy, according to Arkansas Code § 25-19-105. Only records relating to proven

misconduct are released.

CALIFORNIA: MOSTLY OPEN

In 2018 the state's legislature passed SB 1421, The Right To Know Act, which grants access to certain instances of excessive use of force, any incident where an officer fires a gun at a person and records relating to sexual misconduct. Before this, most law enforcement misconduct records were closed and typically could not be obtained by the public or the court system for criminal proceedings.

The legislature expanded on the 2018 law by passing SB 16 in the fall of 2021, opening records of sustained findings of use of excessive force, failure to intervene when other officers use excessive force, engaging in racist or biased behavior and conducting illegal searches or stops.

Instances where the public can access police misconduct records under 1421 include:

- An incident regarding the discharge of a firearm.
- An incident in which use of force by an officer resulted in death or serious injury.

- An incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- An incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation or prosecution of a crime; or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying or concealing of evidence.

COLORADO: MOSTLY OPEN

A law passed in Colorado in 2019 — HB 19-1119 — opens some police misconduct records that hadn't previously been opened, but the narrow wording restricts its effectiveness.

Stecklow points out the new law initially was limited because "it is not retroactive and has language that currently requires requesters to know of specific instances of misconduct, rather than allowing requests for records in general."

The law opened records "related to a specific, identifiable incident of alleged misconduct involving a member of the public" while the officer is on duty. Denver and Aurora have made misconduct files available but many other departments have not, claiming requests are too vague, says Jeffrey A. Roberts, executive director of the Colorado Freedom of Information Coalition.

But a Colorado Supreme Court ruling in June, 2021, gave the law a broader interpretation, holding that people seeking information did not have to identify a particular incident.

Colorado also is developing procedures to make public the names of police officers on so-called "Brady" lists because of past failures to disclose exculpatory evidence to defendants. But the attorney general has refused to disclose decertification data on problem officers.

Additional police conduct information will be made public under Senate Bill 20-2017, the state's criminal justice reform bill, which goes into full effect in 2023.

Agencies will be required to release unedited audio and video footage from body and dash cameras of any incident where misconduct is alleged.

"Other transparency provisions in the bill include the public reporting, in an online searchable database, of extensive information on use of force by law enforcement officers that results in death or serious injuries, and the reporting of interactions between officers and the public," according to the Colorado Freedom of Information Coalition.

CONNECTICUT: MOSTLY OPEN

Police misconduct records in Connecticut are generally public because of the precedent set by the state Supreme Court in 1993 in *Perkins v. Freedom of Information Commission*, which stated records could be withheld only if they did not pertain to matters of public concern.

However a new contract with state troopers limits the access to misconduct records by only making them accessible if a complaint is sustained. Most complaints are not sustained.

According to a study compiled by the ACLU of Connecticut, many departments make it difficult to file a misconduct complaint against an officer. Forty-two percent of the departments in the state surveyed by the ACLU suggested they are not complying with state law requiring public access to complaint policies.

Connecticut is one of 11 states that provide an integrity bulletin to the National Decertification Index, which makes the names of these officers public.

However, this integrity bulletin doesn't provide 100% transparency and an investigation by the ACLU of Connecticut found that none of the prosecutors had "Brady lists" of dishonest cops.

WASHINGTON, D.C.: CLOSED

Police misconduct records are mostly closed in Washington, but activists, including the DC Open Government Coalition, are pushing for reform.

The Washington City Paper reports that the district government regularly invokes the "personal privacy" exemptions in Section 2-534(a)(2) of the D.C. Freedom of Information Act. Strong police unions advocate keeping the records private.

DELAWARE: CLOSED

Police misconduct records are closed and exempt from public disclosure in Delaware by both the Delaware Freedom of Information Act and under Section 12 of the state's Law Enforcement Officers' Bill of Rights. A bill that would open more records is pending in the legislature.

According to the Reporters Committee for Freedom of the Press, law enforcement organizations in Delaware are sometimes willing to provide general statistics but are usually unwilling to provide specific records in response to information requests.

"Fifteen states have versions of a Law Enforcement Officers' Bill of Rights (LEOBOR) statute, but only Delaware's statute makes internal police investigation records completely confidential forever," said the ACLU of Delaware.

FLORIDA: MOSTLY OPEN

Law enforcement misconduct records in Florida are generally available under the state's Freedom of Information Act/Sunshine laws (Florida Statute 119) if the investigation is closed. All active investigations are exempt from public information requests until they are closed or completed.

Misconduct records in Florida are sent to a database that is maintained by the state's Criminal Justice Standards and Training Commission and this is open for public inspection.

Florida is one of 11 states that provides an integrity bulletin to the National Decertification Index. It bulletin lists offending officers' names are public.

A law passed by voters in 2018 could remove the names of some police officers from reports on police shootings. "Marsy's law" allows victims

of crimes and threats to have their names removed from police reports. Two police officers who shot and killed suspects have won court orders to remove their names from public reports because their dead suspects had threatened them before the officers killed them.

GEORGIA: MOSTLY OPEN

Under the Georgia Open Records Act, law enforcement misconduct records are available to the public unless the investigation into the misconduct is active and ongoing.

HAWAII: RESTRICTED

After years of closing records on police misconduct, a new law amending Hawaii's public record laws passed the state legislature in July 2020. But it allows disciplinary records older than 30 months to be destroyed and denies the release of some misconduct complaints when there is lesser or no discipline.

The new law requires county police departments to disclose to the Legislature the identity of an officer who is suspended or discharged and requires law enforcement departments to provide a yearly update regarding misconduct. It also allows public access to information about suspended officers.

A September, 2021 decision of the Hawaii Supreme Court required the release of an arbitration decision that a Honolulu police sergeant had tried to keep from the public. Restaurant video had captured Sgt. Darren Cachola in a physical altercation with a woman. Sergeant Cachola was fired, but reinstated with back pay after taking the case to arbitration. The Civil Beat newspaper filed a request for the arbitration decision. The high court ruled the arbitration record had to be made public because the public interest outweighed the officer's privacy interests.

The most detailed versions of the disciplinary records of the Honolulu Police Department are destroyed after 30 months, says R. Brian Black, executive director for the Civil Beat Law Center for Public Interest. "The department does get rid of its more detailed disciplinary documents after 30 months, but it retains a notecard in the file with a summary sentence about the discipline and the nature of the misconduct."

For lesser punishments — those below firing and suspension — the 2020 law balances privacy against the public interest. Privacy considerations often prevail and close records.

IDAHO: MOSTLY CLOSED

Law enforcement misconduct records are closed under Idaho's Freedom of Information Act, according to Section 74-106 of the Idaho Public Records Act. Idaho police departments also routinely ignore a 1996 court decision that made "administrative reviews" of police shootings public.

ILLINOIS: MOSTLY OPEN

Most law enforcement misconduct records in Illinois are available because of the precedent set in 2014 with *Kalven v. City of Chicago*.

Continued on next page



In this Aug. 9, 2020, photo, Portland, Oregon, police officers in riot gear advance on a group of protesters after a demonstration was declared an “unlawful assembly” and officers statewide, most complaints of misconduct remain closed.

Law enforcement agencies in Illinois must provide a “misconduct registry” detailing general information about what an officer was cited for.

In June 2020, in *City of Chicago v. Fraternal Order of Police Chicago Lodge No. 7*, the Illinois Supreme Court ruled that misconduct records must be preserved and cannot be destroyed every five years, as the Chicago Fraternal Order of Police advocated.

There is a Professional Conduct Database maintained by the state board responsible for certifying and decertifying officers. Local police departments must report to the database when an officer resigns, is fired or is suspended for violating department policy. However, a police reform law passed this year closes the database, including supporting documents. To get statewide records, a person would have to contact each of the hundreds of police departments.

INDIANA: RESTRICTED

The Indiana Legislature passed a bipartisan police reform law this spring, signed by Gov. Eric Holcomb, that provides publication of the names of decertified officers on the website of the Indiana Law Enforcement Academy. But Stecklow says the law allows police agencies to close cases where there was no discipline.

Stecklow says “there is a lot of inconsistency. Some agencies claim an ‘investigative records’ provision in the records law allows them to withhold misconduct records, but there have been rulings that the investigative records exception only applies to criminal records. Still other agencies deny the records saying they are ‘deliberative records.’”

The Indiana Law Enforcement Training

Board has revoked 45 licenses since 2007, with only five in the past two years.

Indiana is one of 11 states, providing an integrity bulletin to the National Decertification Index. Those bulletins disclose the names of the officers disciplined.

IOWA: MOSTLY CLOSED

Law enforcement records in Iowa are closed except where officers were fired, according to Iowa Code § 22-7-11.

However, even when records should be public under Iowa’s law, law enforcement agencies can find ways to deny them. Newspapers have taken cases to the Iowa Supreme Court because agencies have refused to turn over names and records relevant to the public.



Photo by Maranie Rae Staab via AP

." Despite passage of a 2020 Oregon law tracking

KANSAS: MOSTLY CLOSED

Law enforcement misconduct records are closed under the Kansas Open Records Act (Kansas Statute 45-221). Kansas Senate Bill 270 would make certain law enforcement disciplinary/misconduct records available to the public and prevent the hiring of officers with a history of serious misconduct allegations. It is still in the state's Senate Judiciary Committee.

Kansas is one of 11 states that provides an integrity bulletin to the National Decertification Index, but it does not disclose the names of officers disciplined.

The Kansas City Star has been fighting these exemptions to obtain records from the

Overland Park severance agreement with former officer Clayton Jennison, who shot a 17-year-old to death in 2018 while making a "welfare check" on the youth.

KENTUCKY: MOSTLY OPEN

Access to police misconduct records through the Kentucky Open Records Act is limited and up to the discretion of the law enforcement agencies or departments involved.

Departments can use KRS § 61.878(1)(a) to claim a general exemption for the records because of privacy concerns for the employee or officer. However, the Kentucky Attorney General has ruled that for the most part, misconduct records should be made public, as in the Linda Toler v. City of Muldraugh case of 2004 (03-ORD-213).

More recently, in March of this year, the Kentucky Supreme Court ruled that the University of Kentucky had to turn over records of a sexual harassment investigation it had conducted of a professor who was allowed to resign without a final determination of his conduct. The Supreme Court ruled that "where the disclosure of certain information about private citizens sheds significant light on an agency's conduct, we have held that the citizen's privacy interest must yield."

An investigation by the Louisville Courier-Journal uncovered that police concealed and lied about as many as 750,000 documents in an investigation of sexual misconduct by officers in the Explorer Scout program, where police were abusing minors. The Courier-Journal sued to uncover these records, and a small portion was released. The FBI has since opened an investigation into the Explorer program.

LOUISIANA: MOSTLY OPEN

Law enforcement misconduct records are generally public and are not an exception to the Louisiana Sunshine laws, but some departments may try to deny them based on the state's privacy protections. In one such case, the city of Baton Rouge tried to deny records to the Capital City Press and the paper appealed the decision.

While misconduct records in Louisiana are mostly public, an investigation by the Southern Poverty Law Center found serious gaps in the collection of other police data by law enforcement agencies, including data dealing with racial profiling.

MAINE: RESTRICTED

Law enforcement misconduct records in Maine are available to the public if an investigation is completed or closed. However, investigations that don't result in discipline or that have findings that are not sustained are not made available to the public.

An investigation conducted by the Bangor Daily News and the Pulitzer Center found that these records often hide misconduct and lack transparency by not fully describing the incidents in question. Maine only requires that the final findings of an investigation be public, not the internal investigations leading up to a disciplinary decision.

One example cited by the Bangor Daily News is the case of Matthew Shiers, whose public records show that he was fired. They exclude the fact that the internal investigation was prompted by charges against him of aggravated assault, domestic violence and cruelty to animals after fighting with his girlfriend.

MARYLAND: MOSTLY OPEN

In April 2021 the state's House and Senate passed Anton's Law, which will expand access to police misconduct records and increase the use of body cameras in the state. Previously, law enforcement investigations and misconduct records were sealed to the public in Maryland. The law, passed despite the governor's veto, also repealed the Law Enforcement Officers' Bill of Rights.

The public will now have access to misconduct records.

Since passage of the law, some Maryland law enforcement agencies have tried to get around it by withholding the names of officers or by charging large record reproduction fees.

MASSACHUSETTS: MOSTLY OPEN

A new law opens law enforcement misconduct records in Massachusetts, where they had previously been mostly closed. Even before the new law some police records had been released under a court opinion stating that internal affairs investigative records were not the kind personnel records that could be withheld from disclosure.

MICHIGAN: RESTRICTED

Police misconduct records are not explicitly secret in Michigan. However they are often denied and considered an unwarranted invasion of privacy under the state's Freedom of Information Act, Section 15.243.1(a).

Michigan's Attorney General Dana Nessel called for the creation of a database that would track police misconduct statewide through the Michigan Commission on Law Enforcement Standards.

The database has not been created.

MINNESOTA: RESTRICTED

Some law enforcement misconduct records are open to the public under Minnesota's public record laws. But the law limits disclosure to those cases that go to discipline.

Minnesota is one of 11 states, providing an integrity bulletin to the National Decertification Index. Those bulletins disclose the names of the officers disciplined..

MISSISSIPPI: MOSTLY CLOSED

Law enforcement misconduct records are closed and inaccessible to the public.

MISSOURI: MOSTLY CLOSED

On the last day of the session on May 14, 2021, the Missouri Legislature adopted and

Continued on next page

sent to the governor Senate Bill 26, which closes misconduct records and adopts a Law Enforcement Officers' Bill of Rights, making it hard to discipline officers. The bill, expected to be signed by the governor, states that the full administrative record of an investigation into misconduct "shall be confidential and not subject to disclosure under Sunshine Law, except by lawful subpoena or court order."

The bill also requires local law enforcement to report use of force data to the federal government but redacts the officers' names by stating, "the personally identifying information of individual peace officers shall not be included in the reports."

Law enforcement misconduct is usually kept secret in Missouri, but in 2015, a Missouri court ordered the release of police misconduct records relating to police abuse of World Series tickets in *Chasnoff v. St. Louis Board of Police Commissioners*. The court said police had no right to privacy of these records. Stecklow explains, "The Chasnoff decision hinged on whether the allegations being investigated could have a criminal element or not; if yes, the records should be released."

The state's POST Commission does not disclose the names of officers who were decertified, although it responds to requests for information, Stecklow says. Information also becomes public if an officer contests decertification and appeals to a hearing board.

MONTANA: RESTRICTED

In the past, police misconduct records in cases that went to discipline were generally public, but a state supreme court opinion states that even in cases going to discipline an officer may have a privacy interest that justifies keeping the record closed.

Montana Code § 2-6-102 and Article II, Section 10 of the Montana Constitution lay out a right of privacy. The phrasing is as follows: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." This allows police departments to argue that most public disclosures of police records do not have a good enough public benefit to justify harming an officer's individual privacy. However, in some cases, judges have ruled in favor of records being disclosed under Section 9 of the Montana Constitution.

Montana is one of 11 states that provide an Integrity Bulletin to the National Decertification Index, but the bulletins do not disclose the names of officers decertified.

NEBRASKA: MOSTLY CLOSED

Law enforcement misconduct records are secret in Nebraska.

A proposed bill that was introduced in the state's Legislature Jan. 20, 2021, would create a police misconduct database, but it has yet to be voted on.



Police block protesters only allowing them to pass through the sidewalk Saturday, September 25, 2020 in Louisville.

NEVADA: RESTRICTED

Law enforcement misconduct records are restricted in Nevada and it is up to the discretion of individual law enforcement agencies if they are disclosed.

NEW HAMPSHIRE: RESTRICTED

Law enforcement misconduct records historically were closed in New Hampshire under a personnel exemption to public record requests, but a series of state court decisions limited the use of the personnel exemption in the state Right to Know law. The personnel exemption had been used to

keep police misconduct records closed.

A pending state supreme court case is being closely watched to see if the court will require the Canaan Police Department to turn over an investigation of Officer Sam Provenza, who is alleged to have pulled a woman out of her car by her hair during a traffic stop and injured her leg.

A compromise law passed by the legislature in 2021 provides for the gradual release of Laurie's List of 270 officers who have been accused of dishonesty. Before those officers' names are released, each has a chance to go to court to challenge placement on the list. Names are expected to begin to be released in late 2021.



Photo by Isabel Miller

sville, Kentucky.

NEW JERSEY: RESTRICTED

Law enforcement misconduct records have historically been closed in New Jersey, but the attorney general won a court decision last year that would open records of officers who faced discipline for the most serious misconduct. A pending bill would open more records.

NEW MEXICO: RESTRICTED

Police departments have routinely used New Mexico Statute 14-2-1 (A)(3) to withhold records from the public. The statute states that some records are matters of opinion and not subject to public release. It closes

“letters or memorandums, which are matters of opinion in personnel files.” A 1970s state supreme court decision held that “disciplinary action” and other “matters of opinion” could be withheld. But a 2009 state attorney general’s opinion and a 2010 state court decision *Cox v. New Mexico Department of Public Safety* found that citizen complaints against officers should generally be open, even if the department’s disposition of those complaints were closed as matters of opinion.

NEW YORK: MOSTLY OPEN

Law enforcement misconduct records became public in New York in August 2020

following nationwide protests after the death of George Floyd at the hands of police.

New York’s police unions strongly opposed this change and five of them united and sued the state when it passed.

They were unsuccessful in preventing the release of records and a database revealed more than three decades of complaints.

Police departments across the state — from Nassau and Suffolk counties on Long Island, to New York City, to Syracuse and Brighton have spent the past 18 months limiting disclosures. They argue that only substantiated complaints are open,

Continued on next page

leaving out the much greater number of unsubstantiated complaints. The Town of Manlius Police Department attempted to charge the nonprofit organization MuckRock the prohibitive price of \$47,504 to access their records.

NORTH CAROLINA: MOSTLY OPEN

Law enforcement misconduct records are kept secret in North Carolina. If an officer is dismissed, demoted or suspended, the disciplinary action and date are publicly available but not the reason. (North Carolina G.S. § 153A-98 and § 160A-168.) A pending bill would open more records.

NORTH DAKOTA: MOSTLY OPEN

Law enforcement misconduct records are available to the public in North Dakota.

OHIO: MOSTLY OPEN

Law enforcement misconduct records are available to the public in Ohio.

OKLAHOMA: MOSTLY CLOSED

Law enforcement records can only be publicly accessed if they involve an officer losing pay or being suspended, demoted or terminated. (Title 51, Oklahoma Statute §24A.8.)

OREGON: MOSTLY CLOSED

Law enforcement misconduct records are mostly closed in Oregon and are often denied if there was no discipline involved, according to Stecklow.

Decertified police officers in Oregon are tracked in a statewide online database maintained by the agency responsible for law enforcement certification. This database was created during a special legislative session in 2020 that called for more police accountability. Oregon does release the names of officers who have been decertified in the state. It began doing this after the death of George Floyd in 2020.

Oregon is one of 11 states that provide an integrity bulletin to the National Decertification Index, but it doesn't disclose the names of officers disciplined.

PENNSYLVANIA: MOSTLY CLOSED

Law enforcement misconduct records are mostly closed in Pennsylvania and their release is up to the discretion of the law enforcement agency, according to Stecklow.

Under the state's Right to Know Act, the following are secret and exempt from public record requests: a performance rating or review; all documents relating to written criticisms of an employee; grievance material; documents related to discrimination or sexual harassment; information regarding discipline, demotion or discharge contained in a personnel file; arbitration transcripts and opinions; most complaints of potential criminal conduct; and investigative materials, notes, correspondence, videos and reports. (Section 67.708(b) of Pennsylvania's Right-to-Know Law.)

If an officer is discharged or demoted, this will be made public, but not the reason for the disciplinary action.

In 2020 Gov. Tom Wolf signed a bill into law that created a database to track police misconduct statewide and force agencies to check the database before hiring an officer. Like Illinois, this database is confidential and off limits to the public.

RHODE ISLAND: MOSTLY CLOSED

Attorney generals' opinions apply a balancing test that weighs the public interest against an officer's privacy interest. If a document can be released in redacted form without violating privacy interests it will sometimes order the release. In a case this year, the attorney general's opinion ordered the release of 14 of 17 documents requested, but in redacted form.

SOUTH CAROLINA: MOSTLY OPEN

The public has restricted access to law enforcement misconduct records in South Carolina.

South Carolina police departments have kept records from being released based on South Carolina Statute 30-4-40, which states the release of certain information is a violation of officers' privacy. This was pushed back against in *Burton v. York County Sheriff's Department*, which said that public interest often outweighs privacy interest in police officer cases. In certain instances, records can be released with the personal identifying information of the officer involved redacted.

SOUTH DAKOTA: MOSTLY CLOSED

Law enforcement misconduct records are kept secret in South Dakota.

TENNESSEE: MOSTLY OPEN

Law enforcement misconduct records are fairly accessible, according to the Tennessee Code. In certain cases however, such as *Contemporary Media v. Gilliss*, departments have been able to hold records by arguing that they were part of ongoing or recent criminal investigations. If personal information of an officer is included in requested reports, the officer must be notified.

However, an investigation by WREG in Memphis found that some departments are using an outdated, paper-based system that makes it nearly impossible to receive the requested data, or charges the requester excessive fees.

According to the WREG investigation as of July 2020: "In January, WREG asked for records of excessive force and firearm discharge from 2015 to 2019. We were told that would cost nearly \$7,500 because there were 24,000 pages of documents and it would take 88 hours to retrieve and redact information. On Feb. 6, we narrowed the timeline to just six months. Now almost six months later, we're still waiting."

TEXAS: RESTRICTED, DEPENDING ON CITY

According to research conducted by WNYC radio, "Texas Government Code § 552 generally renders police disciplinary records public. However, many cities in Texas are also covered by Local Government Code § 143, which requires police departments to maintain civil service personnel files on each police officer. Those civil service files are available for public inspection and contain records of disciplinary actions, but only if the officer received at least a suspension or loss of pay. If the only discipline was a 'written reprimand,' the records are instead placed in a confidential internal file."

UTAH: RESTRICTED

Law enforcement records are public in Utah, unless their release would interfere with an active investigation.

Utah is one of 11 states that provide an integrity bulletin to the National Decertification Index, but it doesn't disclose the names of the officers disciplined in this bulletin.

"Only cases that result in discipline are always public," Stecklow said. "The rest are subject to a balancing test weighing privacy and public interests, and which can often come down on the side of privacy."

VERMONT: RESTRICTED

Vermont keeps the names of officers about whom complaints are filed a secret unless a state board decides to impose discipline, in which case the names and details are public.

Records containing the names of officers who engaged in misconduct should be released if public interest outweighs the privacy interest of the officer, the state courts ruled in *Rutland Herald v. City of Rutland*. In this case the court ordered the release of the names of officers who had viewed pornography on departmental computers.

Vermont is one of 11 states that provide an integrity bulletin to the National Decertification Index, and it makes the names of these officers public.

VIRGINIA: MOSTLY CLOSED

Law enforcement misconduct records are kept secret in Virginia. (Section 2.2-3705.1 of the Virginia Freedom of Information Act.)

A pending bill would open up most records in Virginia.

WASHINGTON: MOSTLY OPEN

Law enforcement misconduct records are available to the public in Washington.

Washington is one of 11 states that provide an integrity bulletin to the National Decertification Index, and it makes the names of decertified officers public.

WEST VIRGINIA: RESTRICTED

Similar to Vermont and South Carolina, police departments can withhold records if they would be against privacy interests (Freedom of Information, Statute 29B 1-4, Exemptions), but often courts will rule that public interest outweighs the privacy interests of officers.

Charleston Gazette v. Smithers set the precedent that conduct of police officers while they are on the job is public record. This rule is now in the West Virginia Code 29B.

WISCONSIN: MOSTLY OPEN

Law enforcement records are generally available to the public in Wisconsin. Wisconsin Statute § 19.36(10)(b).

A pending bill would open most of the records.

WYOMING: MOSTLY CLOSED

Law enforcement misconduct records are kept secret and hidden from the public in Wyoming.

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A night scene of a crime investigation. The image is dark, with yellow police tape stretched across the middle. In the background, there are several police officers, some with their blue and red lights on. There are also some vehicles, including a white van and a dark car. The scene appears to be a street or a parking lot. The police tape has the text "POLICE LINE DO NOT CROSS" repeated twice.

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