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**BEHIND CLOSED [BLUE] DOORS:  
OFFICER-INVOLVED DOMESTIC VIOLENCE  
AND § 1983’S POTENTIAL**

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**INTRODUCTION**

Following the massacre at Orlando’s Pulse nightclub, a year ago this June, more attention has been paid to the frequency with which domestic violence precedes gun violence.<sup>1</sup> Yet while this better understanding of civilian

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<sup>1</sup> See, e.g., Soroya Chemaly, *In Orlando, as Usual, Domestic Violence Was Ignored Red Flag*, ROLLING STONE (June 13, 2016), <http://www.rollingstone.com/politics/news/in-orlando-as-usual-domestic-violence-was-ignored-red-flag-20160613> (“Intimate partner violence and the toxic masculinity that fuels it are *the* canaries in the coal mine for understanding public terror, and yet this connection continues largely to be ignored, to everyone’s endangerment . . . . [I]t’s time to correlate the known risk factors for intimate partner killing,

gun violence gains traction, the correlations between domestic violence and excessive force by police officers remains relatively unexplored.<sup>2</sup>

In the United States, studies suggest that rates of police officer-involved domestic violence (OIDV) are at 40%, which is significantly higher than the national average.<sup>3</sup> Additionally, 41% of responding male officers admitted to at least one incident of physical aggression against their spouse during the previous year, and 8% of those admitted to “severe” physical aggression including choking, strangling, and the use or threatened use of a knife or gun.<sup>4</sup>

Police officers also have unique access to potential victims; “[t]hey have training, a badge, a gun and the weight of the police culture behind them.”<sup>5</sup> Police officers are taught how to restrain and subdue without causing injuries that are easily observable; they know how and where to hit a partner in a way

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determined in what is known as a lethality assessment, to other factors that might help predict who will engage in acts of mass shooting and killing.”)

<sup>2</sup> This paper uses the term “domestic violence” because courts do so, but the term has various shortcomings. For discussions of the term’s limitations, see NICOLA GROVES & TERRY TOMAS, DOMESTIC VIOLENCE AND CRIMINAL JUSTICE 1-11 (2013); and for discussions of the word term “victim” to describe those who suffer domestic violence, see Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 379-80 (2003).

“A common question is whether the term ‘victim’ or the term ‘survivor’ should be used when referring to a woman who suffers abuse. A concern is that the word ‘victim’ imposes on women a pernicious perception of weakness and vulnerability, which perpetuates the subjugated status inherent within domestic violence. On the other hand, the word ‘survivor’ is problematic in its implied commentary on those women who either kill or are killed as a result of the abuse. . . . I choose to refer to women in domestic violence situations as victims and to the process of harm as victimization. In no way is the term ‘victim’ used to suggest inferiority or weakness.”

*Id.*

<sup>3</sup> Shiho Yamamoto & Harvey Wallace, *Domestic Violence By Law Enforcement Officers*, in ENCYCLOPEDIA OF DOMESTIC VIOLENCE 255, 255-56 (Nicky Ali Jackson ed., 2007); see also Peter H. Neidig, Harold E. Russell, & Albert F. Seng, *Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation*, 15 POLICE STUD.: INT’L REV. POLICE DEV. 30, 37 (1992) (“40% of the officers surveyed report at least one episode of physical aggression during a marital conflict in the previous year . . .”); Philip M. Stinson & John Liederbach, *Fox in the Henhouse: A Study of Police Officers Arrested for Crimes Associated with Intimate Partner and/or Family Violence*, 24 CRIM. JUST. POL’Y REV. 601, 605 (2013) (internal citation omitted) (“40% of responding officers admitted that they had behaved violently toward their spouse at least once during the previous six months.”).

<sup>4</sup> Neidig, Russell, & Seng, *supra* note 3, at 31 tbl. 2.

<sup>5</sup> Diane Wetendorf, *The Impact of Police-Perpetrated Domestic Violence*, in DOMESTIC VIOLENCE BY POLICE OFFICERS 375, 376 (Donald C. Sheehan ed., 2000).

that will not leave visible bruises so that when a victim reports an injury she will often not have physical supporting evidence.<sup>6</sup> Moreover, officer abusers know the locations of domestic violence shelters and may have experience that can be used to manipulate government systems.<sup>7</sup>

A particular advantage that police officers have is a “code of silence” behind a “blue wall,” the protection of their fellow officers should a complainant come forward.<sup>8</sup> The code of silence “is an unofficial acknowledgment that no officer blames or implicates another officer who is accused of a wrongdoing.”<sup>9</sup> Officers face life-and-death situations together, resulting in a culture of solidarity and loyalty among the officers that leads to the unspoken “code of silence.”<sup>10</sup> The “code of silence” discourages reporting against officers by other police officers (and their families), who are all expected to protect the brotherhood rather than “blow the whistle” on officer perpetrators.<sup>11</sup>

Most victims of domestic violence are women,<sup>12</sup> who are economically disadvantaged compared with men in the United States.<sup>13</sup> The police culture of extreme loyalty often leads officers to convince a victim of OIDV that she would be economically better off if she did not cause her husband to lose his job on the force;<sup>14</sup> sometimes she is even convinced to recant previous

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<sup>6</sup> Jacqueline M. Mazzola, *Honey, I'm Home: Addressing the Problem of Officer Domestic Violence*, 27 J. CIV. RTS. & ECON. DEV. 347, 351 (2014).

<sup>7</sup> See Maureen O'Hagan & Cheryl Phillips, *The Brame Case: When a Wife's Abuser is a Cop, Who Can Help?*, SEATTLE TIMES (May 9, 2003), <http://community.seattletimes.nwsource.com/archive/?date=20030509&slug=dv09m0> (explaining the ways in which abusive police officers can use their knowledge of the system to discredit claims made by battered spouses); DIANE WETENDORF, BATTERED WOMEN'S JUSTICE PROJECT, WHEN THE BATTERER IS A LAW ENFORCEMENT OFFICER: A GUIDE FOR ADVOCATES 8 (2004) (“An officer . . . knows the locations of local shelters and can readily discover the address of any shelter. By training and profession, police have investigative skills and access to many types of information, making it possible for the abuser to track the victim or obtain and use personal information against the victim and her family and friends.”)

<sup>8</sup> Karen Oehme et al., *Protecting Lives, Careers, and Public Confidence: Florida's Efforts to Prevent Officer-Involved Domestic Violence*, 49 FAM. CT. REV. 84, 87 (2011).

<sup>9</sup> Yamamoto & Wallace, *supra* note 3, at 258.

<sup>10</sup> *Id.*

<sup>11</sup> Stinson & Liederbach, *supra* note 3, at 605.

<sup>12</sup> CALLIE MARIE RENNISON & SARAH WELCHANS, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE 1 (2000).

<sup>13</sup> This trend cuts across all racial and ethnic groups. ALEXANDRA CAWTHORNE, CTR. FOR AM. PROGRESS, THE STRAIGHT FACTS ON WOMEN IN POVERTY 1 (2008), [https://cdn.americanprogress.org/wp-content/uploads/issues/2008/10/pdf/women\\_poverty.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2008/10/pdf/women_poverty.pdf).

<sup>14</sup> Kevin Fagan, *Police Domestic Violence Nearly Twice Average Rate*, SFGATE (Jan. 15, 2012), <http://www.sfgate.com/bayarea/article/Police-domestic-violence-nearly-twice-average-rate-2536928.php> (citing interview with Diane Wetendorf, author of WHEN THE BATTERER IS A LAW ENFORCEMENT OFFICER: A GUIDE FOR ADVOCATES, *supra* note 7).

statements to cover up domestic violence allegations.<sup>15</sup> According to the Independent Commission on the Los Angeles Police Department, the code of silence constitutes “the greatest single barrier to the effective investigation and adjudication of complaints against police officers.”<sup>16</sup>

This has a disproportionate impact on women of color, who already face additional challenges associated with reporting assaults. Prevailing sexist and racist attitudes make women of color particularly vulnerable to sexual violence and access to justice particularly difficult for them.<sup>17</sup> Many people of color are also particularly reluctant to rely on the aid of other police officers, as police departments have traditionally been viewed as oppressive of minorities and immigrants, rather than a source of protection.<sup>18</sup>

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<sup>15</sup> See Donna Tam, *Experts Say Victims Often Recant Out of Fear, Love*, TIMES STANDARD (Aug. 14, 2008), <http://www.times-standard.com/general-news/20080814/experts-say-victims-often-recant-out-of-fear-love> (“[I]t’s not uncommon for victims to change their mind on pressing charges, or reinterpreting what they’ve said . . . [V]ictims of domestic violence change their testimony, or recant, for different reasons.”); Lillian Lao, *Domestic Violence Victim Recants Statement – Experts Weigh In*, WIAT 42 NEWS (Apr. 1, 2015), <http://wiat.com/2015/04/01/domestic-violence-victim-recants-statement-experts-weigh-in/> (“[M]any different types of pressure can contribute to why a victim might recant a statement Pressure can come from the offender in the relationship . . .”).

<sup>16</sup> INDEP. COMM’N ON THE L.A. POLICE DEP’T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 168 (1991) [hereinafter CHRISTOPHER COMMISSION REPORT].

<sup>17</sup> “African American females experience intimate partner violence at a rate 35% higher than white females do, and at about 2.5 times the rate of women of other races; however, they are less likely than white women to use social services, utilize battered women’s programs, or go to the hospital because of domestic violence.” THE WOMEN OF COLOR NETWORK FACTS & STATS COLLECTION, DOMESTIC VIOLENCE IN COMMUNITIES OF COLOR 2 (2006), [http://www.doj.state.or.us/victims/pdf/women\\_of\\_color\\_network\\_facts\\_sexual\\_violence\\_2006.pdf](http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_sexual_violence_2006.pdf). *Id.* “Stereotypes regarding African American women’s sexuality . . . perpetuate the notion that African American women are willing participants in their own victimization. However, these myths only serve to demean, obstruct appropriate legal remedies, and minimize the seriousness of sexual violence perpetuated against African American women.” *Id.*

<sup>18</sup> See generally *Race, Trust and Police Legitimacy*, NAT’L INST. OF JUSTICE (July 14, 2016), <https://www.nij.gov/topics/law-enforcement/legitimacy/Pages/welcome.aspx> (“Research consistently shows that minorities are more likely than whites to view law enforcement with suspicion and distrust.”); ANITA KHASHU ET AL., VERA INST. OF JUSTICE, BUILDING STRONG POLICE-IMMIGRANT COMMUNITY RELATIONS: LESSONS FROM A NEW YORK CITY PROJECT 2 (2005) (“Research shows that immigrants’ attitudes towards the police are less positive than those of native-born citizens, and immigrants are less likely to imitate contact with police or report crimes.”); Jenny Rivera, *An Equal Protection Standard for National Origin Subclassifications: The Context That Matters*, 82 WASH. L. REV. 897, 920 fn. 91 (citing JOSE LUIS, LATINO/A RIGHTS AND JUSTICE IN THE UNITED STATES 95-110 (2005)) (discussing Latino distrust of government and law enforcement, as evidenced by “community reactions to police brutality and anti-immigration legislation”).

Police violence of another type has recently received well-deserved attention: the use of excessive or deadly force against criminal suspects, which is another shockingly common police practice.<sup>19</sup> These two types of violence are rarely connected, and little research has been done into the likelihood that complaints of domestic violence can serve as predictors of on-the-job violence. Researchers believe OIDV constitutes a well-known phenomenon among police supervisors, yet it remains understudied because police departments seek to hide its prevalence.<sup>20</sup> One study found that over one in five of the officers identified in as having committed OIDV were also named as defendants in federal court civil actions, suggesting a high correlation.<sup>21</sup>

This article will explore the reasons to believe that violence on and off duty may be highly correlated, and the legal implications of that link. It also calls for further research to be done on the correlations.<sup>22</sup>

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<sup>19</sup> See, e.g., Press Release, U.S. Dep't of Justice, Justice Department and City of Cleveland Agree to Reform Division of Police After Finding a Pattern or Practice of Excessive Force (Dec. 4, 2014), <https://www.justice.gov/opa/pr/justice-department-and-city-cleveland-agree-reform-division-police-after-finding-pattern-or> (announcing the U.S. Department of Justice's civil rights investigation of the Cleveland Division of Police and its finding that Cleveland police officers "engage in a pattern or practice of unreasonable and in some cases unnecessary force"); CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, at 28-41 (2015), <http://apps.washingtonpost.com/g/documents/national/department-of-justice-report-on-the-ferguson-mo-police-department/1435/> (reporting on the U.S. Department of Justice's investigation of the Ferguson Police Department and its finding that Ferguson officers engage "in a pattern of excessive force in violation of the Fourth Amendment"); *Police Use of Force*, NAT'L INST. JUST. (Nov. 29, 2016), <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/pages/welcome.aspx> ("[I]n large departments (those with 100 or more sworn officers), the complaint rate for police use of force was 6.6 complaints per 100 sworn officers."). See generally GEOFFREY P. ALPERT & ROGER G. DUNHAM, UNDERSTANDING POLICE USE OF FORCE: OFFICERS, SUSPECTS, AND RECIPROCITY (2004). Nonfatal force by police also poses a serious threat. Such force includes "shouting, cursing, threatening force, pushing or grabbing, hitting or kicking, using pepper spray, using an electroshock weapon, pointing a gun, or using other force." U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, POLICE USE OF NONFATAL FORCE, 2002-11 1 (2015), [https://www.bjs.gov/content/pub/pdf/punf0211\\_sum.pdf](https://www.bjs.gov/content/pub/pdf/punf0211_sum.pdf). "The levels, or continuum, of force police use include basic verbal and physical restraint, less-lethal force, and lethal force." *Police Use of Force*, *supra* note 19.

<sup>20</sup> Melissa J. Erwin, Robyn R. M. Gershon, Michael Tiburzi & Susan Lin, *Reports of Intimate Partner Violence Made Against Police Officers*, 20 J. FAMILY VIOLENCE 13, 14 (2005) (citing Neidig, Russell & Seng, *supra* note 3).

<sup>21</sup> Stinson & Liederbach, *supra* note 3, at 615.

<sup>22</sup> *Id.* at 603 ("There are no comprehensive statistics available on OIDV, and no government entity collects data on the criminal conviction of police officers for crimes associated with domestic and/or family violence.").

## I. TWO “SPHERES” OF VIOLENCE

Historically, the dichotomy between public and private space was deliberately crafted to preserve men’s rule over their households.<sup>23</sup> In the past several decades, women’s rights advocates have succeeded in pressuring states to dissolve the public-private distinction, such that many states have passed laws to respond to in-home violence.<sup>24</sup> As states continued to address domestic violence, the boundaries between public and private have been challenged. Feminist legal theorists critiqued the public/private distinction, and feminist and non-feminist legal theorists suggested that the idea of “privacy” in and of itself is a social and legal construct.<sup>25</sup> Women were traditionally relegated to the “private” sphere, and “raising the curtain” between the two constitutes a central goal of the domestic violence movement.<sup>26</sup>

Yet the divide has remained, as evident in two infamous domestic violence cases. First, in *DeShaney v. Winnebago County Department of Social Services*, the United States Supreme Court almost eliminated substantive due process as a viable remedy.<sup>27</sup> The Supreme Court held that the Due Process Clause did not require Winnebago County Department of Social Services to protect five-year-old Joshua DeShaney from acts of violence committed by

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<sup>23</sup> See generally Reva B. Siegel, “The Rule of Love”: *Wife Beating as a Prerogative and Privacy*, 105 YALE L.J. 2117 (1996).

<sup>24</sup> See Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1857-1860 (1996).

<sup>25</sup> See, e.g., *id.* (discussing issues with the public-private distinction in the context of its relationship with the criminal justice system’s goals and structures); Raia Prokhovnik, *Public and Private Citizenship: From Gender Invisibility to Feminist Inclusiveness*, 60 FEMINIST REV. 84, 87-88 (1998) (discussing problems with the public/private distinction in the context of women’s choices); CATHERINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 100 (1987) (“[T]here is no private, either normatively or empirically. Feminism confronts the fact that women have no privacy to lose or to guarantee.”); Tom Gerety, *Redefining Privacy*, 12 HARV. C.R.-C.L. L. REV. 233, 233-96 (providing an examination of privacy as a social and legal construct outside of traditional feminist scholarship).

<sup>26</sup> Rebecca Green, *Privacy and Domestic Violence in Court*, 16 WM & MARY J. WOMEN & L. 237, 242 (2010).

<sup>27</sup> See *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 194-98 (1989) (“[T]he Due Process Clause does not require the State to provide its citizens with particular protective services, [and thus] the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them.”). In this case, after years of investigating reports of child abuse and medical evidence of a Joshua DeShaney’s repeated injuries, Winnebago County Department of Social Services nonetheless allowed the child to stay in his father’s care. *Id.* at 191-93. The father then beat five-year old Joshua so severely as to put him in a permanent, semi-vegetative state. *Id.* at 193.

his father.<sup>28</sup> Then, in *Town of Castle Rock v. Gonzales*, the Court almost eliminated remedy via procedural due process.<sup>29</sup> In *Castle Rock*, the Court addressed a case in which the failure to enforce a restraining order resulted in the murder of a woman's three children by her estranged husband.<sup>30</sup> The Supreme Court held that the refusal to enforce the restraining order did not amount to a violation of a constitutional due process right under the Fourteenth Amendment,<sup>31</sup> nor do victims of domestic violence have a property interest in the enforcement of their protective orders.<sup>32</sup>

The sense that OIDV and excessive force are unrelated, one belonging in the private sphere and one in the public, also became apparent in two recent cases analyzed under Section 1983 of the Civil Rights Act.<sup>33</sup> In *Ramirez-Lliveras v. Rivera-Merced*, the First Circuit held that domestic violence complaints do not constitute a "known history of widespread abuse sufficient to alert a supervisor to ongoing violations," which is needed to attach supervisory liability to a police officer's excessive violence.<sup>34</sup> Seven disciplinary complaints, including a series of domestic violence allegations (including one described in the official record as "[Officer Javier Pagán] attacked [the complainant] because he saw her talking with another officer and he threatened her with his regulation firearm"<sup>35</sup>) did not give notice that Officer Pagán presented a "substantial," "unusually serious," or "grave" risk.<sup>36</sup> After the domestic violence complaint, the Puerto Rico Police Department Superintendent had released an initial disciplinary recommendation for termination of Officer Pagán's employment, but after a hearing several years later in which Officer Pagán denied the allegations, the Superintendent instead ordered a punishment of 60 days' suspension without pay.<sup>37</sup>

One year after returning from his two-month suspension, when Officer Pagán met with resistance from someone he was arresting for directing traffic

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<sup>28</sup> *Id.* at 197-203. The Court noted that, under the special relationship doctrine, if Joshua had been in state custody then the state may have been liable; but since Joshua was abused at home, Social Services was not liable. *Id.* at 190.

<sup>29</sup> *Town of Castle Rock v. Gonzalez*, 545 U.S. 748, 766-69 (2005).

<sup>30</sup> *Id.* at 751-54.

<sup>31</sup> *Id.* at 764.

<sup>32</sup> *Id.* at 768; see also Mazzola, *supra* note 6, at 350 (discussing how *Castle Rock* severely limited the reach of § 1983 actions by eliminating the right to sue for a failure to arrest when a restraining order has been violated).

<sup>33</sup> 42 U.S.C. § 1983 (2000).

<sup>34</sup> *Ramirez-Lliveras v. Rivera Merced*, 759 F.3d 10, 20-23 (1st Cir. 2014) (citations omitted).

<sup>35</sup> *Id.* at 4-15.

<sup>36</sup> *Id.* at 21.

<sup>37</sup> *Id.* at 15.

outside a *quinceañero*,<sup>38</sup> he drew his gun and shot the victim multiple times in the back.<sup>39</sup> After a pause, Pagán shot the victim one final time, this time in the head.<sup>40</sup> In the § 1983 lawsuit by the victim's wife and children, the *Ramirez-Lliveras* court clarified, “[w]e disagree with the proposition that private domestic abuse is not relevant to the risk of an officer abusing his public position with violence,” yet with the immediate facts it held that the connection between the supervisor's inaction and the resulting violation was too tenuous.<sup>41</sup> The court's reasoning included that Officer Pagán's domestic violence complaints were nine years before the shooting, that he received the “significant discipline” of a sixty-day suspension without pay, and that “[a] reasonable official would think that suspension would have a deterrent effect.”<sup>42</sup>

Similarly, in *Saldivar v. Racine*, the First Circuit affirmed a lower court's ruling that eleven separate violations of on-the-job police misconduct, resulting in forty-one total days of suspension over five years, should not be expected to “put the City on notice” that an officer may attack and rape someone.<sup>43</sup> Thus, the City's failure to terminate the officer's employment or to order him to undergo additional training and supervision did not amount to deliberate indifference.<sup>44</sup> Indeed, the First Circuit held that such a complaint did not even “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”<sup>45</sup>

## II. URGENT CONNECTIONS BETWEEN THE “TWO SPHERES”

The aforementioned cases seem to reflect the law's traditional private/public distinction, categorizing domestic violence and on-the-job violence as both distinct and barely connected, if connected at all.<sup>46</sup> Yet social science

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<sup>38</sup> A *quinceañero* is a traditional party marking the rite of passage of girls turning fifteen. *Id.* at 13 n. 5.

<sup>39</sup> *Id.* at 13-14.

<sup>40</sup> *Id.* at 14.

<sup>41</sup> *Id.* at 21, 22-23.

<sup>42</sup> *Id.* at 21.

<sup>43</sup> *Saldivar v. Pridgen*, 91 F. Supp. 3d 134, 137-39 (D. Mass. 2015) *aff'd* *Saldivar v. Racine*, 818 F.3d 14 (1st Cir. 2016).

<sup>44</sup> *Id.*

<sup>45</sup> *Saldivar*, 818 F.3d at 18-20 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The First Circuit also stated that the fact that Officer Pridgen owned an illegal firearm was insignificant, while the connection between gun ownership and domestic violence has long been evident. For more on related studies, see generally Babak Lalezari, *Domestic Violence: Enough is Enough, Any Force is Enough*, 1 PHOENIX L. REV. 295 (2008); Bethany A. Corbin, *Goodbye Earl: Domestic Abusers and Guns in the Wake of United States v. Castleman-Can the Supreme Court Save Domestic Violence Victims?*, 94 NEB. L. REV. 101 (2015).

<sup>46</sup> See generally Hanna, *supra* note 24.



suggests that the “two spheres” both see violence resulting from stress and other consistent factors, thus violence in one “sphere” points to the factors like stress and authoritarianism that are likely to cause violence in the other.

Much has been written about the general link between stress and health.<sup>47</sup> Researchers have identified policing as “one of the most highly stressful jobs in North America.”<sup>48</sup> Police officers are trained to see every interaction as potentially life threatening and to remain hyper-vigilant and ready to engage.<sup>49</sup> Researchers studying police officers have found strong links between stress in officers’ lives and the propensity to commit excessive on-the-job violence.<sup>50</sup> Additionally, studies have established factors that exacerbate officer violence, factors that supervisors could track and decrease.<sup>51</sup> Studies on police officers’ use of force consistently find that a small percentage of officers are responsible for a relatively large proportion of use-of-force incidents.<sup>52</sup> These studies also show that officers who frequently use force have certain common personal or situational characteristics.<sup>53</sup> For example, research suggests that the location and type of patrol assignment impacts the use of force, with most use-of-force incidents occurring in high-crime areas.<sup>54</sup>

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<sup>47</sup> See, e.g., Anita DeLongis Susan Folkman & Richard S. Lazarus, *The Impact of Daily Stress on Health and Mood: Psychological and Social Resources as Mediators*, 54 J. PERSONALITY & SOC. PSYCHOL. 486, 492-94 (1988) (finding a statistically significant relationship between daily stressors and both concurrent and subsequent health issues in the selected sample).

<sup>48</sup> Oehme et al., *supra* note 8, at 93 (2011) (citing Michael Pendleton et al., *Stress and Strain Among Police, Firefighters, and Government Workers: A Comparative Analysis*, 16 CRIM. JUST. & BEHAV. 196 (1989)).

<sup>49</sup> Seth W. Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225, 228 (2015).

<sup>50</sup> See, e.g., Patrik Manzoni & Manuel Eisner, *Violence Between the Police and the Public: Influences of Work-Related Stress, Job Satisfaction, Burnout, and Situational Factors*, 33 CRIM. JUST. & BEHAV. 613, 632 (“[I]t appears that police officers who used force more frequently also consistently reported higher levels of stress across a wide range of potential stress sources.”).

<sup>51</sup> See, e.g., Donald R. McCreary et al., *The Law Enforcement Officer Stress Survey (LEOSS): Evaluation of Psychometric Properties*, 32 BEHAV. MODIFICATION 133, 134-35 (2008) (discussing risk factors, such as “routine occupational stress,” that may contribute to police officers’ emotional instability).

<sup>52</sup> See, e.g., Steven G. Brandl & Meghan S. Stroshine, *The Role of Officer Attributes, Job Characteristics, and Arrest Activity in Explaining Police Use of Force*, 24 CRIM. JUST. POL’Y REV. 551, 563 (2013) (“Of course, that a relatively small proportion of officers are responsible for a relatively large proportion of force incidents (and complaints) is a common finding in use-of-force research.” (internal citation omitted)).

<sup>53</sup> *Id.* at 552.

<sup>54</sup> *Id.* at 555-56.

Dangerous incidents and other violence exposure constitute stressors highly correlated with excessive force and OIDV.<sup>55</sup> There may be a higher proportion of suspects resisting arrest in high-crime areas, making use of force necessary more frequently.<sup>56</sup> Yet studies show that police are more likely to employ force in higher-crime neighborhoods, higher-disadvantaged neighborhoods, and predominately black neighborhoods, regardless of suspect behavior and other statistical controls.<sup>57</sup> Unsurprisingly, studies have also found that police officers are much more likely to use excessive force against people of color.<sup>58</sup>

Additionally, studies show that most use-of-force incidents occur during high-crime times of day.<sup>59</sup> An officer's shift (particularly shifts that cover the hours of 9:00 PM to 3:00 AM) may be related to the frequency with which officers use force.<sup>60</sup> One study, which did not distinguish between "justified" and "excessive" force, found that among officers who use force, "high-rate" officers (those who were involved in three or more incidents in a certain year) are significantly more likely to be younger, to be male, to patrol higher crime areas, and to be assigned to certain shifts (3:00 PM to 11:00 PM

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<sup>55</sup> Erwin, et al., *supra* note 20, at 17-18; Stinson & Liederbach, *supra* note 3, at 603. Researchers have also hypothesized a relationship between OIDV and officer Post Traumatic Stress Disorder (PTSD), but so far very little empirical data has been collected on this issue.

<sup>56</sup> See Kenneth Adams, *What We Know About Police Use of Force*, in *THE USE OF FORCE BY POLICE* 1, 5 (1999) ("[R]esistance by the public increases the likelihood that police will use force.").

<sup>57</sup> *Why Do US Police Keep Killing Unarmed Black Men?*, BBC (May 26, 2015), <http://www.bbc.com/news/world-us-canada-32740523> (citing GEORGE FACHNER & STEVEN CARTER, U.S. DEP'T OF JUSTICE, COLLABORATIVE REFORM INITIATIVE: AN ASSESSMENT OF DEADLY FORCE IN THE PHILADELPHIA POLICE DEPARTMENT 30-33 (2015)). The cited Department of Justice study reported that Philadelphia police officers were more likely to have incorrectly believed a Black person was armed than a white person (even if the police officer were Black or Latino). *Id.* Additionally, according to a ProPublica report, young black males are at 21 times greater risk of being killed by police officers than young white males, based on analysis of federally collected data. Ryan Gabrielson, Ryan Grochowski Jones, & Eric Sagara, *Deadly Force*, in *Black and White*, PROPUBLICA (Oct. 10, 2014), <http://www.propublica.org/article/deadly-force-in-black-and-white>.

<sup>58</sup> See, e.g., Karen F. Parker, John M. MacDonald, Wesley G. Jennings & Geoffrey P. Alpert, *Racial Threat, Urban Conditions and Police Use of Force: Assessing the Direct and Indirect Linkages Across Multiple Urban Areas*, 7 *CRIMINOLOGY & CRIM. JUST.* 53, 55 (2005) ("[R]ecent studies have found that suspect race and demeanor are strong determinants of an officer's decision to use force . . . . This research is consistent with other studies that have found police are more likely to use force when the subjects reside in predominately black neighborhoods." (citations omitted)); Gabrielson, Grochowski & Sagara, *supra* note 59 ("Young black males in recent years were at far greater risk of being shot dead by police than their white counterparts . . . .").

<sup>59</sup> Brandl & Stoshine, *supra* note 54, at 555-56.

<sup>60</sup> *Id.*

and 7:00 PM to 3:00 AM) compared with the low-rate officers.<sup>61</sup> The study revealed that officers who use force at “high” rates were generally likely to have a relatively high number of complaints against them.<sup>62</sup> Such factors can be monitored to avoid the same officers repeatedly using excess force.

Potential risk factors for OIDV include limited personal social networks, which are often produced by police officer lifestyle of rotating shifts and working on weekends. Other risk factors exist that are inherent in most police work: exposure to danger and the stress that it engenders are also considered potential risk factors and are also inherent in police work.<sup>63</sup> Researchers also believe that officers exposed to the highest rates of work-related violence also perpetrate the highest rates of domestic violence, based on studies showing a relationship between exposure to violence and personal well-being of police officers.<sup>64</sup> Surveys identify violence exposure as “one of the most significant work related stressors for police,”<sup>65</sup> and studies show “links between police stress and poor family functioning.”<sup>66</sup> Another study found that most OIDV perpetrators had been assigned to high crime index precincts; in fact, fifty percent of all officers accused of intimate partner violence in this particular study came from the top four out of nine districts in terms of crime index rates.<sup>67</sup>

In addition, elements of police culture such as authoritarianism often provide context for research on OIDV. Many theorists believe that the reason police officers are more likely to abuse their domestic partners is because they are trained to behave in certain ways on the job, training that has the effect of making them controlling and violent.<sup>68</sup> Officers are trained to develop a “command presence.”<sup>69</sup> In order to maintain control over situations, they are

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<sup>61</sup> *Id.* at 558.

<sup>62</sup> *Id.* at 565.

<sup>63</sup> Erwin et al., *supra* note 20, at 14; *see also* PETER FINN & JULIE ESSELMAN TOMZ, NAT’L INSTIT. OF JUST., DEVELOPING A LAW ENFORCEMENT STRESS PROGRAM FOR OFFICERS AND THEIR FAMILIES 14-15 (1997) (discussing domestic violence as an effect of stress on law enforcement officers and identifying “shift work and overtime” as one of multiple sources of such stress).

<sup>64</sup> Stinson & Liederbach, *supra* note 3, at 603.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Erwin et al., *supra* note 20, at 15.

<sup>68</sup> *See, e.g.*, Robert Sgambelluri, *Police Culture, Police Training, and Police Administration: Their Impact on Violence in Police Families*, in DOMESTIC VIOLENCE BY POLICE OFFICERS 309, 314-15 (Donald C. Sheehan ed., 2000) (exploring the “authoritarianism, isolation, and . . . sense of entitlement” cultivated by police training and linking those traits to domestic abuse).

<sup>69</sup> WETENDORF, *supra* note 7, at 14.

taught to use verbal commands and intimidation meant to gain acquiescence, and/or physical force (punches, kicks, and the use of weapons) when their orders are not obeyed.<sup>70</sup> Such behaviors used at home constitute a behavioral “spillover,”<sup>71</sup> in which police officers treat family members as criminal suspects.<sup>72</sup>

Job-caused stress, exposure to violence, trauma, and anger also cause “spillover.” These factors, which have been shown to lead to on-the-job violence, are similar to those that cause intimate partner violence.<sup>73</sup> Stress also correlates to domestic violence: a recent work stress survey conducted with over 1,100 police officer participants showed that intimate partner violence is significantly correlated with perceived job-related stress.<sup>74</sup>

Researchers point to authoritarianism at home as officers’ maladaptive effort to cope with their stress.<sup>75</sup> Police officers commonly exhibit a personality type called “authoritarian personality,” which social scientists characterize as “narrow-minded, violent, and suspicious,” and having “little tolerance for those who do not submit to their authority,”<sup>76</sup> which causes what Johnson calls the “negative spillover of occupational stress” into the intimate partner sphere.<sup>77</sup> New research, however, suggests that this is not equally the case across racial and gender lines in police ranks. A study that explored the emotional states and personalities of self-reported OIDV offenders suggested that the categories of female and non-white officers are not as subject to authoritarian personality spillover as the study’s male and white officer

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<sup>70</sup> Stinson & Liederbach, *supra* note 3, at 604; *see also* WETENDORF, *supra* note 7, at 16 (“In the ‘use of force continuum,’ officers are taught to use techniques to incapacitate someone without causing death or serious bodily injury. The continuum begins with officer presence, verbal direction or commands and ‘soft’ empty-hand techniques (no nightstick, pepper spray, or gun), which include applying various holds and pressure points that encourage compliance, but within a relatively low threshold of pain. If resistance continues, the officer may escalate to ‘hard’ empty-hand techniques, chemical agents, and finally toward lethal force with a firearm.”).

<sup>71</sup> Stinson & Liederbach, *supra* note 3, at 603-04.

<sup>72</sup> *Id.*

<sup>73</sup> Oehme et al., *supra* note 8, at 93 (citing Michael Pendleton et al., *Stress and Strain Among Police, Firefighters, and Government Workers: A Comparative Analysis*, 16 CRIM. JUST. & BEHAV. 196 (1989)).

<sup>74</sup> Erwin et al., *supra* note 20, at 14.

<sup>75</sup> Anita S. Anderson & Celia C. Lo, *Intimate Partner Violence Within Law Enforcement Families*, 26 J. INTERPERSONAL VIOLENCE 1176, 1186 (2011).

<sup>76</sup> *Id.* at 1178 (citing Robert W. Balch, *The Police Personality: Fact or Fiction?*, 63 J. CRIM. L., CRIMINOLOGY AND POLICE SCI. 106 (1972) and THEODOR W. ADORNO, *THE AUTHORITARIAN PERSONALITY* (1950)).

<sup>77</sup> *Id.* (citing Leonor Boulton-Johnson, *Burnout and Work and Family Violence Among Police: Gender Comparisons*, in *DOMESTIC VIOLENCE BY POLICE OFFICERS* 107 (Donald C. Sheehan ed., 2000)).

categories.<sup>78</sup> This suggests that police supervisors have additional criteria, namely being male and white, from which to draw inferences about authoritarian personalities and their likely future offenses.

### III. LEGAL LOGISTICS OF “RAISING THE CURTAIN”

Supervisors should react based on an understanding that violence on and off the job stem from the same sources, sources that can be identified and targeted. When a supervisor receives a complaint that an officer assaulted his partner, that complaint could, in addition to requiring immediate action on that count, alert him or her to the probability of both further domestic violence and on-the-job excessive use of force.<sup>79</sup>

Currently, as *Ramirez-Lliveras* demonstrates, acts of violence in the workplace are not considered clear warning signs of violence in the “private sphere”; courts also currently hold that officer-involved domestic violence (OIDV) complaints do not evidence that police supervisors should have had constructive knowledge that an officer would use excessive force against a criminal suspect.<sup>80</sup> If further research were to find that police officers who committed excessive force were significantly more likely to perpetrate domestic violence, and vice versa, it could inform a unified system in which any and all violence were considered worthy of putting supervisors on alert.

Section 1983 of the Civil Rights Act is the most prominent federal statute permitting civil action against police officers, their superiors, and municipalities:

Every person who, under color of any statute, ordinance, regulation . . . of any State or Territory, subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured . . . .<sup>81</sup>

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<sup>78</sup> *Id.* at 1187. In this study, “authoritarian spillover” was most highly correlated with OIDV for male officers and white officers; but for the female officers and African American officers, “negative emotions” were much more highly correlated with OIDV. *Id.* This was consistent with previous research showing that “female and African American officers are more likely to experience ‘emotional burnout,’ an exhaustion and emotional depletion attributed to work, than they were to experience ‘depersonalization,’ manifesting in impersonal, unsympathetic behavior toward the public.” *Id.* (internal citations omitted).

<sup>79</sup> See Adams, *supra* note 58, at 9 (“[Research on risk factors] has led many police departments to implement early warning systems designed to identify high-risk officers before they become major problems. Most of these systems use administrative records, such as disciplinary records and citizen complaints, to monitor officer performance for possible problems.”).

<sup>80</sup> *Ramirez-Lliveras v. Rivera-Merced*, 759 F.3d 10, 18-22 (1st Cir. 2014).

<sup>81</sup> 42 U.S.C. § 1983 (2000).

Pursuant to 42 U.S.C. § 1983, local government entities, including cities, counties, and their agencies can be sued in federal court for monetary damages. Additionally, the statute enables civil actions against police officers who act “under color of any statute, ordinance, regulation, custom, or usage, of any State.”<sup>82</sup> Section 1983 does not allow claims based solely on *respondeat superior*,<sup>83</sup> but public officials can be liable for situations stemming from their own acts or omissions.<sup>84</sup> Supervisory liability under § 1983 requires that the supervisor’s conduct, whether action or inaction, constitutes supervisory encouragement, condonation or acquiescence.<sup>85</sup> The law also attaches supervisory liability based on “deliberate indifference”<sup>86</sup> and municipal liability based on, among other claims, “failure to train.”<sup>87</sup> A supervisor may be liable under § 1983 if:

the behavior of his subordinates results in a constitutional violation, and (2) the supervisor’s action or inaction was affirmatively linked to that behavior in the sense that it could be characterized as supervisory encouragement, condonation or acquiescence or gross negligence amounting to deliberate indifference.<sup>88</sup>

The “deliberate indifference” inquiry has a three-part test that requires plaintiffs to show: (1) “that the officials had knowledge of facts,” from which (2) “the official[s] can draw the inference” (3) “that a substantial risk of serious harm exists.”<sup>89</sup>

A municipality can be held liable under § 1983 only where the municipality *itself* causes the constitutional violation at issue since *respondeat superior* and vicarious liability will not attach under this section of the law.<sup>90</sup> A plaintiff

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<sup>82</sup> *Id.*

<sup>83</sup> *Respondeat superior* is a tort theory, a form of strict liability (legal responsibility not requiring proof of fault) where an employer is legally responsible for the actions of her employee by virtue of the special relationship that exists between employers and employees. RESTATEMENT (THIRD) OF AGENCY § 2.04 (2006).

<sup>84</sup> Russell G. Donaldson, *Vicarious Liability of Superior Under 42 U.S.C.A. § 1983 for Subordinate’s Acts in Deprivation of Civil Rights*, 51 A.L.R. FED. 285 (citing *Saldivar v. Pridgen*, 91 F. Supp. 3d 134 (D. Mass 2015)).

<sup>85</sup> *Id.* (citing *Maldonado v. Municipality of Barceloneta*, 682 F. Supp. 2d 109 (D.P.R. 2010)).

<sup>86</sup> *Id.* (citing *Maldonado v. Municipality of Barceloneta*, 682 F. Supp. 2d 109 (D.P.R. 2010) and *Pineda v. Tommey*, 533 F.3d 50 (1st Cir. 2008)).

<sup>87</sup> *Id.* (citing *Monell v. Department of Social Services*, 436 U.S. 658 (1978)).

<sup>88</sup> *Pineda v. Toomey*, 533 F.3d 50, 54 (1st Cir. 2008) (internal citations and quotations omitted).

<sup>89</sup> *Ramirez-Lliveras v. Rivera-Merced*, 759 F.3d 10, 20 (1st Cir. 2014) (internal citation omitted).

<sup>90</sup> *City of Canton v. Harris*, 489 U.S. 378, 385 (1989).

must therefore prove that a policy or custom of the city led to the constitutional deprivation alleged.<sup>91</sup> Moreover, that policy or custom must amount to “deliberate indifference” to the rights of the municipality’s inhabitants.<sup>92</sup> The Supreme Court addressed the statutory liability in *City of Canton v. Harris*, holding that “failure to train” can be the basis of liability if “the need for more or different training is so obvious, and the inadequacy so likely to result in violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.”<sup>93</sup> To establish municipality liability for failure to train police officers under § 1983, plaintiffs must show that the training was in fact inadequate and that the inadequate training demonstrates a deliberate indifference toward persons with whom the police come into contact.<sup>94</sup>

If further research showed a strong connection between excessive force and OIDV and courts reacted accordingly, an excessive force complaint brought against an officer who has been previously accused of OIDV and his supervisor’s subsequent failure to provide adequate re-training and psychological services, or to adequately discipline that officer, could be seen as “deliberate indifference” and supervisory liability under § 1983 of the Civil Rights Act could attach.<sup>95</sup> Courts interpreting § 1983 broadly would also help plaintiffs succeed in excessive-force claims, crucially reinforcing public pressure to help curb abusive police practices.<sup>96</sup>

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<sup>91</sup> *Monell v. Department of Social Services*, 436 U.S. at 690-94 (1978).

<sup>92</sup> *Id.* at 388.

<sup>93</sup> *Id.* at 378; *but see Connick v. Thompson*, 563 U.S. 51, 62 (2011) (“A pattern of similar constitutional violations by untrained employees is ‘ordinarily necessary’ to demonstrate deliberate indifference for purposes of failure to train.” (internal citations omitted)).

<sup>94</sup> *Brown v. Gray*, 227 F.3d 1278, 1286 (10th Cir. 2000) (internal citations omitted).

<sup>95</sup> See generally Thomas J. Martinelli, *Unconstitutional Policing: Part 3—A Failure To Train Is Compensable Liability*, 82 THE POLICE CHIEF 1 (Nov. 2015).

<sup>96</sup> In particular, the events of Ferguson, Missouri have heightened awareness of ubiquitous, abusive police practices, which are tied to the racialized over-criminalization of impoverished neighborhoods. See generally Larry Buchanan et al., *What Happened in Ferguson?*, N.Y. TIMES (Aug. 10, 2015), <https://nyti.ms/2jRj1i1>; Jason M. Williams, *Race and Justice Outcomes: Contextualizing Racial Discrimination and Ferguson*, 6 RALPH BUNCH J. PUB. AFF. 1 (2017). In another highly-publicized case, Officer Michael Slager demonstrated the importance of closely monitoring and retraining violent police officers: when he shot the unarmed Walter Scott he already had an excessive force complaint on his record. See generally Cassandra Vinograd, *Walter Scott Shooting: What We Know About Officer Michael Slager*, NBC NEWS (Apr. 8, 2015), <http://www.nbcnews.com/storyline/walter-scott-shooting/michael-slager-n337691>.

#### IV. ENCOURAGING MUNICIPAL RESPONSE AS A PRODUCT OF “RAISING THE CURTAIN”

The focus on using § 1983 as a tool stems from the fact that monetary damages have been shown to motivate police departments to clarify and update their domestic violence policies.<sup>97</sup> Holding supervisors and municipalities liable for the actions of their subordinates has the following benefits: 1) it reaches the parties likely be a making policy; 2) municipalities and supervisors are more likely than subordinates to be indemnified by local governments, providing them with deep pockets; and 3) a judgment against a supervisor is more likely to lead to a change in the municipal culture, customs, practices or policies that enabled the challenged conduct.<sup>98</sup>

Police departments often compound the problem of OIDV by not taking related complaints seriously: 23% of accused officers in one study had a history of at least one prior OIDV report on file with the police department and 5% had two or more priors.<sup>99</sup> The same study showed that after an OIDV complaint, the majority of accused officers, 64%, were immediately suspended from duty, 26% had a protection order issued against them, and 17% were immediately arrested.<sup>100</sup> However, the final administrative decision in an overwhelming majority of cases, 92%, resulted in no action, usually because of “lack of testimony or unsupported evidence (61%), lack of physical evidence (31%), and conflicting testimony (1%).” Even when the use of a lethal weapon was alleged, reports filed against police officers were usually dropped.<sup>101</sup>

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<sup>97</sup> For example, the \$2,000,000 awarded in *Sorichetti v. New York* prompted the New York Police Department to initiate a mandatory arrest policy in domestic violence cases. 65 N.Y.2d 461, 463 (N.Y. 1985); N.Y. Code Crim. Proc. § 140.10 (1999), cited in G. Kristian Miccio, *Notes from the Underground: Battered Women, the State, and Conceptions of Accountability*, 23 HARV. WOMEN’S L.J. 133, 170-71 (Spring 2000); Lisa Snead, *Domestic Violence Litigation in the Wake of DeShaney and Castle Rock*, 18 TEX. J. WOMEN & L. 305, 306 (2009).

<sup>98</sup> See generally Ivan E. Bodensteiner, *Congress Needs to Repair the Court’s Damage to § 1983*, 16 TEX. J. C.L. & C.R. 29 (2010).

<sup>99</sup> Erwin, et al., *supra* note 20, at 17.

<sup>100</sup> *Id.* The data from other studies also suggest that at least initially, officers accused of violence toward their intimate partners are treated comparably to civilians similarly accused: about 20% of such offenders were initially arrested. *Id.* (citing RENNISON & WELCHANS, *supra* note 12).

<sup>101</sup> *Id.* The impact of more stringent departmental policies against OIDV cuts both ways regarding reporting, however, with many believing that survivors of OIDV are more likely to report when departments demonstrate commitment to addressing complaints, while some researchers suggest reporting rates go down when career-ending penalties are likely. Stinson & Liederbach, *supra* note 3, at 604-05.



Separate from the issue of criminal proceedings is how the precinct reacts to the complaint and whether it continues to employ such officers in positions of power and authority. According to one study, only about one third of cases involved officers who were separated from their job either through resignation or termination; the majority of cases resulted in suspension.<sup>102</sup> Courts could interrupt this harmful status quo by expecting supervisors to be familiar with the vast empirical evidence suggesting that violence of any kind is a warning sign. Liability would be imposed on supervisors who failed to expect that without intervention their subordinate officer would commit more violence in either or both “spheres,” and who failed to respond to their subordinate’s violence, no matter the “sphere.”

In *Saldivar v. Pridgen*, Plaintiff Elva Saldivar had called the Fall River Police Department to report that one of her children was being harassed at school. Before being assigned to investigate the complaint, arriving at her home, and then assaulting, battering, and raping Ms. Saldivar.<sup>103</sup> Officer Anthony Pridgen’s disciplinary record already included eleven violations – one of which was for improperly informing the victim of her rights and inadequately conducting a search for weapons during a domestic violence call.<sup>104</sup> The District Court in *Pridgen* replied that evidence of “serious prior incidents similar to the alleged constitutional violation” were necessary to “put the municipality on . . . notice of an officer’s danger to the public.”<sup>105</sup> The District Court’s decision to grant the motion to dismiss stated that a “disciplinary record in the Fall River Police Department consists of 11 violations between September, 2003 and June, 2011 that are entirely unrelated to any form of sexual misconduct”<sup>106</sup> would not give the Chief of Police constructive knowledge of “even the possibility that [the officer] would sexually assault a woman.”<sup>107</sup> The First Circuit affirmed.<sup>108</sup> The plaintiff in *Pridgen* argued that Police Chief Racine had neglected to institute further training, supervision, or discipline for Officer Pridgen as he could have and should have done. This inaction, Ms. Saldivar argued, reflected a City policy of deliberate indifference, which, in the case of Officer Pridgen, led to her rape and assault.<sup>109</sup>

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<sup>102</sup> Stinson & Liederbach, *supra* note 3, at 612.

<sup>103</sup> *Saldivar v. Pridgen*, 91 F. Supp. 3d 134, 136 (D. Mass. 2015).

<sup>104</sup> *Id.* at 137-38.

<sup>105</sup> *Id.* at 138 (internal citations omitted).

<sup>106</sup> *Id.* at 137.

<sup>107</sup> *Id.*

<sup>108</sup> *Saldivar v. Racine*, 818 F.3d 14 (1st Cir. 2016).

<sup>109</sup> *Saldivar v. Pridgen*, 91 F. Supp. 3d at 138.

Ms. Saldivar argued that the “repetitive decisions to impose suspensions rather than termination of employment reflected a pattern of conduct constituting the official and customary policy of the Fall River Police Department.”<sup>110</sup> The court should have concurred that Officer Pridgen’s prior disciplinary record put his supervisor on notice that he had been behaving in a problematic way. If someone were tracking officer behavior, his would have been identified as symptomatic of underlying stress and likely authoritarian personality spillover. Given the fact that social science has consistently linked stress to police violence and abuse in both “spheres,” the supervisor should be held accountable for failing to recognize Officer Pridgen as the danger to those around him. His supervisor’s failure to terminate his employment or even to order him to undergo additional training, counseling, or supervision, should have been considered deliberate indifference.

In *Ramirez-Lliveras*, there was only one year between Officer Pagán’s two-month suspension for OIDV and his fatal shooting of Mr. Cáceres.<sup>111</sup> Before the suspension, Officer Pagán continued to work on the police force during the eight years it took for a decision to be reached regarding disciplinary action for his OIDV.<sup>112</sup> The *Ramirez-Lliveras* court failed to encourage police departments to consider a domestic violence complaint as a warning sign for excessive force,<sup>113</sup> similarly ignoring the social science that has long linked on-the-job violence with emotional factors such as stress and authoritarianism, the same factors highly correlated with off-the-job violence.

Those courts thus failed to encourage supervisors to focus on officer behavior in either environment as symptomatic of an underlying problem. Such a focus would then have encouraged police supervisors to address the root causes of these two forms of officer violence, both of which are endemic in police departments today.<sup>114</sup>

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<sup>110</sup> *Id.* at 138.

<sup>111</sup> *Ramirez-Lliveras v. Rivera Merced*, 759 F.3d 10, 21 (1st Cir. 2014)

<sup>112</sup> *Id.* at 28.

<sup>113</sup> *Id.* at 19-23.

<sup>114</sup> Section 1983 plaintiffs often establish a constitutional violation and resulting injuries yet are still denied damages due to rulings that limit municipal liability. *See Connick v. Thompson*, 563 U.S. 51, 51 (2011) (holding one Brady violation insufficient for a failure-to-train claim, making it harder to assert failure-to-train claims based on single-incident violations or the theory of “obviousness” for the need for training). Following *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), which heightened pleading requirements, some circuits now require the plaintiff to show that the supervisor possessed discriminatory intent in order to hold the supervisor liable. *See Bodensteiner, supra* note 100, at 52-53 (explaining the effect of *Ashcroft v. Iqbal* on § 1983 actions); *Sandra T.E. v. Grindle*, 599 F.3d 583, 588 (7th Cir. 2010) (“[A]fter *Iqbal* a plaintiff must also show that the supervisor possessed the requisite discriminatory intent.”); *but see Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2101 (2012) (holding that plaintiff

As noted in the Christopher Commission report, “focusing efforts on a handful of officers can eliminate roughly one out of seven excessive-force incidents.”<sup>115</sup> The fact that a small percentage of officers are responsible for a disproportionate number of complaints suggests that police supervisors and administrators could be well aware of those officers and their behavioral issues.<sup>116</sup> Excessive-force complaints, especially those arising in the most crime-filled patrols, could be viewed as indicators of potential OIDV, and complaints of OIDV could be viewed as indicators of potential excessive force. Both are likely violent reactions to job-related situational factors, with stress becoming a psychological trigger for unacceptable violence.<sup>117</sup>

Further research should be done in collaboration with police departments, in order to gain a more accurate picture of the correlations between excessive force and OIDV by individual officers. Yet even with the statistical knowledge social science has already provided, courts should hold domestic violence complaints in § 1983 excessive-force cases to be indicators that could put police supervisors on notice of future excessive force, contrary to the holding of *Ramirez-Lliveras*. This would motivate precincts to seek out domestic violence abusers and to thoroughly address OIDV complaints.<sup>118</sup> Similarly, if contrary to the holding in *Pridgen*, supervisors were “put on notice” following repeated violent misconduct that an officer may perpetrate sexual assault, municipalities could be motivated to better train and track officers.

## V. TRAINING THAT DECREASES OFFICER VIOLENCE IN BOTH “SPHERES”

According to one survey of police departments serving populations over 100,000, only fifty-five percent of the departments had specific policies in place for dealing with OIDV.<sup>119</sup> There are forms of anger-management and

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adequately asserted a supervisory liability claim based on a “deliberate indifference” standard that does not require discriminatory intent for supervisory liability); *Dodds v. Richardson*, 614 F.3d 1185, 1199 (10th Cir. 2010) (concluding that under § 1983, a plaintiff is allowed “to impose liability upon a defendant-supervisor who creates, promulgates, implements, or possesses responsibility for the continued operation of a policy” that abrogates a constitutional right).

<sup>115</sup> Adams, *supra* note 58, at 9 (citing CHRISTOPHER COMMISSION REPORT, *supra* note 16).

<sup>116</sup> Brandl & Stoshine, *supra* note 54, at 563.

<sup>117</sup> *Id.* at 11.

<sup>118</sup> Both domestic violence and on-the-job violence also implicate culture problems; inadequate or improper training of police officers is frequently the basis of municipal liability for excessive-force incidents. LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 431 (2008).

<sup>119</sup> LARRY BOYD, ET AL., *DOMESTIC ASSAULT AMONG POLICE: A SURVEY OF INTERNAL AFFAIRS POLICIES* 5 (1995), [http://www.cailaw.org/media/files/ILEA/Publications/domestic\\_99.pdf](http://www.cailaw.org/media/files/ILEA/Publications/domestic_99.pdf) (“[A]t least 45% of the [surveyed] departments have no specific policy guidelines for dealing with this issue.”).

stress-management trainings, including individualized psychology and anger-prevention modules, that municipalities can implement to decrease police violence, in addition to more-stress-conscious shift and patrol rotations.<sup>120</sup> Given that knowledge, supervisors should theoretically be held liable if they fail to implement these interventions.

Some police organizations already make the connection between at-home and on-the-job violence and disseminate ways to predict violence. For example, the New Jersey Domestic Violence Fatality and Near Fatality Board of the Department of Children and Families have promulgated a “Model Policy On Domestic Violence in the Law Enforcement Community.”<sup>121</sup> One section is particularly relevant:

#### VIII. EARLY WARNING AND INTERVENTION RESPONSIBILITIES

##### A. Department Responsibilities

1. The department shall either in response to observed warning signs or at the request of an officer, provide non-punitive avenues of assistance to officers, their partners, and other family members before an act of domestic violence occurs. . . .

##### B. Supervisor Responsibilities

1. Supervisors shall be aware of and document any pattern of abusive behavior potentially indicative of domestic violence including but not limited to the following:
  - (a) Aggressiveness
    - (1) Excessive and/or increased use of force on the job.
    - (2) Stalking and inappropriate surveillance activities.
    - (3) Unusually high incidences of physical altercations and verbal disputes.
    - (4) Citizen and fellow officer complaints of unwarranted aggression and verbal abuse.<sup>122</sup>

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<sup>120</sup> See generally Alexis D. Abernethy & Christopher Cox, *Anger Management Training for Law Enforcement Personnel*, 22 J. CRIM. JUST. 459 (1994).

<sup>121</sup> LAURA CERMINARA ET AL., NEW JERSEY DOMESTIC VIOLENCE FATALITY AND NEAR FATALITY REVIEW BOARD, MODEL POLICY ON DOMESTIC VIOLENCE IN THE LAW ENFORCEMENT COMMUNITY (2006), [http://www.nj.gov/dcf/news/reportsnewsletters/taskforce/Model\\_of\\_DV\\_in\\_LEC\\_Policy.pdf](http://www.nj.gov/dcf/news/reportsnewsletters/taskforce/Model_of_DV_in_LEC_Policy.pdf).

<sup>122</sup> *Id.* at 8.

Early warning (EW) systems are already in place in over forty percent of all municipal and county law enforcement agencies serving populations greater than 50,000 people.<sup>123</sup> EW systems use data to pinpoint officers who repeated exhibit problematic behavior, enabling supervisors to intervene with counseling or training.<sup>124</sup> While civilian complaints are often included, EW systems should specifically highlight OIDV complaints when tracking misconduct likely to signal when intervention is necessary.<sup>125</sup>

Identification and evaluation of stress is critical for intervention in and prevention of officer-involved domestic violence. Early warning systems, which are designed to identify violence-prone officers while remedial interventions are still an option, could be used. These often include monitoring civilian complaints and disciplinary records to identify officer performance problems, but could also reasonably include monitoring OIDV as a specific predictor for officer involvement in use-of-force incidents.<sup>126</sup> Training, psychological review, and appropriate reassignments could be done quickly; all these measures would help curb the pervasive intimate partner violence among police officers, as well as decrease the likelihood of use of excessive force on the job.

Supervisors should organize programs, encourage self-care, ensure more equitable shift and hour rotation, and provide psychological services necessary to curb stress and thereby police violence; courts could demand that supervisors adapt in light of newly understood psychology and better manage the people bestowed with so much power. It should no longer be considered reasonable to believe that a sixty-day suspension, without any additional retraining or psychological services, would address a police officer's anger and violence issues.

Supervisors could promote a culture in which the entire precinct looks for early warning signs of violence; they could document behavior indicative of both domestic violence and excessive force on the job and could penalize officers who did not report information regarding domestic violence. Once a supervisor has been put "on notice" that an officer may commit further violence, either on or off-the-job, there are a variety of ways that supervisors can then prevent that outcome. Police departments could mandate that when a call is received from a victim of officer-involved domestic violence, for

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<sup>123</sup> Geoffrey P. Alpert & Samuel Walker, *Police Accountability and Early Warning Systems: Developing Policies and Programs*, 2 JUST. RES. & POL'Y 59, 60 (2000).

<sup>124</sup> *Id.* at 59.

<sup>125</sup> See generally Stinson & Liederbach, *supra* note 3, at 618-19 (internal citations omitted).

<sup>126</sup> See Adams, *supra* note 58, at 10 (discussing the general utility of using use-of-force reports, arrest records, injury reports, and medical records to monitor officer performance issues).

example, an Internal Affairs representative must be sent automatically to the scene.<sup>127</sup> Officers who attempt to discourage a victim from seeking help, or who interfere with domestic violence cases, intimidate, or coerce witnesses or victims, could be subject to criminal charges and disciplined.<sup>128</sup>

Courts could help change police norms by rejecting the still-utilized concept of “public” and “private” “spheres,”<sup>129</sup> and demanding that both excessive-force and OIDV complaints put police supervisors on notice of potential future violence, signaling the need for intervention. If either form of violence [re]occurs, supervisory liability should attach under § 1983. By expecting police supervisors to understand the connections between stress and violence, and holding them responsible for failing to respond appropriately, courts could also encourage more mental-health-conscious police departments and thereby help curb future acts of violence.

### CONCLUSION

The historical legal division between “private” and “public” “spheres” still exists within some aspects of domestic violence law, and results in police officer domestic violence being seen as separate and unconnected to on-the-job excessive force. Police departments should actively address the “code of silence” culture and provide training on stress management, anger management, and avoidance of violent and abusive conduct in order to curb both types of violence.<sup>130</sup> Further research should be done—ideally with police department collaboration—to verify that police officers who commit domestic violence or excessive force are more likely to have the other type of violence in their records. This would involve gathering files on officers with excessive violence complaints and cross-referencing them with references to OIDV in order to produce accurate results as to how much overlap exists.

With that information, rather than treating domestic violence claims as separate from the supervisory and municipal liability calculus, courts could incentivize police departments to treat intimate partner violence as a predictor of future excessive and unlawful physical intimidation, and terminate the

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<sup>127</sup> Mazzola, *supra* note 6, at 364.

<sup>128</sup> See CERMINARA ET AL., *supra* note 125, at 23 (“[T]he department shall investigate those officers and take disciplinary action and file criminal charges if probable cause exists.”); *id.* at 10 (“Officers who engage in [interference with cases involving themselves or fellow officers] will be subject to severe discipline up to and including dismissal.”).

<sup>129</sup> See Green, *supra* note 26, at 240-44 for a discussion of the public-private distinction.

<sup>130</sup> See Oehme et al., *supra* note 8, at 87 (discussing the role of the “code of silence” in the culture of tolerance surrounding OIDV); Abernethy & Cox, *supra* note 124, at 460 (discussing the role of anger management trainings in bettering police culture and reducing violent acts by police officers).

officer if the internal review finds fault; likewise, after excessive force complaints, supervisors could be on notice that failing to re-training that officer they make them liable for civil rights abuses. Such a course of action would constitute raising the curtain between the traditionally observed public and private “spheres,” and could both curb excessive-force incidents and decrease the high rate of intimate partner violence in police families.