

WEST'S  
ENCYCLOPEDIA  
*of*  
AMERICAN  
LAW

2ND EDITION

VOLUME 8



PO TO SAN

# WEST'S ENCYCLOPEDIA *of* AMERICAN LAW

2ND EDITION

VOLUME 8



PO TO SAN

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## West's Encyclopedia of American Law, 2nd Edition

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## DEDICATION

*West's Encyclopedia of American Law*  
(*WEAL*) is dedicated to librarians  
and library patrons throughout the  
United States and beyond. Your  
interest in the American legal system  
helps to expand and fuel the frame-  
work of our Republic.



**T**he U.S. legal system is admired around the world for the freedoms it allows the individual and the fairness with which it attempts to treat all persons. On the surface, it may seem simple, yet those who have delved into it know that this system of federal and state constitutions, statutes, regulations, and common-law decisions is elaborate and complex. It derives from the English common law, but includes principles older than England, along with some principles from other lands. The U.S. legal system, like many others, has a language all its own, but too often it is an unfamiliar language: many concepts are still phrased in Latin. The second edition of *West's Encyclopedia of American Law (WEAL)* explains legal terms and concepts in everyday language, however. It covers a wide variety of persons, entities, and events that have shaped the U.S. legal system and influenced public perceptions of it.

## MAIN FEATURES OF THIS SET

### Entries

This encyclopedia contains nearly 5,000 entries devoted to terms, concepts, events, movements, cases, and persons significant to U.S. law. Entries on legal terms contain a definition of the term, followed by explanatory text if necessary. Entries are arranged alphabetically in standard encyclopedia format for ease of use. A wide variety of additional features, listed later in this preface, provide interesting background and supplemental information.

**Definitions** Every entry on a legal term is followed by a definition, which appears at the beginning of the entry and is italicized. The Dictionary and Indexes volume includes a glossary containing all the definitions from *WEAL*.

**Further Readings** To facilitate further research, a list of Further Readings is included at the end of a majority of the main entries.

**Cross-References** *WEAL* provides two types of cross-references, within and following entries. Within the entries, terms are set in small capital letters—for example, *LIEN*—to indicate that they have their own entry in the encyclopedia. At the end of the entries, related entries the reader may wish to explore are listed alphabetically by title.

Blind cross-reference entries are also included to direct the user to other entries throughout the set.

### In Focus Essays

In Focus essays accompany related entries and provide additional facts, details, and arguments on particularly interesting, important, or controversial issues raised by those entries. The subjects covered include hotly contested issues, such as abortion, capital punishment, and gay rights; detailed processes, such as the Food and Drug Administration's approval process for new drugs; and important historical or social issues, such as debates over the formation of the U.S. Constitution.

### Sidebars

Sidebars provide brief highlights of some interesting facet of accompanying entries. They

complement regular entries and In Focus essays by adding informative details. Sidebar topics include the Million Man March and the branches of the U.S. armed services. Sidebars appear at the top of a text page and are set in a box.

### Biographies

*WEAL* profiles a wide variety of interesting and influential people—including lawyers, judges, government and civic leaders, and historical and modern figures—who have played a part in creating or shaping U.S. law. Each biography includes a timeline, which shows important moments in the subject's life as well as important historical events of the period. Biographies appear alphabetically by the subject's last name.

### ADDITIONAL FEATURES OF THIS SET

**Enhancements** Throughout *WEAL*, readers will find a broad array of photographs, charts, graphs, manuscripts, legal forms, and other visual aids enhancing the ideas presented in the text.

**Indexes** *WEAL* features a cases index and a cumulative index in a separate volume.

### Appendixes

Three appendix volumes are included with *WEAL*, containing hundreds of pages of docu-

ments, laws, manuscripts, and forms fundamental to and characteristic of U.S. law.

### Milestone Cases in the Law

A special Appendix volume entitled *Milestones in the Law*, allows readers to take a close look at landmark cases in U.S. law. Readers can explore the reasoning of the judges and the arguments of the attorneys that produced major decisions on important legal and social issues. Included in each Milestone are the opinions of the lower courts; the briefs presented by the parties to the U.S. Supreme Court; and the decision of the Supreme Court, including the majority opinion and all concurring and dissenting opinions for each case.

### Primary Documents

There is also an Appendix volume containing more than 60 primary documents, such as the English Bill of Rights, Martin Luther King Jr.'s Letter from Birmingham Jail, and several presidential speeches.

### Citations

Wherever possible, *WEAL* entries include citations for cases and statutes mentioned in the text. These allow readers wishing to do additional research to find the opinions and statutes cited. Two sample citations, with explanations of common citation terms, can be seen below and opposite.

*Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966)

1                      2    3    4                      5                      6                      7

1. *Case title.* The title of the case is set in i and indicates the names of the parties. The suit in this sample citation was between Ernesto A. Miranda and the state of Arizona.
2. *Reporter volume number.* The number preceding the reporter name indicates the reporter volume containing the case. (The volume number appears on the spine of the reporter, along with the reporter name).
3. *Reporter name.* The reporter name is abbreviated. The suit in the sample citation is from the reporter, or series of books, called *U.S. Reports*, which contains cases from the U.S. Supreme Court. (Numerous reporters publish cases from the federal and state courts.)
4. *Reporter page.* The number following the reporter name indicates the reporter page on which the case begins.
5. *Additional reporter page.* Many cases may be found in more than one reporter. The suit in the sample citation also appears in volume 86 of the *Supreme Court Reporter*, beginning on page 1602.
6. *Additional reporter citation.* The suit in the sample citation is also reported in volume 16 of the *Lawyer's Edition*, second series, beginning on page 694.
7. *Year of decision.* The year the court issued its decision in the case appears in parentheses at the end of the cite.

<i>Brady Handgun Violence Prevention Act,</i>	Pub. L. No.	103-159,	107	Stat. 1536	(18	U.S.C.A.	§§ 921-925A)
1	2	3	4	5	6	7	8

1. *Statute title.*
2. *Public law number.* In the sample citation, the number 103 indicates this law was passed by the 103d Congress, and the number 159 indicates it was the 159th law passed by that Congress.
3. *Reporter volume number.* The number preceding the reporter abbreviation indicates the reporter volume containing the statute.
4. *Reporter name.* The reporter name is abbreviated. The statute in the sample citation is from *Statutes at Large*.
5. *Reporter page.* The number following the reporter abbreviation indicates the reporter page on which the statute begins.
6. *Title number.* Federal laws are divided into major sections with specific titles. The number preceding a reference to the U.S. Code stands for the section called Crimes and Criminal Procedure.
7. *Additional reporter.* The statute in the sample citation may also be found in the *U.S. Code Annotated*.
8. *Section numbers.* The section numbers following a reference to the *U.S. Code Annotated* indicate where the statute appears in that reporter.

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Dictionary of Legal Terms  
Cases Index  
General Index

# P (cont.)

## **POACHING**

*The illegal shooting, trapping, or taking of game or fish from private or public property.*

The poaching of game and fish was made a crime in England in the seventeenth century, as aristocratic landowners sought to preserve their shooting and property rights. Poor peasants did most of the poaching to supplement their diets with meat and fish.

In the United States, poaching was not considered a serious problem meriting legal measures before the twentieth century, because vast expanses of undeveloped land contained abundant sources of fish and game. The increased cultivation of land and the growth of towns and cities reduced wildlife habitats in the twentieth century. In the early 1900s, the U.S. conservation movement arose with an emphasis on preserving wildlife and managing the fish and game populations. Wildlife preserves and state and national parks were created as havens for wild animals, many of which were threatened with extinction.

Because of these changing circumstances, restrictions were placed on hunting and fishing. State game and fish laws now require persons to purchase licenses to hunt and fish. The terms of these licenses limit the kind and number of animals or fish that may be taken and restrict hunting and fishing to designated times of the year, popularly referred to as hunting and fishing seasons.

Therefore, persons who fail to purchase a license, as well as those who violate the terms of

their licenses, commit acts of poaching. Most poaching in the United States is done for sport or commercial profit. Rare and endangered species, which are protected by state and federal law, are often the targets of poachers.

Poaching laws are enforced by game wardens, who patrol state and national parks and respond to violations on private property. Poachers are subject to criminal laws, ranging from misdemeanors to felonies. Penalties may include steep fines, jail sentences, the **FORFEITURE** of any poached game or fish, the loss of hunting and fishing license privileges for several years, and the forfeiture of hunting or fishing equipment, boats, and vehicles used in the poaching.

## **CROSS-REFERENCES**

Endangered Species Act; Environmental Law; Fish and Fishing.

## **POCKET PART**

*An addition to many lawbooks that updates them until a new edition is published.*

A pocket part is located inside the back cover of the book. A legal researcher should always consult it to ensure that the most current law is examined.

## **POINT**

*A distinct proposition or QUESTION OF LAW arising or propounded in a case. In the case of shares*

*of stock, a point means \$1. In the case of bonds a point means \$10, since a bond is quoted as a percentage of \$1,000. In the case of market averages, the word point means merely that and no more. If, for example, the Dow-Jones Industrial Average rises from 8,349.25 to 8,350.25, it has risen a point. A point in this average, however, is not equivalent to \$1.*

*With respect to the home mortgage finance industry, a fee or charge of one percent of the principal of the loan that is collected by the lender at the time the loan is made and is in addition to the constant long-term stated interest rate on the face of the loan.*

## POISON

*Any substance dangerous to living organisms that if applied internally or externally, destroy the action of vital functions or prevent the CONTINUANCE of life.*

*Economic poisons are those substances that are used to control insects, weeds, fungi, bacteria, rodents, predatory animals, or other pests. Economic poisons are useful to society but are still dangerous.*

The way a poison is controlled depends on its potential for harm, its usefulness, and the reasons for its use. The law has a right and a duty pursuant to the POLICE POWER of a state to control substances that can do great harm.

In the past, an individual who was harmed by a poison that had been handled in a careless manner could institute a lawsuit for damages against the person who had mishandled the chemical. As time went on, state statutes prescribed the circumstances under which someone was legally liable for injuries caused by a poison. For example, a sale to anyone under sixteen years of age was unlawful, and a seller was required to ensure that the buyer understood that the chemical was poisonous. It was not unusual for all poisons, drugs, and narcotics to be covered by the same statutory scheme.

Specialized statutes currently regulate poisons. Pesticides must be registered with the federal government, and those denied registration cannot be used. The ENVIRONMENTAL PROTECTION AGENCY (EPA) has issued a number of regulations governing the use of approved pesticides. Federal law also prohibits unauthorized adulteration of any product with a poisonous substance and requires clear labeling for anything sold with a poisonous ingredient. It

might not be sufficient to list all the chemicals in a container or even to put the word POISON on the label. The manufacturer should also warn of the injuries that are likely to occur and the conditions under which the poison will cause harm. Stricter standards are applied to household products than to poisonous products intended to be used in a factory, on a farm, or by a specially trained person. Poisonous food products are banned. Under other federal regulations, pesticide residues on foods are prohibited above certain low tolerance levels.

Certain provisions under federal law seek to protect children from poisoning. Special packaging is required for some household products so that a child will not mistake them for food or will not be able to open containers. Federal funds are available for local programs to reduce or eliminate the danger of poisoning from lead-based paint. Under the Hazardous Substances Act (15 U.S.C.A. § 1261 et seq.), toys containing poisonous substances can be banned or subjected to recall.

## POISON PILL

*A defensive strategy based on issuing special stock that is used to deter aggressors in corporate takeover attempts.*

The poison pill is a defensive strategy used against corporate takeovers. Popularly known as corporate raiding, takeovers are hostile mergers intended to acquire a corporation. A takeover begins when a so-called aggressor tries to buy sufficient stock in another corporation, known as the target, to seize control of it. Target corporations use a wide range of legal options to deter takeovers, among which is the poison pill: a change in the company's stock plan or financial condition that is intended to make the corporation unattractive to the buyer. Despite its fanciful name, the poison pill does not destroy the target company. It is intended to affect the aggressor, which will be burdened with costs if it succeeds in its takeover. The strategy was widely adopted in the 1980s.

The poison pill is unique among anti-takeover strategies. At the simplest level, takeovers are about buying stock. Corporate raiders offer shareholders an inflated price for their shares. They try to buy the company for more than its stock is worth. Although this idea seems paradoxical, raiders can reap profits from their overpriced acquisition by selling off its

divisions and assets. Some anti-takeover strategies try to deter the aggressor by selling off prize assets first, making a counter offer to shareholders, or stipulating that the current executives will receive huge payoffs after a takeover when they are fired. These strategies can injure the company or simply benefit executives. But the poison pill involves a kind of doomsday scenario for the aggressor. If the takeover is successful, it will end up paying enormous dividends to the company's current stockholders.

Essential to the use of such a strategy is that it is first established in the corporation's charter. Among other details, these charters specify shareholders' rights. They specify that companies can issue preferred stock—shares that give special dividends, or payments—to their holders. When a takeover bid begins, the company's board of directors issues this preferred stock to its current shareholders. The stock is essentially worthless and is intended to scare away the aggressor. If the takeover succeeds, the stock becomes quite valuable. It can then be redeemed for a very good price or it can be converted into stock of the new controlling company—namely, the aggressor's. Both scenarios leave the aggressor with the choice of either buying the stock at a high price or paying huge dividends on it. This is the pill's poison.

Poison pill defenses are popular but somewhat controversial. The majority of large U.S. companies had adopted them by the 1990s. Part of this popularity comes from their effectiveness in delaying a corporate takeover, during which time a target company may marshal other defenses as well. Another reason is that courts have upheld their legality. One of the first important cases in this area reached the Delaware courts in 1985 (*Moran v. Household International, Inc.*, 500 A.2d 1346). However, some critics have argued that the strategy gives company directors power at the expense of shareholders. They maintain that it can limit shareholders' wealth by thwarting potentially beneficial takeovers and allowing bad corporate managers to entrench themselves. In the 1990s such arguments spurred some investors to attempt to repeal poison pill provisions in corporate charters.

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#### CROSS-REFERENCES

Golden Parachute; Mergers and Acquisitions.

### POLICE

*A body sanctioned by local, state, or national government to enforce laws and apprehend those who break them.*

The police force as we know it came into being in England in the 1820s when Sir Robert Peel established London's first municipal force. Before that, policing had either been done by volunteers or by soldiers. Police officers in the twenty-first century have technological advantages at their disposal to help them solve crimes, but most rely primarily on training and instinct to do their work.

In the United States, policing was originally done by the "watch system" in which local citizens would go on patrol and look for criminal activity. As cities grew, so did the amount of crime, and it became impossible to control it through volunteers. In the mid-1840s, New York City established the first paid professional police force in the United States. By the end of the nineteenth century, major cities across the nation had their own police forces. Regional police organizations were also established. Federal policing agencies such as the U.S. Park Police (who patrolled national parks), the Postal Inspectors (who helped ensure safe mail delivery) and the Border Patrol (which kept criminals from sneaking into or out of the country) were introduced. In 1905, Pennsylvania established the nation's first state police; other states quickly followed suit.

During the first decades of the twentieth century, police forces were established in smaller municipalities, and police officers took a more active role in fighting crime and protecting citizens. The widespread introduction of telephones and automobiles made it easier for police to respond quickly to emergencies.

Over the ensuing years, many of the techniques and tools commonly associated with police work—mug shots, fingerprint analysis, centralized records, crime labs—were introduced and constantly improved. Although the

scenarios commonly created by television police shows are exaggerations of how much technology can actually do, such innovations as DNA testing have made it easier for the police to positively identify criminals.

The average duties of the modern police officer can vary widely from community to community. In a large city whose police force has dozens of divisions and neighborhood precincts, an officer's duties may be quite specialized. In a small town with a police force of only a few people, each officer will likely have to know how to do several jobs to be able to fill in for their colleagues as needed.

The duties of a police officer on the New York City police force provide an example of what the police do. New York officers are expected to patrol their assigned area, either by car or on foot. They apprehend criminals or crime suspects, stop crimes in progress, and assist people who are in trouble (such as complainants in domestic disputes or emotionally disturbed homeless individuals). They investigate crimes and crime scenes, collect evidence, and interview victims and witnesses. They help find missing persons and handle cases of alleged CHILD ABUSE. They help identify and recover stolen property, and they testify in court as necessary. They also keep detailed records of their activity by filing reports and filling out various forms.

Police officers are expected to be in good physical condition. They may have to run after a suspect, carry injured individuals, subdue suspects (who may be armed or physically strong), and carry heavy equipment. They may have periods of extreme physical activity, followed by hours of no activity at all (perhaps just sitting in a patrol car for several hours). They must also be mentally alert and emotionally able to withstand the strain of their work. Although officers in large cities or dangerous neighborhoods may have a statistically higher chance of being injured or killed on the job, all police officers know that life-and-death situations can happen anywhere.

Not accidentally, police departments, especially those in large cities, are compared to military institutions. In fact, the police and the military have a number of goals in common, including discipline, endurance, teamwork, and clearly established procedures for all operations. Even the ranks given police officers are similar to those in the military.

Not surprisingly, police officers are required to undergo often rigorous training before being sworn in. The movement for formalized training began early in the twentieth century. August Vollmer, chief of police in Berkeley, California, from 1905 to 1932, believed that police officers needed professional training at the college level. He helped found a police training academy at the University of California's Berkeley campus, and Berkeley later established the nation's first college-level CRIMINOLOGY department. Today, many COLLEGES AND UNIVERSITIES have criminology departments and offer degrees in criminal justice. Many police departments will provide tuition reimbursement or scholarships to officers who want to continue their education after they have joined the force. Some officers get their law degrees; others get advanced degrees in criminology and become college instructors.

One of the major goals of many police departments is getting cooperation from within the community. Many officers receive training in communications, and most police departments have public affairs divisions that provide information for citizens who wish to organize neighborhood watch programs or who want to get information on avoiding crime. Some police departments, for example, have increased their foot patrols, believing that the officer "walking the beat" makes people feel safer and also builds rapport with local individuals. Police also work with each other as well as with other law enforcement agencies. State, county, and local police will often come together to solve a crime that falls within their jurisdiction. Agencies such as the FEDERAL BUREAU OF INVESTIGATION, the SECRET SERVICE, the Coast Guard, and others also work with the police to help solve crimes. The emergence of computerized records and databases make it easy for police organizations across the country and even overseas to exchange information about suspects and criminals. In emergency situations (fires, explosions, or natural disasters), police officers work in tandem with fire fighters, medical professionals, or emergency service workers.

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#### CROSS-REFERENCES

Federal Bureau of Investigation; Police Power.

### POLICE AND GUARDS, PRIVATE

The use of private security guards and police by such entities as businesses and school campuses to protect their property, employees, and students has grown rapidly since the early 1980s. The authority of these guards, sometimes known disparagingly as “rent-a-cops,” depends upon the employer and the type of security involved. Some guards are considered private employees of security firms and possess no more authority than an ordinary citizen. Other guards, such as campus police officers, are given specific authority to serve as peace officers by state law.

Private investigation firms predate the formation of the United States. During the nineteenth century and early part of the twentieth century, these firms often were employed by private companies for such purposes as breaking strikes, infiltrating LABOR UNIONS, and investigating robberies and other crimes. By the 1930s, however, the industry was in decline, and from the 1930s to the 1970s, public law enforcement officers were more prevalent than private guards.

By the early 1980s, the private security industry began to expand, and by the early 1990s, it was one of the largest growing industries in the United States. Private guards and police personnel now outnumber the total number of federal, state, and local law enforcement officers combined. Moreover, an estimated 150,000 regular police officers moonlight as private security guards. Some municipal police departments supply regular police officers to businesses and private individuals, and then pay the officers from the proceeds of the arrangement.

One of the most ubiquitous private security officers is the campus or university police officer. Institutions of higher education are generally under a duty to provide reasonable security measures to protect their students. Many states designate these private officers with powers and authority similar or analogous to regular police officers, particularly at state institutions, but also at some larger private institutions. Some campus police departments also make arrange-

ments with local police departments to cooperate in investigating campus crimes. Under the Student Right-to-Know and Campus Security Act, Pub. L. No. 101-542, 104 Stat. 2381, all COLLEGES AND UNIVERSITIES that receive federal financial assistance are required to publish and distribute campus security policies and crime statistics to current students, employees, and the secretary of education.

In California, for example, the Regents of the University of California and the Trustees of the California State University and Colleges may employ one or more campus police officers to serve as peace officers (Cal. Educ. Code §§ 89560, 92601). These officers may only exercise their duties within one mile of the exterior boundaries of each campus, although California courts have held that officers may, in some circumstances, extend beyond these boundaries to fulfill their duties (*Baughman v. State of California*, 45 Cal. Rptr. 82 [Cal. App. 1995]). In order to qualify to become a peace officer, a candidate must be 18 years old, demonstrate good moral character based upon an investigation, and be free from any physical, emotional, or mental condition that might adversely affect the performance of his or her duties.

Some plaintiffs have sought to hold campus police officers liable for the officers' actions under a variety of legal theories. For instance, in *DeSanto v. Youngstown State University*, 2002 WL 31966960 (Oh. Ct. Cl. 2002), campus police were given the responsibility to provide security for a dance, including checking identification of the participants and requiring non-students to sign a log. Two individuals became involved in a fight, requiring the intervention of the officers. Although one of the two participants threatened to kill the other, the officers did not arrest the man who uttered the threats. Thirty minutes later, another individual killed the man against whom the threats were made. The family of the victim claimed that the officers were negligent for failing to arrest the man who made the threats. In addition, a plaintiff's expert witness testified that had the officer arrested the man who made the threats, the victim would not have been killed. Nevertheless, the court found that the theory was speculative and held in favor of the officers.

The application of the constitutional provisions governing CRIMINAL PROCEDURE has come into question in a number of cases involving security guards. If a security guard or officer

is a purely private officer, constitutional provisions generally do not apply. These private guards usually are limited by other state criminal and TORT LAWS, such as ASSAULT, BATTERY, TRESPASS, and FALSE IMPRISONMENT. On the other hand, if the security guard or officer is deemed a state actor, then the constitutional provisions, such as the Fourth Amendment's prohibition against unreasonable SEARCHES AND SEIZURES, applies. Some states, including Georgia and South Carolina, have deputized security guards with much of the same authority as regular police officers. Other states, such as Arizona, have expressly provided that security guards do not have the same authority as regular police officers.

In *Washington v. Heritage*, 61 P.3d 1190 (Wash. App. 2002), a juvenile was convicted of possession of marijuana after she was searched by city park security guards. The juvenile court in the case found that the guards were private guards, so constitutional rules of criminal procedure did not apply. However, the Washington court of appeals determined that these guards were indeed state actors because they were employed by the city government. Accordingly, the guards were required to comply with constitutional requirements, including giving the suspects *Miranda* warnings.

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#### CROSS-REFERENCES

Colleges and Universities; Police Power.

### POLICE CORRUPTION AND MISCONDUCT

*The violation of state and federal laws or the violation of individuals' constitutional rights by police officers; also when police commit crimes for personal gain.*

*Police misconduct* and *corruption* are abuses of police authority. Sometimes used interchangeably, the terms refer to a wide range of procedural, criminal, and civil violations. Misconduct is the broadest category. Misconduct is "procedural" when it refers to police who violate police department rules and regulations; "criminal" when it refers to police who violate state

and federal laws; "unconstitutional" when it refers to police who violate a citizen's CIVIL RIGHTS; or any combination thereof. Common forms of misconduct are excessive use of physical or DEADLY FORCE, discriminatory arrest, physical or verbal harassment, and selective enforcement of the law.

Police corruption is the abuse of police authority for personal gain. Corruption may involve profit or another type of material benefit gained illegally as a consequence of the officer's authority. Typical forms of corruption include BRIBERY, EXTORTION, receiving or fencing stolen goods, and selling drugs. The term also refers to patterns of misconduct within a given police department or special unit, particularly where offenses are repeated with the acquiescence of superiors or through other ongoing failure to correct them.

Safeguards against police misconduct exist throughout the law. Police departments themselves establish codes of conduct, train new recruits, and investigate and discipline officers, sometimes in cooperation with civilian complaint review boards which are intended to provide independent evaluative and remedial advice. Protections are also found in state law, which permits victims to sue police for damages in civil actions. Typically, these actions are brought for claims such as the use of excessive force ("police brutality"), false arrest and imprisonment, MALICIOUS PROSECUTION, and WRONGFUL DEATH. State actions may be brought simultaneously with additional claims for constitutional violations.

Through both criminal and civil statutes, federal law specifically targets police misconduct. Federal law is applicable to all state, county, and local officers, including those who work in correctional facilities. The key federal criminal statute makes it unlawful for anyone acting with police authority to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States (Section 18 U.S.C. § 241 [2000]). Another statute, commonly referred to as the police misconduct provision, makes it unlawful for state or local police to engage in a pattern or practice of conduct that deprives persons of their rights (42 U.S.C.A. 14141 [2000]).

Additionally, federal law prohibits discrimination in police work. Any police department receiving federal funding is covered by Title VI of the Civil Rights Act of 1964 (42 U.S.C.

§ 2000d) and the Office of Justice Programs statute (42 U.S.C. § 3789d[c]), which prohibit discrimination on the basis of race, color, national origin, sex, and religion. These laws prohibit conduct ranging from racial slurs and unjustified arrests to the refusal of departments to respond to discrimination complaints.

Because neither the federal criminal statute nor the civil police misconduct provision provides for lawsuits by individuals, only the federal government may bring suit under these laws. Enforcement is the responsibility of the **JUSTICE DEPARTMENT**. Criminal convictions are punishable by fines and imprisonment. Civil convictions are remedied through injunctive relief, a type of court order that requires a change in behavior; typically, resolutions in such cases force police departments to stop abusive practices, institute types of reform, or submit to court supervision.

Private litigation against police officers or departments is difficult. Besides time and expense, a significant hurdle to success is found in the legal protections that police enjoy. Since the late twentieth century, many court decisions have expanded the powers of police to perform routine stops and searches. Plaintiffs generally must prove willful or unlawful conduct on the part of police; showing mere **NEGLIGENCE** or other failure of due care by police officers often does not suffice in court.

Most problematically of all for plaintiffs, police are protected by the defense of immunity—an exemption from penalties and burdens that the law generally places on other citizens. This **IMMUNITY** is limited, unlike the absolute immunity enjoyed by judges or legislators. In theory, the defense allows police to do their job without fear of **REPRISAL**. In practice, however, it has become increasingly difficult for individuals to sue law enforcement officers for damages for allegedly violating their civil rights. U.S. Supreme Court decisions have continually asserted the general rule that officers must be given the benefit of the doubt that they acted lawfully in carrying out their day-to-day duties, a position reasserted in *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001).

## History

Society has grappled with misconduct and corruption issues for as long as it has had police officers. Through the mid-to-late nineteenth century, private police forces were common-

place, and agents of Pinkerton's and other for-hire services became notorious as the muscle employers used to violently end strikes. Heavy-handed law enforcement as well as **VIGILANTISM** by groups such as the racist **KU KLUX KLAN** spurred passage of the **CIVIL RIGHTS ACT** of 1871, which criminalized acting under state law to deprive a person of constitutional or other rights under federal law. **SECTION 1983** of the act remains a critical tool in the early 2000s for enforcing constitutional rights, with direct applicability to police misconduct cases.

The twentieth century saw multiple legal, administrative, and scholarly approaches to the problem. Some developments bore indirectly upon police misconduct, such as the passage of the Civil Rights Act of 1964, which gave new protections to citizens who had long suffered discriminatory policing. Additionally, a string of landmark Supreme Court decisions during the era gave new force both to individual privacy rights as well as to curbs upon **POLICE POWER**: highly influential cases resulted in the strengthening of **FOURTH AMENDMENT** rights against unreasonable **SEARCH AND SEIZURE**, evidentiary rules forbidding the use at trial of evidence tainted by unconstitutional police actions, and the establishment of the so-called **Miranda Warning** requiring officers to advise detained suspects of their constitutional rights.

While these decisions profoundly shaped the legal and social landscape, renewed focus on police misconduct and corruption occurred in the latter part of the century. As the pioneering criminologist Herman Goldstein argued, traditional views were based on the assumption that police abuse reflected the moral failings of individual officers—the so-called “bad cop.” Public scandals began to shape a new view of the problem. In 1971, New York City organized the Knapp Commission to hold hearings on the extent of corruption in the city's police department. Police officer Frank Serpico's startling testimony against fellow officers not only revealed systemic corruption but highlighted a long-standing obstacle to investigating these abuses: the fraternal understanding among police officers known variously as “the Code of Silence” and “the Blue Curtain” under which officers regard testimony against a fellow officer as betrayal.

Broader recognition of the problem brought more ambitious reform efforts in the 1980s and 1990s. Spurred by the work of criminologists



such as Goldstein and others, police departments sought to improve organizational rules, training, and prevention and control mechanisms. Such efforts are reflected in the publication of a code of police conduct by the International Association of Chiefs of Police, more rigorous training for officers, and experimented with so-called community policing programs to improve ties between officers and the public. Several cities established joint police and civilian complaint review boards to give citizens a larger role in what traditionally had been a closed, internal process by police departments.

Among the most dramatic examples of system-wide reform is New York City's response to long-standing brutality, discrimination, and corruption within the New York City Police Department (NYPD). After flirting with civilian review of complaints against police in the 1960s, the city committed to it after public outcry over the videotaping of officers beating citizens who violated curfew in 1988. The city subsequently established its Civilian Complaint Review Board, which became an all-civilian agency in 1993. In 1992, responding to new complaints, Mayor David N. Dinkins appointed the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, known as the Mollen Commission. Two years later, the commission concluded that the city had alternated between cycles of corruption and reform. Afterwards, in 1995, Mayor Rudolph W. Giuliani established the full-time Commission to Combat Police Corruption (CCPC) as an entity independent from the police department. The CCPC moni-

tors the NYPD anti-corruption policies and procedures, conducts audits, and issues public reports.

### Contemporary Problems

Despite legal safeguards and well-intentioned reforms, police problems have continued to produce headlines. The exact scope of misconduct is unknown. Misconduct complaints can be quantified on a city-by-city basis, but these data are often subjective, and far more complaints are filed than ever are evaluated at trial. Corruption is even harder to measure. As the National Institute of Justice acknowledged in its May 2000 report, *The Measurement of Police Integrity*, most corruption incidents go unreported, and data that do exist "are best regarded as measures of a police agency's anticorruption activity, not the actual level of corruption."

During the late 1990s, highly-publicized cases in New York, New Jersey, Texas, Detroit, and Cleveland exposed an apparently new trend: police drug corruption. In the Cleveland case alone, the FBI arrested 42 officers from five law enforcement agencies in 1998 on charges of conspiracy to distribute cocaine. In a 1998 report to U.S. Congressman Charles B. Rangel, the federal GENERAL ACCOUNTING OFFICE (GAO) found evidence of growing police involvement in drug sales, theft of drugs and money from drug dealers, and perjured testimony about illegal searches. The GAO survey of police commission reports and academic research suggested a troubling new dimension previously not seen in studies of police corruption. Traditionally, police corruption had been understood to involve individuals acting alone, but the new trend revealed officers working in small groups to protect and assist each other.

In 1999, this pattern emerged in one of the worst police corruption scandals in U.S. history. The scandal involved the Los Angeles Police Department's Rampart precinct and particularly its elite anti-gang unit, CRASH (Community Resources Against Street Hoodlums). Following local and federal investigations, CRASH was dismantled, some 70 officers were investigated, and several either pleaded guilty to or were convicted of crimes ranging from drug theft and peddling to assault, fabricating arrests, and filing false reports.

The Rampart scandal bore heavy costs, financially as well as in human terms. Several dozen criminal convictions credited to the work

Protesters react to the acquittal of four New York City police officers in the 1999 shooting death of Amadou Diallo.

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