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# INADEQUATE TRAINING OR INADEQUATE LAW? HOW AMERICAN POLICING AND JURISPRUDENCE TAG TEAM TO RESIST CHANGE IN OFFICER TRAINING PRACTICES

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**Brett Wolff**

## ABSTRACT

The state of police training in The United States today is a topic veiled in controversy. With the recent civil rights violations making headlines across the nation,<sup>1</sup> scholars and laypersons seek to understand how these violations persist today, and many cite police training as a catalyst for change through reform.<sup>2</sup> However, pervasive immunities and numerous legal and non-legal factors work in tandem to perpetuate an environment that is not conducive to reform in the area of police training. Municipalities that are heavily shielded from liability are in turn not encouraged to properly invest in training to prevent civil rights violations without external pressures, given the current structure of American policing and resources available.

This paper will show that training requirements in the United States are inconsistent and woefully inadequate based on national and international comparisons, as well as through executive reports. However, governmental bodies are slow to embrace reform because they have limited resource and no national standard to comply with. Furthermore, they are insulated from suit for implementing inadequate training practices by the doctrine of qualified immunity and its involvement with suits under the Civil Rights Act of 1871 (Section 1983)<sup>3</sup>. This current

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<sup>1</sup> *Former Police Officer Found Guilty of Violating an Arrestee's Civil Rights by Using Excessive Force*, U.S. Dep't of Just. (Nov. 18, 2021), <https://www.justice.gov/opa/pr/former-police-officer-found-guilty-violating-arrestee-s-civil-rights-using-excessive-force>; *Former Lake Charles Police Officer Sentenced to 18 Months in Federal Prison for Civil Rights Violation*, U.S. Dep't of Just. (Nov. 19, 2019), <https://www.justice.gov/opa/pr/former-lake-charles-police-officer-sentenced-18-months-federal-prison-civil-rights-violation>.

<sup>2</sup> Ira Glasser, *FIGHTING POLICE ABUSE: A COMMUNITY ACTION MANUAL*, ACLU (Aug. 1997), <https://www.aclu.org/other/fighting-police-abuse-community-action-manual>; *The Wrong Training*, THE INST. FOR CRIM. JUST. TRAINING REFORM, <https://www.trainingreform.org/the-wrong-training>.

<sup>3</sup> 42 U.S.C.A. § 1983 (West).

environment discourages reform in the area of police training and jeopardizes the civil rights of citizens of The United States. However, there are several considerations that could assuage these disincentives to change or otherwise cure the shortcomings in training reform.

## I. STATE OF U.S. POLICE TRAINING TODAY

### A. *Policing Today*

#### 1. Overview

WHEREAS, from the beginning of this Nation, law enforcement officers have played an important role in safeguarding the rights and freedoms which are guaranteed by the Constitution and in protecting the lives and property of our citizens; and  
WHEREAS, through constant application of new procedures and techniques, such officers are becoming more efficient in their enforcement of our laws . . . .<sup>4</sup>

— President John F. Kennedy.

The United States of America's relatively young policing system has undergone systemic and rapid development since our nation's inception. Beginning with the creation of night watches by early colonists in the 1600's, progressing to the first publicly funded organized police force with officers on duty full-time was created in Boston in 1838,<sup>5</sup> to the independent creation of policing outfits across the nation as it expanded, it was a gradual culmination into the now 18,000+ U.S. police agencies existing within the modern day United States.<sup>6</sup> Because of the diverse historical, economic, legal, geographic, and political engines that helped shape the modern American police force, The United States does not have a centralized policing structure like many

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<sup>4</sup> John F. Kennedy, *Proclamation 3537—Peace Officers Memorial Day and Police Week*, THE AM. PRESIDENCY PROJECT (May 4, 1963), <https://www.presidency.ucsb.edu/node/270033>.

<sup>5</sup> Ivan A Gargurevich, *The History of Policing in the United States*, E. KY. U. POLICE STUD. ONLINE (2013).

<sup>6</sup> *National Sources of Law Enforcement Employment Data*, U.S. Dep't of Just. (October 4, 2016), <https://bjs.ojp.gov/content/pub/pdf/nslead.pdf>.

other nations.<sup>7</sup> The vast majority of policing in the United States is local.<sup>8</sup> Local control of policing is conducted through the election of officials and government leaders,<sup>9</sup> and these officials often play a critical role in implementing policing strategies which have an influence on the operations of a local police agency, including police training practices. Local policing practices have their advantages, but they also lend to the critiqued, patchwork nature of United States policing as a whole.

This fractal nature of America's policing is accentuated by the likes of Michael Parker Banton, Emeritus Professor of Sociology at the University of Bristol, England and author of "The Policeman in the Community", who has contended that "[t]he United States has what may be the most decentralized police system in the world, characterized by an extraordinary degree of duplication and conflicting jurisdiction."<sup>10</sup> The United States Department of Justice ("DOJ") has reported that there are logistical issues with America's policing structure due to its "decentralized, fragmented, and local nature of law enforcement."<sup>11</sup> The current structure of American policing has been accused of causing a litany of diverse problems, but today, in light of heightened national exposure of civil rights violations committed by law enforcement, scholars have focused ever more on the issue of police training statistics, standards, practices, and potential shortcomings.

## **2. Civil Rights Violations**

The recent killings of George Floyd, Daunte Wright, Elijah McClain, Breonna Taylor, William Green, and others have focused national attention on ongoing civil rights violations by

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<sup>7</sup> Banton, M., Brodeur, J. *Decentralized Police Organizations*, <https://www.britannica.com/topic/police/Decentralized-police-organizations>

<sup>8</sup> *National Sources of Law Enforcement Employment Data*, *supra* note 6.

<sup>9</sup> Perry Stanislas, *International Perspectives on Police Education and Training*, 1 ROUTLEDGE 23, 24 (Jun. 8, 2015).

<sup>10</sup> Banton, M., Brodeur, J. *International Police Organizations*, <https://www.britannica.com/topic/police/International-police-organizations>.

<sup>11</sup> *National Sources of Law Enforcement Employment Data*, *supra* note 6.

law enforcement and have applied pressure for wide sweeping police reform.<sup>12</sup> While a litany of potential causes for The United States' civil rights shortcomings<sup>13</sup> have been theorized, inadequate police training has been commonly listed as a root issue by various advocates.<sup>14</sup> Reform has been called for,<sup>15</sup> specifically for restructuring the quantity and content of current training practices.

### **3. Continuous Shortfalls of Training Adequacy in Police Departments**

The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (re-codified at 34 U.S.C. § 12601),<sup>16</sup> allows the DOJ to review the practices of law enforcement agencies that may be violating people's federal rights. Since its enactment in 1994, the DOJ has investigated 61 police departments, leading to the signing of consent decrees with 31 agencies to rectify constitutional issues.<sup>17</sup> A common finding in these investigations, which occur after complaints of civil rights violations, is that there was inadequate training in place for each department.<sup>18</sup> In their investigations and subsequent consent decrees, the DOJ must commonly supplant the inadequate practices put in place by the constitutionally violating police department.<sup>19</sup>

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<sup>12</sup> Rashawn Ray et al., *A Better Path Forward for Criminal Justice: A Report by the Brookings-AEI Working Group on Criminal Justice Reform* (Apr. 2021).

<sup>13</sup> *World Report 2020: The United States*, HUM. RTS. WATCH (2020) <https://www.hrw.org/world-report/2020/country-chapters/united-states#22b5b7>.

<sup>14</sup> *The Wrong Training*, *supra* note 2; David Gutierrez, *Why Police Training Must be Reformed*, HARV. KENNEDY SCH. INST. OF POL., <https://iop.harvard.edu/get-involved/harvard-political-review/why-police-training-must-be-reformed>.

<sup>15</sup> *The Change We Need: 5 Issues that Should Be Part of Efforts to Reform Policing in Local Communities*, ADVANCEMENT PROJ., <https://advancementproject.org/the-change-we-need-5-issues-that-should-be-part-of-efforts-to-reform-policing-in-local-communities/>.

<sup>16</sup> 34 U.S.C.A. § 12601 (West).

<sup>17</sup> *SPECIAL LITIGATION SECTION CASES AND MATTERS*, U.S. DEP'T OF JUST. <https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#police>.

<sup>18</sup> *Id.* (where the DOJ found training inadequacies following their investigations into the police departments of; Albuquerque, Baltimore, Chicago, Cleveland, East Haven, Ferguson, Los Angeles, Maricopa County, City of Miami, Missoula County, New Orleans, Newark, Phoenix, Portland, Seattle, Springfield, Suffolk County, and Yonkers).

<sup>19</sup> *Id.*

*B. Hour Requirements for Police Training Programs in the U.S.*

“You can become a cop in six months and don’t have to have the same amount of training as a cosmetologist. That’s insane.”

— Colin Kaepernick, Activist/ Athlete

A common outcry from activists and scholars alike is that police in The United States are woefully undertrained,<sup>20</sup> which contributes to civil rights violations. The most common ways these individuals and entities illustrate their points is by comparing the minimum training requirements for police officers with other nations,<sup>21</sup> accentuating the discrepancy between each state’s minimum standards, and further comparing how much minimum training an applicant is required to undergo before beginning their tenure as an officer compared to other professions and their minimum training requirements.<sup>22</sup>

Nationwide, a “total of 681 state and local law enforcement training academies provided basic training instruction to 59,511 recruits in 2018. The average length of the core basic training program was 833 hours.”<sup>23</sup> On average, US officers spend around 21 weeks training before they are qualified to go on patrol.<sup>24</sup> These numbers statistically pale in comparison to other countries, as a report of over 100 countries conducted by the Institute for Criminal Justice Training Reform (ICJTR) found that “The United States has among the lowest police training requirements by

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<sup>20</sup> *The Wrong Training*, *supra* note 2.

<sup>21</sup> Cemil Dogutas et al., *A Comparative Study of the Police Training in the United Kingdom, the United States and Turkey*, *TURKISH J. OF POLICE STUD.* 9, 1-20 (2007); *The Wrong Training*, *supra* note 2.

<sup>22</sup> *The Wrong Training*, *supra* note 2.

<sup>23</sup> Emily D. Buehler *State and Local Law Enforcement Training Academies, 2018 – Statistical Tables*, DEP’T OF JUST. (July 2021) [hereinafter 2018 DOJ Report].

<sup>24</sup> Jake Horton, *How US Police Training Compares with the Rest of the World*, BBC NEWS (May 2018), <https://www.bbc.com/news/world-us-canada-56834733>.

far.”<sup>25</sup> Other nations require far more hours of training, with police in Germany, as an example, can be required to complete up to 2861 hours of training.<sup>26</sup>

The discrepancies pointed out by scholars and institutions regarding police training in the United States do not end with comparison to other countries. While a 2018 Report published by the U.S. Department of Justice<sup>27</sup> provides an average length of core basic training programs, each state’s minimum requirements vary drastically due to the decentralized nature of policing.<sup>28</sup> Currently, each State has its own agency that establishes standards for police officer selection, training, licensure, certification, and suspension/decertification.<sup>29</sup> This practice means that officers in one part of the country will receive vastly different training than an officer in another region. Using only the raw number of hours required to become an officer as an example, Georgia only requires 408 hours of basic training, which pales in comparison to other states like Connecticut, which requires 1,321 hours of training<sup>30</sup>

Finally, critics of the inadequate length of training for police officers in The United States compare the time it takes for a trainee hopeful to become a police officer with the time it takes for novices in other trades to become licensed/certified for their respective jobs. As aforementioned, Georgia only requires 408 hours of basic training for prospective police officers.<sup>31</sup> Meanwhile, Georgia requires 2,280 hours of training in order to become an apprentice barber.<sup>32</sup> Other instances

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<sup>25</sup> *The Wrong Training*, *supra* note 2.

<sup>26</sup> Khatia Dekanoidze and Madlen Khelashvili, *Police Education and Training Systems in the OSCE Region*, OSCE 164 (2018), <https://www.osce.org/files/f/7/423401.pdf>.

<sup>27</sup> *2018 DOJ Report*, *supra* note 23.

<sup>28</sup> *The Wrong Training*, *supra* note 2.

<sup>29</sup> President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, OFFICE OF COMMUNITY ORIENTED POLICING 94 (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskForce\\_Finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskForce_Finalreport.pdf).

<sup>30</sup> *Basic Law Enforcement Training Program*, GA. PUB. SAFETY TRAINING CENTER, <https://www.gpstc.org/about-gpstc/training-divisions/basic-training-division/basic-police-officer-training/>; *The Wrong Training*, *supra* note 2.

<sup>31</sup> *Basic Law Enforcement Training Program*, *supra* note 30.

<sup>32</sup> *Transcript of Barber II Apprentice Training*, GA ST. BOARD OF COSMETOLOGY & BARBERS. (July 2017).

of training disparagement is prevalent across the country, notably in states such as California,<sup>33</sup> Florida,<sup>34</sup> Massachusetts,<sup>35</sup> Michigan,<sup>36</sup> and Louisiana.<sup>37</sup>

### *C. Average Training Program Content*

The content of police training is also a heavily researched and debated topic. In the 2018 DOJ Report,<sup>38</sup> it was found that half of recruits nationwide were instructed using a training model with equal parts stress (i.e., military or paramilitary style) and nonstress (i.e., academic or adult learning) environments. Over 90% of all recruits experienced some degree of paramilitary style training.<sup>39</sup> Nearly all recruits were instructed in report writing, defensive tactics, firearms skills, and ethics and integrity, and nearly all were instructed using at least one type of reality-based scenario.<sup>40</sup> Notable from this data, the average time spent training was 833 hours over a variety of topics, but only an average of 35 of those 833 (4.2%) are spent across the topics of mediation/conflict management and ethics/integrity.<sup>41</sup> By comparison, over double that time (an average of 73 hours) are spent on firearm training alone.<sup>42</sup> Activist groups have their own perceptions on the potential ramifications of training geared towards combative techniques, as ICJTR states:

Many law enforcement training curricula focus on preparing for the potential of a threat or threats derived from statistically singular or anecdotal events. This heavily impacts the perceptions, biases, opinions, and attitudes that law enforcement officers carry into their interactions with the public. Absent immediate criminal justice training reform, we will all remain complicit in the racially biased, stereotypical depictions and dehumanization of

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<sup>33</sup> *The Startling Reality of Police Training Hours*, VIRTRA INC. (Jan. 10, 2018), <https://www.virtra.com/overview-le/> (In California, licensed cosmetologists need 1,600 hours of training; police officers in training need 664.).

<sup>34</sup> *Id.* (In Florida, interior designers must have 1,760 hours of training, but police officers only need 770.).

<sup>35</sup> *Id.* (Licensed HVAC technicians in Massachusetts need 1,000 hours of training while policemen need 900.).

<sup>36</sup> *Id.* (In Michigan, licensed electric sign specialists need 4,000 hours of training; policemen need 594.).

<sup>37</sup> *Id.* (Manicurists need 500 hours of training while police officers in training only need 360.).

<sup>38</sup> 2018 DOJ Report, *supra* note 23.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



African Americans, and other minorities, that provoke a falsely-heightened, adversarial perception of threat.<sup>43</sup>

#### *D. Summary*

Police training in The United States is lacking in both quantity and quality, and the civil rights of American citizens are jeopardized as a result. Reform is theorized to be a necessary step in protecting these rights, but the current structure of American policing makes reform difficult. Further roadblocks and potential solutions will be covered in further sections in this paper.

### II. CIVIL DEPRIVATION OF RIGHTS DUE TO INADEQUATE TRAINING OF AN OFFICER

If a person's civil rights have been violated or otherwise deprived in relation to a police officer's inadequate training, recourse can be available through the Civil Rights Act of 1871 (Section 1983). 42 U.S.C., § 1983 states that:

Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . . (emphasis added).<sup>44</sup>

While the language of 42 U.S.C., § 1983 appears broad, subsequent case law has apparently limited its applicability to persons who have had their constitutional rights violated at the hands of inadequately trained law enforcement personnel.

#### *A. Bringing Suit against Individual Officers*

An aggrieved party may first look to the inadequately trained police officer for redress, however there are certain disincentives for suing individual officers alone. An aggrieved party may

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<sup>43</sup> *The Wrong Training*, *supra* note 2.

<sup>44</sup> 42 U.S.C.A. § 1983 (West).

successfully bring suit against police officers in specific instances.<sup>45</sup> However, more typically courts will find that suits against officials like police officers are essentially suits against their offices, thereby immunizing police officers acting in their official capacity from suit under 42 U.S.C., § 1983.<sup>46</sup> Furthermore, “[l]aw enforcement officers are immune from § 1983 liability arising from official discretionary acts that do not ‘violate clearly established statutory or constitutional rights of which a reasonable person would have known.’”<sup>47</sup> In 2021, the Supreme Court took certiorari on two suits against individual officers for excessive force and applied qualified immunity to both cases, further reinforcing the applicability of the doctrine.<sup>48</sup>

An aggrieved party may be further disinclined to sue individual officers over other entities for non-legal, monetary reasons. For instance, the starting salary of an NYPD police officer is \$42,500.<sup>49</sup> For comparison, the NYPD paid \$205.0 million in tort claim settlement and judgment payouts in the year of 2020.<sup>50</sup> The city of New York resolved \$1.03 billion in claims and lawsuits against the city in the year of 2020.<sup>51</sup> It is no question that larger entities such as departments and municipalities typically have larger coffers than individual defendants being sued under 42 U.S.C., § 1983.

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<sup>45</sup> See *Holmes v. Meleady*, 965 F. Supp. 2d 158 (D. Mass. 2013) (where police officers sued by arrestee in their official capacity for monetary relief were “persons” subject to suit under § 1983, where the officers were city and not state officials.); *Wright v. Chief of Transit Police*, 527 F.2d 1262 (2d Cir. 1976) (where the court held the New York Transit Authority was not a “person”, but the individual named officials were “persons” within the meaning of the Civil Rights Act of 1871).

<sup>46</sup> See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989).

<sup>47</sup> *Torian v. City of Beckley*, 963 F. Supp. 565, 568 (S.D.W. Va. 1997) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, (1982)).

<sup>48</sup> See *Rivas-Villegas v. Cortesluna*, 20-1539, 2021 WL 4822662 (U.S. Oct. 18, 2021); *City of Tahlequah, Oklahoma v. Bond*, 20-1668, 2021 WL 4822664 (U.S. Oct. 18, 2021).

<sup>49</sup> *Salary and Benefits*, NYPD, <https://www1.nyc.gov/site/nypd/careers/police-officers/po-benefits.page>.

<sup>50</sup> Scott M. Stringer, *Claims Report: Fiscal Year 2020*, OFF. OF THE NY CITY COMPTROLLER (April 2021), <https://comptroller.nyc.gov/reports/annual-claims-report/>.

<sup>51</sup> Id.

### *B. Bringing Suit Against Police Departments*

Qualified immunity does more than protect individual officers, it extends to the departments entrusted to train them as well. Police departments in jurisdictions across the nation are heavily shielded from suit under 42 U.S.C., § 1983 due to their ties to other governmental bodies.<sup>52</sup> Further, the interpretations of the word “person” in the statute has a powerful immunization effect for aggrieved parties seeking redress from various entities feasibly involved in the improper training of an officer. Jurisdictions have widely held that a city/municipal police department does not qualify as a “person” for the purposes of § 1983.<sup>53</sup>

### *C. Bringing Suit Against Local Governments and Municipalities*

One of the most common avenues of redress for aggrieved persons whose civil rights have been violated due to improper training lies with suit against local governments or municipalities allegedly responsible for the potential violation and improper training. Notwithstanding, just as statutory interpretation and decades of case law has placed substantial constraints on the capacity to sue individual officers and police departments for training inadequacies, there are still multiple common law provisions that provide significant shields from civil right violation liability for municipalities that a plaintiff must overcome to be successful.

Unlike police departments and state officials acting in their official capacity, municipalities and other local government units are included among those “persons” to whom 42 U.S.C., § 1983 applies.<sup>54</sup> Monell further states: “when execution of a government's policy or custom, whether

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<sup>52</sup> See Johnson v. Hurtt, 893 F. Supp. 2d 817, 826 (S.D. Tex. 2012) (under Texas law, county sheriff's and city police departments generally are not legal entities capable of being sued unless they enjoy a separate legal existence)

<sup>53</sup> See Dean v. Barber, 951 F.2d 1210, 1215 (11th Cir.1992); PBA Loc. No. 38 v. Woodbridge Police Dep't, 832 F. Supp. 808, 825 (D.N.J. 1993); Pierre v. Schlemmer, 932 F. Supp. 278, 281 (M.D. Fla. 1996).

<sup>54</sup> See Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 660 (1978); Batiste v. City of Beaumont, 421 F. Supp. 2d 969, 986 (E.D. Tex. 2005).

made by its lawmakers or by those whose edicts and acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983”.<sup>55</sup>

Specifically to failure to train claims, liability under 42 U.S.C., § 1983 may attach if police officers are not adequately trained in relation to the tasks particular officers must perform, and the deficiency is closely related to the ultimate injury, as, “[t]he way in which a City chooses to train its police force is ‘necessarily a matter of policy.’”<sup>56</sup> However, despite how this language seems to depict that 42 U.S.C., § 1983 suits against municipalities are rather straightforward, there are multiple conditions that must be met for a plaintiff’s claim to be successful.

### **1. Roadblock 1: Deliberate Indifference**

A municipality is liable in a Section 1983 action for the failure to train police officers only when the failure to train amounts to a deliberate indifference to the rights of persons with whom the police come into contact.<sup>57</sup> “Only where a failure to train reflects a ‘deliberate’ or ‘conscious’ choice by the municipality can the failure be properly thought of as an actionable city ‘policy.’”<sup>58</sup> “[D]eliberate indifference’ is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.”<sup>59</sup> As a result city policymakers must be on actual or constructive notice of an oversight in a training program which violates a citizen’s rights.<sup>60</sup> But without such notice that training programs are deficient, decision makers can be wholly insulated even in the face of constitutional violations.

A further potential bar under the deliberate indifference standard is reflected in the Supreme Court decision in Connick v. Thompson.<sup>61</sup> In Connick, the court found that “[a] pattern

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<sup>55</sup> Monell, 436 U.S. at 569.

<sup>56</sup> Lytle v. Doyle, 326 F.3d 463, 473 (4th Cir. 2003) (quoting Spell v. McDaniel, 824 F.2d at 1389 (4th Cir. 1987)).

<sup>57</sup> City of Canton, Ohio v. Harris, 489 U.S. 378, 379 (1989).

<sup>58</sup> Id.

<sup>59</sup> Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 410 (1997).

<sup>60</sup> Id.

<sup>61</sup> 563 U.S. 51 (2011).

of similar constitutional violations by untrained employees is ‘ordinarily necessary’ to demonstrate deliberate indifference for purposes of failure to train.”<sup>62</sup> The court continues, stating, “[w]ithout notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights.”<sup>63</sup> The court seemingly dismisses or at least diminishes the likelihood a single-instance constitutional violation can succeed without a history of similar violations.<sup>64</sup> Only when “the unconstitutional consequences of failing to train could be so patently obvious . . . could [a city] be liable under § 1983 without proof of a pre-existing pattern of violations.”<sup>65</sup>

Speaking strictly in terms of inadequate police officer training, it is seemingly quite difficult to prove deliberate indifference. As legal scholars aptly describe, “[a] training program for police officers must be quite deficient in order for the deliberate indifference standard to be met, in an action, alleging that a city's failure to adequately train officers resulted in constitutional violations by the officers.”<sup>66</sup>

## **2. Roadblock 2: Causally Related**

In a number of jurisdictions, there can be no basis for liability if there is no evidence to establish that any training deficiency was causally connected to law enforcement officer's acts alleged to be unconstitutional.<sup>67</sup> Stated alternatively, the identified deficiency in the training program must be closely related to the ultimate injury. Thus, respondent must still prove that a

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<sup>62</sup> Id. at 61.

<sup>63</sup> Id.

<sup>64</sup> Id.; see Robinson v. Keita, 20 F. Supp. 3d 1140 (D. Colo. 2014) (where four unsubstantiated complaints in five years were not notice of widespread pattern of constitutional violations).

<sup>65</sup> Canton, 563 U.S. at 397, 398.

<sup>66</sup> 14A C.J.S. Civil Rights § 461. See also Sanders-Burns v. City of Plano, 594 F.3d 366 (5th Cir. 2010); Young v. City of Providence ex rel. Napolitano, 404 F.3d 4 (1st Cir. 2005); Nelson v. County of Sacramento, 926 F. Supp. 2d 1159 (E.D. Cal. 2013).

<sup>67</sup> See Castro v. County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016); Carswell v. Borough of Homestead, 381 F.3d 235, 244 (3d Cir. 2004); Smith v. Brenoettsy, 158 F.3d 908, 911–12 (5th Cir. 1998); Benhaim v. Borough of Highland Park, 79 F. Supp. 3d 513 (D.N.J. 2015).

deficiency in training actually caused the police officers to act in a way that was constitutionally improper. Should the officers act outside the purview of their training, the municipality is likely insulated.<sup>68</sup> If the officers act within the purview of their training, and their actions were constitutionally impermissible, but were not closely enough related to the plaintiff's injury, the municipality may also be insulated from liability.

An alleged link between city police officers' violations of constitutional rights of citizens and alleged deficiencies in city's training program for police officers must not be too tenuous in a § 1983 claim against a city/municipality based on the failure to train.<sup>69</sup> In Forrest v. Perry, officers who allegedly violated arrestee's Fourth Amendment right to be free from excessive force and to be free from false arrest knew their conduct was criminal and used their authority to pressure victims to refrain from immediately reporting their activities.<sup>70</sup> The court found that because the officer's conduct was knowingly criminal, changes to training protocol would have made no difference, and the link was too tenuous.<sup>71</sup>

### **3. A Note: Federal Judiciary Resistance to Altering the Current Standard.**

The Court in Canton expressed their intent to not deviate from the standards set forth above for a myriad of reasons. When finished with their discussion on the various roadblocks to litigation stated above, the Court summarized their fears by stating:

To adopt lesser standards of fault and causation listed above would open municipalities to unprecedented liability under § 1983; would result in de facto respondeat superior liability, a result rejected in Monell; would engage federal courts in an endless exercise of second-guessing municipal employee-training programs, a task that they are ill suited to undertake; and would implicate serious questions of federalism.<sup>72</sup>

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<sup>68</sup> See Castro, 833 F.3d at 1060; Carswell, 381 F.3d at 244; Smith, 158 F.3d at 911–12; Benhaim, 79 F. Supp. 3d at 513.

<sup>69</sup> See Forrest v. Parry, 930 F.3d 93 (3d Cir. 2019).

<sup>70</sup> Id.

<sup>71</sup> Id. at 109.

<sup>72</sup> Canton, 563 U.S. at 391, 392.

### III. OBSTACLES TO REFORM: LEGAL, STRUCTURAL, AND FINANCIAL DISINCENTIVES

There is little incentive and lackluster motivation to alter or otherwise improve the state of American police training procedures across the nation due to myriad of legal and non-legal factors. The legal landscape of 42 U.S.C., § 1983 outlined in Part 2 creates near-immunity to suit across the strata of those involved in suits for inadequate training, thereby disincentivizing change. Outside the realm of 42 U.S.C., § 1983, several non-legal factors such as resources, effective breach, and lack of a national structure work to further disincentive reform. Without addressing these legal and non-legal factors, police training procedures will likely remain unchanged and further instances of improper, unconstitutional conduct could persist without cure.

#### *A. Legal Disincentives to Reform*

Municipalities and cities, as pointed out in Part 1, are solely responsible for the creation of and implementation of training programs for their local police departments, and thus are realistically the only parties that face threat from suits alleging inadequate training for police officers resulting in a civil rights violation. However, they are incredibly well insulated from any retribution for improperly training their local police. As discussed at length in Part 2, there are a vast number of roadblocks in the way of plaintiff's trying to achieve recompense against a governmental entity for their deprivation of their civil rights. Looking specifically at claims made for failure to train, it is evident that it is extremely difficult for cities and municipalities to face any consequences for implementing an inadequate program. Furthermore, municipalities are disincentivized from investigating or curing deficiencies in existing training programs.

#### **1. Disincentive to Implement Adequate Program**

Based on the composition of failure to train case law, a municipality need hardly consider constitutional shortcomings in the implementation of a new police training program. This is

because for liability to attach under 42 U.S.C., § 1983, the Supreme Court suggests that a pattern of constitutional violations must be established.<sup>73</sup> In this way, a municipality's training program can be analogized to a dog under the now practically archaic "one-bite-rule" found in English Common Law.<sup>74</sup> This common law rule has history tracing back to ancient times, as the Bible contains the following:

If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox shall be quit.  
But if the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death.<sup>75</sup>

The one bite rule, as its name and history denotes, shields the owner of a domestic animal from civil liability to the first victim of their dog's "first bite."<sup>76</sup> This practice, while popular prior to the 20<sup>th</sup> century,<sup>77</sup> has been largely abandoned in the United States.<sup>78</sup> However, it appears that municipalities still enjoy a one free bite-like shield from liability the first time that a constitutional shortcoming or infraction occurs as a result of an inadequate training program.

With the current legal makeup of 42 U.S.C., § 1983, municipalities can implement inadequate training programs with the confidence that they can be largely<sup>79</sup> free from liability from the first constitutional infraction that may occur.<sup>80</sup> Because of this, municipalities are likely to

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<sup>73</sup> Connick, 563 U.S. at 51.

<sup>74</sup> Kenneth M. Phillips, *The History of the "One Bite Rule"*, <http://dogbitelaw.com/one-bite-rule/history-of-the-one-bite-rule.html>.

<sup>75</sup> *Exodus* 21:28-29 (King James).

<sup>76</sup> Allison E. Butler, *Cause of Action Against Owner, Keeper or Harbinger of Domestic Animal to Recover for Personal Injuries Caused by Animal*, 33 Causes of Action 2d 293 (Originally published in 2007).

<sup>77</sup> David Goguen, *State Dog Bite Laws: "One-Bite" vs. Strict Liability*, <https://www.alllaw.com/articles/nolo/personal-injury/one-bite-strict-liability-dog-bite.html>

<sup>78</sup> Id.; *Hamilton v. Walker*, 510 S.E.2d 120 (Ga. App. 1998) (Banke, J., dissenting).

<sup>79</sup> But see Canton, 563 U.S. at 381 (where the court determined that a municipality can be liable for failure to train its police force when a plaintiff proves that the municipality acted recklessly, intentionally, or with gross negligence).

<sup>80</sup> *Flores v. County of Los Angeles*, 758 F.3d 1154, 1159 (9th Cir. 2014) (where the court found that by failing to allege a pattern of constitutional violations, plaintiff did not satisfy their obligation to allege facts to show that the defendant "disregarded the known or obvious consequence that a particular omission in their training program would cause [municipal] employees to violate citizens' constitutional rights").



enact training practices with latent deficiencies only discoverable from further investigation,<sup>81</sup> of which is unlikely to take place until a violation has occurred.

## **2. Disincentive to Investigate Program**

Another barrier to diagnosing and reforming deficient training programs is the legal disincentive to investigate potential constitutional shortcomings in existing training programs under 42 U.S.C., § 1983. As stated in Part 2, a policymaker must be on actual or constructive notice of an oversight in a training program which violates a citizen's rights in order to incur liability for failure to train. Under this standard, a municipality could almost<sup>82</sup> completely avoid liability if they are ignorant of potential oversights in their training practices. In fact, by executing an investigation into its existing training program, a municipality could expose itself to liability after gaining actual knowledge of a training oversight that it otherwise would not have incurred. After learning of the oversight and subsequently failing to adequately address it, the municipality could be liable for 42 U.S.C., § 1983 violations simply because they took the altruistic step of trying to identify potential constitutional shortcomings in their existing police training regime. Otherwise stated, investigation ultimately invites the possibility of suit, as latent defects do not impute liability on the entity or its policymakers. The common adage, "ignorance is bliss", is applicable in many contexts. However, against the legal backdrop of 42 U.S.C., § 1983, ignorance is more than bliss. Ignorance is safety.

## **3. Disincentive to Cure Inadequate Program**

Governmental entities are ultimately disincentivized to cure inadequate training procedures already in place, even if they are potentially aware of the defect, because of the difficulty of success in single-incident civil rights violation suits. As discussed at length in Part 2, there several

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<sup>81</sup> *Findings Report*, BALTIMORE POLICE DEP'T (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download>.

<sup>82</sup> But see Canton, 563 U.S. at 381.

roadblocks that must be hurdled before a wronged plaintiff can succeed in a claim against a government entity. Because plaintiffs must establish a causal link between the potentially inadequate training and the alleged constitutional deprivation, overcome the stringent standard of “deliberate indifference”, and allege sufficient facts to overcome the lofty burdens of proof<sup>83</sup> inherent with 42 U.S.C., § 1983 claims, a government entity can maintain a heightened degree of confidence that they will be successful in the event of a suit. Especially considering the various non-legal factors discouraging reform, municipalities and local governments may think twice before deciding to cure existing deficiencies in their police training programs.

### *B. Non-Legal Disincentives to Reform*

Governmental entities have limited funds and resources, a fact Americans are reminded of every time they drive over a pothole or notice a bump in our income taxes. As such, the budgets of publicly funded police departments are constrained just like any other governmental program. Today, police departments across the nation are experiencing some of the most dramatic budget cuts in a decade.<sup>84</sup> A survey conducted by The Police Executive Research Forum found that nearly half of responding police agencies reported reductions impacting vital areas of operation such as equipment, hiring, and training.<sup>85</sup> These budget cuts sweeping across the nation<sup>86</sup> are affecting

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<sup>83</sup> See *Flores*, 758 F.3d at 1159.

<sup>84</sup> Kevin Johnson and Kristine Phillips, *'Perfect Storm': Defund the Police, COVID-19 Lead to Biggest Police Budget Cuts in Decade*, USA TODAY (July 31, 2020), <https://www.usatoday.com/story/news/politics/2020/07/31/defund-police-covid-19-force-deepest-cop-budget-cuts-decade/5538397002/>.

<sup>85</sup> *PERF Daily COVID-19 Report*, POLICE EXECUTIVE RES. F. (Aug. 3, 2020), <https://www.policeforum.org/covidaugust3>.

<sup>86</sup> Sam Levin, *More Than 20 Major Cities Have Reduced Police Budgets in Some Form, and Activists are Fighting to Ensure that is Only the Start*, THE GUARDIAN (Mar. 11, 2021), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community>.

minor and major cities alike, as Los Angeles,<sup>87</sup> Minneapolis,<sup>88</sup> and departments everywhere are facing restrictions and pressure to cut spending. Considering this notion, coupled with the public outcry for “defunding the police” gaining ground<sup>89</sup> and circulating the news in the early parts of 2020 and beyond,<sup>90</sup> a local government body may have difficulty justifying even a small increase in spending to rehaul their potentially defective training programs. As it stands today, many departments are already underfunded and struggling to pay for existing training practices.<sup>91</sup>

## **1. Efficient Breach**

On June 9, 1978, Ford Motor Company agreed to recall over a million Ford Pinto’s for fuel tank design defects, which made the vehicles susceptible to fire and explosion in the event of a relatively moderate-speed rear end collision.<sup>92</sup> The action was the result of a national investigation, sparked in large part by publicity generated by national publication of the hazard and the largest punitive damages awarded by a California jury to a young man who had been severely injured in a Pinto fuel tank fire.<sup>93</sup>

It was found in internal Ford Motor Company documents that Ford knew of the weakness in the fuel tank before the vehicle was placed on the market, but that a cost/benefit study was done

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<sup>87</sup> *Los Angeles City Council Votes to Slash LAPD Budget by \$150 Million*, CBS NEWS (July 1, 2020), <https://www.cbsnews.com/news/los-angeles-city-council-votes-to-slash-lapd-budget-by-150-million>.

<sup>88</sup> Avie Schneider, *Minneapolis Shifts \$8 Million In Police Funding, But Keeps Force at Current Level*, NPR (Dec. 10, 2020), <https://www.npr.org/2020/12/10/944938471/minneapolis-shifts-8-million-in-police-funding-but-keeps-force-at-current-level>.

<sup>89</sup> Derek Hawkins et al., *‘Defund the Police’ Gains Traction as Cities Seek to Respond to Demands for a Major Law Enforcement Shift*, WA POST (June 7, 2020), <https://www.washingtonpost.com/nation/2020/06/07/protests-defund-police/>.

<sup>90</sup> Michael Gelb, *Calls to Defund Police Gain Traction Across U.S.*, CENTER ON MEDIA CRIME AND JUST. AT JOHN JAY C. (June 12, 2020), <https://thecrimereport.org/2020/06/12/calls-to-defund-police-gain-traction-across-u-s/>; Ines Novacic, *“Defund the Police” Made Headlines. What Does it Look Like Now?*, CBS NEWS (Mar. 11, 2021), <https://www.cbsnews.com/news/defund-the-police-meaning/>.

<sup>91</sup> Patrick Smith, *What Happens When Suburban Police Departments Don’t Have Enough Money?*, NPR (Jan. 22, 2018), <https://www.npr.org/2018/01/22/579778555/what-happens-when-suburban-police-departments-dont-have-enough-money>.

<sup>92</sup> Matthew T. Lee et al., *Pinto “Madness” as a Flawed Landmark Narrative: An Organizational and Network Analysis*, 46 SOCIAL PROBLEMS 1, 30–47 (Feb. 1999), <https://doi.org/10.2307/3097160>.

<sup>93</sup> *Grimshaw v. Ford Motor Co.*, 174 Cal. Rptr. 348 (Cal. App. 4th Dist. 1981) (disapproved of by *Kim v. Toyota Motor Corp.*, 424 P.3d 290 (Cal. 2018)).

which suggested that it would be “cheaper” for Ford to pay liability for burn deaths and injuries rather than modify the fuel tank to prevent the fires in the first place.<sup>94</sup> Ford owned a patent on a better designed gas tank at that time, but estimated the cost of changing the fuel system was to be \$11 per car across 12.5 million cars and light trucks (all manufacturers), for a total of \$137 million.<sup>95</sup> Using another cost analysis, Ford estimated that the design changes would prevent approximately 180 burn deaths and 180 serious injuries per year, which to litigate would cost \$49.5 million.<sup>96</sup>

This famous historical instance referenced above has become what is known as the theory of “effective breach”. Effective breach crops up in various areas of the law such as contract and tort, but universally tends to mean the same thing: sometimes it is more cost effective to breach a contract or otherwise knowingly break some legal constraint because it is more cost effective than adhering to the legal constraint. In Ford’s case, they knew that their fuel tanks were defective, but they chose to keep them because the cost to replace them was higher than paying for damages. With regards to municipalities and cities with defective police training programs, the theory of effective breach can be yet an additional disincentive to change.

As discussed above, it is already difficult for a governmental body to be found liable for unconstitutional harm as a result of failure to train. In some instances, it could be quite expensive to implement a newer training procedure, with longer hours or a more advanced curriculum that must be paid for. It would be dependent on the region and unique challenges facing a particular government entity, but even implicit theories of effective breach could motivate a municipality or

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<sup>94</sup> Mark Dowie, *Pinto Madness*, MOTHER JONES (Sept. 1977), <https://www.motherjones.com/politics/1977/09/pinto-madness/>.

<sup>95</sup> John R. Danley, *Polishing up the Pinto: Legal Liability, Moral Blame, and Risk*, 15 BUSINESS ETHICS QUARTERLY 2, 205–236 (Apr. 2005).

<sup>96</sup> *Id.*

city to be resistant to change. If the defective motor of police training would cost an immense sum of money to replace across the board, would the chances of a fiery death of the civil rights of the few be worth it, especially with the stalwart shield of 42 U.S.C., § 1983 case law allowing governmental bodies to escape the flames unscathed?

## **2. Lack of National Structure**

As discussed in Part 1, The United States does not have a national structure or standard for police training protocol like many other countries.<sup>97</sup> Instead, our policing system is based upon a patchwork of local entities, governed by municipalities and cities, who are independently responsible for their own police training procedures.<sup>98</sup> This means that any given region in the United States could have training more effective at combating potential civil rights violations of the region's constituents than others. One state can mandate over a hundred hours in de-escalation techniques training, another mandating hundreds of hours in constitutional rights training in the realm of 4th amendment searches and seizures, and another state could focus 25% of its training on racial sensitivity and bias courses, all while another state mandates 5 hours of training in each. With such discrepancies, the civil rights of citizens could be jeopardized in some regions more than others based purely on the decisions of their local legislatures.

The current lack of a national minimum standard for police training has its own detriments and potential positives, but it undoubtedly creates an environment less conducive to change with respect to 42 U.S.C., § 1983. While a lack of a national structure itself does not serve as a barrier to improving policing practices, without standards states can have woefully incompetent training practices without any federal recourse. Scholars, activists, and political commentators currently admonish the United States for its local inconsistencies, and for its abysmal training requirements

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<sup>97</sup> *Decentralized Police Organizations*, *supra* note 7.

<sup>98</sup> *Id.*

compared to other countries.<sup>99</sup> Absent internal pressure from local citizens and internal legislatures, local entities can impetuously promulgate inadequate training practices at the expense of the potential violation of their citizens' civil rights.

#### IV. A FEW POTENTIAL SOLUTIONS

The current legal and quasi-legal state of 42 U.S.C., § 1983 manufactures an environment that is naturally resistant to improving the quality of police training in The United States. Risk of poor training practices and subsequent harm to citizens' civil rights is ever present, as evidenced by the frequent news headlines recounting tales of unconstitutional actions on behalf of police officers.<sup>100</sup> There are, however, possible measures that can be taken to belay or otherwise counteract the negative effects perpetuated by this environment, and better equip officers to deal with constitutionally risky situations.

##### A. *Tackling Qualified Immunity*

###### 1. **Judicial Intervention**

There are numerous judicial changes, ranging from complete abolition<sup>101</sup> to slight alterations, to the judicial doctrine of qualified immunity that would consequently improve the state of police training in The United States. Abolishing qualified immunity seems to be a currently unlikely prospect,<sup>102</sup> and its consequences in terms of training have been argued to be boundless.<sup>103</sup>

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<sup>99</sup> *The Wrong Training*, *supra* note 2.

<sup>100</sup> Matt Vasilogambros, *The Feds Are Investigating Local Police Departments Again. Here's What to Expect*, STATELINE (May 3, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/05/03/the-feds-are-investigating-local-police-departments-again-heres-what-to-expect>.

<sup>101</sup> *Ending Qualified Immunity Once and For All is the Next Step in Holding Police Accountable*, ACLU (Mar. 23, 2021), <https://www.aclu.org/news/criminal-law-reform/ending-qualified-immunity-once-and-for-all-is-the-next-step-in-holding-police-accountable/>.

<sup>102</sup> *Id.*

<sup>103</sup> *Canton*, 563 U.S. at 391, 392 (where the Supreme Court expressed fear that lessened standards for qualified immunity would expose municipalities to unprecedented liability under § 1983).

However, specifically targeting how courts treat municipal liability has recent judicial development<sup>104</sup> and has perhaps the best potential for improvement in the realm of police training.

In J.K.J. v. Polk County,<sup>105</sup> the 7<sup>th</sup> Circuit Court of Appeals found a municipality was liable for plaintiff's injuries under § 1983 when municipality inadequately trained staff member who sexually assaulted the plaintiffs. The court recognized the lofty standards put forth by the Supreme Court in Canton<sup>106</sup> were substantial hurdles for the plaintiff to overcome, particularly because the plaintiff failed to allege facts that there was a pattern of sexual assaults by prison staff to put the municipality on actual or constructive notice so as to constitute "deliberate indifference".<sup>107</sup> The court addressed the deliberate indifference standard that other circuits have found plaintiffs were unable to overcome<sup>108</sup> by referring to the Canton "doorway", where the need to train officers in the constitutional limitations for certain situations can be said to be so obvious that failure to do so could qualify as 'deliberate indifference'.<sup>109</sup> The 7<sup>th</sup> Circuit noted that "[i]n Bryan County,<sup>110</sup> the [Supreme] Court confirmed that City of Canton 'did not foreclose the possibility that evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability.'"<sup>111</sup>

The 7<sup>th</sup> Circuit has demonstrated that courts can use the Canton doorway as a tool to expand municipal liability for failure to train. Courts could effectively (even if not intentionally) broaden the quantity and quality of required training for government officials by declaring more areas and

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<sup>104</sup> J.K.J. v. Polk County, 960 F.3d 367 (7th Cir. 2020).

<sup>105</sup> Id.

<sup>106</sup> 563 U.S. 378.

<sup>107</sup> Id. at 380.

<sup>108</sup> Jason v. Tanner, 938 F.3d 191, 199 (5th Cir. 2019); Waller v. City & Cty. of Denver, 932 F.3d 1277, 1288 (10th Cir. 2019); Parrish v. Ball, 594 F.3d 993, 999 (8th Cir. 2010).

<sup>109</sup> J.K.J., 960 F.3d at 381.

<sup>110</sup> 520 U.S. at 409.

<sup>111</sup> J.K.J., 960 F.3d at 381.

situations as ones that present obvious potential for constitutional liability. This judicially driven expansion of municipal liability could have the potential to cure the police training shortcomings facing The United States today.<sup>112</sup>

## **2. Legislative Intervention**

Legislative reform regarding 42 U.S.C., § 1983 has been proposed,<sup>113</sup> advocated for,<sup>114</sup> and at least partially enacted<sup>115</sup> across the nation in recent years. Legislative reform of qualified immunity for failure to train has the same potential of tangentially improving the state of American police training the same way that judicial intervention does, by exposing municipalities to more liability in the event that they inadequately train their officers.

This concept is evidenced in Colorado's bold action of becoming the first state to statutorily limit the use of qualified immunity as a defense in law enforcement cases at the state level through the passing of SB 217 (2020).<sup>116</sup> Included in this legislature, which primarily encourages peace officers to employ nonviolent means before resorting to the use of physical force, is the condition that law enforcement agencies in the state shall train its peace officers on the law's provisions.<sup>117</sup> While the passing of this legislature is new, and its effects have yet to be fully studied, it is evidence that States can indeed expand liability for state actors and reduce qualified immunity. Legislature like SB 217<sup>118</sup> passed in Colorado has the potential to increase local government interest in adequately training its officers, as municipalities cannot easily hide under the shield of qualified immunity if their State does not make it a viable defense for certain actions.

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<sup>112</sup> Randy Shrewsberry, interviewed by Debbie Elliott, *Former Police Officer Says Training Methods for Cops Need to Change*, NPR (Apr. 17, 2021), <https://www.npr.org/2021/04/17/988331517/former-police-officer-says-training-methods-for-cops-need-to-change>.

<sup>113</sup> George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. § 1 (2021).

<sup>114</sup> *Ending Qualified Immunity Once and For All is the Next Step in Holding Police Accountable*, *supra* note 101.

<sup>115</sup> 2020 COLO. LEGIS. SERV. Ch. 110 (S.B. 20-217) (West).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*



*B. The National Standard: A Synergistic Approach to Address Efficient Breach, Lack of Uniformity, Training Content and Quality, and Budgetary Constraints.*

In May of 2015, United States President Barack Obama created the President's Task Force on 21st Century Policing ("Task Force") via an executive order signed on December 18, 2014 in response to the unrest in Ferguson, Missouri following the shooting of Michael Brown by a police officer.<sup>119</sup> The Task Force, charged with the task of identifying the best policing practices, made the recommendation<sup>120</sup> that the Federal Government should "support the development of partnerships with training facilities across the country *to promote consistent standards for high quality training* and establish training innovation hubs" (emphasis added).<sup>121</sup> The Task Force suggested that federally supported regional training hubs could be utilized to promote national police training practices while still accounting for regional variations.<sup>122</sup> Local governments could be further incentivized to enroll in these programs via federal funding.<sup>123</sup> The Task Force also suggested utilizing state policing boards and commissions to collaborate to more effectively promote the program.<sup>124</sup>

The recommendation<sup>125</sup> proposed by the Task Force would be a meaningful step towards the implementation of a more collaborative, national police training standard. As discussed earlier, the lack of a national standard or structure in police training means that local government entities can implement woefully incompetent training procedures without fear of legal retribution.

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<sup>119</sup> Martin Kaste, *Obama's Policing Task Force Begins with Public Hearing*, NPR (Jan. 13, 2015), <https://www.npr.org/2015/01/13/377024708/obamas-policing-task-force-begins-with-public-hearing>.

<sup>120</sup> *Final Report of the President's Task Force on 21st Century Policing*, *supra* note 29.

<sup>121</sup> *Id.* at 53.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 54.

<sup>125</sup> *Id.* at 53.

Insulated by the great deference given to local cities and municipalities in implementing their own policies, these entities have little incentive to improve potentially poor practices. With some form of national standardization, states/cities/municipalities would be encouraged or otherwise incentivized to maintain at least basic training practices deemed adequate by the Federal Government for the protection of civilians' civil rights.

Expanding beyond the proposal by the Task Force, the creation of a true National Structure for police training can potentially ameliorate many of the woes facing police training reform in The United States. One way the federal government can regulate police training to address the problem areas of efficient breach, training content/quality, and budgetary constraints is through the utilization of the spending power. The spending power doctrine allows Congress to impose conditions on federal grants of funds money offered, as long as conditions are for the general welfare, its terms are unambiguous, there is a relation between the purpose of program and the condition required, and the imposed conditions are not sufficiently coercive.<sup>126</sup> The effectiveness of this congressional power is reflected in South Dakota v. Dole.<sup>127</sup> In Dole, Congress sought to encourage a national minimum drinking age of 21 by offering highway funds to states, but would retain 5% if the state's minimum drinking age was under 21.<sup>128</sup> Operating in a similar manner, the Federal Government could create a federal funding structure for state police training programs, conditioned on compliance with certain conditions.

With a federal funding system in place, the problems of local municipality resource constriction and the tangentially related issue of efficient breach would be diminished. As of 2018, most spending on police was done by local governments (86 percent on average).<sup>129</sup> An influx of

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<sup>126</sup> Natl. Fedn. of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

<sup>127</sup> S. Dakota v. Dole, 483 U.S. 203 (1987).

<sup>128</sup> Id. at 203.

<sup>129</sup> *State and Local Criminal Justice Spending*, U.S. CENSUS BUREAU (2017).

federal resources could lessen the pressures expressed in Part 3. With an influx of funds, the scales of effective breach weighing the costs of reform and the costs of lawsuit could tip in favor of reform. Considering there is a substantial government interest in protecting the constitutional rights of its citizens,<sup>130</sup> federal investment in this area is not out of question.

Utilizing the spending power and creating a national system can also reconfigure the content and quantity of police training in The United States. In addition to recommending a more consistent training standard, the Presidential Task Force also advises that basic training should have a better focus on lessons to improve social interaction as well as tactical skills.<sup>131</sup> The Task Force specifically recommends focus in the areas of “critical thinking, social intelligence, implicit bias, [and] fair and impartial policing . . . .”<sup>132</sup> These themes of training content reconfiguration have been requested by multitudes of activist organizations,<sup>133</sup> and a national system as prescribed above can serve to address these concerns.<sup>134</sup> Furthermore, a national standard for quantity of training hours required of police personnel can help raise our abysmally low hour count (compared to that of other countries).<sup>135</sup>

### *C. Proactive Investigation*

Finally, police departments and municipalities can conduct internal investigations to self-assess the adequacy of their training programs,<sup>136</sup> despite the risk of liability in doing so as described in Part 3. Unfortunately, most investigations such as these occur after a civil rights

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<sup>130</sup> U.S. CONST. amend. XIV, § 1.

<sup>131</sup> *Final Report of the President’s Task Force on 21st Century Policing*, *supra* note 29 at 56.

<sup>132</sup> *Id.*

<sup>133</sup> Ray et al., *supra* note 12; George Wood et al., *Procedural Justice Training Reduces Police Use of Force and Complaints Against Officers*, NAT’L ACAD. OF SCI. (May 2020).

<sup>134</sup> *The Wrong Training*, *supra* note 2 (arguing that a disproportionate amount of training is used on combative skills, calling for a shift to de-escalation techniques).

<sup>135</sup> *Id.*

<sup>136</sup> *Investigation of the Chicago Police Department*, U.S. DEP’T OF JUST. CIV. RTS DIVISION (Jan. 13, 2017).

violation has occurred.<sup>137</sup> The Investigation of the Baltimore City Police Department, launched in the wake of the death of Freddie Gray, uncovered a number of deficiencies in the department, including the systemic failure to train its officers.<sup>138</sup>

Investigations such as the one carried out in Baltimore are indicative of this notion: tragic deaths should not be one of the sole catalysts that trigger investigations into the adequacy of training programs. Routine inspections could have the effect of refining training programs and correcting inadequate practices. In some instances, it could also be a way to protect the rights of citizens, or even save their lives. Encouragement to conduct investigation into police training can be sourced from anywhere, ranging from private citizens, interest groups,<sup>139</sup> and even the President.<sup>140</sup>

## V. CONCLUSION

The populace of The United States has been calling for police reform in the wake of civil rights violations making headlines across the nation. One specific area that has been heavily scrutinized is the content and quantity of training required of police. In this area, however, legal and non-legal barriers create an environment not conducive to change. While the factors contributing to this environment are numerous and seemingly entrenched in our society, there can be steps taken, large or small, to help facilitate police training reform and consequently better protect the civil rights of American citizens.

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<sup>137</sup> *Investigation of the Baltimore City Police Department*, U.S. DEP'T OF JUST. CIV. RTS DIVISION (Aug. 10, 2016).

<sup>138</sup> *Id.*

<sup>139</sup> *POLICE ACCOUNTABILITY AND CITIZEN REVIEW A LEADERSHIP OPPORTUNITY FOR POLICE CHIEFS* THE INT'L ASS'N OF CHIEFS OF POLICE (Nov. 2000).

<sup>140</sup> *Final Report of the President's Task Force on 21st Century Policing*, *supra* note 29.; Chris Megerian, *Trump Calls for Improved Police Hiring and Training* (June 16, 2020), <https://www.latimes.com/politics/story/2020-06-16/trump-to-call-for-increased-funding-for-police-training>; *THE BIDEN PLAN FOR STRENGTHENING AMERICA'S COMMITMENT TO JUSTICE*, JOEBIDEN.COM, <https://joebiden.com/justice/>.