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## Chapter 5

# Remedies and Legal Developments

In *Who Is Guarding the Guardians?* the U.S. Commission on Civil Rights detailed the remedies available for victims of police misconduct. Since *Guardians'* publication, only minor changes have occurred in the use of civil lawsuits by individuals against police officers at the state or federal level. Twenty years ago, case law provided that the government did not have authority to seek injunctive relief for police misconduct.[1] In *Guardians*, the Commission recommended that Congress enact legislation that would give the Attorney General the authority denied to the government by controlling case law, namely, the authority to enjoin proven patterns or practices of misconduct in a given law enforcement department. In 1994, such legislation was finally passed, adding an additional federal civil remedy.[2]

This chapter reviews the pattern or practice authority as well as other remedies and legal developments over the past 20 years. Additionally, it highlights state legislation and proposed federal bills that mandate collection of statistics relating to race, age, and gender of those who come into contact with law enforcement officers.

### CIVIL ACTIONS BY VICTIMS OF POLICE MISCONDUCT

The Commission has concluded in various reports that civil lawsuits against individual police officers may help deter police misconduct.[3] While there are several avenues one may pursue when using civil lawsuits as a remedy, state and federal law limit the effectiveness of this remedy.[4]

#### Civil Remedies under State Law

The most common avenue of redress available to victims of police abuse is initiating a civil action for damages under state law.[5] Police misconduct may constitute a tort for which a victim may sue for damages. In general, these lawsuits involve allegations of false arrest, false imprisonment, malicious prosecution, assault, battery, or wrongful death.[6] As pointed out in *Guardians*, there are advantages and disadvantages to the victim when filing a state civil lawsuit. Advantages include a lower burden of proof than required in a criminal case, the fact that the victim may personally initiate the action, and the possibility of direct compensation to the victim.[7] Disadvantages include costly and time-consuming litigation and the fact that police officers ultimately may be judgment-proof and protected by sovereign immunity.[8] Even in cases where the victims of police misconduct are successful in their lawsuits, they rarely work to hold police departments or individual officers accountable for their actions.[9]

#### Civil Remedies under Federal Law

Most civil actions against police officers for misconduct are filed under 42 U.S.C. § 1983.[10] However, it is difficult to succeed in § 1983 claims against police officers, and the successes

in § 1983 claims do not necessarily result in changes in police practices.[11] Further, judicially imposed barriers limit the value of remedies under § 1983. One barrier is the doctrine of immunity that protects individual police officers from lawsuits.[12] As Robert Louden and Hubert Williams discussed at the Commission's June 2000 briefing on national police practices and civil rights, defendant officers are usually indemnified by the municipalities or unions if an alleged misconduct is within the line of duty.[13] Therefore, there is no real incentive for police officers to change their practices to ensure that individual rights are protected. In *Guardians*, the Commission argued that § 1983 claims have not been effective in deterring police misconduct[14] and without much change in police practices, § 1983 continues to be ineffective in deterring police misconduct.

One measure for deterrence of police misconduct is the implementation of overall changes in departmental and agency policy. And one way to bring changes in policy is to impose liability on the department or the agency itself for misconduct of its officers. *Monell v. Department of Social Services of the City of New York*[15] made it possible for victims of police misconduct to sue police departments and impose liability on the municipalities themselves for the actions of their employees.[16] The *Monell* Court held that civil rights violations committed by public employees might impose liability on the government if it is shown the violation is the result of poor training or poor supervision.[17] James Fyfe believes that the legal standard first articulated in *Monell* was a catalyst in changing policing by encouraging police administrations to develop a police standard of care in dealing with the public.[18] He opined that suits against municipalities have resulted in policy changes that have made a great difference in deterring police misconduct.[19] Dr. Fyfe, however, cited two problems with municipal liability. First, many police chiefs see liability as a cost of doing business and the effect of losing a \$10- or \$12-million lawsuit does not have an impact on police operations.[20] Second, no one in the police department is made aware of the results of the lawsuit, and none of the policy implications of the lawsuits are acted upon.[21]

As articulated by the *Monell* Court, “municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a respondeat superior theory.”[22] The presiding judge, therefore, can only impose liability if the municipality caused the injury.[23] The question of a direct causal link between a municipal policy or custom and the alleged misconduct is a difficult inquiry, leaving the U.S. Supreme Court deeply divided.[24] Further, the Court and Congress have not clearly defined what constitutes municipal policy, and this adds to the difficulty in winning claims under § 1983.[25]

Since *Monell*, the Supreme Court has re-examined the issue of municipal liability in various cases.[26] In each case, the Court distinguished the municipal liability from respondeat superior liability.[27] The Court ensured that municipal liability is based on municipal policy and custom.[28] Further in *City of Oklahoma* and *City of Canton*, the Court refused to apply municipal policy doctrine in a single incident of wrongdoing.[29] The Court in *City of Oklahoma* rejected that one incident of misconduct can amount to inadequate training or supervision amounting to “deliberate indifference.”[30] In *City of Canton*, the Court limited the definition of “deliberate indifference.”[31] For liability to attach to a municipality, a victim/plaintiff must show that the particular policy or custom of the municipality that caused the injury is so inadequate that it amounts to “deliberate indifference to the rights of persons with whom the police come in contact.”[32] A plaintiff must prove that the municipality made a deliberate or conscious choice not to implement an adequate training program.[33] The Supreme Court has consistently reaffirmed the deliberate indifference standard and stated when a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability: “As we recognized in *Monell* and [its progeny], Congress did not intend municipalities to be held liable unless deliberate action attributable to the municipality directly caused a deprivation of federal rights.”[34]

The deliberate indifference standard was further defined and narrowed in *Brown*.<sup>[35]</sup> In *Brown*, the plaintiff, Mrs. Brown, sued a Bryan County police officer and the county for alleged use of excessive force and unlawful arrest.<sup>[36]</sup> Mrs. Brown brought a claim under § 1983 alleging that Bryan County should be held liable for inadequately hiring an officer, Burns, with criminal misdemeanor records and for inadequately training the officer.<sup>[37]</sup> The Court vacated and remanded the case, stating that the plaintiff failed to show that Bryan County's decision to hire Burns "reflected a conscious disregard for a high risk that Burns would use excessive force in violation of Brown's federally protected right."<sup>[38]</sup> The Court, relying on *City of Canton*, ruled that in order for the municipality to be held liable, it must have acted with deliberate indifference to "known or obvious consequences."<sup>[39]</sup>

This standard of deliberate indifference defined by the majority in *Brown*, as the dissenting opinion points out, raises the "plainly obvious" dictum in *City of Canton* to a new standard.<sup>[40]</sup> This new standard appears to be higher than criminal recklessness.<sup>[41]</sup> In *Brown*, Burns' records of criminal charges relating to assault and battery, resisting arrest, and public drunkenness, among other charges, were insufficient to prove that Bryan County fully disregarded the substantial risk that Burns would use excessive force when it hired him.<sup>[42]</sup> Before a municipality can be liable, a plaintiff in a § 1983 claim now must prove that an officer committed a felony or show evidence that the officer had a history of continual use of excessive force.<sup>[43]</sup>

Problems remain with using municipal liability as a remedy for police misconduct. The burdensome standards imposed by the courts severely limiting the liability of municipalities for the unlawful conduct of their police officers often leave victims with no real remedy.<sup>[44]</sup> As the Commission in 1995 pointed out in *Racial and Ethnic Tensions in American Communities: The Chicago Report*, "the need remains to establish a more effective means [for victims] to redress violations of civil rights and a more effective tool in deterring police misconduct."<sup>[45]</sup>

## CRIMINAL PROSECUTION OF POLICE MISCONDUCT

Criminal prosecution of police officers accused of misconduct continues to be rare. On the federal level, §§ 241 and 242 of Title 18 remain the principal tools that the U.S. Department of Justice uses to prosecute police officers who abuse their authority.<sup>[46]</sup> There continues to be criticism that very few, usually only high-profile cases, are prosecuted.<sup>[47]</sup> Both in state and federal prosecution, the "code of silence," where police officers either refuse to testify or cover up evidence, makes the investigation and prosecution of cases difficult. While 18 U.S.C. § 242 allows for federal prosecution of local, state, or federal officials alleged to have violated the rights of others under the "color of law," very few cases have resulted in investigation and prosecution.<sup>[48]</sup> This is partly due to lack of resources and the evidentiary requirement where the accused officer's specific intent to violate a federally protected right must be proven beyond a reasonable doubt.<sup>[49]</sup>

In the most recent police corruption scandal against the Los Angeles Police Department, LAPD officers were investigated for "allegedly orchestrating a widespread, violent conspiracy: shooting unarmed suspects, framing others by planting weapons or drugs on them, falsifying police reports and lying under oath in court."<sup>[50]</sup> The corruption resulted in a case brought by the Justice Department against the LAPD, and in this case a U.S. district court judge held that this pattern of extreme misconduct by the LAPD can be considered to be an act by a "criminal enterprise."<sup>[51]</sup> Accordingly, the court found that the LAPD is subject to lawsuits under federal racketeering laws, an unprecedented development.<sup>[52]</sup> This lawsuit against the LAPD under federal racketeering laws may lead to other police departments being found criminally liable for gross police misconduct. While it is still too early to tell whether

this district court ruling will have a great impact on how police misconduct cases will be handled in federal court, it is an unprecedented ruling where gross police misconduct of a law enforcement agency has led to the agency being considered a “criminal enterprise.” This ruling has opened another way to impose liability on police departments for a pattern of police misconduct.

## FEDERAL CIVIL RIGHTS ENFORCEMENT

### Pattern or Practice Lawsuits against Recalcitrant Police Departments

Prior to 1994, the federal government and private citizens did not have standing to sue for declaratory and equitable relief for alleged unconstitutional actions of police officers.[53] After the beating of Rodney King by LAPD officers was captured on videotape and televised, and the subsequent finding by the Christopher Commission that “the problem of excessive force [was] aggravated by racism and bias within the LAPD,”[54] the House Judiciary Committee considered the Police Accountability Act of 1991.[55] While Congress never enacted the bill into law, the first two sections of the bill became a part of the Violent Crime Control and Law Enforcement Act (VCCLEA).[56] The only part of the Police Accountability Act that was deleted from the VCCLEA is the private citizen’s right to pursue injunctive relief for police misconduct.[57]

Congress passed and enacted the VCCLEA into law in 1994. Title XXI of the legislation, 42 U.S.C. § 14141, made it unlawful for state and local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States.[58] This legislation responded to a judicially imposed bar on individual victims’ standing to sue for equitable relief.[59] Title XXI authorizes the Attorney General to bring civil action against police departments engaged in a pattern or practice of discrimination.[60] Given the severe limitations on private parties’ ability to seek relief prior to 1994, the VCCLEA significantly expanded the available legal remedies to address systemic police misconduct.[61]

Before the VCCLEA, many experts criticized the Justice Department for playing no real role in holding local police departments accountable for misconduct.[62] The VCCLEA enhanced the Justice Department’s enforcement authority. One section of the act gives statutory authority to the Attorney General to bring a civil action, seeking equitable and declaratory relief to redress a pattern or practice of misconduct by law enforcement agencies.[63] It allows the Justice Department to seek injunctive relief by mandating law enforcement agencies to make necessary changes to end abusive actions.[64] In the fall of 1995, the Civil Rights Division of the Justice Department established the Special Litigation Section to enforce the police misconduct provision of the VCCLEA.[65]

The remedies under this law do not provide for monetary relief for victims of the misconduct; rather, they allow the Justice Department to petition in federal court for orders to end the misconduct and change law enforcement agencies’ policies and procedures that contributed to the misconduct.[66] The Special Litigation Section investigates “systemic problems in law enforcement agencies, including excessive force; false arrest; discriminatory harassment, stops or arrests; coercive sexual conduct; and retaliation against person alleging misconduct.”[67]

Since the enactment of the VCCLEA, the Justice Department has filed four pattern or practice lawsuits against the following entities: city of Pittsburgh, city of Steubenville, the state of New Jersey, and the city of Columbus, Ohio.[68] The Justice Department obtained consent decrees from the city of Pittsburgh, city of Steubenville, and the state of New Jersey.[69] Montgomery County, Maryland, also signed a memorandum of agreement.[70] The Justice Department’s lawsuit against Columbus, Ohio, is pending at this time with no consent decree.[71] The

Justice Department has authorized litigation against the Los Angeles Police Department and also has begun investigations in New York, Washington, D.C., and other cities around the country.[72] The VCCLEA gives the Justice Department the authority to negotiate and to push local police departments to institute best practices that would lead to increased police accountability without relinquishing the benefits of local knowledge.[73]

However, the process of obtaining court-approved consent decrees has been lengthy and costly.[74] While pattern or practice lawsuits are effective in remedying police misconduct and have led to significant program changes in several police departments, they are not without problems. Amnesty International and other human rights groups have called on Congress to provide greater funding to the Justice Department so it can investigate pattern or practices cases effectively.[75] The Commission also recommended in its Racial and Ethnic Tensions in American Communities: The Los Angeles Report that Congress approve the allocation of specific resources to fund investigations into systemic police misconduct under 42 U.S.C. § 14141(a).[76] It has further recommended that Congress approve the hiring of additional personnel.[77]

As one commentator pointed out, while criminal prosecution of police misconduct cases plays a role in changes in police department policies, the real changes or reforms resulted from the enforcement of the VCCLEA.[78] Section 14141 litigation holds local police departments accountable by comparing their existing practices with reforms and policies outlined in the consent decree and forces local police departments to implement those changes.[79] Indeed, § 14141 has the potential for bringing about real and substantial reforms to police polices by holding police departments liable for implementing policy changes. However, that only four § 14141 lawsuits have been filed since the VCCLEA has been enacted indicates that the process of reforms in police polices has been a slow one.

When discussing the Justice Department's effectiveness in enforcing pattern or practice legislation, Dr. Fyfe concluded that it has done an "excellent job." [80] He said the Justice Department's pattern or practice enforcement endeavors have "made a major difference." [81] Mr. Williams asserted that pattern or practice lawsuits have created fear in local police departments that the Justice Department can and will investigate their departments for possible violations. [82] The Justice Department's authority to enforce pattern or practice legislation will work to transform police behavior, he contended. [83] Dr. Loudon noted, however, that the "time lag from event to finality" is a problem. [84]

## CRIME CONTROL AND SAFE STREETS ACT

Another law that allows the government to initiate litigation to remedy a pattern or practice of discrimination is the Omnibus Crime Control and Safe Streets Act of 1968. [85] The act, along with Title VI of the Civil Rights Act of 1964, prohibits discrimination based on race, color, sex, or national origin by police departments receiving federal funds. [86] The act states the Attorney General may initiate civil litigation to remedy a pattern or practice of discrimination based on race, color, national origin, gender, or religion involving services by law enforcement agencies receiving financial assistance from the Justice Department's Office of Justice Programs and the Office of Community Oriented Policing Services. [87] The Special Litigation Section of the Civil Rights Division of the Justice Department enforces this provision of the law.

Currently, a bill is being considered by Congress to amend the Omnibus Crime Control and Safe Streets Act of 1968. [88] This new bill, the Law Enforcement Trust and Integrity Act of 1999, addresses issues within law enforcement at all levels. This bill calls for establishing national minimum standards for accrediting law enforcement agencies and establishing civilian complaint review boards. It also "defines excessive use of force, requires states to

follow guidelines established by the Attorney General for reporting deaths in custody and offers incentives for local police departments to adopt performance based standards to minimize incidents of misconduct.”[89]

#### Withholding Federal Funding from Agencies That Engage in Discriminatory Practices

Since many law enforcement agencies receive federal funding, Congress has enacted legislation to deter police misconduct. These laws, Title VI of the Civil Rights Act of 1964[90] and the Office of Justice Programs (OJP) Program Statute, prohibit both individual instances and pattern or practices of discriminatory misconduct by state and local law enforcement agencies that receive financial assistance from the federal government.[91] Both statutes provide for the suspension of federal funds if a law enforcement agency engages in discriminatory conduct.[92] The discriminatory conduct covered by these laws includes unjustified arrests, discriminatory traffic stops, use of excessive force, use of racial slurs, or refusal by the agency to respond to complaints alleging discriminatory treatment by its officers.[93]

The remedies under Title VI and the OJP Program Statute differ from those provided in the VCCLEA because not only may the Justice Department seek to change police policies and procedures, but individuals also have a private right of action under both laws.[94] For an individual to file in federal court under the OJP Program Statute, however, he or she must first exhaust the administrative remedies outlined in the statute.[95]

#### Collection of National Statistics on Police Misconduct

Experts cite the lack of reliable national statistics on police brutality as a problem when developing policies to prevent police misconduct.[96] Many think the federal government is best suited to collect and publish needed statistics. In 1993’s Racial and Ethnic Tensions in American Communities: The Mount Pleasant Report, the Commission emphasized the need to maintain national statistics on police discipline to formulate an effective national response to police abuse.[97] Accordingly, the Commission recommended that “the Federal Bureau of Investigation be directed to collect, classify and publish nationwide statistics on police abuse incidents and discipline of officers for use in law enforcement administration and management and to facilitate more accurate assessment of the extent of police abuse in the United States.”[98]

Since then, Congress passed the VCCLEA, which contains a section that directs the Justice Department to collect data on the use of excessive force by police officers.[99] While Congress passed this legislation to collect data, it failed to provide necessary funding to carry out this process.[100] Furthermore, the data collection process lacks involvement from the Justice Department’s Civil Rights Division, which has the authority to enforce federal civil rights laws, because the statute mandates that the data not be used for enforcement purposes.[101] This further creates problems in collecting and using data relating to police practices.

The need for data on police misconduct is long recognized as an important step toward ending this problem. At the briefing, Mr. Williams pointed to a report published in 1977 by the Police Foundation and a 1998 report by the Human Rights Watch, both of which stressed this need.[102] He also discussed a Police Foundation mechanism—Quality of Service Indicator—that collects and analyzes traffic stop data.[103]

Prior to June 1999, only a few police departments around the country collected data on traffic stops by race or ethnicity.[104] Since then, more than 100 jurisdictions have begun to collect data on traffic stops.[105] Data collection assesses whether police officers are engaged in

racial profiling,[106] and therefore it is crucial to the goal of deterring police misconduct. It is important for those in authority to have precise statistical information on the use of excessive force and police misconduct in implementing and changing policies as well as making the police publicly accountable where there is a proven pattern of such misconduct.[107]

## LEGISLATIVE DEVELOPMENTS ON RACIAL PROFILING

### Federal Legislative Developments

In recent years, instances of racial profiling, or “driving while black or brown,” have raised concerns among many civil rights groups. However, there is no federal legislative ban on racial profiling. In June 1999, President Clinton signed an executive order calling for the Justice Department to collect traffic stop data.[108] President Clinton stated:

No person should be subject to excessive force, and no person should be targeted by law enforcement because of the color of his or her skin. Stopping or searching individuals on the basis of race is not effective law enforcement policy, and is not consistent with our democratic ideals, especially our commitment to equal protection under the law for all persons.[109]

To address the problem of racial profiling, the President said federal agencies should collect data at all levels of law enforcement.[110] Accordingly, he directed the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior to develop a proposal for a data collection system and an implementation plan.[111] The President also directed that a report on training programs, polices, and practices regarding the use of race, ethnicity, and gender in law enforcement activities, along with recommendations for improving those programs, policies, and practices, be submitted to him within 120 days of the directive.[112]

In the 1998 legislative term, Congress introduced a bill entitled the Traffic Stops Statistics Act,[113] which allowed the collection of data on traffic stops. It was approved by the Judiciary Committee on a bipartisan basis and passed the House voice vote.[114] However, Congress did not enact this bill into law because the Senate adjourned before considering the bill.[115] The bill was reintroduced in a later legislative term.[116] This new bill entitled Traffic Stops Statistics Study Act of 1999, otherwise known as the “driving while black” bill, has been introduced in both the Senate and House.[117] The bill mandates the Justice Department to conduct a study on racial profiling by collecting traffic stop data. The full House Judiciary Committee approved the bill on March 1, 2000, and it must be considered before adjournment to become law.[118]

### State Legislative Developments

Seven states have passed legislation to combat racial profiling: California, Connecticut, Kansas, Missouri, North Carolina, Rhode Island, and Washington. The statutes vary from state to state and all but California require police agencies to record the age, sex, and race of motorists who are stopped. The new statutes in California, Connecticut, and Missouri make it a state crime for law enforcement officers to engage in racial profiling. Connecticut and Missouri also allow state funds to be withheld from law enforcement agencies that do not comply with all provisions of the racial profiling law.

## CONCLUSION

Since the publication of Guardians, the Commission’s recommendation to enact legislation giving the Attorney General authority to bring civil actions against police departments engaging in patterns of misconduct has resulted in significant legislation. In its various reports, the Commission repeatedly stressed the lack of adequate state and federal remedies to deter

police misconduct. While the Commission's recommendation to enact legislation to allow the federal government to seek equitable and declaratory relief has been realized, the Commission's recommendation to also give individual victims of police misconduct a private right of action has not been implemented. Victims of police misconduct continue to face many barriers that prevent them from obtaining adequate relief and remedy. Prosecution of police misconduct cases similarly continues to be hampered by many judicially imposed barriers as well as by the "code of silence."

The Commission further raised issues regarding the lack of national statistics that could be used to analyze police misconduct. In recent years, racial profiling has become a serious issue for many communities of color, yet there is no federal mandate to fight this problem. While many states are considering enacting a ban on racial profiling and mandating the collection of traffic stop data, there is no uniform collection of information on traffic stops. A strong need exists to continue the effort to change patterns of police misconduct and provide significant remedies for victims of police abuse. While legal developments have occurred to deter police misconduct, more can be and must be done to ensure that there is no room for misconduct by the very people who have been entrusted to provide protection.

## CHAPTER 5: FINDINGS AND RECOMMENDATIONS

While some of the Commission's recommendations set forth in *Guardians* have resulted in policies and legislation, many remain unimplemented and, therefore, the Commission reiterates them.

### Pattern or Practice of Misconduct

**Finding 5.1:** In *Guardians*, the Commission recommended that Congress enact legislation authorizing civil actions by the Attorney General of the United States against appropriate government and police department officials to enjoin proven patterns or practices of misconduct in a given department. Since the publication of *Guardians*, Congress enacted the Violent Crime Control and Law Enforcement Act (VCCLEA), authorizing the Attorney General to bring civil actions against state and local law enforcement agencies for engaging in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. While the U.S. Department of Justice has brought four lawsuits and obtained consent decrees from three police departments, much of its effort has been hampered by lack of resources.

**Recommendation 5.1:** Congress should approve allocation of resources to fund investigations into systemic police misconduct under the VCCLEA.

**Finding 5.2:** The Commission in *Racial and Ethnic Tensions in American Communities: The Chicago Report* recommended that Congress enact legislation authorizing private litigants as well as the Attorney General to bring civil actions for equitable relief. The Attorney General now has authority under the VCCLEA to bring civil actions for equitable and injunctive relief. While Congress has considered a bill to include private citizens' standing to sue for equitable and injunctive relief, it was not enacted. Currently, private litigants do not have the right to seek such relief from a court.

**Recommendation 5.2:** Congress should amend the VCCLEA to allow individual litigants to sue for equitable and injunctive relief against police departments engaging in a pattern or practice of misconduct.

### Criminal Remedies for Police Misconduct

Finding 5.3: Since the publication of *Guardians*, the Commission has found that civil lawsuits brought by individual victims of police misconduct have not deterred police misconduct or held police officers and their police departments accountable for their misconduct. The Commission in *Guardians* recommended that Congress enact legislation holding governmental subdivisions liable under 42 U.S.C. § 1983 for the actions of police officers who deprive persons of rights protected by that section. Since then, the Supreme Court has applied the deliberate indifference standard in deciding municipal liability cases. In a § 1983 lawsuit, for liability to attach to a municipality, a plaintiff must show that the particular policy or custom of the municipality that caused the injury is so inadequate that it amounts to deliberate indifference. This deliberate indifference standard is a high standard of proof causing the plaintiff difficulty in succeeding in a § 1983 lawsuit.

Recommendation 5.3: Congress should enact legislation amending 42 U.S.C. § 1983 to remove the higher burden of proof presented by the judicially imposed “deliberate indifference” standard in municipality liability claims.

Finding 5.4: The Commission in the *Mount Pleasant Report* found that the federal government, through vigorous prosecution of police abuse cases, can be effective in remedying police misconduct. However, the Justice Department’s prosecution of police misconduct cases has been impeded by the “specific intent” requirement of 18 U.S.C. § 242.

Recommendation 5.4: The Commission reiterates its recommendation of the *Mount Pleasant Report* that Congress should amend § 242 to remove the judicially imposed specific intent requirement.

Finding 5.5: In a case involving police corruption and misconduct of the Los Angeles Police Department, a U.S. district court judge ruled that LAPD officers can be sued under federal racketeering laws. This illustrates that existing laws can help remedy gross police misconduct.

Recommendation 5.5: The U.S. Department of Justice should continue its effort in using existing laws to find law enforcement agencies liable for their officers who engage in misconduct.

#### Data Collection

Finding 5.6: The Commission in its reports has emphasized the importance of collecting national data on use of excessive force by police. The Commission has recommended that the Federal Bureau of Investigation and other federal agencies collect and analyze statistics on use of excessive force and other forms of police misconduct. The VCCLEA has a provision requiring the Attorney General to collect and publish data on the use of excessive force by law enforcement officers. However, as found in the *Los Angeles Report*, the information on use of force is not maintained consistently among law enforcement agencies.

Recommendation 5.6: As recommended in the *Los Angeles Report*, Congress should allocate resources to adequately fund the Justice Department’s mandate to collect and publish statistics and information on use of excessive force by law enforcement officers.

#### Racial Profiling

Finding 5.7: In 1999, President Clinton signed an executive order calling for the U.S. Department of Justice to collect traffic stop data. Many states have enacted legislation mandating collection of traffic stop data. Some states prohibit racial profiling by making it a state crime, and others have included legislation to withhold state funds for not complying with the provisions of racial profiling laws. In the 1999 legislative term, Congress introduced a

bill entitled Traffic Stops Statistics Study Act of 1999, which would mandate collection of traffic stop data.

Recommendation 5.7: Congress should pass the Traffic Stops Statistics Study Act of 1999 to allow for collection of data on traffic stops by police. Congress should also enact legislation banning racial profiling that would include a provision allowing for withholding of federal funds for noncompliance.

[1] *United States v. City of Philadelphia*, 644 F.2d 187 (3d Cir. 1981).

[2] 42 U.S.C. § 14141 (1994).

[3] See appendix A.

[4] Marshall Miller, “Police Brutality,” *Yale Law & Policy Review*, vol. 17 (1999), p. 152 (stating that traditional legal remedies are ineffective in deterring police misconduct).

[5] U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, p. 129 (hereafter cited as USCCR, *Guardians*).

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] Amnesty International, “A Briefing for the UN Committee Against Torture,” p. 13, <<http://www.amnesty.it/ailib/apu/2000/AMR/2515600.htm>> (Oct. 20, 2000) (hereafter cited as Amnesty International, “A Briefing”).

[10] 42 U.S.C. § 1983 (1994).

[11] Miller, “Police Brutality,” p. 155.

[12] U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume III: The Chicago Report*, September 1995, p. 139 (hereafter cited as USCCR, *Chicago Report*).

[13] Robert Loudon, statement before the U.S. Commission on Civil Rights, *National Police Practices and Civil Rights Briefing*, June 16, 2000, transcript, p. 16 (hereafter cited as *Police Practices Briefing Transcript*).

[14] See USCCR, *Guardians*, p. 130.

[15] *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

[16] See *id.* at 690.

[17] *Id.*

[18] James Fyfe, *Police Practices Briefing Transcript*, p. 25.

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid.*

[22] *Collins v. City of Harker Heights*, 503 U.S. 115, 121 (1992) (quoting *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978)) (emphasis in original). Under a theory of respondeat superior, an employer can be held liable for the acts of his employees committed in the course and scope of their employment.

[23] *Id.* (emphasis added).

[24] See, e.g., *City of Canton v. Harris*, 489 U.S. 378, 385–86 (1989) (citing *City of St. Louis v. Prapronik*, 485 U.S. 112 (1988)); *City of Springfield v. Kibbe*, 480 U.S. 257 (1987); *City of Los Angeles v. Heller*, 475 U.S. 796 (1986); *City of Oklahoma v. Tuttle*, 471 U.S. 808 (1985).

[25] Adam S. Lurie, “Ganging up on Police Brutality: Municipal Liability For the Unconstitutional Actions of Multiple Police Officers Under 42 U.S.C. § 1983,” *Cardozo Law Review*, vol. 21 (May 2000), pp. 2087, 2089.

[26] See generally, *Bd. of the County Comm'rs of Bryan County v. Brown*, 520 U.S. 397 (1997); *City of Canton*, 489 U.S. 378; *City of St. Louis*, 485 U.S. 112; *Pembaur*, 475 U.S. 469; *City of Oklahoma*, 471 U.S. 808; *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981); and *Owen v. City of Independence*, 445 U.S. 622 (1980).

[27] *Id.*

[28] *Id.*

[29] See *City of Oklahoma*, 471 U.S. 821; *City of Canton*, 489 U.S. 391.

[30] *City of Oklahoma*, 471 U.S. 821.

[31] See generally *City of Canton*, 489 U.S. 378.

[32] *Id.* at 388.

[33] Kevin R. Vodak, “A Plainly Obvious Need for New-Fashioned Municipality Liability: The Deliberate Indifference Standard and Board of County Commissioners of Bryan County v. Brown,” *DePaul Law Review*, vol. 48 (1999), p. 814 (hereafter cited as Vodak, “Need for New-Fashioned Municipality Liability”).

[34] *Brown*, 520 U.S. 415.

[35] See *id.*

[36] *Id.* at 402.

[37] *Id.* at 415–16.

[38] *Id.* at 412–13.

[39] *Id.*

[40] See *id.*

[41] Vodak, “Need for New-Fashioned Municipality Liability,” p. 814.

[42] See *Brown*, 520 U.S. 397.

[43] Vodak, “Need for New-Fashioned Municipality Liability,” p. 814.

[44] USCCR, Chicago Report, p. 140.

[45] *Ibid.*

[46] Under § 241, it is unlawful for “two or more persons to conspire to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same.” 18 U.S.C. § 241 (1994). Under § 242, it is unlawful for a person acting “under color of any law, statute, ordinance, regulation, or custom, [to] willfully subject any inhabitant of any State, Territory, Commonwealth, possession or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States.” 18 U.S.C. § 242 (1994).

[47] Amnesty International, “A Briefing,” p. 12.

[48] *Ibid.*

[49] *Ibid.*

[50] Renee Sanchez, “L.A. Police Misconduct Likened to Racketeering; Judge’s Order Could Widen City’s Liability,” *The Washington Post*, Aug. 31, 2000, p. A4.

[51] *Ibid.*

[52] *Ibid.*

[53] *City of Philadelphia*, 644 F.2d 187 (holding that the federal government does not have the authority to bring a lawsuit for injunctive relief); *City of Los Angeles*, 461 U.S. 95 (holding that private citizens do not have the authority to bring a lawsuit for injunctive relief).

[54] Independent Commission on the Los Angeles Police Department, Report of the Independent Commission on the Los Angeles Police Department, 1991, p. 32; U.S. Commission on Civil Rights, Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report, May 1999, p. 24 (hereafter cited as USCCR, Los Angeles Report).

[55] H.R. 1914, 102d Cong. (2d Sess. 1991).

[56] H.R. 4092, 103d Cong. (2d Sess. 1994); 42 U.S.C. § 14141 (1994); Debra Livingston, “Special Issue: Police Reform and the Department of Justice: an Essay on Accountability,” *Buffalo Criminal Law Review*, vol. 2 (1999), p. 815.

[57] H.R. 4092, 103d Cong. (2d Sess. 1994).

[58] 42 U.S.C. § 14141.

[59] Miller, "Police Brutality," p. 170.

[60] 42 U.S.C. § 14141.

[61] Id.

[62] See, e.g., Livingston, "Special Issue: Police Reform and the Department of Justice," p. 815.

[63] 42 U.S.C. § 1414(b) (1994); see also U.S. Department of Justice, "Special Litigation Section" <<http://www.usdoj.gov/crt/activity.html>> (May 30, 2000).

[64] 42 U.S.C. § 14141(a) (1994).

[65] USCCR, Los Angeles Report, p. 204.

[66] U.S. Department of Justice, "Federal Civil Enforcement," <<http://www.usdoj.gov/crt/split/documents/polmis.htm>> (May 30, 2000).

[67] See U.S. Department of Justice, "Complaints Filed in the U.S. District Courts," <<http://www.usdoj.gov/crt/split/findsettle.htm#>>, Law Enforcement Misconduct Findings Letters (Oct. 31, 2000).

[68] Ibid.

[69] See U.S. Department of Justice, "Conduct of Law Enforcement Agencies Settlements and Court Decisions," <<http://www.usdoj.gov/crt/split/findsettle.htm#>>, Law Enforcement Misconduct Findings Letters (Oct. 31, 2000).

[70] Ibid.

[71] Ibid.

[72] Bill Lann Lee, "Testimony of Bill Lann Lee, Acting Assistant Attorney General, Before the House Subcommittee on the Constitution, Oversight Hearing on the Civil Rights Division" (testimony given before the House Judiciary Subcommittee on the Constitution, July 12, 2000), p. 3 (hereafter cited as Lee Testimony).

[73] Ibid.

[74] Amnesty International, "A Briefing," p. 13.

[75] Ibid.

[76] USCCR, Los Angeles Report, p. 230.

[77] Ibid.

[78] Livingston, "Special Issue: Police Reform and the Department of Justice," pp. 841–43.

[79] Ibid., p. 844.

[80] Fyfe, Police Practices Briefing Transcript, p. 103.

[81] Ibid.

[82] Williams, Police Practices Briefing Transcript, p. 103.

[83] Ibid.

[84] Louden, Police Practices Briefing Transcript, p. 102.

[85] 42 U.S.C. § 3789d(c) (1994).

[86] 42 U.S.C. § 3789d(c).

[87] Id.

[88] H.R. 2656, 106th Cong. (1st Sess. 1999).

[89] Amy Worden, "Crime Bills Pushed in Last Month of Congress," APBnews.com, [\[link\]](#) (Oct. 26, 2000).

[90] 42 U.S.C. § 2000d (1994).

[91] 42 U.S.C. § 3789d(c).

[92] 42 U.S.C. § 2000d; 42 U.S.C. § 3789d(c).

[93] 42 U.S.C. § 2000d; 42 U.S.C. § 3789d(c).

[94] Id.

[95] 42 U.S.C. § 3789d(c).

[96] Amnesty International, "A Briefing," p. 13.

[97] Ibid.

[98] Ibid.

[99] 42 U.S.C. § 14141.

[100] Amnesty International, "A Briefing," p. 13.

[101] USCCR, Los Angeles Report, p. 208.

[102] Williams, Police Practices Briefing Transcript, pp. 52–53.

[103] Ibid., p. 55.

[104] Lee Testimony, p. 3.

[105] Ibid.

[106] Ibid.

[107] Ibid.

[108] Executive Order, “Fairness in Law Enforcement: Collection of Data,”  
<<http://www.pub.whitehouse.gov/ury-res/I2R?urn:pdi://oma.eop.gov.us/1999/6/10/5.test.1>>  
(Sept. 13, 2000).

[109] Ibid.

[110] Ibid.

[111] Ibid.

[112] Ibid.

[113] H.R. 118, 105th Cong. (1st Sess. 1998).

[114] People for the American Way, “On Capitol Hill Civil Rights: Racial Profiling,”  
<<http://www.pfaw.org/caphill/civilrights.html>> (Sept. 13, 2000).

[115] Ibid.

[116] Ibid.

[117] H.R. 1443, 106th Cong. (1st Sess. 1999).

[118] People for the American Way, “On Capitol Hill Civil Rights: Racial Profiling,” [\[link\]](#)  
(Sept. 13, 2000)

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