RACIAL PROFILING-SEPARATE AND UNEQUAL
KEEPING THE MINORITIES IN LINE-THE ROLE
OF LAW ENFORCEMENT IN AMERICA

APRIL WALKER*

I. INTRODUCTION ......................................................... 576
II. THE HISTORY OF POLICING AND THE MODERN TREND...... 579
III. DOES RACE, RELIGION, OR ETHNICITY INCREASE A
PERSON’S CHANCE OF BECOMING A VICTIM OF POLICE
BRUTALITY? ........................................................................... 585

A. Race/Ethnicity as a Factor .............................................. 585
B. Commission report findings .......................................... 587
C. Excessive force ............................................................... 589
D. Racial Profiling ............................................................... 591
E. Pre-Textual Stops ............................................................ 594
F. Religion as a Factor ........................................................ 597

IV. DOES GENDER OR SEXUAL ORIENTATION INCREASE
YOUR CHANCES OF BECOMING A VICTIM OF POLICE
BRUTALITY? ................................................................. 600
A. Law enforcement violence against women ...................... 600
B. Violence against the Gay, Lesbian, Bisexual, and
Transgendered (GLBT) ...................................................... 604

V. (THE CONSEQUENCES OF REPORTING POLICE
BRUTALITY) RETALIATION BY POLICE OFFICERS FOR
REPORTING POLICE BRUTALITY .............................................. 605

VI. QUALIFIED IMMUNITY .................................................... 608
VII. SELF-DEFENSE AND JUSTIFICATION ...................... 609
VIII. SOLUTIONS FOR COMBATING POLICE BRUTALITY .... 611
IX. CONCLUSION ................................................................. 617

I. INTRODUCTION

"The dynamics surrounding an encounter between a police officer and
a black male are quite different from those that surround an encounter
between an officer and the so-called average reasonable person."1 "This

---

* The author is an Associate Professor at Thurgood Marshall School of Law at Texas Southern
University in Houston, Texas. Professor Walker is also an associate judge with the City of
Houston Municipal Court System. Professor Walker would like to thank Ms. Amoa for her
support and assistance in preparing this article.

1. Tracey Maclin, "Black and Blue Encounters” – Some Preliminary Thoughts About
RACIAL PROFILING applies to black men of all economic strata, regardless of their . . . education, . . . job status or place in the community." During the recent highly publicized traffic stop, caught on the officer’s in-car camera, a Dallas policeman, Robert Powell, refused to allow Texans running back Ryan Moats and his family to reach the bedside of a dying family member. The officer threatened Moats with arrest for running a traffic light. Filled with grief, Moats’ wife and aunt rushed into the hospital despite the fact the officer had his gun pulled. Distressed, Moats and his father-in-law tried to explain the urgency of the matter, but the officer utilized immoral discretion and continued to detain them in the hospital emergency parking lot. A nurse and hospital security guards also confirmed the player’s story to Officer Powell.

"You really want to go through this right now?" Moats said. "My mother-in-law is dying, right now.""

"Shut your mouth," Officer Powell said at one point. "You can cooperate and settle down, or I can just take you to jail for running a red light.""

A storm of outrage gathered over the Dallas police department; Powell was first placed on an administrative leave, but then later resigned. Dallas Police Chief David Kunkle called a news conference and apologized for the behavior of Officer Powell and chastised him for lack of compassion, discretion and common sense. "Moats, in an

2. Id. at 253.
7. See Barron, supra note 5.
8. See id.
9. See id.
10. Id. (emphasis added).
11. Id. (emphasis added).
12. Id. (emphasis added).
13. See Thompson & Eiserer, supra note 3.
14. See Barron, supra note 5.
15. See id.
interview with a Dallas radio station, said the officer’s intransigence robbed him and his father-in-law of irreplaceable moments in a time of grief that morphed, after the officer pulled a weapon on Moats and his wife, into moments of confusion and terror.\textsuperscript{16}

"The broader notion of [good and fair] policing still survives in the American constitutional doctrine of police powers, in which the Supreme Court explicitly treats policing as encompassing the tasks of governance,"\textsuperscript{17} however, "[p]olicing is inherently political because social control is a core and contested task of governance."\textsuperscript{18} Although, the law stands at the center of modern American life,\textsuperscript{19} for . . . years, there has been, through the courts and the streets a dreary procession of citizens with [unjustified charges], broken heads, and bruised bodies against few of whom was violence needed to effect an arrest.\textsuperscript{20} "Many of them had done nothing to deserve an arrest."\textsuperscript{21} "In a majority of such cases, no complaint was made."\textsuperscript{22} "[However], [i]f the victim [did] complain, his charge is generally dismissed; the police are practically above the law.\textsuperscript{23}

Many victims, along with the police that brutalize them, mistakenly believe that "[t]here is more law at the end of a policeman’s nightstick than in a decision of the Supreme Court."\textsuperscript{24}

This article will explore the history of modern policing and examine police brutality at the early stages of the implementation of law enforcements in this country. Also, this article will address whether race, gender, sexual orientation, religion, or ethnicity contributes to higher incidents of police brutality and review common misconceptions by the public about police brutality and retaliation against citizens who report police brutality. This article will define the term qualified immunity and

\begin{itemize}
\item \textsuperscript{16} Id.
\item \textsuperscript{17} WILLIAM LYONS, THE POLITICS OF COMMUNITY POLICING 36 (Martha Minow, et al. eds., 1999).
\item \textsuperscript{18} Id.
\item \textsuperscript{20} Albert J. Reiss, Jr., Police Brutality – Answers to Key Questions, in Social Problems and Public Policy: Deviance and Liberty 343 (1974). This statement was published in 1903 by Hon. Frank Moss, a former police commissioner of New York City. Id.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Henry F. Woods, American Sayings: Famous Phrases, Slogans and Aphorisms 214 (1949). A quote Alexander “Clubber” Williams, former NYPD police chief, may have originated. Id.
\end{itemize}
highlight its application towards police officials and district attorneys, while also analyzing highly publicized cases and their dispositions. Lastly, this article will address possible solutions to combating the problem of police brutality, which has plagued American society, leaving victims and many others exposed to this uprising endemic.

II. THE HISTORY OF POLICING AND THE MODERN TREND

The eras of American Policing are often described in terms of three historical periods; the Political Era (1840-1920) describes the close ties that developed between the police and urban political leaders. "In many cities, the police appeared to work for the mayor or the political party in power rather than for the citizens in general."

In the Professional Era, (1920-1970) "policing was greatly influenced by the Progressive reform movement in the early twentieth century." The progressives were mostly upper-middle class, educated Americans. One of their goals was the removal of political influences, such as party politics and patronage on government. "[T]hey envisioned professional law enforcement officials who would use modern technology to benefit the entire society, not just . . . local politicians."

During the Community Era, (1970-Present) "there were calls for movement away from the overriding crime-fighting focus and toward greater emphasis on maintaining order and providing services to the community."

As the decline of community life and the concentration of power in state and corporate bureaucracies intersect with increasingly inescapable violence on urban streets and in our homes, it is not surprising that our concerns about community, democracy, and public safety have joined forces in a reform like community policing.

Yet, despite our nation's move towards a community-based service, police brutality, which law enforcement officials have defined as the use of excessive physical force or verbal assault and psychological intimidation,
“is one of the most serious, enduring, and divisive human rights violations in the United States.”

"The problem is nationwide, and its nature is institutionalized." Police brutality may include false arrest, retaliation, intimidation, racial profiling, secret surveillance, sexual abuse, and corruption of police officers.

Over the last several years, police brutality in the U.S. and across its borders has gradually increased. Moreover, the issues of race, language barriers, and gender closely shadow reoccurring incidents. In addition, the injustices suffered by victims of racial discrimination are well known. "Historically, racism has been defined as the belief that race is the primary determinant of human capacities." In effect, racism suggests "that individuals should be treated differently according to their racial designation."

The very fact that most victims of police brutality are members of poor and minority communities should be cause for concern, and contributes to the perception that the police are more likely to engage in force when dealing with a minority suspect than when dealing with a non-minority suspect.

“Capital flight, corporate downsizing, redlining, and various other routine corporate practices weaken” the resilience of local communities and visited Dec. 10, 2010).

33. Id.
34. See, e.g., Debra Livingston, Police Reform and the Department of Justice: An Essay on Accountability, 2 BUFF. CRIM. L.R. 815, 824 (1999).
35. See Freeman, supra note 31, at 699–700.
36. See id. at 685–86.
42. See generally Ritchie & Mogul, supra note 39, at 216–20.
43. ANNE MARIE MOONEY COTTER, RACE MATTERS: AN INTERNATIONAL LEGAL ANALYSIS OF RACE DISCRIMINATION 7 (2006).
44. See id. at 7–8.
low-income communities’ capacity to respond to changes in their environment. They lack the resources, “like social capital-resources, that allow responses to crime that also preserve and protect our children [and] families . . . from various unaccountable powers” that sadly, plague poor communities. “Like most of us, . . . [but] unlike economists, police do not make their choices by a rational calculation of comparative economic values.”

Furthermore, “[d]espite the social and economic progress of African-Americans over the past fifty years, Americans continue to live in a country where racial . . . [inequity] is the norm.” “The dominant belief about Blacks, upon which their legal rights, or lack thereof, were historically constructed, was the belief in their ontological inferiority.”

“In Traditional Americanism, black people are [still] perceived as poor, lazy, lustful, ignorant, and prone to . . . criminal behavior.”

Today, many police officers still hold those faulty beliefs, demonstrated by the publicized street beating of Rodney King, the sodomizing of Abner Louima in a police station house bathroom, and the

46. See Lyons, supra note 17, at 32.
47. Id.
50. See Amoa, supra note 49; see also Brown, supra note 49.
51. Brown supra note 49; see also Harvey Gee, Book Review: Police Brutality and Citizen Complaints, 4 Conn. Pub. Int. L.J. 49, 50 (2004). The vast majority of police minority interactions are routine instances of police abuse that often go unnoticed. See id. Often, young African American males have been targeted by law enforcement under the guise of investigative profiling. See id. Undoubtedly, police brutality has shaped the history of African Americans and the criminal justice system. See id.
52. See Madison Gray, The L.A. Riots: 15 Years After Rodney, Time, Apr. 27, 2007, available at http://www.time.com/time/specials/2007/la_riot/article/0,28804,1614117_1614084_1614831,00.html. Rodney King was detected speeding by the California Highway Patrol. Id. Fearing that his probation for a robbery offense would be revoked because of the traffic violation, King led the CHP on a high-speed chase. Id. By the time he was caught and ordered to exit his vehicle, several L.A.P.D. squad cars had arrived on the scene. Id. A struggle ensued, and some of the officers quickly decided that King was resisting arrest. Id. Sergeant Stacey Koon fired two shots into King with a TASER gun, and after that failed to subdue him, the officers beat him mercilessly with their batons. Id.
53. See Leonard Greene and Stefanie Cohen, Louima’s Haunted High Life 10 years Later, N.Y. Post, July 30, 2007, http://www.nypost.com/seven/07302007/news/regionalnews/louimas_haunted_high_life_10_years Later_regionalnews_leonard_green. Abner Louima—the New York-based Haitian immigrant who was tortured by white cops in a police station bathroom in 1997—was arrested Aug. 9, 1997, outside a Brooklyn nightclub after he was mistaken for a man who scuffled with police called to
killing of Amadou Diallo.\textsuperscript{54}

Sean Bell,\textsuperscript{55} which a police spokesman referred to as aberrational, simply illustrates the widespread police brutality and harassment in minority neighborhoods.\textsuperscript{56} The sheer violence and horror of these crimes creates a wide public outrage, which often can lead to mass activism.\textsuperscript{57} However, police officers are rarely indicted, tried, or convicted.\textsuperscript{58}

“All too often, racial minorities have been disadvantaged by criminal procedure rules that are race-neutral, as the rules have had a disproportionate effect on communities of color.”\textsuperscript{59} “The chain of radicalized terror that spanned [during] slavery, lynching, and police whippings\textsuperscript{60} remains unbroken as the brutalization of . . . [minorities] is routinely, [but unfortunately,] practiced in today’s criminal justice
system.\textsuperscript{61}  "Like lynchings and police whippings, contemporary police brutality is not an exception to [current] law.\textsuperscript{62}

Nonetheless, "[c]urrent legal doctrine [seems to] condone police brutality and makes individual acts of abuse appear isolated, aberrational, and acceptable rather than part of a systematic pattern of official violence.\textsuperscript{63} Thus, "[l]egal rules fragment instances of police brutality so as to obscure its systemic nature, while police supervisors, prosecutors and judges routinely turn a blind eye to its occurrence."\textsuperscript{64} Similarly, "[p]olice torture of suspects continues to be a tolerated means of confirming the presumed criminality of blacks [and minorities].\textsuperscript{65} As a result, the cost of relying on the criminal justice system leaves no room for accountability for police misconduct and serious reform is needed.\textsuperscript{66}

"Some observers believe that abuses of force reaching the attention of the public and the media are only the tip of the iceberg."\textsuperscript{67} Moreover, excess force has had an adverse impact on relationships between the police and the communities that they serve.\textsuperscript{68} The following is a brief list of publicized incidents of police brutality at its worst.

On June 4, 2008, Monica Emerson, a white woman and a former secret service agent was threatened with arrest after spilling water from her son's sippy cup at Regan International Airport.\textsuperscript{69} Emerson was detained, ordered to apologize and was forced to clean up the spilled water.\textsuperscript{70}

On January 1, 2008, while incarcerated in the Harris County jail, Clarence Freeman, a black man died at the hands of Detention Officer Nathan Hartfield.\textsuperscript{71} Hartfield applied an unpermitted choke hold on

\begin{footnotes}
\item 61. See Roberts, supra note 56, at 279.
\item 62. Id. at 278.
\item 63. Id.
\item 64. Id.
\item 65. Id. at 277.
\item 66. See id. at 282–284 (discussing how the criminal justice system works to preserve the historical racial hierarchy while excluding the actors in the criminal justice system from accountability for their roles in continuing this institutional bias).
\item 68. See id.
\item 71. See Gary Hunter, Texas Prisoners Still Dying in Houston Jails, Among Other Problems,
Freeman’s neck which restricted his air flow. Freeman was placed on life support but died later in January, when the life support was removed.

On January 1st 2008, Judge April Walker, a black woman, was arrested for impersonating a public servant. Judge Walker called 9-1-1 to report a disturbance in her neighborhood. Police arrived and stormed her home accusing her of impersonating a public servant. Although she provided the officers with her credentials, they still arrested her. The charges were dismissed two days later. The District Attorney’s office later tried to have her indicted by a grand jury on resisting arrest charges but those charges were also dropped.

On October 14, 2007, a traveler arriving at the Vancouver International Airport died after being tasered by the Royal Canadian Mounted Police. Robert Dziekanski who did not speak English had arrived at the airport 10 hours earlier. While awaiting the arrival of his mother, Mr. Dziekanski became upset and confused and was pummeled by The RCMP and tasered.

On November 21, 2006, Kathryn Johnston an eighty-eight year-old black woman from Atlanta was shot and killed after police raided her home. Officers had secured a “no knock” warrant which was secured

---

72. See id.
73. See id.
75. See id.
76. See id.
77. See Dale Lezon & Mike Tolson, Judge Cries Foul After Second Arrest This Year, She says Sheriff’s Office targeting her; Officials say she interfered in son’s case, THE HOUSTON CHRONICLE, July 4, 2008, http://www.chron.com/disp/story.mpl/hotstories/5871336.html.
78. See Jeffrey, supra note 74.
79. See id.
80. See Ian Austen, After A Death, Use of Taser In Canada Is Debated, N.Y. TIMES, Nov. 16, 2007, at A16 (describing Mr. Dziekanski’s horrific experience and untimely death at the Vancouver Airport).
81. See id.
82. See id.
83. See Rhonda Cook, Chain of Lies Led to Botched Raid; Feds Detail Woman’s Death, Officers Plea, THE ATLANTA JOURNAL-CONSTITUTION, Apr. 27, 2007, at 1D (detailing the ordeal that led to Ms. Johnston’s death); see also Shaila Dewan & Brenda Goodwin, Anger Undimmed in Atlanta At Killing of Aged Woman, N.Y. TIMES, Nov. 29, 2006, at A22 (discussing the aftermath in Atlanta following Ms. Johnston’s death).
84. See U.S. Legal, No-Knock Warrant Law & Legal Definition,
based on falsified information. Officers later planted illegal drugs in Johnston’s home and attempted to get a confidential informant to lie about purchasing drugs from the elderly woman.

In 2002, Erik and Sean Ibarra, Hispanic individuals, were arrested on charges of resisting arrest and evading arrest after the Ibarra brothers videotaped a drug raid in their Houston neighborhood. Officers destroyed the videotape.

III. DOES RACE, RELIGION, OR ETHNICITY INCREASE A PERSON’S CHANCE OF BECOMING A VICTIM OF POLICE BRUTALITY?

A. RACE/ETHNICITY AS A FACTOR

That Justice is a blind goddess is a thing to which we blacks are wise: Her bandage hides two festering sores that once perhaps were eyes.

- Langston Hughes

The role of race in criminal laws was a direct affront to blacks’ freedom and dignity and in today’s society many states continue to impose harsher penalties on blacks for assaults on whites, than on whites committing the same offenses. Race, class, and gender privilege, in a

http://definitions.uslegal.com/n/no-knock-warrant/ (last visited Sept. 20, 2010). A no-knock warrant is defined as:

A no-knock warrant is a warrant issued by a judge who allows law enforcement to enter a premises without first knocking or identifying themselves as police. It is a warrant authorizing officers to enter certain premises to execute a warrant without first knocking or otherwise announcing their presence where circumstances (such as a known risk of serious harm to the officers or the likelihood that evidence of crime will be destroyed) justify such an entry.

Id.

85. See Cook, supra note 83, at 1D.
86. See id.
87. See id.
88. See Peggy O’Hare, Ibarras Seek $5 Million in Arrest Suit; Jurors Get First Look At Case Against Deputies, County, THE HOUSTON CHRONICAL, Feb. 21, 2008, at B3 (discussing the lawsuit filed by the Ibarras in response to the arrest and destruction of the videotape).
89. See id.
91. See Amoa, supra note 49, at 299 (discussing racial tensions and the use of the castle doctrine).
92. See Gee, supra, note 59 at 115–16; See generally Note, Combating Racial Violence: A
discourse that naturalizes oppression, veil the unspoken societal assumptions. One assumption is that black and other minority men are the ‘bad guys’ and the police are the ‘good guys,’ and if the police killed someone “it must have been for a good reason.” The attitude that they must have done something, “ingrained since slavery, is nurtured and manipulated by the police, who are quick to release the prior-arrest or medical record of their victims [in order to] somehow justify being killed by the police.”

For a host of reasons, crime perpetrators are often imagined as Black or Hispanic, while crime victims are imagined as being white. In reality, four-fifths of violent crimes are intra-racial. Whites are nearly six times more likely to be murdered by another white than by a minority. Similarly, most victims of crimes committed by Black and Hispanic perpetrators are Black and Hispanic themselves. But as one author has noted, police officers are not made upon graduation from the academy ... all of the images that one is exposed to, that he/she reacts to, coupled with his/her own life experiences help shape the officer into what he/she is about to become. Further, “social scientists have demonstrated that there is a definite relationship between one’s occupational environment and the way one interprets events; an occupation may be seen as a major badge of identity that an individual acts to protect as a facet of his or her self-esteem and person.”

An indispensable key in understanding police motives, fears, aspirations, and the moral codes by which they judge themselves is to understand and acknowledge how the police learn to see the world around them and their place in it. "Thus, entry requirements, training, and

---

93. See Cary Clack, Not Everyone Should Feel Guilty for the Sins of the Few, SAN ANTONIO EXPRESS-NEWS, Oct. 28, 2002, at 1B (stating that most minorities feel guilty for the crimes committed by others of their race).
94. See NELSON, supra, note 57 at 13.
95. See id.
96. Id.
97. See Clack, supra, note 93 at 1B.
98. See supra notes 99–100 and accompanying text.
100. See id.
101. See id.
102. See COLE, supra note 25, at 106.
103. See SKOLNICK & FYFE, supra note 48, at 92.
professional socialization produce... homogeneity of attitudes that guides the police in their daily work." Policing generates powerful distinctive ways of looking at the world, cognitive and behavioral responses, which when taken together, may be said to constitute, a "working personality."

B. COMMISSION REPORT FINDINGS

The notion that police brutality of minorities is greater than compared to whites is not a new concept. Since the mid-1960s, there have been several United States Federal Commissions that have studied the trend. Unfortunately, most of the findings in the Kerner Report, a study published 40 years ago, in 1968, still holds true today. However, according to Capers, "[t]heir findings were unambiguous and to the point: hostility between the police and minority communities was not only a contributing factor to urban unrest and violence, [but] in some places, it was the sole factor."

As the Commission put it, "Negroes firmly believe that police brutality and harassment occur repeatedly in Negro neighborhoods. "This belief is unquestionably one of the major reasons for intense Negro resentment against the police."

"Even if the nation had somehow managed in the intervening decades to resolve its urban and racial challenges, this extraordinary document invites a historical reflection."

104. See COLE, supra note 25 at 106.
105. See id.
107. See generally Kerner Report, supra note 106, at v-xxiii. The Kerner Report, is the 1968 report of a federal government commission that investigated urban riots in the United States. See id. The Kerner Report was released after seven months of investigation by the National Advisory Commission on Civil Disorders. See id. The Kerner Report took its name from the commission chairman, Illinois Governor Otto Kerner. President Lyndon B. Johnson appointed the commission on July 28, 1967, while rioting was still underway in Detroit, Michigan. See id. The long, hot summers since 1965 had brought riots in the black sections of many major cities, including Los Angeles (1965), Chicago (1966), and Newark (1967). Johnson charged the commission with analyzing the specific triggers for the riots, the deeper causes of the worsening racial climate of the time, and potential remedies. See id.
108. See COLLINS, supra note 32, at 40.
109. See Capers, supra note 45, at 864.
110. Id.
111. Id. (citing NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968)).
Furthermore, the Kerner Report findings revealed that the police represented the enforcers of white supremacy, racism, and oppression. In many cases this was more than just a perception, many police officers did, in reality, reflect and express those ideas. The Kerner Report also discussed the “double standard” of the American justice system, where there is one set of laws applicable to whites and another for ethnic minorities. The Report stated, “Our nation is moving toward two societies, one black, one white—separate and unequal. What white Americans have never fully understood — but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintained it, and white society condones it.”

After the infamous Rodney King case of 1991, another commission was formed to revisit the perception of police brutality in minority communities. Unlike the previous Kerner Report, this report included Latinos and Asian-Americans in accordance with the changing demographics of the United States. The Christopher Commission affirmed many of the findings of The Kerner Report; however, it delved further into the issue of police abuse against minorities.

One of the primary topics discussed is how members of minority communities view police misconduct as commonplace. The term

113. See Kerner Report, supra note 106, at 206. Wicker states:
   To many Negroes police have come to symbolize white power, white racism, and white repression. And the fact is that many police do reflect and express these white ideas. The atmosphere of hostility and cynicism is reinforced by a widespread perception among Negroes of the existence of police brutality and corruption, and a “double standard” of justice and repression — one for Negroes and one for whites.

114. See COLLINS, supra note 2, at 2.
115. See Kerner Report, supra note 106, at 206 (exemplifying the “double standard”).
118. See id. at 13; see also Laurie L. Levinson, Police Corruption and New Models for Reform, 35 SUFFOLK U. L. REV. 1, 6 (2001).
119. See Christopher Commission Report, supra note 106, at viii. The Christopher Report revealed that:
   The difficulties of policing in Los Angeles are compounded by its vast geographic area and the ethnic diversity of its population. The 1990 census reflects how enormous that diversity is: Latinos constitute 40% of the total population; Whites 37%; African-Americans 13%; and Asian/Pacific Islanders and others 10%.

120. See id. at 37.
121. See Michael Rowan, Leaving No Stone Unturned: Using RICO As a Remedy for Police
“misconduct” is described as abusive and derisive language against minorities as well as the use of unnecessary force police employed when dealing with these minorities.\textsuperscript{122} One practice, known as “proning out,” consists of placing individuals who are being questioned face down on the street pavement.\textsuperscript{123} This practice, backed by the administration,\textsuperscript{124} was used mostly in minority communities.\textsuperscript{125}

C. EXCESSIVE FORCE

“The policing of . . . [minority communities] in the United States initially took the form of occupation, surveillance, and pacification.”\textsuperscript{126} “Even before formal police forces were established in cities at the end of the nineteenth century, people in power relied on ‘legal’ and extralegal violence and terrorism to pacify, discipline, and exploit communities of color.”\textsuperscript{127} Thus, as discussed in the Christopher Commission, race still plays a central role in the police uses of excessive force.\textsuperscript{128}

Excessive force constitutes unreasonable or unnecessary force under a given set of circumstances.\textsuperscript{129} “The chances of local criminal prosecution are slim, and of federal civil rights prosecution, even for strong cases, remote.”\textsuperscript{130} “Although there is no way to determine with mathematic certainty how widespread incidents of police brutality are,”\textsuperscript{131} according to the United States.

Department of Justice, National Data Collection on Police Use of Force, the basic problem is the lack of routine, in national systems for collecting data, on incidents in which police use force during the normal course of duty and on the extent of excessive force.\textsuperscript{132}

\textsuperscript{124} See Cranford 2008 U.S. Dist. LEXIS 57211, at *22.
\textsuperscript{125} See Christopher Commission Report, supra note 106, at 75–76.
\textsuperscript{126} NELSON, supra note 57, at 25.
\textsuperscript{127} Id.
\textsuperscript{128} See COLLINS, supra note 32, at 41.
\textsuperscript{129} BLACK'S LAW DICTIONARY 294 (3rd pocket ed. 1996).
\textsuperscript{130} COLLINS, supra note 32, at 7.
\textsuperscript{131} See Capers, supra note 45, at 845.
The difference between police treatment of whites and non-whites has been perceived by those adversely affected by the mistreatment and those not affected by it. This different view of the police system was so significant that both former President Clinton and former Attorney General Janet Reno addressed the matter. As former Attorney General Janet Reno later noted during a speech on police misconduct, "[T]he perception of too many Americans is that police officers cannot be trusted . . . especially in minority communities residents believe the police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful, and unfair;" this perception holds true of white and minority officers.

But this is not simply a "perceived" difference. In a study conducted by the Commission, twenty-five percent of the 650 Los Angeles police officers surveyed also agreed that an "officer's prejudice towards the suspect's race may lead to the use of excessive force." In addition, "[p]olice decisions to harass, though generally perceived as overzealous enforcement, constitute another body of non-enforcement activities meriting investigation." "Harassment is the imposition by the police, acting under the color of law, of sanctions prior to conviction as a means of ultimate punishment, rather than . . . a device for the invocation if criminal proceedings." While the police do have the right to use force when dealing with a criminal suspect, most departments have precise and strict guidelines of when and under what circumstances that force can be applied.

In general, the amount of police force used should be minimal, in that the force used should only be necessary to achieve the particular purpose. Most police departments employ a progression of stages through which officers can assess the appropriate force that should be administered. The New York Police Department categorizes these stages

133. See Capers, supra note 45.
134. See id. at 843.
135. See id. at 842.
136. See Christopher Commission Report, supra note 106, at 69. "Racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community. . . An officer's prejudice towards the suspect's race may lead to the use of excessive force." Id.
137. Cole, supra note 25, at 122.
138. Id.
140. See id.
141. See id.
as follows: 1) verbal persuasion, 2) unarmed physical force, 3) force using non-lethal weapons, 4) force using impact weapons, and 5) deadly force. The problem of excessive force arises when officers do not follow these guidelines and use a level of force higher than that necessary for a given situation. The police officer’s own awareness that race plays a central role in how they deal with racial minorities is exacerbated by the policy of “racial profiling” prevalent in virtually all police departments in the United States.

D. RACIAL PROFILING

As with the use of excessive force, the pervasiveness of race-based profiling suggests over-enforcement, with respect to targets of profiling, and under-enforcement, in regards to the perpetrators of profiling. Profiling also signals a responsiveness gap.

Racial profiling is a complex, controversial, and multifaceted issue. “There are many definitions of profiling, with federal agencies, states, local jurisdictions, and citizens all offering their own definitions; some are more comprehensive than others.” “Racial profiling may be defined as all law enforcement activities that are initiated solely on the basis of race, while another definition may focus only on the context of vehicle stops.” In general, racial profiling is the target of specific racial groups as suspects in criminal activities based on the assumption that certain racial groups are predisposed to commit certain crimes.

“Dedicated police officers and professional police practices have

---

142. See id.
145. See Capers, supra note 45, at 851.
146. Id.
148. Id., supra note 47, at 3.
149. Id.
150. See Capers, supra note 45, at 851 (Stating quite simply, that the law, for the most part, fails to protect individuals who are the victims of profiling and fails to ensure democratic policing.); see also Weatherspoon, supra note 144, at 728.
contributed to making our communities safer."  

The majority of police officers are hard working public servants who perform a dangerous job with dedication and honor; however, the perception that some police officers are engaging in racial profiling has created resentment and distrust in police departments, this is particularly true in communities of color.  

Assertions that law enforcement personnel at all levels unfairly target certain racial and ethnic groups, particularly, but not exclusively for traffic stops and searches, have raised concerns about violations of the Constitution.  

"So long as police claim targeting is not based on race alone, courts tend to treat the action as beyond the purview of the Equal Protection Clause." Additionally, it has been noted that "after United States v. Armstrong the complainant must show not only a discriminatory effect but also discriminatory purpose to make out a claim of discriminatory enforcement." However, "this doctrinal requirement is, of course, unresponsive to the concerns raised by critical race scholars of unconscious racism and implicit biases."  

In addition, "racial minorities have been disadvantaged by criminal procedure rules that are race-neutral, as the rules have had a disproportionate effect on communities of color." "The Central Park Jogger case is but one example." In 1989, a white woman was viciously raped and beaten in New York's Central Park. After intense interrogations, "[f]ive teenagers, ranging in age from 14 to 16 years old, who . . . [were] implicated in a separate series of muggings, were questioned about the rape." The boys were black and Latino; the victim was white. "Some say that things began to go wrong right there—that
the race factor trumped [the] search for the truth."\textsuperscript{163}

As Capers noted, "[t]his is ostentatiously true in high profile cases where media attention also influences the allocation of police resources."\textsuperscript{164} "For example, Susan Brownmiller, in her analysis of newspaper coverage of rape, found that ‘although New York City police statistics showed that black women were more frequent victims of rape than white women, the favored victim in the tabloid headline . . . was young, white, middle class, and attractive.’\textsuperscript{165} The Central Park jogger case is a perfect example. "The idea of a roving gang of black boys brutally beating and raping a white woman fit the schema of the public’s fear of African-Americans," despite the fact that the DNA recovered did not match any of the accused.\textsuperscript{166}

"This attention to white female victims of crime and comparative inattention to black female victims of crime only fuels the perception prevalent in poor and minority communities that, when it comes to receiving protection, minority victims simply are not as important as non-minority victims."\textsuperscript{167} “More significantly, just as increased media attention results in an increase in police resources, this under-attention by the media to crimes against minority victims translates into a reduced allocation of resources deployed to respond to such crimes."\textsuperscript{168} “This, in turn, increases the perception of undemocratic policing.”\textsuperscript{169}

Thirteen years later, DNA testing, along with another person’s confession, explicitly showed evidence that the five convicted suspects did not commit the crime.\textsuperscript{170} In 2002, the convictions were dismissed.\textsuperscript{171}

\bibliography{163. Id.
164. Capers, supra note 45, at 855.
165. Id.
166. Cassel, supra note 161.
167. Capers, supra note 45, at 855.
168. Id. at 856.
169. Id.
170. See African American Registry, Central Park Jogger Case Dismissed!, available at http://www.aaregistry.org/historic_events/view/central-park-jogger-case-dismissed. The site lists the defendants history concerning the Central Park arrest:

1989, the police had compared the DNA sample found at the Central Park crime scene to DNA evidence from a string of rapes on Manhattan’s Upper East Side, they would have most likely realized the same man, Matias Reyes, had committed these rapes, including the Central Jogger case. Although Reyes is an African-American, the point is that the police almost immediately and solely centralized their efforts in establishing that there was more than one rapist, and that all those involved were African-American or minorities. The police, in securing their suspects, coerced the young boys into confessing to the rape.

Experts say coerced confessions are far more common than one would expect. “During lengthy interrogations, police often lead suspects to believe they have no other options but to confess.” The most vulnerable to such tactics are the young, and those with very low IQs.

E. PRE-TEXTUAL STOPS

“For years, members of the African-American and Hispanic communities have complained that they were victims of profiling” and that they are targeted based on the presumption, and not on the probable cause, that they actually committed a particular offense. For example, pre-textual stops are legal justifications of racial profiling. “Many minorities . . . believe that the police are more likely to target them than

first-degree sexual abuse, first degree-assault, and first-degree riot. Released Aug. 12, 2002, after serving 11 1/2 years.

Id.
172. See id.
174. See id.
175. See id.
176. Id.
177. See id. One professor analyzed confessions as follows: It’s a reaction to a feeling of utter hopelessness and despair that virtually anything I say about my innocence is going to be ignored, and my only way out of this interrogation room is to accede to the interrogators’ demands,” says Steven Drizin, a professor at Chicago’s Northwestern University School of Law and an expert on false confessions. “The whole purpose of police interrogation tactics is to convince a suspect that it is in his best interest to confess to a crime.”

Id.
178. Laney, supra note 147, at 2.
179. See Weatherspoon, supra note 144, at 724.
180. See Capers, supra note 45, at 850.
their white [counter-parts] for pre-textual . . . stops”,\textsuperscript{181} a practice the Supreme Court gave its imprimatur to in \textit{Whren v. United States}.\textsuperscript{182} 

The police strategy is to find lawful grounds to stop the vehicle — a traffic violation was the pretext.\textsuperscript{183} A pre-textual stop flows from an officer’s belief that criminal activity is afoot despite the absence of articulable suspicion.\textsuperscript{184} “A pre-textual stop based on a racial profile stems, therefore, from a belief that stopping minorities will yield evidence of crime more often than stopping other motorists.”\textsuperscript{185} Moreover, “[a]n arrest . . . is a serious personal intrusion regardless of whether the person seized is guilty or innocent.”\textsuperscript{186} “A custodial arrest involves a search of the arrestee’s entire body, the contents of his pockets, and any containers found within his reach.”\textsuperscript{187} “The arrestee may be led away in handcuffs and transported to the police station, fingerprinted and booked, then detained for up to forty-eight hours before a magistrate determines the validity of his detention.”\textsuperscript{188} “Even if the case against such an arrestee is dismissed, or his case results in an acquittal, his arrest record may be maintained and disseminated, further damaging his reputation.”\textsuperscript{189}

“A person’s race, ethnicity, or national origin, may motivate police conduct.”\textsuperscript{190} “The term “DWB” — Driving While Black — describes the phenomenon in which officers target persons based on race for traffic [violations] (or other) detentions, in order to follow up on hunches of criminal behavior.”\textsuperscript{191} “Although African-Americans have disproportionately suffered this procedure,”\textsuperscript{192} other groups have been or can be targeted, for example, women and Arabs.\textsuperscript{193} Suppose that a law enforcement officer, post-September 11, 2001 (commonly referred to as 9-
11), decides to target all persons of apparent Arab ancestry, "just in case they are terrorists." An officer may "put such persons under surveillance and use a minor traffic violation, such as the failure to use a seat belt, as a pretext for further investigation."194 "With the racial and ethnic makeup of the nation changing and after the terrorist attacks of September 11, 2001, other groups such as Arab Americans, Muslims, and Asian Americans, have joined the call for an end to racial profiling."195 This has been defined as the difference between Case probability and Class probability. 196

Case probability, when viewed in situations involving the police, is employed in instances where there are probable factors or background information that can reasonably be interpreted to point towards a specific racial group to find a criminal suspect.197 For example, if a victim of a crime is attacked in a certain area and describes their assailant as a six-foot African-American male and the police begin questioning people that fit their profile based on their investigations, there is most likely probable cause for them to take this action.198

In contrast, class probability occurs in situations where, based on statistics of certain minorities committing certain crimes, these racial minorities are targeted based solely on these statistics and not any evidence or probable cause that they have actually committed a crime.199 An example of class probability occurs in situations where African-Americans and Latinos are targeted in "routine" traffic stops to search for illegal drugs and contraband solely based on their race and statistics that more of them are involved in distributing drugs, without any other reason for probable cause.200 The distinction between the two is important because in the first instance of case probability, there are certain factors that validate the police actions, whereas in the second instance no such factors exist.201

However even in the instances where case probability is present, there is no guarantee that this will minimize the damages of racial profiling.202 This notion is evidenced by the Stuart case that occurred in 1992, in
Boston, Massachusetts. In this instance, a white man who murdered his pregnant wife, took advantage of the racist assumptions against African-American men, and used them to divert suspicion by claiming that his wife’s assailant had been black. This resulted in the round-up and harassment of hundreds of African-American males and a public outcry when it was discovered that there was in fact no assailant and the husband murdered his own wife.

The Stuart case spurred the creation of the St. Clair Commission in 1992, to take a closer look at the Boston Police Department. As with the Kerner Report and the Christopher Commission Report, the St. Clair Report also uncovered considerable inconsistencies in Boston’s Police Department leadership and management. The problems highlighted by the St. Clair Commission are viewed by some as the “blueprint for police reform efforts in the city.”

F. RELIGION AS A FACTOR

The law enforcement’s use of profiling reaches further than just the issue of race. Although freedom of religion is a fundamental right guaranteed in the Constitution, the events of 9-11 and America’s “war on terrorism” have highlighted the problems faced by individuals who practice Islam or a religion outside of the cultural norm. “A public convinced of...
its vulnerability might well be willing to endure greater police intrusions in exchange for greater security."\textsuperscript{211} Evidence of this problem is most visible in the increased profiling and prosecution of Muslims and Arabs in our airports.\textsuperscript{212} Echoing the sentiments of African-American men, who are arbitrarily stopped due to racial profiling while they are driving, or commonly known as "Driving While Black" (DWB), Arabs have experienced the term "Flying While Arab" (FWA) or "Flying While Muslim" (FWM).\textsuperscript{213} According to a two-year study conducted by the Vera Institute of Justice,\textsuperscript{214} "in the aftermath of 9-11, Arab-Americans have a greater fear of racial profiling and immigration enforcement than of falling victim to hate crimes."\textsuperscript{215}

In examining discriminatory practice by law enforcement officials based on race or ethnicity, those based on religion muster a few notable distinctions. First, many view police overreaching against Muslims and Arabs as justified in order to secure our national borders against terrorist attacks.\textsuperscript{216} This viewpoint is sanctioned by the recent acts of legislation passed since September 11, 2001, allowing for arbitrary searches and detention of, mostly male, Arab and Muslims during airport security checks with questionable or no probable cause.\textsuperscript{217}

---

\textsuperscript{212} See Baker, supra note 210, at 1376.
\textsuperscript{213} See id. at 1375–76.
\textsuperscript{214} See THE VERA INSTITUTE OF JUSTICE, \texttt{http://www.vera.org/} (last visited Sept. 19, 2010) (stating that the Vera Institute is dedicated to combining "expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety").

Congress passed the Airport Security Federalization Act of 2001. It mandated that all airport screening personnel must be federal employees . . . . The act also ordered that cockpit doors be fortified and that video monitors be installed to alert pilots to terrorist activity in the passenger cabins.

\textit{Id.}; see also Legomsky, supra note 216, at 165 (2005) ("Even if no link to, or knowledge of, terrorism was suspected, [Arabs and Muslims] were arrested[,] . . . the overwhelming majority [being] males, between the ages twenty-six and forty, from Arab or Muslim countries. About one-third were from Pakistan.").
One such case involved a group of six Muslim imams who were passengers on a US Airways flight heading from Minnesota to Arizona in 2006. Airport security was alerted when three of the men performed their evening prayers in the terminal before boarding the flight. The six Muslim men were then removed from the plane, handcuffed, and questioned for several hours before being released. "Their luggage was also removed, rescreened, and checked with dogs." The FBI conducted interviews and everything checked out fine.

After the incident, a spokesperson for the Minneapolis-St. Paul Metropolitan Airports Commission justified their department’s actions. They claimed that some witnesses reported that the men, who were speaking in both English and Arabic, were making anti-American statements, and that their behavior on the plane was peculiar. This behavior included entering the plane and not sitting together in their assigned seats. Also, one asked for a seat belt extender who did not appear to need one.

Some may argue that these are simply precautionary measures and a necessary evil to protect American citizens. However, as is evident by the cases above, discrimination is not only against undocumented immigrants and visitors, but also against American born Muslims. These individuals, like other immigrant groups, may have only a historical connection with their countries of ethnic origin, and have the same civil

219. See id.
220. See id.
222. See Sander, supra note 218.

[O]fficials with the Metropolitan Airports Commission, which operates the Minneapolis–St. Paul International Airport responded to the settlement through their general counsel, Tom Anderson, who said: Law-enforcement officials did what they believed was appropriate to ensure the safety of travelers based on the information available at the time. We will continue to be vigilant in maintaining the security of Minneapolis–St. Paul International Airport and the safety of travelers who use it.

Id.
224. See Sander, supra note 218.
225. Id.
226. GOTTFRIED, supra note 217, at 4.
227. See SHORA, supra note 209.
liberties guaranteed to other U.S. citizens.\textsuperscript{228} This type of discriminatory behavior is not limited to private citizens; government officials of Arab decent have also been subjected to discrimination.\textsuperscript{229}

IV. DOES GENDER OR SEXUAL ORIENTATION INCREASE YOUR CHANCES OF BECOMING A VICTIM OF POLICE BRUTALITY?

A. LAW ENFORCEMENT VIOLENCE AGAINST WOMEN

"Sexism permeates the criminal justice system."\textsuperscript{230} Women are not immune to incidents of police misconduct.\textsuperscript{231} There have been numerous occurrences reported for violence by law enforcement against women ranging from unnecessary force, strip searches by male officers, and even rape of women while in police custody.\textsuperscript{232} The race and religious affiliation of the women involved in these cases covers the entire spectrum.\textsuperscript{233}

Take for instance, a 2002 case involving the Chicago Police

\begin{itemize}
    \item \textsuperscript{229} See, e.g., Mark Sherman, Rep. Issa: I Was Profiling Victim, Wash. Post, Oct. 26, 2001, http://www.washingtonpost.com/wp-srv/aponline/20011026/aponline175845_000.htm. Congressman Darrell Issa, the grandson of Lebanese immigrants, was barred from boarding an Air France flight to Paris to participate in a congressional investigating commission in the Middle East in October 2001. \textit{Id.} Another case involved a Muslim U.S. Secret Service agent who is a member of President George W. Bush’s security detail. See Hussein Ibish, Report on Hate Crimes and Discrimination Against Arab Americans: Post-September 11 Backlash 20 (2003), available at http://www.adc.org/PDF/hcr02.pdf. After passing through airport security and boarding an American Airlines Flight from Baltimore to Dallas, he was asked to be removed from the plane by the captain. \textit{Id.} His identity was checked several times by airplane personnel and the police while being detained. \textit{Id.} He offered to have Secret Service confirm his identity, which was never done, and was subsequently entered into the American Airline computer system barring him from other flights. \textit{Id.} The airport personnel would not even allow him to retrieve a jacket he left on the plane. \textit{Id.}
    \item \textsuperscript{230} Barbara A. Brown et al., Women’s Rights and the Law, 45 (1977).
    \item \textsuperscript{231} See Marilynn S. Johnson, Street Justice: A History of Police Violence in New York City 4 (2003).
    \item \textsuperscript{233} See id.
\end{itemize}
Racial Profiling

Department.234 Rachelle Jackson stopped to render medical aid to an officer after a car accident.235 While Jackson was rendering aid to the officer she informed the police officers who approached the scene that the injured officer’s weapon had been stolen.236 When she was asked to go to the station for questioning, Jackson assumed it was regarding the accident; but once she arrived, she found out she was accused of theft.237

Jackson claims she was held for two days with little food or water and then violently coerced into signing a statement saying that she committed the crime.238 Jackson was charged and remained in jail for ten months awaiting trial.239 A circuit court judge later threw out the case, and Jackson was awarded $7.9 million in a civil case for false arrest, malicious prosecution, coercive questioning and intentional infliction of emotional distress.240

In 1996, Hope Steffey, a Caucasian woman residing in Stark County, Ohio, was allegedly subjected to a demeaning strip search when at least six male and female officers forcibly removed all of Steffey’s clothes, including her underwear and bra, while she lay face down on the ground and handcuffed.241 The incident began when police arrived at the scene after Steffey’s cousin placed a 911 call claiming Steffey had been assaulted by another woman.242

According to Steffey’s federal lawsuit claim, when the police asked Steffey for her driver’s license, she accidentally gave the officers her deceased sister’s license, which she kept in her wallet as a memento.243 She was later charged with disorderly conduct and resisting arrest.244 Steffey claims that the officers left her naked in a cell for six hours and she was not allowed to use a phone or seek medical attention for her injuries,

234. Chicago Woman Wins $7.9 Million for Rescuing a Police Officer; Rochelle Jackson Rescued Officer From Burning Squad Car and Spent Over Ten Months in Jail, SCI. LETTER, July 1, 2008, available at 2008 WLNR 12052196.
235. Id.
236. Id.
237. Id.
238. Johnson, Woman was Falsely Accused and Jailed, for Helping a Injured Police Officer, POLICE AMERICA BLOG (June 14, 2008), http://police-america.blogspot.com/2008/06/woman-was-falsey-accused-and-jailed-for.html
239. See id.
240. Chicago Woman Wins $7.9 Million for Rescuing a Police Officer, supra note 234.
242. Id.
243. Id.
244. Id.
including a cracked tooth, bulging disc, and bruises.\(^{245}\)

Perhaps some of the most disturbing cases—those involving law enforcement officials’ violence against women—arise when officers are accused of rape.\(^{246}\) A victim of rape under any circumstances will undoubtedly have residual emotional scars, and many rapes are not even reported to authorities.\(^{247}\) When combined with a rape by the very individuals that have sworn to serve and protect these women, the betrayal is even more heinous.

In 2006, a Bloomington, Illinois sergeant was accused of raping four women since 2002.\(^ {248}\) Sergeant Jeff Pelo was investigated for the rapes

---

\(^{245}\) Id.

\(^{246}\) See Amy Dellinger Page, *Gateway to Reform? Policy Implications of Police Officers’ Attitudes Toward Rape*, 33 AM. J. CRIM. JUST. 44, 47 (2008) (demonstrating a police officer’s attitude towards rape victims may also be a contributing factor towards a certain propensity to commit rape).

\(^{247}\) Campbell and Johnson conducted a multi-method study with police officers from a mid-sized city in the Midwest and officers from a large Midwestern university. One aspect of the study asked how police officers defined rape/sexual assault in their own words. Three “clusters” of definitions emerged from the results, with each cluster comprised of conceptually similar definitions. The first cluster offered by 31% of the sample, was named the ‘Consent Definition of Rape.’ This group defined rape in terms of penile penetration and lack of consent. However, consent was not part of the legal definition of rape in the state under study. Only 30% of this cluster mentioned the use of force, which was a defining feature of the state statute. The second cluster, given by 19% of the sample, was the ‘Force Definition of Rape.’ It defined rape in roughly the same terms currently comprising the legal definition of rape in the officer’s state. These factors included penetration (84%), the use of force (95%), and the threat of force (58%). The third cluster, offered by the remaining 50% of the sample, provided a ‘Mixed Definition of Rape.’ This definition contained old and new legal Components along with rape myths. The mixed definition focused around penile-vaginal penetration (42%), rape as sexual gratification (40%) and consent (51%). However, only penetration is currently part of the legal definition in this state. These officers attributed more blame to victims and were more conservative in their views about women, as measured by Spence et al. Revised Attitudes toward Women Scale. It is not known if these beliefs and opinions translated into actual behavioral responses in the treatment of rape cases and victims of rape.

\(^{248}\) Id.; see also RAPE, ABUSE, & INCEST NATIONAL NETWORK, *WHO ARE THE VICTIMS? BREAKDOWN BY GENDER AND AGE*, available at http://www.rainn.org/get-information/statistics/sexual-assault-victims (last visited Oct. 26, 2008). According to the Rape, Abuse & Incest National Network (RAINN), victims of sexual assault are three times more likely to suffer from depression, six times more likely to suffer from post traumatic stress disorder, thirteen times more likely to abuse alcohol, twenty-six times more likely to abuse drugs, and four times more likely to contemplate suicide. Id.; see also RAPE, ABUSE, & INCEST NATIONAL NETWORK, *REPORTING RATES*, available at http://www.rainn.org/get-information/statistics/reporting-rates (last visited Oct. 26, 2008) (reporting that sixty percent of rapes are not reported to the police).

after he was already suspended for stalking a woman.\textsuperscript{249} His other charges included aggravated stalking and attempted residential burglary.\textsuperscript{250}

Regular citizens are not the only ones who have reported sexual violence by police officers.\textsuperscript{251} In Greensboro, North Carolina, an off-duty female police officer was sexually violated by three other officers in a city owned vehicle.\textsuperscript{252} The victimized officer claims that the three officers offered her and a friend a ride home and, when they entered the vehicle the officers began assaulting them.\textsuperscript{253} The District Attorney did not file formal charges, citing a lack of evidence;\textsuperscript{254} however, only three months later the city manager recommended two of the three officers for termination, while the third remained on administrative leave.\textsuperscript{255}

Police officers are not the only law enforcement officials that have been charged with sexual misconduct.\textsuperscript{256} In 1996, three U.S. servicemen were charged and convicted of raping a twelve year-old Japanese girl in Okinawa.\textsuperscript{257} The three servicemen were sentenced to up to seven years in a Japanese prison.\textsuperscript{258} Even with the permissive view of rape in Japanese culture, the lenient sentence created a mass outcry from the public and sparked months of protests against the continued U.S. military presence in Okinawa.\textsuperscript{259}

Pelo was ultimately sentenced to 440 years in prison. \textit{Id}. His attorneys are currently seeking a sentence reduction. \textit{Id.}


\textsuperscript{250} See Brady-Lunny, \textit{Inside the Investigation: From Colleague to Prime Suspect}, supra note 249; see also Edith Brady-Lunny, \textit{Defense Seeks 'Coolheaded Justice' In Sentence Reduction}, supra note 248.


\textsuperscript{253} Elmquist, supra note 252.

\textsuperscript{254} Killian, supra note 251.

\textsuperscript{255} Elmquist, supra note 252.


\textsuperscript{257} Id.

\textsuperscript{258} Id.

\textsuperscript{259} See id.; see also Fury Over Japan Rape Gaffe, \textit{BBC NEWS} (June 27, 2003), http://news.bbc.co.uk/1/hi/world/asia-pacific/3025240.stm. Seiichi Ota, a senior Japanese politician, was quoted in 2003 as saying that "gang rape shows that people who do it are still vigorous, and that is ok." \textit{Id.} Also, normal prison sentences in Japan for rape range from two to fifteen years; however it is unusual for a sentence to be more than five. \textit{Id.}
B. VIOLENCE AGAINST THE GAY, LESBIAN, BISEXUAL, AND TRANSGENDERED (GLBT)

Increased incidents of police brutality apply to any groups of people deemed to be “the other.” This standard also holds true for members of the gay, lesbian, bisexual, and transgendered (GLBT) communities. The general idea is disturbingly summed up by a Los Angeles police officer quoted in the 1991 Christopher Commission Report, which states, “it’s easier to thump a faggot than an average Joe. Who cares?”

In October 1998, a group of peaceful demonstrators participating in a New York City rally protesting the murder of Matthew Sheppard (a gay man who was killed in Wyoming by two men), asserted allegations of police brutality against the New York City Police Department. Although the NYC authorities denied any police misconduct, the attorneys for the rally participants submitted their numerous complaints to the Civilian Complaint Review Board relating to seventy incidents during and after the demonstration. The complaints listed several incidents of improper police behavior including: denial of HIV medication to some of those arrested, withholding access to food and water, denying use or access to toilets, and physical and verbal abuse (including homophobic epithets) by officers whom allegedly covered their badges.

A lesbian woman from Athens, Georgia filed a civil lawsuit alleging that a former Gwinett County Officer raped her because of her sexual orientation. She alleged that the officer said that he was going to “teach her a lesson” and that the world “needed at least one less dyke and he was going to make sure that happened.” The officer was subsequently acquitted of the charges of rape, false imprisonment, aggravated assault with a deadly weapon, and aggravated assault with intent to rape. He was only convicted for violating his oath of office and received 2 years

260. See Amnesty Int’l, supra note 143, at 7.
263. See Amnesty Int’l, supra note 143, at 25.
264. See id.
265. See id. at 25–26.
266. See id. at 26.
268. Id.
269. Id.
V. (THE CONSEQUENCES OF REPORTING POLICE BRUTALITY) RETALIATION BY POLICE OFFICERS FOR REPORTING POLICE BRUTALITY

From filing a complaint to pursuing legal recourse, the victim of police brutality is faced with unnecessary difficulties and, in some cases, concerted opposition from police officers and powerful police unions. Allegations of police abuse are rife in cities throughout the country and take many forms. Police, state, and federal authorities . . . [should] . . . be responsible for holding police officers accountable for abusive or arbitrary acts.271

However, often the officers accused are left unpunished and one of the concerns of citizens who want to challenge police abuse of power is the fear of the officer’s retaliation.272

“Additional barriers that prevent victims from obtaining relief in court are equally onerous.”273 These barriers include: “evidentiary rulings, protective orders, judicial toleration of police perjury, and “the blue wall of silence” that favors the actions of police officers and provides absolute immunity from testifying against each other.”274 This acceptance of not testifying against one another crosses over to the District Attorneys, who are hesitant to bring charges against the law enforcement officials who assist them daily on other criminal cases.275 However, in an attempt to deflect the government’s failure in fulfilling their obligation to ensure individual’s rights are protected, officials have pointed to civil remedies as the most effective avenue of redress.276

“Under 42 United States Code, section 1983,277 individuals may file
lawsuits against the offending officers, department or jurisdiction." 278 Further, "a victim of police abuse may not win a damage award following a judgment against a police department unless it can be shown that the injury was caused by a municipal 'policy' or 'custom.' 279 However, section 1983,280 "which ostensibly provides a cause of action against state actors for civil rights deprivations, has repeatedly proven inadequate in addressing problems of police brutality." 281 "In Rizzo v. Goode, 282 the Supreme Court held that future acts of police brutality, regardless of past pervasiveness, were too speculative to warrant injunctive relief—a holding the Court essentially reaffirmed in City of Los Angeles v. Lyons." 283 "Municipalities themselves are normally immune from civil liability—absent evidence of deliberate indifference to the risk of brutality." 284

In the case that there is sufficient evidence to try the offending officer in court, the victim is faced with a new obstacle—the judge. 285 Many judges view the officer's word on the events that transpired as superior to that of the regular citizen. 286 There is a general belief that most officers are telling the truth, and in absence of formidable evidence to the contrary, the officer's version of the events usually triumphs. 287 Moreover, the judges are not the only ones prejudiced by this opinion—the media also plays a powerful role in how successful a victim of police retaliation will be in his or her case. 288 If the media reports the facts in an unfavorable light to the plaintiff, this has the power to sway public opinion against the plaintiff. 289

---

278. COLLINS, supra note 32, at 118.
279. Id. at 119.
281. Capers, supra note 45, at 848.
283. See Rizzo, 423 U.S. at 379–80; City of Los Angeles v. Lyons, 461 U.S. 95, 112 (1983) (holding lower court lacked jurisdiction to entertain Lyons's claim for injunctive relief). Lyons sought to enjoin the Los Angeles officers from continuing to utilize the use of chokeholds. Lyons, 461 U.S. at 112. However, the Court overruled the lower court's grant of relief because the prior use of chokeholds, including its use against Lyons, would not establish a real and immediate threat that police would again use a chokehold against Lyons personally. Id.; see also Capers, supra note 45, at 848.
284. Capers, supra note 45, at 848.
285. See Armacost, supra note 275, at 468.
286. See id.
287. See id.
289. See Judge Peter D. O'Connell, Pretrial, Publicity, Change of Venue, Public Opinion
This could possibly lead to more retaliatory actions against the victims, not only from law enforcement officials, but from the general public as well. All of these factors combined with the costs and the heavy burden of proof placed on the victim results in their trepidation and reluctance to pursue these cases.

The Supreme Court has issued a ruling that attempts to set guidelines for courts to apply in cases where government retaliation punishes constitutionally protected rights. The Court applies a three prong analysis. The first prong asks that the plaintiff show the alleged conduct was entitled to constitutional protection. The second prong requires the plaintiff to show that the protected right was a “substantial or motivating” factor in the agency’s decision. The Seventh Circuit Court of Appeals’ (while applying the Mt. Healthy three pronged test) ruling in McClure v. Cywinski held that plaintiffs are not required to show that the protected activity was the only or sole factor for the retaliatory action. Once the second prong is satisfied, the burden shifts from the plaintiff to the defendant.

Under the third prong, the defendants must show “by a preponderance of the evidence that [they] would have reached the same decision as to respondent’s reemployment even in the absence of the protected conduct.” Although the aforementioned cases deal with governmental agencies infringement on civilian’s rights, the same legal framework is also applicable to police civil liability as well.

---


293. See Doyle, 429 U.S. at 287; see also Vaughn, supra note 272, at 51–60 (elaborating on the three prong analysis).

294. Doyle, 429 U.S. at 287.

295. Id.; see also McClure v. Cywinski, 686 F.2d 541, 545 (7th Cir. 1982); Vaughn, supra note 272, at 55.

296. See McClure, 686 F.2d at 545.

297. See id. at 545; see also Vaughn, supra note 272 at 57.

298. Doyle, 429 U.S. at 287; see also Vaughn, supra note 272 at 57.

299. See Vaughn, supra note 272, at 52–53.

Mt. Healthy is relevant to police civil liability because the legal justification and motivation of police behavior is critical in assessing the constitutionality of official police action. The case [law] . . . shows that officers must not retaliate against suspects who criticize the police or against citizens who express controversial but
VI. QUALIFIED IMMUNITY

There are "innumerable hurdles in identifying and documenting patterns of police brutality." According to legal scholar Susan Bandes, "complaints are discouraged, confessions are not videotaped, record keeping is lax or nonexistent, records are sealed or expunged, patterns are not tracked, and police files are deemed undiscoverable." Perhaps one of the most difficult barriers to the prosecution of police officers who commit acts of brutality rests in the granting of "qualified immunity." Qualified immunity is defined as "immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established constitutional or statutory rights." The concept of qualified immunity was first introduced by the Supreme Court in the 1967 case of Pierson v. Ray. The Court further outlines the doctrine of qualified immunity in Harlow v. Fitzgerald.

In Harlow, the Court held that "government officials are entitled to some form of immunity from suits for damages . . . public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." However, the immunity granted by the Court is not absolute. If the evidence presented shows that the public official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury," he will lose the right to immunity.

Therefore, based on the opinions of the Court, "[t]he resolution of immunity questions inherently requires a balance between the evils protected ideas. [They] must not use a criminal investigation as a means of retaliation against citizens exercising their First Amendment rights . . . a right that meets with much consternation among police officers, but nonetheless a constitutional right that must be respected and observed.

Id. 300. See Roberts Symposium, supra note 273, at 278.
301. Id. (quoting Susan Bandes, Patterns of Injustice: Police Brutality in the Courts, 47 BUFF. L. REV. 1275, 1279 (1999)).
306. Id. at 806.
307. See id. at 813.
308. Id. at 815 (citing Wood v. Strickland, 420 U.S. 308, 322 (1975)).
inevitable in any available alternative;" however, the Court does not go so far as to establish specific guidelines for lower courts to make this determination. The Court presents qualified immunity as "clearly established law . . . [that] should permit the resolution of many insubstantial claims on summary judgment." However, determining what is reasonable in a given situation requires a close examination of the facts on a case-by-case basis and applying general legal principles to a particular context. This determination centers on the central question of whether qualified immunity should be granted, based upon a question of law, as the Court asserts in Harlow, or should each case be presented to a jury as a question of material facts?

VII. SELF-DEFENSE AND JUSTIFICATION

"In many states, police officers continue to rely on justification defenses, including self-defense and public authority defenses, to justify their use of force in state criminal and civil suits challenging their behavior." "Using deadly force to repel what is perceived as a threat, numerous factors such as: the amount of force used, race, jurisdiction, and place of altercation, and societal intolerance, play a vital role in determining what is considered justified when using deadly force."

There are three themes to consider in defining that range of justification.

1. "Moral judgments about the relative worth of conflicting interests that may skew the balance of interests."
2. "A requirement of imminent risk that restricts the number of cases in which a claim of defending the superior interest in acceptable."
3. "Claims of justification should, in principal, consists of both

309. See id. at 813.
310. See id. at 816–19 (noting the ambiguities of the objective standard established in Harlow).
312. See Chen, supra note 302, at 262–63.
313. See id. at 262–64.
316. Id. at 944.
317. Id. at 945.
318. Id.
objective justifying circumstances and the actor's subjective awareness of and reliance on those circumstances.\textsuperscript{319}

"Adapting the common-law doctrines of justification to the constitutional doctrine of governing police uses of force affirms and strengthens these legal and historical connections between justification defenses and Fourth Amendment reasonableness, in light of the common underlying legal questions all interpersonal force raises."\textsuperscript{320} In order for one to efficiently analyze the theory of justification, there must be an understanding of "why these elements are necessary for a sound claim of justification."\textsuperscript{321} A justification renders a nominal violation of the criminal law and therefore is exempt from criminal sanctions.\textsuperscript{322} "Most significantly, because police officers are the instruments by which the state pursues its interests in law and order, threats to [the officers] often result in justified defensive force in excess of what would otherwise be required to serve the state's interests."\textsuperscript{323} Thus, "not every threat of harm to an officer directly threatens the state's interests in law and order."\textsuperscript{324}

"[C]onstitutionally, permissible police uses of force must serve one or more of [the following] three interests: 1) law — assisting our institutions of criminal adjudication, most commonly by enabling a lawful arrest or facilitating an authorized search; 2) order — maintaining public safety by preventing or stopping disorderly conduct; and 3) self-defense — protecting the officer from physical harm."\textsuperscript{325} "Thus, in determining what constitutes constitutionally reasonable force, the 'totality of the circumstances' should include only circumstances that are relevant to these ends and the state's ability to achieve them, [but] only to the degree that they are relevant."\textsuperscript{326}

"As a general rule, a defendant cannot be convicted of a crime for conduct that was reasonably regarded by the defendant as necessary to defend against what he reasonably perceived to be an unlawful and imminent attack upon his person."\textsuperscript{327} Conversely, the implication of a self-defense justification, can present problems when one must consider: 1) the

\textsuperscript{319} Id.
\textsuperscript{320} Harmon, supra note 314, at 1150.
\textsuperscript{321} See FLETCHER, supra note 315, at 945.
\textsuperscript{322} Id. at 941.
\textsuperscript{323} Harmon, supra note 314, at 1155.
\textsuperscript{324} Id.
\textsuperscript{325} Id. at 1158.
\textsuperscript{326} Id.
demand that the defendant's perception be 'reasonable,' 2) the requirement that the threatened attack be 'imminent,' and 3) the prohibition against using more force than reasonable to repel the attack. Nonetheless, "[t]hose who act in justifiable self-defense exercise a privilege and act in conformity with the law." The criminal justice system that invokes modern policing with self-defense to particular circumstances may be considered from at least three perspectives.

1. Normative- "a body of legal rules expressing social values through prohibitions backed by penal sanctions against conduct viewed as seriously . . . harmful."

2. Administrative- "comprehends the official apparatus for enforcing criminal law, including the police and other . . . enforcement agencies, prosecutorial authorities, judiciary . . . and correctional facilities."

3. Social System- "defining and responding to criminal conduct that involves all elements of society." The most prevailing element is race.

"While defensive force by police officers is often viewed as self-defense, it is more accurately justified as derivative of the state's interests in law and order." If allowing officers to defend themselves did not serve the state's interests, the state could simply demand that officers contract away, at least partially, their right to self-defense as a condition of employment, rather than recognize the right as justifying defensive force while on the job.

VIII. SOLUTIONS FOR COMBATING POLICE BRUTALITY

"Damages are generally thought justified not because victims are uniquely deserving but in order to deter future violations. But this rationale immediately raises difficult empirical questions about the unintended deterrence of legitimate government activity by the threat of damages for

328. Id. at 947.
329. Fletcher, supra note 315, at 941.
331. Id.
332. Id.
333. Id.
335. Harmon, supra note 314, at 1156.
336. Id.
Making money damages freely available for all violations of constitutional rights, including newly declared or clarified constitutional prohibitions, would make such innovations more costly. By holding down the costs of new rights, qualified immunity helps to facilitate constitutional change. It also redistributes societal resources from older generations, who would benefit from payment for past harms, to younger citizens, who will benefit more from future reforms.

"[F]or some purposes, money damages could be an effective means of vindicating constitutional rights; in others, money damages are—and likely will remain—out of reach."

In addition, certain scholars has noted that "it is self-evident that the Justice Department needs a more coherent and accessible approach to the collection and analysis of police abuse data." "Of all the agencies that are conducting data gathering, not one has come up with an effective benchmark against which to compare the data." "Census polls are often utilized as a benchmark but are ineffective for determining demographics for profiling reasons; ... [for example,] ... race and or national origin are not reflected on a driver's license." "Without essential information about the problem of police brutality, the Department cannot effectively combat [such brutality]."

For example, in 1991, in response to the ... [societal outrage] over the [Rodney King] beating in Los Angeles, the Justice Department compiled a report on "official misconduct" complaints between 1985 and 1990, with the purpose of determining "to what extent, if any, a pattern of police brutality by employees of law enforcement agencies is shown from the data maintained by the Civil Rights Division."

The report acknowledged that the data on official misconduct complaints received were severely limited. Therefore, a reorganization on how to collect data as a result of racial profiling needs to be

338. Id.
339. Id. at 1406.
340. COLLINS, supra note 32, at 106.
342. Id.
343. COLLINS, supra note 32, at 106
344. Id.
345. Id.
RACIAL PROFILING

developed. 346 "The data collected as a result of profiling suits in particular jurisdictions can be used to stop [discriminatory law enforcement] as well as raising Eighth and Fourteenth amendment challenges." 347

Next, in an effort to strike a balance between the interests of protecting individuals from improper police methods and promoting effective law enforcement, [creating] independently-operated review boards are one possibility. For example, Denver has established an Office of the Independent Monitor which conducts independent investigations of uniformed personnel including Denver's Police, Sheriff, and Fire Departments, and makes recommendations about administrative and disciplinary actions." The Citizen Oversight Board oversees the Office of the Independent Monitor, and is responsible for: 1) assessing whether the Office of the Independent Monitor is effectively performing its duties; 2) making recommendations regarding policy and training issues; . . . 4) directing the Monitor to monitor or review certain cases; and 5) addressing other issues of concern to the community and other interested stakeholders. 348

Another solution "suggests revealing the racist underpinnings of the entire system, starting with police stops all the way through capital prosecutions" 349 and that police misconduct should be viewed as a systematic problem instead of as isolated incidences. 350 The increase in cases and complaints also supports this notion. 351 Once the departments, as well as the agencies overseeing the departments, acknowledge that the problems boils down to more than just a few "bad apples" effect practices can be implemented to prevent further corruption. 352 Once accepted as a systematic issue, the government will be in a position to implement programs to counteract the diseased mindset. 353


347. Id.


349. Gohara, supra note 346, at 138.


351. See id. at 30–31.


353. See id.
Also, there should be stricter standards requiring individuals who want to join the force to submit to preliminary in depth psychological testing. These tests should be conducted by independent psychologists trained to identify reoccurring traits and behaviors present in those offending law enforcement personnel. This notion is not very different from the health screening, endurance tests, background checks, credit checks, or drug tests already implemented in a majority of departments across the country.

Of course, in order to identify the psychological traits, it is important to first conduct extensive investigations and research into the causes concerning law enforcement misconduct. The commissions formed in the past have resulted as a response to an incident that has already occurred. Thus, the reports issued have not been successful in re-evaluating changes in the American society on a consistent and periodic basis.

Additionally, the commissions have been formed to research particular police departments instead of the system as a whole. While there may be problems unique in one city or state, they are not as clearly evident in another, as the cases have shown; the issue of police brutality is an epidemic that spans across various states even countries. Therefore, in order to effect long lasting changes, the federal and state governments should form a commission to look at the problem of police misconduct in

355. See id. at 575 (discussing the importance of psychologists conducting psychological examinations on potential police personnel in order to identify unstable behavioral traits).
358. See id. at 21.
its entirety across the nation.\textsuperscript{361}

Once the initial reports are compiled, state and local officials should be held responsible for maintaining detailed records and issuing periodic reports providing "statistical data on shootings and other use of force, in-custody deaths and injuries."\textsuperscript{362} "They should also provide data on the number and type of complaints filed and on their disposition and outcome."\textsuperscript{363} Periodic reporting would not only allow the departments to identify patterns of abuse, racial bias, and other discriminatory acts, but would also serve as a contribution to the national reporting system.\textsuperscript{364} This would help minimize the initial costs incurred in the nationwide reports as well as provide more up to date statistics.

Although properly maintained reporting can help combat future problems, an implementation of measures in dealing with existing problems also needs to be addressed.\textsuperscript{365} The most pressing of these matters is properly distributed governmental funds.\textsuperscript{366} First, law enforcement personnel should have mandatory training on use of force, minority issues, gender sensitivity, and how to deal with the mentally ill.\textsuperscript{367} Furthermore, district attorneys should be allotted additional funds to prosecute civil rights violations.\textsuperscript{368} At first glance, this may seem economically impractical, but in the long run, all of these measures implemented in conjunction with each other will result in greater benefits, particularly with the potential massive million-dollar settlements in civil rights cases.\textsuperscript{369}

All police departments, while regulating the use of force, should severely restrict the use of dangerous restraint procedures such as hogtying.

\textsuperscript{361} See Amnesty Int'l, supra note 143, at 33.

The Administration should seek, and Congress provide, adequate funding to allow the Justice Department to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody). Adequate resources should also be provided to allow the Justice Department to continue to pursue "pattern and practice" lawsuits against police departments engaging in widespread or systematic abuses.

\textsuperscript{362} Id.

\textsuperscript{363} Id.

\textsuperscript{364} See Walker, supra note 357, at 15; see also Amnesty Int'l, supra note 143, at 33.

\textsuperscript{365} See Amnesty Int'l, supra note 143, at 31.

\textsuperscript{366} See id. at 3.

\textsuperscript{367} Id. at 34.

\textsuperscript{368} Id. at 33.

\textsuperscript{369} See, e.g., id. at 10, 29 (discussing large civil settlements cities were required to play after incidents of excessive force and police brutality).
chokeholds, pepper spray, and use of canines.\textsuperscript{370} If these methods are employed, an independent investigative unit should also look into the circumstances surrounding why they were used.\textsuperscript{371} The use of tasers and other electro-shock weapons should be suspended pending the outcome of a thorough investigation, by a governmental agency, regarding their short term and long term effects.\textsuperscript{372}

[Also,] litigation strategies should be distributed through different layers of the justice system: cities, counties, states, and the federal government. They should include examination of each level of the criminal justice system, from stops and searches, misdemeanor cases, and bail practices all the way to capital prosecutions and sentences. These litigation strategies must include partners in social science, history, and people with thorough local knowledge of the relevant communities.\textsuperscript{373}

In order to combat the issue of racial profiling, Congress should pass the Traffic Stops Statistics Act of 1999.\textsuperscript{374} This Bill, introduced in the Senate on April 15, 1999, provides for the collection of data on traffic stops for traffic violations by law enforcement officials.\textsuperscript{375} With the passing of this Bill, the Legislature's intent is to minimize the occurrence of racial profiling.\textsuperscript{376} In addition, this act should be expanded to include airports. Finally, police departments, and other law enforcement agencies should have a more transparent policy with regards to allowing citizens access to misconduct reports.\textsuperscript{377} This should also include a system whereupon citizens who filed complaints can track the progress and documentation surrounding the incident.\textsuperscript{378} This will better arm citizen protection groups with information to elicit effective policy changes.\textsuperscript{379} Additionally,

\textsuperscript{370} See id. at 34.
\textsuperscript{371} See Amnesty Int'l, supra note 143, at 34–35.
\textsuperscript{372} Id. at 34.
\textsuperscript{373} Gohara, supra note 346, at 141.
\textsuperscript{375} Id. at S. 821 § 2(a).
\textsuperscript{377} See Amnesty Int'l, supra note 143, at 33–35) (highlighting police abuses of civil rights on racial basis and police department transparency programs to counter these abuses in the United States).
\textsuperscript{378} See id. at 34–35.
\textsuperscript{379} See id. at 13, 34–35. The report states: Police shootings resulting in death or injury are routinely reviewed by local prosecutors in many US jurisdictions to see whether criminal laws have been violated. However, few officers are criminally charged and little public information is given out if a case does not go to trial. Police administrative inquiries into officer-involved shootings are rarely open to public scrutiny and even decisions on whether or not a
transparency of information can also serve to improve the public's perception and trust of law enforcement agencies. 380

IX. CONCLUSION

In January 2009, Barack Hussein Obama was elected as the first African-American President of the United States of America. With the election of an African-American as President, one would think that race relation in America has gotten better. But have they?

Just as this paper was in its final stages, with only its conclusion left to write, America was faced with, yet another race-related incident. Professor Henry Louis Gates, a renowned African-American scholar and Harvard University Professor, was arrested by the Cambridge Police Department, in his own home for disorderly conduct after his neighbor called the police, reporting a break-in. 381 The caller reported that she saw "two gentlemen trying to get in a house . . . they kind of had to barge in." 382 She was later asked by the 911 dispatcher whether the two men were "white, black, or Hispanic." 383 The caller responded that one of the men looked "Hispanic, but I am not really sure." 384 The caller never referred to the men as being 'black.' 385 She only commented on the behavior of the two men, not about their race, until she was asked. Yet, the police report states that the caller observed two black males with backpacks on the porch. 386

Although the charges against Professor Gates were subsequently dropped, the Cambridge Police Department has publicly supported the arresting officer, insisting that his actions were correct under the circumstances. 387 Needless to say, the very same police department made

---

380. See generally Jenny Rachel Macht, Should Police Misconduct Files be Public Record? Why Internal Affairs Investigations and Citizen Complaints Should be Open to Public Scrutiny, 45 CRIM. L. BULL. 1006 (2009).
383. Id.
384. Id.
385. Id.
387. Jonathan Saltzman and Erica Noonan, Officer in Gates Case Says He Won't Apologize,
no comment to Officer Justin Barrett’s email message sent to a member of his National Guard and to the Boston Globe, that Professor Gates was a “jungle monkey.”

When President Obama was first questioned about this incident in a public appearance, he stated that although he did not have full knowledge of the matter, the Cambridge police ‘acted stupidly.’ The President addressed this matter head on and rightfully so. But his honesty led to much criticism over the words he chose, that he later retracted his statement, at the same time, he refused to apologize to the police department. This was a perfect opportunity to address race relations in America, and who better to address it but the President of our country.

Interestingly, during a Black History Month speech, Attorney General Eric Holder, the nation’s first African-American Attorney General, who was appointed by President Obama, called the United States a “Nation of Cowards” when it comes to race relations. Holder stated that “though this nation has proudly thought of itself as an ethnic melting pot, in things racial we have always been and I believe continue to be, in too many ways, essentially a nation of cowards.”

‘If we’re going to ever make progress, we’re going to have to have guts, we have to have determination, to be honest with each other.’ “It also means we have to be able to accept criticisms where that is justified.” Since Attorney General Holder’s statements about race relations in America, the country has yet to hear or read anything regarding race relations. Did his comments alienate the general population and thus was silenced by the Obama administration for being too forthright and honest? Surely the Nation’s top attorney should have weighed in on the arrest of Professor Henry Louis Gates.

391. Id.
393. Id.
To those individuals who are outside looking in at America, it may be thought that race relations in the United States has improved, especially since society has changed over the years. Sadly, while society has had its changes, some things have remained constant. The incident with Professor Gates and the Cambridge Police Department has clearly demonstrated that race still plays a role in police practice, to this very day. Until a person is in Professor Gates' position or any of the other victims of police discrimination mentioned throughout this paper, one will never fully understand this police and racial abuse. But why should we wait until everyone becomes a victim, why not address the issue now, today? America was almost there in the wake of Professor Gates’ arrest. We have witnessed over and over again, that police officers are trained to protect and serve the so-called majority and keep the minorities in line.