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'This Is a Moment': Civil Rights Lawyers Confront Pandemic and Police Violence Inequities

"In many respects, the pandemic has helped to just rip the Band-Aid off and make more visible the racial fault lines that exist in America," said Kristen Clarke, president of the National Lawyers' Committee for Civil Rights Under Law.

By Jacqueline Thomsen | June 04, 2020



Thousands march in Baltimore protesting police brutality and the killing of George Floyd in Minnesota at the hands of local police, on Monday, June 1, 2020. The peaceful march took demonstrators on a route from the Convention Center to City Hall, then onto the I-83 Expressway and then off the Expressway via the Chase Street ramp, rounding up with a loop of the prison and Central Booking and back downtown. Derek Chauvin, the police officer that was caught on video kneeling on Floyd's neck as the unarmed, handcuffed man laid flat and unable to breathe, has been charged with third-degree murder and second-degree manslaughter. Mass demonstrations have taken place nationwide since the incident took place. Photos: Diego M. Radzinski/ALM

When the COVID-19 pandemic hit the United States earlier this year, civil rights attorneys flooded courts to try and protect the country's vulnerable populations. So when the national demonstrations over the death of George Floyd at the hands of Minneapolis police began, those lawyers saw the same inequities amplified by the virus raised yet again.

National civil rights groups have arguably had a moment since the start of the Trump administration, as attorneys frequently litigate policies they label discriminatory. But both the pandemic and the demonstrations raise inequities that go beyond one policy decision or even one administration, furthering attorneys' push for systemic change.

"The pandemic and the tragic police violence have one fundamental thing in common, which is that they both reflect and exacerbate deep seated institutional racism, particularly against black Americans," said Sam Spital, the director of litigation for the NAACP Legal Defense and Educational Fund. "From a civil rights law perspective, they both require a response that is designed to address that deep-seated institutional racism. And to me, this is a moment in American history where fundamental transformation is necessary."

Attorneys said in interviews there could be a spike in legal cases tied to the demonstrations, particularly against the actions of police officers who have instigated clashes (<https://www.cnn.com/2020/06/02/us/police-protests-use-of-force/index.html>) at a number of otherwise peaceful protests. However, they acknowledge the law in its current form can only go so far (<https://www.vox.com/2020/6/4/21278668/george-floyd-protests-police-brutality-breonna-taylor>) in addressing the core issues of systemic racism, particularly as precedent that shields officers from legal claims remains in place.

Still, the overwhelming calls for change taking over major cities are giving hope to attorneys that the tide could

turn in their favor. Stanley King, an attorney who frequently brings misconduct cases against police, said he is hopeful the outcry after Floyd's death becomes "a seminal event for this country."

"I think now, especially when I look at the diversity of the crowds, maybe as a nation we're starting to really get it and say, 'Wait a minute, this is wrong,'" King said. "All these years folks were saying this, and nobody was listening. And I'm hoping that this might be a turning point."

'Rip the Band-Aid Off'

As the COVID-19 pandemic hit the United States in early 2020, it almost immediately sparked litigation trying to protect those who could be most vulnerable to the virus. Groups like the American Civil Liberties Union filed lawsuits seeking the release of defendants, sentenced convicts and undocumented immigrants who were detained in federal and state facilities, at times helped by prominent law firms. Voting rights, access to abortion and religious liberties all landed in federal court as a result of the virus.

"The pandemic literally has impacted every aspect of our work, from A to Z," said Kristen Clarke, the president and executive director of the National Lawyers' Committee for Civil Rights Under Law. "We have been recalibrating and figuring out how we can divert our attention and resources to the crises that have emerged as a result of the pandemic."

Clarke said her group has pushed for the release of racial data on the COVID-19 pandemic to help determine whether low-income communities with people of color had enough testing and then come up with ways to address those issues.

"In many respects, the pandemic has helped to just rip the Band-Aid off and make more visible the racial fault lines that exist in America," said Clarke, who previously worked on civil rights at the Justice Department and the New York State Attorney General's Office.

But those cases don't always result in success. Federal judges have ordered the release of detained immigrants and people being held in correctional facilities in some cases, but not in others. Lawsuits can be dismissed on standing issues before the allegations at the core of a complaint are considered.

Litigation can also be timely and expensive, meaning the people who are most likely to experience civil rights violations don't necessarily have access to the kinds of resources to get a case off the ground.

"Civil rights cases are hard, and they've always been hard," Jonathan Smith, the executive director of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, said. "The law is not generous in the protection of civil rights, and you often face a skeptical judiciary in trying to pursue them."

"The appointment of judges over the last few years has made that hill even higher to climb, judges that are embracing strategies to keep people out of court," added Smith, who previously worked on policing issues at the Obama Justice Department.

Qualified Immunity Meets 'Moment for Reform'

As the country nears a week of national protests over Floyd's death, attorneys are starting to take action. Some law firms are offering support to arrested protesters, announcing steps to focus more on civil rights and racial injustice. Prominent black and civil rights attorneys are calling for (<https://www.law.com/dailybusinessreview/2020/06/02/arbery-floyd-and-taylor-family-lawyers-call-for-national-justice/>) a national approach to ensuring justice.

Immediate results from courts are less likely, especially in connection to police violence. Videos of the national protests repeatedly show acts of aggression by law enforcement toward peaceful protesters, and hundreds have been arrested at the demonstrations. But challenges to police actions face an uphill battle in court, most directly with "qualified immunity"—the judge-created concept which stops officers from facing lawsuits with the exception of actions that violate "clearly established" constitutional or statutory rights.

Activists have called for the doctrine to be repealed by the U.S. Supreme Court or Congress. There are several petitions on qualified immunity cases before the justices but the court so far has declined to touch the doctrine, despite public urging (<https://www.law.com/nationallawjournal/2020/06/03/at-supreme-court-sotomayor-is-leading-voice-against-alleged-police-abuses/>) from Justice Sonia Sotomayor.

"The most obvious and direct consequence of the concept of qualified immunity is that the people who are expected to enforce laws are allowed to break those laws," said Julia Yoo, a prominent civil rights attorney in San Diego and incoming president of the National Police Accountability Project. "When an officer kills, steals, assaults a citizen, they get a pass thanks to qualified immunity, but you don't see the president on national TV calling those officers thugs. This is what we have built, and this is a direct result of what has been happening in the courts."

"It's difficult because, each year, the case law gets worse," she added.

King, a civil rights lawyer in New Jersey who frequently takes up cases over deaths of individuals held in police custody, said a number of other hurdles can make it hard for his clients to achieve the justice they're seeking, including the amount of time it can take a case to make its way through court.

The families whom he and his wife, Sharon King, frequently represent don't have resources to pay for the kinds of experts needed to make the case, meaning the practice has to foot the bill. That can prevent other attorneys who have fewer resources from agreeing to take them on as clients, King said.

King, who sits on the board of directors for the National Police Accountability Project, also said law enforcement are unlikely to testify negatively about their fellow officers in court. Jurors are more likely to view those officers as authority figures who should be trusted, and non-police witnesses can feel too intimidated to give testimony, he added.

King said he was particularly discouraged when the Trump administration began reversing https://www.washingtonpost.com/national-security/the-trump-administration-abandoned-obama-era-police-reform-efforts-now-critics-want-them-restored/2020/06/01/4615bc1c-a413-11ea-b473-04905b1af82b_story.html Obama-era police reforms. But the activism taking place now is starting to change his mind, he said.

Spital, with the NAACP-LDF, echoed that point. "This is a moment where things could go in a very, very scary direction and a direction towards a more authoritarian than democratic state," he said. "Or they could go in a direction where there's real hope that this is a moment where things could be different, and there's some real movement for reform."

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