DISMANTLING THE BLUE WALL OF SILENCE:
Why Every Defender Should Track Law Enforcement Misconduct

JULIE CICCOLINI
Report Author

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

NACDL FOUNDATION FOR CRIMINAL JUSTICE

For more information contact:

National Association of Criminal Defense Lawyers®

1660 L Street NW, 12th Floor, Washington, DC 20036

Phone 202–872–8600

www.NACDL.org

This publication is available online at
NACDL.org/DismantleTheBlueWall

DISMANTLING THE BLUE
WALL OF SILENCE:

Why Every Defender Should Track Law Enforcement Misconduct

Michael P. Heiskell
President, NACDL
Fort Worth, TX

Cynthia Eva Hujar Orr
President, NACDL Foundation
for Criminal Justice (NFCJ)
San Antonio, TX

Lisa M. Wayne
Executive Director
NACDL & NFCJ

Kyle O'Dowd
Deputy Director
NACDL

Julie Ciccolini
Report Author
Director, NACDL Full Disclosure Project
(2020–2023)

Contents

The National Association of Criminal Defense Lawyers and the NACDL Foundation for Criminal Justice

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL envisions a society where all individuals receive fair, rational, and humane treatment within the criminal legal system.

NACDL's mission is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal legal system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level.

NACDL members — and its 90 state, local and international affiliates — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to promoting fairness in America's criminal legal system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and practices.

The NACDL Foundation for Criminal Justice (NFCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of the American criminal legal system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, the right to a jury trial, and fair sentencing. The NFCJ supports NACDL's efforts to promote its mission through resources, education, training and advocacy tools for the public, the nation's criminal defense bar, and the clients they serve.

For more information contact:

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

NACDL FOUNDATION FOR CRIMINAL JUSTICE

National Association of Criminal Defense Lawyers®
1660 L Street NW, 12th Floor, Washington, DC 20036
Phone 202-872-8600
www.NACDL.org

This publication is available online at
NACDL.org/DismantleTheBlueWall

Acknowledgements

Executive Summary

For decades, law enforcement misconduct has been shrouded in secrecy, hidden behind a "blue wall of silence." Until independent projects cropped up in 2012, even simple statistics — like the number of civilians killed by law enforcement — were unknown.[1] However, in the past decade, after countless high-profile deaths and mass protests, there has been a significant push for more police transparency regarding misconduct. In recent years, states like California, New York, Massachusetts, Illinois, and Maryland have opened records.[2] Coinciding with more access has also been an increase in independent projects — by defense lawyers, journalists, and universities — to obtain and expose these records.

Among these was the National Association of Criminal Defense Lawyer's Full Disclosure Project (FDP), which helped defense attorneys track law enforcement misconduct. From 2020-2023, FDP helped defenders build databases tracking misconduct on over 150,000 law enforcement officers. The impact of these databases is already being felt as defenders use this information to create better outcomes for clients at every stage of a case, prevent wrongful convictions, and fuel a cycle of accountability in the legal system.

This report examines how defense lawyers have pioneered the movement to track police misconduct, the impact of their work, and recommendations for other defenders looking to join the movement.

Introduction

In September 2018, Officer Thomas Webster IV of the Greensboro Police Department in Maryland killed 19-year-old Anton Black.[3] It was later revealed that Officer Webster had nearly 30 use-of-force reports filed against him during his previous tenure at the Dover Police Department.[4] There, Webster was arrested for kicking an unarmed Black man in the head and breaking his jaw while he was getting into a face-down position on the ground. The kick was captured on dash cam video, but Webster was acquitted of assault charges. Nevertheless, Dover announced an agreement with Webster in 2016 paying him $230,000 over six years to quit and banning him from ever seeking employment in the city again. Webster crossed state lines and was hired by the Greensboro Police Department in April 2018. Less than six months later, he kneeled on a handcuffed Anton Black for approximately six minutes as he struggled to breathe, lost consciousness and died.[5]

Anton's story highlighted major holes in the accountability systems in the United States and the dangers of keeping police misconduct hidden. In Delaware, where Webster was employed, police internal affairs units are the only entities with access to officer disciplinary records, setting the state apart from others in the country. Unfortunately, this lack of transparency enables officers like Thomas Webster to continue a pattern of abuse towards civilians. If Delaware had made these records public, it would have been difficult for Webster to secretly rack up 30 incidents of use-of-force, and it would have likely been a deterrent.

There is no centralized system for sharing personnel information across states, nor a standard decertification process for officers. While some states have decertification laws providing a process for revoking an officer's certification, these laws vary by state and have serious gaps.[6] The process for investigating and decertifying an officer can be lengthy and complex, and there may be challenges to gathering evidence or holding officers accountable. Because of these gaps, officers who have been decertified in one state can continue working in another. The former Greensboro police chief pleaded guilty to covering up Webster's record on his application for a badge in Maryland, which would have been denied had the state police training commission known about Webster's past.[7]

In 2021, after sustained advocacy, Maryland passed Anton's Law, which removed most police misconduct records as classified personnel records under the Maryland Public Information Act. In partnership with NACDL's Full Disclosure Project (FDP), the Maryland Office of the Public Defender (MOPD) began to request and collect this newly available data. Together, they have built a database of almost 25,000 law enforcement personnel from 90 Maryland departments and have amassed 6,385 records documenting 1,678 incidents of misconduct. Defense attorneys across the state have access to the database and are actively using it to effectively represent their clients in cases where the conduct of the officer may be in question. The impact during individual representation, as well as on the culture of the criminal legal ecosystem, has already been substantial.

The Maryland Office of the Public Defender is part of a developing network of defenders building databases to track law enforcement misconduct. Since 2020, the Full Disclosure Project has helped defenders in seven states begin tracking police misconduct using a software application pioneered by the Legal Aid Society in New York.

These defenders have become the last defense to a criminal legal system where law enforcement all too often operates with impunity. Defenders, from the most to least resourced, must work together to collect police misconduct data to zealously represent their clients, protect them from prosecutorial and police misconduct, and thrust accountability into the legal system.

This report describes how defenders are beginning to dismantle the blue wall of silence and the original project in New York that sparked the movement, and puts forth a call to action for defenders across the country to join it.

Dismantling the Blue Wall of Silence

Hitting a Brick Wall: How The Legal System Conceals Misconduct

In 2015, Maryland was among 23 states where police disciplinary records were considered confidential personnel records, not subject to public disclosure.[8] These secrecy laws do not just obfuscate records from the public — they also infiltrate the courtroom process. As Jonathan Abel's explosive work *Brady's Blind Spot* revealed, even though an officer's testimony is often a crucial determining factor in a criminal case, their history of misconduct is systematically hidden in court.[9]

Under the Brady doctrine, prosecutors are legally obligated to turn over any evidence that could be helpful to the defendant's case, including evidence that could cast doubt on the credibility of prosecution witnesses, be used to impeach the prosecution's case, or mitigate the defendant's culpability.[10] While evidence of prior police misconduct might fit squarely within this definition, it is widely documented that such evidence is routinely and systematically suppressed as a result of state laws and local policies that limit access to the personnel files. Even the most well-intentioned prosecutors often cannot access the files to fulfill their obligations.[11]

If the prosecutor is shielded from the information by a wall, the defense is buried in concrete. How can a defender know whether a prosecutor is knowingly or unknowingly withholding Brady material without their own access to the files?

Like Maryland, police disciplinary records were also confidential in New York. In New York, if the defense argues that the prosecution's evidence relies heavily on the testimony of a police officer who has a history of misconduct, they may be able to make a "Gissendanner motion" requesting disclosure of the officer's misconduct records. However, the defense must demonstrate a "good faith basis" for their request — in other words, show there are prior allegations of misconduct relevant to their case.[12] This is a significant hurdle when the records of those allegations are confidential. A similar, impossible threshold exists in many other states.

Chipping Away: The New York Database as a Catalyst for Transparency

In 2014, the New York Legal Aid Society's (LAS) client Eric Garner died at the hands of New York City Police Department (NYPD) Officer Daniel Pantaleo, who used a police chokehold on him that had been banned for years. Infuriated by yet another NYPD killing and lack of accountability, LAS started a centralized database tracking police misconduct.[13] They tracked open sources of police misconduct such as news articles, civil rights lawsuits, and published legal findings to get a sense of when an officer might have a history of misconduct. On the rare occasion information was disclosed under Brady or as a result of a successful Gissendanner motion, they stored that too, ensuring it was not lost for the next case. The database was a small start to begin chipping away at the blue wall.

And it worked. Defenders began bringing to court information that prosecutors did not even have or chose to ignore. Finally, defenders had the power to prove that disclosure obligations were not being fulfilled.

This caused such a shift that the New York District Attorney's Office penned an open letter to the New York City Police Department, pleading with them to share disciplinary records. The letter made a specific point to note, "this is especially important in an age when media outlets and defense providers are creating their own databases of information about police officer discipline: data that, ironically, is often denied to our office by the NYPD itself."[14]

Prosecutors realized they could no longer ignore their obligations because there was nobody to hold them accountable. They had to be proactive the same way the defense was. More importantly, there was recognition that an officer's credibility should be used to assess the merits of the case, rather than solely to defend the accused. As the DA's office wrote, "These limitations frustrate our ability, not only to prepare for trial, but to make early assessments of witness credibility, explore weaknesses in a potential case, and exonerate individuals who may have been mistakenly accused," adding that their concerns were shared by all five of the city's prosecutors' offices.

The database inspired other systemic changes through impact litigation and policy reform.

LAS brought five successful lawsuits that changed police policies and procedures because of problematic practices identified in the database:

- The database illuminated illegal sweeps officers were making to unconstitutionally arrest transgender people for loitering for the purposes of prostitution.[15] As a result of the lawsuit and continued advocacy, the state loitering law was repealed.

- LAS brought a lawsuit challenging the NYPD's continued use of chokeholds and misuse of tasers — on behalf of Tomas Medina, who was brutally assaulted by an officer in the summer of 2018. Despite the NYPD's formal policy banning chokeholds, LAS was able to prove police officers still regularly misuse this dangerous maneuver through the database, which had documented at least 30 lawsuits involving the use of chokeholds by the NYPD in the prior 3 years.[16]

- LAS challenged the Port Authority Police Department's discriminatory practice of using plainclothes police officers in men's bathrooms to target men they perceive to be attracted to other men for false accusations of public lewdness. In 2022, following plaintiffs' victory on summary judgment, the Port Authority settled this case for substantial damages and policy reforms.[17]

- A joint lawsuit was filed to end a longstanding practice of unconstitutional stops, searches and false arrests of NYC public housing residents and their guests. The database was instrumental in showing a pattern and practice based on similar lawsuits that had been collected and tagged.[18] The action was settled in 2013 by placing the policing of NYCHA housing under the supervision of a Federal Monitor, which has produced substantial revisions to NYPD training and regulations.[19]

- After multiple documented incidents of police retaliating against civilians for lawfully recording them, LAS brought a lawsuit on behalf of Ruben An, which the NYPD settled, agreeing to several measures recognizing the rights of pedestrians to record police officers.[20]

Additionally, LAS was able to push multiple city laws increasing police transparency, for example:

- a law requiring the city's Law Department to publicly post all the lawsuits filed against the New York City Police Department each quarter.[21] This data has proven essential to hold individual officers accountable and study patterns and practices. It also opens the public's eyes. A recent survey of New Yorkers, asking them to guess how much the NYPD spent on settlements and claims in 2022, found that 71 percent guessed significantly less than the actual number of $208 million dollars.[22]

- an amendment to the New York City Charter requiring the Police Commissioner to submit a letter to the Civilian Complaint Review Board (NYPD's independent watchdog agency) explaining any downward departures from the Board's disciplinary recommendations.[23] Just this year, LAS used that law to show that, despite the NYPD Commissioner proudly proclaiming that she downgraded CCRB recommendations over 70 times, she actually downgraded or failed to impose discipline in 425 cases.[24]

Ultimately, the biggest legislative victory was the repeal of a decades-old, statewide police secrecy law that made all police personnel records confidential as a result of sustained advocacy bolstered by data and research from the database.[25]

Cracking Open the Wall: New Police Transparency Laws

In May 2020, the world watched officer Derek Chauvin kneel on a handcuffed George Floyd's neck for nine minutes and 29 seconds. Mr. Floyd repeated that he could not breathe, until he took his final breath as Chauvin's knee remained on his neck. Despite a global pandemic, a wave of protests swept the country in what was possibly the largest movement in US history.[26]

Approximately 140 new laws related to police reform were passed after Mr. Floyd's death. Police secrecy laws became a target. Soon, New Yorkers were rallying in the streets to repeal Civil Rights Law 50-a — a law that exempted police personnel records from public disclosure. On June 9, 2020, New York repealed it.[27] The blue wall of silence began to crack.

Massachusetts, Colorado, Oregon and Maryland followed suit, enacting laws opening records that were previously closed.[28] California also broadened access to records after opening a limited set in 2018.[29]

> **Transparency laws, however necessary as a first step towards accountability, are not self-executing and are largely meaningless without robust implementation.**

Transparency laws, however necessary as a first step towards accountability, are not self-executing and are largely meaningless without robust implementation.

Most laws simply re-categorized the records as public but did not require any sort of online publishing or electronic database of the records. In practice, this means the public must file thousands of public records requests to obtain them. Gaining access has been nothing short of a marathon.

Since the passage of these new laws, there have been protracted legal battles, exorbitant fee requests, illegal record deletions, and many police union attempts to fill in the cracks in the wall. For example, after SB 1421 passed in California — which opened access to records where officers have shot or seriously injured someone, committed sexual assault, or been found to have acted dishonestly — law enforcement unions across the state went to court to stop the release of the documents.[30] Similar battles have taken place in New York, Maryland, and Massachusetts.[31]

Multiple law enforcement agencies have also been caught deleting records to avoid disclosure. In 2019, the Los Angeles County Sheriff's Department was found to have deleted thousands of disciplinary records of deputies just as SB1421 was about to take effect.[32] While the Sheriff's Department claimed that the deletions were accidental and the result of a software error, critics raised concerns about the timing. After the repeal of Section 50-a in New York, it was reported that the NYPD had deleted records from officers' disciplinary files that were newly subject to public disclosure.[33] In another case in Louisiana, the Jefferson Parish Sheriff's Office was found to have been unlawfully destroying its deputies' disciplinary records for at least 10 years.[34]

Records request fees have been another weapon law enforcement agencies have used to avoid releasing records. After Anton's Law went into effect, the Maryland Office of the Public Defender filed dozens of MPIA requests but has been asked to pay more than $1.7 million for them.[35] Departments in New York have similarly sent costly bills, like the Manlius Police Department in Syracuse, which requested $47,504 for documents detailing any allegations of misconduct against current or former officers.[36] In California, which has passed some of the strongest transparency laws in recent years, the statutes limit how much agencies can charge for turning over records.[37]

Piercing Through the Cracks: Making Transparency a Reality

A new coalition called the Community Law Enforcement Accountability Network (CLEAN) — a partnership between NACDL's Full Disclosure Project, the California Reporting Project, the American Civil Liberties Union of Southern California, Stanford University, and University of California Berkeley — is helping operationalize California's reforms. CLEAN demonstrates the labor that it takes to make transparency a reality even when records are turned over.

> **Lisa Pickoff-White, co-founder of the California Reporting Project, explains "checking agency compliance at scale is a huge challenge for the California Reporting Project. It requires working with multiple datasets, involved negotiations on an agency-by-agency basis, and sometimes litigation."**

The California reporting project, a 40-newsroom consortium, filed requests for policing records from more than 700 agencies. Monitoring agency compliance has been difficult. Lisa Pickoff-White, co-founder of the California Reporting Project, explains "checking agency compliance at scale is a huge challenge for the California Reporting Project. It requires working with multiple datasets, involved negotiations on an agency-by-agency basis, and sometimes litigation."

The work has been supported by a records requests manager, six researchers, Muckrock, and the First Amendment Coalition. The American Civil Liberties Union of Southern California also filed hundreds of records requests and partnered with a private law firm to use their legal software to monitor compliance.

The laborious process does not end when the records are turned over. Often, they are sent in unruly formats that make it even more difficult to not only monitor compliance but make sense of the data. Typically, gigabytes of PDFs, audio, and video files are dumped on requesters. Pickoff-White, who has been working with these records since 2019, said, "Many agencies do not provide us with an index of the records so we also have to review files that agencies provide, associate files into a case, extract dates of incidents and only then can we begin to compare what we've received with what agencies should provide under the law." Once the files are organized, they are hand-entered into a database, jurisdiction by jurisdiction, which can take anywhere from one to four hours for a single investigation.
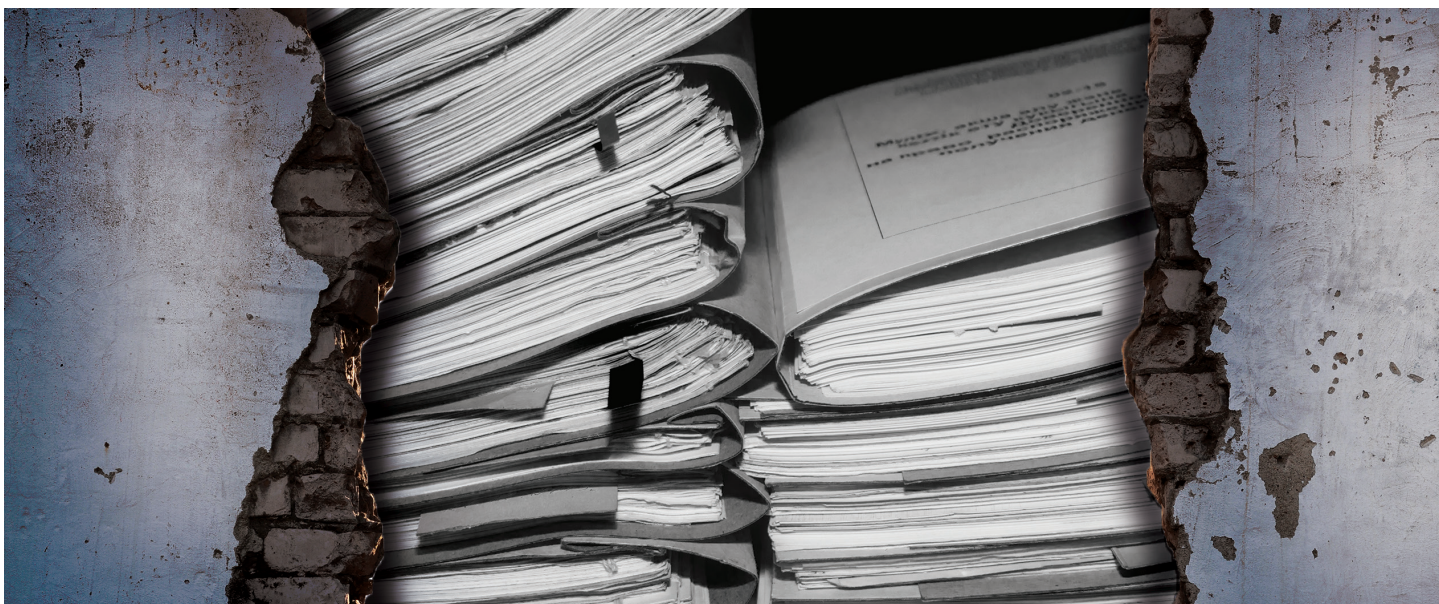
The University of California Berkeley's Institute for Data Science (BIDS) and EPIC Data Lab were brought into the effort to try and apply emerging machine learning and data science technology to ingest and understand the records. They are working on prototypes for making sense of responses to public records requests, extracting data from incident reports and court case PDFs, and matching records to police rosters. Aditya Parameswaran, co-director of the EPIC Data Lab, has emphasized, "Identifying the right mix of automation and human intervention is key — pouring over hundreds of thousands of pages of incident reports is impossible for a human user to do, and so automation is important. And yet, we don't want to automate away everything since there's nuances that can only be caught by a person."

The payoff of transforming these records into a searchable database is critical — a tool that will make it possible to fully establish essential community, journalistic, and legal efforts to hold police accountable. Through the data, the California Reporting Project uncovered how Richmond police dogs caused significant injuries at least once a month over a six-year period and were used disproportionately against Black people.[38] They also exposed how Bakersfield police officers broke 45 bones in 31 people in the span of four years, and no officers were ever disciplined for those assaults.[39]

The Project's research on Bakersfield also highlighted the critical need for an independent review of records and why agencies must not have an exclusive monopoly on the data. While the Bakersfield Police claimed less than three percent of people seriously injured or killed by police were "suffering directly from a mental health crisis," the Project found that number to be 44%.[40] Independent databases must be used to challenge the veracity of departments' data, transparency claims, and their internal accountability systems.

This remains true even in an ideal world, where agencies post their records electronically. After the repeal of Civil Rights Law 50-a in New York, the New York City Police Department released a public, online database of officers' training and disciplinary histories.[41]

> **The Full Disclosure Project compared the new NYPD database to the information posted on the Legal Aid Society's public database, capstat.org. The Project found that officers with long histories of misconduct appeared to have a clean slate with no "applicable" discipline in the NYPD database.[42]**

The Full Disclosure Project compared the new NYPD database to the information posted on the Legal Aid Society's public database, capstat.org. The Project found that officers with long histories of misconduct appeared to have a clean slate with no "applicable" discipline in the NYPD database.[43]

For example, NYPD Detective James R. Rivera has been sued for civil rights violations 31 times, already resulting in $1.46 million in civil settlements. In one case in 2012, Detective Rivera and another detective approached James Young, a 49-year-old father of three, and choked him to the point of unconsciousness while he was sitting on a park bench in Brooklyn. Mr. Young fell into a coma and died four months later. A lawsuit from Mr. Young's widow settled for $832,500.[44] However, according to the NYPD Database, Detective Rivera has no misconduct history. His profile, however, does list eight department awards and recognitions.[45] According to another independent database in New York City, 50-a.org, Detective Rivera now works at the NYPD Internal Affairs Bureau, which investigates other officers for misconduct.[46]

Examples like this demonstrate why independent databases are necessary. "Official records" of law enforcement misconduct should not be viewed as containing the universe of police misconduct information worth capturing, as agencies have little incentive to collect data that could undermine their power. For there to be true accountability of the system itself, sufficient information needs to be gathered about all allegations, rather than simply those made and substantiated by the police.[47]

The Role of Defender Databases

While independent data collection by stakeholders like journalists, academics, and civil society is important, defender-led databases are most critical to changing the criminal legal system. Defenders are the first defense to law enforcement abuses and are in the trenches every day preventing the most immediate injustices. When defenders are readily armed with this information, they thrust accountability into the system, forcing other stakeholders to act where they otherwise might turn a blind eye.

Additionally, defenders are uniquely positioned to learn a significant amount about police misconduct and behavior during their cases. They have special privileges to access the data, can fight for disclosure of more data, and may even witness misconduct in the courtroom, such as judicial determinations of Fourth Amendment violations or credibility issues.

Likewise, defenders have an ear to the community and can document allegations from their clients that might otherwise go unreported. Clients may complain of misconduct or harassment by an officer but for many reasons fail to make a formal complaint. There may not be a mechanism to make a complaint, or they may be too fatigued or distrusting of the criminal legal system, fear retribution, or seek redress through other options like a civil lawsuit.

Defenders can also compile a broader universe of information from public sources like federal and state lawsuits, news articles, notices of claims, and published court decisions. This expands the scope of available data beyond official police records and is essential in understanding the impact of policing on communities.

> **"We have a responsibility to break down the 'blue wall of silence' that has for too long guarded police misconduct. That includes tracking public records,"** explains **Zachary Dillon, a Legal Assistant in the San Francisco Public Defender's Public Integrity Unit.**

In November 2020, the San Francisco Public Defender's Office released CopMonitor, a public database of police misconduct, and worked with the Full Disclosure Project on expanding their database.[48] "CopMonitor is an important public safety tool to expose not just misconduct but also the ordinary violence and problems inherent to policing," says Dillon.

Lastly, while defenders have an inherent motivation to maintain databases to improve case outcomes, it is also their duty to conduct a thorough investigation into the credibility and potential biases of witnesses, including police officers. For example, the American Bar Association's Standards for the Defense Function explicitly state that counsel's investigation should include "potential avenues of impeachment of prosecution witnesses."[49] In order to provide competent representation, defense attorneys must investigate the backgrounds, past conduct, potential biases, and credibility issues of police witnesses to effectively cross-examine them and challenge their testimony. With the ever-increasing availability of electronic information and advancements in technology, thorough online research and checking databases is arguably every defense lawyer's duty.

> "As public defenders, we have a constitutional obligation to zealously defend our clients. That mandate requires us to gather all information on police officers."
>
> *Zachary Dillon, San Francisco Public Defender Office*

The Impact of the Full Disclosure Project

In October 2020, NACDL launched the Full Disclosure Project (FDP) to help defenders build databases tracking police misconduct. The Project was funded in response to the success of the New York City database, the new availability of misconduct records, and the momentum for police accountability post–George Floyd.

The Full Disclosure Project disrupted the culture of secrecy that shields law enforcement misconduct by building technology to track law enforcement misconduct, empowering defenders with tools and training, and advocating for greater police transparency and accountability. Some highlights of the Project's work include:

1. *Building and supporting technology to track law enforcement misconduct*

♦ Worked with the Legal Aid Society of New York to open-source their revolutionary database application and made it functional for other jurisdictions

♦ Released seven upgraded versions of the software ("The FDP Application") based on user feedback and testing to improve the ingestion and analysis of law enforcement misconduct data[50]

♦ Established partnerships with four data science and tech-for-good programs to build tools using artificial intelligence to automate the ingestion and collection of misconduct data

2. *Empowering defenders with tools and training*

♦ Established 5 state-wide and 2 city-wide databases of police misconduct in defender offices, collectively tracking over 150,000 officers from nearly 2,000 agencies

♦ Collected and processed over 17,000 records of misconduct with partners into structured, analyzable data

- Consulted with over 90 public defenders, innocence organizations, private defense firms, and defender associations on how to begin tracking police misconduct

- Created free online resource guides for "Getting Started Tracking Police Misconduct," including systems for under-resourced organizations[51]

3. *Advocating for police transparency and accountability*

- Co-hosted three convenings (1) to bring together practitioners to share best practices on obtaining, organizing, and opening police misconduct data; (2) to build a model for how civil society can work together to capitalize on emerging policing data; and (3) to inaugurate a nation-wide conversation on tactical approaches to combat systemic injustice

(Journalists, academics, defenders, and civil society gather in San Francisco, California on December 7, 2021 at a CLEAN convening to discuss emerging opportunities for policing data in California.)

- Consulted with White House officials, policymakers, and advocates about legislation to support police transparency and best practices for data collection

- Presented at 15 conferences, webinars, and roundtables on law enforcement misconduct and actionable steps to improve police transparency

(The Full Disclosure Project at The United Justice Coalition Summit on July 23, 2022 in New York City.)

The project laid a strong foundation for the future of defense data collection that is already starting to show significant impact.

The Power of Databases in Action: Examples from Maryland

The Full Disclosure Project began working with the Maryland Office of The Public Defender (MOPD) in January 2021. MOPD is a state-wide government agency that handles approximately 150,000 criminal trial-level, appellate, and post-conviction cases each year. They see cases involving every local and state law enforcement agency, including county police, transit police, state police, and even combined FBI, ATF, and DEA task forces.

FDP and MOPD spent ten months reviewing the misconduct data sources available in each county, requesting rosters from 90 agencies across the state, customizing the FDP application for their state, and migrating hundreds of historical records they had stored in various formats throughout the county office. The work was a huge undertaking — championed by Deborah Katz Levi, Director of the Special Litigation Unit who started a Police Accountability Litigation Team that focuses on police misconduct and Brady violations within MOPD; Amelia McDonell-Parry, a former investigative journalist who spent years investigating the Baltimore criminal justice system; and Zach Zwagil, a data scientist and community activist who had been working with Baltimore police data for years. By October 2021, MOPD had captured enough data to release the database to a pilot group of Baltimore attorneys who went to court armed with the misconduct histories of nearly every officer in the city in the palms of their hands.

The return on investment has been undeniable. Below is a list of all the ways defender databases have been shown to have an impact, with examples from the Maryland Office of the Public Defender.

1)   **Databases get better outcomes for clients at every stage of a criminal case. Awareness of prior misconduct can inform every decision point, from conditions of release to judicial determinations about the lawfulness of a stop or jury deliberations about the credibility of a police witness.**

Recent cases exemplify how the MOPD database is making a difference at various stages.

 In April 2023, a Maryland attorney was representing a client at a bail review hearing. The client was picked up on a warrant from 2019. The officer who sought that warrant was actually convicted of theft and left the Baltimore Police Department almost two years prior. Even though the officer also appeared on the State's Attorney's "do not call" list, the prosecutors seemed unaware of it. The client was released at the bail hearing in large part because the attorney was readily able to present information on the officer's history.

In April 2023, a Maryland attorney was about to go to trial on a case involving an officer who had just settled a separate $250,000 lawsuit. The attorney reviewed public information from the database that cataloged all the officer's prior misconduct and found information the State's Attorney had not disclosed. Because of this, the defense received disclosures they would not have otherwise received. The court ended up finding the officer not credible and granted a motion for judgment of acquittal.

2)   **Databases hold police officers accountable. When defenders are able to expose officers with significant histories of misconduct in court, the officers will no longer be trusted in the courtroom or able to testify, making it difficult for them to effectuate meaningful arrests and more likely they will be taken off patrol.**

As the last case demonstrates, the more defenders expose misconduct in court, the less likely untrustworthy officers will be able to testify. Consequently, they may end up on "Brady" or "do not call" lists, which limits their ability to make arrests. In 2021, former Baltimore State's Attorney Marilyn Mosby released her "do not call" list of 91 officers who could no longer be called to testify. Mosby explained that once an officer is on the list, the State's Attorney's Office notifies the Baltimore Police Department's Legal Division or the officer's legal counsel and "requests that the relevant officer be removed from performing any work which may generate a need for testimony or otherwise impact."[52]

There are certainly many problems with the feedback loop for Brady or do not call lists and their disclosures. In many places that keep lists, prosecutors refuse to make them public or fail to flag officers for them. A study by USA Today found 1,200 officers with proven histories of lying had not been put on prosecutors' lists.[53] Defenders can begin changing the system by tracking officers with credibility issues, exposing those issues in court, and ensuring prosecutors do the same.

3) Databases hold prosecutors accountable to fulfill their disclosure obligations, changing the culture of the criminal legal system.

"The State's Attorney's Office is always in the process of learning what defenders are entitled to," says Deborah Katz Levi, Director of the Special Litigation Unit at MOPD, explaining how the database is holding prosecutors accountable for their discovery obligations. "We might win disclosure in one case, catalog that records exist in the database, and then find ourselves having to request the same disclosure in other cases."

Katz Levi recently argued to reverse a murder conviction after the state failed to disclose a Baltimore police detective's misconduct — directly related to honesty — prior to the detective testifying in her client's trial. Among the detective's 19 internal affairs allegations are sustained findings that he made a false statement, wrote a false report and subjected a civilian to inappropriate detention. The Internal Affairs Division brought five charges against the detective, each with several detailed specifications, and recommended that he be terminated. Just before his scheduled trial board, he made a deal to reduce all misconduct findings to one specification, which amounted to "conduct unbecoming a police officer." Instead of termination, the officer received a letter of reprimand, five-day loss of leave, and a five-day suspension.

MOPD only found out about this case after the State's Attorney's Office, then under a prior administration, turned over a disciplinary memo that was poorly redacted with black magic marker, allowing the defense to see the word perjury partially redacted. After requesting the full file and discovering a sustained perjury allegation, MOPD wrote to the State Attorney's Office requesting that this be disclosed in every case.

Nevertheless, the State's Attorney's Office repeatedly withheld some of the detective's misconduct history from the defense. Whether a failure to disclose is inadvertent or not, the database helps MOPD attorneys hold the state accountable when evidence related to misconduct is withheld.

> "Because we have yet to see a fully effective disclosure system in place," says Katz Levi, "we find ourselves having to be a watchdog for information that our clients are entitled to and that fairness and integrity in the system require."

"Because we have yet to see a fully effective disclosure system in place," says Katz Levi, "we find ourselves having to be a watchdog for information that our clients are entitled to and that fairness and integrity in the system require."

Additionally, MOPD has many examples of misconduct being inadequately disclosed. For example, in October 2019, a Baltimore police officer witnessed another officer advise a civilian to destroy the drugs they had just purchased. The officer did not have their body-worn cameras activated as required. The witnessing officer reported the incident to the Public Integrity Bureau which sustained several allegations and recommended discipline, including a 5-day suspension without pay. When these records were not routinely being disclosed in other cases, the existence of the database helped track the state's disclosures and hold the state accountable. MOPD has had to file motions to compel in more than six cases to get the records disclosed.

"It's a learning curve for the prosecution, but the database is fostering better disclosure practices, and we have seen some prosecutors making disclosures out of an abundance of caution, which means we are starting to change the tide," says Katz Levi.

4) Databases expose the effectiveness or ineffectiveness of current accountability systems, such as internal affairs divisions or civilian complaint review boards.

Through disclosures, public records requests, and online investigations, MOPD has uncovered an even larger misconduct history for the same officer, which highlights the ineffectiveness of the current accountability systems.

The officer joined the Baltimore Police Department in 2016 and has since racked up at least 76 allegations of misconduct — 34 internal affairs allegations and 42 use-of-force allegations. Of the 30 internal affairs allegations where MOPD knows the outcome, eight have been sustained.[54]

In addition to the 2019 complaint by a fellow officer, discussed above, two other Baltimore detectives made formal written complaints to their supervisors against this officer in March 2020. They both expressed their concerns about his integrity, and how he carried out his duties, and requested to no longer work with him. One detective specifically stated, "I do not feel comfortable working with [this officer] due to his biased practices ... [and] the way [he] communicates with some citizens.... [he] sometimes utilizes a 'profiling method' to conduct traffic stops as well as armed person investigations." The other Detective stated he "does not believe [this officer] can be trusted with this specialized unit and that his integrity has been compromised" and that he "finds it difficult to find truth within [this officer's] work." As a solution, supervisors partnered the officer with a sergeant "when available" and otherwise allowed him to work on his own.[55] Despite these dangerous warning signs, the officer continues to actively make arrests. As of this report, he has 25 active cases.[56]

Even when the Internal Affairs Division (IAD) sustains complaints, officers can often lessen the charges or evade discipline altogether. The accused officer can appeal to a police trial board comprised of fellow officers, who frequently reject the IAD's proposed resolution. For example, over the course of Sergeant Joseph Donato's career at the Baltimore Police Department, he was the subject of at least 66 complaints (11 for violence), dozens of internal affairs investigations, and at least 4 civil lawsuits.[57] Records from one of those lawsuits indicate that many complaints, including alleged beatings and false arrests, were sustained by IAD.[58]

When additional records about Sergeant Donato came to light years later, according to MOPD's Deborah Katz Levi, they "demonstrated a pattern of abusive conduct, a pattern of bias, a pattern of violence, and instances of failing to report misconduct."[59] On multiple occasions, Sergeant Donato had been accused of warrantless home searches, harassment, false arrest, planting evidence, and excessive force, including beating civilians with his police issued radio. He also allegedly shot six dogs while on duty.[60]

In 2009, Sergeant Donato entered a home without a warrant and, according to the occupant, allegedly used his handheld radio to beat him on the side of his head. Donato also allegedly executed false arrests during this incident. Donato denied having assaulted the man and claimed that he fell and hit his head. Photos taken after the incident showed the man with his chest and jeans soaked in blood.[61]

In April 2011, Sergeant Donato and other officers allegedly brutally beat a civilian inside of a laundromat bathroom, sending the man into a coma and causing head injuries that required staples and stitches.[62] In recorded statements, the other officers involved claimed that the man fell down the stairs, unaware that the incident had been recorded on surveillance cameras.[63]

Three months later, Sergeant Donato allegedly tackled an arrestee and beat him with his handheld radio.[64]

In these and other cases, Sergeant Donato appealed the IAD's decision sustaining some of the allegations, and the police trial board held him not responsible.[65] Tracking officer misconduct in a database allows defenders to hold officers accountable in court when they are not being held accountable by the department.

5) Databases identify problematic police practices and patterns.

Databases can also identify problematic policing practices. The Gun Trace Task Force (GTTF), for example, was a specialized unit within the Baltimore Police Department that was responsible for investigating illegal firearms in the city. However, the unit was exposed as a criminal enterprise in 2017, when its members were indicted, and later convicted, on charges of racketeering, robbery, and fraud. Members of the task force admitted to participating in a range of criminal activities, including stealing drugs and money from suspects, selling stolen firearms, conducting illegal searches, falsifying evidence and lying on search warrant affidavits.[66] Over 800 criminal cases were dropped due to the scandal and $13 million has already been paid in restitution to the victims.[67] The scandal led to widespread criticism of the Baltimore Police Department's culture and practices.[68]

Four months after the scandal, then Commissioner Kevin Davis disbanded the taskforce and created "District Action Teams," claiming they would be more accountable since they will serve in uniform, drive marked vehicles, and have better oversight.[69]

MOPD's database shows the name of the units may be new, but many of the troublesome tactics persist. Today, the officers still operate like former plainclothes units, using marked and unmarked vehicles and wearing plainclothes gear or tactical vests. Amelia McDonell-Parry, who researches and analyzes the data in MOPD's database, says, "The DAT units utilize many of the same tactics as the GTTF and other so-called 'specialized' units that have been disbanded over the years." McDonell-Parry ran the 79 District Action Team members through the database.[70] She found at least five of the officers were flagged by former State's Attorney Mosby's office and put on an automated disclosure list meaning they have allegations of integrity issues.[71]

Collectively, DAT officers have been a part of 707 investigations in the database, an average of nine per officer. Together, they've been subject to at least 410 use of force investigations, 257 Internal Affairs Investigations containing 396 allegations of misconduct, 21 civilian review board investigations containing 44 allegations, 9 lawsuits, and 3 police shooting investigations of which MOPD is aware.[72]

Investigations into Officers in Baltimore Police District Action Teams

INVESTIGATION TYPE	SQUAD MEMBER (64 officers)	SQUAD SUPERVISOR (15 officers)	TOTAL (all 79 officers)
Use of Force Investigation	269	154	**410**[73]
Internal Affairs Investigation	161	97	**257**[74]
Civilian Review Board Investigation	18	3	**21**
Civil Lawsuit/Claim	3	6	**9**
Police Shooting Investigation	3	0	**3**
TOTAL	**454**	**260**	**700**

In reviewing these investigations, MOPD has seen multiple incidents with allegations very similar to the ones alleged against the members of GTTF, including Fourth Amendment violations, manufacturing probable cause, evidence tampering, theft, and providing false statements.

ALLEGATION TYPE	COUNT
Negligence	90
Excessive Force/Violence	66
Harassment	62
Conduct Unbecoming a Police Officer/Employee	42
Falsity	38
Fourth Amendment Violation	29
Other	19
False Arrest/False Imprisonment	19
Supervisor Complaint	18
General Misconduct	13
Discourtesy	13
Theft/Misdemeanor Theft	12
Criminal Misconduct/Misdemeanor	6
Discrimination	4
Unwarranted Action	2
Domestic	2
Sexual Misconduct	1
First Amendment Violation	1
Violation of City/State Law — Planting Evidence	1
Violation of City/State Law — DUI	1
Violation of City/State Law — Other Felony	1

While the outcomes of all these allegations are not clear to MOPD, at least 28% of DAT officers have at least one sustained allegation of misconduct. "We've seen these special enforcement units get rebranded multiple times, but when we look at the data, we can see they are engaging in the same problematic tactics," says McDonell-Parry. "With the database, we are now empowered to monitor this behavior more closely and at least try to hold the State and the police department more accountable to do the same."

6) Databases can monitor wandering officers, ensuring an officer does not leave their misconduct history behind by crossing a county border.

MOPD's database tracks all officers in the state of Maryland — a list compiled through extensive record requests. The Full Disclosure Project helped Maryland build custom algorithms to flag when it appears that an officer moved jurisdictions (based on roster data).

This helped them identify that Officer Joseph Donato, who had a significant history of alleged misconduct and violence, is no longer a Sergeant in the Baltimore Police Department but is now a Lieutenant in the Anne Arundel Community College Department of Public Safety. Because of the database, Officer Donato's misconduct history is not wiped clean. This is critical, as officers with lengthy misconduct histories, such as Officer Thomas Webster, are known to simply switch departments or cross county lines.

7) Databases prevent wrongful convictions and enhance the ability of organizations to vacate convictions.

Barry Scheck, co-founder of the Innocence Project, believes misconduct databases are key to preventing wrongful convictions. "Fifty-four percent of the wrongful convictions we've seen have involved official misconduct. Defenders having access to an officer's misconduct history at the start of a criminal case will certainly help prevent wrongful convictions from happening," he attests.

Innocence projects also benefit from having access to these databases to inform intake. The Maryland Office of the Public Defender has an innocence project within it that works in collaboration with the University of Baltimore School of Law. They screen over 200 cases annually to assess whether an incarcerated individual claiming innocence may have a viable wrongful conviction claim. "If we receive an application from someone and can see there was a problematic officer involved, it will certainly be a factor in assessing which cases to review," says Erica Suter, the director of the project.

"Sergeant Ernest Wilson is an officer that certainly belongs in a misconduct database," claims Marvin Cotton, who spent 19 years in prison on a murder conviction that was manufactured by Wilson and two other homicide detectives.

Marvin Cotton

Marvin Cotton

Cotton and his co-defendant's convictions relied significantly on the testimony of a jailhouse informant. At the time, prosecutors were aware of an ongoing scheme by homicide detectives in using jailhouse informants to manufacture statements and win convictions.[75] Cotton's is one of three convictions that have been overturned that involve Sergeant Ernest Wilson.[76] In the last three years, seven black males have been exonerated from murder charges involving jailhouse informants and the Detroit Homicide Division, according to the National Registry of Exonerations. Sergeant Wilson is now retired from the Detroit Police Department

after his second DUI arrest where he was armed with an illegal weapon.[77] The other officer in Cotton's case — Sergeant Walter Bates — was convicted of thirteen counts of robbery for a string of bank robberies he participated in the same year as Marvin's case.[78] The third homicide officer in Cotton's case unwittingly revealed to an investigator that they manufactured and fed a story to witnesses about the murder. His confession was part of the new evidence that helped Cotton overturn his conviction. Cotton was released in 2020 after a Conviction Integrity Unit reviewed his case.

> **"I wish there was a database tracking these officers before my case,"** says Cotton. **"Who knows how many other wrongful convictions they might have been involved in."** In 2022, Cotton co-founded the Organization of Exonerees, a group of dedicated exonerees that aim to make changes within the legal system that wronged them. He says, **"There definitely needs to be independent databases to track this information because we cannot always rely on the government to get it right."**

"I wish there was a database tracking these officers before my case," says Cotton. "Who knows how many other wrongful convictions they might have been involved in." In 2022, Cotton co-founded the Organization of Exonerees, a group of dedicated exonerees that aim to make changes within the legal system that wronged them. He says, "There definitely needs to be independent databases to track this information because we cannot always rely on the government to get it right."

Recommendations for Defenders

The importance of defenders tracking misconduct is evident, as defenders in New York, Maryland, and California have demonstrated. Yet, many defenders still do not know where to start. The Full Disclosure Project received 55 applications from defenders requesting help to begin a database at their office. Some had tried informally to start tracking the data, but many simply did not have the resources, capacity, or guidance to begin. The good news is that defender databases can start small. The Legal Aid Society database began as informal scrapbooks, and that data, some of which dated back to the 1980s, has been incorporated into the database as it stands today. The Maryland Office of the Public Defender similarly went through multiple systems before the Full Disclosure Project Application.

Defenders can take five simple steps to join the movement.

1. Make an office-wide commitment to track police misconduct

Leadership in defender offices should make an office-wide commitment to track police misconduct data. Sending around an office-wide memo is great, but creating a project name and brand is even better. This can help solidify the practice as part of the culture of the office and ignite momentum for the effort.

A commitment means going after police records zealously, making Brady demands in every case where it makes sense, investigating every police witness involved in the case, and putting resources towards saving the data. Defenders should not simply rely on disclosure but also do their own open-source investigation. A simple google search is a must, but every officer should also be searched on PACER and any relevant state or local court databases for civil rights lawsuits. Additionally, officer names should be searched on Westlaw or other legal databases which can turn up published suppression and incredibility findings.

2. Review all the potential sources of misconduct data

Defenders should take the time to research all the potential sources of misconduct data in their jurisdictions, using NACDL's resources as a guide for what to investigate.[79] Law students or clinics can be brought on board to augment research capacity. Every defender should compile a data collection plan, detailing what records are available, how to obtain them, and any limitations with sharing them.

For any data sources that are currently unavailable, whether due to statutes, policies, or resource constraints, defenders should document the roadblocks and make a strategic plan for how to overcome them. If the roadblock is a secrecy law, starting a database with public information is an effective tool for advocacy against the law, as was evidenced by the Legal Aid Society.

3. Train attorneys on how to access records and introduce them in court

Defenders must train attorneys on how to research the officers in their cases. The data collection plan should be provided to all attorneys when they join a defense office, detailing how to obtain records.

Most importantly, defenders must be trained on how to properly introduce police misconduct data in court, fight for disclosure, impeach police witnesses, and preserve claims for appeal. Defenders can start by reviewing NACDL's hosted trainings, like Deborah Katz Levi's training on "Using Police Technologies to Uncover Law Enforcement Misconduct in Criminal Cases."[80]

Defenders should also be trained on what records to save from their cases, like incredibility findings, that should be stored in a database.

4. Save disclosures and investigations electronically

The simplest practice any defender can start immediately is saving all disclosure documents electronically. It is imperative that defenders, when legally allowed, save any disclosures that can be used in future cases or by other attorneys in the practice. Saving those documents electronically is the best practice to ensure they do not get lost in a case file and can be imported into any future systems.

Defenders should keep in mind that a database does not need to be a custom-built software application. A spreadsheet, a shared folder, or a scrapbook are all databases. Defenders should review NACDL's recommendations on the various systems for tracking police misconduct depending on their resource level.[81] Those capable of using open-source software should certainly consider using the FDP application. The application is specifically tailored for defenders to track law enforcement misconduct and has been finely tuned through seven years of continuous development and hundreds of thousands of dollars invested. The network of defenders using the application has already dealt with many of the challenges that come with the work and are advancing their practices together in a way that would be unfeasible individually.

Defenders must also make it easy for busy attorneys, investigators, and paralegals to submit data to the database. One simple, effective method is creating a dedicated email address for the project where everyone in the practice can send information. Having a dedicated repository that will survive beyond one employee's inbox is important.

Assigning a point person to the data collection project is also helpful for success. In the best-case scenario, defenders should hire someone with some data skills to initiate the project. While this may seem like a large investment, it can actually save staff time in the long run by avoiding repeat investigations on the same officers. As an investigator managing one of the state-wide databases explains, "We don't encounter the same officers as frequently as if we were only working in one city or dealing with one agency. So, it's more challenging to remember important information about officers across cases. Doing background investigation on anyone is a lot of work. The FDP database helps us preserve and consolidate the institutional knowledge we gain from case to case, across our different offices. It is a relief to know that we have a way to preserve this work for others to benefit."

5. Build an Accountability Coalition

"If you want to go fast, go alone. If you want to go far, go together."

Lastly, defenders should begin building a coalition with other stakeholders committed to police transparency and accountability. Defenders certainly are not the only ones interested in police misconduct data, police transparency, or holding police accountable. Journalists, local universities, and community organizations might also be interested in or already collecting misconduct data. The Community Law Enforcement Accountability Network is a model for how various stakeholders can work together in a concerted effort towards greater police transparency and accountability while still maintaining their independence. Defenders should research any projects going on in their jurisdiction, starting with reviewing NACDL's list of all the known police misconduct databases in the country.[82]

Conclusion

The movement towards greater police transparency and accountability has gained significant momentum in recent years, with defense lawyers at the forefront of the effort. The work of the National Association of Criminal Defense Lawyer's Full Disclosure Project and other defenders to track law enforcement misconduct through the creation of databases is proving to be a game-changer in the legal system. By providing attorneys with access to critical information, these databases are helping to secure better outcomes for clients, prevent wrongful convictions, and promote a culture of accountability. The success of these projects in states like Maryland, California, and New York demonstrates the power of collective action. While there is still much work to be done to completely dismantle the blue wall of silence, these projects should serve as a model for defenders across the country looking to join the movement for a more humane and equitable legal system.

Endnotes

1.   Eric Markowitz, *Meet the Man Who Spends 10 Hours a Day Tracking Police Shootings*, GQ, July 8, 2016.

2.   Kallie Cox & William Freivogel, *Police Misconduct Records Secret, Difficult to Access*, Pulitzer Center, Jan. 24, 2022.

3.   LaToya Holley, *Honor Anton Black: Stop hiding police misconduct records | Opinion*, News Journal (Wilmington, DE), Jan. 30, 2021.

4.   Brandon Holveck, *Former Dover officer removed from Greensboro police staff after use of force reports surface*, News Journal (Wilmington, DE), Aug. 2, 2019.

5.   Alex Mann, *Family of Anton Black, 19-year-old who died at the hands of police on Eastern Shore, reaches $5 million settlement in federal lawsuit*, Baltimore Sun, Aug. 8, 2022.

6.   Benjamin Feigenberg & Eleni Packis, *Police Officer Certification/Decertification and Misconduct Databases*, University of Chicago Crime Lab, Jan. 21, 2021.

7.   Hannah Combs, *Former Greensboro police chief pleads guilty to misconduct*, Star-Democrat (Easton, MD), Jan. 17, 2020.

8.   Robert Lewis, Noah Veltman & Xander Landen, *Is Police Misconduct a Secret in Your State?*, WNYC, Oct. 15, 2015.

9.   Jonathan Abel, *Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 Stan. L. Rev. 743 (2015).

10. Brady v. Maryland, 373 U.S. 83 (1963).

11. Tom MacDonald, *DA seeks contempt order against Philadelphia Police for failure to disclose officers' disciplinary records*, WHYY, Aug. 11, 2021.

12. People v. Gissendanner, 48 N.Y.2d 543 (1979).

13. This was not the first time the idea of a database had been floated around. In fact, as early as 1997, a memo went around the Legal Aid Society office urging them to lead the city in setting up a citywide database of police brutality and misconduct claims by clients. Attorneys in the borough offices had also maintained informal spreadsheets and scrapbooks of misconduct information over the years. However, this was the first time significant resources were put behind a formal, centralized system.

14. Mike Hayes & Kendall Taggart, *The District Attorney Says The NYPD Isn't Telling Prosecutors Which Cops Have A History Of Lying*, BuzzFeed News, June 2, 2018.

15. Melissa Gira Grant, *The NYPD Arrests Women for Who They Are and Where They Go — Now They're Fighting Back*, Village Voice, Nov. 22, 2016.

16. Medina v. City of New York, 19-CV-09412 (S.D.N.Y. Apr. 20, 2021).

17. Holden v. The Port Authority of New York and New Jersey, 1:17-cv-02192 (S.D.N.Y. June 1, 2022).

18. Davis v. The City of New York and New York City Housing Authority, 10 Civ. 0699, 2013 WL 145584 (S.D.N.Y. Jan. 14, 2013).

19. Independent Monitor of the New York City Police Department.

20. An v. City of New York, 16 Civ. 5381, 2017 WL 2376576 (S.D.N.Y. Jun. 1, 2017); Leonard Greene, *Pedestrian arrested after recording cops settles First Amendment lawsuit with NYPD*, New York Daily News, Oct. 11, 2018.

21.	NYC Administrative Code § 7-114: Civil Actions Regarding the Police Department and Covered Individuals. On September 8, 2017, Mayor de Blasio signed into law Local Law 166 of 2017 (previously Int. No. 119-D), which amended the administrative code of the City of New York to add a new section 7-114: civil actions regarding the police department.

22.	NACDL survey of New Yorkers at United Justice Coalition summit on July 23, 2022.

23.	New York City Civilian Complaint Review Board, NYPD Departure Letters.

24.	Letter from Legal Aid Society Criminal Defense Practice to Mayor Eric Adams Regarding NYPD Discipline Departures (March 15, 2023).

25.	Tom Robbins, *How a Coalition of New York Activists Revealed Police-Department Secrets*, New Yorker, July 17, 2020.

26.	Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. Times, July 3, 2020.

27.	Julie Ciccolini, *New York State Passes Historic Police Transparency Bill*, Human Rights Watch, June 10, 2020.

28.	Kallie Cox & William Freivogel, *Police Misconduct Records Secret, Difficult to Access*, Pulitzer Center, Jan. 24, 2022; Jeffrey A. Roberts, *Requests for police internal affairs records do not have to identify a specific incident, Colorado Supreme Court rules*, Colorado Freedom of Information Coalition, June 28, 2021.

29.	SB 16, 2021-2022 Leg., Reg. Sess. (Cal. 2021)

30.	Maya Lau, *California law enforcement unions seek to block release of officer disciplinary records*, L.A. Times, Jan. 17, 2019; Monique Judge, *Police Disciplinary Records in California Are Now Public Information*, The Root, Jan. 17, 2019.

31.	Brendan J. Lyons, *NY police agencies still fighting release of some disciplinary files*, Albany Times Union, Feb. 21, 2023; Andrew Quemere, *A Win For Transparency And Police Accountability In Mass*, Boston Institute for Nonprofit Journalism, Feb 8, 2022; Madeleine O'Neill, *Transparency advocates sue Baltimore Law Department over police records requests*, Maryland Daily Record, July 1, 2022.

32.	Kevin Rector, *Judge orders L.A. County Sheriff's Department to release misconduct, use-of-force records after L.A. Times lawsuit*, L.A. Times, June 25, 2021.

33.	J. David Goodman, *Record Purge by New York Police Raises Fears of Cover-Up*, N.Y. Times, Nov. 7, 2020.

34.	Richard A. Webster, *A Sheriff in Louisiana Has Been Destroying Records of Deputies' Alleged Misconduct for Years*, ProPublica, Jan. 12, 2023.

35.	Madeleine O'Neill, *Maryland public defender, ACLU supporting lawsuit over public records fees for police files*, Maryland Daily Record, Dec. 14, 2022.

36.	Jon Campbell and Beryl Lipton, *New York 50-a repeal: Six months later, police find ways to shield disciplinary records*, Democrat and Chronicle (Rochester, NY), Dec. 22, 2020.

37.	SB 1421, 2017-2018 Leg., Reg. Sess. (Cal. 2018) and SB 16, 2021-2022 Leg., Reg. Sess. (Cal. 2021).

38.	Julia Prodis Sulek & Harriet Blair Rowan, *One Bay Area city, 73 police dog bites, and the law that made them public*, Mercury News (San Jose, CA), Dec. 19, 2021.

39.	Lisa Pickoff-White, Ross Ewald, Danielle Echeverria & Anne Daugherty, *Bakersfield Police Broke 31 People's Bones in Four Years. No Officer Has Been Disciplined for It*, KQED, June 16, 2021.

40.	Soreath Hok, Molly Peterson & Lisa Pickoff-White, *Bakersfield Police Department fails to identify people in crisis, thwarting reform*, KVPR, The California Reporting Project, Apr. 12, 2022.

41.	Available at New York City Police Department.

42.	Julie Ciccolini (@ciccolinijulie), Twitter (Mar. 10, 2021, 9:40 AM).

43.   Julie Ciccolini (@ciccolinijulie), Twitter (Mar. 10, 2021, 9:40 AM).

44.   Jake Offenhartz, Here Are NYC's Most Sued Cops Who Are Still On The Job, According To New Public Database, Gothamist/WYNC, Mar. 7, 2019.

45.   Accurate as of April 26, 2023.

46.   James Rivera #5027, 50-a.org.

47.   Studies have found racism even within the internal police disciplinary systems. For example, a study that looked at departments in Chicago, Philadelphia, and Los Angeles found Black officers received more and harsher punishments for misconduct than white officers, even with there being no difference in the number of allegations against them.

48.   CopMonitor SF, San Francisco Public Defender.

49.   ABA Crim. Just. Stand. Def. Func., Standard 4-4.1 (4th ed. 2017).

50.   Codebase available at Full Disclosure Project FDP App, GitHub.

51.   Guide available at Getting Started Tracking Police Misconduct, NACDL Full Disclosure Project.

52.   Mosby Publishes 'Do Not Call' List Of BPD Officers 'Who Lack Credibility To Testify', CBS Baltimore, Oct. 29, 2021.

53.   Steve Reilly & Mark Nichols, Hundreds of police officers have been labeled liars. Some still help send people to prison., USA Today, Oct. 14, 2019.

54.   MOPD does not know the outcome of 46 of the allegations.

55.   Brandon Soderberg, Training Days: Leaked disciplinary records of a Baltimore cop hired 'post-Freddie Gray' exemplify the limits of police reform, Real News Network (Baltimore, MD), June 8, 2022.

56.   Maryland Judiciary Case Search searched on April 25, 2023.

57.   Joe Spielberger, Chasing Justice: Addressing Police Violence and Corruption in Maryland, ACLU Maryland, Jan. 2021; Zoe Zellers, Baltimore Police officer appeals complaints as court evidence, WBFF FOX45, Mar. 30, 2017; Justin Fenton, Attorneys for 20 defendants seek release of city police officer's personnel file, Baltimore Sun, Mar. 9, 2017.

58.   The judge in that lawsuit, U.S. District Judge Catherine C. Blake, said Donato engaged in "unacceptable behavior" in entering a home without a warrant, damaging the residence's door frame, and writing a report that was "conspicuously" inconsistent with that of his fellow officer. Harrell et al v. Donato, et al, 1:2011cv03046 (D. Md. Apr. 29, 2014); Justin Fenton, Attorneys for 20 defendants seek release of city police officer's personnel file, Baltimore Sun, Mar. 9, 2017.

59.   Brandon Soderberg, Years After Freddie Gray's Death, Baltimore Police Misconduct Persists, The Appeal, Jan. 19, 2021.

60.   Maryland v. Spencer, No. 116173007 (Balt. Cnty. Cir. Ct. Mar. 28, 2017), Tr. 28-29; Spreadsheet of all internal affairs complaints, including internal, citizen, or other agency complaints against Joseph Donato provided by the Baltimore Police Department to the Maryland Office of the Public Defender on 04/08/2022 in response to Maryland Public Information Act Request on 11/9/21.

61.   Jessica Anderson, In rare hearing, Baltimore police officer testifies about past internal affairs complaints, Baltimore Sun, Mar. 28, 2017; Brandon Soderberg, Years After Freddie Gray's Death, Baltimore Police Misconduct Persists, The Appeal, Jan. 19, 2021; Justin Fenton, Attorneys for 20 defendants seek release of city police officer's personnel file, Baltimore Sun, Mar. 9, 2017; Maryland v. Spencer, No. 116173007 (Balt. Cnty. Cir. Ct. Mar. 28, 2017), Tr. 43.w

62.   Maryland v. Spencer, No. 116173007 (Balt. Cnty. Cir. Ct. Mar. 28, 2017), Tr. 29-30; Justin Fenton, Attorneys for 20 defendants seek release of city police officer's personnel file, Baltimore Sun, Mar. 9, 2017.

63.   Justin Fenton, [Attorneys for 20 defendants seek release of city police officer's personnel file](#), Baltimore Sun, Mar. 9, 2017.

64.   Maryland v. Spencer, No. 116173007 (Balt. Cnty. Cir. Ct. Mar. 28, 2017), Tr. 29.

65.   Justin Fenton, [Attorneys for 20 defendants seek release of city police officer's personnel file](#), Baltimore Sun, Mar. 9, 2017; Maryland v. Spencer, No. 116173007 (Balt. Cnty. Cir. Ct. Mar. 28, 2017), Tr. 48.

66.   Ryan Dickstein, [An In Focus look into the 500+ page Gun Trace Task Force investigative report](#), WMAR-2 (ABC Baltimore), Jan. 14, 2022.

67.   [City spending board to consider $575K Gun Trace Task Force settlement](#), CBS Baltimore, Aug. 31, 2022.

68.   Former Department of Justice Inspector General Michael Bromwich led a two-year inquiry into the scandal, reviewing hundreds of documents and interviewing over 160 people which culminated in a 515 page report on the history and events that led to the problems in GTTF.

69.   Kevin Rector, [Davis rebuilds operations units, redeploys more than 150 officers as Baltimore hits 200th homicide](#), Baltimore Sun, July 26, 2017.

70.   List of officers in District Action Teams provided to MOPD on February 23, 2023, in response to a public information request to the Baltimore Police Department. This list is valid as of June 30, 2022.

71.   Tim Swift & Jeff Abell, [List of 300 Baltimore cops with credibility issues released](#), WBFF (Fox28 Savannah), May 27, 2022.

72.   MOPD does not have copies of all of the investigations against BPD. These numbers only represent what MOPD is aware of, but there might be more cases.

73.   Thirteen investigations involved both a member and a supervisor.

74.   One investigation involved both a member and a supervisor.

75.   A homicide detective later filed a whistleblower lawsuit saying the division had a long-held practice of coercing statements. Ryan Felton, [The Would-Be Auto Worker Caught Up In A Detroit Prison Snitch Scandal](#), Jalopnik, April 26, 2017; Ryan Felton, [How an alleged snitch scheme led Detroit police to wrongly land dozens behind bars](#), Detroit Metro Times, May 10, 2017.

76.   Diane Bukowski, [Mubarez Ahmed Wins $9.95 M For Wrongful Detroit Conviction; Bad Cops, Prosecutors Not Charged](#), Voice of Detroit, July 28, 2021.

77.   Mike McConnell, [Detroit police officer faces sentencing in Ferndale for second-time drunken driving](#), Royal Oak Tribune (Oakland, CA), Aug. 20, 2020.

78.   [Detroit police sergeant charged with robberies of 13 banks, conspiracy](#), The Courier (Waterloo-Cedar Falls, ID), Nov. 27, 2003.

79.   A list of potential data sources is available here: [Collect Data: Data Sources for Police Misconduct](#), NACDL Full Disclosure Project

80.   Deborah Katz-Levi, [Policing the Police: Using Police Technologies to Uncover Law Enforcement Misconduct in Criminal Cases](#), NACDL Fourth Amendment Center, Aug. 11, 2020.

81.   Available at [Organize Data: Systems for Organizing Law Enforcement Misconduct Data](#), NACDL Full Disclosure Project.

82.   Available at [Known Police Accountability Data Sets](#), NACDL Full Disclosure Project.

Notes

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____