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'They Have All the Power': Youth/Police Encounters on Chicago's South Side

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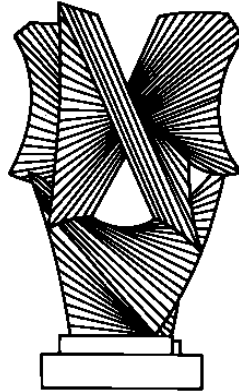
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CHICAGO

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"THEY HAVE ALL THE POWER": YOUTH/POLICE ENCOUNTERS ON
CHICAGO'S SOUTH SIDE

Craig B. Futterman, Chaclyn Hunt, and Jamie Kalven

THE LAW SCHOOL
THE UNIVERSITY OF CHICAGO

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"They Have All the Power"

Youth/Police Encounters on Chicago's South Side

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ABSTRACT

Public conversations about urban police practices tend to exclude the perspectives and experiences of the young Black people, the citizens often most affected by those practices. The aim of the Youth/Police Project--a collaboration of the Mandel Legal Aid Clinic of the University of Chicago Law School and the Invisible Institute--is to access that critical knowledge and ensure that it is represented in the public discourse.

This paper describes what we have learned from our ongoing project. In contrast to the attention commanded by high profile incidents of police abuse, we focus on the routine encounters between police and Black youth that take place countless times every day in cities across the nation—interactions that shape how kids see police and how police see them.

Our methodology is straightforward. We ask Black high school students to describe their interactions with the police. And we listen.

Three findings stand out, above all, from these conversations:

****The ubiquity of police presence in the lives of Black youth.** Every student with whom we work lives with the ever-present possibility of being stopped, searched, and treated as a criminal. These negative encounters make many students feel “less than a person,” and cause them to curtail their own freedom at critical times in their development to avoid being stopped by the police.*

****The depth of Black students’ alienation from law enforcement.** The overwhelming majority expressed great distrust of the police, so much that they did not feel comfortable seeking police assistance, even when someone close to them was the victim of a violent crime.*

****The primacy of accountability.** Unchecked police power—lack of accountability—emerged as the single greatest barrier to building a relationship of trust with police.*

This paper offers a concrete policy, advocacy, and research agenda to address these issues. Central to our recommendations is acknowledging the realities of young people living in marginalized communities. Drawing on our work with youth, we propose a set of policies that, taken together, have the potential to yield more equitable and constructive relationships between Black communities and police.

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INTRODUCTION

We write from Chicago, a city in upheaval following revelations about the police shooting of 17-year-old Laquan McDonald. In a matter of days, public debate about patterns of police abuse and impunity, a discourse extending back to the 1960s and beyond, has undergone a Copernican revolution. A set of propositions about the nature of the problem, fiercely resisted for decades by public and private interests, has been embraced by officials and the media as axiomatic.

Perhaps the most striking expression of this sea change was the speech Mayor Rahm Emanuel gave to the Chicago City Council on December 9, 2015. Breaking with the past and his own prior stances,¹ the mayor asserted that this is "a defining moment on the issues of crime and policing--and the even larger issues of truth, justice and race."² He stated that we confront longstanding institutional conditions that enable and shield police abuse. He acknowledged that there is "a code of silence" within the Chicago Police Department that must be addressed. He further acknowledged the inadequacy of the city's investigative and disciplinary systems. And he emphasized that police accountability is essential to effective law enforcement. Most important, he spoke of this constellation of issues as fundamentally a matter of race--of other people's children being treated different than his children because they are Black.³

Such movement in the semantic realm is heartening. The challenge now is to invest the words with concrete meaning: to walk the talk. The path ahead is uncertain. It will require both sustained critical scrutiny and statesmanship from all involved to articulate that path and advance along it toward fundamental, enduring reforms. Our aim in this article is to contribute to that process from a particular perspective: that of Black youth living in neighborhoods most affected by the policing patterns at issue.

Since the summer of 2014 when the police shooting of Michael Brown in Ferguson, Missouri first commanded public attention, we have been engaged in what some have described as a national conversation about racial disparities in the criminal justice system. Again and again, incidents in different jurisdictions across the nation that would in the past have received little, if any, attention have been given high visibility in the media. And a lengthening series of names have joined that of Michael Brown--Eric Garner, Tamir Rice, Walter Scott, Sandra Bland,

¹ Mayor Emanuel's description of system problems within the CPD contrasts sharply with his statement on November 23, 2015 that only "one individual needs to be held accountable" in the Laquan McDonald case, Jason Van Dyke, the officer who shot him. Bill Ruthhart and John Byrne, *Emanuel Condemns 'Hideous' Actions of Police Officer in Shooting Video*, Chi. Trib., Nov. 23, 2015, available at <http://www.chicagotribune.com/news/local/breaking/ct-chicago-cop-shooting-video-laquan-mcdonald-rahm-emanuel-20151123-story.html>.

² Rahm Emanuel, Mayor of Chicago, Justice Culture and Community, Remarks before the Chicago City Council (Dec. 9, 2015), available at [.cityofchicago.org/content/dam/city/1epts./mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf](http://www.cityofchicago.org/content/dam/city/1epts./mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf).

³ *Id.*

Samuel DuBose, Laquan McDonald . . . --in the grim shorthand we now use to evoke conditions of structural violence in American society.

Enabled by the ubiquity of video technology, this historic opening has been sustained and made immediate by the youthful energies of the Black Lives Matter movement: young people who insist on remaining visible, on being heard, and on placing issues of police accountability in the larger context of the structural inequalities and exclusion that deform our common life.

This extended post-Ferguson moment has given rise to the hope that we may be at a turning point--that we may finally find the political will and institutional stamina to address fundamental issues of race and equality under the law. We share this hope. Yet, in the interest of realizing the possibilities at hand, we also feel the need to note several tendencies that distort the discourse and skew the diagnosis:

- The press tends reflexively to describe matters of grave concern as *crises*. By definition, a crisis is a departure from the norm. What we are confronting, however, is not a departure from the norm but the very nature of the norm. The challenge is to fully acknowledge these realities.
- These are at once national issues--the defining issues in American life--and intensely local issues. The federal government has a significant role to play in articulating national norms and imposing uniform standards. And it has a further role to intervene in local jurisdictions to address civil rights violations that offend our nation's most fundamental laws. Ultimately, though, the desired structural and cultural changes will require intense, sustained engagement of citizens with one another and their governments in the places where they live.
- This may prove a transformative moment. Having perceived grave harms, it is a natural human tendency to seek remedies commensurate with those harms. The challenge is to connect the moral passion that has been aroused with a concrete, achievable reform agenda—a range of interventions, none of them transformative in itself, but together that have the power to bring about systemic and cultural change.
- While there are clear priorities among remedies, there are no quick fixes. To rush past diagnosis to prescription is a form of denial.
- Video--the capacity of both the state and citizens to document police interactions--is said to be a game changer. While the impact of video is undeniable, it is possible to over-make the point. What we are contending with ultimately is our capacity not to know what we have the power to know--a dynamic especially acute with respect to race. The proposition that seeing is believing is dangerous, if the corollary is that we withhold belief in the absence of compelling visual evidence. By devaluing other kinds of evidence, other modes of knowing, this can have the effect of aiding and abetting denial.
- We have long known the path to equal justice, but have refused to take the necessary steps to get there. The primary challenge to realizing solutions stems less from the lack of

knowledge about what needs to be done and more from the lack of collective will. We continue to live in socially segregated worlds. The social status of the victims of police brutality matter. A necessary part of acknowledging the realities includes examining the ways that the racial images and stock stories that pervade the media, portraying Black neighborhoods as dangerous places with dangerous inhabitants, impede our ability to see Black people as fully human.

Finally, we feel the need to interrogate the concept of a national conversation. Is such a thing possible? A conversation is a collaboration – something that happens in the air between two or more people. It is supported by the substructure of their relationships and is played out in the medium of a common language. A good conversation is a domain of freedom in which one can explore what one thinks about the matter under discussion, entertaining possibilities one may ultimately reject.

Whatever else might be said about the tsunami of talk about police accountability currently sweeping through the media, it is only occasionally and intermittently a conversation. It has more often seemed like a collision between alternative realities. In light of the fate of other fundamental issues, we should not underestimate the dynamics by which massive coverage can devolve into an entrenched, polarized stand-off in which we are deaf to one another.⁴

These tendencies must be resisted, if we are to make the most of this historic opportunity to advance toward a society that ensures equal treatment under law. The quality of the conversation really matters. One way of describing our situation would be to say that we have an urgent need to engage in public and private conversations about issues of law enforcement and race, but we have neither the relationships nor the common language to sustain those conversations.

The aim of the Youth/Police Project is precisely to build the relationships and develop the common language required to have these necessary conversations. Modest in scale, immersive in practice, and intensely local, this effort has yielded insights, questions, and policy prescriptions we would not have been able to access by other means. The purpose of this paper is to report on what we have learned and to set forth the reform agenda that has emerged.

I. Methodology

The project emerges out of a particular history, set of relationships, and style of inquiry. Futterman and Kalven began collaborating in 2000 in the setting of Stateway Gardens, a high-rise public housing development on the South Side of Chicago that has since been demolished. (The last of the Stateway buildings came down in 2007.)

During our years in public housing, we inquired into patterns of police abuse, the nature of impunity, and the human consequences of institutional denial by way of a particular place--the eight square blocks of the South Side occupied by Stateway Gardens.

⁴ [Add footnote quoting Mark Danner on fate of discourse over torture?]

We emerged from our immersion there having learned several fundamental lessons that continue to guide our work:

- *The Constitution means different things in different neighborhoods.* Aggressive stops and searches and street interrogations were daily realities within those eight square blocks. University of Chicago law students who work with us, having studied the principle of "reasonable suspicion" in class, were often startled when they first witnessed the phenomenon of young men in the inner city "assuming the position" to be searched as a police car rolls up on them. The students became even more disturbed as they came to understand the normalcy of these encounters. Every young person at Stateway expected to be treated with the suspicion of being a criminal, and every officer believed that it was his or her duty to do so. The constitutional realities for young Black people at Stateway stood in stark contrast to the personal experiences of the law students—different and unequal.
- *Everyday interactions between police and community members--especially young people--are the medium out of which more serious abuses arise.*
- *A small number of abusive officers, acting with impunity, can do extraordinary harm to individuals, communities, and law enforcement.* That damage extends beyond the individuals they abuse. To the extent they are allowed to operate with impunity, their actions can have the effect of alienating whole regions of the city from civic authority.

With the erasure of that community, we lost our singular perspective. We did not, however, lose our methodological conviction that there are things that can only be learned on the ground from those most directly affected.⁵ Guided by that principle, we recalibrated our work. In light of what we learned--and the questions that formed--during the Stateway years, we shifted our focus from a particular place to a relationship: youth/police interactions in inner city neighborhoods.

Why focus on youth in an effort to better understand the larger dynamics between police and Black communities? There are two reasons. First, a very substantial number of police interactions involve young people. Anything we might learn that could improve the outcomes of those interactions would be valuable. Second, if we hope to improve the relationship between law enforcement and communities of color, we need to better understand how attitudes of

⁵ Our inquiry follows a rich epistemological tradition in Critical Race Theory, central to Mari Matsuda's groundbreaking article, *Looking to the Bottom*. Professor Matsuda taught that "looking to the bottom"—listening to people who have experienced discrimination, and learning from their experience, history, culture, and intellectual traditions—is necessary to inform legal philosophy and scholarship. Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L.L. Rev. 323 (Spring 1987). See also Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992).

distrust form and harden. Adolescence is the time of life when this process is most dynamic and accessible to observation.⁶

For the past four years, the Mandel Legal Aid Clinic of the University of Chicago Law School and the Invisible Institute have built conversations with Black teens on the South Side about how their lives are affected by the character of the police presence in their neighborhoods. We have focused this inquiry on everyday encounters rather than egregious instances of abuse. Avoiding conventional policy frames (e.g. "stop and frisk"), we ask teens to describe their interactions with police in their own words, to tell us how those encounters make them feel, and to reflect on how their experiences with the police shape their behavior.

After conducting workshops and interviews in various high schools on the South and West Sides of Chicago over a two year period, we have partnered throughout the last two-and-a-half years with the Media Program at Hyde Park Academy (HPA), a public high school in Chicago's Woodlawn neighborhood, situated just two to three blocks south of University of Chicago's campus. Like in many of Chicago segregated public schools, more than 99% of Hyde Park Academy's students are Black.⁷

Under the leadership of instructor Keva McGee, the Media Program has been our base of operations, affording a classroom, a broadcast studio, and ongoing access to groups of students. A team of a dozen adult collaborators--including attorneys, law students, journalists, and academics--works with two HPA classes on a weekly basis throughout the school year. Team members bring multiple perspectives and competencies to bear. Each week the team meets to debrief about their sessions with students and to strategize about how best to create the conditions for robust, searching conversations.

For team members, the project is at heart an extended act of listening. A great deal of work--and good will on all sides--is required for us to become fully audible to one another. When we first begin meeting with a new group of students, we take pains to convey to them that they know things other people need to know. They are, for the most part, inside a set of conditions they do not have much critical distance on. "It just is what it is." As the process advances, they come to see that what is commonplace to them is often remarkable and significant to others. Once they begin to entertain the possibility that we--and others beyond us--are genuinely interested in what they have to say, the conversations come alive.

⁶ Negative views toward authority can grow and calcify as adolescents become adults. Tom Tyler and Jeffrey Fagan, *The Impact of Stop and Frisk Policies upon Police Legitimacy*, in Urban Institute Research Papers 30 (2012) (noting that psychologists have found that adult orientations toward the law are often formed during adolescence).

⁷ More than 70% of all Black students in Chicago attend schools that are over 90 percent Black or Hispanic. Gary Orfield, John Kucsera & Genevieve Siegel-Hawley, *E Pluribus... Separation, Deepening Double Segregation for More Students*, The Civil Rights Project 58 (Sep. 2012), available at http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students/orfield_epluribus_revised_omplete_2012.pdf. Nearly half of all Black students attend schools like Hyde Park Academy that are more than 99% Black. *Id.*

The project has yielded a steady current of narrative and observation beyond our expectations, unsettling things we thought we understood and suggesting new areas to explore. Teens on the South Side are of necessity close observers of the police. And some have proved to be remarkable witnesses to their own experience, once they gain a foothold outside that experience.

Our process is organic and intensely collaborative. We continually experiment with different techniques for eliciting students' stories, explore new lines of inquiry, and consider how best to engage particular students.

Team members interact with the students in various configurations: one-on-one, in small groups, and as a full class. Students interview other students and on occasion members of the team; and they facilitate discussions with their peers in other HPA classrooms.

Among the various techniques we employ, role-plays have proved especially effective, enabling students to share things they know but may not yet have the words to describe. Acting out various scenarios, they dramatize the ritualized choreography of youth-police interactions with precise nuances of body language, gesture, and tone. In the process, they generate rich material for further discussion.

Operating in the setting of the media program, we use production tools to extend and deepen our conversations. The process of videotaping and editing various interactions--class discussions, interviews, role plays--offers multiple occasions for revisiting stories, advancing inquiries, and renewing the essential challenge: how might you best communicate what you know about the world to others?

Our ongoing conversations stir a range of emotions in all involved. Among them: anger, frustration, and fear. There are intense arguments and occasional tears. There is also a good deal of laughter. This is not only an expression of adolescent high spirits. It is also, to our ears, the sound of possibility. When a story or role-play provokes laughter by bringing home some absurd aspect of the status quo, it nourishes the conviction that we can surely do better.

II. Findings

A. "It's Like the Weather"

Consistent with what we saw in public housing, the first thing that jumped out to us was that a different set of rules and norms govern encounters between Black high school students and the police in Black neighborhoods than those that we experience and teach on campus at the University of Chicago. Our fundamental expectations and relations with law enforcement could not be more different, as though we live in separate worlds that do not intersect. We experience different realities.

In contrast to our experiences, the high school students see police as a ubiquitous presence in their lives. In Chicago, police officers regularly subject Black teenagers to rituals of stops, questions, searches, and arrests. The encounters feel random, yet contained within specific racially and economically segregated areas, and so are effective in creating a pervasive atmosphere, a constant threat.

The kids we work with range from 14 to 18 years old. For some, being stopped is “an everyday thing.” For others, it is a relatively infrequent occurrence. For all, it is an ever-present possibility. There is scarcely a moment they are out in the city when they are not alert to that possibility. It pervades their daily existence.

They describe as routine hostile encounters in which officers command them to put their hands against a wall and spread their legs to be searched. Everything about these encounters—from the officers’ swagger as they approach to their tone of voice—appears, from the students’ perspectives, to be calculated to convey messages of power and authority.

Hassanti:

“I’ll just be walking with my friends or something. Or I could be walking by myself. And then they pull up . . . ‘Get on the car!’ Or, ‘Get on the wall!’ ‘Spread your legs. Put your hands up. Put your hands on the gate. Don’t move.’ Searching my pockets...”

“How often does that happen?” we asked.

“Pretty much every time I go outside.”

These stops range from low-key encounters to the aggressive performance art of the so-called “jump-out boys,” plainclothes officers for whom a routine street stop often takes the form of driving their car up on the sidewalk and jumping out with guns drawn.

Carl:

“I done seen people being pulled over, and the police walk up to the car with their guns out, with the flashlight. They walk up to the car with the guns out. I don’t get that.”

Routine encounters involve questions about who they are, where they live, who their friends are, and what ‘type’ of kids they are. Although the questions are superficially innocuous, as an ongoing narrative, they are indicative of an underlying suspicion: merely ‘being’ somewhere or someone is enough to merit investigation.

Desiree:

“It was two officers. They came up to us with . . . you know, they came on to us aggressive anyway, like always. I mean sometimes police approach in a different way, but the majority of the time, it's simply aggression. They're just like, "What are you doing over here? How old are you? What school do you go to?"

Christopher:

“They stopped us, and they asked me where the fuck I'm going. Then that's when they went in my pockets, threw my keys, and took my money.”

During our workshops we often role-play encounters with police officers. One student plays a "driver" or pedestrian and another plays an officer. The only prompt is that the officer must stop the person, and then they are to engage with each other in ways they feel are accurate. After four years of witnessing hundreds of role plays, with over a hundred different teenagers, it has become apparent that kids are drawing on the same "script."

A typical role play includes these elements: An 'officer' mimics a siren sound, "Whoop." The 'driver' might instinctually, quickly, raise their hands above their head. If not, they mime holding their hands on steering wheel intentionally in the ten-and-two position. The officer gives a command, whether easy, "Go ahead and give me your license," or tough, "Get out the vehicle." The driver responds according to a variety of motivations.

Performing interactions often reveals information students would not otherwise name or notice. Teenagers who verbally relate encounters pepper their descriptions with, "you know," or "just how they always do," assuming we are familiar with the policing practices they encounter as a matter of course. Early on in our interviews, we learned to ask detailed questions about specific movements, but role plays are far more effective.

As the driver automatically lifts his hands, his action revealed to the observers as expressing some trained, almost instinctual response. We notice the movement, because it seems unnecessary—the driver is actually sitting in a school chair, in an open room, clearly unarmed, and the driver has not engaged in any illegal or suspicious behavior. But even in a contrived, safe, low-risk encounter, the student driver feels compelled to recite his response to police attention.

One young woman, Mikalah, played an officer who she had encountered a few weeks before. As she entered the room to stop her friend, Mikalah had one hand on her belt and the other holding the shoulder strap of her imaginary bulletproof vest. Anyone who has seen a Chicago officer making a stop would recognize this stance. Mikalah affected a sneer and with surprising accuracy imitated a man's Chicago accent, "Got anything for me, honey?"

As we paused and questioned her, Mikalah provided details about the officer's eyebrows and mustache ("sort of like an old cowboy"), his body language ("getting real close to show me how big he was"), and his smell ("like lake water"). She felt he was, "like flirting with me, but as a joke." It was a mean-spirited joke, she said, because they both knew she could not do what she normally does when old men try to flirt with her - tell them to "fuck off."

Also similar to our experiences in public housing, we were even more struck by the extent to which the high school students and police see these encounters as *normal*. The students expect to be treated with the suspicion of being a criminal by the police. “That’s just the way it is.” And the police officers in these scenes believe that they are simply doing their jobs.

Once, some of the students had written a "Know Your Rights" public service announcement and were filming it for a media class assignment. They set up on a sidewalk behind the school. It was a freezing February day, almost 0 degrees, and the camera lenses were fogging from the wind chill. The students had recruited their favorite police officer, who works full time on the high school campus. During breaks in the filming, the officer let some of the students sit in the back of his patrol car to warm up.

Ayana, the writer and director, planned to film two encounters--one good and one bad--and then add a voice-over explaining the legal elements of each interaction. The good encounter was first. The officer had read his script, which called for him to stop Richard, ask why he wasn’t in class, check his early dismissal pass, and then tell him to have a good day. Richard was to move slowly, keep his hands visible, and treat the officer with exaggerated respect.

“Quiet on the set! Action!” The officer jumps out of his car and gets in Richard’s face, “Hey, come here for a second.” A little aggressive for the script, but not terrible. “Why aren’t you in school?” Without waiting for Richard’s reply, he says, “Let me see that for a second,” and slides the backpack off Richard’s shoulder, unzipping and rifling through it.

Richard breaks character and looks up at the camera anxiously.

“Cut!” yells Ayana.

Richard does not normally carry a backpack, for the explicit purpose of not attracting police attention, so for the scene he borrowed a friend’s. The script never calls for a search, not even in the bad encounter, so Richard was not expecting to be responsible for the contents of the backpack, whatever they might be.

Ayana runs over to the officer, and explains that this is the *good* encounter. No searching, she directs, just a polite check-in to make sure Richard isn’t cutting class. Okay, he says, I’ve got it.

“Action!” Again, the officer jumps out, grabs the backpack, and starts rifling through it. “Cut!”

A few takes later, the officer is still searching, and Ayana is still trying to assert her power as director. “You’re not listening,” Ayana says, “You need to make this a friendly encounter.”

Frustrated, the officer shakes his head, “What do you want me to do? Smile?”

By this time, everyone's fingers are turning blue and the kids decide to just use the footage of the search.

Even in the context of the role play, the officer cannot imagine engaging Richard any other way. It's his *normal*. The motion he uses to disarm Richard of his backpack is fluid, quick, and practiced. It is a natural extension of the stop. It is what he's been taught to do. There is no pause to determine reasonable suspicion of a weapon or probable cause to search. The officer understands that this is what is expected of him by the police department, just as Richard understands that he is viewed as a suspect in the eyes of the police.⁸

We could not help but take note of the physical choreography in each of these encounters. Hands up, legs spread, against a wall, frisking through pockets, grabbing bags, slow driving, hands on gun, hands over badge, car windows rolled down. Policing as performance.

Occasionally the audience is the individual being stopped, but it is almost always the surrounding community as well. Some of the teenagers have never been pushed against a wall and made to spread their hands and legs, but they can enact either side of that encounter with precision.

B. *"They Have All the Power"*

Time and again, students tell us, "They have all the power." Students' knowledge of unchecked police power informs every encounter between them and police. The encounters the students describe do not occur in isolation. They have contexts shaped by the experiences of their family members and friends, the teachings and cautions of their elders, and information they absorb from the media. Nearly every student with whom we spoke has a friend or family member who has been beat, arrested, tased, or shot at the hands of the police. They deeply know what the rest of society is beginning to comprehend in light of high-profile shooting cases: no matter how "routine" it begins, every police encounter holds the potential to quickly escalate into something far worse—a false arrest, years in prison, brutality, even death. For them, stops are at once utterly prosaic--a fact of life "like the weather"--and fraught with danger.

Jazmine, a boisterous senior girl who is friends with everyone in the class, has a friend who was shot by the police. She says that he had run away from the police, and that they shot him with a Taser as he attempted to climb over a fence. As he was lying on the ground stunned, a police officer shot and killed him. Nothing happened to the police officer. Ever since getting the news, Jazmine experiences a physical reaction akin to Post Traumatic Stress Disorder whenever she is around police. "It's scary because you don't know what's gonna happen next. So, when it's going on...my heart will be beating real fast, I'll be scared, my legs'll be shaking...I'll be like, 'What's gonna happen if I do something wrong, if I move a certain way,

⁸ In contrast, one of us led a workshop of 100 high school students at the Laboratory Schools, an elite private school affiliated with the University of Chicago located just five blocks from Hyde Park Academy where we work. None of the Lab students had ever been stopped or searched by police in their lives.

and they interpret it wrong?' They might . . . pull out a gun.... You hear it in my voice, like it's trembling."

Jazmine's fear is rooted in her complete vulnerability when stopped by police. She knows she is unable to control the outcome of any interaction she has with officers—simply avoiding criminal behavior is not enough to guarantee a good result. This is a common understanding amongst Black teenagers on the South Side—regardless of any effort they may make to pacify officers, once detained, the situation is largely out of their control.

Students report that they assert themselves at their own peril. One young man complained, "I'd feel bad if I do get stopped and I don't say anything [to stand up for myself]. I'll feel like I just got bullied by the police... [But] if I do say something, I'll lose because you're either going to take it offensively and try to arrest me, or you'll put your hands on me."

Students consistently express, if an encounter goes bad, they will not be believed. The word "impunity" may not be an active part of most of their vocabularies, but they have full command of the concept.

"They're over you and you're under them. Therefore you don't matter. Their word will prevail over yours."

A girl describes how her cousin felt after being aggressively detained and hit by an officer. "My cousin, they asked him did he wanna put in a report on the police or whatever, and my cousin said no 'cause he felt . . . the other police officers would be on their side like, 'It's okay.' So he didn't."

Whenever we raise the possibility of filing a misconduct complaint in response to experiences of abuse, the students brush us off. Even when we explain the ease of submitting an online form, and discuss the importance of creating a record, students do not consider this as a serious possibility. Raquel, a senior, responded to our pleas by rolling her eyes. When we asked her why she was so skeptical, she scoffed, "They're cops, so they know the paperwork. They control everything that goes in and out. Besides, is some judge gonna believe me or a police officer with a badge?"

Student beliefs in police impunity harden, when officers disregard their humanity. Devon describes a recent encounter. Riding in the car with his brother and a friend, they are pulled over by police. An officer puts all three young men in handcuffs and orders them to sit on the curb. Officers search the car (without asking for consent) and find a bottle of air freshener in the glove compartment.

Devon recounts, "So the police thought it was some type of chemical drug or something. So he go to tweaking, man. He said, 'Man what's in this bottle?' My brother's like, 'Man that ain't nothing. That's air freshener.' 'Air freshener that says Buzz?' That's what the police said. So he gave it to him and he's like, 'I want you to spray this in your face.' He said, 'Man I'm not spraying no air freshener in my face.' Yeah he was handcuffed but he still had one arm out. He [officer] was like, 'So if I spray this in your face, you ain't going to get high or nothing?' He was like, 'No

but don't spray that stuff in my face.' Sprayed it in his face anyway. Right. So he sprayed it in his face and actually got into his eye too, or whatever. So his eyes was burning, his nose was burning."

Devon continues, "And I asked, 'You all didn't find nothing on me right?' They're like, 'No we didn't.' And my brother was still complaining about his eyes. [The officer] was telling him to 'shut the fuck up or whatever before I shoot you.' Yeah. He did. I told my brother, Bro just stop talking bro. They're ignorant. They going to do this stuff anyway because they think they got the power to do whatever they want to do or whatever."

"It was a frigid winter day," Devon continued, "and I asked the officer, I had on little sleeves, it's like below 10 degrees outside. I got on a fleece. I'm frozen. I asked him, 'Man I can sit in the car? I'm freezing out here. I'm anemic. I can't get too cold.' I was lying though. I ain't anemic. I asked him, 'Can I get in the car?' He said, 'You cold?' I said, 'Yeah.' He's like, 'Yeah me too.' And I asked him, 'Can I get in the car?' And he's like, 'Whatch you think? I'm like, 'Yeah.' He said, 'Hell no.'

When asked about the officer threatening to shoot, Devon said it was not a big deal. "I've heard it a few times. . . They always have their hands on their guns ready to shoot. Me I just keep my mouth closed, because I know they'll do it."

Another time, Devon and a few friends were hanging out near some train tracks when they saw a police car. "There was like 10 of us. We all skedaddled up out of there, but me and my cousin got caught. We got caught on the train tracks while the train was coming. . . So [an officer] kind of stopped, holding us in front of the train, he stopped. 'I should throw your ass underneath this mother fucking train if you're going to be on the train tracks.' We was crying, 'No we don't want to die. Just let us go. Let us go. We're sorry.' And so then he waited until the last minute till the train was like five feet away from us and carried us and pulled us off. We terrified. We crying. All of that. We're like, 'Man that was just some bullshit. Why the fuck would you do something like that?' He said, 'Why the fuck are you on train tracks?' And it wasn't too major. He put us in the car and took us home. Asked us where we live at and told our mamas and stuff."

At the end of Devon's story, he describes it as not "too major." Devon meant no arrest, no repercussions within the criminal justice system. For our law student partners in the Youth/Police Project, being forced by an officer to stare down an oncoming train was almost unimaginable, but for Devon it was entirely consistent with his understanding of the unchecked police power where he lives.

Bryanna describes being pulled over while driving in a funeral line of cars following a hearse. Police officers forced the four teens in the car to remove their jackets and stand in the snow with their hands on their car while their family and friends drove past. Bryanna asked for a female officer, but the male officers said no, and searched both girls up and down their bodies. It serves as a public spectacle, again ending with no tickets, arrests or paperwork for anyone involved. Later Bryanna asked an aunt, why didn't she stop and intervene on behalf of her daughter and Bryanna, at least tell the officers they were headed to a service? Her aunt said,

“Ain’t no use.” Her aunt explained that interrupting officers who are intentionally performing their ability to illegally stop and search, especially against young women, and especially during a funeral line, is impossible. There is no reasonable intervention.

For Tytania, her first encounter with an officer was also sexual harassment. “The first time an officer stopped me while walking, and questioned me, I was 13 years old. I was with some friends, and we were walking the shops on Michigan Avenue. Two officers pulled up alongside us, exited their vehicle and began to question us about where we were going, where we came from, and what we were doing downtown. We answered them, but they kept asking with suspicion. One officer accused my friends of stealing, then tried to flirt with me. I felt uncomfortable, weak, like less than a person. I knew I could not say anything back to him, because he was intimidating me. He was standing very close to me.”

When Tytania described that experience, she focused on how the officer’s face kept getting closer to hers, and how the boys she was with looked away. She then used her hands to mime pushing the officer away.

We asked, “Did you push him away?”

Her eyes got wide, and she looked at us like we were fools. “No! You can’t touch police!”

We asked, what about the boys with you? What was their response?

Tytania said they just keep quiet and waited, kind of embarrassed. After the officers left, they began describing what they might have done if the guy hadn’t been an officer, if he touched Tytania one more time. The officers had, of course, hurt Tytania, but there was also a sense in which they used her to humiliate the young men, driving home their powerlessness to protect their friend. The not so subtle gendered messages to both Black boys and girls.

Malik describes being forced to wait in the heat. “They hopped out and told us to get on the car and asked did we have anything. And then they started searching us. I don’t like that. They said take my shoes off. We’re still in the alley we gotta take our shoes off. The car hot, we gotta put our hands on the car. Don’t like that.” Malik was in physical pain for the time it takes the officer to run his name, see a clean record, and release him, but he knew that there was nothing that he could do about it. If he complained or talked back, the situation could get much worse. While they know that there is no guarantee of a safe outcome, students are taught to minimize their chances of being arrested or beaten by being obsequious to police power. Some teens describe hostile, provocative behavior by the police. Jamari says “They want you to be aggressive like them so they could actually do something to you, take control of the situation. They can’t take control of the situation if you’re calm.”

Tall and thin, with a confident smile and a heavy South Side accent (what the kids affectionately call a ‘blaccent’), Mario is an example of a student completely engaged by our work. He enjoys media production, but he really loves talking about questions of police and authority. Born in Englewood community, an all-Black neighborhood on Chicago’s South Side,

located a couple of miles west of Hyde Park Academy, he moved to Indiana and went to a racially integrated elementary and middle school. For high school, he moved back to Englewood, and the transition back to the segregated and violent environment was tough for him. Englewood has endured more violence than virtually every other neighborhood in Chicago. Police are part of his daily commute.

After spending nine months working with Mario in the classroom, we sat down for a formal interview about his experiences. In response to a question about his ability to safely navigate his block, Mario spoke of a friend of his who was extremely street smart. Mario had encouraged him to go to college, “You can have your streets degree, and then you’ll have your school degree.” As we asked more about his friend, Mario explained he’d been shot and killed by a Chicago police officer about a year back. The friend’s name was Cedrick Chatman. An unarmed 17 year old, he was shot in the back while running away from officers who pulled him over in a stolen car.⁹

Mario had not spoken of Cedrick before, and his grief spilled over in the interview. He described receiving the news from his mom. His eyes welled up. As tears broke over his cheek, he said “It wasn’t on the news.” His grief was focused on how little the media and the general public valued Cedrick’s life. “I think it was on the nine o’clock news, and that’s all. Everyday I think about it . . . if that was me, would it still be on the news or not?”¹⁰

Months later, we entered the classroom for a regular session, and Mario was waiting to tell us about a recent encounter. He had been standing on a corner near his house with friends, eating chips from the corner store. A patrol car with two white officers drove through the intersection, a few feet away from Mario and his friends. An officer leaned out his window, and as the car passed, yelled “Niggers!” right into Mario’s face. “I could see his features.” Mario watched the car drive off.

Disturbed, we asked, “Were you angry? Didn’t you want to yell back?”

Of course he did. But he couldn’t.

“Why?”

Without hesitation, Mario said, “Cedrick. Just thinking of Cedrick.”

⁹Steve Bogira, *When Chicago Cops Shoot*, Chicago Reader, May 20, 2015, available at <http://www.chicagoreader.com/chicago/chicago-police-department-shooting-kevin-fry-cops-Cedrick-chatman/Content?oid=17767928>.

¹⁰ Three years after the Chicago police officer shot Cedrick, in the midst of the worldwide audience to police shootings in Chicago after the court-ordered release of the video of the police killing of Laquan McDonald, the Chicago Police Department under public pressure released the video of the police shooting of Cedrick Chatman, finally bringing needed attention to Mario’s friend’s death. Wayne Drash and Ben Brumfield, *Video Released of Chicago Police Shooting of Cedrick Chatman*, CNN, Jan. 15, 2016, available at <http://www.cnn.com/2016/01/15/us/chicago-police-shooting-Cedrickk-chatman-video/>.

The big encounters live in the little encounters. Mario cannot treat a racial slur as an isolated incident. He cannot yell back or move his hands. For Mario, it's not just his past encounters that make him fearful of an officer who may or may not act on his nonchalant racism. It's the story of Cedrick, the story of another neighbor beat up by police, the story of an uncle picked up on the wrong warrant, the way the officers at Mario's school speak to him, the instructions his mom gives him on how to handle the police, and so on. We tend to think of police misconduct as a linear continuum with mild forms at one end and grievous human rights violations at the opposite extreme, but that is not the way it is experienced on the ground. Under conditions of impunity, the worst things that have happened inform the day-to-day interactions.

C. *"How it Makes Me Feel"*

We have been moved by how deeply the students are affected by their encounters with the police and the normalcy with which they occur in their communities—the repeated assaults on their self-esteem. How they affect the way they view themselves, classmates, and their place in the world. Young people speak with pained eloquence about what it feels like to be regarded as a suspect rather than a citizen by the officers who stop them:

"They make you feel less of a person."

"It felt like I was a nobody."

"It made me feel small... I'm almost a man, but it [being stopped] made me feel like less than a man."

"It just makes you feel down, like you ain't nobody."

The harm is evident even in the expressions of those who try to minimize the extent that they are affected by these encounters. Malik, a clean cut young man who expressed a desire to become a police officer, has repeatedly been stopped by police. After describing a particularly aggressive stop, we asked him how it felt. He answered, "Felt okay 'cause I ain't got nothing. I ain't got no record or anything... I just don't like being touched when they're searching you and everything, touching up on me. I don't like that." When asked to elaborate, he said he felt "disrespected."

1. *"Don't Go Outside"*

A 16-year-old boy recounted, "We were coming from where we played basketball... and we were walking through the alley, playing, whatever, you know like teenagers do. And a police car cut us off. . . . They asked us, Where we was coming from? 'Get on the car.' We had our

whole team with us so they put us on the car, and they start searching us. Asked if we had anything. . . . Obviously we had nothing. We'd just left playing basketball. We've got on basketball shorts and tank tops. We had our basketball and everything. And they just stopped us for no apparent reason, just being ignorant or being noseey or whatever. Basically did we have anything on us, where we was coming from, do we know anybody like running with such and such."

How does it affect Black students' behavior to live with the ever-present possibility of being stopped by the police?

A major theme running through our conversations is how to avoid being stopped. A partial list of avoidance strategies culled from those conversations might have been composed by Samuel Beckett:

Don't walk alone.

Don't walk in groups.

Don't make eye contact.

Don't look away too quickly.

Don't move too fast.

Don't linger.

Don't do anything.

Don't do nothing.

It is as if they are trying to discern and decode a hidden set of rules, a secret etiquette that would enable them to move freely through the city.

Their strategies also include various disguises. Wear a childish knapsack, for example. Or affect a "nerdy" appearance. One young man wears glasses to avoid being stopped. He says his friends make fun of him, saying things like "the police just think you look all school."

"That's cool with me," he says. "I ain't trying to get stopped."

Kids report that gender stereotypes also matter: the more officers perceive students as masculine, the more likely they may be stopped and abused. A large wrestler told us that he wears "hipster" styles to avoid police scrutiny. "My jeans will be fitted. If I have a hoodie on, it wouldn't be dark. It'll be a bright red or purple or something like that with designs on it." He

notes that styles he perceives as more masculine like “really baggy pants, big hoodies, things like baggy clothes in general are suspicious to the police.”

And we repeatedly hear about boys who use girls as decoys--by appearing to be a couple--when the police come into view. Doing so, young men claim, means they appear sensitive, caring, and sweet—all qualities that are believed to be antithetical to a police officer’s idea of a criminal.¹¹

One young woman said that when they are in public, her 6’2” linebacker boyfriend routinely carries her pink "Hello Kitty" backpack. “If we are somewhere where there are police, he usually just puts his arm around me, so it's just like nothing. He carries my book bag, I guess they're like, 'She's with him.' I don't know. It's like the book bag is, I don't know, innocence or something. . . He doesn't smile a lot when we're outside. And the way he walks ... I just think he'll get stopped if he didn't have me around.”

Yet providing cover for a young man can put young women in danger, because a man who poorly performs romance attracts police attention both towards himself and the woman covering for him. Another teen-age girl opined that if the man is too obvious about initiating cover, the police will “see that he grabbed you, and they’re like, 'He’s probably got something on him. Let’s go over to him.'...If you would have just stayed calm then nothing would have happened.”¹² The boundaries between what is normal and what is suspicious seem to change daily, depending on the neighborhood, the officer, the teen.

Beyond its impact on their emerging identities, the way they experience police leads high school students to curtail their own freedom of movement. A number of boys have told us that they avoid contact with the police by staying home or only going out after dark in a car. At a time in their lives when their growth and flourishing requires that they explore an expanding world, they pull their boundaries in around themselves and are denied what in another context has been called the right to the city.

A 17-year-old girl plaintively summarizes, “It restricting.”

One of the most extreme manifestations of this self-policing is deciding not to spend time outside at all. One boy explained “I don't go outside, unless maybe to go to the store.”

Another agreed, “I just stay inside, especially on the weekends. I don't have time to get picked up, I have other things going on.”

¹¹ For a deeper exploration of this phenomenon, see Ava Benezra, *Policing Gender on Chicago’s South Side* 2015 (on file with the authors).

¹² For other examples, see Carla Shedd, *Unequal City: Race, Schools, and Perceptions of Injustice* 134-35 (2015) (describing high school boys’ efforts to avoid negative police attention by navigating public space with “female company” and the ironic effects of making “girls more vulnerable to police contacts if police decide to stop and search the mixed-gender group”).

Other students made similar decisions. They alter their routes to and from school and work, avoiding certain streets with police action, and crossing the street or turning down an alley when police become visible.

Jayquan explained, “I stay inside, except when I go to school and come back from school. Or if I have plans with my family, we go somewhere together. If I see a police officer, I’ll put my head up and take my hands out of my pockets and walk casually. It’s not that I’m doing anything wrong at the time, I just don’t want to give them the thought, ‘Oh, this kid looks suspicious. Let’s stop him.’”

Physical choreography extends beyond "hands up." Richard, the young man who doesn’t carry a backpack, described the balance he must strike between doing "nothing" and doing "something" while he walks home from school. He keeps his earbuds in his ears as he walks, so he can pretend he is really into his music when he walks by police. Sometimes he pulls out his phone to pretend he is checking his voice mail, or texting a friend. He strives to look both engaged and uninvolved in whatever street activity is occurring around him. He needs to look “neutral” to the police.

Ericka describes the importance of avoiding eye contact until an officer asks her a direct question. She does not want to invite attention. So if she is forced to walk near a police officer, she averts her eyes. Once an officer engages her, good eye contact becomes a sign of innocence.

Deference appears to be the students’ back-up survival mode in police encounters, when avoidance strategies prove unsuccessful. Alajuwon is a recent graduate of Hyde Park Academy who was hired to assist in their media/technology classes. A tall boy with broad shoulders and cornrows, Alajuwon is extremely respectful and responsible in the classroom—the ideal teaching assistant. The stories he shares of growing up in his neighborhood, however, make clear that being deferential is not always an advantage—in fact, it can put one in danger with his peers. “[I grew up] in that type of neighborhood where you can’t show nobody that you’re weak, you go in bad or you get beat up...[but] with the police, it’s kind of hard to switch it on and off. Going to school every day I’ve got to be this big, bad person, and then I gotta go home, act like I’m a goody-two-shoe.” Performing aggressive masculinity helps to protect Alajuwon from his peers, but doing so increases his chance of being stopped by the police. By playing a servile role to avoid police, he makes himself more vulnerable to attack by others.

Another student advised, “I avoid getting shot just by shutting up. You can’t be reasonable with assholes. Assholes are going to be assholes. That’s what they are. So they’re going to do what they want to do.” He explains, “Because I know the outcome. It’s either they going to take me to jail, say some stupid stuff and let me go home, or they are going to shoot me. So I’m just calm. Really you just gotta be quiet. That’s the only way you could avoid that because if they do decide to do something to you, you really can’t do nothing. You can’t fight the system.”

Many students would like to stand up to aggressive officers, but do not feel safe to do so. One boy protested, “I would like to be, but I know for a fact that [I’m] not gonna win. Not there. Like at that moment ... I just say yes sir, no sir or yes ma’am. They searched me and ran our names. They asked what our name was. They asked if we had ID. They asked where we live

at, what we were doing in that area or whatever. That's pretty much what they do all the time. After they're done running your name, if you don't talk back to 'em too much and give 'em smart remarks they probably won't take you in."

There are often no good options for students who feel at the complete mercy of the police. A student describes the difficult decisions teens face when police officers order them to move: "And the police pulled up on the corner, and he's like, 'Get off that corner.' And we didn't move. He drove around. And I just sat there. He kept going. I wasn't fixing to run. What am I running for? I could run and get killed. Run and get shot by him. He could lie and say I'm armed. I'd rather just see him – let him come lock me up than for me to run."

There is an element of resistance that can be read onto these strategies. Like making a decision to stay home, students are naming a dangerous power that confronts them, and making themselves inaccessible to that power. The physical gestures seem less of an imposition on their lives when compared to the decision to just stay inside.

The careful balance their gestures strike in order to avoid police attention is both dictated to them (by behaviors they perceive the police to notice) and an effort of creativity and skill. Performance can be both submission and inversion. When Richard carefully checks his text messages as he walks by the police, he is a caricature of himself, of a teenager. When Tytania's boyfriend holds her pink backpack, he is playing the role of a devoted boyfriend. When Ericka averts her eyes, she is a respectful young woman. They are performing the person they imagine the police do not suspect.

The cost of these avoidance strategies is freedom. One young man spoke of feeling like "prey" when the police cruise past on the street. At such moments, he said, he tries to make himself "invisible." Were one to follow the underlying logic of these stratagems where they lead, the ultimate disguise would be somehow not to be seen as Black.

2. "How I See Police"

Everyday encounters between Black youth and police not only affect how students see themselves, they also impact the ways students see the police.

Martrell is a hard worker. We often entered the class to find him already at his computer, editing interview footage, tracking down b-roll shots, or researching a legal question. After an assembly where he sang a beautiful, if slightly squeaky, solo for the senior class choir, his friends began calling him an angel. He's reserved and thoughtful. Unlike most of his fellow classmates, Martrell had not had many prior negative experiences with the police. We often found him defending police in conversations with his classmates.

Martrell stayed late one evening at the school library working on a project, and was walking home around 8:00 p.m. A patrol car pulled up alongside him, and the officer in the passenger seat began asking Martrell questions through the window about a recent homicide in the neighborhood. "What do you know about the murder?" he asks sharply. "What gang do you

run with?” Martrell is taken aback. He knows nothing about a murder and is not affiliated with a gang. The officer accused Martrell of lying about his age, but when Martrell handed him a school I.D., the officer didn't even look at it.

Losing interest in Martrell, the officer blows cigarette smoke in his face. He then drives away, leaving Martrell in a waft of smoke.

A “routine” encounter for children at Hyde Park Academy. Before the encounter, Martrell had heard stories about police misconduct. “But I never really believed it, cause I thought the police was supposed to protect you, and uphold order.” After the encounter, he remembered those stories and considered that they might be true. To us, his interviewers, the officer blowing smoke in his face was the most difficult part of the story to hear. So dismissive, rude, unnecessary. Martrell was more offended by the underlying assumptions the officer was making about him through the questions. “I have no idea what they could be capable of if they could be that disrespectful, and assume that I’m a criminal, when I’m just one boy walking down the street. I don’t know how they would have responded if I was in a large group or had responded in a disrespectful way when he blew smoke in my face.”

We once hosted a retired Chicago police commander at a meeting, and shared Martrell’s story with her. Our team regarded the story to be a telling illustration of the way seemingly minor encounters have lasting effects. The commander, who had been otherwise receptive to our findings, was confused about why we were even telling this story. Of course, the smoke was rude, but other than that, she said, it was a good encounter. To the commander, the officers were investigating and doing their jobs. No touching, no taking, just talking. What more do we want from police investigating a murder?

For Martrell, however, this encounter confirms that some officers do have ugly assumptions about people who look like him and live in his neighborhood. It makes his neighbors’ stories more plausible. It stays with him and affects his future decisions:

“At first I assumed all cops were good cops, but now I realize there are some bad cops. When I call, what’s gonna come? A good cop or a bad cop? Are they gonna be effective, do their job, ask questions, investigate, or criminalize and penalize me before even knowing me?”

In a neighborhood where residents have a reasonable expectation that there are enforceable limits on the power of the police, the response of a teenager to an officer who blows smoke in his face might well be to think, “What a jerk.” It’s unpleasant, it’s wrong, but it’s an isolated event. For Martrell, who lives in an over-policed and under-protected neighborhood and whose family and friends have frequent and sometimes frightening interactions with abusive officers, this encounter teaches that “the police are capable of anything.”

We often ask the teenagers to estimate how many bad officers versus good officers exist. It’s a crude question, designed to access some of their superficial perceptions. Like Martrell,

some students share encounters with officers who greet them, show an interest in them, and treat them with dignity and respect. The positive experiences that appear to have the greatest impact on the students' views of law enforcement occur when officers more profoundly involve themselves in the kids' neighborhoods and lives, for example as a coach or mentor.

However, it doesn't matter whether the student is generally supportive or critical of the police during our discussions, they all answer more bad than good. Some say 60/40, some say 90/10, some don't give numbers but just shake their heads and say, "Oh, it's a lot of bad."

In light of the number of positive experiences that students described, we were initially surprised by the extent to which students saw police as bad. We came to understand, however, that those positive encounters were eclipsed by their everyday experiences of being treated with the suspicion of being criminals, and encounters, personal or vicarious, with abusive officers who operated as though they were above the law.

We learned how abusive officers become, in a very real sense, the face of the police department to Black students. Kids told us that the "*real police*" are not the officers who try to be nice or talk with them. The *real police* are the ones who, despite their bad acts, are protected from discipline. At the same time Officer Friendly smiles and greets a student, students see officers who are not so righteous in plain view across the street, harassing other kids on their block. And they see those officers come back again and again. And again.

"Nothing happens to them."

One young man reflected, "You got good cops and bad cops. I think that it's a small number of good cops. It's a big number of bad cops. That's how I look at it."

Because of the context of police impunity, courteous or even friendly encounters did not change students' basic perceptions. When we pointed to positive police interactions that students had described, a teen-age boy corrected us, "Every situation is upsetting... There's no such thing as good encounters with the police."

Another common refrain among the students is: "The police are dirty."

They describe encounters in which officers brazenly steal their money, yet kids feel that there was nothing that they could do. One young woman reports, "I know a police officer personally. And she knows – she's a good cop, and she knows dirty cops. Yeah, and she knows the cops that are all b.s."

Like the students who told us about officers who routinely steal from kids, another girl shares a story about seeing an officer break the law: "Me, my mother and my little brother had walked past, and we see the police officer telling the boy, 'If you give me this much amount of weed, I'll make sure you don't go to jail.' I had seen it 'cause me and the boy was talking, and then – I didn't know that he was selling weed or nothing. I just seen him walk off with another person or whatever, and the police officer walked up like, 'Give me all of it.' And the boy was like, 'Why should I give it to you now? You been letting me sell weed.' So right then and now, I

knew, 'This isn't right.' And then the police officer –I guess the police officer got mad 'cause there was a lot of people around – it was hot outside, and the police officer was like 'Well, you just put our business out there.' Then the police officer just choked him. Ambulance came. And the police officer told the ambulance people 'that some guys was jumping on me.' "

Azante, in his junior year, is an artist and a talented poet. Once, he said, during a summer school session, another student set off a small firecracker. The teacher rounded up the most likely suspects, and took them to the main school office to have them searched. One by one, a police officer went through their pockets and backpacks. When it was Azante's turn, the officer instructed him to remove his sneakers. Azante was nervous because he had a twenty dollar bill, but he did as he was told. When he got into the hallway, he checked, and the bill was gone.

When Azante told this story, other students were initially skeptical the officer had actually stolen the money. "How do you know it didn't fall out?"

"Yeah right, like you had twenty dollars."

"If he did steal it, why didn't you say anything? You could've told the dean."

Azante wasn't flustered by the questions, "I'm not saying he did or didn't. I'm saying I think he did."

We paused. "Hold on, forget whether the officer actually stole the money. How many of you believe it's *possible* that the officer stole Azante's bill?"

The students quieted, thought about it, and then one said, "No. That officer is a good guy." Other students generally agreed. They know the officer well, and he just doesn't seem like the type.

"But," said Rayquan, and he paused. "He *is* a cop."

"Oh, yeah," all the kids start nodding, "He is a cop."

We take a vote and everyone agrees. Despite the students' positive personal relationship with the officer, the Police Department's protection of abusive officers enables them to seriously entertain the possibility that he stole Azante's money.

D. Would You Call the Police?

Driana was walking with her younger brother after school one day when a small group of young men began to follow them, jeering and calling out insults. Driana called the police, but

no one arrived, and her brother was jumped and badly beaten. She called the police several times, and after almost three hours, two officers arrived at her home. Though her parents were not home, the officers entered her house, tore apart her brother's room, interrogated him, put him in handcuffs and threatened to arrest him. They did not fill out a report on his assault. When asked how she handles bad situations now, Driana smiles, "I have cousins."

It is not often enough noted that law enforcement itself is among the major casualties of the lack of police accountability. More than anything, we were struck by how alienated so many of the students felt from law enforcement. Their sense of injury. Their fundamental distrust of the police. Some were so alienated from, unprotected or even threatened by police that they argued that they would be safer if they could abolish the police altogether.

Distrust of the police sets in motion a cycle with devastating effects for our children's safety, sometimes with grave consequences. Because kids do not trust police, they will not call the police when they're in trouble. Because people will not cooperate with the police, the police cannot solve and prevent crimes. Because the police cannot solve and prevent crimes, residents are yet less likely to go to the police and more likely to look for resolution or restitution outside the law. In the absence of meaningful accountability, the cycle goes on and on, reducing urban neighborhoods to something akin to failed states.

Many students explain that they would not call the police if they needed help. Some admit, if pushed, that they would probably call police if they or a family member had been shot, but many still insist that they would not call.

"I can't imagine a scenario I would call the police."

"I wouldn't call the police for nothing."

One young mother lamented, "If I was ever to get into something, the police would be the last people I'd call."

E. Is it Because We're Black?

A teen-age girl was sitting on a bench at a bus stop, when two white officers in a marked patrol car pulled up and began questioning her. They wanted to know if she had a brother or uncle who might have a gun, or if she could get them a gun. She answered their questions honestly, but they started using more derogatory language towards her. The officers called her a bitch, called her brother a punk, and told her she was a waste of taxpayer money. The girl assumed they were talking about her public education, until the end of the encounter, when one officer said, "They should let you all starve." She then realized they assumed she received food stamps.

Every conversation we have with the kids involves race. Most of the students with whom we interact live in Black neighborhoods. They attend schools that are 99% or more Black. Yet

they are policed by a force that is disproportionately white¹³ and that disproportionately dismisses complaints made by Black people.¹⁴ After hearing so many students tell us that they feel that police treat them less than a person, we often ask why they think that that's so. For many, the question evokes confused expressions, as though we asked a ridiculous question. The ever-present possibility of being stopped by police and treated like a criminal is simply like the weather. To them, our question was the equivalent of asking why the weather exists. It just does. When we press, students typically repeat, "That's just the way it is."

In contrast, when we had conversations with Black students at Kenwood Academy High School, a nearby South Side school in which nearly 90% of the students are African-American but located in a racially diverse neighborhood with a significant white population, virtually every student reported that police treated them this way "because they are Black." Students saw a stark contrast between their treatment and that of their white neighbors. The HPA students rarely see a white student in their school or their neighborhoods. *Everybody* in their schools and neighborhoods is treated with suspicion. "That's just how the police act."¹⁵

Like the students who went to school in Kenwood's racially diverse neighborhood, the HPA students who had at some point lived or spent some time in neighborhoods with significant white populations were far more likely to see racial disparities in treatment by police. One girl reflected, "I think that police officers are trained to act different depending on the neighborhood that they are in. They act nicer in white neighborhoods compared to Black neighborhoods. I use to live in a Black neighborhood and the police were horrible. They were always around but never helped."

¹³ Jeremy Ashkenas and Haeyoun Park, *The Race Gap in America's Police Departments*, N.Y. Times, Apr. 8, 2015, available at http://www.nytimes.com/interactive/2014/09/03/us/the-race-gap-in-americas-police-departments.html?_r=0.

¹⁴ Chicago police misconduct data show that Black residents are the most abused but least believed by the police. While they make up less than a third of the city's population, African-Americans are victims in 61% of the police brutality complaints brought against Chicago police officers. However, according to the Police Department, only 25% of the "actual" victims of police brutality in Chicago are Black, because the Department fails to sustain complaints brought by African-Americans. Citizens Police Data Project, *Findings*, available at <http://cpdb.co/findings/>; see also Adeshina Emmanuel & Jonah Newman, *Police Misconduct by Whites More Likely to be Upheld*, Chicago Reporter, Nov. 10, 2015, available at <http://chicagoreporter.com/police-misconduct-complaints-by-whites-more-likely-to-be-upheld/>.

¹⁵ Sociologist Carla Shedd observed similar trends among Chicago public high school students who attend schools with different racial demographics. She found that the "racial composition of the student body profoundly shapes students' perceptions of injustice. The more diverse a school is, the more likely its students of color will recognize whether they are subject to discriminatory treatment. By contrast, African American and Hispanic youth whose schools and neighborhoods are both highly segregated and highly policed are less likely to understand their individual and group disadvantage due to their lack of exposure to youth of differing backgrounds." Carla Shedd, *Unequal City: Race, Schools, and Perceptions of Injustice* (2015).

Another boy relayed, “One time these little kids, maybe 5 or 6 [years old], went into a park that was not open yet. They went through a cut hole in the fence. When they started playing in the park the police came and said, “What the fuck are you doing? Get the fuck out of the park!” If the kids were white they would not have said that.”

We were taken by the reluctance of many HPA students to attribute their experiences to race. Even when an officer used an explicit racial epithet, many students resisted the notion that the officers acted that way because the students were Black. Some kids prefer to speculate, “Maybe he just had a bad day,” than to think that the officer’s behavior has something to do with who the students are or the color of their skin. One teen-age boy began to express the view that police treat white people better than him, but then stopped himself and said he didn’t want to be racist. These conversations are among our most sensitive. It is difficult, occasionally embarrassing or traumatic, to identify as a ‘victim’ of racism.¹⁶ In a way, it acknowledges a further limit of the agency of the teenager during an encounter.

During a group interview, Desiree told us that she and her little brother were two of a handful of Black students at their elementary school on the north side of Chicago. When she was in 6th grade a few white girls got in a fight after school, and the police arrived. The officers, looking around for the kids who fought, saw Desiree and her brother walking to their home across the street from the school and stopped them. The officers told their white friends with them to leave.

“They pushed me and my little brother on the gate, my gate, my house. My mom is really, really light. She looks like she’s Puerto Rican. My mom came downstairs ‘What’s going on?’ The police officers were like, ‘This is none of your business.’ She’s like, ‘Them my kids.’ They’re like, ‘No they’re not. They’re niggers and you’re Puerto Rican.’”

Desiree’s mom and the officers cursed at each other, and the officers let the kids go. As we asked about the details of the story, especially about the use of the word ‘nigger,’ Desiree told me us we were incorrect to think the officers were racist.

She explained, “I got from this story that the color of your skin don’t matter,” because the officers were equally rude to her light skinned mother. So she believed the officers were not being racist.

We challenged this understanding by asking, “They must have been making some assumptions about you, versus your white friends?”

Desiree paused and looked down. “Yeah... um.”

We then asked a better question: “Why don’t you think that the white girl got put against the fence the way that you and your brother did?”

¹⁶ [Cite psych research on stigma associated with identifying as victim of racism? Carl Bell? Carter?]

Without hesitation, Desiree answered “Because the officer was white.”

Synamon, another student in the room, interjected “He was being racist if he called them niggers.”

Tasia, who was filming the interview said quietly, “I would have cried.”

At this point, Desiree reconsidered her earlier analysis. “I think he racially profiled me, because there was only a small amount of Black people over there.”

Despite the reluctance of some to name racism, race is ever-present in the HPA students’ descriptions of their experiences with police. When we asked a girl to describe the officer who had recently pulled her over, she said, “It was a white man. He was bald. I actually thought he was with the KKK.”

Jamari describes “feeling like a caged animal” when police approach him, calling to our minds the ways that American law has dehumanized Black bodies, from slavery to contemporary prisons.

When we ask students to describe the people who they think are most likely to be stopped by police, they repeatedly describe dark skinned young men with dreadlocks, reflecting racist stereotypes that remain pervasive not just among police, but also throughout broader society.

We ask Jamari, “Describe to me someone who never, ever gets stopped?”

“White people.”

F. “I Can’t Imagine Anything Different”

Among the most depressing things that we heard in our conversations, both with Black high school students and with police officers, was their inability to even *imagine* that relations with one another could be different—their shared belief in the intractability of the problem. When we ask, “Could things be different?” the kids often respond, “If I moved.” When we press them to contemplate a different a different reality, we hear things like, “Maybe in your neighborhood. That’s fantasyland here.”

High school students and police matter-of-factly report, “That’s just the way it is.”

And even more disturbingly, “That’s the way it’s always going to be.”

While Black teens and police officers believe that their relations with one another will not change, they also express that they would like things to be different. They would like things to be better.

One young woman’s voice shook as she poignantly expressed her hope: “When my son gets older ... I’m hoping that the police be done changed. Some of the attitudes or training that they receive needs to change.”

Our experiences over the last four years give us reason for optimism. The distrust of Black teens toward the police--their attitudes about lack of accountability and unequal treatment--are not mistaken; they have an empirical basis. Judging by our experience in the Youth/Police Project, when these realities are acknowledged rather than denied, young people become enthusiastic partners in the work of diagnosis, problem-solving and reform.¹⁷

Among the causes of denial is lack of effective agency. It is difficult to hold grievous, ongoing harms in focus, if you feel you have no way to address them. To see, you need to be able to act. How then do things change? What is the agenda going forward?

III. The Plan for Change

We have long known the solutions. They are grounded in fundamental, time-honored principles of honesty, accountability, and respect for the dignity of others. Our challenge today is to summon the political will to implement remedies that have long been in plain sight. Let’s not let this moment pass without addressing the underlying issues that have *caused* Black children to distrust the police.

Toward that end, we offer a series of concrete proposals that we hope will help frame national policy, advocacy, and research agendas going forward.

A. Acknowledge the Realities—Honesty and Transparency

Any conversation about solutions has to begin with *honesty*. Denial and secrecy, in response to African-American students’ experiences with conditions of unequal justice and police abuse, have not served law enforcement well. Students have taught us that if we want relations between young people and the police to change, we must acknowledge the reality of their experience.

¹⁷ The shared desire of young Black people and the police to have positive and trusting relations also gives reason for hope. Stanford psychologist Carol Dweck’s research demonstrates that when we believe a conflict or problem is insoluble, that belief can become a self-fulfilling prophecy, erecting powerful barriers to change. In contrast, when we begin to see possibilities for change (what Dweck calls a “growth mindset”), even once “intractable” problems can be resolved. See Carol Dweck, *Mindset: The New Psychology of Success* (2006).

1. An Informed Public is an Empowered Public

Recommendation No. 1: *Share information with the public within 12 hours of any police shooting or major incident involving alleged misconduct. In most cases, any video of these incidents should be released within 24 to 48 hours, and such video should always be released within 14 days.*¹⁸

What do police departments say when there is a police misconduct complaint that commands public attention? Someone is shot, someone is seriously hurt. What information do departments share? Most departments reflexively respond with some combination of denial and the standard one liner: “It’s under investigation.”

Such secrecy exacerbates distrust of the police. To earn public trust, police departments must be far more transparent when their officers are accused of violating that trust. Hold press conferences within 12 hours of a major incident. Keep people informed about the progress of an investigation. When police possess a video of an encounter that took place in a public area, release the video within 24 to 48 hours.

Cincinnati v. Chicago

The contrasting practices of Cincinnati and Chicago demonstrate the power of transparency in building trust. The Cincinnati Police Department underwent dramatic reform after a history of charges of discriminatory police abuse and terrible relations between Black residents and police.¹⁹ Between 1995 and 2001, Cincinnati police officers had killed 15 Black men, including the 2001 shooting of Timothy Thomas that sparked mass protests.²⁰ As a part of a collaborative agreement, and a companion agreement with the Department of Justice, Cincinnati police worked together with Black residents to create mechanisms for transparency and accountability, and thereby built constructive relationships that previously would have been hard to imagine.²¹ That does not mean that there have not been incidents of police abuse and violence in the decade since the Department opened itself to the public. Bad things predictably will happen even in the best departments. But by embracing principles of honesty, Cincinnati, police have built trust even when officers abuse their power.

¹⁸ Our summary recommendations are listed in the Appendix.

¹⁹ Andrew Buncombe, *Cincinnati Police Have ‘Harassed Blacks for 30 Years’*, Guardian Newspaper, Apr. 14, 2014.

²⁰ Ron Daniels, *The Significance of the Rebellion in Cincinnati*, The Black World Today, Apr. 25, 2001.

²¹ Alana Semuels, *How to Fix a Broken Police Department*, The Atlantic (May 28, 2015), <http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/> (Between 1999 and 2014, use of force incidents decreased by 69%, citizen complaints decreased 42%, citizen injuries during police encounters went down 56%; and misdemeanor arrests decreased by more than 200%. At the same time violent crime decreased by nearly 50 %.). Francis Clines, *A City Tries to Turn Candor into Consensus*, N.Y. Times, Sep. 9, 2001, available at <http://www.nytimes.com/2001/09/09/us/a-city-tries-to-turn-candor-into-consensus.html>.

For example, Cincinnati's practice has been to hold a press conference and release available video within 12 hours of every police shooting.²² More generally, its policy is to release video footage from police body cameras within 24 to 48 hours of police/citizen encounters.²³

²² Kelly McEvers, *Former Cincinnati Chief Recalls Challenges of Police Reform*, National Public Radio (Dec. 8, 2015), <http://www.npr.org/2015/12/07/458828493/former-cincinnati-chief-recalls-challenges-of-police-reform> (quoting former Chief Streicher: "I think one of the biggest things that we did was change the way we release information when a critical incident occurs. It used to be that we tell people very little and tell them everything's under investigation; we'll get back to you when it's over with. And of course, those investigations can take months and months. And because of that, information was withheld from the public. Rumors start to fly. Distrust starts to grow. And then no matter what you say or what you release, six months later, nine months later, a year later, it makes no difference because the rumors have already made their way through the community, and there's an enormous amount of distrust that's already been created. And so one of the things we changed is that from that point forward, I literally went to the scene of every single critical incident, released information at the scene. And then we mandated that in no more than eight hours after an incident occurred. We had a PowerPoint presentation prepared that we released to the entire media. We released all the recordings, all the pictures, all the evidence and opened the process up to become very transparent. And we believe that that worked very, very well for us. That's helped build a lot of trust and help improve relationships between our police department and the citizens, particularly those parts of the community inhabited by people of color." See also Semuels, *supra* note _ (Cincinnati's reforms centered on a community problem-oriented policing model that led to fewer arrests and a greater focus on collaborative problem solving with community residents. It adopted a series of accountability measures to address police abuse, such as tracking officers who accumulate extraordinary numbers of complaints, imposing discipline as appropriate, and establishing the Citizen Complaint Authority with investigative and subpoena powers to address complaints of police misconduct.).

²³ Kevin Williams, *University of Cincinnati Police Officer Who Shot Man During Traffic Stop Charged with Murder*, Wash. Post (July 29, 2015), <http://www.washingtonpost.com/news/post-nation/wp/2015/07/29/prosecutors-to-announce-conclusion-of-probe-into-cincinnati-campus-police-shooting/>.

The Police Executive Research Forum advises that police departments "need to be transparent in providing information following use-of-force incidents." *Use of Force: Taking Policing to a Higher Standard 30 Guiding Principles*, Police Executive Research Forum (Jan. 29, 2016), available at <http://www.policeforum.org/assets/30%20guiding%20principles.pdf> (recommending that departments release "as much information as possible to the public, as quickly as possible" in serious use of force cases, and provide updates as new information becomes available). Like Cincinnati, the Seattle Police Department developed a pilot program to further transparency by publicly releasing police videos of citizen encounters within 24 hours, after editing or withholding the small fraction that raises privacy issues or impairs the integrity of

Then came the fatal shooting of Samuel DuBose by University of Cincinnati Police Officer Ray Tensing, caught on videotape, in July 2015. The shooting occurred in the midst of national focus on police killings of Black people. In this case, the police department had a sound investigatory reason to delay the release of the videotape until it could question a couple of officers who had made statements that were captured on video from Officer Tensing's body camera. The videotaped statements were potential evidence of a police cover up. The department interviewed the involved officers as quickly as possible, and then released the video to the public within eight days of the shooting. While many in Cincinnati and around the nation have been justifiably shocked by the video, the department's transparency and accountability have the potential to enhance public trust.²⁴

Compare Cincinnati's response to Mr. DuBose's shooting to Chicago's handling of the shooting of Laquan McDonald.²⁵ Having withheld video footage of the incident for more than 13 months on the ground that the case was under investigation, its ultimate release in response to a judicial order was devastating to public trust in the institutions of government.

2. Data, Data, Data—Collect and Share it

Recommendation No. 2: *Collect and report information in a standardized format about encounters between citizens and police, including street and traffic stops, police shootings, and*

an investigation. Colin Wood, *Seattle Police Hackathon Tackles Video Transparency*, Gov't Technology (Dec. 22 2014), <http://www.govtech.com/public-safety/Seattle-Police-Hackathon-Tackles-Video-Transparency.html>. The Department plans to do this automatically, without waiting for a request from a member of the public. *Id.* Redactions should occur only in exceptional circumstances, particularly when the incident occurs in public areas, as it is difficult to justify withholding video that any person could have taken with his or her cell phone.

²⁴Mark O'Mara, the lawyer representing DuBose's family, observed that Cincinnati addressed Mr. DuBose's case better than other cities had dealt with police shootings: "Cincinnati is showing us how to do this right." Sharon Coolidge et al., 'Absolutely Unwarranted,' *Lawyer Says of Cop's Indictment*, USA Today (July 29 2015), <http://www.usatoday.com/story/news/nation/2015/07/29/cincinnati-black-motorist-killed-university-officer/30830297/>. Recently, community members have voiced concern about backsliding in Cincinnati, after the dismissal of a police chief who had embraced principles of transparency and accountability, but did not win the support of some of the rank and file. Authors' Interview of Attorney Rickell Howard, Mar. 10, 2016.

²⁵Whet Moser, *Chicago Police Department Reforms Could Go Further than a DOJ Investigation*, Chicago Magazine (Dec. 4, 2015), <http://www.chicagomag.com/city-life/December-2015/Chicago-Police-Department-Reforms-Could-Go-Much-Farther-Than-a-DOJ-Investigation/>.

citizen complaints of police misconduct; and including demographic data about the subjects of those incidents.

Acknowledging the realities also requires transparency on a systemic level, including sharing data on police misconduct complaints and stops-and-searches. The call for transparency is nothing new. Indeed, it is a bedrock principle of democratic governance that we as citizens need access to information about our government to ensure that it acts in the public interest. Accordingly, it should come as no surprise that transparency is a core tenet of the President's Task Force on Twenty-First Century Policing.²⁶ Notwithstanding our stated national commitment to transparency, police departments in the U.S. have been stingy in sharing information with the public. Law enforcement reporting practices on citizen/police encounters vary widely throughout the country. Very few departments collect and report demographic information when officers stop and search individuals, and the departments that do, report the information in inconsistent ways.²⁷

Similarly, most police departments do not publish data on police misconduct.²⁸ Since 1994, federal law has required the United States Justice Department (DOJ) to collect national data on police use of force from local law enforcement.²⁹ However, the law fails to provide the DOJ with any funding or enforcement mechanism to do so. As former Attorney General Eric Holder lamented, "The troubling reality is that we lack the ability right now to comprehensively track the number of incidents of either uses of force directed at police officers or uses of force by police."³⁰

²⁶ Toward the end of his second term, President Obama convened an historic task force that laid out a national agenda for policing in the 21st Century. Many of its recommendations are consistent with those in this paper. Central to its first "pillar" of building trust and legitimacy, the President's Task Force calls upon all law enforcement agencies to "establish a culture of transparency and accountability." *Report of the President's Task Force on 21st Century Policing* at 1.

²⁷ The most common ground for police resistance to recording their stops and searches of Black students and their reasons for doing so is the amount of time it takes to do so. We have little sympathy for this resistance, especially in light of the effects of this practice on Black teens, not to mention the costs to law enforcement. If it is important enough to stop and search a child in the first instance, then it is certainly important enough to require officers to document their reasons for doing so.

²⁸ Adam Dunn & Patrick Caceres, *Constructing a Better Estimate of Police Misconduct*, Pol'y Matters, Spring 2010 at 10, 14.

²⁹ 42 U.S.C. § 14142(a) (1994) (instructing the Attorney General to "acquire data about the use of excessive force by law enforcement officers").

³⁰ Mark Berman, *Holder: We Need Better Data on Police Shootings and Officer Deaths*, Wash. Post, Jan. 15, 2015, available at <http://www.washingtonpost.com/news/post-nation/wp/2015/01/15/holder-we-need-better-data-on-police-shootings-and-officer-deaths/>.

The result is scattered, inconsistent, and unintelligible information about citizen/police encounters that provides little basis for comparisons across jurisdictions.³¹ We even fail to keep reliable data when people are shot or killed by police.³² Our government's failure to do so is even more disturbing in light of *ProPublica's* analysis of the admittedly "unreliable" FBI data³³ on police shootings suggesting that African-American men are 21 times more likely than white men to be killed by police.³⁴

Police departments have provided the FBI with official data on civilian crime for nearly a century. It is long past time that we *require* all law enforcement agencies in the country to report information on citizen/police encounters in a uniform manner, and make that information publicly accessible on at least an annual basis.³⁵ This means offering incentives--above all,

³¹ Pursuant to 42 U.S.C. § 14141, the Justice Department conducted a national survey on the use of force in 2013, the first time it had attempted to gather such data since 2006. The New York Times calls the survey "almost useless." Matt Apuzzo and Sarah Cohen, *Data on Use of Force by Police across U.S. Proves Almost Useless*, N.Y. Times, Aug. 11, 2015, available at http://www.nytimes.com/2015/08/12/us/data-on-use-of-force-by-police-across-us-proves-almost-useless.html?emc=edit_th_20150812&nl=todaysheadlines&nid=23983883&_r=1. Many large departments refused to provide any data whatsoever, and the agencies that provided some data collected them in such inconsistent and unreliable ways as to make comparisons meaningless. *Id.*

³² Tony Dokoupil, *What Is Police Brutality? Depends on Where You Live*, U.S. News (Jan. 13 2014), http://usnews.nbcnews.com/_news/2014/01/14/22293714-what-is-police-brutality-depends-on-where-you-live ("There are no hard national standards, no binding state policies, not even a national database that tracks how often, where, and under what circumstances police use deadly force. The result, say scholars, is a free-wheeling space in American law and police policy."); see also Rob Barry, *Hundreds of Police Killings Are Uncounted in Federal Stats*, Wall St. J., Dec. 3 2014, available at <http://www.wsj.com/articles/hundreds-of-police-killings-are-uncounted-in-federal-statistics-1417577504> ("A Wall Street Journal analysis of the latest data from 105 of the country's largest police agencies found more than 550 police killings [between 2007 and 2012] ... were missing from the national tally or, in a few dozen cases, not attributed to the agency involved. The result: It is nearly impossible to determine how many people are killed by the police each year.").

³³ Wesley Lowery, *How Many Police Shootings a Year? No One Knows*, Wash. Post, Sept 8 2014, available at <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/> ("Officials with the Justice Department keep no comprehensive database or record of police shootings, instead allowing the nation's more than 17,000 law enforcement agencies to self-report officer-involved shootings as part of the FBI's annual data on "justifiable homicides" by law enforcement. . . The DOJ's Bureau of Justice Statistics also tracks "arrest-related deaths." But the department stopped releasing those numbers after 2009, because, like the FBI data, they were widely regarded as unreliable.").

³⁴ Ryan Gabrielson, et al., *Deadly Force, In Black and White*, ProPublica, Oct. 10, 2014, available at <http://www.propublica.org/article/deadly-force-in-black-and-white>.

³⁵ 28 C.F.R. § 0.85(f) (2012); Uniform Federal Crime Reporting Act of 1988, 28 U.S.C. §§ 534(a)(1), (f) (2006). See e.g., *Crime in the United States 2013*, Federal Bureau of Investigation,

funding--to departments to do so, and imposing penalties on those that refuse. Moreover, it means acting with the urgency this problem demands—treating it as the critically important national public safety and civil rights issue that it is.³⁶

While high level public officials have bemoaned the lack of standardized national data and have recommended that local police departments collect and report these data, they have failed to put their political capital behind concrete efforts to *require* law enforcement to do so.³⁷ Police departments will not spontaneously initiate coordinated data collection and reporting efforts, simply because we wish that they would. Our national leaders need to exercise their power to require local law enforcement to collect and report on these police/citizen interactions. United States Representative John Conyers has repeatedly introduced legislation that would require this to no avail. Indeed, thoughtful bills were introduced in the House and the Senate again in 2015, entitled the End Racial Profiling Act of 2015, which would have required local

Criminal Justice Information Services Division, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013> (last visited Sep. 22, 2015). Criminologist Robert Kane similarly proposed a national policy that would require police departments to collect and publish data on all coercive encounters they have with the public. Robert Kane, *Police Departments Should Collect and Release Data on Coercive processes and Outcomes*, 6 J. Criminology & Public Policy 2801 (2007) (“[H]ow many times did police officers in the United States use deadly force?...[H]ow many times did police officers use their batons or chemical spray during encounters with people in any given community? How many high-speed police pursuits ended in collisions? How many vehicle stops last year in any given community led to vehicle searches, and what was the racial composition of those searched as compared with those stopped? All of these questions have the same answer: *We do not know.*”).

³⁶ President Obama recently took a significant step toward inducing police departments to improve transparency when he launched the White House’s Police Data Initiative, but that step falls far short of requiring departments to do so. With technical support from the White House, more than 20 police departments have voluntarily begun posting some police data in real time. Megan Smith & Roy L. Austin, Jr., *Launching the Police Data Initiative*, *The White House Blog* (May 18, 2015), <https://www.whitehouse.gov/blog/2015/05/18/launching-police-data-initiative>. Experiences have been positive. For example, Dallas, which posts data about police use of force, shootings, and pedestrian and vehicle stops shortly after they occur, has found that its participation in the White House’s Initiative critical to building trust in the police. See Dallas Police Department, *Dallas Police Department Reveals Updated officer Involved Shooting Website*, *The DPD Beat* (Oct. 21, 2015), <http://dpdbeat.com/2015/10/21/dallas-police-department-reveals-updated-officer-involved-shooting-website/>; Dell Cameron, “Dallas Police Department Releases 11 Years of Officer-Involved Shooting Data,” *DAILY DOT* (Dec. 1, 2014), <http://www.dailydot.com/politics/dallas-police-involved-shootings-report/>.

³⁷ FBI Director James Comey rightly characterizes our national failure to require law enforcement to report when police kill citizens as “unacceptable,” “embarrassing and ridiculous,” the FBI also admits that it lacks any legal authority to require such reporting. Kimberly Kindy, *FBI to Sharply Expand System for Tracking Fatal Police Shootings*, *Chi. Trib.*, Dec. 8, 2015, available at <http://www.chicagotribune.com/news/nationworld/ct-fbi-tracking-fatal-police-shootings-20151208-story.html>. This needs to change and change now.

law enforcement to collect standardized data on investigatory and traffic stops, and report the data to the U.S. Department of Justice, consistent with our recommendations here.³⁸ The Bureau of Justice Statistics would then publish annual reports analyzing the data to Congress and the public. Despite the public attention to issues of race and police abuse, Congressional experts rightly concluded that there was nearly zero probability that these bills would pass.³⁹ The suggestions of a Presidential Task Force are not enough. We need to find the political will to enact these bills into law.

Local Solutions

While a national solution is ultimately required, we offer promising local examples as models for collecting and sharing information on a national basis.

The Citizens Police Data Project

After a nearly five-year battle in a case called *Kalven v. City of Chicago*,⁴⁰ Illinois records relating to police misconduct complaints, including completed investigations into allegations of misconduct (“founded” or otherwise) and the names of officers accused of misconduct, belong to the people. Before the *Kalven* decision, information about police abuse remained hidden behind a wall of secrecy. Today police misconduct files are open to the public. We (the authors) and our colleagues have worked with the City of Chicago to put this principle into practice.

³⁸ H.R. 1933, 114th Cong. 1st Sess. (U.S. 2015); S. 1056, 114th Cong., 1st Sess. (U.S. 2015).

³⁹ H.R. 1993: *End Racial Profiling Act of 2015*, GovTrack, <https://www.govtrack.us/congress/bills/114/hr1933>.

⁴⁰ 2014 Il. App. (1st) 121846. The *Kalven* team included two of the authors of this piece, joined by civil rights lawyers, Samantha Liskow and Jon Loevy of the Loevy Law Firm, and Ben Elson and Flint Taylor of the People’s Law Office.

To that end, we have launched the Citizens Police Data Project, a database that gives everyone access to police misconduct data in Chicago.⁴¹ We hope that the CPDP will serve as a model for other jurisdictions.⁴²

The universal accessibility of this information allows members of the public, researchers, advocates, policymakers, and the press to assess the quality of investigations; it creates incentives for investigators, knowing their work is subject to public scrutiny, to conduct rigorous investigations; and it enables the public to identify groups of officers with patterns of complaints, and move the department to address those patterns.

Information is power. Sharing information redistributes power from law enforcement to ordinary people, young and old, allowing those most affected by police abuse to play meaningful roles in police oversight. It facilitates honest and informed conversations without the usual, debilitating information asymmetries.⁴³ These conversations enable citizens and police to build

⁴¹ The database is available at cpdp.co. However, battles about the accessibility of these records persist. See note __, *infra*. The local police unions have brought a lawsuit seeking to destroy years of police misconduct records. *Fraternal Order of Police v. City of Chicago*, Nos. 14-3884, 15-0162 (consol.), IL App. (1st). The records contain evidence of systematic police torture that caused African-Americans to endure decades of false imprisonment. See Chicago Reparations Ordinance, http://www.cityofchicago.org/city/en/depts/dol/supp_info/burge-reparations-information/burge-reparations--ordinance.html; Adeshina Emmanuel, *Chicago Passes Ordinance Granting Reparations to Torture Survivors*, Truthout (May 7, 2015), <http://www.truth-out.org/news/item/30667-human-rights-practices-inform-chicago-ordinance-in-police-torture-case>. Nearly a hundred people allege that they remain in prison as a result of false and tortured confessions. Austin Berg, *Chicago Police Unions Fight to Destroy Decades of Records*, Rocket River Times (Dec. 14, 2015), <http://rockrivertimes.com/2015/12/14/chicago-police-unions-fight-to-destroy-decades-of-records/>. If the police unions prevail, evidence of police torture would go up in smoke. We have drafted an *amicus* brief and proposed legislation to prevent a “great bonfire” of these critically important records. Amicus Curiae Brief of Jamie Kalven, John Conroy, and the Better Government Association, *F.O.P. v. City of Chicago*, Nos. 14-3884, 15-0162 (consol.) IL App. (1st) (Feb. 10, 2015); Craig Futterman and Jamie Kalven, *Don’t Allow Police Misconduct Records to be Destroyed*, Chicago Sun Times (Feb. 13, 2015). In response, Illinois has introduced a bill to require the permanent retention of records that relate to police misconduct complaints. SB 2233, 99th Gen Assem. (IL 2015 and 2016), available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=09900SB2233&GA=99&SessionId=88&DocTypeId=SB&LegID=93282&DocNum=2233&GAID=13&Session=>.

⁴² Attorney Cynthia Conti-Cook has developed an innovative police misconduct database for the Legal Aid Society of New York, accessible to public defenders in criminal cases. Jason Tashea, *Databases Create Access to Police Misconduct Cases and Offer a Handy Tool for Defense Lawyers*, ABA Journal (Feb. 1, 2016), available at http://www.abajournal.com/magazine/article/databases_create_access_to_police_misconduct_cases_and_offer_a_handy_tool_f.

⁴³ Todd M. La Porte et al., *Democracy and Bureaucracy in the Age of the Web*, 34 Admin. & Soc’y 411 (2002); Daniel Albalade del Sol, *The Institutional, Economic, and Social Determinants*

more egalitarian relationships based on trust, relations whose positive effects go far beyond the merits of any particular policy.⁴⁴

The “Stop” Act

Empirical data support the reality of HPA student experiences of the ubiquity and racial inequality of police stops.⁴⁵ Yet police departments remain reluctant to collect and share, much less talk about these data. Honesty means that departments share the truth about who is being stopped, searched, subjected to force, and killed by police. If police are stopping and searching more Black and Brown people than Whites, let’s talk candidly about why that is so, and what, if anything, we should do about it. Denying the reality of Black youth—telling kids, “No, that doesn’t happen”—guarantees that law enforcement will not gain their trust, much less their cooperation or partnership. And just as with police misconduct data, federal law enforcement should require all local departments to collect and share information in a standardized form. Illinois has an excellent example of state legislation that could serve as a national model for documentation and public reporting of all traffic stops.⁴⁶

A recent example of a model for data collection and reporting of street stops also comes from Chicago. A youth-led advocacy campaign has garnered broad public support for a proposed ordinance dubbed the “STOP Act.”⁴⁷ The ordinance would mandate that the police department collect and publicly share data for all street stops, including demographic

of Local Government Transparency, 16 J. Econ Pol’y Reform 90 (2013) (finding that transparency enhances accountability by reducing information asymmetries, enables public oversight and reduces corruption).

⁴⁴ John C. Bertot et al., *Using ICTs to Create a Culture of Transparency: E-Government and Social Media as Openness and Anti-Corruption Tools for Society*, 27 Gov’t Info. Q. 264 (2010); Dong Chul Shim & Tae Ho Eom, *Anticorruption Effects of Information Communication and Technology (ICT) and Social Capital*, 75 Int’l Rev. Admin. Sci. 99 (2009) (finding that citizen trust in government increases with access to information).

The United States Department of Justice’s Consent Decree with the City of Cleveland provides another good example for tracking and reporting on use of force data, and engaging people in the community in conversations about police reform. *See* Settlement Agreement, *U.S. v. Cleveland*, (E.D. Oh. May 26, 2015), at Section X.B., available at http://wwaw.justice.gov/crt/about/spl/documents/cleveland_agreement_5-26-15.pdf.

⁴⁵ *See* ACLU of Illinois, *Stop and Frisk in Chicago* (March 2015), available at http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf (discussed in Section III.C.1., *infra*).

⁴⁶ 625 ILCS 5/11-212. The Illinois Department of Transportation has published more than ten years of data about traffic stops and searches on its website. *See: Illinois Traffic Stop Study, Illinois Department of Transportation*, <http://www.idot.illinois.gov/transportation-system/local-transportation-partners/law-enforcement/illinois-traffic-stop-study>.

⁴⁷ Stops Transparency Oversight and Protection Act, available at http://wechargegenocide.org/wp-content/uploads/2015/08/CPD.ContactDataOrdinance.FINAL_.7.29.15.web_.pdf.

information of the individuals stopped, the names and badge numbers of the involved officers, and the reason for and outcome of the stop, including whether an individual was searched.⁴⁸ In addition, officers would be required to obtain written consent in order to perform a consensual search (to ensure that it is consensual) and to provide receipts to each individual who was stopped.⁴⁹ Reforms taking place in New York City and New Orleans should also inform national data collection and reporting requirements on stop and frisk.⁵⁰

B. Accountability

A central lesson we learned from the Youth/Police Project is *the priority of police accountability*. Black youth will not trust the police until their police departments have credible systems for investigating and addressing police abuse; until their departments address patterns of abuse in Black and Brown communities; and until their departments address the code of silence.

The unifying theme articulated in one form or another by virtually every student with whom we spoke was that “they (the police) have all the power.” That theme defines their very relationship with the police. Unchecked power by police, no matter how exercised, forms the context of each and every police encounter. And this unchecked power overshadows every positive thing that kids experience vis-à-vis individual officers.

Credible regimes of accountability have the potential to change the backdrop of these encounters and thereby change the way young people see police. Our children need to *see* that

⁴⁸ *Id.*

⁴⁹ *Id.* The Illinois Police Reform Act of 2015 also requires all law enforcement agencies to give a “receipt” to each person stopped and searched, with the officers’ name and badge number, along with the reason for the stop. 725 ICLS 5/107-14(b). The ACLU reached a voluntary agreement with the Chicago Police Department that accomplishes a number of the goals of the STOP Act. Investigatory Stop and Protective Pat Down Settlement Agreement between the ACLU and Chicago Police Department (Aug. 6, 2015), available at <http://www.aclu-il.org/wp-content/uploads/2015/08/2015-08-06-Investigatory-Stop-and-Protective-Pat-Down-Settlement-Agreeme....pdf>.

⁵⁰ Following years-long litigation that challenged the New York Police Department’s stop and frisk practices, the city has agreed to a joint reform process, in which community groups and the NYPD will come together to map out solutions. *Stop-And-Frisk Attorneys Hopefully at Beginning of Police Reform Process*, Center for Constitutional Rights (Nov. 3, 2015), <https://ccrjustice.org/home/press-center/press-releases/stop-and-frisk-attorneys-hopeful-beginning-police-reform-process-0>. Similarly, the City of New Orleans entered a consent decree with the U.S. Department of Justice that required its police department to collect comprehensive data on all investigatory stops and searches, and issue a “publicly accessible annual report summarizing, analyzing, and responding to the data.” Consent Decree Regarding the New Orleans Police Department, *U.S. v. City of New Orleans*, 12 CV 1924, ECF No. 2-1, E.D. LA. July 24, 2012, available at <http://www.nola.gov/getattachment/NOPD/About-Us/NOPD-Consent-Decree/NOPD-Consent-Decree-7-24-12.pdf/>.

officers are held accountable when they hurt their neighbors. That their police departments do not stand behind officers who abuse their power. Only then can there be trust.⁵¹

1. Establish Police Disciplinary Systems People can Believe in

Recommendation No. 3: *Implement credible systems for investigating and addressing complaints of police abuse.*

Accessibility is a threshold requirement of any credible system for citizens to bring complaints of police abuse. First, encourage and make it easy for citizens to report misconduct and offer feedback (including complimenting good police work). Provide multiple avenues for doing so in ways that make people feel less vulnerable to retaliation. Eliminate barriers to critical feedback: allow people to make anonymous complaints (amend any local law or contractual provision that prevents this); permit individuals to initiate complaints on-line; provide safe sites outside of police departments where individuals may go to file and get assistance lodging a complaint; do away with conditions that disincentivize complaints, such as any requirement that a complainant must sign a sworn affidavit under penalty of perjury before her complaint will be investigated.⁵² Elicit regular feedback from complainants about their satisfaction with the investigative process, and seek suggestions for improvement.

Second, investigate allegations of police abuse as diligently as other serious crime. Ensure that investigators are well trained and appropriately supervised. Address institutional bias. Make sure that investigators and the procedures for investigations are unbiased either in favor of the police or complainants. Endow investigators with the power and resources that they need to conduct prompt, high quality investigations.⁵³ Document each step within every investigation and supervisory review of the investigation.

⁵¹ Consistent with what we learned from the kids, Chicago data from the Citizens Police Data Project reveal that police are least successful in addressing crime in the areas they have the least trust. *See* Graph, Chicago Police Misconduct Complaints, as Compared to Clearance Rates for Violent Crime by Neighborhood, 2011-2015 (on file with authors, drawn from City of Chicago Data Portal Crimes 2011-2015 and the Citizens Police Data Project, cpdb.co) (showing that the neighborhoods in the City with the lowest clearance rates for violent crime also have the most complaints of police abuse).

⁵² *See e.g.*, 50 ILCS 725/3.8 (2015)

⁵³ Many collective bargaining agreements and laws have been promulgated that establish a “law enforcement officer bill of rights,” some of which have erected inappropriate barriers to effective investigations, such as imposing waiting periods before an investigator may question an officer accused of misconduct and requirements to provide the accused officer with the evidence against him or her before giving a statement. Law Professors Aziz Huq and Richard McAdams offer a persuasive argument to eliminate these “interrogation buffers.” Aziz Huq & Richard McAdams, *Litigating the Blue Wall of Silence*, U. Chi. L.F., forthcoming Working Paper No. 555 (2016) (finding that these delays can seriously impair police misconduct investigations and lack any functional justification).

Third, when investigators find misconduct, address it. Employ firm, fair, and even-handed discipline. Recognize the difference between a mistake and malicious behavior. Correct mistakes. Get rid of deliberate liars and those who inflict pain wantonly on people.

Fourth, as stressed above, be transparent. Strive for transparency throughout the entire investigative process. Keep people informed from the beginning. When an investigation is complete, publish the findings and explain the Department's reasons for its findings. Those explanations make people feel like that their complaints were heard, respected, and treated fairly. Conversely, a spare form letter, even when it sustains an individual's complaint, does little to instill confidence in the process. Indeed, it sends a message that the complaint was not treated with the attention it deserved.

Social scientific research has shown that when young people see that there is a credible regime of accountability, when they feel heard and treated fairly in the process, they are far more likely to trust law enforcement and respect the outcome of a police misconduct investigation, even if they disagree with it.⁵⁴ They are more likely to trust the process if they believe that it is fair.⁵⁵

2. Root out Patterns of Police Abuse

Recommendation No. 4: Use “pattern evidence” to investigate and root out police misconduct.

Most urban police chiefs agree that a small fraction of their officers are responsible for the vast majority of abuse in their agencies.⁵⁶ As a result, it is relatively easy to determine where the potential problems lie.⁵⁷ However, law enforcement agencies have been loathe to use available

⁵⁴ Tracey L. Meares, with Peter Neyroud, *Rightful Policing*, New Perspectives on Policing, National Institute of Justice 6, Feb. 2015, available at <http://www.hks.harvard.edu/content/download/74084/1679313/version/4/file/RightfulPolicing.pdf>; Tom R. Tyler, *Why People Obey the Law* (reprint, 2006). Tyler's and Meares' research on procedural justice and “rightful policing” is more fully explored in Section __, *infra*.

⁵⁵ *Id.*

⁵⁶ See e.g., Samuel Walker, Geoffrey Alpert, and Dennis Kenney, *Early Warning Systems: Responding to the Problem Police Officer*, National Institute of Justice (July 2001) at 1, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/188565.pdf> (“It has become a truism among police chiefs that 10 percent of their officers cause 90 percent of their problems.”).

⁵⁷ See Craig Futterman, Melissa Mather, & Melanie Miles, *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department's Broken System*, 1 DePaul J. for Soc. Just. 251 (Spring 2008) (When we conducted a study of civilian complaints of police abuse in Chicago, we observed that most police officers had very few complaints of misconduct. As a result, certain individual and groups of officers' pattern of complaints jumped off the page. We found that police abuse is a highly patterned phenomenon, committed by certain officers, who tend to work together in cohesive groups, and concentrated

tools to examine potential patterns of police abuse, when investigating and disciplining officer misconduct. While agencies have long recognized the value of analyzing patterns when addressing civilian crime, they have refused to use those very same tools to investigate and fire the relatively small number of officers who repeatedly dishonor the badge.⁵⁸

Although police departments have resisted any examination of pattern evidence when investigating police abuse, numerous departments have implemented early warning or early identification systems to identify officers who may be in need of assistance. The theory behind these tools is simple: Address small problems before they become big ones. The agencies that have implemented these programs select performance indicators, such as repeated absences or excessive force complaints, to identify officers. They then work with officers to address issues that may be causing the problematic behavior.⁵⁹

against certain victims—people who live in lower-income black and brown neighborhoods.). Consistent with findings from that study, our analysis of the last four years of excessive force complaints in Chicago showed that African-Americans were more than seven times more likely than Whites to file a complaint alleging that they were victims of police brutality. *Data*, Citizens Police Database Project (Mar. 14, 2016, 12:07 PM), <http://cpdb.co/data/LonIQD/citizens-police-data-project>.

⁵⁸ See Rachel Harmon, *Why Do We (Still) Lack Data on Policing?* 96 Marq. L. Rev. 1119 (2012) (citing many of the ways police departments make use of data and pattern analysis to address crime, and describing the political challenges to using those tools to regulate police).

Police Commissioner William Bratton first introduced Comp Stat, a data-driven system for identifying crime patterns, in New York in 1994. Rightly or wrongly, Bratton's use of Comp Stat to guide the NYPD's policing strategies based on data about patterns of criminal activity has been widely hailed for its success in contributing to the most dramatic crime reduction in the history of New York City. See e.g., Franklin Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and its Control*, New York: Oxford University Press (2011) (arguing that the NYPD's "hot spot" policing strategy measurably reduced crime). The use of data-driven policing to identify and address crime patterns has since become the norm in most major police departments. Police Executive Research Forum, *Comp Stat: Its Origins, Evolution, and Future in Law Enforcement Agencies* (2013), http://www.policeforum.org/assets/docs/Free_Online_Documents/Compstat/compstat%20-%20its%20origins%20evolution%20and%20future%20in%20law%20enforcement%20agencies%202013.pdf ("Today Compstat is a part of the institutional DNA of policing."). [check form of cite]

Law enforcement's recognition of the importance of patterns to criminal investigations existed long before Comp Stat. It is difficult to even imagine that a detective would not attempt to retrieve a potential suspect's "history" (e.g., prior arrests, stops, etc.) when investigating whether he may have committed a particular murder, rape, or other serious crime. This has been a fundamental part of Criminal Investigations 101 throughout the history of modern policing. Christopher Bruce, *Fundamentals of Crime Analysis*, in S. Gwinn (Ed.), *Exploring Crime Analysis*, (2008).

⁵⁹ Samuel Walker, *The New World of Police Accountability*, Sage Publications (2005).

This is far from a new idea. The Miami-Dade Police Department had an early warning system in place in the late 1970s, long before the spread of the technology available today.⁶⁰ In 1981, the U.S. Commission on Civil Rights recommended that all police departments implement early warning systems to identify problem officers “who are frequently the subject of complaints or who demonstrate identifiable patterns of inappropriate behavior.”⁶¹ Twenty years later, the U.S. Department of Justice recommended these systems as a “best practice” for promoting integrity in law enforcement.⁶² And they have been widely endorsed by police leaders and experts around the nation for their success.⁶³

However, early warning systems have *not* been used to investigate or discipline police misconduct. But they should be. Pattern evidence can and should be used *proactively* to identify potential corruption, dishonesty, brutality, and civil rights violations for the purposes of investigating and eliminating abusive officers. A potential pattern of discourteous behavior calls for a very different response than evidence of corruption, dishonesty or brutality. It makes good sense to invest resources to try to save the career of an officer who may be stressed out, battling substance abuse, or experiencing performance issues that are amenable to treatment, education, or monitoring, before the problem metastasizes. But when departments see a potential pattern of corruption, dishonesty, or brutality, the last thing they should do is to tip the officer off that they’re on to him or her. Do instead what any good detective would do: *investigate it*.

Law enforcement knows how to do this better than anyone. Treat police brutality and corruption as the serious crimes that they are. Invest the resources where they are most needed to weed out police abuse. If the investigation then shows that the officer has indeed committed

⁶⁰ Walker, Alpert, & Kenney, *supra* note __.

⁶¹ *Id.*

⁶² U.S. Department of Justice, *Principles for Promoting Police Integrity* (2001), available at <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>.

⁶³ See e.g., Steve Rothlein, *Early Intervention Systems for Law Enforcement*, Public Agency Training Council (2006), available at <http://patc.com/weeklyarticles/intervention.shtml>. The International Association of Chiefs of Police have also touted early warning systems as effective management tools. Walker, Alpert, & Kenney, *supra* note __. There is a growing recognition, however, that many of these systems are sorely in need of review. University of Chicago researchers recently revamped the Charlotte-Mecklenburg Police Department’s early warning system by creating algorithms to predict police misconduct that they claim are far more effective than more traditional systems. Rob Arthur, *We Now Have Algorithms to Predict Police Misconduct, Will Police Departments Use Them?* FiveThirtyEight (Mar. 9, 2016). A 2012 analysis of the Chicago Police Department’s early warning system raised serious questions about its effectiveness, finding that it identified only 6% of the officers who had accumulated the very most misconduct complaints in the city for enrollment in any of the CPD’s “early” intervention programs. Steven Whitman, *Data Analysis Memo for Padilla v. City of Chicago*, 06 C 6562 (N.D.Ill.) June 12, 2012 (on file with authors). In addition, Chicago police officers racked up disproportionate numbers of misconduct complaints, even *after* participating in the Department’s early warning programs. Futterman, Mather, & Miles, *supra* note __.

serious misconduct, it is not the time for hand holding. Get rid of him or her. If she has engaged in criminal behavior, prosecute her.

As with Comp Stat, pattern analysis also promotes the intelligent use of limited resources. If 5% of the officers in any given department earn the bulk of its complaints, should we be spending all our resources scrutinizing the 95% who don't seem to be causing problems? Or should we be looking into the team of officers that has amassed dozens of corruption and brutality complaints within the last few years?

Pattern evidence should also be used *reactively*, when investigating particular allegations of police misconduct. Just as any good police detective would examine a suspect's arrest and stop history as a part of any criminal investigation, police misconduct investigators should, as a matter of standard practice, retrieve information about an accused officer's prior misconduct complaints and other evidence of a potential pattern of problematic behavior, when investigating a charge of police misconduct.

Finally, just as we preserve arrest records and records related to criminal investigations, regulations should be promulgated to ensure that law enforcement agencies preserve records related to police misconduct allegations and their investigations.⁶⁴ Patterns develop over time. We can't afford to erase knowledge that can and should be used to eliminate police abuse and to prevent similar patterns of abuse from arising in the future. We cannot earn our children's trust by destroying evidence of patterns of abuse.

3. End the Code of Silence

Recommendation No. 5: Acknowledge and address the police code of silence.

Over the last four-and-a-half years, more than 80% of Chicago police officers have had less than four complaints against them.⁶⁵ Most officers have not earned a single complaint. Yet with extraordinarily rare exceptions, those 80 plus percent have refused to come forward to report the relative few who are disgracing the badge for fear of retaliation by their fellow officers and supervisors.⁶⁶

This isn't simply a Chicago issue. The police code of silence remains one of the greatest challenges to accountability in departments around the country. Over the last 85 years, at least nine different commissions around the nation have identified the police code of silence as a

⁶⁴ Illinois has introduced a bill to preserve police misconduct records that may serve as a good national model. See note __, *supra*.

⁶⁵ Citizens Police Data Project, cpdb.co.

⁶⁶ Futterman, Mather, & Miles, *supra* note __.

serious problem that prevents accountability.⁶⁷ Yet many departments still do not want to admit that the code of silence even exists.⁶⁸

⁶⁷ National Comm'n on Law Observance and Enf't, *Report on the Enforcement of the Prohibition Laws in the United States* (1931); Preliminary Expert Report of Lou Reiter at, *Obrycka v. City Of Chicago*, 913 F. Supp. 2d 598 (N.D. Ill. (No. 07 C 2372) (quoting August Vollmer that "It's unwritten law in police departments that police officers must never testify against their brother officers."); President's Comm'n on Law Enf't and Admin. of Justice, Task Force on the Police (1967)); National Advisory Comm'n on Civil Disorders, Report of the National Advisory Commission on Civil Disorders (1968); National Advisory Commission on Criminal Justice Standards and Goals, *The Police*, (1973); Indep. Comm'n on the Los Angeles Police Dep't, *Report of the Independent Commission on the Los Angeles Police Department* ("Christopher Commission") (1991) ("Perhaps the greatest single barrier to the effective investigation and adjudication of complaints is the officers' unwritten 'code of silence.'"); St. Clair Com'n, *Report of the Boston Police Department Management Review Committee* (1992); James G. Kolts & Staff, *The Los Angeles County Sheriff's Department: A Report by Special Counsel James G. Kolts & Staff* (1992); The City of New York Comm'n to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Dep't, *Commission Report* (1994); Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (1998), available at <http://www.hrw.org/legacy/reports98/police/index.htm>; Neal Trautman, *Police Code of Silence Facts Revealed*, National Institute of Ethics (2000), available at <http://www.aele.org/loscode2000.html>; Ed Bradley, *The Blue Wall of Silence*, CBS 60 Minutes (1999); CBS News, *Officer Herrera Goes Public: Indicted Police Officer Tells 60 Minutes His "Bosses" Knew of and Encouraged Lies* (2008), available at <http://www.cbsnews.com/news/officer-herrera-goes-public/>; Kevin M. Gilmartin & John (Jack) J. Harris, Law Enforcement Ethics . . . The Continuum of Compromise, *Police Chief Magazine*, Jan. 1998, available at http://emotionalsurvival.com/law_enforcement_ethics.htm.

⁶⁸ In Chicago and New York, for instance, we have observed the police code of silence about the *existence* of the code of silence. "What's that? A Hollywood movie or something? We don't have anything like that here." See e.g., Mark Karlin, *Federal Jury Finds City of Chicago Responsible for "Code of Silence" in Chicago Police Department*, Truthout (Dec. 24, 2012), available at <http://www.truth-out.org/news/item/13510-in-significant-precedent-federal-jury-finds-city-of-chicago-responsible-for-code-of-silence-in-chicago-police-department>; Joey LeMay, *Police Code of Silence still Plagues NYPD Whistleblowers*, Mint Press News (June 27, 2012), <http://www.mintpressnews.com/police-code-of-silence-still-plagues-nypd-whistleblowers/31204/>. In late 2012, a federal jury found that the Chicago Police Department's code of silence caused a burly male officer, to believe that he could pummel a petite immigrant female bartender with impunity. This vicious beating, caught on video, has been viewed millions of times around the world. *Id.* The City offered to pay Ms. Obrycka (the bartender) and her lawyers millions of dollars if they would join the Police Department in a motion to erase the code of silence verdict from the books so that it could continue to deny the existence of the code of silence. *Obrycka v. City of Chicago*, 07 C 2372, ECF 701, IN.D. IL. Dec. 11, 2012); see also David Heinzmann, *Judge Refuses to Erase 'Code of Silence' Verdict*, Chicago Tribune

Acknowledging the existence of the code of silence requires admitting both its form and its scope. The code of silence is not simply a phenomenon of silence—remaining mute in the face of charges of police abuse. It’s also about lying. When an officer commits misconduct, any fellow officer who witnesses the abuse must lie when called to give a statement, either by falsely stating that she did not observe the accused officer’s misconduct, denying that the accused committed the charged abuse, or providing a false justification for the officer’s conduct.⁶⁹

Law enforcement must also acknowledge that the code of silence is something more than a code of loyalty among the rank and file. It cannot thrive without the complicity of police supervisors and leaders. And in some jurisdictions, the code of silence among line officers is not merely tolerated or facilitated by supervisors, but *directed* by those in power. We have seen repeated instances where departments use their power to crush any officer who challenges the

(Dec. 20, 2012), available at http://articles.chicagotribune.com/2012-12-20/news/chi-judge-refuses-to-erase-code-of-silence-verdict-20121220_1_karolina-obrycka-jury-award-federal-judge. Chicago’s denial of the code of silence continued well into 2015, when the City designated Chicago Police Captain Michael Piggott, the person who oversees all police training for the Police Department, as the “person most knowledgeable” about police ethics and the code of silence in Chicago. Captain Piggott testified that there is no such thing as a code of silence in Chicago: “I don’t acknowledge that a code of silence exists, therefore, we wouldn’t teach to it... [That is just something] from television shows and movies.” Deposition Testimony of Michael Piggott, *Cazares v. Frugoli*, 13 CV 5626 (N.D.IL. Mar. 11, 2014) at 21, 29. Mayor Emanuel finally admitted the existence of Chicago’s code of silence after the public exposure of its top-to-bottom cover-up of the police killing of Laquan McDonald made it impossible to deny. *Mayor Emanuel on Police Reform, Accountability*, Chicago Tonight, Chicago Public Television (Dec. 8, 2015), <http://chicagotonight.wttw.com/2015/12/08/mayor-emanuel-police-reform-accountability> (Paris Schultz: “Is there a code of silence that exists among police officers?” Chicago Mayor Rahm Emanuel: “The short answer is yes... There’s no doubt what we have, and it exists.”)

⁶⁹ See e.g., Report of the Independent Commission on the Los Angeles Police Department (“Christopher Commission”) (1991). Examination of the Chicago police officers’ official statements after the Laquan McDonald killing offers a textbook example. Multiple officers backed up Officer Van Dyke’s lie that Laquan lunged at him with a knife. Mark Konkol and Paul Biasco, *Officers Who Saw Laquan Shooting have History of Misconduct, Remain on Duty*, DNAInfo Chicago (Dec. 16, 2015), <http://www.dnainfo.com/chicago/20151216/downtown/officers-who-saw-laquan-shooting-have-misconduct-history-remain-on-duty>. The remainder of the officers on the scene, including an officer sitting in the front seat of the police car that recorded the shooting, falsely claimed that they did not see any of Van Dyke’s 16 shots into Laquan’s body. Andy Grimm, *Despite Laquan Video, Reports from Cops Back Shooting*, Chicago Sun-Times (Dec. 5, 2015), <http://chicago.suntimes.com/news/7/71/1156884/despite-laquan-video-reports-cops-back-shooting> (officer sitting in front driver’s seat of car whose dashboard camera captured the shooting claimed that she was looking down throughout the entirety of Van Dyke’s “fusillade of 16 gunshots” that the prosecutor reported “lasted 14 seconds or more”).

official narrative.⁷⁰ A common refrain we heard in our conversations with police officers, “It doesn’t matter what happened. What matters is what the department *says* happened.” The official narrative trumps the truth.

The code of silence is another example of a problem for which we have long had solutions, but have lacked the courage and will to do what is necessary to put them into practice. It begins with leadership. We cannot eradicate the code of silence without ethical and courageous leadership.

Here are our suggestions:

Ethics Training

Recommendation No. 6: *Conduct rigorous training on police ethics in the academy and in service, with a special emphasis on the code of silence.*

Leaders set the tone for the entire department. They must send a strong message to recruits about their expectations from the very beginning that police integrity is demanded, valued, and rewarded, and that lack of integrity will not be tolerated. Prepare officers for the ethical challenges they will face, including the pressure to lie for a fellow officer. Leaders must then reinforce that message throughout their officers’ careers by ongoing training and action.

Protect Whistleblowers

Recommendation No. 7: *Protect and honor officers who expose abuse of police power.*

⁷⁰ See e.g., Ed Bradley, *The Blue Wall of Silence*, CBS 60 Minutes (1999) (sharing the stories of officers who broke the code of silence from New York City to Riverside, California); Phil Rogers, *Investigator: Conspiracy of Silence Protects Dirty Cops*, NBC Channel 5 Chicago, (Nov. 20, 2012), available at <http://www.nbcchicago.com/news/local/chicago-police-corruption-180281661.html> (telling story of two Chicago police officers who charged that they were “hung up to dry” by their department for exposing corruption); Edward Ericson Jr., *Whistleblower Cop Joseph Crystal Recalls his Battles with Baltimore’s Blue Wall of Silence*, City Paper (Jan. 20, 2015), available at <http://www.citypaper.com/news/mobtownbeat/bcp-whistleblower-cop-joseph-crystal-recalls-his-battles-with-the-baltimore-police-departments-blue-wall-20150120-story.html> (describing retaliation that forced a Baltimore police detective to resign after he had broken the code of silence, by reporting fellow officers’ brutality). Adrian Schoolcraft, a former NYPD officer who secretly recorded conversations that exposed evidence of a pattern of dishonesty in the Department, brought a lawsuit against the Department in 2010, alleging extreme retaliation against him. See Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy’s 81st Precinct*, The Village Voice (May 4, 2010).

In order to encourage officers to come forward, every department must ensure confidentiality to any reporting officer who desires it. Allow officers to go outside the chain of command to report police misconduct. Permit officers to report misconduct anonymously.⁷¹

Then protect officers when they come forward. Every department must maintain and rigorously enforce written policies that prohibit retaliation of any form against officers who report abuse. Any officer or supervisor who retaliates against a whistleblower should be fired and referred for criminal prosecution.

Police leaders must personally and publicly support whistleblowers who choose not to remain anonymous. Lead by example. Take whatever affirmative steps are necessary to protect the reporting officer. If the reporting officer consents, she should be honored by the department when she provides truthful information that exposes brutality, corruption, or civil rights violations.⁷² Officers deserve the same recognition for uncovering corruption given to any other officer who has taken risks to protect the public.⁷³ They should be commended and held out as examples worthy of respect and admiration for having the courage to step up and stop officers who disgrace the badge.

Mandatory Reporting?

Recommendation No. 8: *Establish and strictly enforce written policies that require officers to report serious police abuse. Officers who refuse to report or lie should be fired.*

Many departments have mandatory reporting policies, but few enforce them. Law enforcement agencies are justifiably guarded about creating a culture of politicking and backstabbing to get ahead, particularly in policing where loyalty to fellow officers can be critical to safety and effectiveness.⁷⁴ Very few leaders want to fire an officer for failing to report his

⁷¹ Anonymous reports have assisted departments in uncovering corruption and eliminating officers who have no business wearing a badge. See e.g., Tom Hays & Colleen Long, NYPD Officers Surrender in Corruption Probe, N.Y. Times (Dec. 28, 2011), available at http://www.huffingtonpost.com/2011/10/28/nypd-officers-surrender-i_n_1063515.html; Sharon Cohen, *Jon Burge Case: Final Judgment in a Notorious Police Abuse Scandal*, Huffington Post (Jan. 29, 2011), available at http://www.huffingtonpost.com/2011/01/29/jon-burge-case-final-judg_n_815793.html (discussing how an anonymous officer known as “Deep Badge” helped to uncover a now infamous police torture ring of African-American suspects).

⁷² Because of the fear and threat of retaliation, whistleblowers should not be thrust into the limelight against their wishes. As emphasized above, they should be permitted to remain anonymous if they so choose.

⁷³ Neil Steinberg, *A Time for Heroes*, Chicago Sun-Times (Dec. 17, 2015), <http://chicago.suntimes.com/neil-steinberg/7/71/1188573/craig-futterman-laquan-mcdonald-police-ethics>.

⁷⁴ Kevin Gilmartin and John Harris, *Law Enforcement Ethics: The Continuum of Compromise*, Police Chief Magazine (January 1998).

partner for some ministerial violation. And rightly so. Officers need to know that they can rely on fellow officers in situations that can involve matters of life and death. They need to know that fellow officers “have their backs.”

Departments are far more likely enforce mandatory reporting policies when those policies derive from the department’s core values. We thus recommend that every department should establish mandatory reporting policies, but that those policies should be expressly limited to the things that matter most to the department—the big stuff—excessive force, illegal searches, false arrests, false reports, theft, corruption, planting or tampering with evidence, lies, Constitutional violations, etc. Then those policies must be strictly enforced.

4. Community Oversight of the Police

Recommendation No. 9: *Give community members who are independent from both the police department and municipal government a formal role in overseeing police misconduct and shooting investigations.*

While we don’t recommend a one-size-fits-all approach, we cannot overstate the importance of ensuring that the public plays a meaningful role in police oversight. Public oversight is subsumed in one of the most fundamental principles of policing: “To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police.”⁷⁵

This raises the age-old question of who should police the police. Police accountability advocates have long questioned the ability of police to police themselves and demanded independent review of police misconduct allegations. Our experience with young people confirms that independent review is critical to building trust, transparency, and accountability—a necessary counterbalance to their expectations that the word of an officer will always prevail over their own, or that charges of police abuse will be whitewashed by fellow officers.

⁷⁵William Bratton, *Peel’s Nine Principles of Policing*, Commissioner Bratton’s Blog (March 6, 2014), available at http://www.nyc.gov/html/nypd/html/administration/commissioners_corner.shtml (“Peel’s nine principles inform the vision of collaborative policing that I believe is essential to healing the divisions that exist between the police and the communities we serve.”). Sir Robert Peel, who served as England’s Prime Minister for two separate terms, founded the London Metropolitan Police in 1829 (the “bobbies”). He is widely credited as the parent of modern policing, embodied in Peel’s “Nine Principles of Policing.” Michael Nagle, *Sir Robert Peel’s Nine Principles of Policing*, *New York Times* (Apr. 15, 2014), available at http://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html?_r=0. New York Police Commissioner William Bratton has called these principles his “bible:” “I carry these with me everywhere.” *Id.* (Sadly, because many of the early police archives have been destroyed, historians cannot be certain that Peel authored the “Nine Principles.” *Id.*)

Police departments would be well served by appointing their fiercest critics to serve on civilian review boards. Young people are much more likely to view those boards as honest and transparent, if they consist of people who they trust—people who are accountable to their communities.

Various forms of civilian review exist, but there is no consensus with respect to any single model. Different models may be more suitable depending upon the particular needs and circumstances of the jurisdiction.⁷⁶ Some civilian agencies conduct police misconduct investigations from their inception.⁷⁷ Others serve as independent auditors or monitors during the investigative process.⁷⁸ And still others act as appellate panels and review investigations after they have been completed.⁷⁹ The powers of these agencies also vary widely from jurisdiction to jurisdiction. For example, some serve in only an advisory capacity. Others have the power to impose their findings upon a department.

Despite broad agreement about the importance of civilian review, we have had limited success implementing it. Common critiques include low quality investigations, insufficient power and resources, poorly trained staff, and more fundamentally, lack of independence.⁸⁰ Chicago's Independent Police Review Authority ("IPRA") is a prime example of a civilian-staffed agency that became steeped with bias in favor of protecting police officers from discipline.⁸¹

⁷⁶ The National Association for Civilian Oversight of Law Enforcement (NACOLE) is an organization dedicated to establishing best practices of civilian oversight in the United States. See <https://nacole.org/>. It provides resources and training that should inform civilian review.

⁷⁷ E.g., San Francisco Office of Civilian Complaints, <http://sfgov.org/occ/>; Chicago Independent Police Review Authority, <http://iprachicago.org/>; New York City Civilian Complaint Review Board, <http://www.nyc.gov/html/ccrb/html/home/home.shtml>; Washington D.C. Officer of Police Complaints, <http://policecomplaints.dc.gov/>.

⁷⁸ E.g., San Jose Office of the Independent Police Auditor, <http://www.sanjoseca.gov/index.aspx?NID=200>; Office of Independent Review of the Los Angeles County Sheriff's Department, <https://oig.lacounty.gov/Reports/oirr.aspx>; Denver Office of the Independent Monitor, <http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/OIM>.

⁷⁹ E.g., San Diego Citizens' Review Board, <http://www.sandiego.gov/citizensreviewboard/>; Atlanta Citizen Review Board, <http://acrbgov.org/>; Boston Community Ombudsman Oversight Panel, <http://www.cityofboston.gov/law/co-op/>.

⁸⁰ See e.g., Samuel Walker, *Police Accountability: The Role of Citizen Oversight 2001* (questioning the effectiveness of existing examples of citizen review).

⁸¹ IPRA is widely seen by young people and their communities as part of the municipal machinery that covers up police abuse. See Alexa Van Brunt, Sheila Bedi, Locke Bowman, and Craig Futterman, *Complaint to the United States Department of Justice Documenting the Role of the Independent Police Review Authority in Perpetuating a Code of Silence and Culture of Violence in the Chicago Police Department* (Dec. 8, 2015), http://www.law.uchicago.edu/files/files/complaint_to_doj_concerning_ipra_with_appendix.pdf.

So how do we accomplish the elusive goal of effective civilian review? In our view, civilian review must, at a minimum, incorporate the following elements for it to be effective:

- *Independence:* Institutionalize appointment procedures in order to sustain organizational independence over time, by granting representatives of the community members most affected by police abuse the power to participate in the selection of the leader(s) of their civilian review board.⁸² Develop procedures that insulate from politics the process of firing those leaders, such as service for a fixed term of years with removal only for cause.
- *Resources:* Ensure that the boards have sufficient budgets, well-trained and unbiased staff, and manageable caseloads. Establish procedures to protect and insulate the board's budget and resources from political decisions, to further goals of independence. The size of the board and its budget can be tied to a fixed percentage of the size and budget of the police department (*e.g.*, one investigator for every hundred officers).
- *Power:* Endow the civilian review boards with the power to promptly compel records and interviews of officers, and to preserve evidence for testing. Even in boards with the power to compel police officer statements, officers are typically permitted to delay providing any statement until the tail end of the investigation, months after the charged incident.⁸³ Authorize boards to interview officers within two hours of any serious incident, such as a shooting. Empower them to make policy recommendations based on what they learn from reviewing and investigating police misconduct complaints.

(documenting IPRA's role in facilitating a pattern of police abuse in Chicago); Chip Mitchell, *Fired Investigator: Policy Could Help Cover up Police Misconduct*, Chicago Public Radio (Aug. 10, 2015), <http://www.wbez.org/news/fired-investigator-policy-could-help-cover-police-misconduct-112614> (report that IPRA fired a supervisor for refusing to erase findings that Chicago police officers unjustifiably shot citizens in six cases). The U.S. Department of Justice has recently launched an investigation into a pattern and practice of civil rights violations in Chicago that includes IPRA. Timothy Phelps, Annie Sweeney, and Steve Mills, *Feds to Conduct a Civil Rights Probe of Chicago Police*, Chicago Tribune (Dec. 7, 2015), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-justice-department-investigates-met-20151206-story.html>.

⁸² For example, Newark's newly constituted Citizen Review Board adopted written procedures by which organizations such as the ACLU, NAACP, and the Newark Anti-Violence Coalition nominate members to the board. Courtney Hutchinson, *Advocates in Newark Win Independent Community Oversight of Police Departments*, PolicyLink, May 8, 2015, <http://www.policylink.org/blog/newark-community-oversight-pdf>.

⁸³ Such delay is contrary to any notion of accepted investigative practice when investigating crime. See Futterman, Mather, & Miles, *supra* note __ (“It is universally accepted that investigators should try to interview witnesses separately, as soon as possible after the incident, to avoid the tainting of memories (innocent or otherwise) and opportunities for collusion.”).

- *Transparency*: Require civilian review boards to publish regular reports on the web that provide standardized information about each complaint they review. The reports should also include their policy recommendations and the reasons for those recommendations. Finally, keep the people informed about ongoing investigations and make all non-private aspects of completed investigations accessible to the public.⁸⁴

5. Community Voice in Police Policy and Practice

Recommendation No. 10: *Empower members of the public and police rank and file with a formal voice in developing and evaluating police policy and procedure.*

The President’s Task Force rightly recognized that “best practice” requires police departments to make their policies available to the public.⁸⁵ Moreover, it recommended public and officer participation in the development of those practices.⁸⁶ When departments give members of the public and the rank and file formal roles in developing and evaluating policy, they share power, enhance their legitimacy, and earn community and officer support. By opening their policies to broader scrutiny, departments arrive at better practices tailored to community needs, while building a process that will be perceived as more fair and true to the principle that “the police are the public and the public are the police.”⁸⁷

By including community voices in developing its safety and accountability practices and policies, Cincinnati has proven how public partnerships in police oversight can build trust, reduce police abuse, and improve police effectiveness.⁸⁸ The Seattle police reform process also serves as an excellent example of a community/police partnership in police oversight and reform. After a series of civil rights violations that fractured community relations, Seattle in 2012 established the Community Police Commission, which gives community representatives a direct voice in police policymaking.⁸⁹ This Commission also gives rank and file officers an equal voice in evaluating police policies and procedures, thereby promoting both external and internal legitimacy of the Department.

6. Seeing is Believing—The Role of Video

⁸⁴ We have proposed an ordinance for civilian review in Chicago that may serve as a model to accomplish each of the goals listed above. **[cite to Independent Civilian Police Monitor ordinance]**

⁸⁵ *Report of the President’s Task Force on 21st Century Policing* at 13-14, 20.

⁸⁶ *Id.*

⁸⁷ See Bratton, note __, *supra*.

⁸⁸ See discussion of Cincinnati example in Section __, *supra*.

⁸⁹ Samuel Walker, *How Seattle Bridged the Community-Police Divide*, *The Crime Report* (Aug. 27, 2015), available at <http://www.thecrimereport.org/viewpoints/2015-08-how-seattle-bridged-the-community-police-divide>.

Recommendation No. 11: *Use video to enhance police training, supervision, and accountability, but use it wisely and not exclusively.*

Body cameras have been much discussed as an accountability tool.⁹⁰ No doubt cameras have a role to play in improved accountability. Chicago Officer Jason Van Dyke never would have faced discipline, much less have been criminally prosecuted, for killing Laquan McDonald, without the dashboard video that captured the shooting.⁹¹ While young Black people and their families have long known about the serious harms from unchecked police abuse, the spread of video technology and social media have made the reality of their experience more visible to the rest of America. Video of police shootings and brutality are available to anyone on the internet.

But cameras are no cure all. As President Obama observed upon the release of the report of his policing task force, “There's been a lot of talk about body cameras as a silver bullet or a solution. I think the task force concluded that there is a role for technology to play in building additional trust and accountability, but it's not a panacea. It has to be embedded in a broader change in culture...”⁹²

The greatest risk in anointing body cameras as the cure for problematic aspects of police culture is that our fixation sucks needed oxygen from conversations about measures that address the underlying causes of young Black peoples’ distrust of police. As Eric Garner’s family in New

⁹⁰ Body cameras have captured the attention of the broader public, the media, prominent public officials, national political candidates, the largest national lawyers’ association, and police departments around the nation. See e.g., Howard Wasserman, *Moral Panics and Body Cameras*, Wash. U.L. Rev. (2015 Forthcoming) (collecting sources); Police Executive Research Forum, *Implementing A Body-Worn Camera Program: Recommendations And Lessons Learned* (2014), available at http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/eimplementing%20a%20body-worn%20camera%20program.pdf; David Jackson, *Obama Team Will Fund Police Body Camera Project*, USA Today (May 1 2015), <http://www.usatoday.com/story/news/nation/2015/05/01/obama-police-body-cameras-josh-earnest-baltimore/26696517/> (quoting U.S. Attorney General Loretta Lynch: “Body-worn cameras hold tremendous promise for enhancing transparency, promoting accountability and advancing public safety for law enforcement officers and the communities they serve.”); American Bar Association, *American Bar Association Establishes Task Force on law Enforcement Body Camera* (July 30, 2015), available at http://www.americanbar.org/news/abanews/aba-news-archives/2015/07/american_bar_associa0.html.

⁹¹ The Chicago Police Department, after its internal review, had found the killing to be justified. See Mills, Gerner et al., *supra* note _.

⁹² Wesley Bruer, *Obama Warns Cop Body Cameras Are No ‘Panacea’*, CNN (Mar. 3 2015), <http://www.cnn.com/2015/03/02/politics/obama-police-body-camera-report/>; see also Lyndsay Winkley, *Year of SDPD Body Cameras Yields Surprises*, San Diego Union Tribune (Sep. 8, 2015) (the number of use of force incidents increased 10 percent between July 2014 and June 2015, the first year that the San Diego Police Department began using body cameras).

York can attest, like the thousands of Black families who viewed the video of Rodney King's beating by Los Angeles police officers nearly twenty-five years earlier, videos do not ensure police accountability or overcome the effects of racism.⁹³

It is also important to recognize the limits of body cameras as the ultimate arbiter of "truth." Body cameras provide a finite lens into any interaction. They are trained toward the citizen, and not the officer, providing a view of the police officer's perspective of the encounter. They fail to capture everything even within the officer's lens.⁹⁴ Cameras are no substitute for a thorough investigation that incorporates the perspectives of all relevant witnesses and the physical evidence.⁹⁵

Nonetheless, if used wisely, cameras can be a powerful tool, when implemented along with the *primary* solutions outlined here, to promote accountability, public safety, and improved

⁹³ This is not to minimize the power of video. Public officials in Cincinnati acknowledge that without the video from his body camera, University of Cincinnati Police Officer Raymond Tensing may never have been held accountable for shooting and killing unarmed motorist Samuel DuBose during a routine traffic stop. See Interview with Jeffrey Blackwell, Cincinnati Police Chief (July 30, 2015), *transcript available at* <http://www.pbs.org/newshour/bb/cincinnati-police-chief-body-cameras-required-equipment/> ("Candidly, I'm not sure that this would have resulted in an indictment had we not had that body camera footage.") When Officer Tensing shot and killed Mr. DuBose, he immediately deployed a strategy of denial, buttressed by the code of silence, to avoid accountability. Within seconds of the shooting, he and fellow officers reported that he shot Mr. DuBose in self defense, as he was being dragged by DuBose's car. Jackie Congedo, *Former UC Officer Ray Tensing's Attorney Plans to Use Self-Defense Claim*, WLWT5 (July 30, 2015), <http://www.wlwt.com/news/uc-officer-ray-tenings-attorney-plans-to-use-selfdefense-claim/34433782>. However, video evidence from Officer Tensing's body camera appeared to debunk Tensing's and his cohorts' story. In this instance, that video (and public pressure) counteracted effects of racism, denial, and the code of silence, and led to the filing of murder charges against Tensing. Dana Ford, *University Cop Indicted for Murder in Shooting of Motorist Samuel DuBose*, CNN (July 30, 2015), <http://www.cnn.com/2015/07/29/us/ohio-sam-dubose-tening-indictment/>.

⁹⁴ Sean Smoot, the Director of the Police Benevolent & Protective Association of Illinois and member of the President's Task Force on Policing, forcefully made this point at the national conference of the American Bar Association. See Laurence Colletti, *ABA Annual Meeting 2015: Perspectives on Race, Communities and Policing in Twenty-First Century America*, Legal Talk Network (Aug. 20, 2015), available at <http://legaltalknetwork.com/podcasts/special-reports/2015/08/aba-annual-meeting-2015-perspectives-race-communities-policing-twenty-first-century-america/>.

⁹⁵ The exaltation of video presents a danger that the video evidence eclipses everything else. It is critical to remember that video is just one piece of a larger picture that in isolation can distort as much as it reveals. As mass surveillance becomes more the norm, there is an even greater danger that the absence of video becomes an instrument to deny African-Americans' experiences of abuse at the hands of police. If there isn't video, it didn't happen. Real change becomes possible by acknowledging the realities of the most marginalized populations, video or not.

citizen/police interactions. They deter misconduct, incentivize better behavior, and provide objective evidence. They also serve as an independent check on officer reporting and motivate officers to write truthful reports.

Just as importantly, video of citizen/police encounters can be an excellent resource for training, supervision, and review of police practices. Despite the insight it could provide into these encounters, police departments have not yet conducted any systematic analysis of existing video. Law enforcement agencies could compare interactions, and analyze what went right and wrong. Why did this interaction yield a better outcome than that one? What caused things to escalate? How can we prevent things from escalating in the future? Are officers treating people differently based on perceptions of race, gender, and age? How does officer behavior influence the outcomes of these encounters? Video of these interactions could similarly be used to educate youth about strategies to improve the outcomes of their encounters with police.⁹⁶

As with any other tool, the utility of body and car cameras depends on the details:⁹⁷

- *When cameras must be turned on and off.* Require police officers to activate their cameras when they respond to calls for service, conduct traffic or pedestrian stops, search individuals, make arrests, transport prisoners, chase individuals in cars or on foot, perform crowd control, and investigate crime scenes. Keep the cameras on throughout the entire interaction. Discipline officers for failure to abide by these policies.⁹⁸ In addition, cameras should be trained to record police interactions with members of the public inside police facilities and detention areas, including interrogations, witness interviews, and the processing of prisoners.

⁹⁶ The Oakland Police Department in California is implementing a promising pilot project that uses body camera video as part of a consent decree. In the first study of its kind, video is being reviewed by a team of researchers led by Jennifer Eberhardt, a court monitor, police supervisors and patrol officers to study police/citizen encounters, work to improve them, and identify practices and mindsets that lead to negative outcomes. In addition, video will be reviewed to assess the effectiveness of new training on police/citizen interactions. Testimony of Jennifer Eberhardt, President's Task Force on 21st Century Policing, (Jan. 13, 2015).

⁹⁷ In summer 2015, Illinois enacted the Law Enforcement Officer Body-Worn Camera System Act, which provides statewide standards for the use of body cameras. 50 ILCS 706/10 (2016). It serves as one example of a state government's efforts to address some of these details.

⁹⁸ An investigation by DNAInfo Chicago revealed that Chicago police officers routinely destroyed their in-car cameras without consequence, resulting in the absence of audio in 80% of Chicago police dashcam videos. Indeed, the car camera in Officer Jason Van Dyke's car failed to record his killing of Laquan McDonald as a result of "intentional damage." Mark Konkol and Paul Biasco, *Chicago Police Hid Mics, Destroyed Dashcams to Block Audio, Records Show*, DNAInfo Chicago (Jan. 27, 2016), available at <https://www.dnainfo.com/chicago/20160127/archer-heights/whats-behind-no-sound-syndrome-on-chicago-police-dashcams>.

- *Privacy interests of the individuals being recorded.* Allow officers to have private, unrecorded conversations among themselves while on routine patrol, when not engaged in any of the activities listed above. Informants, victims, and civilian witnesses should also be allowed to have private and confidential conversations with officers, when they so choose. Citizens should retain their privacy rights in places and circumstances, in which they have reasonable expectations of privacy, including their homes.⁹⁹
- *Public access to video.* As noted above, video of police shootings and incidents of alleged police misconduct should be released to the public within 24 to 48 hours of an incident. Further delays should be countenanced only in exceptional circumstances in which law enforcement can show the need to question critical witnesses before the video is released, to prevent witnesses from tailoring their statements to the video.¹⁰⁰ Make video of other police/citizen interactions in public places available to the public upon request.¹⁰¹
- *Officer Review of Video.* Forbid accused or witness officers from reviewing video before they submit their official statements or reports about an incident in order to ensure that officer/witness statements are based on their own observations and memory, and are not tainted by the viewing of the video.¹⁰²

⁹⁹ We believe that officers should activate their cameras in circumstances in which they have the legal right to enter and search a private home without consent (e.g., with a warrant), but that video should not be publicly available without the consent of the individuals involved. Video from the search can prove to be valuable evidence in criminal prosecutions, and it deters police misconduct during those searches.

¹⁰⁰ Interviews of the primary witnesses should be conducted expeditiously in any event to maintain the integrity of the investigation. The longer the delay, the greater the opportunity for witness taint or collusion. In our view, video of police/citizen encounters in public areas should never be withheld for more than 14 days. Opportunities for taint and collusion are abound if authorities fail to interview key witnesses within that time frame, and any negligible cost from the possibility of any additional taint is outweighed by the benefits of transparency.

¹⁰¹ Other issues include policies for review of the footage; use by supervisors for education, supervision, and disciplinary purposes; preservation, storage, and coding of the recordings; training; cost and functionality. Details matter. Putting all our marbles into cameras to the exclusion of the suite of solutions outlined here can worsen community trust and accountability. Dramatizing cameras' potential waste of resources, the Oakland Police Department was among the first law enforcement agencies in the country to deploy body cameras, but until recently, it lacked any practice to organize or review any of the video footage. Scott C. Johnson, *How a Dirty Police Force Gets Clean*, Politico Magazine (Mar. 2015), available at http://www.politico.com/magazine/story/2015/03/oakland-police-reform-115552_full.html?print#.VcT7WmCp3ww.

¹⁰² Of course police detectives investigating an incident should review video, just as they would analyze other evidence, in guiding their investigation. The investigative role is distinct from that of a witness or accused officer, who is called upon to report only what he or she observed.

7. Prosecute Police Misconduct

Recommendation No. 12: *Prosecute police officers when they abuse their power to commit crimes.*

African-Americans have long complained about the lack of accountability when they are abused at the hands of police. And rightfully so. A tiny fraction of civilian complaints of crimes committed by police result in criminal prosecution. For example, Chicago police officers have shot more than 1,600 people since 1986, averaging more than one person a week.¹⁰³ More than 75% of the people shot by police have been African-American.¹⁰⁴ Yet before the video of Laquan McDonald's video was released, it had been nearly 50 years since the last time that an on-duty Chicago police officer had been prosecuted for unjustifiably shooting anyone.¹⁰⁵

Vigorous criminal prosecutions are critically important for at least two reasons: (1) they send a powerful deterrent message to the small percentage of police officers who repeatedly abuse their authority and to those who cover for them; and (2) they let young people and their families know that our justice system does not stand behind crimes committed by state actors.

The Department of Justice should exercise its authority to prosecute police officers for willful federal civil rights violations far more than it currently does to improve police accountability throughout the country.¹⁰⁶ U.S. Attorneys across the nation have refused to

Investigators, in their effort to search for the truth, may also wish to confront witnesses with physical evidence or video that may be in tension with their preliminary statements.

Police executives have differing views on whether officers should be allowed to view video before giving their statements. Contrary to our recommendation here, some argue that accused and reporting officers' review of video would help them recall events more clearly and would provide greater protection to accused officers. Police Executive Research Forum, *PERF and COPS Office to Release Report on Body-Worn Cameras*, 28 Subject to Debate 4 at p. 7, (July/August 2014), available at http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2014/debate_2014_julaug.pdf.

¹⁰³ Steve Bogira, *When Chicago Cops Shoot*, Chicago Reader (May 30, 2015).

¹⁰⁴ Sarah Macareg and Alison Flowers, *Amid Shootings, Chicago Police Department Upholds Culture of Impunity*, Truthout (Oct. 22, 2014).

¹⁰⁵ The last prosecution of an on-duty shooting was in 1968, when Chicago police officer Richard Nuccio shot and killed a young man. Local press reported that the Chicago Police Department determined that no disciplinary action would be taken against Nuccio after the shooting. Chicago Tribune, *Killing by Policeman Called Self-Defense* (June 6, 1968), available at <http://archives.chicagotribune.com/1968/06/06/page/27/article/killing-by-policeman-called-self-defense>; *People v. Nuccio*, 43 Ill. 2d 375 (1969).

¹⁰⁶ 18 U.S.C. § 242 authorizes criminal prosecutions of persons who under act under color of law to willfully deprive another person of a right or privilege protected by the Constitution or law of the United States.

prosecute 96 percent of the civil rights cases against police officers referred to them by the FBI since 1995.¹⁰⁷ In contrast, federal prosecutors brought charges in “more than 98 percent of the FBI referrals on cases of illegal reentry of non-citizens into the U.S.”¹⁰⁸

Most criminal prosecutions for police abuse are left to local prosecutors, who often have a symbiotic relationship with local police. County prosecutors rely on local police to prosecute crime and win convictions. They work together as partners to build their cases.¹⁰⁹ The political process by which most prosecutors are elected makes them even more reticent to bite the hand that feeds them, particularly when asked to prosecute members of law enforcement agencies whose arrests comprise a significant chunk of their cases. The power of police unions to influence the outcomes of local prosecutor races also makes prosecutors wary of going after police misconduct. A number of scholars have highlighted the structural conflict of interest between prosecutors and police officers accused of brutality.¹¹⁰ These conflicts help to explain why it has been nearly 50 years since local prosecutors had last prosecuted a Chicago police officers for an unjustified shooting. The recognition of the reality of these conflicts and their observable effects in deterring local prosecutions have led police accountability advocates to seek the appointment of independent prosecutors to investigate police misconduct.¹¹¹

¹⁰⁷ Brian Bowling and Andrew Conte, *Cops Often Let Off the Hook for Civil Rights Complaints*, Pittsburgh Tribune Review (Mar. 12, 2016), available at <http://triblive.com/usworld/nation/9939487-74/police-rights-civil>.

¹⁰⁸ Rick Tulsy and Emily Hoerner, *Feds Seldom Make Cops Answer for Police Brutality*, InjusticeWatch (Jan. 14, 2016), <http://www.injusticewatch.org/data/2016/feds-seldom-make-cops-answer-for-police-brutality/>.

¹⁰⁹ Nicholas Schmidle, *Crime Fiction*, New Yorker Magazine (Aug. 4, 2014), available at <http://www.newyorker.com/magazine/2014/08/04/crime-fiction> (explaining prosecutor incentives to turn a blind eye to police misconduct); Erwin Chemerinsky, *The Role of Prosecutors in Dealing with Police Abuse: The Lessons of Los Angeles*, 8 Va. J. Soc. Pol’y & L. 305 (Winter 2001) (discussing prosecutor reliance on police to win convictions and the pressure to do so). David Harris, *The Interaction and Relationship Between Prosecutors and Police Officers in the U.S., and How This Affects Police Reform Efforts*, in *The Prosecutor in Transnational Perspective*, Erik Luna and Marianne Wade, eds. (Oxford University Press 2012) (propounding reasons why American prosecutors are reluctant to alienate police officers).

¹¹⁰ See e.g., Kate Levine, *Who Shouldn’t Prosecute the Police*, 101 Iowa L. Rev. ____ (forthcoming 2016) (arguing that the conflict of interest between local prosecutors and police defendants is so anathema to our system of justice that it requires removal in every police defendant case); Paul Butler, *The System Must Counter Prosecutors’ Natural Sympathies for Cops*, New York Times (Dec. 4, 2014); Peter Joy and Kevin McMunigal, *Prosecutorial Conflicts of Interest and Excessive Force by Police*, ABA Criminal Justice (Summer 2015) (providing legal analysis of prosecutor’s conflict of interest).

¹¹¹ For example, protests in Ferguson and around the nation prominently featured calls for an independent prosecutor to investigate the killing of Michael Brown. CBS News, *Protesters Demand New Prosecutor for Ferguson Case*, CBS News (Aug. 20, 2014), available at <http://www.cbsnews.com/news/ferguson-missouri-peaceful-protests-turn-tense/>. One of the authors here filed a petition on the behalf of a number of community groups, political leaders,

One example that could enhance public trust has recently been implemented on a temporary basis in New York, empowering the State Attorney General to investigate and prosecute police shootings.¹¹² State Attorneys General, while certainly not immune from local politics, are at least one step removed, and if given appropriate resources, may be a more credible arm of state government to investigate and prosecute police abuse and corruption than local prosecutors, who have often lacked the political will to do so for the reasons described above.

C. A Change of Mindset—Community-Driven Policing

Police accountability to community implies a change in mindset in which police officers see themselves as parts of and accountable to the communities they serve. Former Seattle Police Chief Norm Stamper said it best:

“Too many police agencies claim to operate in accordance with the values and principles of ‘community policing,’ when in reality, their operations remain under the exclusive control of the local agency. That’s not community policing.”¹¹³

We strongly support Chief Stamper’s vision of a “community-driven system of policing,” in which police operate in full partnership with the citizenry.¹¹⁴ This community-driven system incorporates the principles of procedural justice championed by Tom Tyler and Tracey Meares and that form the first pillar of the President’s Task Force.¹¹⁵ Procedural justice means treating people in ways that they will perceive as fair and respectful.¹¹⁶ However, procedural justice is not only about how police officers treat people once engaged. It’s also about whether to engage them at all. Principles of basic fairness and respect should determine both when and how police engage people. That’s how police build legitimacy.

and affected citizens for the appointment of a special prosecutor to investigate criminal responsibility for witness intimidation, obstruction of justice, evidence tampering, and perjury in the Laquan McDonald case in Chicago. Jason Meisner and William Lee, *Coalition Seeks Special Prosecutor in Laquan McDonald Slaying*, Chicago Tribune (Feb. 16, 2016), available at <http://www.chicagotribune.com/news/local/breaking/ct-laquan-mcdonald-shooting-lawsuit-met-0217-20160216-story.html>.

¹¹² Jennifer Peltz, *In NY, a Special Prosecutor for Police Killings, for now: Governor Taps Attorney General*, Associated Press (June 24, 2015).

¹¹³ Norm Stamper, *To Protect and Serve: How to Fix America’s Police* 14 (2016).

¹¹⁴ *Id.*

¹¹⁵ *Report of the President’s Task Force on 21st Century Policing* at 10; Meares, with Neyroud, *supra* note __; Tyler, *supra* note __.

¹¹⁶ Meares, with Neyroud, *supra* note __, at 5-6 (explaining that psychologists have identified four factors that make up procedural justice: (1) quality of treatment; (2) decision-making fairness; (3) citizens’ opportunity to be heard; and (4) expectation of benevolent treatment).

1. Is this Stop Really Worth it?

Recommendation No. 13: *Minimize unnecessary negative police/citizen encounters.*

Let's continue with some more truth-telling. There *will* be interactions between police and Black youth. Some of those encounters can and should lead to an arrest. Some will lead to a use of force. Those are necessary parts of policing. A necessary part of keeping people safe. However, our infatuation with preventative, proactive policing in the U.S. has led to millions of unnecessary negative interactions between Black citizens and the police each year, many of which have ended disastrously. Many if not most of these encounters need not ever have occurred in the first instance. Our research shows that these repeated negative encounters, buttressed by the context of a lack of accountability, contribute mightily to the state of distrust between young Black people and the police.

Unnecessary negative police encounters, and those steeped in racial bias, do not engender trust or police legitimacy in the eyes of youth. Police in the United States stop, search, arrest, and kill far more people than law enforcement in any other nation in the world. And Black people are stopped, arrested, and killed by police at far greater rates than Whites.

In New York City alone, police stopped nearly 4.5 million people between 2004 and 2012, but in 90% of the cases, police found no evidence that the person stopped did anything wrong.¹¹⁷ More than 80% of the people stopped were Black or Latino.¹¹⁸ In 2014, Chicago police stopped its residents with similar results at more than four times the rate of the NYPD at the height of New York's stop-and-frisk practices.¹¹⁹ Nearly three-quarters of the people stopped in Chicago were African-American, despite making up less than a third of its population.¹²⁰

Our country's incarceration rate dwarfs that of any developed nation.¹²¹ While only 12% of the U.S. population, African-Americans make up nearly one million of our nation's 2.2

¹¹⁷ *Floyd v. City of New York*, 959 F. Supp.2d. 540 (S.D.N.Y. 2013).

¹¹⁸ *Id.*

¹¹⁹ ACLU of Illinois, *Stop and Frisk in Chicago* (March 2015), available at http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf.

¹²⁰ *Id.*

¹²¹ The United States imprisons 716 people per 100,000 of the national population. In comparison, the median rate is 98 for western European countries, 46 for western African countries, 62 for south and central Asian countries, 159.5 for eastern Asian countries, 202 for South American countries, and 130 for Australia. Roy Walmsley, *World Prison Population List*, International Centre for Prison Studies (Nov. 21, 2013), available at http://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_10.pdf. The U.S. jail and prison exploded between 1982 to the early 2000s, with the launch of our nation's war on drugs. In 1982, America incarcerated approximately 320,000 people of all races; today we imprison nearly one million Black people alone. See Michelle Alexander, *The New Jim Crow*:

million prisoners.¹²² The United States Sentencing Project estimates that one of every three Black American boys born today can expect to go to prison in his lifetime, as compared to one of seventeen Whites.¹²³

The Bureau of Justice Statistics found that an average of 44 million Americans have face-to-face contacts with police each year, 704,000 experience the use of police force against them, with African-Americans 2.5 times more likely to experience police force than Whites.¹²⁴

A study of killings by police officers by the Guardian Newspaper paints a disturbing picture of the U.S. as the extreme “outlier” from the rest of the world. For example, the *Guardian* reports that England and Wales experienced **55** fatal police shootings in the last **24** years, in contrast with the United States’ **59** fatal police shootings in the first **24** days of 2015.¹²⁵ Frank Zimring estimates that police have killed more than 1,100 people in 2015 alone, also disproportionately Black.¹²⁶ 1,100 people killed by police in a single year.

These numbers should be eye-popping. Each stop—each arrest—each killing—represents the life and reality of a fellow human being. They represent the experiences of all too many of the Black high school students with whom we work.

The sheer number of negative police/citizen encounters as compared to the rest of the world and the racial disparities of those encounters raise fundamental questions of fairness and justice that demand our attention.¹²⁷ In evaluating the effectiveness of strategies to address crime, we must embrace those that minimize unnecessary negative police/citizen interactions.

Recommendation No. 14: *Re-examine stop and frisk practices and the selective deployment of those practices in communities of color.*

Mass Incarceration in the Age of Colorblindness 2010 (arguing that mass incarceration operates as the modern-day Jim Crow).

¹²² Marc Maurer, *The Drug War and its Social Implications*, 13 Chap. L. Rev. 695 (Spring 2010).

¹²³ *Report of The Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System*, The Sentencing Project (Aug. 2013), available at

http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf.

¹²⁴ Shelley Hyland, Lynn Langton, and Elizabeth Davis, *Police Use of Nonfatal Force, 2002-11*, Bureau of Justice Statistics (November 2015).

¹²⁵ James Lartey, *By the Numbers: US Police Kill More in Days than Other Countries do in Years*, The Guardian Newspaper (June 9, 2015), available at <http://www.theguardian.com/us-news/2015/jun/09/the-counted-police-killings-us-vs-other-countries>.

¹²⁶ Franklin Zimring [University of Chicago Legal Forum]; *see also* Gabrielson, *supra* note __.

¹²⁷ While beyond the scope of this paper, there are a number of thoughtful proposals to reduce mass incarceration in the United States. *See e.g.*, The Sentencing Commission, *supra* note __.

There is no doubt that one of the practices that has led to hundreds of thousands of negative police/citizen interactions each year is stop-and-frisk. Lots of ink have been spilled on stop and frisk. There have been hundreds of court decisions and numerous scholarly articles since 1968, when the Supreme Court first authorized police to temporarily detain individuals based on reasonable suspicion, and then to frisk the person if officers reasonably believe the person is armed and dangerous.¹²⁸ What was originally conceived as a narrow exception to the probable cause requirement has become a widely used tactic in proactive policing.¹²⁹ Pittsburgh Law Professor David Harris notes that it is safe to assume that every American law enforcement agency practices stop and frisk as a part of its crime-fighting strategy.¹³⁰

As stop and frisk has spread as a mass practice, so have charges of racial profiling and discriminatory policing. Legal scholars have questioned whether the Supreme Court should revisit the *Terry* decision.¹³¹ Police departments in New York, Philadelphia, and now Chicago have been sued over the disproportionate racial impact of pedestrian stops.¹³² Newark, Seattle, Oakland and Los Angeles have had their pedestrian stops policies and data reviewed and

¹²⁸*Terry v. Ohio*, 392 U.S. 1, 21 (1968). Long before 1968, police officers stopped individuals whom they thought suspicious, but *Terry* provided legal legitimacy for these stops and offered the Supreme Court's first attempt to define their scope under the Constitution. [cite?]

¹²⁹ James Q. Wilson's and George Kelling's influential "broken windows" theory of policing has become institutionalized as a proactive police strategy to deter crime. David A. Harris, *Across the Hudson: Taking the Stop and Frisk Debate Beyond New York City*, 16 N.Y.U. J. Legis. & Pub. Pol'y 853, 863 (2014).

¹³⁰ Harris, *supra* note _.

¹³¹ See e.g., Renee Hutchins, *Stop Terry: Reasonable Suspicion, Race, and a Proposal to Limit Terry Stops*, 16 Legislation and Public Policy 883, 899 (2014); Anthony Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U.L.Rev. 956 (Oct. 1999); Tracey Maclin, *Terry v. Ohio's Fourth Amendment Legacy: Black Men and Police Discretion*, 72 St. John's L.Rev. 1271 (1998).

¹³² *Floyd v. City of New York*, 959 F. Supp.2d. 540 (S.D.N.Y. 2013); *Bailey v. City of Philadelphia*, 10-5952, (E.D. Pa.), lawsuit available at http://www.aclupa.org/download_file/view_inline/669/198/; *Smith v. Chicago*, 15 CV 3467, ECF 22 (N.D. IL. June 22, 2015).

The legal debate over whether and when stop and frisk practices discriminate against racial minorities and violate the constitutional right to be free from illegal seizures most famously played out in New York in *Floyd v. City of New York*. Among other findings, Federal Judge Shira Scheindlin ruled that the city of New York engaged in "a policy of indirect racial profiling by targeting racially defined groups for stops based on local crime suspect data" that "has resulted in the disproportionate and discriminatory stopping of blacks and Hispanics in violation of the Equal Protection Clause." The Court declared, "No one should live in fear of being stopped whenever he leaves his home to go about the activities of daily life."

criticized by the Department of Justice.¹³³ And the communities who are most impacted by stop and frisk have organized in the streets against the practice.¹³⁴

These critiques have been met with arguments that stop-and-frisk is an effective crime-fighting strategy that makes us safer.¹³⁵ Police stops and searches have indisputably led to the discovery of contraband or evidence of other criminal activity. Even though the rates at which these stops yield an arrest or contraband are quite low (in New York, less than 10%),¹³⁶ basic math dictates that the more people we stop and search, the more illegal activity we will uncover. However, the research in support of arguments for the effectiveness of stop-and-frisk is anything but conclusive.¹³⁷ Sociologist David Greenberg observed that the number of shooting incidents and other serious crimes remained virtually unchanged in New York City during the years in which stops and frisks grew at an exponential rate. While NYPD's stop and frisks increased

¹³³ *Stop and Frisk in Other Cities*, ACLU, <http://www.aclu-il.org/stop-and-frisk-in-other-cities/>.

¹³⁴ See, for example, *Stop and Frisk/Broken Windows*, Morris Justice: A Public Science Project, <http://morrisjustice.org/stop-and-friskbroken-windows>; *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*, The Sentencing Project (2015), available at http://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf; We Charge Genocide, <http://wechargegenocide.org/>; Leaders of a Beautiful Struggle, <http://lbsbaltimore.com/>; Project South, <http://projectsouth.org>; "All of Us or None," Legal Services for Prisoners with Children, <http://www.prisonerswithchildren.org/our-projects/all-of-us-or-none/>; see generally Funders for Justice, <http://fundersforjustice.org/organizations/>.

¹³⁵ New York Police Commissioner William Bratton, as well as his predecessor Ray Kelly, have ardently supported the practice as an essential crime fighting tool. David A. Harris, *Across the Hudson* at 863 (quoting William Bratton: "[T]hose that are advocating that [stop and frisk] can be done away with, or representing that it can be done away with, I'm sorry, because you do away with it and you're going to have your cities overrun with crime because it is the basic tool that every police department in America uses."). So has former Mayor Michael Bloomberg. See e.g., Michael Bloomberg, *Frisks Save Lives*, New York Post (Aug. 13, 2013), available at <http://nypost.com/2013/08/13/frisks-save-lives-2/> (arguing that index crimes in New York City decreased by 75% since the NYPD began using stop and frisk).

¹³⁶ Hutchins at 903.

¹³⁷ E.g., David Weisburd et al, *Is Problem-Oriented Policing Effective in Reducing Crime and Disorder?*, 9 *Criminology & Public Policy* 139 (2010) (summarizing studies about the effectiveness of problem-oriented policing and finding that the evidence is deficient to draw any firm conclusions; also noting that it did not evaluate the effectiveness of any particular tactic, such as stop and frisk). Wharton economist David Abrams, who has served as an expert consultant to evaluate stop-and-frisk in Philadelphia, observed, "While a large number of police departments that use this tactic [stop-and-frisk] claim that it reduces crime, there is no rigorous study that supports this assertion." David Abrams, *The Law and Economics of Stop-and-Frisk*, 46 *Loyola U. Chicago L.J.* 369, 375 (2014). Law Professor Franklin Zimring has found that police practices such as "hot spot policing" had a measurable effect in reducing crime in New York City, but observed that on the other hand there is no proof that stop and frisk contributed to the falling crime rates. Franklin Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and its Control*, New York: Oxford University Press (2011).

seven-fold between 2002 and 2011, shootings actually *increased* 4% from 2002 to 2011. The decline in shootings in New York occurred before the city doubled down on stop and frisk, making it highly unlikely that these stops had any effect on the murder rate.¹³⁸

With few exceptions, the debate about the effectiveness of stopping and searching large numbers of young Black people has failed to account for the alienation the practice generates and resulting harm to the ability of police to solve crime.¹³⁹ Our work with high school students illuminates real injury to our children's self esteem, police legitimacy, and public safety. Our research does not purport to answer all the questions surrounding the debate over stop and frisk, but it opens a necessary window to costs for which we must account when deciding when and how investigatory stops should be used as a tool by police to address crime.¹⁴⁰

Consider the poignant expressions of the young people we work with:

¹³⁸ David Greenberg, *Studying New York City's Crime Decline: Methodological Issues*, 31 Justice Quarterly 155 (2014).

¹³⁹ Tom Tyler, Jeffrey Fagan, & Amanda Geller, *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, Yale Law School, Public Law Working Paper No. 302 (Apr. 15, 2014) (uses survey data to analyze effects of stop and frisk on police legitimacy); Carla Shedd, *What About the Other 99%: The Broader Impact of Street Stops on Minority Communities*, Urban Institute Research Paper Series 30 (2012) (documenting high rates of distress and perceptions of injustice among Chicago youth stopped by police); Cathy Cohen, *Democracy Remixed: Black Youth and the Future of American Politics*, Oxford University Press (2010) (survey findings that black youth suffer more police harassment than Whites, and have less trust in the police and our legal system).

¹⁴⁰ Law enforcement agencies should similarly assess the costs and benefits of practices of traffic and street stops that are not premised on significant risks to public safety. Police officers have often told us that traffic and municipal codes are so thick that any officer worth her salt can identify a legal reason to stop an individual after following them for just a couple of blocks. Enforcement of these laws, when not tied to compelling public safety reasons, has resulted in countless negative interactions between police and members of the public, sometimes with tragic consequences that need not have ever occurred, such as recent high profile deaths of Sandra Bland in Texas, Samuel DuBose in Cincinnati, and Deven Guilford in Lansing, Michigan. See Stanton, *infra* note __; Williams, *supra* note __; Matt Mencarini, *Experts, Like Community, Divided on Guilford Shooting*, Lansing State Journal (Oct. 26, 2015), available at <http://www.lansingstatejournal.com/story/news/local/2015/10/22/experts-like-community-divided-guilford-shooting/73985862/>. No one likes being stopped, and especially not for ticky-tack violations that people do not see tied to protecting the public.

Pretextual stops for minor violations to search for evidence of other crimes often also feel unfair and thereby hurt police legitimacy, despite the Supreme Court's perplexing imprimatur on this practice in *Whren v. U.S.*, 517 U.S. 806 (1996). See e.g., Anthony Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. Rev. 956 (1999); David Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 Sup.Ct. Rev. 271, 274.

“They make you feel less of a person.”

“It felt like I was a nobody.”

“It made me feel small... I’m almost a man, but it [being stopped] made me feel less than a man.”

Consider how these experiences affect young people's sense of themselves and their place in the world. Consider how such interactions with police deny them the freedom to explore the world at a critical time in their development.

Consider the costs of their alienation from police: How do these encounters affect the way our children see the police? Their respect for the law? Their view of the legitimacy of the justice system?

“If I was ever to get into something, the police would be the last people I’d call.”

Our work with youth also highlights the tension between modern stop and frisk practices and procedural justice. The incorporation of some aspects of procedural justice (e.g., being respectful to the kids who officers stop and search; explaining the reason why they stopped them; giving kids an opportunity to speak) may take the edge off of some of these interactions, but it does not change their fundamental nature. It does not ameliorate the essence of the harm. No matter how respectful officers are, no matter how “nice” they act when stopping and searching our children, it does not change the unmistakable message a young student receives when stopped by police—the message that police think that he looks like a criminal. That’s the honest and *intended* message. Officers are not even allowed to stop the student without a reasonable belief that he has committed a crime.¹⁴¹ And officers cannot search him absent a reasonable belief that he is armed and dangerous.¹⁴²

No matter how respectful officers are when stopping and searching a child, they are telling that child that they think that he or she looks like a dangerous criminal. No matter how nicely they deliver the message.

In addition, as long as police deploy stop and frisk practices only in Black and Brown neighborhoods, and predominantly on Black and Brown people, as long as the costs of this practice are disproportionately borne by Black and Brown people, kids will continue to experience these stops as unjust.¹⁴³

¹⁴¹ *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

¹⁴² *Id.* at 27.

¹⁴³ Chicago black high school students’ experience of this reality has been borne out by study after study that has shown that Black people in America are stopped and searched at far greater rates than Whites. See e.g., ACLU of Illinois, *supra* note _; *Floyd v. City of New York*, *supra* note _; David A. Harris, *Frisking Every Suspect: The Withering of Terry*, 28 U.C. Davis L. Rev.

It's difficult to forge trusting, positive relations in this context.¹⁴⁴

2. “*The Police are the Public, and the Public are the Police*”

Recommendation No. 15: *Instill a culture in which their officers see themselves as guardians in and parts of the communities that they serve.*

Even after minimizing unnecessary negative encounters, police and youth will still engage, and the reality is that some of those encounters will be coercive. We have the power, however, to decide what those encounters should look like. Most encounters can be resolved without an arrest or use of force, when we teach officers to see themselves as community guardians and problem-solvers, trained to de-escalate and mediate conflict.

Our research strongly supports the Presidential Task Force's overarching recommendation that “[l]aw enforcement culture should embrace a guardian--rather than a warrior--mindset to build trust and legitimacy both within agencies and with the public.”¹⁴⁵ This requires a fundamental change of mindset. Most police departments still train their recruits in a military model designed to prepare them for combat.¹⁴⁶ We saw how police officers' warrior

1, 43-44 (1994) (stop and frisk has “most heavily burden[ed] members of minority groups, especially African Americans”). Studies of traffic data have yielded similar results. Alexander Weiss Consulting, *Illinois Traffic Stop Study 2014 Annual Report*, Illinois Department of Transportation (2014) (African-American drivers are stopped at nearly a 25% greater rate than white drivers in Illinois and are more than twice as likely as Whites to be searched); David Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 Minn. L. Rev. 265 (Dec. 1999) (providing examples of significant racial disparities in different jurisdictions).

¹⁴⁴ Rilla Askew, *The Cost: What Stop and Frisk Does to a Black Man's Soul*, The Daily Beast (May 21, 2014), available at <http://www.thedailybeast.com/articles/2014/05/21/the-cost-what-stop-and-frisk-does-to-a-young-man-s-soul.html>; Tom Tyler et al, *The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact*, 12 J. Empir. Legal Studies 602, 605 (Dec. 2015) (finding based on a national survey that “the experience of being stopped and ‘feeling as a suspect’ is linked to lowered police legitimacy and to a diminished willingness to cooperate with the police.”). Tyler argues that ironically, “the activities the police have been engaged in to proactively prevent crime are antithetical to the goal of building police legitimacy.” *Id.*

¹⁴⁵ *Final Report of the President's Task Force on 21st Century Policing* at 1. It is equally important for police departments and their leaders to treat their officers fairly and respectfully. Procedural justice must be practiced both from within and without to earn true legitimacy.

¹⁴⁶ Brian Reaves, *State and Local Law Enforcement Training Academies, 2006*, Bureau of Justice Statistics (Feb. 2009). The combat-oriented approach is fundamentally inconsistent with community policing models advocated by the Department of Justice. U.S. Department of Justice, Office of Community Oriented Policing Services, *Community Policing Defined* at 8 (2014), available at <http://ric-zai-inc.com/Publications/cops-p157-pub.pdf>. See also Radley Balko, *Rise of the Warrior Cop* (2013); Seth Stoughton, *Law Enforcement's “Warrior”*

mindset alienated students and limited possibilities for building positive relations. That mindset that the police “are not to be messed with” was the norm in everyday interactions the students described to us.¹⁴⁷

We need to teach our officers to stop looking at every Black child as though he or she is a potential enemy or threat. We instead need to train police to see our kids as just that—our children. The more police officers see themselves as a part of the community they serve, the more they see Black teen-agers as their children, the more effective they will be.

Tale of Two Cities

Consider the experiences of Richmond and Oakland, California. Richmond is a small city of about 110,000 people, just east of Oakland. Many of its residents struggle to make ends meet. Poverty remains a significant issue there. When Chris Magnus became Richmond’s police chief in 2005, after serving as chief in Fargo, North Dakota, Richmond was known as one of the nation’s most violent cities. There was also a long history of tense relations between the predominantly Black and Latino community and the police. The Department also had low clearance rates—it was ineffective in solving violent crimes. No one trusted the police.¹⁴⁸

Magnus’ efforts to make Richmond a “community-driven” police department, instill a guardian mindset, and promote accountability have paid remarkable dividends. The first thing he did was eliminate Richmond’s “street teams” units, which had the reputation of being the most aggressive and corrupt in the city. These units had engaged in aggressive practices of stopping and searching anyone outside in certain neighborhoods, thereby alienating entire communities from the police. Magnus assigned officers to regular beats and directed them to get out of their cars, walk their beats, and interact with people. Officers were trained not just to talk with residents, but to *listen* to them—to learn about what residents most wanted from the police. And to put community priorities into practice. He assigned more experienced officers to neighborhoods with higher crime. He also kept officers in the same neighborhoods for sustained

Problem, 128 Harvard L.Rev.225 (2015) (discussing how law enforcement’s dominant warrior mindset and hypervigilance is antithetical to building community relationships and generating trust, and undermines police legitimacy).

¹⁴⁷ The high school students’ experiences in these routine encounters are consistent with a command-and-control police culture that has become a prevalent part of modern urban policing in America. Garland, D., *The Culture of Control*, Univ. of Chicago Press (2001). Tom Tyler explains that this style of policing “conveys social marginality and suggests suspected character” to the young Black people stopped by the police. The teens who are stopped are viewed as potential suspects or wrongdoers, and the stops are thus intended to communicate a “threat” to conform. Tom Tyler et al, *The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact*, 12 J. Empir. Legal Studies 602, 610 (Dec. 2015).

¹⁴⁸ See Steve Early, *Police Violence is not Inevitable: Four Ways a California Police Chief Connected Cops with Communities*, Yes Magazine (Nov. 28, 2014), available at <http://www.yesmagazine.org/peace-justice/police-violence-is-not-inevitable-four-ways-a-california-police-chief-connected-cops-with-communities>.

periods of time to enable them and neighbors to know one another, and to allow officers to develop specialized knowledge of the issues, the players, and crime patterns in those neighborhoods—for officers to see themselves as a part of the community that they policed.¹⁴⁹

Magnus did not simply preach problem-solving over maximizing the number of arrests. He made it the centerpiece of officer performance evaluations, thereby weaving a guardian and problem-solving ethos into the very fabric of the institution. Instead of evaluating officers based on the sheer quantity of arrests, performance ratings are tied to officer success in community engagement and relationship building. Officers receive recognition for resolving situations without the need for arrest. They're rewarded for community involvement and efforts to build relations, such as talking with kids in schools and meeting with people at local churches, businesses, and community organizations. When evaluating arrests, Magnus prioritizes those that flow from solving violent crime, which tends to require more investigative police work and relationship-building than simply rounding up a bunch of teenagers on low level drug offenses. Officers are trained to follow the principles of procedural justice outlined above.¹⁵⁰ They also receive training to help them recognize and address their own “implicit bias”—biases that have been shown to result in unequal treatment of black and brown residents based on officers' unconscious associations between Black and Brown people with violence.¹⁵¹

Most importantly, he worked to make the police accountable to the community. Residents have seen that police abuse is not tolerated by the Department. Officers receive extensive practical situation-based training to ensure that deadly force is used only as a last resort. Adherence to the code of silence will end your career as a police officer in Richmond.

The results: While Magnus acknowledges that a number of challenges to greater police accountability remain (e.g., the Department still encounters real barriers to firing its most abusive officers), police violence and complaints are at all time lows. No one has been killed by a Richmond Police Officer in more than eight years. Community trust in police has skyrocketed in comparison to where it was less than a decade ago. Residents are talking with police, engaging them, reporting crime, and stepping up as witnesses. Richmond police have never been more

¹⁴⁹ Paul Elias, *Northern California Chief's New Approach Revitalizes Force*, N.Y. Times (Feb. 1, 2015), available at http://www.nytimes.com/aponline/2015/02/01/us/ap-us-police-chief-joins-protest-.html?_r=0 (Criminologist Barry Krisberg cited Richmond as one of the few departments in the country actually engaged in community policing: “A lot of departments pay lip service to community policing, but Richmond is actually doing it.”)

¹⁵⁰ The Spokane Police Department in Washington and the Camden Police Department in New Jersey have undertaken similar efforts with reportedly impressive results. See Anne Milgram and Frank Straub, *How to Restore Trust in the Police*, *The Crime Report* (Sep. 1, 2015), available at <http://www.thecrimereport.org/viewpoints/2015-09-how-to-restore-trust-in-the-police>.

¹⁵¹ Jennifer Eberhardt et al., *Seeing Black: Race, Crime, And Visual Processing*, 87 *Journal of Personality And Social Psychology* 876 (2004).

effective. Both violent and property crime are at historic lows. And there are fewer and fewer unsolved murders.¹⁵² It is a different world than just a decade ago.

When Magnus left to become the police chief in Tucson, the editorial board of the *Contra Costa Times* wrote: “Thanks to his leadership, the city he leaves is much safer than the one that greeted him 10 years ago... He didn't do it by banging heads. He did it by reaching out. Magnus has engaged residents, not just talking about putting cops in the community, as some police leaders have, but actually doing it, establishing a critical rapport between officers and residents.”¹⁵³

Oakland, a city of about 400,000 residents immediately to the west of Richmond, took a different tact. Despite repeated complaints of police abuse, lack of accountability, and alienation from police, the Oakland Police Department resisted efforts to reform. It clung to aggressive policing and minimal accountability, emblemized by specialized street units like the now infamous “Oakland Riders.”¹⁵⁴ As a result, it languished under federal court supervision for more than 13 years, paid out tens of millions of dollars from charges of rampant police abuse, and remained ineffective in addressing crime.¹⁵⁵ Under fresh leadership, the Department finally appears to be turning a corner toward greater accountability and a guardian mindset.¹⁵⁶

A few additional recommendations, based on the lessons learned in Richmond:

- Develop recruiting and hiring practices that seek to identify officers with appropriate skillsets and orientations toward mediating conflict, de-escalating tense situations, and building relationships with the communities served by the department.

¹⁵² Robert Rogers and David DeBolt, *Use of Deadly Force by Police Disappears on Richmond Streets*, *Contra Costa Times* (Sept. 6, 2014), available at http://www.contracostatimes.com/news/ci_26482775/use-deadly-force-by-police-disappears-richmond-streets.

¹⁵³ Editorial Board, *Chris Magnus has been a Great Chief for Richmond*, *Contra Costa Times* (Nov. 20, 2015), http://www.contracostatimes.com/richmond/ci_29140866/contra-costa-times-editorial-chris-magnus-has-been. See also Katherine Wei, *Departing Police Chief Built Richmond Legacy on Trust*, *Richmond Confidential* (Dec. 8, 2015) (describing Magnus’ legacy, goodwill, and “remarkable record of achievement” in Richmond).

¹⁵⁴ Sarah Moughty, *The Oakland Police Department’s Troubled History*, PBS Frontline (Oct. 27, 2011), available at <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/the-oakland-police-departments-troubled-history/>.

¹⁵⁵ *Id.*

¹⁵⁶ Scott C. Johnson, *How A Dirty Police Force Gets Clean*, *Politico Magazine* (Mar. 2015), available at http://www.politico.com/magazine/story/2015/03/oakland-police-reform-115552_full.html?print#.VcT7WmCp3ww (reporting that Oakland went nearly two years without a police shooting, after having an average of eight police shootings a year, and when a police shooting occurred in 2015, police leaders quickly released detailed information to the public, including footage from officer body cameras).

- Train all officers in procedural justice, and establish it as the governing principle that informs *every* police/citizen encounter, so that even the negative encounters are guided by the reality of fair and respectful policing.
- Evaluate officer performance, based on success in implementing principles of procedural justice. Recognize officers for their positive interactions with the public, problem solving skills, de-escalation success, ability to resolve conflicts without the need for an arrest, and engagement with young people and other community members.

De-escalation

Recommendation No. 16: *Train officers on de-escalation and implement de-escalation as a matter of policy on use-of-force.*

All too often, teens describe police encounters in which perceived slights or challenges to police authority ramped up a “routine stop” into something far more dramatic.¹⁵⁷ An eye roll, some back talk, a little attitude. Every young person with whom we spoke recognizes the potential for these interactions to escalate. Even in the absence of bad intent by either party, it can go wrong in a variety of ways, often with major consequences for the individuals involved and for the community-police relations on which effective law enforcement depends. While adolescents are not without blame for escalating an encounter (after all they are adolescents), it is critically important that police officers understand how to defuse a situation before it unnecessarily leads to violence or an arrest. Popular command and control policies leave few other options when kids offer any challenge to an officer’s control.¹⁵⁸

¹⁵⁷ While not an incident involving youth, the recent high profile videotaped stop of Sandra Bland by a Texas state trooper for failing to signal as she changed traffic lanes to get out of the trooper’s way is a tragic reminder of the stakes involved in these routine encounters and the critical need for de-escalation strategies. What began as a questionable if not routine traffic stop quickly escalated to a threat to “light [Ms. Bland] up” with a Taser, followed by a full-blown arrest, after the trooper perceived that Ms. Bland had questioned his authority. She was found dead in a jail cell three days later. See Robert Stanton, *Video Shows that Traffic Stop of Woman who Died in Texas Jail Escalated Quickly*, Reuters (July 22, 2015), available at <http://www.reuters.com/article/2015/07/22/us-usa-texas-death-idUSKCN0PV1XM20150722> (includes link to video that provides a record of the encounter).

¹⁵⁸ Christy Lopez, *Disorderly (Mis)conduct: The Problem with “Contempt of Cop” Arrests*, American Constitution Society for Law and Policy (June 2010) (“an individual being arrested after responding obstreperously to perceived police misconduct---is one that plays out routinely across the United States”).

For these reasons, the President’s Task Force recommended annual use of force training that includes training on de-escalation techniques.¹⁵⁹ The analysis and testing of the effectiveness of local models can help develop national best practices on de-escalation. For example, the Seattle Police Department’s de-escalation policies and training, which it implemented after the Department of Justice found a pattern of excessive force in the SPD, serves as a good model for other agencies.¹⁶⁰

Youth/Police Training—Youth as a Special Population

Recommendation No. 17: *Train officers about adolescent development and procedures for interacting with youth.*

One of the recurrent themes that emerged in our work at Hyde Park Academy was the truism, “They’re just kids.” We were constantly reminded of what every parent and adolescent psychologist knows all too well: kids are different. Their brains and identities are still developing, and adolescence can bring some dramatic mood and personality swings as kids figure out who they are and where they fit into the world. Conflict and emotional turmoil are the norms in most households with teens.¹⁶¹ We observed how these developmental issues play out

¹⁵⁹ *Report of the President’s Task Force on 21st Century Policing* at pp. 20-21. The Police Executive Research Forum has proposed that all law enforcement agencies adopt de-escalation as formal agency policy. Police Executive Research Forum, *Use of Force: Taking Policing to a Higher Standard, 30 Guiding Principles*, PERF (Jan. 20, 2016), available at <http://www.policeforum.org/assets/30%20guiding%20principles.pdf> (“The sanctity of human life should be at the heart of everything an agency does.”). Professor Jeb Rubenfeld and his students further recommend that local police departments adopt use of force policies in line with those of the U.S. Department of Justice that make deadly force a measure of last resort that may be used only when *necessary*, when non-deadly or less deadly alternatives are inadequate to meet the threat. Olevia Boykin, Christopher Desir and Jed Rubenfeld, *A Better Standard for the Use of Deadly Force*, *New York Times* (Jan. 1, 2016), available at http://www.nytimes.com/2016/01/01/opinion/a-better-standard-for-the-use-of-deadly-force.html?_r=0 (arguing that the reasonableness standard has facilitated too many unnecessary police shootings, especially of African-Americans, because “[i]ndividuals of all races in America perceive black people as more aggressive and dangerous than white people.”). See also *Re-Engineering Training on Police Use of Force*, Police Executive Research Forum (Aug. 2015), available at <http://www.policeforum.org/assets/reengineeringtraining1.pdf> (citing the National Decision Model in England, which focuses on the *necessity* rather than the reasonableness of the use of force, as a model for use of force guidelines for U.S. police departments).

¹⁶⁰ Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, *N.Y. Times* (June 27, 2015), available at <http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html>.

¹⁶¹ Spencer, Margaret Beale & Swanson, Dena Phillips, *Vulnerability and Resilience: Illustrations from Theory and Research on African-American Youth*, in D. Cicchetti (Ed.), *Handbook of Developmental Psychopathology* (forthcoming 2015); Laval S. Miller-Wilson, *Foreword: Law and Adolescence: Examining the Legal and Policy Implications of Adolescent*

on a daily basis when kids interact with police officers, and how a kid’s behavior and the officer’s interpretation of that behavior can transform a routine into a tragic encounter in a single instant.

While police departments typically train their officers about legally-required procedures when arresting, questioning, or detaining *juveniles*--a legal category--most departments fail to train officers on adolescent development and its effects on interactions with police.¹⁶² When we asked high school students to work through their encounters with police, they gained insight into how their attitude, actions, and behavior affect police. As they role played and reflected on their encounters, kids began to see those encounters through the eyes of officers. For example, they saw how an officer’s perception that he or she was being “played” or disrespected by a student, especially in a public setting, could influence the officer’s emotions and actions. Students also learned how changes in their attitude and behavior could affect the outcomes of their encounters with law enforcement. We observed that when the students had carefully thought through police encounters in advance, they were better prepared to adjust their behavior in the moment. Even minor adjustments diminished the probability that encounters would escalate. A number of students told us how they implemented the strategies that they learned with us, and described the ways that they thought that their preparation prevented their encounters from escalating.

The same kinds of training and role plays for officers, particularly when supplemented with instruction on youth development, can change the ways officers interact with youth, prevent bad outcomes, and improve relations between kids and police.

3. The Golden Rule—Treat Others How you Want to be Treated

Recommendation No. 18: *Treat people fairly and respectfully in every encounter. (But don’t forget about police accountability.)*

Gary Klugiewicz, former chairman of the American Society of Law Enforcement trainers, advised, “If we ask people instead of telling them, and if we give them a reason for why we’re

Development Research for Youth Involved in the Child Welfare, Juvenile Justice, or Criminal Justice Systems, 79 Temp. L. Rev. 317 (2006)]

¹⁶² Lisa H. Thureau, *Rethinking how we Police Youth: Incorporating Knowledge of Adolescence into Policing Teens*, 29 Children’s Legal Rights Journal 30 (Fall 2009) (arguing that the prevalent approach to policing children in America is antithetical to all that is known about child and adolescent development); *see also* Strategies for Youth, *If Not Now, When? A Survey of Juvenile Justice Training in America’s Police Academies* (February 2013), available at http://strategiesforyouth.org/sfysite/wp-content/uploads/2013/03/SFYReport_02-2013_rev.pdf (“SFY’s findings confirm that most police officers who interact frequently with juveniles are not benefiting from the wealth of new scientific research available about adolescent brain development. Nor are police provided information on promising and best practices for interacting with teens that stem from our growth in understanding of how teenagers’ brains differ from those of adults.”).

doing something, we get much less resistance. . . If we just started to treat people with dignity and respect, things would go much better.”¹⁶³

It should be uncontroversial that police officers should strive to treat people fairly and respectfully in all of their interactions, and they should be held accountable when they fail to do so. Tracey Meares and Tom Tyler’s research show that when people feel that they are treated fairly and respectfully, they are far more likely to view the police as legitimate.¹⁶⁴ When people view police and the criminal justice system as legitimate, they are more likely to obey the law; they are more likely to trust law enforcement; and they are more likely to work together with law enforcement to improve public safety, such as reporting crime, serving as witnesses, identifying safety concerns, and cooperating with police in investigations.¹⁶⁵ Police legitimacy improves the effectiveness of police in addressing crime. It makes us safer.

Professor Meares forcefully argues that the most important factor, within a police department’s control, in determining whether people comply with the law and cooperate with police, is making people feel like they are treated fairly and respectfully.¹⁶⁶ The more departments embrace principles of procedural justice, the more legitimacy they will have. She aptly calls this “rightful policing.”¹⁶⁷

Our work with youth showed us that treating people respectfully is a necessary but insufficient condition to police legitimacy in Black communities. Procedural justice must also be coupled with rigorous accountability, or it will not be effective. Young Black people will not feel that they are being treated fairly or respectfully by the police until they see that officers are held accountable when they treat kids unfairly. Without accountability, the police will not be seen as fair, legitimate, or just.

No doubt positive encounters matter. But when the department protects abusive officers, they became the face of the department to young people, not Officer Rightful or Officer Friendly. The impunity with which the brutal officers operate in their communities make Officer Friendly’s smile feel like a lie.

When young people and their families see the department’s machinery of accountability work the way it is supposed to work, confidence in police grows. With that trust comes

¹⁶³ Williams, *supra* note __.

¹⁶⁴ Meares, with Neyroud, *supra* note __; Tyler, *supra* note __. See also Schulhofer et al., *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 101 J. Crim. L & Criminology 335, 346 (2011).

¹⁶⁵ *Id.*

¹⁶⁶ Meares, with Neyroud, *supra* note __, at 5 (“[D]ecades of research show that people typically care much more about how law enforcement agents treat them than about the outcome of the contact.”).

¹⁶⁷ *Id.*

cooperation and assistance. With that trust comes more effective police departments and improved safety.¹⁶⁸

D. Race

We cannot ignore the continued salience of race and racism in young peoples' encounters with police. Our children's questions: "Is it because we're Black?"

Social science has long established that unconscious negative racial stereotypes and attitudes affect the behavior and judgment of even the most egalitarian individuals.¹⁶⁹ And simply listening to the students' stories confirms that the more virulent, intentional forms of racism are not simply shameful relics of the past. Racism remains a serious problem within law enforcement, just as it does in broader society. Police officers come from the same society as the rest of us. As renowned Clinical Law Professor and trial lawyer Herschella Conyers commented, "At the end of the day, we get the police force that we deserve. We don't import police from other countries. We don't import them from other planets. They're our brothers, our sisters, our husbands, our wives. If they're racist, guess what? You know, they reflect us just as much as they inform us."¹⁷⁰

A significant step toward honesty is simply acknowledging the role that racism has played in policing.¹⁷¹ It is equally important to acknowledge the present reality of racism—that police officers no more than any of the rest of us can be blind to race in a society in which racial inequality remains pervasive.

Because we can't address racism without explicitly addressing race, we make a few direct recommendations on this topic.

¹⁶⁸ A guardian, community-oriented mindset will be rendered ineffective if it is consigned only to individual units within the department. A department is either community-driven, or it is not. There is no in between. Young people taught us that this mindset must inform the culture of the entire department to earn their trust. The maintenance of aggressive police units that internalize a warrior mindset, consistent with the high school students' descriptions of their experiences in Chicago, undermines trust and goodwill in the same way that the impunity of abusive officers destroys the work of good officers. How can a department be "community driven," when aggressive police units remain outside community control?

¹⁶⁹ L. Song Richardson and Phillip Atiba Goff, *Interrogating Racial Violence*, 12 Ohio State J. of Crim. L. 115 (2014).

¹⁷⁰ Herschella Conyers, *How it Makes me Feel*, Youth/Police Conference, University of Chicago Law School, at 1:05:51 (Apr. 24, 2015), <http://invisible.institute/youth-police-conference/panels>.

¹⁷¹ *Report of the President's Task Force on 21st Century Policing* at 12.

Recommendation No. 19: *Enact the National End Racial Profiling Act.*

This long overdue law: (a) clearly defines and prohibits racial profiling; (b) provides mechanisms for private individuals and the United States Attorney General to bring enforcement actions to address racial profiling by local law enforcement; (c) mandates uniform data collection on various types of police/civilian encounters, including street and traffic stops; (d) requires the publication of annual reports to Congress and the public that analyze these data; (e) provides for the development of regulations, policies, and training to eliminate racial profiling; (f) provides funding for grants to local law enforcement to develop programs and training to collect data, eliminate racial profiling, and implement early warning systems to identify officers who are at risk of engaging in profiling or other misconduct; and (g) enables the Attorney General to deny federal funding to law enforcement agencies who fail to comply with the Act.¹⁷²

Recommendation No. 20: *Train officers on implicit and unconscious racial bias.*

Stanford Professor Jennifer Eberhardt observed that “[t]he stereotype of Black Americans as violent and criminal has been documented by social psychologists for almost 60 years.”¹⁷³ When a police officer sees a young Black man on the street, he is far more likely to view him as a potential threat or criminal than a white male in a similar circumstance.¹⁷⁴ Those implicit associations cannot help but affect the officer’s conduct toward and interaction with the young man, independent of any intentional racism. Police officers are trained to engage people differently based on their perceptions of danger and criminality.¹⁷⁵ Officer perceptions affect the officer’s approach to the teen, the decision whether to stop or search the individual, his attitude toward the teen, the likelihood that the officer feels the need to use force, even the likelihood that the officer will shoot the teen. And as we’ve seen, the officer’s approach also affects the way the young man sees the police.

Making officers aware of their biases can serve as an important self-check when engaging youth of color and generate a deeper understanding of and empathy for their experience with police.¹⁷⁶ A number of law enforcement agencies have begun training officers on implicit

¹⁷² H.R. 1933, 114th Cong. 1st Sess. (U.S. 2015); S. 1056, 114th Cong., 1st Sess. (U.S. 2015). [Correct way to cite?]

¹⁷³ Jennifer Eberhardt et al., *Seeing Black: Race, Crime, And Visual Processing*, 87 *Journal of Personality And Social Psychology* 876 (2004).

¹⁷⁴ *Id.* at _ (finding that the “mere presence of a Black man, for instance, can trigger thoughts that he is violent and criminal.”).

¹⁷⁵ Geoffrey Alpert, et al, *Interactive Police-Citizen Encounters that result in Force*, 7 *Police Q.* 475 (2004) (officers are trained to use greater force when officers sense a heightened level of threat); (study also suggests that police are more likely to use greater force in interactions with citizens who officers perceive as unimportant).

¹⁷⁶ See e.g., Nilanjana Dasgupta & Jane G. Stout, *Contemporary Discrimination in the Lab and Field: Benefits and Obstacles of Full-Cycle Social Psychology*, 68 *J. Soc. Issues* 399 (2012)

bias and have been pleased with the results.¹⁷⁷

Recommendation No. 21: *Build a police force, from leadership through the rank and file that is representative of the community that it serves.*

It is difficult to give meaning to the principle that the police are the public and the public are the police, when police departments look little like the communities that they serve. Recent experience in Ferguson highlights this point, dramatizing the community/police divide there.¹⁷⁸

The high school students with whom we work speak most positively about their

(“[I]ndividuals who hold explicit egalitarian beliefs may benefit from learning that despite their explicit egalitarian attitudes, implicit stereotypes and biases may influence their decisions and behavior in unintended ways.”)

¹⁷⁷ Police Chief Chris Magnus reported at the Youth/Police Conference that implicit bias training in Richmond played a significant role in improving interactions between police and youth of color. Chris Magnus, *I Can’t Imagine Anything Different*, Youth/Police Conference, University of Chicago Law School (Apr. 24, 2015), <http://invisible.institute/youth-police-conference/panels>. Las Vegas has also experienced success with this training. Daniel Hernandez, *How one of the Deadliest Police Forces in America Stopped Shooting People*, Quartz (Dec. 4, 2015), <http://qz.com/565011/how-one-of-the-largest-police-forces-in-america-stopped-shooting-people/> (The Police Captain in charge of the department’s internal oversight observed, “When you become aware that you have these biases, where they are toward a people or a race or a gender, and you feel that you’re going to act on that bias without any reason behind your action you need to put yourself in check.”) Social psychologist Jennifer Eberhardt is developing a series of tools to measure the effectiveness of such training in Oakland, California. Training there will include review of police/citizen interactions recorded on officer body cameras. Testimony of Jennifer Eberhardt, President’s Task Force on 21st Century Policing, (Jan. 13, 2015). *But see* Jack Glaser & Eric D. Knowles, *Implicit Motivation To Control Prejudice*, 44 J. Experimental Soc. Psychol. 164, 171 (2008) (“[T]o the extent that unintended discriminatory behavior resulting from truly implicit biases is controllable, such control would also have to operate outside of consciousness.”). Research also shows that reform of broader police practices can mitigate unconscious bias. For example, increasing the amount of time officers have to make decisions (e.g., through de-escalation policies), reducing officer stress and fatigue, sharpening officer skills (through additional use of force training), and recording officer encounters with the public (letting officers know that others may be watching) reduce the likelihood that officer decisions will be infected by bias. Jennifer Eberhardt and Hazel Rose Markus, *Seven Ways to Mitigate Racial Bias*, Stanford University 2015 (on file with authors). While preliminary research is mixed about the effectiveness of implicit bias training in positively changing an individual officer’s behavior when encountering a young Black man, at the very least, such training gives officers greater empathy for and understanding of our children’s experience with the unconscious racism of the police.

¹⁷⁸*Investigation of the Ferguson Police Department*, United States Department of Justice (March 2015) (“While approximately two-thirds of Ferguson’s residents are African American, only four of Ferguson’s 54 commissioned police officers are African American.”).

experiences with police, when they encounter officers who they feel can identify with their experiences. Some of those officers serve as role models and mentors to kids, positively impacting their attitudes toward police. It is clear that more racially diverse police forces have the potential to increase community confidence and trust in police.¹⁷⁹ Departments that reflect the constitution of the community send a signal of equity and fairness, promoting legitimacy and principles of procedural justice.

Just as importantly, diversity can positively affect internal culture and address racism and bias within the department.¹⁸⁰

Recommendation No. 22: *Publish statements on projected racial impact, when evaluating their policing policies and practices.*

African-Americans have borne a disproportionate share of the costs associated with many of our policing and criminal justice policies.¹⁸¹ Just as some states have begun to require the publication of racial impact statements that analyze the anticipated effect of proposed criminal sentencing legislation, law enforcement agencies ought to produce similar statements before implementing new crime strategies and invite public conversation and feedback on the potential racial impact of those strategies.¹⁸² By making potential harms visible, we ensure that if we choose practices that will disproportionately burden Black youth, we will have done so with our eyes wide open. We cannot pretend *not to know* about the impact of our decisions.¹⁸³

¹⁷⁹ Joshua Cochran and Patricia Warren, *Racial, Ethnic, and Gender Differences in Perceptions of the Police: The Salience of Officer Race within the Context of Racial Profiling*, 28 J. Contemp. Crim. Just. 206 (2012); David Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 Crim. L. & Criminology 1209 (2006).

¹⁸⁰ Richardson & Goff, *supra* note_.

¹⁸¹ Michael Tonry & Matthew Melewski, *The Malign Effects of Drug and Crime Control Policies on Black Americans*, 37 Crime & Justice 1 (2008). See also Section III.C.1., *supra*.

¹⁸² See e.g., The Sentencing Project, Racial Impact Statements (Dec. 2014), http://www.sentencingproject.org/detail/publication.cfm?publication_id=570&id=.

¹⁸³ For example, there is a burgeoning movement to dramatically enhance the punishments for individuals found in possession of illegal guns. See e.g., Editorial Board, *Pack a Gun, Go to Prison*, Chicago Tribune (Feb. 12, 2013), available at http://articles.chicagotribune.com/2013-02-12/opinion/ct-edit-guns-20130212_1_gun-crime-illegal-guns-project-safe-neighborhoods. What are the likely race and class effects, if this becomes our newest war? See Benjamin Levin, *Guns and Drugs*, Fordham L.Rev. (forthcoming 2016) (arguing that the increasing penalties and prosecutions of gun possession laws are likely to have similar racial impact as our war on drugs); Douglas Berman, *Talk in Chicago of Increasing Mandatory Minimum Sentences for Gun Possession*, Law Professor Blogs: Sentencing Law and Policy (Feb. 11, 2013), available at http://sentencing.typepad.com/sentencing_law_and_policy/2013/02/talk-in-chicago-of-increasing-mandatory-minimum-sentences-for-gun-possession.html (observing that enhancing prosecutorial discretion via mandatory minimums tends to increase sentencing disparities).

CONCLUSION

The plan outlined above provides a sequence of concrete steps on a path that leads to fundamental and enduring change. Young people have showed us what we need to do. The truth is that we have long known what we need to do. The question is: will we do it?

The paradox—the blood knot—at the heart of the American dilemma with respect to race is that perceptions of the gravity of the harms daily inflicted by our *de facto* system of apartheid justice too often inspire not urgent action but moral paralysis. The problems seem too large, too intractable, too inextricably tied to the original sin of slavery.

Throughout this paper, we have stressed the critical importance, above all else, of *acknowledging the realities*. Listening to the people most impacted by police abuse. Listening to our children.

Youth-led movements have brought us to this historic moment.

It is up to us to act on it.

APPENDIX

Recommendations

No. 1: Share information with the public within 12 hours of any police shooting or major incident involving alleged misconduct. In most cases, any video of these incidents should be released within 24 to 48 hours, and such video should always be released within 14 days.

No. 2: Collect and report information in a standardized format about encounters between citizens and police, including street and traffic stops, police shootings, and citizen complaints of police misconduct; and including demographic data about the subjects of those incidents.

No. 3: Implement credible systems for investigating and addressing complaints of police abuse

No. 4: Use “pattern evidence” to investigate and root out police misconduct.

No. 5: Acknowledge and address the police code of silence.

No. 6: Conduct rigorous training on police ethics in the academy and in service, with a special emphasis on the code of silence.

No. 7: Protect and honor officers who expose abuse of police power

No. 8: Establish and strictly enforce written policies that require officers to report serious police abuse. Officers who refuse to report or lie should be fired.

No. 9: Give community members who are independent from both the police department and municipal government a formal role in overseeing police misconduct and shooting investigations.

No. 10: Empower members of the public and police rank and file with a formal voice in developing and evaluating police policy and procedure.

No. 11: Use video to enhance police training, supervision, and accountability, but use it wisely and not exclusively.

No. 12: Prosecute police officers when they abuse their power to commit crimes.

No. 13: Minimize unnecessary negative police/citizen encounters.

No. 14: Re-examine stop and frisk practices and the selective deployment of those practices in communities of color.

No. 15: Instill a culture in which their officers see themselves as guardians in and parts of the communities that they serve.

No. 16: Train officers on de-escalation and implement de-escalation as a matter of policy on use-of-force.

No. 17: Train officers about adolescent development and procedures for interacting with youth.

No. 18: Treat people fairly and respectfully in every encounter. (But don't forget about police accountability.)

No. 19: Enact the National End Racial Profiling Act.

No. 20: Train officers on implicit and unconscious racial bias.

No. 21: Build a police force, from leadership through the rank and file that is representative of the community that it serves.

No. 22: Publish statements on projected racial impact, when evaluating policing policies and practice.