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TOWARD IMPROVING POLICING IN AFRICAN AMERICAN COMMUNITIES

MELVIN L. OTEY*

ABSTRACT

The distressed state of police relations with African American communities has enraptured national and international attention recently. Demonstrations and protests have persisted while pundits and interested parties have debated the matter in public and private spheres. No one can deny that disturbing problems exist, and reasonable people recognize that contributing factors are stubborn and complex. This article briefly surveys the environmental circumstances that have given rise to recent troubles in New York City, New York; Ferguson, Missouri; Cleveland, Ohio; and Baltimore, Maryland, because they are illustrative of similar troubles in many African American communities nationwide. The article then proffers five proactive initiatives local police departments should implement in order to improve the tenor and effectiveness of their relations with these communities, namely (1) provide comprehensive emotional and psychological training; (2) initiate intensive cultural competency education; (3) apologize for past transgressions; (4) broadly deploy body cameras; and (5) engage in cooperative crisis management planning with community leaders.

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INTRODUCTION

“Black Lives Matter.” “Hands Up, Don’t Shoot.” “I Can’t Breathe.” In 1967, the President’s Commission on Law Enforcement and Administration of Justice called poor police relations with minority

communities “as serious as any problem the police have today.”¹ Sadly, almost 50 years later, that appraisal is still dreadfully accurate. More specifically, systemic flaws persistently manifest in, among other ways, a daunting pattern of unconstitutional abuses against African Americans by law enforcement officers. In some places, the violations have been so outrageous and persistent that citizens simply cannot view the blue police uniform as symbolic of law and order.² Rather, generations, particularly (but not solely) generations of African American males, have reasonably come to view it as emblematic of menacing, abusive occupation.³ There are

¹ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 99 (1967), available at <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

² See *id.* at 102 (observing that, when impolite and abusive actions and attitudes are directed against minority-group citizens, “it is particularly likely to lead, for quite obvious reasons, to bitterness in the community”). See also Michael Martinez, *Former Oklahoma City Police Officer Daniel Holtzclaw Found Guilty of Rape*, CNN (Dec. 10, 2015), <http://www.cnn.com/2015/12/10/us/oklahoma-daniel-holtzclaw-trial/index.html> (officer accused of raping thirteen African American women while on duty); Artemis Moshaghian and Sara Sidner, *\$1.5 Million Settlement for Woman Beaten by California Patrol Officer*, CNN (Sept. 25, 2014), <http://www.cnn.com/2014/09/25/justice/california-police-videotape-beating/> (in July 2014, a California Highway Patrol officer straddled and beat an unarmed 51-year-old African American great-grandmother along the Santa Monica Freeway in broad daylight).

³ See *Illinois v. Wardlow*, 528 U.S. 119, 132 (2000) (Stevens, J., concurring in part and dissenting in part) (averring that fear among minorities “that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer’s sudden presence” has been validated by law enforcement investigations into their own practices and that “the evidence supporting the reasonableness of these beliefs is too pervasive to be dismissed as random or rare, and too supportive to be disparaged as inconclusive or insufficient.”); *Washington v. Lambert*, 98 F.3d 1181, 1187 (9th Cir. 1996) (“[W]e cannot help but be aware that the burden of aggressive and intrusive police action falls disproportionately on African-American, and sometimes Latino, males.”); *C.E.L. v. State*, 24 So. 3d 1181, 1191 (Fla. 2009) (Pariente, J., concurring) (agreeing that “minorities and those residing in high-crime areas may flee upon sight of police, not because of criminal activity, but because of a well-founded fear of police, rooted in a perceived mistreatment of minorities by the police”); *NAACP v. Detroit Police Officers Ass’n*, 591 F. Supp. 1194, 1205 (E.D. Mich. 1984) (noting that, according to Detroit’s police Chief and Deputy Chief, “[P]rior to 1974 when the City first seriously began to eliminate racial segregation in the Detroit Police Department, the Department was viewed as an occupation army by the black citizens of Detroit. This . . . reduced the effectiveness of the police in that they could not get witnesses to testify or cooperate in solving crimes, controlling crowds, or in crime prevention”); Kindaka Sanders, *A Reason to Resist: The Use of Deadly Force in Aiding Victims of Unlawful Police Aggression*, 52 San Diego L. Rev. 695, 740 (2015) (“Many members of [minority] communities as well as scholars and commentators view the police not as an organization of public servants but as an occupying force present primarily to control the community through fear, intimidation, and incarceration”); Vanita Gupta, Principal Deputy Assistant Attorney General, Remarks at the Colorado Lawyers Committee Annual Lunch (May 19, 2015), available at <http://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-vanita-gupta-delivers-remarks-colorado> (observing that, in Ferguson, unlawful police practices severely undermined the public trust, made local residents less safe, and created an intensely charged atmosphere where residents feel under siege by those charged to serving and protecting them); Kevin Johnson, Meghan Hoyer & Brad Heath, *Local Police Involved in 400 Killings Per Year*, USA TODAY (Aug. 15, 2014), <http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/> (“Nearly two times a week in the United States, a white police officer killed a black person during a seven-year period ending in 2012, according to the most recent accounts of justifiable homicide reported to the FBI.”); CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE ET AL., INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE, 6 (2014) (noting that some Cleveland residents view the city’s Police Division as “an occupying force instead of a true partner and resource in the community it serves.”); POLICE EXECUTIVE RESEARCH FORUM, OVERCOMING THE CHALLENGES AND CREATING A REGIONAL

real problems with policing in the land of freedom and opportunity, and it is high time for dramatic change.

It is important to note at the outset that any criticism of policing properly begins with the sober recognition that enforcing the law is hard,⁴ and all too often thankless, work.⁵ Americans owe a debt of gratitude to the men and women who serve and protect their communities, enabling them to live quiet and peaceable lives. Most officers have noble character and enter the profession for commendable reasons.⁶ These are the people who run into danger when others run away. Indeed, citizens should generally be thankful that they are able to call on the police to maintain and restore order rather than resort to vigilantism when others operate outside the bounds of the law.

These things being said, recent events have shined a spotlight on the reality that police-community relations in some American cities are tenuous, at best, and sometimes altogether toxic. In cities all over the United States, Americans have poured out *en masse* to protest and register their outrage over a series of police killings of unarmed African American males, and tensions have been extremely high. In some instances, lawless ne'er-do-wells numbered among the sincere protestors have stoked the fires. In others, law enforcement agencies have, sometimes preemptively and sometimes responsively, made dramatic showings of force, ostensibly to maintain order, that deepened rifts brought about by the prior conduct of some of their officers.

A. Cause for Alarm

Even one high-profile instance of police misconduct can dramatically shake community confidence and seriously tarnish the image of an entire

APPROACH TO POLICING IN ST. LOUIS CITY AND COUNTY 50 (2015) (“In general, the message from many young people—especially young African-Americans—is that they often see the police as a threat, not as a protector.”).

⁴ Detroit Police Officers Ass’n v. Young, 446 F. Supp. 979, 1016 (E.D. Mich. 1978) (“No one can doubt that a police officer is a professional in every sense of the word. Ordinarily he makes more decisions and exercises broader discretion day in and day out than a judge does in a week. Indeed, these professionals have only minutes – sometimes seconds – to make decisions that perplex experienced judges for months, who may even then divide five to four or two to one. Our society expects that these professional officers will not only enforce the law in determining what constitutes a constitutional arrest or search but also act as a curbside psychiatrist, social worker, legal adviser, minister and doctor.”).

⁵ State v. Norton, 2002 Tenn. Crim. App. LEXIS 592, at *1, *28 (July 18, 2002) (Smith, J., concurring) (“Too often inadequate compensation and little appreciation accompany the public’s demand for better policing of our neighborhoods and streets”).

⁶ Cleveland v. City of Elmendorf, Tex., 388 F.3d 522, 529 (5th Cir. 2004) (“Any individual willing to undertake the dangerous jobs of a police officer or firefighter must possess some altruistic sense of civic responsibility”).

police department.⁷ Predictably, then, multiple police homicides in a span of only a few months have proven calamitous.⁸ Citizens concerned with fairness, truth, and justice have rightly been distressed and disturbed by the recent spate of police killings of African Americans, mostly males, and the ensuing civil unrest in cities across the Nation. The most prominent deaths include Eric Garner in New York City, Michael Brown in Ferguson, Tamir Rice in Cleveland, and Freddie Gray in Baltimore – all unarmed males killed between July 2014 and April 2015, but several others accompany them on the growing list of highly publicized wrongful or questionable fatalities.⁹

There is, of course, an obvious and strong racial element in these episodes of police violence and community protest.¹⁰ The overwhelming

⁷ William Farrar, *Operation Candid Camera: The Rialto Police Department's Body-Worn Camera Experiment*, 81 THE POLICE CHIEF, Jan. 2014, at 20.

⁸ Justin George, *Residents Air Complaints about Police at Justice Department Forum*, BALTIMORE SUN (Apr. 16, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-police-town-hall-meeting-20150416-story.html#page=1> (“lethal interactions between law enforcement officers and unarmed black males have grown into a pressing issue facing police departments across the country”); Anna Stolley Persky, *Policing the Police* WASHINGTON LAWYER (Jan. 2016), <https://www.dcb.org/bar-resources/publications/washington-lawyer/articles/january-2016-reviewing-law-enforcement.cfm> (quoting the executive director of the partnership for Civil Justice Fund as saying, “We’re seeing what must be identified as an epidemic of police violence all over the country”).

⁹ See, e.g., *People v. Meherle*, 206 Cal. App. 4th 1125 (2012) (affirming involuntary manslaughter verdict where officer fatally shot Oscar Grant, a 22 year-old unarmed African American man, in the back as Grant lay face down on a transit platform); *Morse v. S.F. Bay Area Rapid Transit Dist. (BART)*, 2014 U.S. Dist. LEXIS 17369, at *3 (N.D. Cal. Feb. 11, 2014) (“Grant’s death set off a series of large demonstrations, including some riots . . .”); John Eligon & Ashley Southall, *Black Lives Matter Activists Vow Not to Cower After 5 Are Shot*, N.Y. TIMES (Nov. 24, 2015), http://www.nytimes.com/2015/11/25/us/minneapolis-shooting-protest-police-jamar-clark.html?_r=0 (unarmed 24 year-old Jamar Clark shot and killed by white Minneapolis police officer); David A. Graham, *The Shockingly Familiar Killing of Walter Scott*, THE ATLANTIC (Apr. 8, 2015), <http://www.theatlantic.com/national/archive/2015/04/the-shockingly-familiar-killing-of-walter-scott/390006>; Jason Law & Greg Noble, *UC Independent Investigation: Fatal Shooting of Sam DuBose by Officer Ray Tensing ‘Not Justified’*, WCPO CINCINNATI (Sept. 11, 2015), <http://www.wcpo.com/news/local-news/colleges/uc-news/uc-independent-investigation-decries-fatal-shooting-of-sam-dubose-by-officer-ray-tenzing> (“The fatal shooting of Sam DuBose by University of Cincinnati officer Ray Tensing was ‘not justified’ and violated department policy, according to an independent investigative report . . .”); Jason Meisner, Jeremy Gorner & Steve Schmadeke, *Chicago Releases Dash-Cam Video of Fatal Shooting After Cop Charged with Murder*, CHICAGO TRIBUNE (Nov. 24, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-cop-shooting-video-laquan-mcdonald-charges-20151124-story.html> (unarmed 17 year old Laquan McDonald shot and killed by white Chicago police officer); Sara Sidner, Steve Almasy & Joshua Berlinger, *Jamar Clark shooting: Witness Says He Was in Handcuffs*, CNN (Nov. 22, 2015), <http://www.cnn.com/2015/11/21/us/minneapolis-jamar-clark-police-shooting/>.

¹⁰ See POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 7 (“Issues of race and racial bias lie at the heart of many of these problems.”); Redditt Hudson, *I’m a Black Ex-Cop, and This is the Real Truth about Race and Policing*, VOX (May 28, 2015), <http://www.vox.com/2015/5/28/8661977/race-police-officer> (“Institutional racism runs throughout our criminal justice system. Its presence in police culture, though often flatly denied by the many police apologists that appear in the media now, has been central to the breakdown in police-community relationships for decades in spite of good people doing police work.”); Libor Jany & David Chanen, *3 Men in Custody, 1 Released in Minneapolis 4th Precinct Protest Shooting*, STAR TRIBUNE (Nov. 25, 2015), <http://www.startribune.com/police-searching-for->

majority of the officers involved in these recent killings have been Anglo American, i.e., Caucasian or “white,” and the victims have been African American, or “black,”¹¹ so each death seemingly reinforces the reality that racism and intolerance are for many African Americans, whether young or old, rich or poor, a persistent part of daily life.¹² Some clearly believe that African American lives are being officially and unofficially discounted in ways that continually result in unnecessary homicides by police officers.¹³ The recent wave of killings, then, has fed long-standing fears, exacerbated rifts between police departments and local communities, and undermined the rule of law.¹⁴

All of this raises serious constitutional concerns as well. Physically abusive governmental conduct implicates the Fourth Amendment’s prohibition against unreasonable seizures.¹⁵ Moreover, the fact that so many of the recent high-profile incidents involve lethal, rather than merely excessive, force against unarmed citizens necessarily exacerbates the alarm. “The intrusiveness of a seizure by means of deadly force is unmatched,” and the use of deadly force “frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment.”¹⁶

suspects-who-fired-into-crowd-at-blm-protest-outside-4th-precinct/353154811/ (five protesters were shot near a Black Lives Matter demonstration in Minneapolis in an apparently racially motivated attack).

¹¹ The author uses terms like “black” and “white” in discussing race as an accommodation since discussions of race in America have historically been cast in such terms but notes that the designations are obviously inaccurate in describing the hue of distinct groups of people and they tend to falsely exacerbate any appropriate distinctions that can be made on the basis of humans’ skin tone. See Juan F. Pena, *The Black/White Binary Paradigm of Race: The Normal Science of American Racial Thought*, 85 CALIF. L. REV. 1213, 1219 (1997).

¹² *Washington v. Lambert*, 98 F.3d 1181, 1188 (9th Cir. 1996); Tracey Maclin, “*Black and Blue Encounters*” - *Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?*, 26 VAL. U. L. REV. 243, 253 (1991).

¹³ George, *supra* note 8 (“dozens of residents—most of them black—inundated federal officials with their assertions that city police have been brutalizing residents with impunity.”).

¹⁴ I. Bennett Capers, *Crime, Surveillance and Communities*, 40 FORDHAM URB. L.J. 959, 982-83 (2013) (“[S]everal high-profile cases of excessive force - Rodney King, Amadou Diallo, Abner Louima, and the shooting deaths of two men during Hurricane Katrina contribute to the perception, at least in minority communities, that the use of excessive force against minorities is endemic.”); PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 79 (“[A]buse of authority—real or imagined—may seriously impair young people’s respect for constituted authority and produce deep resentment.”).

¹⁵ See *Graham v. Connor*, 490 U.S. 386, 394 (1989); *Atkinson v. City of Mt. View*, 709 F.3d 1201, 1207 (8th Cir. 2013) (stating that objectively unreasonable uses of force by law enforcement violate the Fourth Amendment).

¹⁶ *Tennessee v. Garner*, 471 U.S. 1, 9 (1985).

B. Time for Action

In many respects, civil unrest has been the natural consequence of aggressive, sometimes unconstitutional, policing in already volatile environments where communities generally do not trust law enforcement agencies.¹⁷ The outbreaks were predictable, largely because America previously witnessed similar disturbances in the face of perceived civil rights abuses, and scholars have noted the connection.¹⁸ Not only has America seen this before, but the current wave of unrest is likely to sprawl and intensify if significant changes are not made forthwith, because each new instance of police abuse that emerges, whether real or perceived, threatens to inflame the circumstances anew.¹⁹ Because these problems are significant, foreseeable, and continuous, there is no reasonable excuse for failing to substantially redress them.

Fortunately, the time is ripe for change. In times past, it has been relatively easy for those outside minority communities to overlook or deny police abuses because they did not have regular opportunities to observe them personally. However, in the same way that photographic and videographic images of African Americans being savagely beaten and killed had a profound and lasting impact on the public conscience in the 1950s and 1960s, similar imagery is presently being emblazoned on people's minds.²⁰ Depictions of abuse are stoking fervent dialogue.²¹

¹⁷ PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 10 (1967), available at <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> (asserting that an officer can touch off a riot where "he overestimates the seriousness of a situation or his actions are controlled by panic or prejudice," and he consequently hurts or kills someone unnecessarily).

¹⁸ See, e.g., April Walker, *Racial Profiling-Separate and Unequal Keeping the Minorities in Line-The Role of Law Enforcement in America*, 23 ST. THOMAS L. REV. 576, 581-582 (2011) (averring that the "sheer violence and horror" of police attacks on Rodney King, Abner Louima, Amadou Diallo, and Sean Bell, among others, "creates a wide public outrage, which often can lead to mass activism."); Peter L. Davis, *Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Police Brutality for Victims of Police Brutality When the Prosecutor Declines to Prosecute*, 53 MD. L. REV. 271, 276 (1994) ("Because of this publicity, when the state criminal trial of the four police officers who participated in the beating resulted in the virtual acquittal of the officers, the verdict triggered rioting in Los Angeles, scenes of which also were televised repeatedly throughout the country. Viewed together, these events present a fascinating cause-and-effect illustration of the social dysfunction that results from the breakdown of public confidence in the criminal justice system.").

¹⁹ Kevin Cokley, *Improving Race Relations in an Era of Police Brutality*, UT NEWS (June 18, 2015), <http://news.utexas.edu/2015/06/18/improving-race-relations-in-an-era-of-police-brutality> ("The repeated killings of unarmed black men and women by police officers have heightened racial tensions across the country.").

²⁰ Davis, *supra* note 18, at 280 ("The advent of the camcorder has made the epidemic of police brutality more visible nationwide."); Arcynta Ali Childs, *The Power of Imagery in Advancing Civil Rights*, SMITHSONIAN MAG., Oct. 2011, available at <http://www.smithsonianmag.com/arts-culture/the-power-of-imagery-in-advancing-civil-rights-72983041/>; Shaila Dewan, *How Photos Became Icon of Civil Rights Movement*, N.Y. TIMES (Aug. 28, 2005), <http://www.nytimes.com/2005/08/28/us/how->

Consequently, staunch denial is increasingly giving way to reluctant resignation, and reflexive incredulity is yielding to disquiet, even outrage. Thus, America now has a vital opportunity for progress in race relations, generally, and policing in African American communities, more specifically.²²

C. Overview

Given this potentially fleeting window of opportunity, immediate, progressive steps must be taken to curb unnecessary and excessive uses of force and relieve hostilities that have long existed between police departments and African American communities. Admittedly, substantial efforts can and should also be made by leaders and residents within African American communities. However, responsibility for taking the first steps properly lies with the authorities. Indeed,

Citizen hostility toward the police is every bit as disruptive of peace and order, of course, as police indifference to or mistreatment of citizens. . . . However, . . . the duty of taking the initiative clearly devolves on the police, both because they are organized and disciplined and because they are public servants sworn to protect every part of the community. It is an urgent duty.²³

Consequently, the goal of this article is to suggest and justify steps police departments and public officials around the nation should take to reduce incidents of unnecessary and excessive uses-of-force and decrease the

photos-became-icon-of-civil-rights-movement.html?_r=0; *Freedom Rides: Introduction*, HISTORY.COM, <http://www.history.com/topics/black-history/freedom-rides> (last visited Dec. 9, 2015) (“Photographs of the burning Greyhound bus and the bloodied riders appeared on the front pages of newspapers throughout the country and around the world the next day, drawing international attention to the Freedom Riders’ cause and the state of race relations in the U.S.”).

²¹ *Improving Police-Community Relations ‘Boils Down to Leadership’*, HERE & NOW (June 12, 2015), <http://hereandnow.wbur.org/2015/06/12/los-angeles-police-john-mack> (“The tensions between African-American communities and the police officers have become a continuing conversation across the nation as images of the incidents trend on social media and dominate the news.”).

²² *Matter of Dist. Attorney of Richmond Cnty.*, 8 N.Y.S.3d 856, 858 (Sup. Ct. 2014) (noting that this is “a crucial moment in the nation’s history,” where public confidence in the evenhanded application of fairness and impartiality among a diverse citizenry is being questioned); Aquil Basheer, *The Police Must Build Bridges to Black Communities*, THE GUARDIAN (Apr. 9, 2015), <http://www.theguardian.com/commentisfree/2015/apr/09/the-police-must-build-bridges-to-black-communities> (“Following the deaths of Michael Brown, Eric Garner and now Walter Scott, it’s time to look at how relationships between law enforcement and the black community can be repaired to the benefit of all individuals”).

²³ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 100; *see also* POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 6-7 (“Police, with support from elected officials, must take significant steps to build trust and restore relationships with the communities that they serve. This is especially important in the communities that historically have had a contentious relationship with the police.”)

pressures of policing in African American communities, while building trust with residents where it has been virtually non-existent for years or even decades.

This paper will consider the police behaviors that sparked recent bouts of civil protest and recommend steps to potentially help repair damaged police-community relations. In Part I, the recent history of police abuses in New York City, Ferguson, Cleveland, and Baltimore will be briefly surveyed in order to illustrate the circumstances that have corroded public trust in law enforcement in certain communities. In Part II, two proposals are offered to better prepare officers for the pressures of policing in primarily African American communities. Last, Part III proffers three recommendations to help police departments build trust with those communities.²⁴

I. POLICE TENSIONS WITH AFRICAN AMERICAN COMMUNITIES

Race relations in America have improved dramatically, but there are still lingering problems of discrimination, marginalization, and oppression of African Americans by those in socially dominant positions. As part of that larger issue, the burden of aggressive and intrusive police action continues to fall disproportionately on African American males.²⁵ Any credible effort to improve police-community relations, then, must honestly account for the racial discrimination and disparities that produce the pressurized environments in which police abuses and civil unrest proliferate.²⁶ A brief survey of troubles in New York City, Ferguson, Cleveland, and Baltimore, where Eric Garner, Michael Brown, Tamir Rice, and Freddie Gray,

²⁴ The principles and recommendations discussed herein would be applicable, more or less, to other contexts involving police-community tensions, but the context of the current crisis demands specific attention and application to the pressures of policing in African American communities.

²⁵ *Lambert*, 98 F.3d at 1187 (“In balancing the interests in freedom from arbitrary government intrusion and the legitimate needs of law enforcement officers, we cannot help but be aware that the burden of aggressive and intrusive police action falls disproportionately on African-American, and sometimes Latino, males.”); Davis, *supra* note 18, at 285 (“The core problem is . . . the constant, daily battering by police officers of suspects, mostly African-American and Latino”); *Law Enforcement and Violence: The Divide between Black and White Americans*, THE ASSOCIATED PRESS-NORC CENTER FOR PUBLIC AFFAIRS RESEARCH, <http://www.apnorc.org/projects/Pages/HTML%20Reports/law-enforcement-and-violence-the-divide-between-black-and-white-americans0803-9759.aspx>.

²⁶ POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 48 (“Any analysis of policing in St. Louis City and County, and any attempt to improve policing services, must address the issue of race directly and honestly. Race is at the heart of every aspect of this study.”); Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351, 367 (2011) (“Police misconduct affects not only individual members of society, but there is substantial evidence that police abuse negatively impacts the perceived legitimacy of police officers and increases police-community tensions. This is acutely the case among minority groups who are disproportionately impacted by police brutality.”).

respectively, were killed illustrate the depth of the difficulties.

A. *The Homicide of Eric Garner in New York City*

Eric Garner, a forty-three year-old father, died on July 17, 2014, outside a Staten Island convenience store after being choked by a New York City police officer. His death was recorded by a bystander and became the first in the recent line of protested police homicides. In contemplating the circumstances surrounding Garner's death and the outcry that followed, one should note that Garner's death was not anomalous in New York City.

1. New York City's Pre-existing Pattern of Police Abuses

The city has a recent history of reaching substantial civil settlements in high-profile cases involving police officer homicides of unarmed black men. For example, on February 4, 1999, four plainclothes, Caucasian New York City police officers gunned down twenty-two year-old West African immigrant Amadou Diallo.²⁷ The officers fired forty-one shots striking Diallo nineteen times as he stood in the doorway of his apartment.²⁸ The officers claimed they thought Diallo resembled a rape suspect and that he had drawn a gun, but the supposed firearm was actually a wallet.²⁹ The officers were acquitted of wrongdoing in the state criminal trial, but Diallo's killing sparked months of protesting and intensified already heightened racial tensions.³⁰ In 2004, the city agreed to pay \$3 million to settle a lawsuit brought by Diallo's family and, under the agreement, neither the city nor the Police Department admitted wrongdoing.³¹

Later, in 2010, the city agreed to pay \$3.25 million to the estate of Sean Bell, who was killed in November 2006 at age twenty-three in a hail of fifty bullets outside a Queens strip club as he was leaving his bachelor party.³² Bell's death, which came the day before his wedding,³³ prompted "intense and widespread criticism from the public."³⁴ Three officers

²⁷ *Locurto v. Giuliani*, 269 F. Supp. 2d 368, 393 (S.D.N.Y. 2003).

²⁸ *Id.*; Alan Feuer, *\$3 Million Deal In Police Killing Of Diallo in '99*, N.Y. TIMES (Jan. 7, 2004), http://www.nytimes.com/2004/01/07/nyregion/3-million-deal-in-police-killing-of-diallo-in-99.html?_r=0

²⁹ Feuer, *supra* note 28.

³⁰ *Locurto*, 269 F. Supp. 2d at 393; Feuer, *supra* note 28.

³¹ Feuer, *supra* note 28.

³² Tamer El-Ghobashy, *\$7 Million Payout in Sean Bell Case*, WALL ST. J. (July 28, 2010), <http://www.wsj.com/articles/SB10001424052748703977004575393823233738384>; *Lynch v. City of N.Y.*, 589 F.3d 94, 97 (2d Cir. 2009).

³³ El-Ghobashy, *supra* note 32; *Fenner v. News Corp.*, 2013 U.S. Dist. LEXIS 170187 (S.D.N.Y. Dec. 2, 2013).

³⁴ *Lynch*, 589 F.3d at 97.

involved in the killing were charged with manslaughter, but they were acquitted in 2008. Once again, the settlement agreement precluded the city from admitting wrongdoing.³⁵

In January 2015, New York City settled with the family of Ramarley Graham for \$3.9 million after Graham was killed by a police officer in 2012.³⁶ Graham, then eighteen years old, died after being shot by an officer in a small bathroom inside his apartment.³⁷ While the officer claimed he was afraid for his own safety and was going to be shot, no weapons were found in the apartment.³⁸ The officer was initially indicted on manslaughter charges, but a judge dismissed the indictment and a second grand jury declined to re-indict him.³⁹ Graham's killing was later cited during demonstrations following Garner's homicide and the death of Michael Brown in Ferguson, Missouri (discussed below).⁴⁰

2. Eric Garner's Death & Resulting Protests

Officers suspected Eric Garner of selling loose, untaxed cigarettes. A bystander's video records him telling the officers to leave him alone and refusing to be handcuffed before being seized around the neck by one Caucasian officer and taken to the ground with the assistance of at least four other officers, at least three of whom appear to be Caucasian.⁴¹ As Garner, a large man with asthma, was being choked by one officer and another was pressing his head down into the pavement, he repeatedly gasped, "I can't breathe!" before losing consciousness.⁴² The chokehold maneuver that led to Eric Garner's death in July of 2014 had been banned by a New York City Police Department policy for more than a decade.⁴³

An initial internal report prepared for senior police commanders falsely stated that officers took Garner, who was unarmed, down "by the arms."⁴⁴

³⁵ El-Ghobashy, *supra* note 32.

³⁶ Larry Neumeister, *Ramarley Graham's Family To Receive \$3.9 Million From NYC For Police Shooting*, HUFFINGTON POST (Apr. 1, 2015), http://www.huffingtonpost.com/2015/01/30/ramarley-graham-million-nyc_n_6583430.html.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 'I Can't Breathe': Eric Garner Put in Chokehold by NYPD Officer – Video, THE GUARDIAN (Dec. 4, 2014), <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>.

⁴² *Id.*

⁴³ Conor Friedersdorf, *Eric Garner and the NYPD's History of Deadly Chokeholds*, THE ATLANTIC (Dec. 4, 2014), <http://www.theatlantic.com/national/archive/2014/12/context-for-the-punishment-free-killing-of-eric-garner/383413/>.

⁴⁴ Al Baker, J. David Goodman & Benjamin Mueller, *Beyond the Chokehold: The Path to Eric*

The video, however, shows the chokehold and helped the city medical examiner conclude that Garner's death was a homicide resulting from the chokehold, compression of his neck and chest by officers, and complicating health factors.⁴⁵ Still, a grand jury declined to indict the officer who choked Garner, and a wave of protests ensued.⁴⁶ In July 2015, Garner's family reached a \$5.9 million settlement with the city.⁴⁷ As part of the agreement, the City of New York did not admit liability.⁴⁸

The protests that arose following the killing of Eric Garner and the grand jury's declination to indict the officer who choked him, were not the product of public disagreement over a singular instance of police use of force. Rather, the demonstrations and unrest were a response to the latest installment in a series of fatal abuses by police officers, particularly white police officers, against unarmed African Americans over a long period of time. Garner's homicide was the first in a rapid succession of police killings of unarmed black males in America that have arrested the Nation's attention and sparked intense debate about race and law enforcement. As Attorney General Eric Holder explained, "Mr. Garner's death is one of several recent incidents across the country that have tested the sense of trust that must exist between law enforcement and the communities they are charged to serve and protect."⁴⁹

B. The Homicide of Michael Brown in Ferguson

Less than one month after Eric Garner was choked to death on a New York City sidewalk, Michael Brown was shot to death in a Ferguson, Missouri, street by a Caucasian officer. While this killing was not recorded like Garner's, it also occurred in a public space in broad daylight, and there were several witnesses. Ferguson, like New York City, is a community plagued by unhealthy racial pressures and a history of troubled police-

Garner's Death, N.Y. TIMES (June 13, 2015), http://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html?_r=0.

⁴⁵ *Medical Examiner Rules Eric Garner's Death a Homicide, Says He Was Killed By Chokehold*, NBC NEW YORK (Aug. 21, 2014), <http://www.nbcnewyork.com/news/local/Eric-Garner-Chokehold-Police-Custody-Cause-of-Death-Staten-Island-Medical-Examiner-269396151.html>; Baker, et al., *supra* note 44.

⁴⁶ State v. E.J.J., 354 P.3d 815, 830183 Wash. 2d 497, 527 n.5 (2015) (Gonzalez, J., concurring).

⁴⁷ *NYC Officials Announce \$5.9 Million Settlement in Eric Garner Police Chokehold Case*, NBC NEW YORK (July 14, 2015), <http://www.nbcnewyork.com/news/local/NYC-Eric-Garner-Widow-Family-Reject-NYC-Wrongful-Death-Settlement-Suit-Police-NYPD-314653071.html>.

⁴⁸ *Id.*

⁴⁹ Andrew Siff, Jonathan Dienst & Jennifer Millman, *Grand Jury Declines to Indict NYPD Officer in Eric Garner Chokehold Death*, NBC NEW YORK (Dec. 4, 2014), <http://www.nbcnewyork.com/news/local/Grand-Jury-Decision-Eric-Garner-Staten-Island-Chokehold-Death-NYPD-284595921.html>.

community relations.

1. Ferguson's Pre-existing Pattern of Police Abuses

The Ferguson Police Department serves in a combustible environment. As an initial matter, the St. Louis County area, which encompasses the City of Ferguson, has a long history of racial tension.⁵⁰ Like so many areas in America, race relations in the St. Louis region have been punctuated by, among other things, restrictive covenants, exclusionary zoning restrictions, legalized racial segregation in the schools, and severe economic disparities between blacks and whites.⁵¹ All of this contributes to a general atmosphere of mistrust of government and law enforcement among African Americans in the area.⁵²

In addition to these generalized troubles, the Ferguson Police Department and the city's African American community share a very tumultuous history.⁵³ More than two-thirds of the city's residents are African American,⁵⁴ yet only four of the fifty-three police officers employed in 2014 were black,⁵⁵ and the turbulence is due, in large measure, to overly aggressive and revenue-driven policing. For example, in

⁵⁰ Missouri was a slave state, of course, and the infamous Dred Scott decision originated in St. Louis. See *Scott v. Sandford*, 60 U.S. 393 (1856).

⁵¹ LEGAL DEFENSE FUND, NAACP, *FERGUSON IN FOCUS 2-5* (2015), available at http://www.naacpldf.org/files/publications/Ferguson%20in%20Focus_0.pdf.

⁵² Gupta, *supra* note 3 ("Mistrust can't be explained away as the kneejerk reaction of the ill-informed or the hyperbolic. It's in part the product of historical awareness about the role that police have played in enforcing and perpetuating slavery, the Black Codes, lynchings and Jim Crow segregation"); see also S. Rep. No. 92-415, at 10 (1971) ("Discrimination by government . . . serves a doubly destructive purpose. The exclusion of minorities from effective participation in the bureaucracy not only promotes ignorance of minority problems in that particular community, but also creates mistrust, alienation, and all too often hostility toward the entire process of government"); THE FERGUSON COMMISSION, *FORWARD THROUGH FERGUSON: A PATH TOWARD RACIAL EQUALITY* 24 (2015).

⁵³ Gupta, *supra* note 3 ("the public trust in Ferguson law enforcement and its criminal justice system, especially among African Americans, was damaged long before August 2014"); POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 8 ("In other communities, however, policing is in crisis. It is a crisis whose roots began to take hold long before Ferguson Police Officer Darren Wilson's fatal encounter with Michael Brown on West Florissant Avenue in August 2014, although that incident has brought new attention and urgency to the issue of policing practices in the region."); Hudson, *supra* note 10 ("Long before Darren Wilson shot and killed unarmed Michael Brown last August, there was a poisonous relationship between the Ferguson, Missouri, department and the community it claimed to serve."); THE FERGUSON COMMISSION, *supra* note 52, at 24.

⁵⁴ State & County QuickFacts for Ferguson, Mo., U.S. CENSUS BUREAU (May 29, 2015), <http://quickfacts.census.gov/qfd/states/29/2923986.html>.

⁵⁵ Shaila Dewan, *Mostly White Forces in Mostly Black Towns: Police Struggle for Racial Diversity*, N.Y. TIMES, Sept. 9, 2014, <http://www.nytimes.com/2014/09/10/us/for-small-police-departments-increasing-diversity-is-a-struggle.html>; Kimberly Kindy & Carol D. Leonnig, *At Least 5 Ferguson Officers Apart from Brown Shooter Have Been Named in Lawsuits*, WASH. POST, Aug. 30, 2014, http://www.washingtonpost.com/politics/at-least-6-ferguson-officers-apart-from-brown-shooter-have-been-named-in-lawsuits/2014/08/30/535f7142-2c96-11e4-bb9b-997ae96fad33_story.html.

2013, Ferguson officers effected 86% of traffic stops, 92% of searches, and 93% of arrests on African Americans, “despite the fact that police officers were far less likely to find contraband on black drivers (22% versus 34% of whites).”⁵⁶ These statistics justify concerns expressed by Justice O’Connor, among others, that relatively minor traffic infractions are sometimes used as excuses for stopping and harassing people.⁵⁷

The concerns raised by these raw enforcement statistics are amplified by a series of allegations filed against Ferguson’s officers over the past decade. Despite the small size of the department, in recent years its officers have killed a mentally-ill man with a Taser, pistol-whipped a child, and choked and hog-tied another.⁵⁸ One lawsuit alleges that, in January 2011 following a car chase, Ferguson officers broke out the windows of the vehicle and struck the back seat passenger on the head and arms, then allowed a police dog to bite him all over his body, causing injuries that required medical attention.⁵⁹ In Ferguson, this kind of barbarism is directed exclusively at African Americans.⁶⁰

Another lawsuit seems to epitomize the troubles between police and black residents in Ferguson. Henry Davis alleges that he was stopped for speeding and arrested for driving while intoxicated in the early morning hours on September 20, 2009.⁶¹ Apparently, it is undisputed that an officer pushed him into a cell and a short, bloody fight ensued in which an officer suffered a broken nose and Davis sustained a concussion and scalp laceration.⁶² The police claim the security videotape for the hours involving the altercation was recorded over, so there is no recording of the incident.⁶³ However, there has been testimony that three officers beat or kicked Davis after he was already handcuffed and subdued on the floor of the cell.⁶⁴ Afterwards, Davis was charged with “Property Damage” for transferring

⁵⁶ Jeff Smith, *In Ferguson, Black Town, White Power*, N.Y. TIMES, Aug. 17, 2014, <http://www.nytimes.com/2014/08/18/opinion/in-ferguson-black-town-white-power.html>.

⁵⁷ *Atwater v. City of Lago Vista*, 532 U.S. 318, 372 (2001) (O’Connor, J., dissenting).

⁵⁸ Kindy & Leonnig, *supra* note 55. Some of these suits were initiated while the officers were employed by the City of Ferguson based on conduct at their former departments. *See Id.*

⁵⁹ *McAllister v. Ferguson Police Dep’t*, No. 4:13CV2492 CEJ, 2014 WL 1052778, at *2 (E.D. Mo. Mar. 14, 2014).

⁶⁰ *See U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., Investigation of the Ferguson Police Department*, 5 (2015).

⁶¹ *Davis v. White*, 794 F.3d 1008, 1011 (8th Cir. July 28, 2015).

⁶² *Id.*

⁶³ Joseph Shapiro, *In Ferguson, Mo., Before Michael Brown There Was Henry Davis*, NPR (Sept. 12, 2014), <http://www.npr.org/2014/09/12/348010247/in-ferguson-mo-before-michael-brown-there-was-henry-davis>.

⁶⁴ *Davis*, 794 F.3d at 1011.

blood onto the uniforms of the officers involved in the altercation.⁶⁵

These and other policing problems in Ferguson have been well-documented, thanks in part to the United States Department of Justice's "Investigation of the Ferguson Police Department," promulgated on March 4, 2015. According to that report,

... distrust of the Ferguson Police Department is longstanding and largely attributable to Ferguson's approach to law enforcement. This approach results in patterns of unnecessarily aggressive and at times unlawful policing; reinforces the harm of discriminatory stereotypes; discourages a culture of accountability; and neglects community engagement. In recent years, FPD has moved away from the modest community policing efforts it previously had implemented, reducing opportunities for positive police-community interactions, and losing the little familiarity it had with some African-American neighborhoods.⁶⁶

In short, the death of Michael Brown was the straw that broke the proverbial camel's back in Ferguson, "but the camel was already grossly overweight, very old, and very tired."⁶⁷

2. Michael Brown's Death & Resulting Protests

On the afternoon of August 9, 2014, Darren Wilson, a white officer, shot and killed eighteen year-old Michael Brown. Wilson encountered the unarmed teen as he walked with a friend on a public street. The friend, Dorian Johnson, was interviewed by a local news station days later and stated that Wilson was unnecessarily confrontational, attacked Brown without cause, and gunned him down as he fled.⁶⁸ A second eyewitness, unacquainted with Brown, also said Brown was running away as Wilson pursued and shot him.⁶⁹ She said Wilson continued shooting Brown even after Brown stopped running and turned to face Wilson with his hands in the air.⁷⁰

⁶⁵ *Id.*

⁶⁶ U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., *supra* note 60, at 5-6.

⁶⁷ Kimberly Jade Norwood, *The Far-Reaching Shadow Cast By Ferguson*, 46 WASH. U. J.L. & POL'Y 1, 22 (2014).

⁶⁸ See Farrah Fazal, *Witness: Mike Brown was 'shot like an animal,'* KSDK, Aug. 13, 2014, <http://www.ksdk.com/story/news/local/2014/08/13/dorian-johnson-michael-brown-eyewitness/13986845/>.

⁶⁹ See Tim Hains, *Tiffany Mitchell, Eyewitness To Michael Brown Shooting, Speaks*, REAL CLEAR POLITICS, Aug. 15, 2014, http://www.realclearpolitics.com/video/2014/08/15/tiffany_mitchell_eyewitness_to_michael_brown_shooting_speaks.html.

⁷⁰ *Id.*

In the interest of completeness, Wilson and the Ferguson Police Department offered a radically different account of the shooting. They assert that Brown assaulted Wilson inside his vehicle without provocation and attempted to take Wilson's firearm, so Wilson shot Brown in self-defense.⁷¹ Moreover, the Police Department contends that Brown did not turn and face Wilson, but rather charged at him before Wilson shot him in the head and chest.⁷² Some or all of Wilson's interaction with Brown might well have been recorded had Wilson been issued and trained to use a body camera by the department. While the footage would not have provided a complete picture of their encounter, it would likely have captured sufficient evidence to discount one of the diametrically opposing storylines that emerged in the wake of Brown's death.

Ultimately, for purposes of the present discussion, the objective details regarding Brown's death are, in some respects, immaterial. Whatever the particulars, it is tragic that an unarmed young man was gunned down in broad daylight only two days before starting college.⁷³ The acerbic tensions between Ferguson's Police Department and its African American residents, rather than the specific details, had more to do with the aftermath than the objective facts.⁷⁴ When the grand jury declined to return charges that would have at least subjected Wilson to public hearings and the specter of criminal sanction, protesting and rioting ensued,⁷⁵ and authorities responded with a dramatic, military-inspired presence reminiscent of the Arab Spring and the Ukraine crises.⁷⁶ The aftermath captured the world's

⁷¹ See Erik Eckholm & Matt Apuzzo, *Darren Wilson is Cleared of Rights Violations in Ferguson Shooting*, N.Y. TIMES, Mar. 4, 2015, http://www.nytimes.com/2015/03/05/us/darren-wilson-is-cleared-of-rights-violations-in-ferguson-shooting.html?_r=0.

⁷² See *id.*

⁷³ GEORGE FACHNER & STEVEN CARTER, COLLABORATIVE REFORM INITIATIVE, AN ASSESSMENT OF DEADLY FORCE IN THE PHILADELPHIA POLICE DEPARTMENT 30 (2015) available at <http://ric-zai-inc.com/Publications/cops-w0753-pub.pdf> ("The shooting of unarmed subjects is the most tragic and controversial issue in policing today."); See Joshua Alston, *Actually, It Does Matter that Michael Brown Was Going to College*, WASH. POST (Aug. 25, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/08/25/actually-it-does-matter-if-michael-brown-was-going-to-college/>.

⁷⁴ Darren Lenard Hutchinson, "Continually Reminded of Their Inferior Position": *Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23, 112 (2014) ("The police conduct took place within a broader context of historical and contemporary racism in Missouri."); See generally Catherine E. Shoichet, *Missouri Teen Shot by Police Was Two Days Away from Starting College*, CNN (Aug. 13, 2014), <http://www.cnn.com/2014/08/11/justice/michael-brown-missouri-teen-shot/>.

⁷⁵ See *Abdullah v. County of St. Louis*, 52 F. Supp. 3d 936, 940 (E.D. Mo. 2014).

⁷⁶ Adam Taylor and Rick Noack, *How the Rest of the World Sees Ferguson*, WASH. POST (Aug. 18, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/08/18/how-the-rest-of-the-world-sees-ferguson/>.

attention.⁷⁷

C. *The Homicide of Tamir Rice in Cleveland*

Three months after eighteen year-old Brown was killed, twelve year-old Tamir Rice was gunned down by a white officer in Cleveland outside a recreation center, and concerned citizens were inflamed once again. Cleveland, like New York City and Ferguson, has a lengthy, tortured history of significant police abuses.

1. Cleveland's Pre-existing Pattern of Police Abuses

In December 2014, the Department of Justice (DOJ) completed its second investigation of the Cleveland Division of Police (CDP) in just over a decade; both investigations raised similarly grave concerns.⁷⁸ Among other findings, the DOJ determined that CDP officers “engage in excessive force far too often,” and that “[s]upervisors tolerate this behavior and, in some cases, endorse it.”⁷⁹ Moreover, “[f]orce incidents often are not properly reported, documented, investigated, or addressed with corrective measures,” and specially-trained investigators charged with conducting unbiased reviews of officers’ uses of deadly force admittedly conduct their investigations with the specific goal of casting the accused officer in the most positive light possible.⁸⁰ These findings, while troubling, are merely corroborative of what many Cleveland residents have long suspected.

The DOJ’s most recent investigation began in March 2013 “in the wake of serious allegations that CDP officers use excessive force, and that the Division fails to identify, correct, and hold officers accountable” for doing so.⁸¹ The videotaped attack on Edward Henderson in January 2011 is one of the significant incidents that precipitated the second investigation.⁸² Henderson, a black male diagnosed with schizophrenia and bipolar disorder, was arrested after a lengthy police chase on New Year’s Day.⁸³

⁷⁷ See Adam Taylor, *How the Rest of the World Reacted to the Ferguson Verdict*, WASH. POST (Nov. 25, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/11/25/how-the-rest-of-the-world-reacted-to-the-ferguson-verdict/>.

⁷⁸ See generally CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE ET AL., *supra* note 3, at 1-2.

⁷⁹ *Id.* at 3.

⁸⁰ *Id.* at 5.

⁸¹ *Id.* at 7.

⁸² See *id.*

⁸³ See *Cleveland Police Brutality Case Settled*, CLEVELAND 19 NEWS (July 10, 2013), <http://www.cleveland19.com/story/22809660/cleveland-police-brutality-case-settled>; See also Ryllie Danylko, *Helicopter Video Shows Mentally Disabled Man Kicked by Police After Chase: Forcing Change*, CLEVELAND.COM (Feb. 1, 2015), <http://www.cleveland.com/forcing-change>.

The chase concluded when he stopped his van and laid face down on the ground.⁸⁴ After he was cuffed, multiple officers ran up and kicked him in the head; the resulting injuries included a blow out fracture of his orbital bone and permanent vision impairment.⁸⁵ None of the many officers involved filed a written report regarding use of force, nor were they appropriately disciplined for failing to report it.⁸⁶ No one was held accountable,⁸⁷ but the City of Cleveland agreed to pay Henderson \$600,000 for his injuries.⁸⁸

Another critical police-involved shooting occurred on November 29, 2012. As Timothy Russell and Malissa Williams were driving near the police and courts' complex in downtown Cleveland that evening, their vehicle apparently backfired.⁸⁹ Officers and bystanders mistook the sound for a gunshot,⁹⁰ and "at least 62 police vehicles, some of which were unmarked, and more than 100 patrol officers, supervisors, and dispatchers—about 37 percent of the CDP personnel on duty in the City," pursued them.⁹¹ While it is unclear why Russell and Williams, both unarmed African Americans, did not stop for the officers, and the circumstances immediately preceding the gunfire are disputed, 13 officers discharged 137 rounds at them, striking both more than 20 times.⁹² The DOJ report observed that, on the heels of other incidents, the killings "inflamed community perceptions, particularly in the African-American community, that CDP is a department out of control and that its officers routinely engage in brutality."⁹³ In November 2014, the City of Cleveland

change/index.ssf/2015/02/helicopter_video_shows_mentall.html.

⁸⁴ See *Cleveland Police Brutality Case Settled*, *supra* note 83.

⁸⁵ *Id.*

⁸⁶ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 3, at 7.

⁸⁷ *See id.*

⁸⁸ *Cleveland Police Brutality Case Settled*, *supra* note 83.

⁸⁹ See Thomas J. Sheeran, *Timothy Russell, Malissa Williams Shooting: Cleveland Community Wonders Why 137 Rounds Fired*, HUFFINGTON POST (Dec. 17, 2012), http://www.huffingtonpost.com/2012/12/17/timothy-russell-malissa-williams-cleveland-shooting_n_2315330.html; See generally MARK KOLLAR, OHIO BUREAU OF CRIMINAL IDENTIFICATION & INVESTIGATION, PROSECUTOR'S SUMMARY 4-5 (2013), *available at* <http://www.ohioattorneygeneral.gov/bcishootingreport>.

⁹⁰ Sheeran, *supra* note 89; KOLLAR, *supra* note 89; MIKE DEWINE, OHIO ATTORNEY GENERAL, STATEMENT AS PREPARED: OFFICER INVOLVED SHOOTING OF TIMOTHY RUSSELL AND MALISSA WILLIAMS 4-5, *available at* <http://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Cleveland-Officer-Involved-Shooting-Investigation/Officer-Involved-Shooting-Statement-Morning-02-05.aspx>.

⁹¹ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 3, at 8; *but see* KOLLAR, *supra* note 89 ("Cleveland Police Department policy states that no more than two police vehicles can participate directly in a pursuit except under unusual and well-articulated circumstances. In this situation, at least 59 vehicles were involved without the sector supervisor's knowledge or permission.").

⁹² Sheeran, *supra* note 89.

⁹³ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 3, at 8.

agreed to pay \$1.5 million each to Russell and Williams' families in settlement of a federal lawsuit.⁹⁴ One officer was charged with voluntary manslaughter for his role in the killings, but was acquitted because prosecutors did not prove beyond a reasonable doubt that his shots, alone, killed the pair.⁹⁵

While the attack on Henderson and the killings of Russell and Williams were particularly egregious, they are only representative of episodes that raised grave concerns among Cleveland residents, particularly residents within African American communities.⁹⁶ According to its report, the DOJ found

that Cleveland police officers use unnecessary and unreasonable force in violation of the Constitution *at a significant rate*, and in a manner that is extremely dangerous to officers, victims of crimes, and innocent bystanders. This pattern of unreasonable force manifests itself in CDP's use of deadly force, use of less lethal force, including Tasers, and use of force against restrained people and people in crisis.⁹⁷

Further, CDP officers use unnecessary and unreasonable force “a significant percentage of the time that they use force,” including firing their guns “in circumstances where the use of deadly force is not justified, including against unarmed or fleeing suspects who do not pose a threat of serious harm to officers or others,” and drawing and pointing firearms “at suspects too readily and in circumstances in which it is inappropriate.”⁹⁸ Long before the death of Tamir Rice, then, some Cleveland residents viewed the city's Police Division as “an occupying force instead of a true partner and resource in the community it serves.”⁹⁹ There is lethal disconnect between the city's police officers and many of the people they are sworn to protect and serve.

⁹⁴ John Caniglia, *Judge Approves Settlement Reached with Families of Timothy Russell, Malissa Williams Over Deadly Police Chase and Shooting*, CLEVELAND.COM (Nov. 18, 2014), http://www.cleveland.com/court-justice/index.ssf/2014/11/judge_approves_settlement_reac.html.

⁹⁵ Sheeran, *supra* note 89; Afi, *Cleveland Calm Despite Rising Anger but Tamir Rice Case Could be New Flashpoint*, THE GUARDIAN (May 24, 2015), <http://www.theguardian.com/us-news/2015/may/24/cleveland-michael-brelo-calm-anger-tamir-rice>.

⁹⁶ Karen Farkas, *Cleveland Police Misconduct Detailed in 16 Specific Cases in Justice Department Report*, CLEVELAND.COM (Dec. 4, 2014), http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_misconduct_de.html; *see generally* CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 3.

⁹⁷ CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 3, at 12 (emphasis added).

⁹⁸ *Id.* at 12-13.

⁹⁹ *Id.* at 6.

2. Tamir Rice's Death & Resulting Protests

In this climate of repeated, harrowing constitutional abuses, twelve year-old Tamir Rice was gunned down outside a recreation center on November 22, 2014. The child had borrowed a pellet gun from a friend, and a citizen called the police to alert them that someone, “probably a juvenile,” had a pistol that “was probably fake.”¹⁰⁰ Within two seconds of their arrival, one of the two responding officers, both of whom were Caucasian, shot Rice in the abdomen at close range.¹⁰¹ While one of the officers called for Emergency Medical Services (EMS), neither checked Rice's vital signs or performed first aid in the minutes after he was shot.¹⁰² When Rice's fourteen year-old sister approached minutes later, one of the officers tackled her to the ground and handcuffed her; when his distraught mother arrived, the officers threatened to arrest her unless she calmed down.¹⁰³ Rice died as a result of his injuries.

The officer who killed Rice was hired despite a history of problems as a patrolman with another police department. A memorandum dated November 29, 2012, stated that he was emotionally unstable, immature, “downtrodden,” “melancholy,” and distracted; ultimately, it recommended that he be released from employment with that department because neither time nor training would likely correct his deficiencies.¹⁰⁴ The Cleveland Division of Police hired him less than two years later without reviewing his file at the former department,¹⁰⁵ and Tamir Rice was dead before Thanksgiving. This is almost certainly a case of negligent hiring, but Rice might still be alive today if the department provided continual, preventative emotional and psychological support for its officers.

The Rice killing, like the killings of Eric Garner and Michael Brown before him, fit into a broader history of deadly police dysfunction discussed and documented in the DOJ's biting report, released only two weeks after

¹⁰⁰ Shaila Dewan & Richard A. Opiel, Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 22, 2015), http://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html?_r=2; JOHN MORGAN, CUYAHOGA CNTY. SHERIFF'S DEP'T, SYNOPSIS OF CCSO CASE #15-004 USE OF DEADLY FORCE INCIDENT pt. 1, at 3 (2015), available at <http://prosecutor.cuyahogacounty.us/en-us/Investigation-Into-Death-of-Tamir-Rice.aspx>.

¹⁰¹ MORGAN, *supra* note 100, at pt. 1, at 3; Ralph Ellis & Melissa Gray, *Tamir Rice Report: No Proof Police Officer Shouted Warning Before Shooting*, CNN (June 15, 2015), <http://www.cnn.com/2015/06/13/us/tamir-rice-report/>.

¹⁰² Dewan, et al., *supra* note 100.

¹⁰³ *Id.*

¹⁰⁴ Catherine E. Shoichet, *Cleveland Cop Who Shot 12-Year-Old Slammed for 'Immaturity' in Past Job*, CNN (Dec. 5, 2014), <http://www.cnn.com/2014/12/04/justice/cleveland-police-officer-timothy-loehmann/>.

¹⁰⁵ *Id.*

Rice was killed. “Many Cleveland residents fear and mistrust CDP,” according to the report, “and feel that they are in an adversarial relationship with the Division.”¹⁰⁶ Of course, these concerns are most acute in African American communities,¹⁰⁷ and the resulting lack of trust in the police undermines the department’s ability to effectively serve and protect the citizenry.¹⁰⁸

Rice’s death became yet another touchstone for protests of police violence in Cleveland and across the Nation,¹⁰⁹ and the concerns are well-founded.¹¹⁰ “The use of force by police should be guided by a respect for human life and human dignity, the need to protect public safety, and the duty to protect individuals from unreasonable seizures under the Fourth Amendment. A significant amount of the force used by CDP officers falls short of these standards.”¹¹¹ The public outcry, then, was not in response to one police killing, albeit one especially disturbing killing; it was a byproduct of a comprehensive, ongoing failure of policing in African American communities in Cleveland and beyond.

D. The Homicide of Freddie Gray in Baltimore

Approximately four months after Tamir Rice was killed in Cleveland, Freddie Gray died as a consequence of injuries he sustained while in the custody of Baltimore’s Police Department. Given the department’s ignominious history of abuses and the elevated state of public concern and consternation, protests and rioting predictably ensued.

1. Baltimore’s Pre-existing Pattern of Police Abuses

Baltimore, like New York City, Ferguson, and Cleveland, has a brutal police culture.¹¹² According to an American Civil Liberties Union (ACLU)

¹⁰⁶ CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE ET AL., *supra* note 3, at 52.

¹⁰⁷ *Id.* at 49 (“In addition, despite the fact that we are making no finding regarding racial profiling, we must report that when we interviewed members of the community about their experiences with the police, many African-Americans reported that they believe CDP officers are verbally and physically aggressive toward them because of their race.”).

¹⁰⁸ *Id.* at 48.

¹⁰⁹ Dewan, et al., *supra* note 100; Adam Ferrise, *Day of Protests Over Tamir Rice Shooting Ends After 10 Hours with No Arrests*, CLEVELAND.COM (Dec. 20, 2014), http://www.cleveland.com/metro/index.ssf/2014/12/day_of_protests_over_tamir_ric.html; Oren Dorell, *Officer Shot Tamir Rice Within a Second of Exiting Squad Car: Report*, USA TODAY (Dec. 6, 2015), <http://www.usatoday.com/story/news/2015/12/06/officer-shot-tamir-rice-within-second-exiting-squad-car-report/76880786/>.

¹¹⁰ CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE ET AL., *supra* note 3, at 1.

¹¹¹ *Id.*

¹¹² Michael Pinard, *Poor, Black and “Wanted”: Criminal Justice in Ferguson and Baltimore*, 58 HOW. L.J. 857, 864 (2015) (“As in Ferguson, relationships between Baltimore’s police force and its’

of Maryland report, 31 people in Baltimore City, out of 109 total in the entire state of Maryland, died in police encounters between 2010 and 2014.¹¹³ The city has paid nearly six million dollars in judgments and settlements in more than one hundred lawsuits alleging misconduct and excessive force between 2011 and 2014.¹¹⁴ According to one scathing exposé,

Victims include a 15-year-old boy riding a dirt bike, a 26-year-old pregnant accountant who had witnessed a beating, a 50-year-old woman selling church raffle tickets, a 65-year-old church deacon rolling a cigarette and an 87-year-old grandmother aiding her wounded grandson. Those cases detail a frightful human toll. Officers have battered dozens of residents who suffered broken bones—jaws, noses, arms, legs, ankles—head trauma, organ failure, and even death, coming during questionable arrests. Some residents were beaten while handcuffed; others were thrown to the pavement.¹¹⁵

The eighty-seven year-old grandmother, Venus Green, settled with the city in 2012 for \$95,000 after a male officer threw her down and separated her shoulder.¹¹⁶ The incident occurred in her home, and the officer had no warrant to be inside.¹¹⁷

Later, in September 2012, Anthony Anderson, who was suspected of having engaged in a drug transaction, died as a consequence of his encounter with Baltimore police.¹¹⁸ He was returning home from a local

Black residents have been disconnected, strained and, at times, violent.”); D.K., *The Lessons of Baltimore*, THE ECONOMIST (Apr. 28, 2015), <http://www.economist.com/blogs/democracyinamerica/2015/04/race-and-criminal-justice> (averring that Baltimore’s police department “has a history of extraordinary violence”); George, *supra* note 8 (“hundreds of Baltimore residents gathered to air grievances over years of harassment, beatings and other mistreatment they say they have endured from city police”); see generally Conor Friedersdorf, *The Brutality of Police Culture in Baltimore*, THE ATLANTIC (Apr. 22, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-brutality-of-police-culture-in-baltimore/391158/>

¹¹³ AM. CIVIL LIBERTIES UNION, BRIEFING PAPER ON DEATHS IN POLICE ENCOUNTERS IN MARYLAND, 2010-2014 6 (2015), available at http://aclu-md.org/uploaded_files/0000/0629/md_deaths_in_police_encounters.pdf.

¹¹⁴ Justin George, *Prosecutors: No Charges Against Baltimore Officer Who Used Taser on Teen*, BALTIMORE SUN (Oct. 28, 2014), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-citaser-death-20141028-story.html>; George, *supra* note 8 (“Officers had battered dozens of residents during questionable arrests, the investigation revealed, resulting in broken bones, head trauma, organ failure and even death”).

¹¹⁵ Friedersdorf, *supra* note 112.

¹¹⁶ *Woman, 90, Locked Officer in Basement, Settles with Police*, WBAL-TV11 (Apr. 4, 2012), <http://www.wbalv.com/i-team/Woman-90-locked-officer-in-basement-settles-with-police/11028044>.

¹¹⁷ *Id.*

¹¹⁸ INDEP. IN-CUSTODY FATALITY REVIEW COMM., BALTIMORE POLICE DEP’T, THE “IN-CUSTODY” DEATH OF MR. ANTHONY ANDERSON ON SEPTEMBER 21, 2012 6 (2013), available at <https://www.baltimorepolice.org/sites/default/files/The-Anderson-Revised-Review.pdf>.

corner store when a plainclothes officer approached him from behind in a vacant lot, lifted him from his knees, and threw him to the ground head and neck first, then handcuffed him.¹¹⁹ As he lay cuffed on the ground, three officers proceeded to kick him repeatedly in his ribs, stomach, back, and chest. Anderson suffered massive internal bleeding from blunt force injuries, including a ruptured spleen and multiple fractured ribs, and later died.¹²⁰ An independent review concluded “that everything that occurred was reasonable,”¹²¹ and the Baltimore City State’s Attorney Office declined to prosecute the officers involved.¹²² Still, Anderson’s homicide sparked protests and cries of police brutality.¹²³

In May 2014, Baltimore officers deployed a Taser five times on a nineteen year-old, unarmed hospital patient in their efforts to subdue him.¹²⁴ The young man, George King, was also punched and choked until he passed out during the encounter.¹²⁵ He fell into a coma and died five days later.¹²⁶ The Baltimore City State’s Attorney Office declined to charge the officers involved, concluding based on an autopsy report that King died of “natural causes.”¹²⁷ Some thought the Taser was used unnecessarily and excessively, and groups protested outside the hospital where the struggle occurred and King lost his life.¹²⁸

2. Freddie Gray’s Death & Resulting Protests

When twenty-five year-old Freddie Gray died in 2015, he became the latest in a long line of African Americans brutalized by the Baltimore Police Department. Officers arrested Gray on a street corner on the morning of April 12.¹²⁹ A bystander’s video footage depicting the latter

¹¹⁹ Estate of Anderson v. Strohman, 6 F. Supp. 3d 639, 641 (D. Md. 2014); INDEP. IN-CUSTODY FATALITY REVIEW COMM., BALTIMORE POLICE DEP’T, *supra* note 118, at 6.

¹²⁰ Mike Schuh, *Death Ruled Homicide for East Baltimore Man Who Died in Police Custody*, CBS BALTIMORE (Oct. 2, 2012), <http://baltimore.cbslocal.com/2012/10/02/lawyer-death-ruled-homicide-for-east-baltimore-man-who-died-in-police-custody/>; INDEP. IN-CUSTODY FATALITY REVIEW COMM., BALTIMORE POLICE DEP’T, *supra* note 118, at 6.

¹²¹ INDEP. IN-CUSTODY FATALITY REVIEW COMM., BALTIMORE POLICE DEP’T, *supra* note 118, at 25.

¹²² Justin George, *No Charges Against Officers in Death of Anthony Anderson During Arrest*, BALTIMORE SUN (Jan. 25, 2013), http://articles.baltimoresun.com/2013-01-25/news/bs-md-anthony-anderson-decision-20130124_1_michael-vodarick-baltimore-police-fatal-arrest.

¹²³ Schuh, *supra* note 120.

¹²⁴ George, *supra* note 114.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ George Lettis, *Group Protests Death of Teen at Baltimore Hospital*, WBAL-TV11 (May 20, 2014), <http://www.wbalv.com/news/group-protests-death-of-teen-at-baltimore-hospital/26061630>.

¹²⁹ *Timeline: Freddie Gray’s Arrest, Death and the Aftermath*, BALTIMORE SUN (Apr. 12, 2015),

stages of the arrest shows Gray, seemingly injured and crying out as if in pain, as onlookers express concern for his condition and the officers' actions.¹³⁰ At some point during his transport for booking, officers stopped the van and placed him in leg irons.¹³¹ A witness testified that, in so doing, officers grabbed Gray by the wrists and ankles and “threw him into the paddy wagon. . . It was like they hog tied him.”¹³²

Police acknowledge that Gray, who was never secured in the back of the transport vehicle by a seat belt, repeatedly asked for medical treatment during his arrest and transport, but did not receive it until after he arrived at the police station.¹³³ Less than an hour after his arrest, paramedics were summoned to the police station, where Gray was unconscious and in serious medical distress.¹³⁴ He died one week later of an almost completely severed spinal cord.¹³⁵ Six police officers were charged in connection with his death, and the city settled with his family for \$6.4 million.¹³⁶

Gray's injuries resulted either from his arrest or a “rough ride,” where police vans are purposely driven erratically to harm unbuckled, handcuffed detainees, or a combination of the two.¹³⁷ His death, like the deaths of Garner, Brown, and Rice before him, has drawn national attention and intensified discussion about the use of excessive force by police, especially against black men.¹³⁸ Protesting began outside the police station while

<http://data.baltimoresun.com/news/freddie-gray/>.

¹³⁰ See Colin Campbell, *Man Critically Injured in Videotaped Baltimore Police Encounter*, BALTIMORE SUN (Apr. 14, 2015), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-gilmor-homes-arrest-20150413-story.html>.

¹³¹ *Timeline: Freddie Gray's Arrest, Death and the Aftermath*, *supra* note 129.

¹³² Donna Owens, *Baltimore Officer Said Freddie Gray Asked for Help While in Van*, REUTERS (Dec. 4, 2015), <http://news.yahoo.com/baltimore-police-trial-resumes-freddie-gray-arrest-video-111418565.html>.

¹³³ Justin Fenton & Jessica Anderson, *Freddie Gray Repeatedly Asked for Medical Care, Police Said Monday*, BALTIMORE SUN (Apr. 20, 2015), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-freddie-gray-arrest-documents-20150420-story.html>.

¹³⁴ *Timeline: Freddie Gray's Arrest, Death and the Aftermath*, *supra* note 129.

¹³⁵ Owens, *supra* note 132; David A. Graham, ‘Rough Rides’ and the Challenges of Improving Police Culture, THE ATLANTIC (Apr. 27, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-rough-ride-and-police-culture/391538/>.

¹³⁶ Miguel Marquez, Jason Hanna & Ashley Fantz, *Baltimore Approves \$6.4 Million Settlement for Freddie Gray's Family*, CNN (Sept. 9, 2015), <http://www.cnn.com/2015/09/09/us/baltimore-freddie-gray/>.

¹³⁷ Luke Broadwater, *Baltimore Police Acknowledges Mistakes in Freddie Gray's Death*, BALTIMORE SUN (Apr. 24, 2015), <http://www.baltimoresun.com/news/maryland/bs-md-freddie-gray-protest-prepare-20150424-story.html#page=1>; Doug Donovan & Mark Puente, *Freddie Gray Not the First to Come Out of Baltimore Police Van with Serious Injuries*, BALTIMORE SUN (Apr. 23, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-rough-rides-20150423-story.html>.

¹³⁸ See *Jones v. Chapman*, No. ELH-14-2627, 2015 U.S. Dist. LEXIS 96562, at *19 (D. Md. July 24, 2015); see also Owens, *supra* note 132.

Gray lay in a coma.¹³⁹ Whereas protesting had occurred in Baltimore following the deaths of Anthony Anderson and George King, among others, peaceful protests morphed into riots following Gray's death.¹⁴⁰ Activists viewed his death as part of the larger national issue of police abuse of African American males.¹⁴¹ Given Baltimore's history and the events that unfolded in other cities, particularly in Ferguson, the city should have taken proactive steps to prevent, or at least mitigate, the prospects of an eruption.

Gray's homicide was one in a long line of violent transgressions against African Americans by Baltimore officers, and each death makes it more difficult for African Americans to trust and work cooperatively with law enforcement.¹⁴² But preventative crisis management, including discussions between city and police officials and local community leaders when the protesting began, could have helped de-escalate the obviously explosive situation. As a consequence of the ongoing abuses, and at the invitation of Baltimore's mayor, the DOJ opened a civil rights investigation into the department.¹⁴³

E. The Common Thread

One cannot credibly persist in characterizing these killings and extreme acts of violence as isolated incidents or denying there is a larger problem. In a vacuum, most communities can tolerate an officer's mistake and absorb a tragedy, even a fatal one, but when unnecessary and excessive uses of force become habitual, it fosters a combustible environment for both citizens and officers, particularly in places with significant historical race problems. Those communities cannot absorb another homicide by police officers under spurious circumstances because the abuses have been too numerous and too persistent for too long. In many communities, law enforcement has forfeited the benefit of the doubt they are afforded

¹³⁹ *Timeline: Freddie Gray's Arrest, Death and the Aftermath*, *supra* note 129.

¹⁴⁰ See Jones, 2015 U.S. Dist. LEXIS 96562, at *2; see also Peter Hermann & John Woodrow Cox, *A Freddie Gray Primer: Who Was He, How Did He Die, Why is There so Much Anger?*, WASH. POST (Apr. 28, 2015), <https://www.washingtonpost.com/news/local/wp/2015/04/28/a-freddie-gray-primer-who-was-he-how-did-he-why-is-there-so-much-anger/>.

¹⁴¹ Hermann, et al., *supra* note 140.

¹⁴² See Juliet Linderman, *Each Death in Baltimore Makes Mistrust Harder to Overcome*, WTOP (Apr. 25, 2015), <http://wtop.com/politics/2015/04/each-death-in-baltimore-makes-mistrust-harder-to-overcome/>.

¹⁴³ See Press Release, U.S. Dep't of Justice, Justice Department Opens Pattern or Practice Investigation into the Baltimore Police Department (May 8, 2015), available at <http://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-baltimore-police-department>.

elsewhere because systemic problems have gone unacknowledged and uncorrected. Even brief surveys of police uses of force in New York City, Ferguson, Cleveland, and Baltimore demonstrate that police relations with African Americans in some cities and neighborhoods were at a boiling point before recent police killings of unarmed black males and significant community responses. Protests, and even rioting, were probable when the agents of law and order were perceived as instruments of cruelty and oppression instead.

II. PREPARING TO POLICE AFRICAN AMERICAN COMMUNITIES

Substantial research has shown that citizen trust in law enforcement and perceived police legitimacy are significantly affected by the way officers do their jobs.¹⁴⁴ In light of the lengthy history of police abuses, then, it is no wonder that many African American communities struggle to trust and cooperate with local law enforcement agencies.¹⁴⁵ There is no reason to believe that black people, many of whom live in what police regard as “high-crime areas,”¹⁴⁶ want the police to refrain from doing their jobs.¹⁴⁷ Rather, they want the officers in their communities to do their jobs better,¹⁴⁸ and substantially improved officer performance will likely bring

¹⁴⁴ BRIAN A. JACKSON, RESPECT AND LEGITIMACY—A TWO-WAY STREET: STRENGTHENING TRUST BETWEEN POLICE AND THE PUBLIC IN AN ERA OF INCREASING TRANSPARENCY 5 (2015), http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE154/RAND_PE154.pdf; Simmons, *supra* note 26 at 367 (“Police misconduct affects not only individual members of society, but there is substantial evidence that police abuse negatively impacts the perceived legitimacy of police officers and increases police-community tensions.”).

¹⁴⁵ Mia Carpinello, *Striking a Sincere Balance: A Reasonable Black Person Standard for “Location Plus Evasion” Terry Stops*, 6 MICH. J. RACE & L. 355, 361-62 (2001) (“Minority suspicion of police enforcement is rooted in history. While recent incidents of police brutality toward communities of color have confirmed existing minority suspicions about racially biased law enforcement, these suspicions are not new.”).

¹⁴⁶ *United States v. Black*, 707 F.3d 531, 542 (4th Cir. 2013) (“In our present society, the demographics of those who reside in high crime neighborhoods often consist of racial minorities and individuals disadvantaged by their social and economic circumstances”); *Gutierrez v. City of Woodland*, No. CIV. S-10-1142 LKK, 2012 WL 1640509, at *1 (E.D. Cal. May 9, 2012) (recognizing “the danger of citing ‘high crime area’ as another way of referring to places where there are high concentrations of poor and minority persons”); *People v. Lopez*, 20 Misc. 3d 737, 744, 864 N.Y.S.2d 696, 702 (Sup. Ct. 2008) *aff’d*, 67 A.D.3d 708, 886 N.Y.S.2d 894 (2009) (remarking that recent statistical studies show that high-crime areas in New York City “tend to have a high percentage minority population”); David A. Harris, *Factors for Reasonable Suspicion: When Black and Poor Means Stopped and Frisked*, 69 IND. L.J. 659, 677 (1994) (“African Americans and Hispanic Americans make up almost all of the population in most of the neighborhoods the police regard as high crime areas.”).

¹⁴⁷ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 25 (stating that studies indicate that minority communities “have a strong feeling of need for adequate police protection.”).

¹⁴⁸ Pinard, *supra* note 112, at 857-58 (averring that African American and Latino communities “have dire need and demand for law enforcement, but not the type of law enforcement that stereotypes,

substantially improved police-community relations.¹⁴⁹ Hence, efforts to better prepare police for their work are deserving of substantial investment.

In fact, police officers can do their jobs better, even under sometimes difficult circumstances. One of the best ways to deal with police misconduct is to prevent it by effective training.¹⁵⁰ While certain improvements are potentially possible through tactical training, huge gains can be made via intense emotional and psychological training and cultural education, and it is incumbent on public and police officials to provide or enhance officers' preparation in order to better equip them for the specific pressures of policing African American communities.

A. Provide Comprehensive Emotional & Psychological Training

In light of the weighty pressures of policing, officials have a responsibility to develop and implement programs designed to better address officers' continuing emotional and psychological needs.¹⁵¹ Officers' current training, or lack thereof, is actually part of the problem because it increases the likelihood of their using more force than necessary in citizen encounters. According to Dennis Rosenbaum, Professor of Criminal Justice and Psychology at the University of Illinois at Chicago, there is reason to believe that, by the time officers leave their academy training, they are more prone to want to use force rather than talk to people.¹⁵² Because training academies have a great influence on police recruits,¹⁵³ "[o]fficer training should be reevaluated, beginning with academy training of recruits to ensure they get the training necessary to

generalizes, disrespects, interferes with [sic] without reason, harms and kills"); Elizabeth Weise, *No Deaths, No Drama: A Creed for Calif. Police*, USA TODAY, Sept. 24, 2015, available at <https://www.highbeam.com/doc/1P2-38792673.html> (noting that Richmond, California, community came together and demanded better policing); Hermann, et al., *supra* note 140 ("People want justice," said Adam Jordan, 27, who leads one of the Baltimore protest groups. "They want the officers to go to jail. But most of all, they want reform – sweeping reform."); D.K., *supra* note 112 (noting that Washington, DC, residents complained that the police are not doing enough to stop violent crime).

¹⁴⁹ PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 17 ("A community's attitude toward the police is influenced most by the actions of individual officers on the streets.")

¹⁵⁰ *Id.*

¹⁵¹ Herbert M. Gupton, et al., *Support and Sustain: Psychological Intervention for Law Enforcement Personnel*, 78 THE POLICE CHIEF, Aug. 2011, at 92, 92.

¹⁵² POLICE EXECUTIVE RESEARCH FORUM, AN INTEGRATED APPROACH TO DE-ESCALATION AND MINIMIZING USE OF FORCE, 19 (2012), available at http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf.

¹⁵³ Nancy Marion, *Police Academy Training: Are We Teaching Recruits What They Need to Know?*, 21 POLICING: AN INT'L J. OF POLICE STRATEGIES & MGMT., 1998, at 54, 72.

meet the daily challenges and demands of police work.”¹⁵⁴

Policing is hard, dangerous work¹⁵⁵ and, “[b]y the very nature of the job, law enforcement personnel are routinely exposed to ordinary as well as extraordinary stressors.”¹⁵⁶ Among other things, officers risk their lives every time they put on their uniforms. They are injured in various ways, but they are too often injured and killed by lawless citizens. For example, a uniformed St. Louis Police Department officer, a husband and father, was shot inside his personal vehicle in July 2015.¹⁵⁷ Thankfully, he survived, but he had not been pursuing, or even investigating, his attacker when he was shot.¹⁵⁸ Rather, he was working his side job providing security, essentially being a presence in an upscale entertainment district.¹⁵⁹ Weeks after that incident, a Memphis police officer was gunned down during a traffic stop when he apparently interrupted a drug deal involving less than two grams of marijuana.¹⁶⁰ The Memphis Police Director soberly noted, “This is just a reminder of how dangerous this job is.”¹⁶¹ He is right, of course, and many other examples could be given.¹⁶²

¹⁵⁴ Robyn R. M. Gershon, et al., *Mental, Physical, and Behavioral Outcomes Associated with Perceived Work Stress in Police Officers*, 36 CRIM. JUST. & BEHAV., Mar. 2009, at 275, 286.

¹⁵⁵ *Roberts v. Louisiana*, 431 U.S. 633, 637 (1977) (“We recognize that the life of a police officer is a dangerous one”); *Walls v. City of Detroit*, 993 F.2d 1548 (6th Cir. 1993) (observing that “a police officer’s job is inherently dangerous and all officers know or should know of the risks involved in the position”); *Moore v. Indehar*, 514 F.3d 756, 763-64 (8th Cir. 2008) (Beam, J., dissenting) (“Police officers assigned to street duty in populous urban locations have difficult and dangerous jobs, especially in high crime areas and more especially at places where gangs of armed young men congregate and tend to shoot at each other and even at passing vehicles.”).

¹⁵⁶ Gupton, et al., *supra* note 151, at 92.

¹⁵⁷ Casey Nolen, ‘Ambushed’ St. Louis Officer: God Told Me to put on Vest, USA TODAY (Aug. 3, 2015 at 9:20AM), <http://www.usatoday.com/story/news/nation/2015/08/03/ambushed-st-louis-officer-speaks/31045471/>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ John Bacon, *Suspect arrested in Memphis cop killing*, USA TODAY (Aug. 3, 2015 at 6:29PM), <http://www.usatoday.com/story/news/nation/2015/08/02/memphis-officer-fatally-shot/31013881/>.

¹⁶¹ *Id.*

¹⁶² See, e.g., *Clark v. Arizona*, 548 U.S. 735, 743 (2006) (Flagstaff, Arizona police officer shot and killed by seventeen year-old paranoid schizophrenic during traffic stop); Emily Hill, ‘Extremely Dangerous’ Suspect Shoots Montgomery Police Officer, Flees in Stolen Car, AL.com (Oct. 5, 2014), http://www.al.com/news/montgomery/index.ssf/2014/10/extremely_dangerous_suspect_ru.html; Faith Karimi, *Fallen Officers: Separated by Thousands of Miles, United by Similar Dangers*, CNN (Nov. 4, 2015), <http://www.cnn.com/2015/08/03/us/police-officers-killed-nationwide/>; Ray Sanchez, Faith Karimi & Melissa Gray, *Suspect Arrested in ‘Execution-Style’ Killing of Texas Deputy Sheriff*, CNN (Aug. 29, 2015),

<http://www.cnn.com/2015/08/29/us/texas-sheriffs-deputy-shot-gas-station/> (“Deputy Darren H. Goforth was in uniform when he was shot in the back Friday night in what authorities described as an unprovoked killing.”);

Nick Valencia, *Pistol-Whipped Detective Says He Didn’t Shoot Attacker Because of Headlines*, CNN (Aug. 14, 2015), <http://www.cnn.com/2015/08/13/us/alabama-birmingham-police-detective-pistol-whipped/index.html> (Birmingham, Alabama, police detective was pistol-whipped unconscious during traffic stop); Dana Ford & Catherine E. Shoichet, *Police Officer Shot and Killed in California Traffic*

While the general public may think about the mortal risks inherent in policing relatively infrequently, perhaps only when a news story reports an injury or death, police officers are constantly reminded of the dangers they potentially face. For instance, a video depicting the 1998 murder of Deputy Kyle Dinkheller in Georgia has been repeatedly shown in trainings as an example of how quickly roadside stops, a common aspect of policing, can spin out of control.¹⁶³ Dinkheller, a twenty-two year-old husband and father, stopped a motorist for speeding and was gunned down without provocation.¹⁶⁴ Some speculate that he waited too long to employ lethal force,¹⁶⁵ and, understandably, no officer wants to share his fate.

Officers' awareness of the perils they continually face has a profound impact on the way they do their jobs.¹⁶⁶ According to Joshua Ederheimer, Principal Deputy Director of the Office of Community Oriented Policing Services, the DOJ component responsible for advancing the practice of community policing, officers' awareness of their comrades' deaths in the line of duty raises concerns that affect "how they use their skills as well as

Stop, CNN (July 22, 2015), <http://www.cnn.com/2015/07/22/us/california-police-officer-killed/> (Hayward, California, officer fatally shot during traffic stop after 3 a.m.); Ben Brumfield, *Police: Cincinnati Man Calls 911 on Self, Kills Responding Officer*, CNN (June 21, 2015), <http://www.cnn.com/2015/06/20/us/ohio-suicide-by-cop-officer-killed/index.html> (Cincinnati, Ohio, officer ambushed and killed by 911 caller); Press Release, Fed. Bureau of Investigation, FBI Releases 2014 Preliminary Statistics for Law Enforcement Officers Killed in the Line of Duty (May 11, 2015), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2014-preliminary-statistics-for-law-enforcement-officers-killed-in-the-line-of-duty> (observing that fifty-one law enforcement officers were killed in the line of duty in 2014).

¹⁶³ Dan Lamothe, *PTSD, Police Altercations, and the Case of Vietnam Veteran and Convicted Killer Andrew Brannan*, WASH. POST (Jan. 11, 2015), <https://www.washingtonpost.com/news/checkpoint/wp/2015/01/11/ptsd-police-altercations-and-the-case-of-vietnam-veteran-and-convicted-killer-andrew-brannan/>.

¹⁶⁴ See Hall v. Brannan, 670 S.E.2d 87, 91 (2008); Lamothe, *supra* note 163; MrMikesMondoVideo, *Police Shootout - Deputy Kyle Dinkheller - Laurens County, GA*, YOUTUBE (Dec. 13, 2012), <https://www.youtube.com/watch?v=L6z8q4lOrDU>.

¹⁶⁵ See, e.g., Cammy Clark, *Training Helps Keys Cops Make Better Split-Second Decisions About When to Shoot*, MIAMI HERALD (Nov. 23, 2014), <http://www.miamiherald.com/news/local/community/florida-keys/article4077525.html>; Jacob Eubanks, *Baltimore PD to Publicize Use of Force Investigations*, LAW ENFORCEMENT TODAY (July 5, 2014), <http://www.lawenforcementtoday.com/2014/07/05/baltimore-pd-to-publicize-use-of-force-investigations/#sthash.X64WrQ2y.dpuf> ("This video is used in training to demonstrate the failure to act in the face of danger.").

¹⁶⁶ Gupton, et al., *supra* note 151, at 92 ("In addition, traumatic experiences, such as exposure to violent deaths, near death incidents, and injuries involving the employee, are equally traumatizing. Psychological difficulties also arise through the indirect experience of others' trauma, thus compounding the already heavy burden experienced by law enforcement personnel. Long-term cumulative exposure to these general stressors, as well as to the employee's personally experienced traumas, can result in emotional and behavioral difficulties");

CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., INVESTIGATION OF THE SEATTLE POLICE DEPARTMENT, 2 (2011) (recognizing the impact that several "unprovoked, unexpected attacks against on-duty uniformed officers by members of the community" had on all police, particularly members of the Seattle Police Department).

their capacity to deescalate and minimize use of force.”¹⁶⁷ Philadelphia Commissioner Charles Ramsey, who formerly served as Chief of Police in Washington, D.C., was even more pointed:

One thing that we haven’t talked about is the fear and anxiety that a lot of police officers have when they’re out in some of these neighborhoods. We don’t talk about that because, you know, cops aren’t supposed to be afraid of anything. But that’s a lot of BS. When you ride around all day long and you’re dealing with shootings, you’re dealing with robberies, you’re dealing with all this violent crime that’s constantly going on, that’s going to also influence how you respond in certain situations.¹⁶⁸

In short, officers who are incapable of managing the ample stress and fear that necessarily accompanies policing are more likely to harm the public.¹⁶⁹

Law enforcement has long been recognized as a high stress profession,¹⁷⁰ and police officers are human beings, subject to the same passions and foibles as the citizens they serve, so the stresses and dangers of their work understandably and predictably have a significant and harmful impact on them.¹⁷¹ For instance, police stress leads to anger,¹⁷² and has been associated with maladaptive and antisocial behaviors like problem drinking, hyper-aggressiveness, and violence, both on and off the

¹⁶⁷ POLICE EXECUTIVE RESEARCH FORUM, *supra* note 152, at 10;

Gershon, et al., *supra* note 154, at 276 (“The death or injury of a fellow officer in the line of duty is known to be especially stressful for officers.”).

¹⁶⁸ POLICE EXECUTIVE RESEARCH FORUM, *supra* note 152, at 10-11.

¹⁶⁹ Leon Neyfakh & Aaron Wolfe, “*That’s Our Standard in Policing ... Fear*”, SLATE.COM (Aug. 6, 2015), http://www.slate.com/articles/news_and_politics/crime/2015/08/baltimore_ex_cop_discusses_police_violence_toward_young_black_men.html (“I’ve always thought that those are the ones that actually cross a line more – is the ones that are afraid. And that’s our standard in policing is fear. So if you’re afraid you can do whatever you want. That’s the legal standard. So if I’m afraid that you can take my life, then I’m allowed to take yours. Legally.”).

¹⁷⁰ Gershon, et al., *supra* note 154, at 276; *Town of Purcellville Police v. Bromser-Kloeden*, 544 S.E.2d 381, 385 (Va. Ct. App. 2001) (“The jobs of law enforcement officers, like firefighters, are often stressful”);

Bell Tel. Co. v. Workmen’s Comp. Appeal Bd., 487 A.2d 1053, 1058 (Pa. Commw. Ct. 1985) (observing that police officers’ occupation is, by its very nature, high stress).

¹⁷¹ Gershon, et al., *supra* note 154, at 276 (“The effects of routine police stressors along with exposure to critical incidents or traumatic stressors may result in physiological, psychological, and/or behavioral problems.”);

see, e.g., City of Cedar Rapids v. Board of Trs. of the Mun. Fire & Police Ret. Sys., 572 N.W.2d 919, 920 (Iowa 1998) (affirming finding of posttraumatic stress disorder where an officer was hospitalized for depressive symptoms following stressful events that occurred during his work as a police officer, including a motor vehicle accident in which he saw two victims burn to death, a confrontation with an armed suspect, and a confrontation with an armed, suicidal citizen).

¹⁷² S. Hakan Can & Helen M. Hendy, *Police Stressors, Negative Outcomes Associated with Them and Coping Mechanisms that May Reduce these Associations*, 87 POLICE J.: THEORY, PRAC. & PRINCIPLES, 167, 168, 173 (2014).

job.¹⁷³ According to the President’s Task Force on 21st Century Policing, a recent study found that officers die from suicide 2.4 times as often as from homicide, and routine work and life stressors are frequent motivators.¹⁷⁴ The pressure is real, and the symptoms are evident.

A study involving more than 1,000 officers with the Baltimore Police Department, which has a significant history of tensions with the African American community,¹⁷⁵ confirms both the problem and the accompanying dangers. According to the study, symptoms of posttraumatic stress were common.¹⁷⁶ Moreover, fourteen percent of participating officers acknowledged “treat[ing] the public as if they were impersonal objects;” fifteen percent of the respondents admitted that they sometimes “smashed things” to relieve their stress; and several acknowledged sometimes “getting physical,” that is, by pushing, shoving, grabbing, and hitting their pets, fellow officers, spouses or significant others, or children.¹⁷⁷ Clearly, a number of officers in the department that killed Freddie Gray were not emotionally well.¹⁷⁸

The ongoing dangers of dispatching troubled officers into vulnerable communities should be obvious, and the potential dangers are far too great to ignore.

The wellness and safety of law enforcement officers is critical not only to themselves, their colleagues, and their agencies but also to public safety. An officer whose capabilities, judgment, and behavior are adversely affected by poor physical or psychological health may not only be of little use to the community he or she serves, but also may be a danger to the community and to other officers.¹⁷⁹

A lack of emotional stability in officers at least partially explains the recent string of excessive uses of force and homicides against unarmed African Americans.¹⁸⁰ When disturbed and angry officers, unable to cope

¹⁷³ Gershon, et al., *supra* note 154, at 276.

¹⁷⁴ PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, AT 61 (2015).

¹⁷⁵ Sari Horwitz, *Justice Department to Launch Federal Investigation of Baltimore Police*, WASH. POST (May 7, 2015), https://www.washingtonpost.com/world/national-security/justice-department-to-launch-federal-investigation-of-baltimore-police/2015/05/07/b3a422da-f4d4-11e4-b2f3-af5479e6bbdd_story.html (quoting Baltimore Mayor Stephanie Rawlings-Blake as saying, “We all know that Baltimore continues to have a fractured relationship between the police and the community”); Hermann, et al., *supra* note 140.

¹⁷⁶ Gershon, et al., *supra* note 154, at 281.

¹⁷⁷ *Id.* at 281-82.

¹⁷⁸ Conor Friedersdorf, *supra* note 112 (detailing several instances of violence by Baltimore police officers in recent years).

¹⁷⁹ PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 174, at 61.

¹⁸⁰ *Cf.* Neyfakh, et al., *supra* note 169 (“They don’t have much of a release, so I think a lot of it

with their work stresses, are dispatched into untrusting African American communities under the color of law, with combat training and ready access to lethal weapons, offenses and tragedy naturally result. Addressing officer wellness at regular intervals, then, is a crucial ingredient in improving police relations with African American communities.¹⁸¹

Despite the great dangers to officers and communities, psychological problems in police officers are growing at an alarming rate.¹⁸² Something has to be done. Oftentimes, police officers are ordered to attend emotional or psychological counseling responsively, i.e., only after problems are manifest, but it is irresponsible and reckless to intervene only after calamity occurs. According to George Anderson, a consultant who provides anger management coaching for the California State Highway Patrol, little can be done to reduce job stress among law enforcement professionals, so intervention “must be narrowly structured on teaching officers how best to recognize and manage anger and stress, enhance assertive communication skills, as well as increase emotional intelligence.”¹⁸³ The President’s Task Force on 21st Century Policing would seemingly concur because it recently suggested that the frequency of mental health checks for officers need to increase in order to prevent problems.¹⁸⁴ Improving the coping mechanisms of officers exposed to high levels of stress and anger as a part of their job is a simple, sensible path to improving their performance.¹⁸⁵

Armed with the knowledge that officers have incredibly stressful jobs

gets built up in, like, bitterness of the people and of the environment. Not in a productive way. They generally don’t go and work out, they don’t deflate themselves. Instead, they’ll get angry at the citizens, get further into that us vs. them and, you know, start their infamous drinking problems that you hear about with police. You know that’s real because it is a stressful thing.”)

¹⁸¹ Walker, *supra* note 18, at 614 (calling for independent, in-depth psychological testing for police officer candidates); cf. PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 102 (“No community-relations or recruiting or training program will avail if courteous and coolheaded conduct by police-men in their contacts with citizens is not enforced.”).

¹⁸² Gershon, et al., *supra* note 154, at 276.

¹⁸³ *Human Resources: Institute Anger Management Classes for Officers at Earliest Opportunity*, 26 LAW ENFORCEMENT EMP’T BULL., Apr. 2009, at article 6.

¹⁸⁴ PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 174, at 64.

¹⁸⁵ Gershon, et al., *supra* note 154, at 285; Can, et al., *supra* note 172, at 175; Marion, *supra* note 153, at 59 (“Practitioners suggest anger management programs to help police manage their anger more effectively.”); FERGUSON COMMISSION, *supra* note 52, at 26 (“To support officer well-being and help officers manage the daily stress of policing, training and ongoing support must attend to the mental and physical wellness of officers. Ensuring physically and mentally strong officers helps secure public safety and ensure neighborhoods are patrolled by healthy personnel”); CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE ET AL., *supra* note 166, at 33 (“A stressed officer with an excessive workload itself can lead to problems.”); Kim Covington, *6 Ways to Improve Police and Community Relations*, THE ARIZONA REPUBLIC (Sept. 21, 2015), <http://www.azcentral.com/story/news/local/phoenix/contributed/2015/09/16/6-ways-improve-police-and-community-relations/32536565/> (reporting that Deputy Chief Danielle Outlaw of the Oakland Police Department suggested that increased stress and fear training limits poor reaction errors and creates a culture of self-examination which de-escalates situations).

and are often dispatched into difficult environments, there simply must be a greater emphasis on both preparing them emotionally and psychologically for their work before it begins, and on providing more robust ongoing support as they continue in their duties. Policemen and policewomen must be better trained for their vital and taxing work¹⁸⁶ because when their anger gets the better of them, they mistreat citizens and cast a pall on their profession.¹⁸⁷ In light of the growing awareness of stress-related problems among police officers, those who fail to provide them with comprehensive stress and anger management courses are “making a big mistake.”¹⁸⁸ They are courting major trouble for their departments and the communities they serve because the “most prevalently used coping mechanisms by stressed police officers may not necessarily be the most *healthy* coping mechanisms, and they may not always be associated with *reduced* risk for negative outcomes.”¹⁸⁹ Continuous intensive anger management, stress management, and fear management should be standard aspects of officers’ training, and it can only improve their performance in African American communities where relations are historically and deeply strained.

B. Initiate Intensive Cultural Competency Education

One cannot reasonably expect “outsiders” to effectively police certain neighborhoods.¹⁹⁰ Policing a community one does not participate in and empathize with is contrary to traditional notions of serving and protecting, as well as the more recent emphasis on community policing. Rather, it is more consistent with lording over others, and it predictably leads to conflict. Decades ago, studies showed “that too many policemen do misunderstand and are indifferent to minority-group aspirations, attitudes, and customs, and that incidents involving physical or verbal mistreatment of minority-group citizens do occur and do contribute to the resentment against police that some minority-group members feel.”¹⁹¹ Given these realities, it is notable that the officers involved in many of these deplorable interactions, including the recent killings that have sparked outcries and

¹⁸⁶ *Human Resources*, *supra* note 183, at article 6.

¹⁸⁷ See, e.g., Jonathan Dienst, Kevin Nious & Ann Givens, *Cop in Viral Uber Rant Video Apologizes, Says Emotions Got the Better of Him*, NBC New York (Apr. 6, 2015), <http://www.nbcnewyork.com/news/local/New-York-NYC-NYPD-Taxi-Driver-Uber-Cop-Video-Tirade-NYC-Detective-298585531.html>.

¹⁸⁸ *Human Resources*, *supra* note 183, at article 6.

¹⁸⁹ Can, et al., *supra* note 172, at 168-69.

¹⁹⁰ *Detroit Police Officers Ass’n*, 591 F. Supp. at 1205 (“No one today could seriously hold . . . that a white police force living in the suburbs could effectively police the City of Detroit.”).

¹⁹¹ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 100.

unrest, have been Anglo American, i.e., Caucasian.

While America has made laudable improvements in race relations in several respects, there is still much work to do,¹⁹² particularly in policing.¹⁹³ Humiliating, abusive interactions with law enforcement merely confirms perceptions that racism and intolerance are a regular part of daily life for many African Americans.¹⁹⁴ As the Ninth Circuit Court of Appeals explained, “we cannot help but be aware that the burden of aggressive and intrusive police action falls disproportionately on African American, and sometimes Latino, males. Notwithstanding the views of some legal theoreticians, as a practical matter neither society nor our enforcement of the laws is yet color-blind.”¹⁹⁵

One can hardly be surprised, then, that there are tense police relations with African American communities where many, and in some cases the majority, of officers are not part of the neighborhoods in which they operate.¹⁹⁶

¹⁹² *Shaw v. Hunt*, 861 F. Supp. 408, 496 (E.D.N.C. 1994) (“That our society’s race consciousness persists, latent or otherwise, is indeed a regrettable phenomenon.”); *Rhode Island Chapter, Associated Gen. Contractors, Inc. v. Kreps*, 450 F. Supp. 338, 367 (D.R.I. 1978) (“[I]t would be wishful thinking to believe that a color-blind society can be created in a short time”); *In re H.*, 305 N.E.2d 815, 818 (Ohio Juv. Ct. 1973) (“Race relations in the United States has long been one of our most turbulent and troublesome problems. In the past two decades much progress has been made in the direction of giving racial minorities the protection and rights that are avowedly guaranteed to all persons under our laws and constitutions. We still have a long way to go if both the spirit and the letter of our laws are to be applied equally and with even impartiality to all our citizens, regardless of race.”)

¹⁹³ FACHNER, ET AL., *supra* note 73, at 71 (“It is clear that the Black community is disproportionately impacted by extreme violence involving the police.”); Hutchinson, *supra* note 74, at 27 (“Although facially discriminatory crime and punishment would violate the Constitution today, historical patterns of racist criminal law enforcement continue.”); Robert J. Smith, *Reducing Racially Disparate Policing Outcomes: Is Implicit Bias Training the Answer?*, 37 HAWAII L. REV. 295, 297 (2015) (“Racially disparate outcomes pervade policing. Non-whites, and especially young black men, are disproportionately stopped, searched, and arrested.”); Floyd v. City of N.Y., 959 F. Supp. 2d 540, 580 n.158 (S.D.N.Y. 2013) (“A study of police officers in Savannah, Georgia found evidence that minority suspects were more likely than white suspects to be viewed suspiciously by the officers for nonbehavioral reasons — even when the officers knew they were being closely observed by social scientists while on patrol.”); Simmons, *supra* note 26, at 366 (stating that minority groups are disproportionately impacted by police brutality); Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1387 (2000) (“[P]olice brutality and its disproportionate impact on minority groups and the poor threatens the stability of our society and the legitimacy of our justice system”).

¹⁹⁴ *Lambert*, 98 F.3d at 1188; *see, e.g.*, Julie Zauzmer, *Officer Convicted of Assault for Pointing Gun at Civilian’s Face*, WASH. POST (Dec. 2, 2015), https://www.washingtonpost.com/local/public-safety/officer-convicted-of-assault-for-pointing-gun-at-civilians-face/2015/12/02/f8d3ec04-992b-11e5-94f0-9eeaff906ef3_story.html (Bowie, Maryland, officer convicted of first-degree assault for holding the gun close to the man’s forehead and shouting, “I dare you to [expletive] fight me, son,” as the man tried to enter his own home.); Benjamin Mueller, Al Baker & Liz Robbins, *James Blake’s Arrest Brings Swift Apologies from New York Officials*, N.Y. TIMES (Sept. 10, 2015), <http://www.nytimes.com/2015/09/11/nyregion/james-blake-new-york-police-officer.html>.

¹⁹⁵ *Lambert*, 98 F.3d at 1187.

¹⁹⁶ *Young*, 608 F.2d at 695 (“The presence of a mostly white police force in minority communities can be a ‘dangerous irritant’ which can trigger, as it did in Detroit in 1967, a violent response.”).

[A] lack of understanding of the problems and behavior of minority groups is common to most police departments and is a serious deterrent to effective police work in the often turbulent neighborhoods where those groups are segregated. And the relationship between the police and the community is so personal that every section of the community has a right to expect that its aspirations and problems, its hopes and fears, are fully reflected in its police. A major, and most urgent, step in the direction of improving police-community relations is recruiting more, many more, policemen from minority groups.¹⁹⁷

This troubling state of affairs is unlikely to improve unless the officers better understand the experiences, frustration, anger, and pain, much of which grows out of racial discrimination, endured by African Americans within the communities they police.¹⁹⁸

Departments that send officers into the field without first educating them about the cultural complexities they will meet are doing the officers and the communities a tremendous disservice. The officers are, in effect, being blindly dispatched into minefields.

The way that police power was applied during the eras of segregation and the civil rights movement placed police departments and their officers in direct opposition to communities advocating for social change. And in the years since, interactions with the police have been a part of the continued experience of minority groups and their relationship with government, and are therefore central in debates about race and racism in the nation. As a result, while young people—whether in the ranks of police departments or living in the community—may be tempted to view much of this history as part of the past rather than the present, doing so neglects that it is a history that shapes America’s current challenges.¹⁹⁹

Under such circumstances, it is inevitable that negative interactions with citizens will ensue. Because officers often work in communities that do not share their cultural experiences and perspectives, good public relations requires that they have sufficient education to interact without offending them unnecessarily. Targeted historical and cultural education is an

¹⁹⁷ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 107.

¹⁹⁸ Kevin Cokley, *Black Community’s Mistrust of Police is Rational, Justified*, ST. LOUIS POST-DISPATCH, Oct. 15, 2014, http://www.stltoday.com/news/opinion/black-community-s-mistrust-of-police-is-rational-justified/article_7aa43d1b-28df-5c70-84bc-6c782e970d48.html; POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 53 (“Race is an issue that permeates almost every aspect of policing and justice in St. Louis City and County. Concerns over racial tensions and racial bias were raised throughout the course of this study, especially by African-Americans and young people. The failure to address the racial issues in policing is holding back progress.”); *see also* Gupta, *supra* note 3.

¹⁹⁹ JACKSON, *supra* note 144, at 2-3.

important step in helping them appreciate and respect the existing diversities in the communities they serve.²⁰⁰

More departments should follow the lead of the Montgomery Police Department in Alabama.²⁰¹ In order to raise officers' cultural awareness and equip them to better serve communities plagued by harmful racial tensions, Chief Kevin Murphy initiated a course for officers entitled "Policing in a Historic City: Civil Rights and Wrongs in Montgomery." The class, which may well be the only one of its kind, focuses on cultural diversity and bias-based policing, and includes discussion of landmark civil rights cases and events in the United States, generally, and Alabama, specifically.²⁰² The mandatory course also includes a visit to the Rosa Parks Museum and discussion of the significance of policing in a city with a complex history of civil rights and wrongs.²⁰³

In discussing the need for such a course, J. Christopher Murphy, Director of Public Safety for the City of Montgomery, explained, "Why is a history lesson important for police officers? I believe the answer lies in law enforcement's understanding of its role and relationship with the community it serves. It lies in the understanding that as a department and as a city, we are not defined solely by the present. We also must understand the past and look to the future."²⁰⁴ This unique and progressive curriculum is part of Montgomery's effort to increase public safety in partnership with its community.²⁰⁵ This program is of inestimable importance; it directly addresses a critical aspect of the destructive "us" versus "them" paradigm that exists in too many communities between police officers and minority residents.²⁰⁶

The need for cultural education has been acknowledged in other troubled areas. For example, in its discussion of overcoming the challenges of

²⁰⁰ Marion, *supra* note 153, at 64.

²⁰¹ See, e.g., CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *supra* note 166, at 34 ("We encourage SPD to work with Seattle's diverse communities to address cultural competency skill building."); FACHNER, ET AL., *supra* note 73, at 71-72 (recommending that recruits participate in "cultural immersion" and that departments "improve academy training to better prepare officers for policing in a multicultural society.").

²⁰² J. Christopher Murphy, *Alabama Voices: Civil Rights, Wrongs*, MONTGOMERY ADVERTISER, Aug. 27, 2011, <http://www.thedredscottfoundation.org/dshf/documents/Newsreel/Dred%20Scott%20Newsreel%20Alabama%20Voices.pdf>.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 23; Walker, *supra* note 18, at 586 ("An indispensable key in understanding police motives, fears, aspirations, and the moral codes by which they judge themselves is to understand and acknowledge how the police learn to see the world around them and their place in it.").

policing in St. Louis City and County, the Police Executive Research Forum wrote,

Time and again, we heard from residents—in particular, African-American residents—who expressed concern that their police departments did not come close to reflecting the racial makeup of the communities they serve. On numerous occasions, residents expressed frustration that officers do not understand the community, because they do not live there and cannot relate to the cultures, experiences, and everyday challenges of the people who do live there.²⁰⁷

In response to this problem, the Ferguson Commission, appointed by Missouri Governor Jay Nixon, recommended that, “officers need to be trained in cultural responsiveness and trained to recognize the impact of historical trauma.”²⁰⁸ Montgomery’s mandatory and pointed cultural training for officers recognizes the seemingly obvious truth that “effective community policing requires a basic understanding of the history and psychology of members of that community,”²⁰⁹ and other cities urgently need to emulate it and institute similar educational programs for their officers, if they hope to repair longstanding breaches in police-community relations.²¹⁰

On the first day on the job, Caucasian officers working in African American neighborhoods often walk into combustible situations. They may not have personally helped create the volatile circumstances, but the ingredients for local, and even national, outrage and international scandal are present nonetheless. American society and local communities must figure out ways to alleviate some of this pressure. Cultural education like that provided for Montgomery’s officers will very likely help in this respect for at least two reasons. First, by requiring all officers to participate, police

²⁰⁷ See, e.g., POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 23.

²⁰⁸ FERGUSON COMMISSION, *supra* note 52, at 24-28.

²⁰⁹ Cokley, *supra* note 198.

²¹⁰ David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 Rutgers L. J. 1, 56 (2006) (referring to cultural education as for law enforcement agents and officers as “a necessary ingredient in any effort to build relationships with people from very different cultural backgrounds”); PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 112 (“Recruits receive too little background in the nature of the community and the role of the police; in two large departments that offer over 10 weeks of training, less than 2 days are devoted to police-minority group relations.”); Kate Abbey-Lambertz and Joeseeph Erbenraut, *The Simple Strategies That Could Fundamentally Change How Communities View Their Police*, HUFFINGTON POST, Feb. 17, 2015, http://www.huffingtonpost.com/2015/02/17/community-policing-police-trust_n_6607766.html (former Madison, Wisconsin, police officer who now works with at-risk African-American boys expressing hoping that the Police Department will do a better job ensuring that all officers are trained in cultural awareness).

departments and cities would unquestionably demonstrate a desire for officers to understand and responsibly navigate the complex racial dynamics they face and avoid trampling over citizens' duly sensitive and raw feelings. Second, the training should help officers do their jobs as peace officers more effectively on a daily basis because they will be better equipped to serve the public.

Officers need not be hostage to community perceptions, but in order for them to keep the peace and de-escalate tensions between law enforcement and the community where possible, they need to be better informed. History matters. Members of the public who have a "bad experience" during a police encounter are nearly fifteen times more likely to evaluate the police negatively,²¹¹ so officers need to know and understand that their uniforms do not represent the same things in all communities. Citizens in African American communities oftentimes have experiences that make it difficult for them to see law and order when they look at police uniforms.²¹² With good reason, they sometimes see tyranny and oppression instead. Educating and truly sensitizing officers to the perceptions within these communities will help them serve better and bolster efforts to change negative perceptions. When officers are culturally ignorant, it is all too easy for them to adopt and exacerbate the toxic "us" versus "them" model that sometimes leads them to see threats where none exist and to use violence when it is not necessary.

III. BUILDING TRUST WITH AFRICAN AMERICAN COMMUNITIES

In addition to better preparing officers for the complex work of policing in African American communities, significant investments must be made in building trust between departments and communities. Community participation is absolutely critical to effective policing. Even when the public sympathizes and cooperates with the police, "[c]arrying out with proper efficiency and discretion the complicated law enforcement and

²¹¹ Barak Ariel, William A. Farrar & Alex Sutherland, *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, J. QUANTITATIVE CRIMINOLOGY, 31, Nov. 19, 2014, available at <http://link.springer.com/article/10.1007/s10940-014-9236-3>; see also, Andy Bain et al., *Perceptions of Policing: Improving Communication in Local Communities*, 16 INT'L J. POLICE SCI. & MGMT. 267, 269 (2014) ("It is reasonable to assume that positive encounters will increase public perceptions of local policing, whereas negative contact results in poorer public perceptions.").

²¹² Mia Carpiniello, *supra* note 145, at 362 ("The willingness of police to enforce discriminatory laws, such as the southern slave codes prior to the Civil War and "Jim Crow" thereafter, the inability or unwillingness of police to protect Blacks from mob violence and lynching, and police precipitation of mob violence against Blacks during the Civil Rights Era, have all contributed to a history of betrayal of minorities by the police force.").

community-service tasks the police are expected to perform is a formidable assignment.”²¹³ Of course, sympathy and cooperation are not generally descriptive of sentiment towards law enforcement in many of the African American neighborhoods where effective policing is most needed and wanted. Distrust among minorities towards police, particularly the boys and young men with whom law enforcement often deal, is nothing new.²¹⁴ However, recent high-profile killings of unarmed African American males “have focused national attention on profound fractures in trust between some police departments and the communities they are charged with protecting.”²¹⁵

As administrators and officials undertake the vital work of improving police-community relations, they must remember that redressing crime is not the sole objective. “[P]olice organizations rarely experience community crises for failing to control crime. Instead, it is the failure of police to control police conduct that most often causes community distrust.”²¹⁶ The necessary efforts to improve policing in African American communities must begin with the complex task of building trust where it has long been vitiated,²¹⁷ because public trust builds legitimacy and begets cooperation and compliance.²¹⁸ The problem is “multifaceted and deep,” and it may take several years to address, but it is solvable.²¹⁹ Among other things, public and police officials should begin by apologizing for past police abuses against African Americans, broadly deploy body cameras to record police-citizen interactions, and cooperate with citizens in crisis

²¹³ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 99.

²¹⁴ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 25 (stating that studies indicate that minority communities “have a strong feeling of need for adequate police protection.”); *Illinois v. Wardlow*, 528 U.S. 119, 132 (2000) (Stevens, J., concurring in part and dissenting in part); *C.E.L. v. State*, 24 So. 3d 1181, 1191 (Fla. 2009) (Pariente, J., concurring) (agreeing that “minorities and those residing in high-crime areas may flee upon sight of police, not because of criminal activity, but because of a well-founded fear of police, rooted in a perceived mistreatment of minorities by the police”).

²¹⁵ JACKSON, *supra* note 144, at 1.

²¹⁶ Farrar, *supra* note 7, at 20.

²¹⁷ Horwitz, *supra* note 175 (quoting Maryland Senator Barbara A. Mikulski as saying, “In many cities throughout the country, and including my own town of Baltimore, and in communities primarily that have significant populations of color, there has been now a tattered, worn and even broken trust between the community and the police department. We’ve got to restore that trust.”); Persky, *supra* note 8, at 30 (quoting the executive director of the partnership for Civil Justice Fund as saying, “There is a complete absence of trust between civilians and police, and it needs to be addressed as a national emergency”); *Cotter v. City of Boston*, 193 F. Supp. 2d 323, 341 (D. Mass. 2002) (noting that Boston’s Police Commissioner insisted “that the success of community policing depends on the ability of the Department to garner the trust of the citizens it serves.”)

²¹⁸ MIKE HOUGH, ET AL., *Trust in Justice and the Legitimacy of Legal Authorities*, THE ROUTLEDGE HANDBOOK OF EUROPEAN CRIMINOLOGY, 243 (Sophie Body-Gendrot et al. eds., 2014).

²¹⁹ JACKSON, *supra* note 144, at 2.

management planning in order to minimize the possibilities, or at least the intensity, of future unrest.

A. Apologize for Past Transgressions

In order to relieve some of the pressures of policing in communities with historical police abuses, authorities must do something they are often loathe to do. One of the simplest and potentially most effective ways for police to rebuild community trust is to begin acknowledging responsibility for the past failures that have contributed to current difficulties with many African American communities. Those who expect to move forward constructively without addressing the past are dangerously misguided. According to the Executive Police Research Forum and its studies in St. Louis City and County, “[r]ace is an issue that permeates almost every aspect of policing and justice The failure to address the racial issues in policing is holding back progress.”²²⁰

Racial tribulations in cities across the United States, and the harmful perceptions that attend them, are exacerbated by each wrongful use of force in African American communities. Not surprisingly, then, recommendations to police departments in communities where relations are combustible because of past transgressions generally include acknowledgement of prior wrongs. According to the DOJ’s Investigation of the Ferguson Police Department, for example, restoring trust in law enforcement in Ferguson, Missouri, will require, among other things, recognition of “the harms caused by Ferguson’s law enforcement practices,” and diligent, committed collaboration with the entire Ferguson community.²²¹ Similarly, Dr. Kevin Cokley, Editor-in-Chief for *The Journal of Black Psychology* and professor in the Departments of Educational Psychology and African and African American Diaspora Studies at the University of Texas at Austin, said, “If police truly want to improve their image and reputation among black citizens, they must first acknowledge that the black community’s mistrust of police is rational and justified.”²²²

Some might be inclined to quickly dismiss the notion that acknowledging past wrongs is a prerequisite to effectively moving forward (perhaps because of concerns about civil liability), but that would be a grave error. Acknowledging a history of mistakes by law enforcement, and

²²⁰ POLICE EXECUTIVE RESEARCH FORUM, *supra* note 3, at 48-50.

²²¹ CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, *supra* note 60, at 4-5.

²²² Cokley, *supra* note 198.

pledging to do better in the future, would be of inestimable value in improving police-community relations. A former police chief in Madison, Wisconsin, explained that apologies, and ostensibly forgiveness, can occur between groups; he personally diffused a difficult situation in which one of his officers had made an insensitive remark that stoked tensions between his department and the African American community with an apology in lieu of firing the officer.²²³ Apologies can help.

This simple, direct approach has been successfully undertaken in at least one major city with troubled race relations and historical police misconduct against African Americans. Montgomery, Alabama, is a city with a well-known history of both. Among other things, a mob of white protestors viciously attacked a group of Freedom Riders at a Greyhound Bus Station in Montgomery in May of 1961.²²⁴ The riders were part of an effort designed to end the practice of segregated transportation.²²⁵ When they arrived in Montgomery, the city's police department intentionally left them unescorted,²²⁶ and the crowds savagely assailed the riders.²²⁷

In 2013, more than five decades after that infamous dereliction of duty, Police Chief Kevin Murphy, who was not even alive in 1961, apologized to Congressman John Lewis, one of the Freedom Riders assaulted at the Greyhound station.²²⁸ Regarding the apology, Murphy, an Anglo American, said, "It needed to be done. It needed to be spoken because we have to live with the truth and it is the truth."²²⁹ This was, in his words, "the first move to build that trust back in our community that was once lost because we enforced unjust laws."²³⁰ Murphy's apology was accepted by Lewis, acknowledged by President Barack Obama,²³¹ and enthusiastically

²²³ David C. Couper, *Trusting Police: The Case for Apology from a Veteran Police Chief*, IMPROVING POLICE: A VETERAN POLICE CHIEF DISCUSSES EFFECTIVE WAYS TO IMPROVE POLICE AND RESTORE THEIR TRUST IN A FREE SOCIETY BLOG (Dec. 17, 2014), <https://improvingpolice.wordpress.com/2014/12/17/the-case-for-apology-2/>.

²²⁴ National Park Service, *National Register of Historic Places Program: African American History Month Feature 2012 Montgomery Greyhound Bus Station, Alabama*, NPS.GOV, http://www.nps.gov/nr/feature/afam/2012/montgomery_greyhound_bus_station.htm.

²²⁵ *Lewis v. Greyhound Corp.*, 199 F. Supp. 210, 211 (M.D. Ala. 1961).

²²⁶ *United States v. U.S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897, 901 (M.D. Ala. 1961) (finding that the Montgomery City Police Department "willfully and deliberately failed to take measures to ensure the safety of the students and to prevent unlawful acts of violence upon their persons").

²²⁷ National Park Service, *supra* note 224.

²²⁸ Story of America, *Police Chief's "Apology Heard 'Round the World'" to John Lewis*, YOUTUBE (June 18, 2013), <https://www.youtube.com/watch?v=vKBVtLn5T1k>.

²²⁹ Craig Giammona, *Alabama Police Chief Apologizes to Freedom Rider Congressman*, NBC NEWS (Mar. 3, 2013), http://usnews.nbcnews.com/_news/2013/03/03/17167907-alabama-police-chief-apologizes-to-freedom-rider-congressman?lite.

²³⁰ *Id.*

²³¹ Rachel Jinright, *Montgomery Police Chief Kevin Murphy to be Honored by Pres. Obama*,

supported within the Montgomery community.²³² His apology helped.

Maintaining trust in African American communities is complicated by a history that often includes many “prominent examples of demonstrably inappropriate behavior by police.”²³³ Where historical and continuing problems exist, officials and administrators desperately need to acknowledge and apologize for the unfortunate part their departments have played in creating the turmoil. It is impossible to collectively move beyond continuing abuses, and it is difficult to trust departments when they deny that mistreatments have occurred and attempt to cover them up. However, sincere apologies can begin to ease tensions and break down barriers so African American communities and the officers policing them can work more cooperatively in the future. In some cities, they already have.

B. Broadly Deploy Body Cameras

While acknowledgements of historical transgressions are needed and wanting, a perceived lack of transparency also contributes to the volatility and lack of trust between law enforcement and minority communities. Citizens sometimes have dramatically differing accounts of their contacts with police officers than do the officers themselves, and there is a strong suspicion in African American communities that the differences are oftentimes attributable to officers lying to cover-up unnecessary and excessive uses of force.²³⁴ Some use of force is obviously part and parcel of policing,²³⁵ and the degree of suspicion may exceed the realities of police collusion in many cases, but the concerns are justified. While police officers are supposed to be “guardians of the law” who scrupulously fulfill their responsibility to obey its commands,²³⁶ they sometimes abuse

WORLDNOW (Mar. 23, 2014), <http://raycomgroup.worldnow.com/story/24966282/montgomery-police-chief-kevin-murphy-to-be-honored-by-pres-obama>.

²³² Matt Okarmus, *Support Follows Police Chief's Freedom Riders Apology*, MONTGOMERY ADVERTISER (Mar. 8, 2013), <http://www.usatoday.com/story/news/nation/2013/03/08/montgomery-police-chief-freedom-riders-apology/1972801/>.

²³³ JACKSON, *supra* note 144, at 1.

²³⁴ Elissa Krauss & Martha Schulman, *Juries: Arbiters or Arbitrary?: Redefining the Role of the Jury: The Myth of Black Juror Nullification: Racism Dressed up in Jurisprudential Clothing*, 7 CORNELL J. L. & PUB. POL'Y 57, 70 (1997) (“Numerous polls and studies have shown widespread suspicion of police among minorities in general, and blacks in particular.”).

²³⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989) (observing that, subject to the Fourth Amendment’s reasonableness limitation, “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it”); *Lee v. Ferraro*, 284 F.3d 1188, 1200 (11th Cir. 2002) (“the use of force is an expected, necessary part of a law enforcement officer’s task of subduing and securing individuals suspected of committing crimes” citing *Graham*, 490 U.S. at 396-397, 109 S.Ct. at 1872).

²³⁶ *Brewer v. Williams*, 430 U.S. 387, 407 (1977) (Marshall, J., concurring); *United States v. Cort. . s-Cabán*, 691 F.3d 1, 30 (1st Cir. 2012) (“Appellants, as police officers, held positions of

their positions and lie to conceal their crimes.²³⁷

In the absence of video corroboration, community concerns and theories that police officers sometimes get away with murdering African Americans by falsely depicting victims as aggressors have been lightly dismissed by many, particularly by those outside of minority communities where such abuses are less likely to occur. Perhaps it is all too easy to doubt the credibility of the outcries where there is no irrefutable evidence of police misconduct and one's own life experiences are not punctuated by instances of police abuses. In fact, though, officers in minority communities sometimes falsely cast victims as antagonists in order to obscure their own criminal uses of force.²³⁸ While this cannot be proven or verified each time

authority that society regards with admiration and respect, and which it trusts to safeguard our freedoms, not infringe upon them; to protect us from harm, not be the instigator thereof; and to stand the post, not be the cause for the watch. As often echoed, with great power comes great responsibility, and appellants showed themselves susceptible to corruption's tarnishing influence often found lapping at the shores of such power. Simply put, appellants disregarded the honorable integrity of their guardian role, and civil liberties were dealt the tragic blow. We can express no greater disapproval or remorse than this: we are saddened and indignant that today, it falls to us to assume the role of guarding the guardians."); *Abdullah*, 52 F. Supp. 3d at 949 ("The rule of law is essential to our constitutional system of government, and it applies equally to law enforcement officers and to other citizens").

²³⁷ See, e.g., *United States v. Figueroa*, 729 F.3d 267 (3d Cir. 2013) (affirming civil rights conviction of police officer who, among other things, took drug money, planted drugs on suspects and falsified numerous police reports); *Tesler v. State*, 672 S.E.2d 522 (Ga. Ct. App. 2009) (discussing officers lying to secure a search warrant, executing a "no knock" entry into a private residence, killing the 92 year-old occupant, and lying to cover-up their mistakes); Cassandra Fairbanks, *Alabama Police Officer Breaks Down on Stand, Admits to Repeatedly Lying to Cover Up for Fellow Cop Beating Handcuffed Man*, PHOTOGRAPHYISNOTACRIME.COM (July 30, 2015), <http://photographyisnotacrime.com/2015/07/alabama-police-officer-breaks-down-on-stand-admits-to-repeatedly-lying-to-cover-up-for-fellow-cop-beating-handcuffed-man/> (Huntsville police officer admitted during a federal trial that he lied to internal affairs investigators, an FBI agent, and a federal grand jury when he was questioned about his colleague brutally beating a handcuffed man and keeping his property as "trophies"); Steve Miletich, *Video from Bus Driver's Body Camera Could Cost 2 Deputies Their Jobs*, SEATTLE TIMES (July 23, 2015), <http://www.seattletimes.com/seattle-news/crime/video-from-bus-drivers-body-camera-could-cost-2-deputies-their-jobs/>; Nick Wing, *12 Videos That Show The Difference Between What Cops Said And What Actually Happened*, HUFFINGTON POST (July 28, 2015), http://www.huffingtonpost.com/entry/police-brutality-reports_55b65b79e4b0074ba5a53417.

²³⁸ See, e.g., John Swaine, *Alabama Officer Kept Job After Proposal to Murder Black Man and Hide Evidence*, THE GUARDIAN (Aug. 4, 2015), <http://www.theguardian.com/us-news/2015/aug/04/alabama-police-officer-murder-black-man-self-defense> (a police officer in Alabama proposed murdering a black resident and creating bogus evidence to suggest the killing was in self-defense); Steve Mills, et al., *Laquan McDonald Police Reports Differ Dramatically from Video*, CHICAGO TRIBUNE (Dec. 5, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-laquan-mcdonald-chicago-police-reports-met-20151204-story.html> (reporting that police reports claim "17-year-old McDonald moved or turned threateningly toward officers, even though the video of the October 2014 shooting shows McDonald walking away . . ."); Hasime Kukaj, *Bloomfield Officers Convicted in 'Dashcam' Case*, BLOOMFIELD LIFE (Nov. 5, 2015), available at <http://www.northjersey.com/news/crime-and-courts/bloomfield-officers-convicted-in-dashcam-case-1.1449629> (two Bloomfield police officers convicted of official misconduct and related charges in an arrest, where the officers wrote reports stating that the victim attempted to grab one of their guns and struck the other, but police dashboard camera videos showed them breaking the victim's window and dragging him from the car).

it occurs, the suspicions themselves are devastating to police relations with African American communities.

The killing of Sam DuBose illustrates just how invaluable a tool video corroboration can be when the worst happens. On July 19, 2015, University of Cincinnati police officer Ray Tensing shot the unarmed African American motorist in the head during a traffic stop that began because of a missing license plate.²³⁹ Tensing claimed he shot DuBose, a forty-three year-old father, because DuBose tried to run him over, and that the killing occurred as he was being dragged by DuBose's vehicle.²⁴⁰ At least two of Tensing's fellow officers supported his account. One claimed to have witnessed Tensing being dragged and firing the fatal shot, and another claimed to have observed evidence on Tensing's uniform consistent with his having been dragged.²⁴¹ On the basis of these accounts, the Cincinnati police told reporters that DuBose was shot when he attempted to speed away following an altercation with Tensing.²⁴²

Typically, in a circumstance where multiple officers claim a deceased victim attacked an officer and was killed in self-defense, the shooter would be celebrated for heroism, and the victim would be denounced as deserving of his fate. In this case, however, video footage from Tensing's body worn camera contradicted all of the officers' accounts. There was no struggle. DuBose did not try to flee at a high rate of speed, and no officer witnessed Tensing being dragged along by DuBose's vehicle because it did not happen. Based on the footage from his body camera, Tensing was fired from the police department and charged with murder.²⁴³ Moreover, the two officers who supported his lie were placed on paid administrative leave after body camera footage from other officers showed them coalescing around Tensing's false narrative of the killing.²⁴⁴

In light of community concerns, police transparency is critical in developing and maintaining community trust, particularly in high profile

²³⁹ ERIC WEIBEL, UNIV. OF CINCINNATI, POLICE DIV., INFORMATION REPORT ON POLICE OFFICER SHOOTING (July 20, 2015), available at <http://www.uc.edu/content/dam/uc/ucomm/docs/incident-report.pdf>.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Ralph Ellis, Don Melvin & David Shortell, *Investigation Finished in Police Shooting in Cincinnati Traffic Stop*, CNN (July 29, 2015), <http://www.cnn.com/2015/07/21/us/cincinnati-police-shooting/>.

²⁴³ Dana Ford & Ed Payne, *Ex-University Cop in Samuel Dubose Shooting Death Pleads Not Guilty*, CNN (July 31, 2015), <http://www.cnn.com/2015/07/30/us/ohio-sam-dubose-tenzing/>.

²⁴⁴ Jeremy Stahl, *New Body Cam Videos Show Cops Coalescing Around False Narrative of Sam DuBose Killing*, SLATE.COM (July 30, 2015), http://www.slate.com/blogs/the_slatest/2015/07/30/sam_dubose_murder_phillip_kidd_and_david_linde_nschmidt_suspended_after_backing.html.

cases where police use deadly force,²⁴⁵ and there is a growing consensus from varying quarters supporting broader deployment of officer body cameras in order to increase transparency. In a recent study, the first randomized, controlled trial of its kind, the use of body-worn cameras reduced the incidents of police use of force and citizen complaints in the Rialto, California, Police Department, seemingly because people tend to exhibit more desirable behaviors when they know they are being watched.²⁴⁶ The presence of the cameras and knowledge that the police-citizen contact was being recorded likely caused both parties to the contact to behave better than they would have otherwise.²⁴⁷ The authors of the study specifically recommended that body-worn-cameras might be a tool to potentially improve the quality of police encounters with members of minority groups.²⁴⁸

Even before the Rialto study was conducted, the Southern District of New York ordered New York's Police Department to begin testing wearable cameras in response to complaints about its stop-and-frisk patterns.²⁴⁹ In explaining its order, the court described the potential benefits of deploying the cameras:

Video recordings will serve a variety of useful functions. *First*, they will provide a contemporaneous, objective record of stops and frisks, allowing for the review of officer conduct by supervisors and the courts. The recordings may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore, such as baggy pants or a hoodie.

²⁴⁵ *Pasadena Police Officers Ass'n v. Superior Court*, 192 Cal. Rptr. 3d 486, 497-98 (2015) (“Given the extraordinary authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers.”); *City of Portland v. Oregonian Pub. Co.*, 112 P.3d 457, 460 (2005) (“It is beyond dispute, however, that the public’s (and the police bureau’s) need to have complete confidence that a thorough and unbiased inquiry has occurred is most urgent and compelling in ‘high profile’ cases where a police officer has killed a citizen in the line of duty. That confidence comes from transparency . . .”); *New York Times Co. v. Superior Court*, 60 Cal. Rptr. 2d 410, 414 (1997) (internal citations omitted) (“Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers. Disclosure is all the more a matter of public interest when those officers use deadly force and kill a suspect.”).

²⁴⁶ Ariel, et al., *supra* note 211, at 6; Farrar, *supra* note 7, at 24 (“Lastly, leaders cannot rule out the possibility that the cameras have (also) modified the behavior of those who interacted with the police. Members of the public with whom the officers communicated were also aware of being videotaped and, therefore, were likely to be cognizant that they ought to act cooperatively.”).

²⁴⁷ LINDSAY MILLER, JESSICA TOLIVER & POLICE EXECUTIVE RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 5-6 (2014), available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

²⁴⁸ Ariel, et al., *supra* note 211, at 6.

²⁴⁹ *Floyd*, 959 F. Supp. 2d at 685.

Second, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. *Third*, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police, and that the authorities are more likely to believe the police. Thus, the recordings should also alleviate some of the mistrust that has developed between the police and the black and Hispanic communities, based on the belief that stops and frisks are overwhelmingly and unjustifiably directed at members of these communities. Video recordings will be equally helpful to members of the NYPD who are wrongly accused of inappropriate behavior.²⁵⁰

Consistent with the findings from the study at the Rialto Police Department, the Southern District of New York concluded that body cameras would improve the quality of interactions and help alleviate mistrust between police officers and African American and Hispanic communities.²⁵¹ Notably, the Ninth Circuit Court of Appeals recently affirmed a similar court order designed to curb racial profiling and pretextual traffic stops against Latinos by the Maricopa County Sheriff's Office in Arizona.²⁵²

Police chiefs throughout the United States agree with the research and the courts that body-worn cameras are a desirable tool in protecting citizens and officers, and improving relations between the two. Chief of Police Ron Miller of Topeka, Kansas, declared, "There's absolutely no doubt that having body-worn cameras reduces the number of complaints against officers."²⁵³ The cameras also offer citizens some insulation against their constitutional rights being trampled upon by rogue cops.²⁵⁴ Chicago Police Superintendent Garry McCarthy is credited with saying, "[A]n officer's

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Melendres v. Arpaio, 784 F.3d 1254, 1266 (9th Cir. 2015).

²⁵³ MILLER, et al., *supra* note 247, at 6.

²⁵⁴ See, e.g., Steve Schmadeke, *4 Cops Charged with Lying Under Oath After Video of Drug Bust Shown in Court*, CHICAGO TRIBUNE (June 8, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-glenview-cops-charged-20150608-story.html>; Elahe Izadi, *Pa. Police Officer Charged with Criminal Homicide After Fatal Shooting of Unarmed Motorist*, WASH. POST (Mar. 24, 2015), <http://www.washingtonpost.com/news/post-nation/wp/2015/03/24/pa-officer-charged-with-fatally-shooting-unarmed-man-in-the-back-as-he-was-lying-face-down/>; but see Justin Hansford, *Body Cameras Won't Stop Police Brutality. Eric Garner is Only One of Several Reasons Why*, WASH. POST (December 4, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/12/04/body-cameras-wont-stop-police-brutality-eric-garner-is-only-one-of-several-reasons-why/> ("Ultimately, body cameras could do more harm than good to the cause of protecting citizens from police violence. Pinned to officers' chests, these cameras face outward — capturing the behavior of citizens, but not of the police. Their footage provides a one-sided view of the interaction, allowing outsiders to scrutinize the citizens' every move, but leaving them blind to the police officers' behavior.").

credibility is one of the most important attributes in this job and integrity is at the core of our ability to effectively police our communities.²⁵⁵ Certainly, cameras do not constitute magical wands that will eradicate real or perceived police abuses of power. Nor will they suddenly alleviate the profound lack of trust in police within communities that have endured abuses, but the accountability and transparency that comes with recorded encounters will help build public trust and perceived legitimacy in police officers where it is most assuredly needed and sorely lacking.²⁵⁶

C. *Engage in Cooperative Crisis Prevention and Management*

Sometimes, despite the best efforts of the police and the communities they serve, the worst is going to happen. Officers will use force against citizens, whether appropriately or inappropriately, and fatalities will sometimes result. In African American communities, particularly given the current climate of suspicion and unrest, protests will likely follow. Most protests will be peaceful, but violence is always possible when tensions run so high, new episodes keep emerging to add fuel to the fire, and officers make too great a show of force.

In the immediate wake of Michael Brown's death in Ferguson, Missouri, crowds gathered at various locations in and around the city. Some protested, while others prayed or provided sustenance to the protestors.²⁵⁷ Most assembled peacefully and lawfully, but some in the crowds became unruly and violent in the days and weeks following the killing.²⁵⁸ Rather than provide a restraining influence, though, law enforcement personnel actually made the situation worse by overreacting. For example, there is evidence that officers violated law abiding, non-violent protestors' rights to due process, peaceful assembly, and freedom of speech by threatening to arrest them if they did not "keep moving," although they were standing alone or in small groups, or even attempting to pray.²⁵⁹

²⁵⁵ Jeremy Gorner, *Chicago's Top Cop Recommends Officer be Fired Over 2011 Shooting*, CHICAGO TRIBUNE (July 30, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-mccarthy-police-officer-firing-met-20150729-story.html>.

²⁵⁶ Capers, *Crime*, *supra* note 14, at 987 ("Camera surveillance, to the extent it does not discriminate, and to the extent it confirms or refutes police misconduct, is likely to increase perceptions of legitimacy."); Mike Hough, et al., *supra* note 218, at 259 ("Across the 26 countries included in the analysis, trust in police procedural justice was the strongest and/or most consistent predictor of legitimacy.")

²⁵⁷ *Abdullah*, 52 F. Supp. 3d at 940.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 944-48 (granting a "preliminary injunction enjoining police from telling citizens that they must keep moving, or from threatening them with arrest if they stand still, so long as those citizens are not committing a crime, engaging in violent acts, or participating in a crowd that contains other people

The protests and rioting in Ferguson illustrate the perils of heavy-handed totalitarianism in these circumstances. The DOJ researched the police response to demonstrations that occurred in Ferguson in August 2014 and found that police use of military grade weapons and vehicles inflamed police-community tensions.²⁶⁰ Police and public officials in Ferguson should have been well aware of this likely result. “The use of tactical units should be limited to a specific and deliberate mission because their use can undermine the police’s peace-keeping role. Such units can anger and frighten citizens, resulting in greater animosity toward the police, which in turn may fuel more conflict.”²⁶¹ Displaying greater force when citizens protest excessive uses of force is antithetical to maintaining order because citizens’ willingness to follow police instructions or assist police in carrying out their roles enables law enforcement to be far more effective than reliance on coercion or the threat of coercion.²⁶²

In order to contain unrest when it begins to foment, it is vital that police do not confuse demonstrators with rioters and react too quickly or severely.²⁶³ In stark contrast to the unrest in Ferguson, no major instances of violence attended the protests of Tamir Rice’s death in Cleveland, and no one was arrested.²⁶⁴ Perhaps this was due in no small part to the novel approach taken by the city’s police chief. Chief Calvin Williams actually attended many of the protests and spoke one-on-one with angry protesters.²⁶⁵ Moreover, that was no isolated effort. Whereas Ferguson’s police chief resigned in disgrace following Michael Brown’s death and the unrest that followed,²⁶⁶ Williams remained engaged and listened to citizens vent during community meetings about the shooting and the general conduct of Cleveland’s officers.²⁶⁷ In large part because of his response

doing those things.”).

²⁶⁰ Office of Cmty. Oriented Policing Servs., U.S. Dep’t of Justice, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri* 59 (2015), <https://assets.documentcloud.org/documents/2328941/after-action-assessment-of-the-police-response.pdf>.

²⁶¹ *Id.*

²⁶² JACKSON, et al., *supra* note 144, at 4; Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails*, 43 Colum. J.L. & Soc. Probs. 1, 2 (2009) (“Corruption and brutality undermine the legitimacy of governmental authority and reduce the willingness of citizens to comply with the law.”).

²⁶³ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 118-19.

²⁶⁴ Ferrise, *supra* note 109.

²⁶⁵ *Id.*

²⁶⁶ Miles Parks & Krishnadev Calamur, *Ferguson, Mo., Police Chief Resigns Following Justice Department Report*, NPR (Mar. 31, 2015), <http://www.npr.org/sections/thetwo-way/2015/03/11/392381084/ferguson-mo-police-chief-resigns-following-justice-department-report>.

²⁶⁷ Mark Naymik, *Tamir Rice Shooting and Other Events Turn Cabvin Williams into Cleveland’s Chief Mediator Between Police and Angry Public*, CLEVELAND.COM (Nov. 20, 2015),

during tumultuous times for the city where he was reared and resides, he has come to be viewed by some as the chief mediator between the police department and an angry public.²⁶⁸ Through caring, consistent engagement, police officials can indeed be part of the solution.

The contrast between law enforcement reactions and community responses in Ferguson and Cleveland illustrate a simple truth. Officer uses of force will continue. Indeed, they must continue, but if police departments truly want to preserve order and protect citizens' rights, they should partner with the communities they serve. For example, during protests in Richmond, California, following Michael Brown's death, Police Chief Chris Magnus, an Anglo American, conversed with protestors and held a sign that read "#Black Lives Matter."²⁶⁹ While a photo depicting Magnus with the sign went viral, it was only a symbol of the many years he has invested in fostering peace and cooperation between his officers and the African American communities they serve in Richmond, a city with its own troubled history of police-community relations.²⁷⁰ "Like any kind of crime, riots are best controlled by prevention. This of course involves maintaining proper police conduct, but the most important element in prevention is a city government's awareness of and response to the frustrations of the community."²⁷¹

If police departments truly want to improve their performance and build trust in African American communities, many must radically reshape their approaches to managing community protests following controversial officer uses-of-force. Rather than await the inevitable outcry when citizens are abused and killed, and then respond with ostensibly overwhelming shows of greater force, officials should engage in cooperative crisis management planning with the communities they serve. Going forward, troubled cities and departments would do well to discuss appropriate and lawful times, places, and methods for peaceful protest with community leaders in advance.²⁷² Response plans should be developed in consultation with community members, community organizers, and law enforcement officials, and made publicly available.²⁷³ Then, when questionable, or even wrongful, uses of force occur, there will be strong, pre-existing police-

http://www.cleveland.com/naymik/index.ssf/2015/11/tamir_rice_shooting_and_other.html.

²⁶⁸ *Id.*

²⁶⁹ Elizabeth Weise, *supra* note 148.

²⁷⁰ *Id.*

²⁷¹ PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 1, at 119.

²⁷² *Id.* at 118-19.

²⁷³ FERGUSON COMMISSION, *supra* note 52, at 29.

community relationships in place to navigate the episodes cooperatively. Arlington, Texas Assistant Chief Will Johnson hit the proverbial nail on the head:

If we have established our legitimacy in the community, we are in a better position to serve our community during the worst type of crisis situations—incidents where de-escalation options are not available. The reality is that there are situations when an officer has to make a quick judgment regarding the use of force and the whole thing is almost over before it even starts. By building legitimacy in the community beforehand, we are able to maintain open dialogue and the trust of the community after the event. This can be key in controversial use-of-force incidents, and it can vastly improve supervisors' ability to alleviate community tensions.²⁷⁴

CONCLUSION

Justice Jackson once averred that “[t]he most odious of all oppressions are those which mask as justice.”²⁷⁵ Fair and effective systems of law and government are a pillar of any decent society,²⁷⁶ so America still has significant work to do. The problem of policing in African American neighborhoods is playing out more prominently today than ever before, largely because of the availability of private and police cameras and the proliferation of Internet access and social media. The world saw what happened in New York City, Ferguson, Cleveland and Baltimore, and America's international reputation has been sullied because of it, but there is clear evidence that similar troubles exist in New Orleans,²⁷⁷ Philadelphia,²⁷⁸ Chicago,²⁷⁹ and Boston,²⁸⁰ among other cities.

²⁷⁴ POLICE EXECUTIVE RESEARCH FORUM, *supra* note 152, at 21.

²⁷⁵ *Krulwitch v. United States*, 336 U.S. 440, 458 (1949) (Jackson, J., concurring).

²⁷⁶ ROBERT P. GEORGE, *CONSCIENCE AND ITS ENEMIES*, p. 6 (2013).

²⁷⁷ See generally Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 *BUFF. L. REV.* 1275, 1284 n. 47 and 1306 (1999); Simmons, *supra* note 26, at 360-62 (discussing the scope of police misconduct); CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE ET AL., *INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT* (2011); Trymaine Lee, *Justice Department Report Details Wide Range of Abuses by New Orleans Police Department*, *HUFFINGTON POST* (May 25, 2011), http://www.huffingtonpost.com/2011/03/18/justice-department-report-new-orleans-police_n_837866.html.

²⁷⁸ See generally *United States v. Philadelphia*, 482 F. Supp. 1248 (E.D. Pa. 1979); Michael Coard, *Abolish police brutality, corruption*, *THE PHILADELPHIA TRIBUNE* (July 17, 2015, 12:00 AM), http://www.phillytrib.com/commentary/abolish-police-brutality-corruption/article_a541e912-4a58-5b94-b5b7-438d808a1fce.html; see, e.g., George Spencer & David Chang, *Video of Arrest Sparks Allegations of Police Brutality*, *NBC PHILADELPHIA* (July 21, 2015), <http://www.nbcphiladelphia.com/news/local/Chester-Police-Arrest-Police-Brutality-Allegations-318077191.html>; Erin Calabrese, *Philadelphia police investigating video of man being beaten by cops*, *MSNBC* (July 10, 2015, 9:39 AM), <http://www.msnbc.com/msnbc/philadelphia-police-investigating>

People of color live in a different America than their Caucasian counterparts, certainly with respect to the policing services they receive or, better yet, endure, and the occasion for innocent ignorance and guiltless denial have long passed. As Professor Tracey Maclin affirmed decades ago, “[T]he dynamics surrounding an encounter between a police officer and a black male are quite different from those that surround an encounter between an officer and the so-called average reasonable person.”²⁸¹ Unjustified and unnecessary attacks by officers against unarmed African Americans are not anomalous.²⁸² The homicides of Eric Garner, Michael Brown, Tamir Rice, and Freddie Gray are tragically familiar events in black communities, and citizens have been crying out for many decades.

While sitting in a Birmingham city jail, Martin Luther King wrote,

video-man-being-beaten-cops.

²⁷⁹ Steven A. Drizin & Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions*, 32 LOY. U. CHI. L.J. 337, 380 (2001) (“Mistrust of police in Chicago appears to be particularly heightened in the city’s minority communities.”); Banes, *supra* note 277, at 1276-77 (“During a period of at least thirteen years, more than sixty men, all of them black, have alleged that they were physically abused, and in fact, tortured, by several named officers in the Area Two Violent Crimes Unit on Chicago’s South Side. Certain types of torture, by certain officers, were alleged repeatedly, including suffocation with a typewriter cover, electroshock with a specially constructed black box, hanging by handcuffs for hours, a cattle prod to the testicles, and Russian roulette with a gun in the suspect’s mouth. The allegations were corroborated not only by defense attorneys and emergency room physicians, but by several other respected groups including a broad-based Chicago citizens’ coalition, an investigative group from the internal police review agency, and Amnesty International”).

see generally Katherine Skiba & Annie Sweeney, *Historic probe of Chicago police expected to be long and costly*, CHICAGO TRIBUNE (Dec. 12, 2015, 6:15 PM), <http://www.chicagotribune.com/news/ct-chicago-police-civil-rights-probe-met-20151212-story.html>; Kim Bellware, *Laquan McDonald's Shooting Is Just The Latest Episode In Chicago Police's Brutal History*, HUFFINGTON POST (Nov. 26, 2015),

http://www.huffingtonpost.com/entry/brutal-history-chicago-police_56564af0e4b072e9d1c1c06e; *see, e.g.*, Kim Bellware, *Chicago Police Torture Victims Finally Get Reparations*, HUFFINGTON POST (May 6, 2015), http://www.huffingtonpost.com/2015/05/06/chicago-torture-reparations_n_7225938.html; Spencer Ackerman, *Inside Chicago's legacy of police abuse: violence "as routine as traffic lights"*, THE GUARDIAN (Mar. 3, 2015, 12:39 PM), <http://www.theguardian.com/us-news/2015/mar/03/chicago-police-violence-homan-square>.

²⁸⁰ *See generally* AM. CIVIL LIBERTIES UNION, BLACK, BROWN AND TARGETED: A REPORT ON BOSTON POLICE DEPARTMENT STREET ENCOUNTERS FROM 2007-2010 (2014), *available at* <https://aclum.org/app/uploads/2015/06/reports-black-brown-and-targeted.pdf>; Jeffrey Fagan, Anthony A. Braga, Rod K. Brunson & April Pattavina, AN ANALYSIS OF RACE AND ETHNICITY PATTERNS IN BOSTON POLICE DEPARTMENT FIELD INTERROGATION OBSERVATION, FRISK AND/OR SEARCH REPORTS (2015), *available at* <https://s3.amazonaws.com/s3.documentcloud.org/documents/2158964/full-boston-police-analysis-on-race-and-ethnicity.pdf>; *see, e.g.*, Cassandra Fairbanks, *WATCH: Cop Beats and Pulls Gun on Unarmed Black Woman on a Crowded Bus*, U.S. UNCUT (Sept. 19, 2015), <http://usuncut.com/black-lives-matter/watch-cop-beats-and-pulls-gun-on-unarmed-black-woman-on-a-crowded-bus/>.

²⁸¹ Maclin, *supra* note 12, at 250.

²⁸² Davis, *supra* note 18, at 284 (“Any criminal lawyer who spends a substantial amount of time in an urban criminal court knows that examples of police officers slapping, pummeling, hitting, and beating criminal defendants are routine, ‘as common as potholes.’”).

“Whatever affects one directly affects all indirectly.”²⁸³ There is cause for common concern,²⁸⁴ and it is high time for urgent action because police-community relations are at a crossroads in cities all across the United States. People are tired of tyranny.²⁸⁵ Things simply cannot remain the same. They can improve, and they must, because they will worsen if the same old, failed policies persist. Among other things, police and public officials must initiate or intensify emotional and psychological training as well as cultural education programs in order to better prepare officers, most of whom are Anglo American, for the realities of policing African American neighborhoods. They must also work to build trust with citizens by acknowledging and apologizing for past abuses, broadly deploying video cameras to record police-citizen interactions, and proactively engage communities to avoid crises and manage those that arise.

²⁸³ Letter from Martin Luther King, Jr. to C.C.J. Carpenter, et al. (Apr. 16, 1963), *available at* <http://www.thekingcenter.org/archive/document/letter-birmingham-city-jail-0#>.

²⁸⁴ Walker, *supra* note 18, at 580 (“The very fact that most victims of police brutality are members of poor and minority communities should be cause for concern, and contributes to the perception that the police are more likely to engage in force when dealing with a minority suspect than when dealing with a non-minority suspect.”).

²⁸⁵ Gupta, *supra* note 3 (“Again and again, people have told me that young people are losing faith in our justice system and view law enforcement as preying on them rather than protecting their loved ones. They talk about how the police don’t value their rights, or indeed, their lives. They talk about being tired of being viewed as criminals first, human beings second”).