

Implicit Bias

OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a recent Law Enforcement Liability (LEL) claim related to profiling and implicit bias;
- Understand the impact associated with certain discriminatory practices;
- Understand the reputational risk faced by departments;
- Develop specific risk management best practices to either prevent or mitigate future losses for Connecticut law enforcement agencies based on lessons learned.

BACKGROUND

On the date of the incident the plaintiff, a Hispanic male, was traveling through the CIRMA-member town when he came across a seat-belt/cell phone check point. One officer “recognizes” the plaintiff as someone who he might have pulled over before, and subsequently directed the plaintiff to pull over to the processing area. The plaintiff was then commanded to exit the vehicle and placed into handcuffs approximately 30 seconds later. The plaintiff was searched, his vehicle was searched, and he was ultimately issued a written warning for having an obstructed view.

The plaintiff hired an attorney and submitted an FOIA request for the body-worn camera (BWC) footage of all officers on the scene. Based on the BWC footage, the plaintiff’s attorney filed a lawsuit against the police department, its officers and the town for discrimination, and unreasonable use of force.

INVESTIGATION

- The member has a current population of just over 10,000 residents.
- The member police department applied for and was awarded grant money to engage in the “Click or Ticket” seat belt enforcement program.
- On the date of the incident the department had set up a “check point” at a four (4) way intersection.
 - ▶ The set up consisted of proper signage indicating that motorist where entering a checkpoint.
 - ▶ Traffic cones where placed in a proper pattern to direct the traffic flow that passed by the officer in the roadway.
 - ▶ There were several police vehicles with their emergency lights activated to identify that law enforcement was in the area.
 - ▶ Officers where in the roadway wearing the required D.O.T. High Visibility clothing.
- At this check point, officers would observe the vehicle enter the “check point” and make a visual determination as to whether or not the operator and any occupants of the vehicle were wearing their seat belts.
 - ▶ In addition, officers would visually determine if the operator was using a hand-held phone device while driving.
- The plaintiff, operator of his vehicle and only occupant, entered the “check point” in a controlled manner and was wearing his seat belt, and was not operating his cell phone.
 - ▶ This was confirmed after review of the plaintiff’s cell phone activity.
- As the plaintiff continued through the “check point” one officer states that he recognized the plaintiff as someone he has pulled over before.
- The officer directs the plaintiff to pull his vehicle over to the processing section, which the plaintiff complies with.
 - ▶ Within the processing area is another vehicle with two (2) white male subjects standing outside of their vehicle talking with another officer.
- Once the plaintiff vehicle is stopped the officer asks the plaintiff to exit his vehicle, which he does.
- The plaintiff puts his hands inside of his pants pockets and is immediately ordered by the officer to take his hands out of his pockets. The plaintiff immediately complies, taking his hands out of his pockets and puts them in the raised “surrender position”. This is verified through the BWC footage.
- The officer then pushes the plaintiff up against the car and places him in handcuffs.
- When asked by the plaintiff why he is being handcuffed and why he was “pulled over” the officer replies that he has an

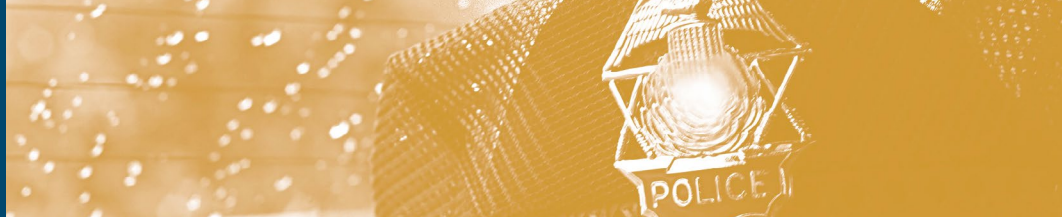


obstructed view through his front windshield, and that is illegal. The officer states that the plaintiff failed to comply with his verbal commands – keep your hands out of your pockets.



- The plaintiff, a Hispanic Male, was then leaned over the hood of the near by police vehicle and searched.





- The officer then called for a K9 Officer, who was already onsite to gain consent from the plaintiff to search his vehicle, frustrated and just wanting to leave, the plaintiff answered all of the K9 officer's questions and gave consent for the K9 officer to search his vehicle.
- The police dog **did not indicate** as to the presence of any illegal drugs and was subsequently returned to the K9 officers' vehicle.
- The Officer then conducted a physical search of the vehicle, which **did not yield** any evidence of illegal substances or activity.
- The plaintiff was un-cuffed and allowed to enter his vehicle.
- Once in his vehicle, the plaintiff was asked by officers for his license, registration, and proof of insurance. The plaintiff asked why the officer just did not take that from him while he was searching the vehicle.
- The officer at this time states, "Are you going to give it to me, or should I arrest you for interfering with a police officer...?".
- The plaintiff provides the information and is issued a written warning for having an obstructed view, caused by one (1) air freshener.

DAMAGES

The claim was ultimately accepted under the CIRMA Liability-Auto-Property (LAP) policy.

The driver and passenger retained legal counsel and filled a lawsuit against the officer, the department and town alleging;

- Discriminatory practices against people of color,
 - ▶ This is based on the BWC footage of the two (2) white males not in handcuffs.
 - ▶ It is noted that both white males were subsequently arrested for illegal possession of a firearm. However, they were not handcuffed and were processed from the scene with a promise to appear agreement.
- Deformation of character,
- Emotional distress,
- Negligent supervision of the officers,
 - ▶ There were high ranking command officers on scene
- Negligent retention of the officer, and
- Unreasonable use-of-force.

The total demand made by the plaintiffs was \$100K dollars.

After reviewing the video, securing depositions of all parties involved, and review of the department's enforcement demographics, along with the media attention to this incident, it was determined that this case was best suited for a settlement strategy.

Negotiations extended several months, however, they ultimately concluded in an agreed settlement amount of \$50K plus attorney fees and expenses.

There was a significant media response to this incident, which resulted in several peaceful protests. The incident resulted in damaged departmental reputation and a sense of mistrust in the community.

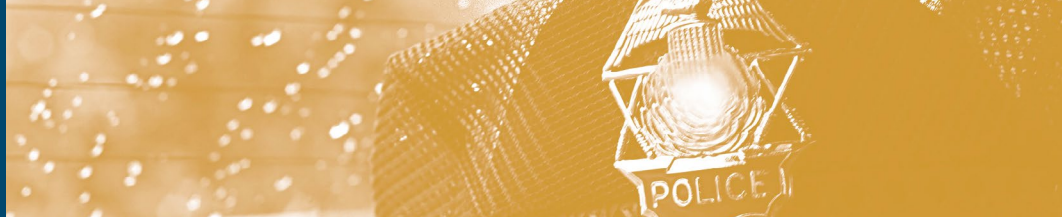
CONCLUSION

Law enforcement and municipalities are among the many segments that have dealt with significant tumult this past year, but in their case, it's not completely related to the pandemic. Rather, the deaths of black citizens by white police officers sparked racial justice movements across the country and shined a light on unjust police practices.

The legal doctrine known as *qualified immunity* has worked as a liability shield against frivolous litigation in suits against police officers and the municipalities they work for by making it difficult for plaintiffs to prove excessive force. But after so many high-profile events, qualified immunity has come under scrutiny in the courts, with even some judges questioning its application in excessive force cases. If liability claims against police departments or municipalities succeed, often there are associated large financial settlements, and loss of public trust.

Police departments nationwide are under a microscope and compelled to address racial biases within their force. Policies like police immunity when shootings occur and in civil rights violations are being more heavily scrutinized and litigated, with multi-million-dollar settlements in some cases.

For the first time in its 27 years of measuring attitudes toward the police, Gallup found that a majority of American adults do not trust



law enforcement amid waves of civil unrest as protesters across the country continue to demonstrate against police brutality, Americans' confidence in the police has dropped to a record low, according to a Gallup poll¹. This decline in trust not only affects the community, but also affects officer safety, the department's reputation and can create long term implications to the overall operations, and management of a department.

COMMITTEE ACTION

Currently, police officers are required to undergo training on the use of physical force, the use of body-worn recording equipment, cultural competency and sensitivity, and bias-free policing. The amendment modifies the scope of this training to include "implicit bias training."²

CIRMA Risk Management is seeking feedback from the Law Enforcement Advisory Committee on the recommendations to reduce injuries from occurring during physical trainings. Following the meeting, any additional thoughts or comments should be directed to Joey Barbera (jbarbera@ccm-ct.org).

¹ <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>

² <https://www.jacksonlewis.com/publication/connecticut-requires-implicit-bias-training-police>

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.