

Introduction

POLICE VIOLENCE

Some cops are bad. Some cops are even criminals. The power of having a gun and a badge leads some police officers to think they can commit crimes because they are above the law, exempt from law enforcement, and able to get away with it. After all, who polices the police?

A serial rapist attacked numerous woman over a period of several years from 2002 to 2005 in Bloomington, Illinois. A masked intruder would tie up his victims and cover their heads with a pillowcase, sometimes first using duct tape to cover his victim's mouth before sexually assaulting a woman. The rapist told one of his victims that he had been stalking her and knew everything about her. He knew what car her fiancé drove, what her sister looked like, and he even knew her work schedule. Afterward, he would force his victims into the bathroom for a long soak in the bathtub to wash away any forensic evidence. He knew exactly what he was doing. Then one night around 1:00 a.m. in June 2006, a twenty-nine-year-old woman named Jonelle Galuska awoke to her startled dog and immediately called the police. Galuska had felt for some time that she was being watched by someone, maybe even stalked. She just sensed it. Bloomington police officer Dave Zeamer was first to arrive and saw a man, dressed in all-black clothing, standing outside next to the side of Galuska's house. Officer Zeamer immediately recognized the person. It was Bloomington police sergeant Jeff Pelo. Pelo's explanation did not make any sense; he claimed that he was scouting out the area looking for a new place for his mother-in-law. Detectives later realized that Pelo had run the license plate numbers of several of his victims in a law enforcement database. Several of his victims identified Pelo as their rapist. Pelo selected his rape victims carefully by using the training, resources, power, and status of being a police officer. He thought he could get away with it. Even without

DNA or other forensic evidence at his trial, a jury convicted Pelo on dozens of sexual assault, armed home invasion, burglary, and stalking charges. Ultimately, a judge sentenced Pelo to 375 years in prison. Jeff Pelo—a seventeen-year police veteran—was a serial rapist.¹

Jeff Pelo is not the only police officer to misuse a law enforcement database. During the years 2005–12, at least 142 police officers across the United States were charged with a crime for illegally accessing a law enforcement database.² Drug corruption or an officer's misguided pursuit of women is often at the root of these cases. Numerous cases involve a police officer enmeshed in the illegal drug trade who provided information from a law enforcement database to a drug dealer. In other cases an officer was paid to provide confidential law enforcement information to private investigators. Often the officers arrested for misusing a law enforcement database did so to obtain personal information, such as the home address of a woman they had come into contact with on the job as a police officer. Presumably, the information was then used to contact or stalk the woman. Some officers used license plate numbers to find out the identity of the new boyfriend of an ex-wife or ex-girlfriend. Prior to the 1980s the only way for a police officer to access vehicle and driver license information was to request that a police teletype operator or dispatcher conduct a computer search. The ubiquity of mobile computers in police cruisers has made it tempting for some officers to illegally obtain information from law enforcement databases. The procedures in place to prevent misuse of the database systems are passive because no human interaction is needed for a police officer to search a law enforcement database. I suspect that the problem at many police departments is much larger than the 142 known cases of an officer being arrested for criminal misuse of a law enforcement database would suggest. The secret nature of the police subculture provides ample opportunities for officers to misuse law enforcement resources.

THE PROBLEM OF POLICE VIOLENCE

Nobody starts their career as a police officer thinking they will end up a criminal. No rookie police officer wants to become a bad cop. Successful applicants for jobs as sworn law enforcement officers all look good on paper. They might have attended college for a few years or earned a college degree. They might be a military veteran. They are all in good physical shape and

typically have no known criminal history and no known drug problems. Their neighbors, friends, college professors, former employers, and roommates all indicate to background investigators that they are good people who have the personality suitable to be a police officer. They even have good credit scores. Most law enforcement agencies require applicants for a police officer position to have all the above characteristics and to pass pre-employment psychological and polygraph examinations. Yet, there is something about the job of a police officer that leads some officers to become criminals.

The job of a police officer is unlike any other job. It is a job that comes with incredible power to control other people. Officers cannot simply “turn off” their jobs when they go home at the end of a shift. Police officers on the street work without close supervision. They always carry their badge and gun even when they are off duty. Police officers do not tolerate others well and they like to be in charge. They are used to telling people what to do and expect that people will follow their directions. Eventually most police officers conclude that it is an us-versus-them world. There are police officers and there are assholes. Officers think that everyone who is not a police officer is probably an asshole. This reality of the police subculture shapes everything a police officer does. It leads many officers to conclude that they are above the law and can do whatever they want to do. Sometimes this includes police officers engaging in criminal activity. For some officers, things unravel only when their crimes become public.

Chronic Offenders

Some police officers manage to keep their jobs even after being arrested multiple times. Occasionally officers are arrested numerous times within a short period of time in which their personal lives unravel. Other officers are arrested numerous times over the course of many years during their careers.

Lt. Kenneth Parrish of the Prince George’s County Police Department in Maryland was arrested for driving under the influence of alcohol on four occasions in 2008. In February of that year, Parrish was arrested while allegedly driving a police cruiser off duty while drunk. Then in July he was arrested for driving under the influence, driving with a suspended license, and reckless driving, and again in September he was arrested for driving under the influence and failing to stop after a motor vehicle accident. The arresting officer in the July incident had to deploy a Taser and use pepper spray to get Parrish handcuffed. Parrish ended the year with a fourth drunk driving arrest in December 2008, where his blood alcohol content was three

times the legal limit and he admitted to drinking a half pint of vodka earlier in the morning. After the December arrest, acting police chief Roberto Hylton was quoted in the *Washington Post* saying that Parrish “had taken a downward spiral” after a difficult year in which his marriage ended and his mother died.³ The chief also noted that Parrish had been treated for alcohol dependence through the county’s employee assistance program. Parrish was convicted of driving under the influence for only the last arrest. In July 2009, he was sentenced to one year of supervised probation. Although most of Parrish’s arrests do not involve acts of police violence, his multiple drunk driving arrests within a short time are typical of sworn law enforcement officers who get repeatedly arrested when their personal lives are unraveling.

Another officer, John Lewis of the Schenectady Police Department in New York, was arrested nine times between April 2008 and May 2010. It should have been clear to anyone that Lewis’s life was spiraling out of control as he was arrested for violating an order of protection, stalking, drunk driving, criminal mischief, witness tampering, and other offenses during those three years. Lewis was terminated from the police department just before he was arrested on a federal firearms offense in 2010. After his death in 2014 at the age of forty-four, his attorney Michael Horan said, “It’s tragic that his personal life and career took such a terrible turn. He made some bad choices but was a good cop in many ways.”⁴ All indications are that Kenneth Parrish and John Lewis were good cops, but they unraveled personally and professionally after each having served about twenty years as a police officer, when their problems led to their multiple arrests.

Rarely, an officer is arrested for crimes over many years during his or her law enforcement career, often for seemingly unrelated offenses. These are bad cops who game the system to keep their jobs for a long time after being flagged as problem officers. Jeff Brunswick, who joined the Cincinnati Police Department in Ohio in 1980, was one such officer.⁵ He was fired in 1990 after a supervisor accused him of operating his car in a reckless manner and then lying about it. The allegation was that Brunswick had used his police cruiser to bump a fleeing suspect. He was also accused of firing bottle rockets into a parking lot in northern Kentucky while he was drunk. The Civil Service Commission upheld Brunswick’s termination, but a court later reversed that decision and ordered that he be reinstated as a Cincinnati police officer. He was promoted to sergeant in 1997.

Brunswick was arrested in May 2005 and charged with misdemeanor assault after a woman accused him of punching her in the face and choking

her. The criminal case was dismissed following mediation between Brunswick and the woman. Then, at age fifty-one in August 2008, Brunswick was charged with menacing and stalking a twenty-seven-year-old female police officer under his supervision. He was acquitted at a jury trial in the Hamilton County Municipal Court. In February 2011, Brunswick got into a bar fight and punched another off-duty police officer in the face. He pleaded guilty to a minor misdemeanor charge of disorderly conduct and was sentenced to one day in jail. A minor misdemeanor in Ohio is the equivalent of a violation, infraction, or summary offense in other states. Brunswick continued to work as a police sergeant in Cincinnati until he was indicted two years later in May 2013 on two counts of obstruction of justice and four counts of unauthorized use of property. It was Brunswick's fourth arrest while employed as a police officer. The indictment stemmed from allegations that Brunswick had accessed a law enforcement database to assist two men in Chesterfield, Virginia, who were wanted for armed robbery in South Carolina. While on suspension after the indictment, Brunswick was charged with promoting prostitution following an incident at a Cincinnati-area hotel where he had sex with a prostitute and then paid for her hotel room so that she could service other men.⁶ Sergeant Brunswick retired from the Cincinnati Police Department at age fifty-seven with thirty-three years of service, and later he was sentenced to three years of probation after pleading guilty to promoting prostitution and offenses related to unauthorized use of a police computer.

Cops Think That Everyone Is an Asshole

Police officers often view the world as an us-versus-them place, even when off duty, and are used to people doing exactly what a police officer tells them to do. This sometimes leads to odd encounters at public events. Every year at least a few off-duty police officers around the country are arrested at sporting events and concerts, often at outdoor venues. Sometimes the arrest is for public intoxication during a concert or drunk driving when leaving a concert. Other times off-duty officers are arrested for incidents that arise from the officers' intolerance for assholes. Lt. Robert Walker and Sgt. Kenneth Ciesla, both of the Hudson Police Department in Ohio, were convicted in 2005 for beating a man whose picnic basket accidentally bumped their car as they left a James Taylor concert at the Blossom Music Center.⁷ Two Pittsburgh, Pennsylvania, police detectives, Patrick Moffatt and Joseph Simunovic, were arrested in 2007 for aggravated assault in the parking lot of the Post-Gazette Pavilion

outside a Toby Keith concert they were attending.⁸ Nicholas Maurer, a police officer in Fremont, California, was convicted of assault after getting mad at an off-duty firefighter whose wife pointed out to Maurer that he was leaning against the door of a train on the way to a Kenny Chesney concert in 2008 at AT&T Park.⁹ An off-duty Altoona police officer in Pennsylvania, Matthew Plummer, was charged with aggravated assault in 2013 for punching a man who exposed his buttocks following a Kid Rock concert at First Niagara Pavilion. Plummer pleaded guilty to a reduced charge of disorderly conduct, was fined \$1,000, and kept his job with the Altoona Police Department.¹⁰

Ohio Highway Patrol trooper Jason Fantone was arrested and charged with disorderly conduct for throwing peanuts at deputy sheriffs in January 2011 while attending a Cleveland Browns football game against the Pittsburgh Steelers at Cleveland Browns Stadium.¹¹ Trooper Fantone was also charged with vandalism for damaging the latch on the steel door of the holding cell where he was taken after being arrested and removed from the stadium.¹² He entered a court diversion program that allowed for his record to be expunged after a period of good behavior. Fantone was fired from the Ohio Highway Patrol following his January 2011 arrest but was reinstated a year later when an arbitrator overturned his dismissal.¹³ Trooper Fantone was arrested again in July 2013 for operating a vehicle while impaired when he was found sleeping in his vehicle outside a Buffalo Wild Wings restaurant. He had been asked to leave the restaurant after being served two beers and falling asleep on the bar. He later pleaded guilty to a reduced charge of being in physical control of a vehicle while intoxicated and was sentenced to thirty days in jail with all but three days suspended, placed on probation for six months, and required to attend an alcohol treatment program; his driver's license was also suspended for six months except for driving to work or medical appointments.¹⁴ Fantone was terminated from the Ohio Highway Patrol in September 2013.

It is not uncommon in these scenarios for the officer being arrested to let it be known to the arresting officers that he or she, too, is a police officer. In one such 2007 incident, Officer Kenneth Magielski of the Boynton Beach Police Department in Florida was arrested while off duty for disorderly intoxication at a minor league baseball game in Port St. Lucie. An off-duty firefighter told a deputy sheriff that Magielski was upset that his child was not allowed to participate in on-the-field youth activities. When deputies asked Magielski to leave the ballpark, he said, "I am a fucking cop, you do not know who you're messing with. . . . I can't believe they gave you two assholes

a uniform.”¹⁵ Other times an off-duty officer’s dislike for someone the officer perceives as being an asshole results in the officer’s arrest at his or her child’s sporting event. In one such incident during 2007, Sgt. William Stradley of the Marcus Hook Police Department in Pennsylvania was cited for stalking and harassment after he punched a referee at a youth association wrestling match.¹⁶ Stradley apparently took issue with a penalty imposed against his son by the referee for an illegal wrestling move and unnecessary roughness. Howard Lewis, a Charlotte-Mecklenburg, North Carolina, police officer, was charged with assaulting his daughter’s coach during a softball game in 2009.¹⁷ Two years earlier Lewis had been involved in another incident at a youth basketball game and told to leave.

Revenge as Police Violence

Some police officers who think they are above the law engage in acts of revenge that result in criminal charges. Rogue officers have the power of the gun and badge, as well as an arsenal of law enforcement tools and resources not available to the general public, which are occasionally used for the improper purpose of exacting revenge on someone. The ability to mess with somebody for sport is too tempting for some bad cops because they know they can get away with it and are routinely exempt from law enforcement consequences. Police officers who commit crimes of revenge think they are above the law and can do whatever they want. Their actions often suggest they are out of control with rage. Cases in which a police officer is arrested for a crime that constitutes an act of revenge generally involve an officer using either (a) his or her police authority to violently beat someone or (b) the resources of law enforcement to embarrass someone, even having someone falsely arrested as the ultimate act of retaliation. Several police officers in New Jersey were convicted in 2016 of conspiracy for retaliating against another officer as an act of revenge. Officers Michael Dotro, Victor Aravena, Brian Favretto, and Sgt. William Gesell of the Edison Police Department conspired in 2012 against a North Brunswick police officer who had arrested one of Dotro’s relatives for drunk driving after being shown a police union card. Although no retaliation occurred, the four Edison officers conducted surveillance and illegally accessed a law enforcement database to find personal information on the North Brunswick officer. Meanwhile, Dotro was convicted and sentenced to twenty years in prison for attempted murder and aggravated arson after firebombing his captain’s home in the middle of the

night.¹⁸ Prosecutors alleged that Dotro was retaliating against the police captain for ordering him to undergo a psychological evaluation following the eleventh excessive force complaint filed against Dotro.

Even high-ranking officers have been arrested for crimes of revenge. Suffolk County police chief James Burke in New York pleaded guilty and was sentenced in late 2016 to forty-six months in federal prison for criminal deprivation of civil rights for assaulting and threatening to kill a handcuffed and shackled suspect, Christopher Loeb, at a police station. Loeb was a twenty-six-year-old heroin addict in 2012 when he broke into the police chief's department-issued SUV and stole a duffel bag containing the chief's gun belt, ammunition, cigars, sex toys, and adult pornography. Chief Burke allegedly pressured police officers who witnessed his attack on Loeb to conceal the event through an elaborate cover-up. Officers later testified in federal court that Burke went berserk in the interrogation room when Loeb called the chief a "pervert" and that the beating ended only when a detective said, "Boss, that's enough, that's enough."¹⁹ Apparently, Loeb mistakenly believed that the pornography he stole from the police chief's vehicle was child pornography.

Off-Duty Officers Who Misuse Their Guns

In 1980 James Fyfe found that the reasons were not readily articulable for many off-duty acts of bizarre violence involving police officers and their firearms.²⁰ He noted that a growing body of literature had concluded that intense psychological pressures on police officers and their families might explain such bizarre violence. Research shows that 6.6 percent ($n = 316$) of the off-duty police officers arrested during the years 2005–12 were involved in gun incidents of bizarre violence.²¹ One such case in 2005 involved William Doyle, a lieutenant with the New York Police Department. Doyle became enraged at his forty-seventh birthday party when his wife arrived with a cake, but not the ice-cream cake that he wanted. According to the police report, Doyle doused the cake with a glass of wine and then held a masonry hammer to his wife's head, saying, "I could kill you right now and open up your head." He then held his department-issued handgun to the back of his wife's head and screamed, "I will kill you!" Before leaving to work the midnight shift later that evening, Doyle grabbed his handgun again and threatened his wife while pointing the gun at her chest, saying, "Don't fuck with me. . . . I'll end this now."²² Menacing charges were dismissed a few months later when Doyle's wife refused to cooperate with prosecutors.²³

Police Violence Work-to-Family Spillover

Officer-involved domestic violence is a form of police violence often overlooked because victims feel they have nowhere to go when the abuser is a member of the local police department. Presumably one concern a victim might have in calling 9-1-1 is that the abuser might not only get arrested but also lose his or her job as a result of the arrest.²⁴ Persons convicted of a qualifying misdemeanor crime of domestic violence are prohibited from possessing firearms or ammunition pursuant to the Lautenberg Amendment to the federal Gun Control Act.²⁵ There is no exception from this statutory provision for active-duty military personnel or sworn law enforcement officers. The US Supreme Court later clarified that a qualifying crime of domestic violence includes any offense committed by a person who has a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship as an element of the crime.²⁶

Officer-involved domestic violence emerged from the shadows in 2003 when Tacoma, Washington, police chief David Brame shot and killed his estranged wife, Crystal Judson, and then himself in front of their two children in a parking lot outside a shopping mall. Brame had been accused of repeatedly threatening and strangling his wife during the months preceding the murder-suicide, and a subsequent investigation revealed details of long-term domestic abuse by the police chief.²⁷ The murder of Crystal Judson galvanized a movement to increase public awareness of domestic violence within police families and demands for accountability. My research has identified more than 1,250 arrest cases from across the country during the years 2005-13 in which an officer was arrested for a crime arising out of an officer-involved domestic violence incident.

Predatory Police Sexual Violence

A few cops are sexual predators.²⁸ They believe they can get away with their crimes because they are police officers. These predator officers carefully select their victims based on a calculation that the victim will not be believed if she or he files a complaint. Many victims are girls and women living on the fringes of society; they are often addicts, sex workers, homeless, or maybe have extensive criminal records themselves.

The police sexual violence that has arguably received the most media attention in recent years involved twenty-seven-year-old Oklahoma City

police officer Daniel Holtzclaw.²⁹ He was in his third year with the police department when charged with numerous on-duty sex crimes in August 2014, including rape, rape by instrumentation, forcible sodomy, sexual battery, and indecent exposure. Investigators soon realized that Holtzclaw was a sexual predator who had attacked more than a dozen black women he encountered on the streets and during traffic stops while on patrol in some of the city's poorest neighborhoods. Holtzclaw targeted mostly older women of color he thought were unlikely to contact the police or be believed if they did. Some were the most vulnerable women in the community, including victims Holtzclaw thought were sex workers, criminals, or women with drug addiction or alcohol problems. One of his victims was a grandmother who thought Holtzclaw was going to kill her if she did not comply with his demands. His youngest victim was a seventeen-year-old who testified at trial that Holtzclaw pulled up next to her in his patrol car while she was walking home. He proceeded to rape the girl on the front porch of her family's home, telling her that he had to conduct a search. Holtzclaw was convicted on eighteen of thirty-six charges at a jury trial, including four counts of forcible rape, and in early 2016 he was sentenced to 263 years in prison.

There are also bad cops who victimize children and adolescents they come into contact with while working as a police officer. Robert Pavlovich always liked young girls.³⁰ In 1995 Pavlovich, then a police officer in Manheim Township, Pennsylvania, was acquitted at a jury trial on charges of indecently assaulting a teenage girl. He was fired from the Manheim Police Department but soon found work as a police officer about fifty miles northwest in Duncannon, Pennsylvania. Pavlovich left the Duncannon Police Department after borough officials received two similar complaints alleging sexual misconduct involving underage girls. In 2000 he again found work as a police officer, this time in Marysville, a borough along the Susquehanna River about fifteen miles southeast of Duncannon. Seven years later the Pennsylvania State Police filed criminal charges against Pavlovich alleging that he had used his position of authority as a Marysville police officer to coerce and solicit sex from fourteen girls, some as young as twelve. Pavlovich was convicted at a jury trial on charges including involuntary deviate sexual intercourse, indecent assault, bribery in official matters, and corruption of minors. He was sentenced to serve ten to twenty-six years in prison and as of July 2019 was incarcerated at the State Correctional Institution in Albion, Pennsylvania.

Dozens of police officers across the country have been arrested since 2005 for sex crimes against teenage girls who participate in law enforcement

Explorers programs. Samuel Walker and Dawn Irlbeck, writing in 2003, first recognized the sexual exploitation of teenage girls in police department–sponsored Explorers programs as a pattern of police sexual abuse.³¹ The Explorers programs are career-oriented scouting programs for teenagers, sometimes as young as thirteen, who are interested in learning about police work. One of the main activities for individual youths participating in Explorer programs is to go on ride-alongs with an on-duty patrol officer. Some police departments and sheriff’s offices limit the number of ride-alongs an Explorer can go on with the same officer, and there have been instances where police supervisors do not allow teenage girls to ride with officers who have developed a reputation for pursuing sexual relationships with teenage girls.

Easy Targets

Bad cops who prey on vulnerable victims is a problem not limited to cases of police sexual misconduct. Dozens of on-duty sworn law enforcement officers across the country were arrested in 2005–16 for stealing money from Hispanic motorists during traffic stops. A Tennessee case offers facts similar to most of such shakedown arrest cases. Two Chattanooga police officers, Frank Goodwyn and O’Dell Draper, were each sentenced in 2006 to eighteen months in federal prison after pleading guilty to one count each of conspiracy to violate civil rights pursuant to 18 U.S.C. § 241. According to court records filed by the US attorney for the Eastern District of Tennessee, “Hispanic individuals were targeted because they would often be illegal residents concerned about possible deportation, might have large amounts of money on them, i.e., they would have no bank account, speak little or no English and would, therefore, be unlikely to complain about the officers’ conduct.”³²

The Officer Shuffle

Even when police officers are arrested, they sometimes do not lose their jobs and often are not convicted of any crime. Many officers convicted of misdemeanors are not terminated from their jobs, especially in states that have collective bargaining in the public sector. However, in right-to-work states, where often there is no property right to continued public employment, it is common for police officers who are arrested for any offense to be immediately terminated. Some officers who are terminated after being arrested end

up working as police officers in other jurisdictions, sometimes even in other states, where their new employers are somehow unaware of their prior law enforcement experience or criminal history.

Zusha Elinson, a reporter at the *Wall Street Journal*, called me in early 2015 and wanted to know if I would be willing to share some of my data on arrested officers. I had known Zusha for several years and the research question he proposed intrigued me. How many officers who have been convicted of a crime and/or terminated from their employment after being arrested are still police officers today, either at the same law enforcement agency or another one? This was not an easy question to answer. A team of reporters, including Zusha Elinson, Louise Radnofsky, Gary Fields, and John Emshwiller, endeavored to obtain lists of certified and decertified police officers from each state across the country. The plan was to compare that list of 832,275 names against my list of 3,458 officers who had been arrested from 2005 to 2011 and then either convicted or fired. The project took almost two years to complete. Almost 10 percent, 332 of the officers, remained in law enforcement. Some of these officers had been convicted for injuring or killing someone through recklessness or negligence or for drunk driving offenses. Others had been convicted of assaults, weapons offenses, stealing, or lying.³³

One officer whose name appeared on lists from two states was Claudia Wright. She was fired in 2010 from the Daytona Beach Police Department in Florida when arrested for uttering a forged instrument and criminal use of personal identification information after she allegedly forged her grandmother's signature on loan applications to buy a car. Wright surrendered her state certification as a police officer in a plea deal with prosecutors to dismiss the criminal charges against her. Nevertheless, we found Wright in 2016 employed as a deputy sheriff in Richmond, Virginia.

We found that other officers were still employed at the same police department where they had worked when they had been arrested years earlier for crimes of violence. Gary Steele of the Detroit Police Department was suspended from his job after being arrested in 2008 following a fight with his girlfriend. Steele was charged with several felonies, including assault with attempt to murder, for allegedly hitting his girlfriend with a bat, pinning her down, firing three shots near her head, and putting the gun into her mouth while screaming that he would kill her.³⁴ A year later Steele was back on the job as a Detroit police officer, having pleaded no contest to a misdemeanor charge of reckless discharge of a firearm. Steele was in the news a decade later when a social media video showed the officer making racist comments about a young woman he had

pulled over in a traffic stop during a snowstorm in January 2019. Steele was fired from the Detroit Police Department a month later, but only after the video went viral and garnered national media attention.³⁵

The Extent of the Problem

The specific offense, and whether it was committed while on or off duty, tends to impact on whether an officer is ultimately convicted in court after being arrested. Courts are very reluctant to convict officers of any violence-related crime that is committed while an officer is on duty, especially crimes involving firearms. Officers are more likely to be convicted of an on-duty crime if the crime is drug- or alcohol-related. When officers are charged with a crime committed off duty, they are unlikely to be convicted if the underlying incident was committed by an officer in his or her official capacity acting as a police officer. Courts have examined numerous factors in considering whether an off-duty police officer's crimes were committed in his or her official capacity, such as whether officers identified themselves as a police officer, were wearing their police uniform, displayed their department-issued firearm, displayed a badge, conducted an off-duty search, made an off-duty arrest, or intervened in an existing dispute pursuant to a policy of their employing law enforcement agency.³⁶

It has never been easy to gauge the incidence and prevalence of police misconduct because it is hard to measure. The police often do not do a good job of policing their own ranks. Most police misconduct goes unreported, and the public is never aware of the extent of the misconduct, crime, and corruption committed by state and local police officers. Less than 2 percent of all police officers are arrested for committing a crime at some point during their careers. A much higher percentage of police officers presumably wash out early in their careers or are allowed to resign later in their careers in lieu of being arrested for some crime they have committed.

Some scholars conclude that police crime is a form of occupational deviance and leave it at that. However, it is more than that. A sense of entitlement comes with the badge and gun. Police officers simply do whatever they want to do, and they are rarely held accountable even if their actions are criminal in nature. The irony, of course, is that most people have a high regard for the police and think of police officers as the good guys. The presumption is that most police officers are indeed the good guys. Others argue that crime committed by police officers is perpetrated by just a few bad apples. The

reality is that we simply do not know how bad the problem of police crime is at nonfederal law enforcement agencies across the United States.

EXPLAINING POLICE VIOLENCE

Police violence includes any amount of force used by a nonfederal sworn law enforcement officer that cannot be accounted for under the auspices of lawful necessity in the line of duty.³⁷ Police officers are legally justified in using that amount of force necessary to effectuate an arrest. It is often difficult to determine when excessive force was used because the police generally own the narrative when reviewing the facts of a violent street encounter. Police perjury—“testilying,” as the police call it—is rampant in some jurisdictions and has long been recognized as a problem by judges, prosecutors, and defense attorneys.³⁸ When I was a young police officer in the mid-1980s, some officers I knew referred to the practice of writing an incident report or arrest report as “creative report writing,” and the running joke among those officers when asked by a supervisor why they had arrested someone was, “I don’t know yet. I’ll think of something and let you know when I get down to the booking room.” This practice proliferates in the US criminal justice system where, in many jurisdictions, more than 95 percent of criminal cases end in a plea bargain without any trial. Officers who lie have no fear of getting caught because they know there is almost no chance of a case going to trial, where they would be cross-examined by a defense lawyer.

Rarely are citizen versions of an incident involving police violence taken seriously by investigators, although the ubiquitous nature of smartphone, bodycam, dashcam, and security or surveillance video recordings are having an impact; these occasionally provide an alternative narrative to the police version of events in the aftermath of police shooting incidents and other violent street encounters. Rarely are acts of police violence treated as criminal behavior by sworn law enforcement officers because everyone recognizes that policing often involves violence. Police officers encounter violent people in the normal course of their day-to-day patrol activities. In numerous cases since 2014, video recordings have provided an alternative narrative to the official police reports filed by officers following a police shooting. These are cases where the statements and testimony of officers are factually inconsistent with the video evidence. Nevertheless, rarely do prosecutors, judges, and juries hold officers accountable in those rare instances where a police officer

is charged with murder or manslaughter as a result of an on-duty fatal shooting. Complicating matters is the reality that police officers are generally exempt from law enforcement, meaning that police officers do not like to arrest other police officers.³⁹

The Difficulty in Prosecuting Police Officers

Sometimes crimes committed by sworn officers come to the attention of an officer's employing law enforcement agency during the course of internal disciplinary investigations. In *Garrity v. New Jersey*, the US Supreme Court held that a police officer is required to answer questions truthfully in internal disciplinary investigations where the officer would be subject to involuntary termination for failing to answer the questions, but that any statements made in that context cannot then be used in criminal proceedings against the officer.⁴⁰ The court's rationale was that any statements made by a police officer are coerced if obtained under the threat of being fired for refusing to cooperate during an administrative disciplinary investigation, by reason of the fact that an officer who refused to answer such questions could lose his or her position as a police officer. Such statements would be considered to have been obtained by coercion and made under legal duress in violation of the Fifth and Fourteenth Amendments to the US Constitution, because an officer would have to choose between self-incrimination or job forfeiture. The police officers in *Garrity* were questioned by state investigators about allegations of fixing traffic tickets. Before being questioned, each officer was "warned (1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office."⁴¹

Many investigations into allegations of police violence are stymied because police administrators and investigators must decide whether to gather information by questioning an officer in a disciplinary investigation or to forgo any such questioning and instead proceed with a criminal investigation against the officer. If investigators decide to proceed with a criminal investigation, the officer under investigation is entitled to the constitutional right against self-incrimination afforded under *Miranda v. Arizona*.⁴² Most police officers are very familiar with their *Garrity* rights, and I have long presumed that each year hundreds of police officers across the United States are involuntarily terminated from their jobs with state and local law enforcement