

CITATIONS:

Bluebook 22nd ed.

Marlee Tomlinson Martin, Bryant v. Los Angeles County: A Modern Look at Sec. 1983, 47 LAW & PSYCHOL. REV. 181 (2022-2023).

ALWD 7th ed.

Marlee Tomlinson Martin, Bryant v. Los Angeles County: A Modern Look at Sec. 1983, 47 Law & Psychol. Rev. 181 (2022-2023).

APA 7th ed.

Martin, Marlee Tomlinson. (2022-2023). Bryant v. Los Angeles County: Modern Look at Sec. 1983. Law & Psychology Review, 47, 181-196.

Chicago 18th ed.

Martin, Marlee Tomlinson. 2022-2023. "Bryant v. Los Angeles County: A Modern Look at Sec. 1983." Law & Psychology Review 47: 181-196. HeinOnline.

McGill Guide 10th ed.

Marlee Tomlinson Martin, "Bryant v. Los Angeles County: A Modern Look at Sec. 1983" (2022-2023) 47 Law & Psychol Rev 181.

AGLC 4th ed.

Marlee Tomlinson Martin, 'Bryant v. Los Angeles County: A Modern Look at Sec. 1983' (2022-2023) 47 Law & Psychology Review 181

MLA 9th ed.

Martin, Marlee Tomlinson. "Bryant v. Los Angeles County: A Modern Look at Sec. 1983." Law & Psychology Review, 47, 2022-2023, pp. 181-196. HeinOnline.

OSCOLA 5th ed.

Marlee Tomlinson Martin, 'Bryant v. Los Angeles County: A Modern Look at Sec. 1983' (2022-2023) 47 Law & Psychol Rev 181 Export To:

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BRYANT V. LOS ANGELES COUNTY: A MODERN LOOK AT §1983

*Marlee Tomlinson Martin**

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I. INTRODUCTION

In January of 2020, a helicopter crash killed Kobe Bryant and his young daughter, Gianna Bryant.¹ Following the crash, deputies from the Los Angeles County Sheriff's Department took graphic photos of the Bryants' remains and shared them without any investigatory purpose.² In a case called *Bryant v. County of Los Angeles*, Vanessa Bryant, widow of Kobe Bryant and mother of Gianna Bryant, filed suit, alleging violations of her right to privacy and severe emotional distress.³ Mrs. Bryant based her first cause of action on 42 U.S.C. § 1983,⁴ a federal statute allowing civil actions for deprivation of rights.⁵

Section 1983 permits individuals like Mrs. Bryant to sue government employees or entities who violate their constitutionally or federally protected rights "under color of any statute, ordinance, regulation, custom, or usage."⁶ The statute does not grant any specific rights to individuals, but rather protects an individual's already existing rights.⁷ The Supreme Court's application of § 1983 has broadened significantly since its enactment,⁸ transforming § 1983 "from a statute that in its first [fifty] years generated [twenty-one] cases[,] to a statute that today produces tens of thousands of cases in federal court."⁹ This note will review the history and application of § 1983, and analyze *Bryant v. County of Los Angeles* as a modern-day § 1983 case. This note will also explore the legal and psychological significance of *Bryant*, specifically relating to its demonstration of § 1983. Finally, this note will discuss the Kobe Bryant Act, a bill passed in response to the *Bryant* case, and consider its potential implications.

1. First Amended Complaint at 1, *Bryant v. Cnty. of L.A., et al.*, No. 2:20-CV-09582 (C.D. Cal. Aug. 31, 2022).

2. *Id.* at 2.

3. *Id.* at 1, 28.

4. *Id.* at 30.

5. 42 U.S.C. § 1983.

6. *Id.*

7. Martin A. Schwartz, *Fundamentals of Section 1983 Litigation*, 17 *TOURO L. REV.* 525, 528 (2001).

8. See Dale Conder, Jr., *An Introduction to Section 1983 Claims and Their Elements*, in SECTION 1983 PRIMER, DRI 1, 1-2 (Kurt M. Simatic et al. eds., 2020). Congress first enacted § 1983 in 1871, and the federal courts initially interpreted the statute to attack unconstitutional laws, rather than private torts of government actors. *Id.* However, in 1961, the Supreme Court changed this interpretation, allowing suit under § 1983 for any kind of state action. See *id.* Seventeen years later the Court further expanded its interpretation to include municipalities and government entities as potential defendants. *Id.*

9. *Id.* at 2.

II. History & Application of Section 1983

A. Purpose

Congress originally passed the Civil Rights Act of 1871, codified as § 1983, “to [compel] state officials to comply with the new Fourteenth Amendment”¹⁰—likely for the purpose of combatting the ongoing terrors of the Ku Klux Klan after the Civil War.¹¹ Well after the emancipation of enslaved people in the United States, the Ku Klux Klan’s “acts of lawlessness went unpunished . . . because Klan members and sympathizers controlled or influenced the administration of state criminal justice.”¹² To weaken the Klan’s grip on the criminal justice system, Congress drafted § 1983 broadly, providing “a cause of action against any person who deprives another of their constitutional rights under color of law.”¹³ Under § 1983, a plaintiff may allege that a violation of a constitutionally or federally protected right occurred under the color of law;¹⁴ however, the analysis does not stop there. To succeed under a § 1983 claim, a plaintiff must prove (1) deprivation of a protected right (2) that was proximately caused (3) by a person (4) who was acting under the color of law.¹⁵ The Supreme Court initially expanded its

10. Case Comment, *Freedom from Religion Foundation, Inc. v. Mack—Fifth Circuit Holds That Section 1983 Does Not Apply to Local Judges*, 135 HARV. L. REV. 1472, 1472 (2022) [hereinafter *Freedom from Religion*].

11. Conder, Jr., *supra* note 8, at 1.

12. *Briscoe v. LaHue*, 460 U.S. 325, 337–38 (1983) (“The Ku Klux Act . . . was enacted on April 20, 1871, less than a month after President Grant sent a dramatic message to Congress describing the breakdown of law and order in the Southern states. (citation omitted). During the debates, supporters of the bill repeatedly described the reign of terror imposed by the Klan upon black citizens and their white sympathizers in the Southern states. . . . These acts of lawlessness went unpunished, legislators asserted, because Klan members and sympathizers controlled or influenced the administration of state criminal justice. In particular, it was alleged that Klan members were obligated, by virtue of membership in the organization, to protect fellow members who were charged with criminal activity. They had a duty to offer themselves for service on grand and petit juries, and to violate their jurors’ oaths by refusing to indict or to convict regardless of the strength of the evidence. They also were bound to appear as witnesses, and again to violate their oaths by committing perjury, if necessary, to exculpate their Klan colleagues. Perjury was thus one of the means by which the Klan prevented state courts from gaining convictions of Klan members for crimes against blacks and Republicans.”).

13. *Freedom from Religion*, *supra* note 10, at 1472 (citing 42 U.S.C. § 1983).

14. Schwartz, *supra* note 7, at 527; *see also* *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999) (“To state a claim for relief in an action brought under § 1983, respondents must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law. Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach ‘merely private conduct, no matter how discriminatory or wrongful.’” (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)) (citation omitted).

15. Schwartz, *supra* note 7, at 527 (first citing *Am. Mfrs.*, 526 U.S. at 49–50; then citing *Malley v. Briggs*, 475 U.S. 335, 345 n.7 (1986); then citing *Martinez v. California*, 444 U.S. 277, 285 (1980); and then citing *Monroe v. Pape*, 365 U.S. 167, 187 (1961), *overruled by* *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658 (1978)).

interpretation of the statute by redefining what it means to act “under color of law”¹⁶ and by broadening the application of the word “person.”¹⁷

B. Early Application

Initially, plaintiffs used § 1983 to attack the Black Codes of the South, meaning the statute “only applied if a defendant violated a federal constitutional or statutory right while acting in a manner *authorized* by state law.”¹⁸ But in 1961, the Supreme Court drastically changed this interpretation in a case called *Monroe v. Pape*.¹⁹ In *Monroe*, the plaintiffs alleged that Chicago police officers violated their Fourth Amendment rights by “[making] them stand naked [while the officers] ransacked every room [in the house].”²⁰ The officers claimed § 1983 did not apply, arguing they may have violated the plaintiffs’ constitutional rights, but not while acting in a manner *authorized* by state law.²¹ In fact, their actions were prohibited by the Illinois constitution.²² The Court held the color of law requirement was broad enough to include any kind of state action, regardless of whether that action complied with state law.²³ This case served as a catalyst in transforming § 1983 from an underused and ineffective enforcement statute to one that produces tens of thousands of cases each year.²⁴

At the time of *Monroe*, and for a significant time thereafter, the Supreme Court held that the word “person” within the meaning of the statute did not extend to municipalities.²⁵ However, in 1978, the Supreme Court changed its tune and overruled their precedent in *Monell v. Department of Social Services of City of New York*.²⁶ In *Monell*, “the Court determined ‘that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies.’”²⁷ The Court also changed the requirements for plaintiffs bringing suit under § 1983. When plaintiffs sue government entities, they must also prove

16. See *Monroe*, 365 U.S. at 186.

17. See *Monell*, 436 U.S. at 701.

18. Conder, Jr., *supra* note 8, at 1 (citing *Crawford-El v. Britton*, 93 F.3d 813, 830 (D.C. Cir. 1996) (Silberman, J. concurring), *judgment vacated* by *Crawford-El v. Britton*, 523 U.S. 574 (1998)) (emphasis added).

19. 365 U.S. at 187.

20. *Id.* at 169.

21. *Id.* at 172.

22. *Id.*

23. *Id.* at 187.

24. Conder, Jr., *supra* note 8, at 1 (citing *Crawford-El*, 523 U.S. at 611 (Scalia, J., dissenting)).

25. Conder, Jr., *supra* note 8, at 1 (citing *Monroe*, 365 U.S. at 191).

26. Conder, Jr., *supra* note 8, at 1; see generally *Monell*, 436 U.S. at 658.

27. Conder, Jr., *supra* note 8, at 1 (citing *Monell*, 436 U.S. at 690 (emphasis in original)).

“the violation resulted from the implementation of a policy, custom, or procedure.”²⁸

C. *Compensatory Damages*

The Supreme Court determined the issue of compensatory damages under a § 1983 claim most notably in *Carey v. Phipus*.²⁹ The Court held that “school students who had been suspended without procedural due process were entitled to recover only nominal damages from school officials, absent proof of actual injury.”³⁰ The Court reasoned that damages awarded under § 1983 should mirror damages awarded under traditional tort law, which requires a showing of actual injury for compensatory damages and malicious intent for punitive damages.³¹ Even though emotional distress damages are available under § 1983, “neither the likelihood of such injury nor the difficulty of proving it is so great as to justify awarding compensatory damages without proof that such injury actually was caused.”³² Thus, § 1983 claims require real proof of an actual injury that flows from a constitutional violation.³³ Though *Monroe* and *Monell* greatly expanded the interpretation of § 1983, *Carey* expanded the available damages under § 1983 while also placing limits on that expansion.³⁴

D. *Constitutional Violations*

Plaintiffs file suit under § 1983 to address a wide variety of constitutional claims, “including First Amendment freedoms, Fourth Amendment protections, and the rights of privacy, travel, the right to vote, as well as due process and equal protection rights.”³⁵ The government can certainly violate a person’s First Amendment freedoms by preventing that person from speaking on a

28. Conder, Jr., *supra* note 8, at 1

29. 435 U.S. 247, 254 (1978).

30. David J. Dempsey, *Section 1983: An Analysis of Damage Awards: Carey v. Phipus*, 435 U.S. 247 (1978), 58 NEB. L. REV. 580, 581 (1978) (“But more importantly, the Court decided that in order to further the purpose of [S]ection 1983 the common law rules of damages should be used to formulate an appropriate remedy of compensation. . . . These findings have a sweeping impact on all [S]ection 1983 litigation, particularly actions seeking redress for the indignity and the mental and emotional distress caused by the deprivation of procedural due process.”).

31. *Id.*

32. *Carey*, 435 U.S. at 264.

33. *Price v. City of Charlotte, N.C.*, 93 F.3d 1241, 1245 (4th Cir. 1996) (citing *Carey*, 435 U.S. at 253).

34. *See* Conder, Jr., *supra* note 8, at 1-2; *see also* Sanders, *supra* note 29, at 20.

35. Conder, Jr., *supra* note 8, at 2 (quoting MARTIN A. SCHWARTZ, SECTION 1983 LITIGATION: CLAIMS AND DEFENSES 117 (3d ed. 1997)).

constitutionally protected subject.³⁶ Fourth Amendment violations are also common under § 1983 claims because they often involve use of excessive force during arrests, unreasonable searches of vehicles and homes, and unlawful seizures.³⁷ A seizure under the Fourth Amendment requires a government actor intentionally terminating a person's freedom of movement.³⁸ Perhaps the most extensive amendment is the Fourteenth Amendment of the Constitution. The Fourteenth Amendment's Due Process Clause contains both substantive rights and procedural rights,³⁹ prohibiting the government from depriving "any person of life, liberty, or property, without due process of law."⁴⁰ Procedural due process means the government may only deprive a person of certain freedoms if it does so fairly.⁴¹ Substantive due process is less clear. It prohibits the government from behavior that "shocks the conscience" or violates "rights implicit in the concept of ordered liberty."⁴² Essentially, substantive due process protects rights that are fundamental to freedom.⁴³

In *Paul v. Davis*, the Supreme Court reinforced the absence of an explicit right of privacy in the Constitution, recognizing, instead, certain privacy rights guaranteed in the Fourteenth Amendment.⁴⁴ In *Marsh v. County of San Diego*, the Ninth Circuit identified one of those privacy rights.⁴⁵ In that case, the plaintiff filed suit against the San Diego District Attorney and the County of San Diego under § 1983, "alleging that the copying and dissemination of [her two-year-old son's] autopsy photographs violated her Fourteenth Amendment Due Process rights."⁴⁶ On appeal, the Ninth Circuit found the plaintiff "ha[d] a constitutionally protected

36. Conder, Jr., *supra* note 8, at 5; see U.S. CONST. amend. I; see also *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 243 (6th Cir. 2015) (The First Amendment's "protection applies to loathsome and unpopular speech with the same force as it does to speech that is celebrated and widely accepted.").

37. Conder, Jr., *supra* note 8, at 6; see also U.S. CONST. amend. IV.

38. Conder, Jr., *supra* note 8, at 7 (quoting *Brower v. Cnty. of Inyo*, 489 U.S. 593, 597 (1989)).

39. *Id.* at 8 (citing *EJS Properties, LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012)); see U.S. CONST. amend. XIV.

40. U.S. CONST. amend. XIV.

41. Conder, Jr., *supra* note 8, at 8 (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)).

42. Conder, Jr., *supra* note 8, at 8 (citing *Prater v. City of Burnside*, 289 F.3d 417, 431 (6th Cir. 2002) (quoting *Salerno*, 481 U.S. at 746)).

43. Conder, Jr., *supra* note 8, at 9 (quoting *Kenter v. City of Sanibel*, 750 F.3d 1274, 1279 (11th Cir. 2014) (quoting *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc))).

44. *Paul v. Davis*, 424 U.S. 693, 712–13 (1976) ("While there is no 'right of privacy' found in any specific guarantee of the Constitution, the Court has recognized that 'zones of privacy' may be created by more specific constitutional guarantees and thereby impose limits upon government power.").

45. *Marsh v. County of San Diego*, 680 F.3d 1148, 1152 (9th Cir. 2012).

46. *Id.*

right to privacy over her child's death images."⁴⁷ The Court noted the right to privacy under the Fourteenth Amendment protects an individual's interest in avoiding disclosure of certain personal matters as well as the interest in making certain important decisions.⁴⁸ In its analysis, the Ninth Circuit cited a Supreme Court case on the subject, in which the Court held that "the right to 'personal privacy' included the 'surviving family members' right to personal privacy with respect to their close relative's death scene images."⁴⁹ The Ninth Circuit's and the Supreme Court's findings are consistent with common law's longstanding recognition of the same privacy rights.⁵⁰

III. THE BRYANT V. LOS ANGELES COUNTY CASE

On January 26, 2020, NBA star Kobe Bryant and his young daughter, Gianna, left on a helicopter with several other young girls, their parents, and coaches for a basketball tournament in Thousand Oaks.⁵¹ The helicopter entered dense fog, dropped rapidly, and "crashed into the foothills of the Santa Monica mountains, killing everyone on board" including Kobe Bryant and his daughter.⁵² Vanessa Bryant, widow of Kobe Bryant, filed a § 1983 claim against the County of Los Angeles, the Los Angeles County Sheriff's Department, the Los Angeles County Fire Department, and a number of Los Angeles County deputies for taking and sharing photos of her husband's and daughter's remains at the crash site.⁵³

A. Allegations

Shortly after Mrs. Bryant learned of the crash and tragic death of her husband and young daughter, she met with Sheriff Villanueva along with the other victims' families at the Sheriff's station in Lost Hills.⁵⁴ She expressed concern about photographers, paparazzi, and members of the public gaining access to the site and taking photos.⁵⁵ Sheriff Villanueva "assured her that his deputies were securing the scene,"⁵⁶ but that was not the case—Mrs. Bryant alleged his deputies used personal

47. *Id.* at 1160.

48. *Id.* at 1153 (citing *Whalen v. Roe*, 429 U.S. 589, 599–600 (1977)).

49. *Marsh*, 680 F.3d at 1153 (quoting *Nat'l Archives and Rec. Admin. v. Favish*, 541 U.S. 157, 170 (2004)).

50. *Marsh*, 680 F.3d at 1154 (quoting *Favish*, 541 U.S. at 168 (The "well-established cultural tradition acknowledging a family's control over the body and death images of the deceased has long been recognized at common law.")).

51. First Amended Complaint, *supra* note 1, at 1.

52. *Id.*

53. *Id.* at 3.

54. *Id.* at 7.

55. *Id.*

56. *Id.* at 7.

cell phones to take photos of the crash site, along with photos of her deceased family members and the other victims.⁵⁷ The Sheriff's Department later confirmed this allegation in an investigatory report, noting that "one deputy in particular took between 25 and 100 photos of the crash scene . . . [which] were focused directly on the victims' remains."⁵⁸ The report also noted that the deputies who took these photos had "no conceivable investigatory purpose."⁵⁹

Within days, the photos spread across the Department as deputies shared them not only with one another via text and AirDrop, but also with other colleagues under circumstances that had nothing to do with investigating the crash.⁶⁰ Mrs. Bryant further reported in her complaint that the National Transportation Safety Board handled the investigation of the crash, further illustrating that any discussions or sharing of crash site photos proved to be nothing more than gossip within the Sheriff's Department.⁶¹ She also alleged that members of the Los Angeles County Fire Department did the same, some showing up hours after the crash to take photos of the scene for reasons unrelated to any genuine government purpose.⁶²

Mrs. Bryant specifically identified Deputies Rafael Mejia, Joey Cruz, Michael Russell, and Raul Versales as those who took photos and shared them — absent any legitimate investigatory purpose.⁶³ Deputy Mejia confessed to investigators that he took and shared the photos with a female deputy directing traffic near the scene and Deputy Cruz, stating that "curiosity got the best of [them]."⁶⁴ Mrs. Bryant alleged Deputy Mejia "willfully destroyed evidence of his wrongdoing" by deleting the photos from his personal cell phone after learning a complaint had been filed with the Sheriff's Department "regarding improper sharing of photos of the crash victims' remains."⁶⁵

Mrs. Bryant also alleged that Deputy Cruz obtained several photos of the Bryants' remains and shared them with members of the public—including his niece—without any legitimate governmental interest, and having no part in

57. *Id.* at 8.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* (alleging that because the National Transportation Safety Board—not the Los Angeles County Sheriff's Department—handled the investigation of the helicopter crash, deputies in the Sheriff's Department had no professional purpose in seeing, sharing, or possessing the photos).

62. *Id.* at 8–9.

63. *Id.* 8–13.

64. *Id.*

65. *Id.* at 10.

investigating the accident.⁶⁶ Later, at a bar in Norwalk, California, Cruz “boasted that he had worked at the scene of the accident where Kobe Bryant had died,” showing the photos to another person at the bar and the bartender.⁶⁷ Mrs. Bryant’s complaint also stated the bar’s security footage shows Deputy Cruz zooming in and out on the photos of the bodies.⁶⁸ After learning a complaint had been filed with the Sheriff’s Department, he too deleted the photos and text messages from his phone.⁶⁹ Deputy Russell expressed curiosity and asked Deputy Cruz to send him the photos from the day of the accident which he shared with a personal friend, and Deputy Versales shared them with other members of the Department—both Deputies also deleted such photos after the complaint was filed.⁷⁰

The complaint filed with the Sheriff’s Department came from a patron at the bar where Deputy Cruz shared the disturbing photos.⁷¹ The patron sent an email, expressing concern and stated that it was “very inappropriate for that deputy to be there at that environment, showing those pictures to other individuals.”⁷² This kind of complaint, under standard circumstances, would have led to an internal investigation, but Sheriff Villanueva “did not follow protocol.”⁷³ He did not collect cell phones or try to determine how many photos existed, nor did he alert the family members of the existence of such photos.⁷⁴ Instead, he called the deputies into his office and asked that they delete the photos and any photos they had shared.⁷⁵ He informed them that if they did so, they would not face discipline.⁷⁶ The Sheriff and “the Department took no further action to investigate or contain the spread of the photos.”⁷⁷ Furthermore, when asked about the incident, Jorge Valdez, Captain of the Los Angeles County Sheriff’s Department, claimed he was “unaware of any complaint” and stated there was no order to delete the photographs.⁷⁸ However,

66. *Id.* at 10–11.

67. *Id.* at 11.

68. *Id.*

69. *Id.*

70. *Id.* at 12–14.

71. *Id.* at 14–15.

72. *Id.*

73. *Id.* at 15 (“Under normal protocol, this complaint would have triggered a formal inquiry and/or an internal affairs investigation. But Sheriff Villanueva did not follow protocol. He did not conduct a standard investigation or collect, inspect, or search cell phones to determine how many photos existed, whether and how they had been transmitted, or whether they were stored on the cloud. He did not inform the L.A. County Office of the Inspector General. Most importantly, he did not alert the victims’ families of the misconduct or the existence of the photos.”).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 16.

Mrs. Bryant's complaint alleged Captain Valdez was "personally involved" in responding to the complaint and actually spoke to the patron who filed it.⁷⁹

Mrs. Bryant further argued that though the Ninth Circuit recognizes "that individuals have a substantive due process right under the United States Constitution to control the death images and physical remains of deceased family members," the Sheriff's and Fire Departments had no policies in place to prevent violations of such rights.⁸⁰ However, months later, the Sheriff's Department added a new section to its Manual of Policies and Procedures, prohibiting "any unauthorized release or sharing" of photographs taken at scenes containing human remains.⁸¹ According to interviews with Department investigators, at the time of the helicopter crash, the deputies involved lacked awareness of any policies prohibiting the use of personal cell phones to photograph accident scenes.⁸² Though the Department did have a general policy prohibiting personal cell phone use to capture work-related scenes, Mrs. Bryant alleged the Department failed to train its deputies on this policy.⁸³ As a result of the actions and inactions of the deputies and the Department, Mrs. Bryant claimed she and her family suffered from severe emotional distress, fearing they may one day confront one of the leaked photographs online.⁸⁴

B. Section 1983 Cause of Action

Mrs. Bryant's first cause of action was a § 1983 claim involving deprivation "of her substantive due process right to control the physical remains, memory, and death images of her deceased husband and child."⁸⁵ Under this cause of action, she demonstrated the required elements of a § 1983 claim: (1) deprivation of her constitutionally protected right of privacy (2) that was proximately caused (3) by the defendants (4) under color of law and within the scope of their duties (5) as a result of implementation of a policy, custom, or procedure.⁸⁶ She proved the "color of law" requirement by reiterating the Deputy Defendants and other Department members took the gruesome photographs "while in uniform, on duty, and in an area

79. *Id.*

80. *Id.* at 18–19; *see also Marsh*, 680 F.3d at 1154.

81. First Amended Complaint, *supra* note 1, at 19 (The new policy states the following: "In order to preserve the dignity and privacy of the deceased and their families, scenes where human remains are present shall only be photographed/recorded by Scientific Services Bureau or the Department of Medical Examiner (DME) personnel. . . . Any photograph, recording, or record produced by a Department member . . . shall be considered the sole property of the Department.").

82. *Id.* at 19–21.

83. *Id.* at 21–22.

84. *Id.* at 29–31.

85. *Id.* at 31–32; *see also Marsh*, 680 F.3d at 1154.

86. *See* First Amended Complaint, *supra* note 1, at 32–34; *see also Schwartz*, *supra* note 7, at 527.

where public access was prohibited and only first responders (such as Sheriff's and Fire Department personnel) were allowed."⁸⁷ Moreover, the Deputy Defendants and Department members also shared the photographs "in connection with or by virtue of their employment with the Sheriff's or Fire Department."⁸⁸ Because these actions were consistent with the Department's custom and that custom deprived Mrs. Bryant and her family of a constitutionally protected right, a public entity such as the Los Angeles County Sheriff's or Fire Department should be liable.⁸⁹ In her prayer for relief, Mrs. Bryant asked for compensatory damages, nominal damages, punitive damages, and costs and attorneys' fees.⁹⁰

C. Jury Verdict

The trial lasted eleven days, and after only a few hours of deliberating, a federal jury awarded Mrs. Bryant \$16 million for her § 1983 cause of action.⁹¹ The jurors found the defendants infringing on Mrs. Bryant's constitutionally protected rights by failing to implement "adequate training and policies to prevent employees from taking and sharing photos of dead bodies for no purpose."⁹² The jury also found "that there [had] been a long-standing practice among deputies of sharing death images for no legitimate reason."⁹³ The jury rendered its verdict only on Mrs. Bryant's 42 U.S.C. § 1983 cause of action.⁹⁴

IV. LEGAL & PSYCHOLOGICAL IMPACT OF *BRYANT*

Bryant is a noteworthy § 1983 case for many reasons. Its jury verdict aligns with § 1983's legal history and serves one of the general purposes for which § 1983 was enacted—to compensate plaintiffs whose constitutional rights have been violated.⁹⁵ Psychologically, *Bryant* succeeds by emphasizing that emotional distress has been and continues to be a real, compensable injury under the law. Nonetheless, the case's unintended legal consequences may fetter its positive impact. *Bryant*'s incredibly large monetary award further expands the breadth of recovery under § 1983, perhaps beyond what Congress intended. If left unchecked, incredibly large

87. First Amended Complaint, *supra* note 1, at 32.

88. *Id.*

89. *Id.* at 32-34; see *Monell*, 436 U.S. at 690 (holding that municipalities and other local governments may be liable under § 1983 claims).

90. First Amended Complaint, *supra* note 1, at 39.

91. Alene Tchekmedyan, *Jury Orders L.A. County to Pay \$31 Million in Kobe Bryant Crash Photo Sharing Case*, L.A. TIMES, <https://www.latimes.com/california/story/2022-08-24/jury-vanessa-kobe-bryant-photos-trial-sheriff-deputies> (Aug. 24, 2022).

92. *Id.*

93. *Id.*

94. Verdict and Settlement Summary, *Bryant*, No. 2:20-CV-09582 (C.D. Cal. Aug. 24, 2022).

95. *Freedom from Religion*, *supra* note 10, at 1472; see also 42 U.S.C. § 1983.

monetary awards for emotional distress under § 1983 may lead to excessive penalties against state governments and municipalities, ultimately hurting taxpayers rather than deterring misconduct.

A. *Legal Significance*

Bryant aligns with § 1983's legal history and emphasizes its necessity even today. *Bryant* is consistent with *Monroe* in that it allows recovery under § 1983 regardless of whether the department's or the deputies' conduct complied with the law.⁹⁶ In other words, even if the department or the state of California had a policy or law directly at odds with the defendants' conduct, § 1983 still applies. *Bryant* is also consistent with *Monell* in that it allows suit under

§ 1983 against a municipality.⁹⁷ Because Mrs. Bryant named Los Angeles County as a defendant in her lawsuit, to succeed in a claim against the county, she had to prove the constitutional violation was the result of a policy, custom, or procedure.⁹⁸ Her ability to show the defendants acted in accordance with the general custom of the sheriff's department and fire department persuaded the jury to find for Mrs. Bryant on this element of the claim.⁹⁹ *Bryant's* consistency with *Monroe* and *Monell* further highlights the unchanging necessity of § 1983 throughout history. The Supreme Court's interpretation of the statute in those early cases still prevails and works today.

Though the verdict itself is consistent with the original purpose of § 1983, the negative policy implications of a \$16 million award may be inconsistent with that purpose. Requiring Los Angeles County to pay \$16 million in damages will certainly protect Mrs. Bryant's Fourteenth Amendment rights, but at the expense of the county's budget. Ultimately, the award may only hurt the people of Los Angeles, as a portion of their tax dollars fund the *Bryant* award instead of other beneficial endeavors. It begs the question of whether Congress considered the types of harm for which plaintiffs would be compensated under § 1983. Could Congress have imagined, at the time, that the statute would be used to compensate harms such as emotional distress, a type of harm so subjective that it might expose municipalities and state governments to boundless penalties? Congress might have imposed a limit or a cap on damages had it known the law would evolve to include emotional distress damages in legal remedies. On the other hand, perhaps the *Bryant* award is worth over \$16 million to eliminate future invasion of privacy claims under

96. See *Monroe*, 365 U.S. at 187.

97. See *Monell*, 436 U.S. at 690.

98. *Id.* at 690–91.

99. See Tchekmedyan, *supra* note 93.

§ 1983. The *Carey* Court said it best: emotional distress damages are “essentially subjective.”¹⁰⁰

B. Psychological Significance

Neuroscience studies have found physiological evidence of emotional harm.¹⁰¹ These studies observe “the primary structural and chemical systems of the brain that are affected when an individual experiences trauma.”¹⁰² Undoubtedly, Mrs. Bryant and her family suffered severe emotional distress during the Los Angeles County investigation. Her emotional distress is twofold, with current psychological trauma resulting from the defendants’ conduct, as well as future psychological trauma resulting from fear of the photos surfacing. Chronic fear of that nature can have disastrous effects on a person’s mental health.¹⁰³ Fear affects certain parts of the brain, activating the body’s stress response to protect it from an “external threat.”¹⁰⁴ If the brain’s perception of the external threat never goes away, a person may experience dissociation, helplessness, phobic anxiety, mood swings, or intrusive thoughts.¹⁰⁵ Unfortunately, Mrs. Bryant may experience the same if she continues to live in a state of chronic fear and anxiety.

These findings certainly emphasize the importance of recognizing emotional distress as a real, compensable injury under § 1983,¹⁰⁶ but whether Mrs. Bryant’s anguish accurately amounts to the jury’s determination of damages is another question entirely. The Supreme Court in *Carey* recognized that emotional distress requires “proof that [the] injury actually was caused.”¹⁰⁷ Because emotional distress is difficult to prove and difficult to equate with a monetary value, “[j]uries must be guided by appropriate instructions, and an award of damages must be supported by competent evidence concerning the injury.”¹⁰⁸ Did the jury award Mrs. Bryant \$16 million based on competent evidence? If neuroscientists were to study her brain, would they find physiological signs of trauma or the effects of chronic fear? Without such proof, emotional distress damages will always be “essentially

100. See *Carey*, 435 U.S. at 254.

101. Betsy J. Grey, *Neuroscience and Emotional Harm in Tort Law: Rethinking the American Approach to Free-Standing Emotional Distress Claims*, RESEARCHGATE 1, 9–10 (2011).

102. *Id.* at 2.

103. Jaime Rosenberg, *The Effects of Chronic Fear on a Person’s Health*, AM. J. MANAGED CARE, <https://www.ajmc.com/view/the-effects-of-chronic-fear-on-a-persons-health> (Nov. 11, 2017).

104. *Id.*

105. *Id.*

106. Calvert Magruder, *Mental and Emotional Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033, 1066–67 (1936).

107. *Carey*, 435 U.S. at 264.

108. *Id.* at 264 n.20 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)).

subjective.”¹⁰⁹ In her complaint, Mrs. Bryant submitted evidence of the defendants’ misconduct, proving the cause of her current pain and suffering.¹¹⁰ However, to this day, none of the photos taken by the Defendant Deputies or the Fire Department have surfaced.¹¹¹ Thus, her only evidence to support a finding of future pain and suffering is through fear of the photos appearing, and such evidence is likely insufficient to justify the \$16 million award.

V. THE KOBE BRYANT ACT

Despite the subjective nature of emotional distress claims, *Bryant* profoundly impacted the state of California. In response to the case, Governor Gavin Newsom enacted the Kobe Bryant Act, “mak[ing] it a crime for peace officers and other first responders to take unauthorized photos of dead people at the scene of a crime or accident.”¹¹² The bill specifically addresses the invasion of privacy of first responders, amending and adding to California’s penal code.¹¹³ The Legislative Counsel’s Digest states that the “bill would require an agency that employs first responders to . . . notify those first responders of the prohibition imposed by the bill[, and by] increasing the duties of local agencies, the bill would impose a state-mandated local program.”¹¹⁴ The bill also authorizes “a search warrant to be issued” to recover photographs or other evidence proving first responders’ misconduct.¹¹⁵ The bill makes each violation a misdemeanor punishable by a fine up to \$1,000.¹¹⁶ Governor Newsom signed the bill on September 28, 2020, and the bill went into effect on January 1, 2021.¹¹⁷

The Kobe Bryant Act, in essence, provides the criminal component that § 1983 lacks. Section 1983 exists to compensate plaintiffs for constitutional violations and to force state actors to comply with the Constitution and, specifically, the

109. *Id.*

110. *See generally* First Amended Complaint, *supra* note 1, at 1.

111. Alene Tchekmedyan & Michael Finnegan, *Vanessa Bryant Says Sheriff’s Deputies Violated the Dignity of Her Husband and Daughter*, L.A. TIMES (August 19, 2022), <https://www.latimes.com/california/story/2022-08-19/vanessa-bryant-kobe-crash-photos-los-angeles-sheriff-testimony>.

112. Paul Pringle & Alene Tchekmedyan, *Newsom Signs New Privacy Law Prompted by Crash that Killed Kobe Bryant*, L.A. TIMES (Sept. 29, 2020, 7:45 PM), <https://www.latimes.com/world-nation/story/2020-09-29/new-california-law-prompted-by-crash-that-killed-kobe-bryant>.

113. Cal. Assemb. B. 2655, 2019–2020 Gen. Assemb., Reg. Sess. at 1 (Ca. 2021) [hereinafter California Assembly Bill].

114. *Id.*

115. *Id.*

116. *Id.* at 2.

117. *Id.*

Fourteenth Amendment.¹¹⁸ Initially, § 1983 was the only way to accomplish this purpose because many plaintiffs lacked a remedy under state law or state actors refused to enforce existing laws.¹¹⁹ In the same way, Mrs. Bryant expressed her privacy concerns to the Sheriff's Department long before she filed suit.¹²⁰ Perhaps her § 1983 claim was indeed the only way to compel the Los Angeles County Sheriff's Department to comply with the Fourteenth Amendment and protect her and her family's right to privacy. Now that California has a criminal law addressing the subject, a state actor will face monetary fines and charges of misdemeanor if in violation of the Act,¹²¹ providing an additional layer of deterrence lacking in Mrs. Bryant's case.

As California enforces the Kobe Bryant Act, § 1983 claims like *Bryant* may become less frequent and less necessary. If claims like *Bryant* become less frequent, opportunities for excessive damage awards against municipalities in California may also decline. The Act deters misconduct of state actors by threatening criminal consequences without the negative implications of excessive damage awards that may exist under § 1983. Imposing a thousand dollar fine and charging an individual with a misdemeanor seems more reasonable and more efficient than an expensive legal battle and a \$16 million penalty. Additionally, the Act places the burden on state and local agencies to inform first responders of the contents of the bill, filling in the gaps for agencies that, like the Los Angeles County Sheriff's Department, initially lacked policies on the subject. Also, the Act's authorization of search warrants to recover improperly taken photographs is another beneficial component of the bill. In *Bryant*, this component would have allowed, and likely required, the Defendant Deputies' phones to be searched to recover and prevent the spread of the photographs. Such a result might have completely eliminated Mrs. Bryant's fear of the photos one day surfacing.

Though the Kobe Bryant Act protects the specific constitutional right at issue in *Bryant*, the Act cannot compensate a plaintiff suffering from a constitutional violation—no criminal statute can. The Act plays only a small part in protecting individuals like Mrs. Bryant. It creates a number of safeguards to prevent what happened in the *Bryant* case, but its safeguards do not ensure that it will never happen again. The Act deters future misconduct, but § 1983 remedies the misconduct. States and legislatures can enact specific laws like the Kobe Bryant Act to protect every known and recognized constitutional right in America. Even still, there must be a way for individuals to recover when those laws are broken. In

118. Conder, Jr., *supra* note 8, at 1.

119. *Id.*; *Monroe*, 365 U.S. at 174.

120. First Amended Complaint, *supra* note 1, at 7.

121. California Assembly Bill, *supra* note 115, at 2.

that sense, § 1983 will always be essential to compensate plaintiffs, like Mrs. Vanessa Bryant, whose constitutional rights have been violated even with adequate state laws in effect.

VI. CONCLUSION

What happened surrounding the helicopter crash that killed Kobe Bryant and his young daughter was horrific, inappropriate, and astounding. Fortunately, the *Bryant* jury rightly recognized that the psychological trauma Mrs. Bryant and her family suffered, and continue to suffer, are incredibly real, compensable injuries under the law. Constitutional violations often result in some sort of emotional distress or suffering, especially right to privacy violations. However, emotional distress damages are entirely subjective, at times even based on hypothetical harm rather than actual evidence. Finding a balance between compensating plaintiffs and protecting local governments from the subjectivity of emotional distress damages may be the best way to uphold the purpose of § 1983 and to protect the statute from abuse. Perhaps one day juries and courts will use scientific evidence of physiological and psychological harm to determine emotional distress damages. Until then, emotional distress damages under § 1983 may continue to soar and, at what rate, no one can be sure.