

# SOUTH FLORIDA SunSentinel

## End qualified immunity for cops

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Demonstrators protesting police brutality outside Barclays Center, home of the Nets, in New York on Sunday, May 31, 2020. Taxpayers wind up paying millions of dollars in settlements over cases like that of George Floyd, prompting a call for the burden to shift to officers. In the days since George Floyd's tragic death, **tensions have flared** and cities across the country are burning. Protesters are reasonably calling for the officers responsible to be properly punished for killing a man who clearly wasn't posing any risk to law enforcement. But if history is any guide, fair legal restitution may not happen anytime soon. In lieu of a timely, just criminal justice system, cities can and should revamp liability laws and pass settlement costs for wrongdoing onto police officers rather than taxpayers. Even before dismissal and conviction, problem officers must pay the price for their crimes.

Based on video footage and eyewitness testimony, the case against the officers presiding over Floyd's death seems straightforward. But legal problems may pose insurmountable barriers to a fair, speedy resolution of this case. It often takes years to hold officers accountable in cases of misconduct. For example, it took **five years** for the officer who strangled Eric Garner to even be dismissed.

Meanwhile, it's city and municipal taxpayers who foot the bill for the resulting settlement payouts to victims' families. For example, New York City taxpayers paid Eric Garner's family **\$5.9 million** for New York Police Department officer Daniel Pantaleo's wrongdoing. Baltimore taxpayers paid **\$6.4 million** for their police department's role in the death of Freddie Gray.

Having these costs included in residents' tax bills — instead of forcing officers to pay — results in diminished accountability and creates all the wrong incentives. In addition it creates a two-track system: While civilians are held liable for causing the deaths of others, police officers are not.

Holding officers liable for illegal acts committed on the job is next to impossible, due to "**qualified immunity**" rules that create an almost insurmountable threshold for prospective

plaintiffs. Thanks to Supreme Court precedent, police cannot be held liable in a court of law unless their actions fly in the face of “clearly established” laws or constitutional rights. A fairer system would reject this qualified immunity and introduce liability for individual police officers similar to how individual doctors can be held accountable for recklessly disregarding the lives of their patients. In most cases, doctors would hardly be able to afford \$5 million-plus legal bills on their regular salaries. This is where liability insurance — commonly used by doctors — **comes into play**. These insurance policies protect beneficiaries against a catastrophically large bill that could completely wipe out their savings. But there’s a catch: policyholders must pay insurance premiums, and these premiums **can and do increase** in response to messy legal entanglements.

If a doctor has been repeatedly sued by patients, they will likely face higher liability insurance premiums than a doctor with a clean track-record. There are, of course, excesses in this liability-driven system. A tidal wave of unbridled liability led to **tort reform** across many states, and doctors rarely have to pay settlements out of their own pockets on top of insurance premiums. In any case, the insurance premiums seem sufficient to keep doctors in line while legal liability limits safeguard against doctors being overly cautious. Policymakers can strike a similar balance in the case of liability for police officers.

In 2018, Cato Institute scholar Clark Neily **noted**, “insurance companies have powerful incentives to identify the greatest risks — whether drivers, doctors or cops — and charge them accordingly. If cops had to carry insurance, the worst offenders would quickly be identified and charged higher rates. If they failed to clean up their act, they would eventually become uninsurable and thus unemployable.”

Usually, talk about private insurance and liability systems is limited to traditionally commercial endeavors such as medicine and workplace safety. The government obviously has a monopoly on policing and protection against criminals. But injecting private forces into police protection can safeguard civilians in a way that the status-quo cannot.

Fortunately, the Supreme Court may soon be **reconsidering** the stale doctrine of qualified immunity. If they scale it back, it is time to introduce accountability via liability for law enforcement officers. To help prevent future George Floyd cases, city and municipal governments across the country should seriously consider extending liability costs to police officers.

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