

Police Brutality

by Michael F. Hupy

Police officers vow to serve and protect the public. While most officers serve as heroes, there are extreme cases where the use of excessive force has led to wrongful injury or death. Our firm has taken on police brutality cases for decades earning financial compensation for the loss of a loved one and holding the accused accountable for their deadly actions.

The wrongful death of Daniel Bell was the first police brutality case a former Hupy partner took. Daniel Bell was pulled over by Milwaukee police officers Thomas Grady and Louis Krause for a broken taillight. According to Mr. Bell's sister, he fled on foot because he did not have a driver's license and was afraid of the consequences. As the officers started closing in on Mr. Bell, Officer Grady shot Mr. Bell at close range putting a bullet in the back of his neck. Once Officer Grady realized Mr. Bell was dead, he planted a knife in his hand giving the appearance that Mr. Bell was the aggressor.

When the case went to court, a witness claimed Daniel Bell was not holding the knife. Mr. Bell's family was not allowed to testify that Daniel Bell was left-handed, and the all-white jury cleared both officers of any wrongdoing.

It was not until 1979 when the truth came out that Officer Krause was moved to tell the truth about what happened that night. Officer Krause revealed that Officer Grady shot Mr. Bell, planted the knife and used racial slurs both before and after the shooting. Officer Grady testified the shooting was an accident but admitted

planting the knife. He plead guilty to reckless homicide and perjury, finally bringing the truth of this case to light.

Our firm brought the case to court in a civil rights lawsuit, earning \$1.6 million in compensation for the Bell family.

In December 2003, what started as a family misunderstanding turned into a tragic evening for Curtis Harris. After an argument with his sister, police were called, which led to Mr. Harris' arrest on the grounds of an outstanding traffic ticket.

Despite being fully cooperative with the police, Mr. Harris was inhumanely thrown outside of his sister's house into the mud. Mr. Harris was then transported to the police station where the abuse continued. After being taken into a booking room, Mr. Harris was shoved from behind and thrown headfirst into a concrete wall by the arresting officer. Officers who surrounded him taunted and laughed, believing Mr. Harris was putting on an act and making a mockery of himself.

But in reality, Mr. Harris' life would be changed forever, as he was rendered quadriplegic due to the excessive force used by the arresting officer. While Curtis Harris' life will never be the same, we secured a \$3 million settlement for Mr. Harris, the largest settlement for a police brutality case in Wisconsin history at the time.

Cases like Daniel Bell and Curtis Harris are not uncommon. Police brutality and use of excessive force have been an issue in our society for far too long.

In August 2013, a Chicago police officer pointed a gun at a 3-year-old

girl as they raided her home. The girl's mother, Aretha Simmons, said her daughter also saw police violently shake her and also point a gun at the head of the girl's grandmother. Aretha Simmons sued the City of Chicago in 2014 with an excessive-force lawsuit that accused police of traumatizing her daughter and was awarded a \$2.5 million settlement in 2018.

Robert Lee Stinson was wrongly accused and convicted in 1984 for the homicide of his neighbor. Mr. Stinson spent 23 years in prison before the Wisconsin Innocence Project helped exonerate him in 2009. Mr. Stinson sued the retired detective and dentists assigned to his case who his lawyers said conspired to frame him with false bite mark evidence. The bite marks on the body did not match the dentation of Mr. Stinson, but that evidence was never presented to the jury. One of the dentists who testified as an expert witness, Dr. Johnson, stated that the bite marks "had to have come" from Mr. Stinson. More advanced DNA technology would later identify the real killer as Moses Price, and the original bite mark analysis was flawed from the start. Mr. Stinson was fully exonerated and awarded a \$7.5 million settlement from the City of Milwaukee.

In July 2014, an NYPD officer choked Eric Garner to death while attempting to arrest him for selling untaxed cigarettes. In October 2014, a Chicago police officer shot unarmed 17-year-old Laquan McDonald once and 15 more times as he laid on the street. Recently, Cincinnati police used a taser on an 11-year-old girl suspected of shoplifting food. In January 2019,



Milwaukee police officers were accused of excessive force after using a stun gun to arrest Milwaukee Bucks player Sterling Brown.

According to the *Washington Post*, at least 996 people were shot and killed by police nationwide in 2018. In light of the current climate, it is important for attorneys to consider the following when handling a police brutality/excessive force claim.

I. Civil Rights Act of 1871 (42 U.S.C. § 1983): Allows people to sue the government for civil rights violations

“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, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”

When viewing a police brutality/excessive force case, judges will take into account whether the officer was acting under the color of state law, including but not limited to, whether the officer was:

- Working on duty
- Wearing a police uniform
- Using police equipment (i.e., squad car, gun, handcuffs, nightstick, etc.)
- Flashing a badge or claiming to be an officer
- Carrying out an arrest

II. Intentional Tort Claims

Illinois law permits that an intentional tort claim may be brought when police engage in excessive force.¹ Within the seven intentional torts,² it is possible to plead and prove a claim as intentional without a showing of damages. However, proving damages may be the quickest way to proving a prima facie case.³

III. Statute of Limitations

Since 42 U.S.C. §1983 does not contain a statute of limitations, the state statute of limitations applies. With these terms, the United States Supreme Court has held that 42 U.S.C. §1983 claims are treated as tort claims for recovery of personal injuries.⁴ In the states of Wisconsin, Illinois and Iowa, the statute of limitations for these types of tort claims is generally two years. Some causes of action can cause the statute of limitations to be limited to one year.

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IV. Damages

A. Actual Damages: It is important to understand damages as they relate to excessive force claims. When excessive force causes serious injuries, proving damages in a civil rights case can be done by the same type of evidence submitted in other personal injuries cases. For example, in *Contreras v. City of Los Angeles*, the plaintiff was paralyzed after being shot four times in the back. He was able to recover a multi-million-dollar damage award by presenting expert testimony from a life care consultant and a forensic economist regarding what the plaintiff's care was likely to cost over the period of his life expectancy.⁵

B. Nominal Damages: It is possible a jury could award nominal damages, even if the actual damages are not substantial and there is no serious injury.⁶ In *Briggs v. Marshall*, the court recognized several situations where nominal damages might be awarded as a result of an excessive force violation:

- Where an arresting officer uses both justifiable and excessive force, but an injury results from the use of justifiable force;
- Where a jury reasonably concludes that evidence of plaintiff's injury is not credible; or
- Where a plaintiff's injuries are insufficient to justify with reasonable certainty a more substantial measure of damages.⁷

C. Punitive Damages: Punitive damages may also be recovered in excessive force claims. In some cases, where there is a clear and egregious constitutional violation -- but only miniscule actual damages -- punitive damages might be the only meaningful means of recovery.⁸ Admittedly, 42 U.S.C. §1983 does not specifically provide for punitive damages. However, the Supreme Court has allowed for recovery of punitive damages when the defendant had an "evil motive or

reckless or careless indifference to the rights of others."⁹

V. Attorney's Fees

Attorney's fees may also be collected when handling excessive force claims.¹⁰ To collect attorney's fees, the court should apply a "lodestar."¹¹ This fee can be adjusted based on factors not included within the computations. In *Frizzell v. Szabo*, the court provided some guidelines for determining whether a plaintiff achieved enough success to warrant attorney's fees:

- The difference between the judgment recovered and the recovery sought, and
- The significance of the legal issue on which the plaintiff lost on his false arrest claim, the court had a basis for denying attorney's fees.¹²

In closing, it is very important to keep track of your hours, whether or not the case is taken on a contingent basis.

Excessive force cases are a complex form of litigation that require the time and experience of attorneys well-versed in this extremely focused area of law.

Endnotes

¹ *Kofler v. Florence*, 216 Wis. 2d 41, 45 (Wis. Ct. Ap. 1997).
² Battery, assault, false imprisonment, intentional infliction of emotional distress, trespass to land, trespass to chattels, and conversation.
³ A cause of action or defense that is sufficiently established by a party's evidence to justify a verdict in his/her favor.
⁴ Civil Rights Act of 1871 (42 U.S.C. § 1983).
⁵ 603 Fed. Appx. 530 (9th Cir. 2015), cert. denied 136 S. Ct. 688, 193 L. Ed. 2d 519 (2015)
⁶ *Frizzell v. Szabo*, 647 F.3d 698, 702 (7th Cir. 2011); *Cable v. City of Phoenix*, 647 Fed. Appx. 780, 782 (9th Cir. 2016).
⁷ 93 F.3d 355, 359-360 (7th Cir. 1996).
⁸ *Cable v. City of Phoenix*, 647 Fed. Appx. 780, 782 (9th Cir. 2016).

⁹ *Smith v. Wade*, 461 U.S. 30, 56, 103 S. Ct. 1625, 75 L. Ed. 2d 632 (1983); *Booke v. County of Fresno*, 98 F. Supp. 3d 1103, 1131 (E.D. Cal. 2015).

¹⁰ *Hensley v. Eckerhart*, 461 U.S. 424, 433-434, 103 S. Ct. 1933, 76 L. Ed. 2d 40, 31 Fair Empl. Prac. Cas. (BNA) 1169, 32 Empl. Prac. Dec. (CCH) ¶ 33618 (1983).

¹¹ Defined as the hours reasonably expended on a case multiplied by a reasonable hourly rate.

¹² 647 F.3d at 702.

Attorney Michael F. Hupy is the senior partner in the billion-dollar law firm of Hupy and Abraham, S.C. overseeing 11 offices in Wisconsin, Illinois and Iowa. In his career he has achieved multi-million-dollar results for clients including a \$22 million award for an injured child.



Through Attorney Hupy's leadership, the firm has donated over \$1 million to thousands of worthwhile causes.

In December 2008, Wisconsin Governor Jim Doyle presented Attorney Hupy with a Certificate of Commendation for many years of leadership in making "the community a better place to live." The Governor previously publicly thanked Attorney Hupy for his help in reversing a unanimous Wisconsin Supreme Court decision that could have reduced damages for injured motorcyclists.

Attorney Hupy has been AV Preeminent Rated by Martindale-Hubbell for more than 20 years. This is the Gold Standard of Lawyer Ratings - highest possible peer review rating in legal ability and ethical standards - and has been since 1987. This award is the pinnacle of



professional excellence earned through a strenuous Peer Review Process that is managed by the world's most trusted legal resources - not made up ratings and scores based on posts, reviews, and responses to public forums.

In 2019, Attorney Hupy was a recipient of the Albert Nelson Marquis Lifetime Achievement Award presented by The Marquis Who's Who Publications Board. This award is an honor reserved for Marquis Biographies who have achieved career longevity and demonstrated unwavering excellence in their field.

Attorney Hupy is a board member of 114-year-old Children's Outing Association (COA), which has the highest rating of a non-profit in Wisconsin by Charity Navigator. He is President of the newly formed Milwaukee Crime Stoppers and personally offers rewards of \$25,000 to \$50,000 in cases where innocent children are shot to death.

Did you know ITLA has a Paralegal Listserv?

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