Youth/Police Encounters On Chicago's South Side: Acknowledging The Realities

Craig B. Futterman
Chaclyn Hunt
Jamie Kalven

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles

Part of the Law Commons

Recommended Citation

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.
Youth/Police Encounters on Chicago’s South Side: Acknowledging the Realities

Craig B. Futterman,† Chaclyn Hunt, and Jamie Kalven

ABSTRACT

This paper highlights the critical importance of acknowledging the reality of Black teenagers’ experiences with the police. Public conversations about urban police practices tend to exclude the perspectives and experiences of young Black people, the citizens 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 it is represented in the public discourse. Rather than examining 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 kids. 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 have worked 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 a critical phase in their development in efforts to avoid being stopped by the police.

• The depth of alienation between young Black people and the police. The overwhelming majority of Black high school students express great distrust of the police, so much that they do not feel comfortable seeking police assistance, even when someone close to them is the victim of a violent crime.

† Clinical Professor of Law, University of Chicago Law School; Invisible Institute. Thanks to Christina Bell and Kashan Pathan for their superb research assistance; to our colleagues in the Youth/Police Project, including Anna Alekseyeva, Adam Barber, Rachel Beattie, Ava Benezra, Elyse Blennerhassett, Aaron Cahan, Patricia Evans, Jesse Galdston, Laura Acosta Gonzalez, Maira Hayat, Emmitt House, Traci Irvin, Laurel Kean, Jackie Scotch-Marmo, Michelle Mbekeani, Joe MehChu, Andrew Miller, Michael Morrill, Audrey Petty, Rajiv Sinclair, Rachel Steinbeck, Forrest Stuart, Stephen Teague, James Winn, and Erica Zunkel; and to Samantha Liskow for her sage editorial advice. Special thanks go to Hyde Park Academy teacher Keva McGee and her students who trusted us with their wisdom and experience.
The primacy of accountability. Unchecked police power—lack of accountability—emerged as the single greatest barrier to building a relationship of trust with police.

Drawing on these findings, we propose a set of policies that, taken together, have the potential to improve police accountability and yield more equitable and constructive relationships between Black communities and police.

I. INTRODUCTION

We write from Chicago, a city in upheaval following revelations about the police shooting of seventeen-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, 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.” He stated that we must 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 importantly, he spoke of this constellation of issues as fundamentally a

---


2 Rahm Emanuel, Mayor of Chicago, Justice Culture and Community, Remarks before the Chicago City Council (Dec. 9, 2015), http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf [https://perma.cc/UMB2-VF8X].

3 Id.

4 Id.

5 Id.

6 Id.
matter of race—of other people's children being treated differently than his children because they are Black.\(^7\)

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 change. 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, our country has 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.\(^8\) And a lengthening series of names have joined that of Michael Brown—Eric Garner, Tamir Rice, Walter Scott, Sandra Bland, Samuel DuBose, Rekia Boyd, Laquan McDonald, Alton Sterling, and Philando Castile—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 Black Lives Matter and other movements: 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.\(^9\)

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:

---


\(^8\) See, e.g., Michael McLaughlin, *The Dynamic History of #BlackLivesMatter Explained*, HUFFINGTON POST (Feb. 29, 2016), www.huffingtonpost.com/entry/history-black-lives-matter_us_56d0a3b0e4b0871f60eb4af5 [https://perma.cc/GU6M-B4VN].
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, imposing uniform standards, and intervening 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, but there are no transformative remedies. 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 agenda—a range of interventions that are not transformative on their own, but together 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. It is imperative to implement particular reforms as soon as possible, but it is also critically important to sustain the process of diagnosis, of truth telling, of public acknowledgement.

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.

Finally, we need to challenge 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 standoff in which we are deaf to one another.11

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 agenda that has emerged.

II. 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).12

During our years working from a ground floor apartment of one of the seventeen story buildings, 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. 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. 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, then we need to better understand how attitudes of distrust form and harden. Adolescence is the time of life when this process is most dynamic and accessible to observation.

For the past four years, the Mandel Legal Aid Clinic of the University of Chicago Law School and the Invisible Institute have engaged in conversations with Black teens in the South Side about how their lives are affected by 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 over the last two-and-a-half years with the Media

---


15 Tom Tyler & Jeffrey Fagan, *The Impact of Stop and Frisk Policies upon Police Legitimacy*, in *Key Issues in the Police Use of Pedestrian Stops and Searches: Discussion Papers from an Urban Institute Roundtable 30* (Nancy La Vigne et al., eds., 2012) (noting that psychologists have found that adult orientations toward the law are often formed during adolescence and that negative views toward authority can grow and calcify as adolescents become adults).
Broadcast Program at Hyde Park Academy High School (HPA), a public high school in Chicago’s Woodlawn neighborhood, situated just two to three blocks south of the University of Chicago’s campus. Like in many of Chicago’s segregated public schools, more than ninety-nine percent of HPA’s students are Black.16

Under the leadership of instructor Keva McGee, the Media Broadcast 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 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 from which they do not have much critical distance. Kids often say, 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.

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, exploring new lines of inquiry, and considering how best to engage particular students. Team members interact with the students in

16 More than seventy percent of all Black students in Chicago attend schools that are over ninety percent Black or Hispanic. Gary Orfield, John Kucsera & Genevieve Siegel-Hawley, *E Pluribus... Separation, Deepening Double Segregation for More Students*, CIVIL RIGHTS PROJECT at 58 (Sept. 2012), 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_complete_2012.pdf [https://perma.cc/9UKK-XA89]. Nearly half of all Black students attend schools like Hyde Park Academy High School, which are more than ninety-nine percent Black. Id.
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 sparks laughter by bringing home some absurd aspect of the status quo, it nourishes the conviction that we can surely do better.

The body of the paper is devoted to what we have learned in the course of the Youth/Police Project. In keeping with our methodological orientation, our findings take the form of conversational exchanges, stories told, and role-plays enacted. These are our data, the bases for our analyses and prescriptions. We have taken care to present them with fidelity to particular moments and to the tenor of particular voices, resisting the temptation to homogenize those particularities in the service of broader generalizations. The “Findings” section is followed by “The Plan for Action,” in which we describe the prescriptions that have emerged from our engagement with our young collaborators.

III. Findings

Consistent with what we saw in public housing, a different set of rules and norms governs encounters between Black high school students and the police in their neighborhoods than those we experience and teach on campus at the University of Chicago. It is as though we live in separate worlds and inhabit different realities.
A. “It’s Like the Weather”

In contrast to our experiences, the Black teenagers see police as a ubiquitous presence in their lives. Officers regularly subject them to rituals of stops, questions, searches, and arrests. The encounters feel random, yet they are contained within racially and economically segregated areas, and so have the effect of creating a pervasive atmosphere—a constant threat.

The kids we work with range from fourteen- to eighteen-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. For them, stops are at once utterly prosaic—a fact of life “like the weather”—and fraught with danger.

Students 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’ body language as they approach to their tone of voice—appears, from the students’ perspectives, to be calculated to convey messages of power and authority. Hassanti, a high school junior, describes a typical encounter to one of us:

_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...”

_Jamie (facilitator and coauthor):_ “How often does that happen?”

_Hassanti:_ “Pretty much every time I go outside.”

Many stops are low-key encounters. Kids also experience 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. While the kids are often able to describe some of these officers who repeatedly harass them with some particularity, the officers are often known by street names, because their actual names are obscured.

---

17 _E.g._, Interview with Christopher, Youth/Police Project, in Chi., Ill. (May 3, 2013).
18 Interview with Hassanti, Youth/Police Project, in Chi., Ill. (May 13, 2013).
19 _Id._
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.”20

Routine encounters involve questions from officers 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 express an underlying suspicion. When the same questions are posed day after day, the message becomes clear. Merely being someone somewhere 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?’ And those are just the basic questions.”21

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.”22

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. 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.

After four years of witnessing hundreds of role-plays, with hundreds of 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 whoop.” The “driver” might quickly raise his hands above his head. If not, then they mime holding their hands on a steering wheel, intentionally in the ten-and-two position. The officer gives a command, either easy, “Go ahead

---

20 Interview with Carl, Youth/Police Project, in Chi., Ill. (Jan. 14, 2015).
21 Interview with Desiree, Youth/Police Project, in Chi., Ill. (Feb. 16, 2016).
22 Interview with Christopher, Youth/Police Project, in Chi., Ill. (May 3, 2013).
and give me your license,” or tough, “Get out the vehicle.” The driver responds according to a variety of motivations.

The driver automatically lifts his hands. To the observers, his action appears to be a 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 often feels compelled to recite his response to police attention.

The physical choreography in each of these encounters is striking. 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.

James: “Like the way they come up on you, it’s like, you know, like, in the safari or something. It would be like a cheetah, or something, creeping through, and when they see prey they attack.”

Occasionally, the audience is the individual being stopped, but it is almost always the surrounding community looking on. 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. One young woman, Mikalah, played an officer she had encountered a few weeks before. As she entered the room to stop another high school girl in the role-play, Mikalah placed one hand on her belt and the other holding the shoulder strap of her imaginary bulletproof vest. Anyone who has seen a Chicago police 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.”

23 Interview with James, Youth/Police Project, in Chi., Ill. (May 3, 2013).
24 Field Notes, Youth/Police Project at Chicago Summer for Youth Violence Prevention, in Chi., Ill. (Summer 2015).
Also similar to our experiences in public housing is 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. Again and again, they told us, in effect, that’s just the way it is.

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 zero 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 a student, Richard, ask why he was not 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 of 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 backpack. 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.

---

25 Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Winter Quarter 2013–14).
26 Id.
27 Id.
28 Id.
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,” the officer 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, just as Richard understands that he is viewed as a suspect in the eyes of the police.

Richard, a smart and successful student, volunteered and prepared for his role to be stopped on film by a real police officer. He was immediately exposed. What if his friend’s backpack contained some sort of contraband? Though it is a manufactured and fictional encounter, the consequences to Richard’s life are real. The officer is a mentor helping out with the kids’ film, but he is still a police officer with the power to detour Richard’s future. The power imbalance is not magically equalized, even in the context of a classroom skit.

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 the 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 caution 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 beaten, arrested, tased, or shot at the hands of the police. They know deeply 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 escalate into something far worse—a false arrest, years in prison, brutality, even death.

Jazmine, a boisterous senior girl who is friendly 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.34 Ever since getting the news, Jazmine experiences a physical reaction akin to Post Traumatic Stress Disorder whenever she is around police.

_**Jazmine:** “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, and they interpret it wrong?’ They might . . . pull out a gun . . . . You hear it in my voice, like it’s trembling.”_35

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 among the Black teenagers we work with 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. Jayquan 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

---

34 Before the killing of Laquan McDonald, no on-duty Chicago police officer had been criminally prosecuted for killing a person for nearly fifty years. See infra note 184. We do not know which officer-involved shooting Jazmine was referring to.

35 Interview with Jazmine, Youth/Police Project, in Chi., Ill. (May 5, 2015).
either going to take it offensively and try to arrest me, or you’ll put your hands on me.\textsuperscript{36}

Students consistently express the knowledge that if an encounter goes bad, then 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.

\textit{Richard}: “They’re over you and you’re under them. Therefore, you don’t matter. Their word will prevail over yours.”\textsuperscript{37}

Nijia 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 if he’s innocent and he didn’t do nothing, and if they did him like this ... the other police officers would be on their side like, ‘It’s okay.’ So he didn’t.”\textsuperscript{38}

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?”\textsuperscript{39}

The kids are able to describe groups of officers (e.g., “jump-out boys”) who repeatedly harass people in their neighborhood. However, when students feel abused by police officers, they are rarely able to get officer names, badge numbers, or license plates. The officer’s identity is hidden, heightening the students’ perceptions that accountability mechanisms do not exist. After being stopped for no apparent reason and asked “Where the fuck [he] was going?”, having his keys taken and thrown on the ground, and having his money confiscated, Christopher

\textsuperscript{36} Interview with Jayquan, Youth/Police Project, in Chi., Ill. (Mar. 17, 2015).
\textsuperscript{37} Interview with Richard, Youth/Police Project, in Chi., Ill. (May 13, 2013).
\textsuperscript{38} Interview with Nijia, Youth/Police Project, in Chi., Ill. (Apr. 1, 2015).
\textsuperscript{39} Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Spring Quarter 2012-13).
went to the police station. He only went to see if he could get his money back; about $15. After the officer at the desk gave him some money—not his exact bills, and no paperwork—Christopher went the extra step to ask about the offending officer.

*Christopher*: “I had to go up to the 71st[street] police station and get it back. I asked for the officer that harassed me. They said they couldn’t find him.”

Student beliefs in police impunity harden when officers disregard their humanity. Devin 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.

*Devin*: “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.”

There are many disturbing aspects to Devin’s story, but most unsettling is the casual way he tells it. When Devin relates a story, he becomes each character in turn, changing the octaves of his voice. After the officer sprayed the air freshener in his brother’s eyes and nose, and his brother was complaining, the officer says “Shut the fuck up or whatever before I shoot you.” Devin remembers trying to calm his brother, and he looks down at the table and shakes his head back and forth, his voice goes quiet, “Bro, just stop talking bro. They’re ignorant.

---

40 Interview with Christopher, *supra* note 22.
41 *Id.*
42 Interview with Devin, Youth/Police Project, in Chi., Ill. (Feb. 5, 2015).
43 *Id.*
They going to do this stuff anyway because they think they got the power to do whatever they want to do or whatever."\textsuperscript{44}

When asked about the officer threatening to shoot, Devin said, "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."\textsuperscript{45}

Another time, Devin and a few friends were hanging out near some train tracks when they saw a police car.

\textit{Devin}: "There was like ten 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 motherfucking 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."\textsuperscript{46}

At the end of Devin's story, he describes it as not "too major." Devin meant there was 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 Devin 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 to tell the officers they were headed

\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id.
to a service? Her aunt said, "Ain't no use."\textsuperscript{47} Her aunt explained that you cannot interrupt officers who are intentionally performing their ability to illegally stop and search, especially against young women, and especially during a funeral line. There is no reasonable intervention.

For Tytania, her first encounter with an officer also had sexual connotations:

The first time an officer stopped me while walking, and questioned me, I was thirteen 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're going, where we came from, and what were we 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.\textsuperscript{48}

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 whether she pushed him away. Her eyes got wide, and she looked at us like we were fools. "No! You can't touch police!"\textsuperscript{49}

What about the boys with you, we asked. What was their response? Tytania said they just keep quiet and waited, kind of embarrassed. After the officers left, the boys began describing what they might have done if the guy hadn't been an officer, if he touched Tytania one more time.\textsuperscript{50} 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.

Some of the most dehumanizing experiences for our students involve officers forcing them unnecessarily to wait in uncomfortable positions, in extreme weather, in front of family and strangers.

\textsuperscript{47} Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Fall Quarter 2015–16).
\textsuperscript{48} Interview with Tytania, Youth/Police Project, in Chi., Ill. (Apr. 24, 2014).
\textsuperscript{49} Id.
\textsuperscript{50} Id.
Malik: "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 took 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 loves talking about questions of the police and authority. Born in Englewood, 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

---

61 Interview with Malik, Youth/Police Project, in Chi., Ill. (May 4, 2014).
62 Interview with Jamari, Youth/Police Project, in Chi., Ill. (May 3, 2013).
63 Interview with Mario, Youth/Police Project, in Chi., Ill. (May 2, 2014).
65 Interview with Mario, supra note 53.
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 seventeen-year-old, he was shot in the back while running away from officers who pulled him over in a stolen car.56

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."57 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. Every day I think about it . . . if that was me, would it still be on the news or not?"58

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.59

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."

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


57 Interview with Mario, supra note 53.

58 Id. Three years later, 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 CPD, 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 & Ben Brumfield, Video Released of Chicago Police Shooting of Cedrick Chatman, CNN (Jan. 15, 2016), http://www.cnn.com/2016/01/15/us/chicago-police-shooting-cedrick-chatman-video [https://perma.cc/L6E-BSP9]. Six months later, on the eve of trial, it was reported that the City of Chicago reached a tentative monetary settlement with Cedrick's family to make up for their loss. Jason Meisner, City Reaches Tentative Settlement in 2013 Fatal Police Shooting, CHI. TRIB. (June 10, 2016), http://www.chicagotribune.com/news/local/breaking/kt-fatal-police-shooting-lawsuit-settled-met-20160610-story.html [https://perma.cc/L2QL-ZHTL].

59 Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Fall Quarter 2014–15).

60 Id.
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 beaten 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—by how those encounters affect the way they view themselves, classmates, and their place in the world. They 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:

Christopher: “It made me feel small . . . . I'm almost a man, but [being stopped] made me feel like less than a man . . . . It just makes you feel down, like you ain’t nobody.”

Jamari: “They make you feel less of a person.”

Ericka: “You can’t do what regular people do.”

The harm is evident even in the expressions of those who try to minimize the extent to which 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.”

Sometimes the kids describe the stops as being for no reason, but they also articulate a general set of reasons that they think are “no

61 Interview with Christopher, supra note 22.
62 Interview with Jamari, supra note 52.
63 Interview with Ericka, Youth/Police Project, in Chi., Ill. (May 3, 2013).
64 Interview with Malik, Invisible Institute, in Chi., Ill. (May 4, 2014).
reason," like the officers are bored or ignorant or nosy or trying to survey an imagined criminal network.

Malik: “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 nosy or whatever. Basically did we have anything on us, where we was coming from, do we know anybody like running with such and such.”

During the interview, Malik was cracking up about how silly officers in his neighborhood look when they have “nerds” up against a fence, searching their pockets. Malik lives in Englewood, a neighborhood constantly in the news for gun violence. Officers’ actions must seem absurd to a teen who knows everyone on his block.

A major theme running through our conversations is how to avoid being stopped. It is as if the kids are trying to discern and decode a hidden set of rules, a secret etiquette that would enable them to move freely through the city. 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.

65 Interview with Malik, Youth/Police Project, in Chi., Ill. (May 4, 2014).
During the Youth/Police Conference hosted by this project, one of the students, Tytania, was seated on stage as a part of a panel. When this list of avoidance strategies was read aloud, she exclaimed that it feels like “sometimes we’re just being Black at the wrong time.” Teenagers in the first four rows of the auditorium, listening, nodded their heads in agreement.

Their strategies also include various disguises, such as wearing a childish knapsack or affecting a “nerdy” appearance. Jayvion, a tattooed football player, 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.”

Jayvion: “That’s cool with me. 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. Malik, 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.

Tytania said that when they are in public, her 6’2” linebacker boyfriend routinely carries her pink “Hello Kitty” book bag:

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

---

67 Interview with Jayvion, Youth/Police Project, in Chi., Ill. (Mar. 10, 2015).
68 Interview with Malik, Youth/Police Project, in Chi., Ill. (May 4, 2014).
69 Id.
70 For a deeper exploration of this phenomenon, see AVA BENEZRA, POLICING GENDER ON CHICAGO’S SOUTH SIDE (2015) (on file with the authors).
walks . . . . I just think he’ll get stopped if he didn’t have me around. 71

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. Portia opined that, if the man is too obvious about initiating cover, then 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.” 72 The boundaries between what is normal and what is suspicious seem to change daily, depending on the neighborhood, the officer, the teenager.

Beyond its impact on their emerging identities, the way they experience the 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. 73 Ericka plaintively summarizes: “It’s restricting.” 74

One of the most extreme manifestations of this self-policing is deciding not to spend time outside at all. Richard explained “I don’t go outside, unless maybe to go to the store.” 75

James agreed, “I just stay inside, especially on the weekends. I don’t have time to get picked up, I have other things going on.” 76

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 they see police.

Jayquan: “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

71 Interview with Tytania, supra note 48.
72 Interview with Portia, Youth/Police Project, in Chi., III. (Mar. 4, 2015). 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”).
74 Interview with Ericka, supra note 63.
75 Interview with Richard, supra note 37.
76 Interview with James, supra note 23.
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 ear buds in his ears as he walks, so he can pretend he is really into his music when he walks by the police. Sometimes, he pulls out his phone to pretend he is checking his voicemail, 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, then 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 HPA who was hired to assist in its media/technology classes. A tall young man 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. Demonstrating aggressive masculinity helps to protect Alajuwon from his peers, but doing so increases his chance of being stopped by the police. But, by playing a servile role to avoid police, he makes himself more vulnerable to attack by others.

Alajuwon: “[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.”

---

77 Interview with Jayquan, supra note 36.
78 Interview with Richard, supra note 37.
79 Id.
80 Interview with Ericka, supra note 63.
81 Interview with Alajuwon, Youth/Police Project, in Chi., Ill. (May 10, 2013).
Many students would like to stand up to aggressive officers, but do not feel safe doing so.

Devin: “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. 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.”\(^{82}\)

There are often no good options for students who feel at the complete mercy of the police. A student describes the difficult decisions teenagers 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.\(^{83}\)

There is an element of resistance that can be read into these strategies. In 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 their own 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 as a teenager. When Tytania’s boyfriend holds her pink book bag, 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. James spoke of feeling like “prey” when the police cruise past him on the street. At

\(^{82}\) Interview with Devin, supra note 42.

\(^{83}\) Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Spring Quarter 2011–12).
such moments, he said, he tries to make himself “invisible.” Were one to follow the underlying logic of these strategies where they lead, the ultimate disguise would be somehow not to be seen as Black.

1. “How I see 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 the police during 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 him questions through the window about a recent homicide in the neighborhood. “What do you know about the murder?” the officer asked sharply. “What gang do you run with?” Martrell was taken aback. He knew nothing about a murder, and was 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 blew cigarette smoke in his face and drove away.

A “routine” encounter for children at HPA. 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.”85 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. But 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.86

---

84 Interview with Martrell, Youth/Police Project, in Chi., Ill. (May 3, 2013).
85 Id.
86 Id.
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, 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. 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 sixty percent are bad, some say

---

87 Interview with retired West Side Chicago Police Commander, Youth/Police Project, in Chi., Ill. (Nov. 5, 2013).
88 Id.
89 Id.
90 See Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill.
ninety percent are bad, some don’t give numbers but just shake their heads.\footnote{Interview with Christopher, supra note 22.}

Christopher: “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.”\footnote{Interview with Hassanti, supra note 18.}

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. Students 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. 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, Hassanti corrected us, “Every situation is upsetting.... There’s no such thing as good encounters with the police.”\footnote{Interview with Desiree, supra note 21.}

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. Desiree reports, “I know a police officer personally.... She’s a good cop, and she knows dirty cops. Yeah, and she knows the cops that are all b.s.”\footnote{Interview with Desiree, supra note 21.}

Nijia: “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 inside one of his shoes, 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.”

---

95 Interview with Nijia, Youth/Policing Project, in Chi., Ill. (Apr. 1, 2015).
96 Field Notes, Youth/Policing Project at Hyde Park Academy, in Chi., Ill. (Winter Quarter 2015).
97 Id.
98 Id.
99 Id.
100 Id.
We take a vote, and everyone agrees. Despite the students’ positive personal relationship with the officer, the CPD's protection of abusive officers enables them to seriously entertain the possibility that he stole Azante’s money.101

2. 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.102 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.”103

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.104

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.105

102 Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Spring Quarter 2011–12).
103 Id.
104 See generally id.
105 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, (2011–15) (on file with authors, drawn from City of Chicago Data Portal Crimes 2011–15 and the Citizens Police
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.

\textit{Vontate}: "I can't imagine a scenario I would call the police."\textsuperscript{106}

\textit{James}: "I wouldn't call the police for nothing."\textsuperscript{107}

\textit{Aniyah}: "If I was ever to get into something, the police would be the last people I'd call."\textsuperscript{108}

D. Race

Driana was sitting on a bench at a bus stop with her younger brother, when two white officers in a marked patrol car pulled up and began questioning her.\textsuperscript{109} They wanted to know if she had a brother or uncle who might have a gun, or if she could get them a gun. Driana 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. Driana assumed they were talking about her public education, until the end of the encounter, when one officer said, "They should let you all starve." Driana then realized they assumed she received food stamps.\textsuperscript{110}

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 ninety-nine percent or more Black.\textsuperscript{111} They are policed by a force that is disproportionately White.\textsuperscript{112} After hearing so many students tell us that they feel that police treat them as less than a person, we often ask why they think that is so. For many, the

\textsuperscript{106} Interview with Vontate, Youth/Police Project, in Chi., Ill. (May 3, 2013).
\textsuperscript{107} Interview with James, supra note 23.
\textsuperscript{108} Interview with Aniyah, Invisible Institute, in Chi., Ill. (May 13, 2013).
\textsuperscript{109} Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Spring Quarter 2011–12).
\textsuperscript{110} Id.
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 spoke with Black students at Kenwood Academy High School, a nearby South Side school in which nearly ninety percent 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 we’re Black.” Students saw a stark difference 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.

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.

Portia: “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 used to live in a Black neighborhood and the police were horrible. They were always around but never helped.”

We were taken by the reluctance of many HPA students to attribute their experiences to race. These conversations are among our most sensitive. 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 preferred 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.

We reflect among ourselves about the ways that the "Whiteness" or at least non-Blackness of most of us as facilitators affects the ways that the high school students talk to us about race. Often the teens in our project qualify their statements about race when speaking about themselves. Jayquan once began to express that police treat White people better than him, but then stopped himself and said he did not want to be racist. Another teenager might start to describe an officer, "He was White—" then interrupt herself, and correct her phrasing. "Caucasian, sorry."117

Early in the project, we attempted not to correct any teenager's language. As facilitators we followed the principle that it is best to allow expression in a comfortable way, whether that means using a legal term incorrectly, obscenities or slurs and epithets, yelling or arguing, etc. So when a teenager switched to "Caucasian," we would just smile and encourage them to continue, more interested in the idea than the phrasing. Over time, we observed that when teenagers were having one-on-one conversations with us, and especially when the conversation was with a Black facilitator, they were more likely to speak candidly of race. We began to take a more assertive stance, encouraging them to discuss freely in groups. We now say, "Don't worry, you can say White," so that they know we are not judging their language.

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 sixth grade, a few White girls got into 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.

*Desiree:* "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.'"118

---

117 Interview with Jayquan, *supra* note 36.
118 Field Notes, Youth/Police Project at Hyde Park Academy, in Chi., Ill. (Spring Quarter
Desiree’s mom and the officers cursed at each other, and the officers let the kids go. When Desiree told this story, there were several teens in the room with Chaclyn Hunt, one of the authors, who is White. As Chaclyn asked about the details of the story, especially about the use of the word ‘nigger,’ Desiree told Chaclyn she was incorrect to think the officers were racist.\textsuperscript{119} 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.\textsuperscript{120} Chaclyn 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.”\textsuperscript{121} Sometimes, when a teenager has difficulty answering a question, we will ask a more specific question to approach the same topic. Chaclyn then asked, “Why don’t you think that the White girl got put against the fence the way that you and your brother did?” Without hesitation, Desiree answered, “Because the officer was White.”\textsuperscript{122} Synamon, another student in the room, interjected, “He was being racist if he called them ‘niggers.’”\textsuperscript{123} 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.”\textsuperscript{124} Others are more likely to see race as a reason for their negative treatment by police.

\textit{Devin:} “One time these little kids, maybe five or six [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.'\textsuperscript{125}

Despite the reluctance of some to name racism, race is ever-present
in the HPA students' descriptions of their experiences with police. Jamari describes "feeling like a caged animal" when police approach
him.\textsuperscript{126} Nijia, when describing the officer who had recently pulled her
over, said, "It was a White man. He was bald. I actually thought he was
with the KKK."\textsuperscript{127}

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.

In contrast, we asked Jamari, "Describe to me someone who never,
ever gets stopped."

"White people."\textsuperscript{128}

E. "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 might
respond: "If I moved," or, "maybe in your neighborhood." "That's just
the way it is," high school students and police say. And even more
disturbingly, "That's the way it's always going to be."\textsuperscript{129}

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. The shared desire of young Black people and the
police to have positive and trusting relations gives reason for hope.\textsuperscript{130}

Aniya's voice shook as she expressed this hope: "When my son gets

\textsuperscript{125} Interview with Devin, supra note 42.
\textsuperscript{126} Interview with Jamari, supra note 52.
\textsuperscript{127} Interview with Nijia, Invisible Institute, in Chi., Ill. (Apr. 1, 2015).
\textsuperscript{128} Interview with Jamari, supra note 52.
\textsuperscript{129} See generally Field Notes, Youth/Police Project at Hyde Park Academy (2012–16).
\textsuperscript{130} 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
older . . . . I'm hoping that the police be done changed. Some of the attitudes or training that they receive needs to change.”

IV. THE PLAN FOR ACTION: ACKNOWLEDGING THE REALITIES

Just as the experiences of the young people most affected by urban police practices inform our diagnoses, they also inform the cure. Their distrust of the police arises from their experiences with a lack of accountability and unequal treatment. The preceding section documents that reality—a reality of ongoing racism, institutional denial, and impunity.

The students taught us that the path to change must begin with acknowledging those realities. Until we do so, real change is not possible. Pushing past denial is not easy. It requires acknowledging White privilege, sustaining conversations on the difficult subject of race, and grappling with the experiences of “others” who have been cast as “less than.” Once we do so, however, the path becomes clear. Black high school students have showed us the way:

1. Embrace principles of honesty and transparency to counter the students' experiences with institutional denial and secrecy.

2. Implement a credible regime of accountability in response to students' experiences with police impunity.

3. Stop harassing, arresting, brutalizing, and killing so many Black people.

4. Build a relationship based on shared power and respect for the dignity of young Black people to transform the present relationship in which “the police have all the power.”

The remainder of this paper offers a series of concrete proposals drawn from these four principles that we hope will frame national policy, advocacy, and research agendas going forward. There is no quick fix. While none of the proposals are transformative by themselves, when implemented together, they have the potential to lead us to equal justice. Let's not let this moment pass without addressing the underlying issues that have caused Black children to distrust the police.

Recommendation No. 1: Acknowledge the reality of experience of Black high school students with respect to their encounters with the police.132

---

131 Interview with Aniyah, supra note 108.
132 Our summary recommendations are listed in the Appendix.
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. If we want relations between young people and the police to change, we must acknowledge the reality of their experience. The reasons are threefold. First, honesty is the best way to earn trust. Second, sharing information that is presently monopolized by the police redistributes power and creates possibilities for more egalitarian relations between youth and police. Third and most important, acknowledging Black students' realities is a prerequisite to addressing those realities. We concretize these concepts in the policy recommendations below.

A. Honesty Begets Trust

Recommendation No. 2: Share information with the public within twelve hours of any police shooting or major incident involving alleged misconduct. In most cases, any video of these incidents should be released within twenty-four to forty-eight hours. Such video should always be released within fourteen days.

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 a combination of denial and secrecy: "The officer shot the subject as he lunged at the officer with a knife, putting the officer in fear for his life," followed by three words designed to end any further public inquiry: "It's under investigation." Internal investigations proceed, sometimes for years, cloaked in secrecy. The result preordained—another justified shooting.

---


Such secrecy exacerbates distrust of the police. Honesty demands that police departments share information when a police officer shoots somebody or is accused of brutality. Be honest with people. Don't lie. Hold press conferences within twelve hours of a major incident. Keep people informed about the progress of an investigation. When police possess a video of an incident that took place in a public area, release the video within twenty-four to forty-eight hours. People are far more likely to trust departments that are honest with them.

Consider the experience in Cincinnati. After years of distrust between the Cincinnati Police Department and minority communities, Cincinnati adopted the practice of holding a press conference and releasing available video within eight hours of every police shooting.135 Cincinnati underwent dramatic reform after a history of charges of discriminatory police abuse and severely strained relations between Black residents and police.136 Between 1995 and 2001, Cincinnati police officers had killed fifteen Black men, including the 2001 shooting of Timothy Thomas that sparked mass protests.137 As a part of a collaborative agreement between the Cincinnati Black United Front, the American Civil Liberties Union, and the police, and a companion agreement with the U.S. Department of Justice (DOJ), Cincinnati

135 Kelly McEvers, Former Cincinnati Chief Recalls Challenges of Police Reform, NAT'L PUB. RADIO (Dec. 8, 2015), http://www.npr.org/2015/12/07/458828493/former-cincinnati-chief-recalls-challenges-of-police-reform [https://perma.cc/63GH-6N7V] (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 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 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. This 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 Alana Semuels, How to Fix a Broken Police Department, ATLANTIC (May 28, 2015), http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/ [https://perma.cc/9K49-YZDH] (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.).


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.\textsuperscript{138} That does not mean that there have not been incidents of police abuse and violence in the decade since the Cincinnati Police opened itself to the public. Bad things predictably will happen even in the best departments. But, by embracing principles of honesty, Cincinnati has built trust even when officers abuse their power.\textsuperscript{139}

Then came the fatal shooting of Samuel DuBose by University of Cincinnati Police Officer Ray Tensing, caught on videotape, in July 2015. After engaging Mr. DuBose in a questionable traffic stop, Officer Tensing shot Mr. DuBose in the face as he began to pull away.\textsuperscript{140} In this case, the police department had a sound investigatory reason to delay the release of the videotape until it could question two 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.\textsuperscript{141} While many in Cincinnati and around the nation have been justifiably shocked by the video, the department’s

\textsuperscript{138} Semuels, \textit{supra} note 135 (Between 1999 and 2014, use of force incidents decreased by sixty-nine percent, citizen complaints decreased 42%, citizen injuries during police encounters decreased 56%; and misdemeanor arrests decreased by more than 200%. At the same time, violent crime decreased by nearly 50%). Francis Clines, \textit{A City Tries to Turn Candor into Consensus}, N.Y. Times (Sept. 9, 2001), http://www.nytimes.com/2001/09/09/us/a-city-tries-to-turn-candor-into-consensus.html [https://perma.cc/23RD-DWMA].

\textsuperscript{139} The Police Executive Research Forum advises that police departments “need to be transparent in providing information following use-of-force incidents.” POLICE EXEC. RESEARCH FORUM, \textit{USE OF FORCE: TAKING POLICING TO A HIGHER STANDARD} (Jan. 29, 2016), http://www.policeforum.org/assets/30%20guiding%20principles.pdf [https://perma.cc/P33S-WFA7] (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 twenty-four hours, after editing or withholding the small fraction that raises privacy issues or impairs the integrity of an investigation. Colin Wood, \textit{Seattle Police Hackathon Tackles Video Transparency}, GOV’T TECH. (Dec. 22 2014), http://www.govtech.com/public-safety/Seattle-Police-Hackathon-Tackles-Video-Transparency.html [https://perma.cc/4W95-EM3G]. The Department plans to do this automatically, without waiting for a request from a member of the public. \textit{Id.} Redactions should occur only in exceptional circumstances, particularly when the incident occurs in public areas, as it is difficult to justify withholding a video that any person could have taken with his or her cell phone.


\textsuperscript{141} \textit{Id.}
transparency and accountability have the potential to enhance public trust.¹⁴²

Compare Cincinnati's response to Mr. DuBose's shooting to Chicago's denial and secrecy in response to the shooting of Laquan McDonald.¹⁴³ Having denied any inappropriate conduct on the behalf of the officer who shot Laquan, and having withheld video footage of the incident for more than thirteen months on the ground that the case was "under investigation," the Department's involuntary release of the video that impeached its denials in response to a judicial order was devastating to public trust in the institutions of government.¹⁴⁴

¹⁴² Mark 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 Un warranted,' 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/ [https://perma.cc/6MP6-PSK9]. 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. Interview with Rickell Howard, Ohio Dir. of Litig, and Policy, Children's Law Ctr. (Mar. 10, 2016).


¹⁴⁴ Bill Ruthhart & Lolly Bowean, Distrust of Chicago Cops Helps Drive Emanuel's Low Approval on Crime, CHI. TRIB. (Feb. 3, 2016), http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-crime-poll-met-0203-20160202-story.html [https://perma.cc/ZG82-HKZ9]. Chicago took a stride toward greater transparency in announcing a policy to release police video, radio transmissions, and certain reports that relate to police shootings and other major incidents within sixty to ninety days of the incident. See Annie Sweeney et al., Video Release of Police Shootings, Incidents, Marks Seismic Shift in Chicago's Secrecy, CHI. TRIB. (June 3, 2016), http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-videos-met-20160603-story.html [https://perma.cc/5UUG-WD8N]. Under the policy, the Police Department may seek additional delays with court approval. On June 3, 2016, the city offered an unprecedented down payment on the policy, in releasing video or other information in approximately a hundred ongoing investigations into police shootings and misconduct. In our view, Chicago's policy still falls short of what is needed to earn trust. When a police officer shoots a Black teen, telling her friends and family to come back in sixty to ninety days or more simply will not cut it. We recommend that
1. Information is power.

_Recommendation No. 3: 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 incorporate 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. Honesty means that departments share accurate information about who is being stopped, searched, subjected to force, and killed by police. We cannot begin to address our children’s experiences without acknowledging that they are real. Empirical data document that reality; they make immediate the ubiquity and racial inequality of police stops.\textsuperscript{145} If police are stopping and searching more Black and Brown people than White, we need to talk candidly about why that is so, and ask what should be done about it.

The call for transparency is nothing new. It is a bedrock principle of democratic governance that we as citizens need access to information about our government to ensure it acts in the public interest. Accordingly, transparency is a central tenet of the President’s Task Force on 21st Century Policing.\textsuperscript{146} Notwithstanding our stated national commitment to transparency, however, police departments 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 those that do, report the information in inconsistent ways.\textsuperscript{147}


\textsuperscript{146} Toward the end of his second term, President Obama convened an historic task force that laid out a national agenda for policing in the twenty-first 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.” _President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing_ 1 (May 18, 2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [https://perma.cc:6W7C-WRFJ].

\textsuperscript{147} 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.
Similarly, most police departments do not publish data on police misconduct. Since 1994, federal law has required the DOJ to collect national data on police use of force from local law enforcement. 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.” The result is scattered, inconsistent, and unintelligible information about citizen/police encounters that provides little basis for comparisons across jurisdictions. It is beyond shameful that the U.S. fails to even keep reliable data about instances in which police shoot or kill people.

The reality is that police in the United States stop, search, arrest, and kill far more people than the law enforcement in any other nation in the world. And the reality is also that police stop, arrest, and kill Black people at far greater rates than Whites. In New York City for doing so.

---

149 42 U.S.C. § 14142(a) (1994) (instructing the Attorney General to “acquire data about the use of excessive force by law enforcement officers”).
154 U.S. law enforcement also imprisons a greater share of its population than police in any
alone, the police stopped nearly 4.4 million people between 2004 and 2012, but in nearly ninety percent of the cases, police found no evidence that the person stopped did anything wrong.® In 2014, Chicago police stopped 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.® Nearly three-quarters of the people stopped in Chicago were African American, despite making up less than a third of the population.® The Bureau of Justice Statistics found that an average of 44 million Americans have face-to-face contacts with police each year, and 704,000 experience the use of police force against them, with Blacks 2.5 times more likely to experience police force than Whites.®

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 fifty-five fatal police shootings in the last twenty-four years, in contrast with the United States' fifty-nine fatal police shootings in the first twenty-four days of 2015.® Frank Zimring estimates that police killed more than 1100 people in 2015 alone, with the victims being disproportionately Black.® One thousand and one hundred people killed by police in a single year. Drawing on the FBI's admittedly unreliable data on police shootings, ProPublica found that
African American men are twenty-one times more likely than White men to be killed by police.\(^\text{163}\)

Police departments have provided the FBI with official data on civilian crime for nearly a century.\(^\text{164}\) 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.\(^\text{165}\) This means offering incentives—above all, 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.\(^\text{166}\)

While 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 invest political capital


\(^{164}\) E N C Y C L O P E D I A O F L A W E N F O R C E M E N T 8 5 6 (L a r r y E . S u ll i v a n e t a l . e d s . , 2 0 0 5).


\(^{166}\) 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. Only about twenty of the nation’s 18,000 police forces have voluntarily begun posting some police data in real time. Megan Smith & Roy L. Austin, Jr., *Launching the Police Data Initiative*, WHITE HOUSE (May 18, 2015), https://www.whitehouse.gov/blog/2015/05/18/launching-police-data-initiative [https://perma.cc/#6YQ-AR4J]. Experiences of the few departments that have embraced the White House’s initiative 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 Police Data Initiative critical to building trust in the police. See Dallas Police Dept., *Dallas Police Department Reveals Updated Officer Involved Shooting Website*, DPD BEAT (Oct. 21, 2015), http://dpbeat.com/2015/10/21/dallas-police-department-reveals-updated-officer-involved-shooting-website/ [https://perma.cc/QLV2-EBL6]; 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/ [https://perma.cc/FY76-WU2F].
in concrete efforts to require law enforcement to do so.\textsuperscript{167} 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 legislation was introduced in the House and the Senate again in 2015, entitled the End Racial Profiling Act of 2015. This act would have required local law enforcement to collect standardized data on investigatory and traffic stops, and report the data to the DOJ, consistent with our recommendations here.\textsuperscript{168} 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 these bills would pass.\textsuperscript{169} The suggestions of a Presidential Task Force are not enough. We need to find the political will to enact these bills into law.

2. Local solutions.

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

\textit{The Citizens Police Data Project}

After a nearly five-year battle in a case called \textit{Kalven v. City of Chicago},\textsuperscript{170} Illinois records relating to police misconduct complaints, including completed investigations into allegations of misconduct and the names of officers accused of misconduct, belong to the people. Before the \textit{Kalven} decision, information about police abuse remained hidden behind a wall of secrecy. Today, police misconduct files are open


\textsuperscript{170} 7 N.E.3d 741 (2014). The \textit{Kalven} team included two of the authors of this piece, joined by civil rights lawyers, Samantha Liskow and Jon Loewy of the Loewy & Loewy law firm, and Ben Elson and Flint Taylor of the People’s Law Office.
to the public. We and our colleagues have worked with City of Chicago officials to put this principle into practice.

In 2015, we launched the Citizens Police Data Project (CPDP), a database that gives everyone access to police misconduct data in Chicago.\textsuperscript{171} The high school students with whom we work now have the power to identify the police officers who have accumulated the greatest number of complaints in their neighborhoods. 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 community members to identify groups of officers with patterns of complaints, and demand that the CPD address those patterns.\textsuperscript{172}


Information is power. Sharing information redistributes power from law enforcement to citizens, allowing those most affected by police abuse to play meaningful roles in police oversight.\textsuperscript{173} It facilitates honest and informed conversations, enabling young people and police to build more egalitarian relationships based on trust.\textsuperscript{174} We hope that the CPDP will serve as a model for other jurisdictions.\textsuperscript{175}

\textit{The “Stop” Act}

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 called the “STOP Act.”\textsuperscript{176} The ordinance would mandate that the police department collect and publicly share data for all street stops, including demographic information on 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.\textsuperscript{177} In addition, officers would be required to obtain written consent in order to perform a consensual search and to provide receipts.


\textsuperscript{175} 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, \textit{Databases Create Access to Police Misconduct Cases and Offer a Handy Tool for Defense Lawyers}, A.B.A. J. (Feb. 1, 2016), http://www.abajournal.com/magazine/article/databases_create_access_to_police_misconduct_cases_and_offer_a_handy_tool_f [https://perma.cc/CGF9-UMM9]. An Illinois law also serves as an excellent example of model legislation for requiring the documentation and public reporting of all traffic stops. 625 ILCS 5/11-212 (2003). The Illinois Department of Transportation has published more than ten years of data about traffic stops and searches on its website. See \textit{ILL. DEPT OF TRANSP.}, \textit{ILL. TRAFFIC STOP STUDY}, http://www.idot.illinois.gov/transportation-system/local-transportation-partners/law-enforcement/illinois-traffic-stop-study [https://perma.cc/8EU7-KT63].


\textsuperscript{177} Id.
to each individual who was stopped. New York City and New Orleans are in the process of similar reform.

B. Accountability

A critical reality that must be acknowledged is the lack of police accountability in Black communities. Consistent with the experiences of the students we interviewed, Chicago police data suggest that Black people are the most abused but least believed by police. While they make up less than a third of the city’s population, African Americans are victims in sixty-one percent of the police brutality complaints brought against Chicago police officers. However, according to the CPD, only twenty-five percent of the “actual” victims of police brutality in Chicago are Black, because the Department fails to sustain complaints brought by African Americans. Similarly, Chicago police officers have shot more than 1600 people since 1986, averaging more than one person a week. More than seventy-five percent of the people shot by police have been African American. Yet before the video of

178 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) (2015). The ACLU reached a voluntary agreement with the CPD 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, ACLU OF ILL. (Aug. 6, 2015), http://www.aclu-il.org/wp-content/uploads/2015/08/2015-08-06-Investigatory-Stop-and-Protective-Pat-Down-Settlement-AgreementFalsepdf [https://perma.cc/C9FP-95NX].


181 Id.


Laquan McDonald's killing was released, it had been nearly fifty years since an on-duty Chicago police officer had been prosecuted for shooting anyone. The absence of police accountability is apparent in other types of civil rights complaints as well. An exhaustive review of six years of Chicago police disciplinary data revealed that the probability was less than one in a thousand that an officer would receive any discipline when accused of falsely arresting, illegally searching, or stealing from people.

A central lesson we learned from the Youth/Police Project is the priority of police accountability—the need to hold police officers accountable when they abuse their power to hurt people. When mistreated by police, the high school students feel that they have no place to turn to be heard, much less be believed. The word of a police officer will always prevail. Moreover, they see the same officers commit repeated abuse in their neighborhoods without fear of punishment. And they see other officers cover for those who abuse their friends and neighbors. 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.” Unchecked power, no matter how it is exercised, forms the context of every encounter with the police. And that, unchecked power overshadows positive encounters they have with individual officers.

Credible regimes of accountability have the potential to change the character of these encounters, and thereby change the way young people see the police. They have the potential to build trust. By implementing credible systems to (1) investigate police misconduct, (2) address patterns of abuse in Black communities, and (3) end the code of silence, police departments have the opportunity to show young people...
that they do not stand behind officers who abuse their power—that they stand instead behind the honorable officers who treat the kids with respect.

1. Establish credible police disciplinary systems.

Recommendation No. 4: Implement credible systems for investigating complaints of abuse.

Our work in the Youth/Police Project supports social scientific research that 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 more likely to trust law enforcement and respect the outcome of a police misconduct investigation, even if they disagree with it. They are more likely to trust the process if they believe that it is fair. There are five essential elements to creating a disciplinary system worthy of our children’s trust.

First, make it easy for young people 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; permit individuals to initiate complaints on-line; provide safe sites outside of police departments where individuals may go for assistance in 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. 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 crimes. 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 the complainants. Endow investigators with the power and resources that they need to conduct prompt, high-quality

---


187 Id.

188 See, e.g., 50 ILCS 725/3.8 (2015).
investigations. Document each step of the investigation and supervisory review of the investigation.

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 others.

Fourth, 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 reasons for those findings. Such explanations make people feel 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.

Fifth, give community members who are independent from both the police department and municipal government a formal role in overseeing police misconduct and shooting investigations. 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. Police departments would be well served by appointing their most credible 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 regarding the effectiveness of one model over any other. We do not recommend a one-size-fits-all approach. Different models may be more suitable depending upon the particular needs and circumstances of the jurisdiction. Some civilian agencies conduct police misconduct

---

189 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: How to Challenge the Police Privilege to Delay Investigation, 2016 U. CHI. LEGAL F. 213 (finding that these delays can seriously impair police misconduct investigations and lack any functional justification).

190 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 NAT’L ASSOC. FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT, https://nacole.org/ [https://perma.cc/F2H9-BBZQ]. It provides resources and training that should inform civilian review.
investigations from their inception. Others serve as independent auditors or monitors during the investigative process. And still others act as appellate panels and review investigations after they have been completed. 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. Irrespective of its form, a meaningful community role in police oversight is an essential ingredient to maintaining a police force that is accountable to that community and to engendering public trust.

Despite broad agreement about the importance of civilian review, there has been limited success in implementing it. Common critiques include low quality investigations, insufficient power and resources, poorly trained staff, and more fundamentally, lack of independence. 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.

| See generally, SAMUEL WALKER, POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT (2001) (questioning the effectiveness of existing examples of citizen review). |

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

- **Independence**: Institutionalize appointment procedures designed 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.\(^{196}\) 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).\(^{197}\)

- **Power**: Endow the 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 end of the investigation, months after the charged incident.\(^{198}\) 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.

- **Transparency**: Keep citizens informed about ongoing investigations and make all non-private aspects of completed investigations accessible to the public in real time. Require civilian review boards to publish regular reports on the web that

\(^{196}\) 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-pd [https://perma.cc/WDR2-ZVAV].

\(^{197}\) *E.g.*, SAN FRANCISCO OFFICE OF CIVILIAN COMPLAINTS, *supra* note 191.

\(^{198}\) Such delay is contrary to any notion of accepted investigative practice when investigating crime. See Craig Futterman et al., *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 (2008) ("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.").
provide standardized information about each complaint they review. The reports should also include their policy recommendations and the reasons for those recommendations.

We have proposed an ordinance in Chicago that seeks to accomplish each of the goals above that may serve as a national model.¹⁹⁹

2. Root out patterns of police abuse.

Recommendation No. 5: Use “pattern evidence” to investigate and root out police misconduct.

Just as the high school students saw the same officers return to abuse their neighbors again and again, most urban police chiefs agree that a small fraction of their officers are responsible for the majority of abuse.²⁰⁰ Over the last four-and-a-half years, more than 80 percent of Chicago police officers have had less than four complaints against them.²⁰¹ Most officers have not earned a single complaint.²⁰² However, if the relatively small percentage of officers who repeatedly commit abuse are allowed to operate with impunity, they can come to represent civil authority—the “real police”—to an entire community.

Police abuse is a highly patterned phenomenon, committed by certain officers, who tend to work together in cohesive groups, and concentrated against certain victims—people who live in lower-income Black and Latino neighborhoods.²⁰³ Black Chicagoans are more than seven times more likely than Whites to file a complaint alleging that they are victims of police brutality.²⁰⁴ Because of the highly patterned nature of police abuse, it is relatively easy to determine where the potential problems lie.²⁰⁵ Nonetheless, law enforcement agencies have


²⁰¹ We performed an analysis of data in the CPDP, cpdb.co, which contains all misconduct complaints against Chicago police officers between March 2011 and September 2015.

²⁰² Id.

²⁰³ Futterman et al., supra note 198.


²⁰⁵ See Futterman et al., supra note 198, at 283 (“Certain officers’ pattern of complaints jumped off the page.”).
been loath to use available 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 tools to investigate and fire the relatively small number of officers who repeatedly dishonor the badge.206

Nonetheless, many 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.207 They then work with officers to address issues that may be causing the problematic behavior.208

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.209 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.”210 Twenty years later, the DOJ recommended these systems as a “best practice” for promoting integrity in law enforcement.211 And they have been widely endorsed by police leaders and experts around the nation for their success.212

---

206 See Rachel Harmon, Why Do We (Still) Lack Data on Policing?, 96 MARQ. L. REV. 1119, 1122–32 (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).


208 Id.

209 Walker et al., supra note 200.

210 Id.


212 See, e.g., Steve Rothlein, Early Intervention Systems for Law Enforcement, PUB. AGENCY TRAINING COUNCIL (2006), http://patc.com/weeklyarticles/intervention.shtml [https://perma.cc/Z2K6-HEJD]. The International Association of Chiefs of Police have also touted early warning systems as effective management tools. Walker et al., supra note 200. 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, FIVETHIRTYEIGHT (Mar. 9, 2016, 7:32 AM), http://fivethirtyeight.com/features/we-now-have-algorithms-to-predict-police-misconduct/ [https://perma.cc/3QYH-TMD8]. A 2012 analysis of the CPD’s early warning system raised serious questions about its effectiveness, finding that it identified only six percent of the officers who had accumulated the very most
However, early warning systems have not been used to investigate or discipline police misconduct. They should be. Pattern evidence 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 discursive 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 are on to him or her. Instead, they should do 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 shows that the officer has indeed committed serious misconduct, get rid of him. If he has engaged in criminal behavior, prosecute him.

As with Comp Stat, pattern analysis promotes the intelligent use of limited resources. If five percent of the officers in any given department draw the bulk of complaints, should we be spending all our resources scrutinizing the ninety-five percent who are not causing problems? Or should we be looking into the team of officers that has amassed dozens of 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.\textsuperscript{214}

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.\textsuperscript{215} Patterns develop over time. We cannot 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.

3. End the code of silence.

Recommendation No. 6: Acknowledge the police code of silence.

Nothing has contributed more to our children's distrust of police than the code of silence. While relatively few Chicago police officers engage in brutality,\textsuperscript{216} virtually every officer shares some responsibility for protecting those officers who do to the extent that they acquiesce in the code of silence.\textsuperscript{217} We should not expect kids to trust the police when officers lie and cover for fellow officers. And little contributes more to Black teens' sense of powerlessness than this blue wall of silence.

This is not 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 eighty-five years, at least nine different commissions around the nation have identified the police code of silence as a serious problem that prevents accountability.\textsuperscript{218} Yet

\textsuperscript{214} 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 W. Bruce, \textit{Fundamentals of Crime Analysis}, in EXPERIENCING CRIME ANALYSIS 7-32, (Samantha Gwinn et al., 2009).

\textsuperscript{216} The Illinois Legislature has introduced a bill to preserve police misconduct records that may serve as a good national model. See supra note 171.

\textsuperscript{217} See CITIZENS POLICE DATA PROJECT, supra note 180 (eighty percent of Chicago police officers have received few misconduct complaints).


\textsuperscript{218} NAT'L COMM'N ON LAW OBSERVANCE AND ENF'T, \textit{REPORT ON THE ENFORCEMENT OF THE}
many departments still do not want to admit that the code of silence even exists.\textsuperscript{219}

\begin{quote}
\end{quote}

\textsuperscript{219} 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, \textit{Federal Jury Finds City of Chicago Responsible for “Code of Silence” in Chicago Police Department}, TRUTHOUT (Dec. 24, 2012), http://www.truthout.org/news/item/13510-in-significant-precedent-federal-jury-finds-city-of-chicago-responsible-for-code-of-silence-in-chicago-police-department [https://perma.cc/6M2Q-XWVP]; Joey LeMay, \textit{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/ [https://perma.cc/QE37-4XZS]. In late 2012, a federal jury found that the CPD’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. \textit{Id}. The City of Chicago offered to pay Ms. Obrycka (the bartender) and her lawyers millions of dollars if they would join the CPD 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, 913 F. Supp. 2d 598 (N.D. Ill. 2012); see also David Heinzmann, \textit{Judge Refuses to Erase ‘Code of Silence’ Verdict}, CHI. TRIB. (Dec. 20, 2012), http://articles.chicagotribune.com/2012-12-20/news/chicago-judge-refuses-to-erase-code-of-silence-verdict-20121220_1_karolina-obrycka-jury-award-federal-judge [https://perma.cc/8XH5-CZ4U]. Chicago’s denial of the code of silence continued well into 2015, when the City of Chicago 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 at 21, 29, Cazares v. Frugoli, 13 CV 5626 (N.D. Ill. Mar. 11, 2014). 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. \textit{Chicago Tonight: Mayor Emanuel on Police Reform, Accountability, CHI. PUB. TELEVISION} (Dec. 8, 2015), http://chicagonight.wttw.com/2015/12/08/mayor-emanuel-police-reform-accountability [https://perma.cc/2H5F-WKZM] (Paris Schutz: “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.”).
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 is 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. An officer’s failure to adhere to the code can jeopardize her career, safety, and even her family.

Law enforcement must also acknowledge that the code of silence is something more than a matter 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

---

220 See, e.g., REPORT OF THE INDEP. COMM’N ON THE L.A. POLICE DEPT (“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 & Paul Biasco, Officers Who Saw Laquan Shooting Have History of Misconduct, Remain on Duty, DNAINFO (Dec. 16, 2015), http://www.dnainfo.com/chicago/20151216/downtown/officers-who-saw-laquan-shooting-have-misconduct-history-remain-on-duty [https://perma.cc/5V5T-6MC5]. 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 sixteen shots into Laquan’s body. Andy Grimm, Despite Laquan Video, Reports from Cops Back Shooting, CHI. SUN-TIMES (Dec. 5, 2015), http://chicago.suntimes.com/news/7/71/1156884/despite-laquan-video-reports-cops-back-shooting [https://perma.cc/5WDA-FBJC] (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”).

power. We have seen repeated instances where departments use their power to crush any officer who challenges the official narrative. 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 code of silence is a set of tools for enforcing the official narrative.

Acknowledging the reality of the police code of silence is a necessary step to eradicating it, but it is insufficient by itself. We also must address the code head on.

Recommendation No. 7: 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 beginning, they must make clear that police integrity will be demanded, valued, and rewarded, and that lack of integrity will not be tolerated. Prepare officers for the ethical challenges they will face, including pressure to lie for fellow officers. Leaders must then reinforce that message throughout their officers' careers by ongoing training and action.

Recommendation No. 8: Protect and honor officers who expose abuse of police power.

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. 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

222 Field Notes, Confidential Interviews with Chicago Police Officers, Youth/Police Project (2013–14).

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, then the department should honor her when she provides truthful information that exposes brutality, corruption, or civil rights violations.\textsuperscript{224} Officers who report misconduct deserve the same recognition given to any other officer who takes risks to protect the public.\textsuperscript{225} 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.

Recommendation No. 9: 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.\textsuperscript{226} Very few leaders want to fire an officer for failing to report his 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 to 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 particular department—the big stuff—such as 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.

\textsuperscript{224} 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.


\textsuperscript{226} Gilmartin & Harris, \textit{supra} note 218.
4. Seeing is believing—the role of video.

Recommendation No. 10: Use video to enhance police training, supervision, and accountability, but use it wisely and not exclusively.


Cameras are everywhere. Nearly every high school student we have worked with carries a cell phone camera. There are private security cameras throughout our cities, surveillance cameras throughout our streets, and growing numbers of cameras in police cars and inside police stations. Chicago is one of the most surveilled cities in the world.\footnote{Adam Schwartz, \textit{Chicago’s Video Surveillance Cameras: A Pervasive and Poorly Regulated Threat to Our Privacy}, 11 NW. J. TECH. & INTELL. PROP. 47 (2013); Gaynor Hall and Pam Grimes, \textit{Are Surveillance Cameras Making Chicago Safer?}, WGN-TV (Feb. 22, 2016), http://wgntv.com/2016/02/22/are-surveillance-cameras-making-chicago-safer/ [https://perma.cc/3WYP-S4K9].} No doubt cameras have a role to play in improved accountability. Chicago Police 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.\footnote{The CPD, after its internal review, had found the killing to be justified. See Steve Mills, Jeremy Gorner et al., \textit{Laquan McDonald Police Reports Differ Dramatically from Video}, CHI. TRIB. (Dec. 5, 2015), http://www.chicagotribune.com/news/ct-laquan-mcdonald-chicago-police-reports-} 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. Videos of police shootings and brutality are available to anyone on the Internet.

But cameras are no cure-all. While video has provided powerful evidence that documents the reality of Black students’ experiences with police abuse, it has not changed the underlying power dynamics in youth/police encounters. Without video, Black children still know that the word of a police officer will prevail over their own—that their experiences are somehow less real unless White people can see them on video. 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 . . . .”

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. But they fail to capture everything even within the officer’s lens. Cameras are no substitute for a thorough investigation that incorporates the perspectives of all relevant witnesses and the physical evidence.

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 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. 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? How do officers engage Black teens? 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.

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

---


233 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, then it didn’t happen. Real change becomes possible by acknowledging the realities of the most marginalized populations—video or not.

234 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), http://www.copa.usdoj.gov/pdf/taskforce/submissions/Eberhardt_Testimony_Submitted.pdf [https://perma.cc/WWH8-THCS].

235 In summer 2015, Illinois enacted the Law Enforcement Officer Body-Worn Camera System
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. 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.

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.

Public access to video. As noted above, video of police shootings and incidents of alleged police misconduct should be released to the public within twenty-four to forty-eight 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. Make video of other police/citizen interactions in public places available to the public upon request.
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.\textsuperscript{240}

C. Quit It

The most important thing that police can do to earn the confidence of our kids is simply to “quit it.” Stop harassing, arresting, brutalizing, and killing so many Black people.

This begins with acknowledging the reality of racism in policing—past and present.\textsuperscript{241} We cannot continue to deny the salience of race and racism in young peoples’ encounters with police. Social science has long established that unconscious negative racial stereotypes and attitudes affect the behavior and judgment of even the most egalitarian individuals.\textsuperscript{242} And simply listening to the students’ stories confirms that the more virulent, intentional forms of racism are not mere shameful relics of the past. Police officers come from the same society as the rest of us. As 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

\textsuperscript{239} 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, \textit{How a Dirty Police Force Gets Clean}, POLITICO (Mar. 2015), http://www.politico.com/magazine/story/2015/03/oakland-police-reform-115552_full.html?print#.VcT7WmCp3ww [https://perma.cc/2NGC-5YWL].\textsuperscript{240}

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. 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, \textit{PERF and COPS Office to Release Report on Body-Worn Cameras}, 28 SUBJECT TO DEBATE 4, 7 (July/Aug. 2014), http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2014/debate_2014_julaug.pdf[https://perma.cc/DF74-W4AC].\textsuperscript{241}

\textsuperscript{242} \textsc{President’s Task Force, supra} note 146, at 12.

husbands, and our wives. If they're racist, guess what? You know, they reflect us just as much as they inform us."

Acknowledging the reality of racism clears the path for law enforcement to address conditions of unequal justice. Our experiences in the Youth/Police Project have led us to the following recommendations that will help police to “quit it”: (1) limit the number of negative police encounters with Black teens to those that are truly necessary; (2) teach officers to de-escalate the encounters that really need to occur; (3) train officers on adolescent development, interactions with teens, and racial bias; and (4) consciously address the racial impact of police practices. On the affirmative side, treat all our children fairly, equally, and respectfully. Share power through true community policing.

1. Is this stop really worth it?

**Recommendation No. 11: Minimize unnecessary negative police/citizen encounters, and re-examine stop-and-frisk.**

Overarching principles of fairness and respect for the dignity of others should not only determine how police treat people when stopped. They should also determine whether police engage in the encounter at all. 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—necessary to keeping people safe. However, our infatuation with preventative, proactive policing in the U.S. has led to millions of negative interactions between Black citizens and the police each year, some of which have ended disastrously. Many if not most of these encounters need never have occurred.

One of the practices that have led to hundreds of thousands of negative police/citizen interactions each year is stop-and-frisk. The effectiveness of this practice has been much discussed and debated. With few exceptions, however, the debate has failed to account for the


alienation it generates and the harm to the ability of police to solve crime.245

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.246 What was originally conceived as a narrow exception to the probable cause requirement has become a widely used tactic in proactive policing.247 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.248

As stop and frisk has spread as a mass practice, so have charges of racial profiling and discriminatory policing. Legal scholars have raised the question of whether the Supreme Court should revisit the Terry decision.249 Police departments in New York, Philadelphia, and now Chicago have been sued over the disproportionate racial impact of pedestrian stops.250 Newark, Seattle, Oakland, and Los Angeles have

---

245 But see Tom Tyler et al., 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 INST. 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).

246 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.


248 Harris, supra note 247.


250 Floyd v. City of New York. 959 F. Supp.2d. 540 (S.D.N.Y. 2013); Bailey v. City of Philadelphia, 374 F. App’x 305 (3d Cir. 2010); Smith v. Chicago, 15 CV 3467, 2015 WL 6859299 (N.D. Ill. Nov. 9, 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
had their pedestrian stops policies and data reviewed and criticized by the DOJ.\footnote{ALCU OF ILL., Stop and Frisk in Other Cities, http://www.aclu-il.org/stop-and-frisk-in-other-cities/ [https://perma.cc/ZF7J-86YT].} And the communities that are most impacted by stop and frisk have taken to the streets to protest against the practice.\footnote{See, e.g., MORRIS JUSTICE, STOP AND FRISK/BROKEN WINDOWS, http://morrisjustice.org/stop-and-friskbroken-windows [https://perma.cc/3RYF-U2CH]; SENTENCING PROJECT, BLACK LIVES MATTER: ELIMINATING RACIAL INEQUALITY IN THE CRIMINAL JUSTICE SYSTEM (Oct. 5, 2015), http://sentencingproject.org/doc/publications/rd_Black_Lives_Matter.pdf [https://perma.cc/6AC5-LFSS]; WE CHARGE GENOCIDE, http://wechargegenocide.org/; LEADERS OF A BEAUTIFUL STRUGGLE, http://lbabaltimore.com/; PROJECT SOUTH, http://projectsouth.org [https://perma.cc/6NQ6-EGFJ]; All of Us or None, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, http://www.prisonerswithchildren.org/tour-projects/all-of-us-or-none/ [https://perma.cc/2643-BZAH]; see generally FUNDERS FOR JUSTICE, http://fundersforjustice.org/organizations/ [https://perma.cc/SM2M-RZ2N].} These critiques have been met with arguments that stop and frisk is an effective crime-fighting strategy.\footnote{Hutchins, supra note 247, 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, N.Y. POST (Aug. 13, 2013), http://nypost.com/2013/08/13/frisks-save-lives-2/ [https://perma.cc/7L5U-3CH6] (arguing that index crimes in New York City decreased by seventy-five percent since the NYPD began using stop and frisk).} Police stops and searches have indisputably led to the discovery of contraband or evidence of criminal activity. Even though the rates at which these stops yield an arrest or contraband are low (in New York, less than ten percent),\footnote{E.g., David Weisburd et al., Is Problem-Oriented Policing Effective in Reducing Crime and Disorder?, 9 CRIMINOLOGY & PUB. POL’Y 139, 142–43 (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 LOY. U. CHI. 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 146 (2011).} basic math dictates that the more people police stop and search, the more illegal activity they will uncover. However, the research in support of arguments for the effectiveness of stop-and-frisk is anything but conclusive.\footnote{New York Police Commissioner William Bratton, as well as his predecessor Ray Kelly, have ardently supported the practice as an essential crime fighting tool. Harris, supra note 247, 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, N.Y. POST (Aug. 13, 2013), http://nypost.com/2013/08/13/frisks-save-lives-2/ [https://perma.cc/7L5U-3CH6] (arguing that index crimes in New York City decreased by seventy-five percent since the NYPD began using stop and frisk).} When police are busy stopping and searching thousands
of young people, they are not investigating crimes or the sources of guns and drugs, much less engaging in the kinds of work that builds constructive relations with Black teens. 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 seven-fold between 2002 and 2011, shootings actually increased four percent from 2002 to 2011.256 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.257 Similarly, as stop-and-frisks shot up in Chicago, police seized fewer guns and solved fewer murders.258 Ironically, gun violence increased with the rise of police stops, after having declined for ten straight years before police leadership in Chicago decided to engage in mass stops in Black neighborhoods.259

Moreover, stop-and-frisk advocates have failed to reckon with the serious human harms that we documented in the Youth/Police Project—the injury to our children’s self-esteem; the loss of their freedom to explore the world at a critical stage of their development; their alienation from civil authority.260 How does the calculus shift when we account for these harms?

Equally important, supporters of stop-and-frisk have neglected the impact of Black youths’ alienation on law enforcement’s ability to solve crime—kids’ reluctance to call police when they are in trouble, report crime, or cooperate with police—as well as the consequences that flow from their decisions to seek assistance or retribution outside the law as a result of their distrust of police.261 Social psychologist Tom Tyler


257 Id.


259 Id.

260 Consider the voices of the children with whom we spoke: “They make you feel less of a person.” Interview with Jamari, Youth/Police Project, in Chi., Ill. (May 3, 2013). “It felt like I was a nobody.” Interview with Christopher, Youth/Police Project, in Chi., Ill. (May 3, 2013). “It made me feel small . . . I’m almost a man, but [being stopped] made me feel less than a man.” Id.

261 Just as Black high school students told us that they would not call the police when in need, a recent poll conducted by the New York Times found that more than fifty percent of people who live in Black and Latino neighborhoods on Chicago’s South and West Sides believe that calling police “will make the situation worse or will make no difference.” Monica Davey, A Weekend in Chicago: Where Gunfire Is a Terrifying Norm, N.Y. TIMES (June 4, 2016), http://www.nytimes.com/interactive/2016/06/04/us/chicago-shootings.html?emc=eta1&_r=0 [https://perma.cc/K766-SRZQ]. Irrespective of the reasons for the distrust, the reality that the majority of Black high
found on the basis of 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."262 Recall Aniya: "If I was ever to get into something, the police would be the last people I'd call."263

Some stop-and-frisk advocates, including former Chicago Police Superintendent Garry McCarthy, argue that “selling the stop,” by treating the young people stopped more respectfully, will increase confidence in the police.264 Treating our children respectfully is no doubt good and indeed essential to improving youth/police relations,265 but it does not change the essence of the harm. No matter how respectful officers are, it does not alter the unmistakable message a student receives when stopped by police—the message that police think that he looks like a criminal. That message is intended. Officers are not even allowed to stop the student without a reasonable belief that he has committed a crime.266 And officers cannot search him absent a reasonable belief that he is armed and dangerous.267 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.268

As long as police deploy stop-and-frisk only in Black and Brown neighborhoods, and predominantly on Black and Brown people, kids will continue to experience these stops as unjust.269 270

school students distrust the police is a distressing and powerful indication of the need for change.

262 Tom Tyler, et al., The Consequences of Being an Object of Suspicion: Potential Pitfalls of Proactive Police Contact, 12 J. EMPIR. LEGAL STUD. 602, 605 (Dec. 2015) (arguing that ironically, "the activities the police have been engaged in to proactively prevent crime are antithetical to the goal of building police legitimacy").


264 Garry McCarthy, Using Stop and Search Powers Responsibly, The Law Enforcement Executive's Perspective, in KEY ISSUES IN THE POLICE USE OF PEDESTRIAN STOPS AND SEARCHES, (Nancy LaVigne, Pamela Lachman, Andrea Matthews & S. Rebecca Neusteter, eds., 2012), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412647-Key-Issues-in-the-Police-Use-of-Pedestrian-Stops-and-Searches.PDF [https://perma.cc/J3FL-3UGM] (arguing that the officer's "selling of the stop . . . is the most important determinant in whether the pedestrian and bystanders will believe the stop was legitimate").

265 See Recommendation No. 17, infra notes 307–314 and accompanying text.

266 Terry, 392 U.S. at 21.

267 Id. at 27.

268 Notwithstanding former Superintendent McCarthy's public advocacy for police to "sell" their stops, the overwhelming majority of Chicago high school students describe their stops by police as far from courteous or respectful of their dignity.

269 Black high school students' experience of this reality has been borne out by study after study that has shown that African Americans are stopped and searched at far greater rates than
2. De-escalation and youth/police training—youth as a special population.

**Recommendation No. 12:** Train officers on de-escalation and implement de-escalation as a matter of policy on use-of-force.

Another way for police officers to “quit it” is to stop escalating their encounters with Black youth. Even after minimizing unnecessary negative encounters, police and youth will still engage, and the reality is that some of those encounters will be coercive. Popular command and control policies provide few options when kids challenge an officer’s authority.\(^{271}\) Commands often prove ineffective, particularly when given to an adolescent in turmoil or crisis, causing officers to ratchet up their use of force.

The Presidential Task Force’s recommendation to conduct annual use of force training that includes de-escalation techniques is

---

\(^{270}\) 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 Robert Stanton, *Video Shows that Traffic Stop of Woman Who Died in Texas Jail Escalated Quickly*, REUTERS (July 22, 2015), http://www.reuters.com/article/2015/07/22/us-usa-texas-death-idUSKCN0PV1XM20150722 [https://perma.cc/9DCR-6J6S]; Williams, *supra* note 140; Matt Mencarini, *Experts, Like Community, Divided on Guilford Shooting*, LANSING ST. J. (Oct. 26, 2015), http://www.lansingstatejournal.com/story/news/local/2015/10/22/experts-like-community-divided-guilford-shooting/73985862/ [https://perma.cc/9AF9-JDMD]. 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. United States, 517 U.S. 806, 812–19 (1996). See, e.g., Anthony Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 978–83 (1999); David Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 274 (1997).

\(^{271}\) Christy Lopez, *Disorderly (Mis)conduct: The Problem with "Contempt of Cop" Arrests*, AM. CONST. SOC’Y FOR L. & POL’Y (2010) (“[A]n individual being arrested after responding obstreperously to perceived police misconduct—is one that plays out routinely across the United States.”).
particularly relevant to youth/police encounters.\textsuperscript{272} All too often, teens describe police encounters in which perceived slights or challenges to police authority ramp up a “routine stop” into something far more dramatic.\textsuperscript{273} 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, an encounter between a Black child and the police 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 often not without blame (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.\textsuperscript{274}

Recommendation No. 13: Train officers about adolescent development and procedures for interacting with youth.

\textsuperscript{272} President's Task Force, supra note 146, at 20–21. The Police Executive Research Forum has proposed that all law enforcement agencies adopt de-escalation as formal agency policy. Police Exec. Research Forum, Use of Force: Taking Policing to a Higher Standard, PERF 34 (Jan. 20, 2016), http://www.policeforum.org/assets/30%20guiding%20principles.pdf [https://perma.cc/2S24-3LRJ] (“The sanctity of human life should be at the heart of everything an agency does.”). Law 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 et al., A Better Standard for the Use of Deadly Force, N.Y. TIMES (Jan. 1, 2016), http://www.nytimes.com/2016/01/01/opinion/a-better-standard-for-the-use-of-deadly-force.html?_r=0 [https://perma.cc/ZYVY-PV4N] (arguing that the reasonableness standard has facilitated too many unnecessary police shootings, especially of African Americans, because “[j]individuals 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 EXEC. RESEARCH FORUM (Aug. 2015), http://www.policeforum.org/assets/reengineeringtraining1.pdf [https://perma.cc/LT47-7N3G] (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).

\textsuperscript{273} 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 Stanton, supra note 271 (includes link to video that provides a record of the encounter).

\textsuperscript{274} Testing of local models can help develop national best practices on de-escalation. The Seattle Police Department’s de-escalation policies and training, which it implemented after the DOJ found a pattern of excessive force in the SPD, serves as a good model for other agencies. Timothy Williams, Long Taught to Use Force, Police Warily Learn to De-escalate, N.Y. TIMES (June 27, 2015), http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html [https://perma.cc/W6C6-MAQV].
To be successful, de-escalation strategies must also be informed by knowledge about adolescent development. We observed how developmental issues play out on a daily basis when kids interact with police officers, and how a teen’s behavior and the officer’s interpretation of that behavior can transform a routine stop into a tragic encounter in a single instant. One of the recurrent themes that emerged in our work at Hyde Park Academy was the truism, “They’re just kids.” We are constantly reminded of what every parent and adolescent psychologist knows all too well: kids are different.\textsuperscript{275} Their brains and identities are still developing, and adolescence can bring dramatic mood and personality swings as kids figure out who they are and where they fit into the world.\textsuperscript{276} Conflict and emotional turmoil are the norms in most households with teens.\textsuperscript{277}

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.\textsuperscript{278} When we ask high school students to work through their encounters with police, they gain insight into how their attitude, actions, and behavior affect police. As they role-play—and reflect on their encounters—kids begin to see those encounters through the eyes of police officers. For example, they learned how a police 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.

\textsuperscript{275} Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012).
\textsuperscript{278} Lisa H. Thurau, Rethinking How We Police Youth: Incorporating Knowledge of Adolescence into Policing Teens, 29 CHILDREN’S LEGAL RTS J. 30 (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), http://strategiesforyouth.org/sfysite/wp-content/uploads/2013/03/SFYReport_02-2013_rev.pdf [https://perma.cc/7BWV-XC2T] (“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.”).
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 their preparation prevented their encounters with the police 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 community-police relations.

3. Implicit bias.

**Recommendation No. 14: Train officers on implicit and unconscious racial bias.**

We cannot address racism without talking about race. Making police officers aware of their biases can serve as an important self-check and generate a more empathic understanding of the experiences of Black youth with police.\(^{279}\) 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.”\(^{280}\) 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.\(^{281}\) 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.\(^{282}\) The officer’s perceptions affect his 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


\(^{281}\) Id. (finding that the “mere presence of a Black man, for instance, can trigger thoughts that he is violent and criminal”).

\(^{282}\) Geoffrey Alpert et al., *Interactive Police-Citizen Encounters that Result in Force*, 7 POLICE Q. 475, 484 (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).
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 or woman sees the police.

A number of law enforcement agencies have begun training officers on implicit bias and have been pleased with the results. Professor Eberhardt is developing a series of tools to measure the effectiveness of such training in Oakland, California, that can be adapted to other jurisdictions.

4. Racial impact statements.

Recommendation No. 15: Publish statements on projected racial impact, when evaluating policing policies and practices.

African Americans have borne a disproportionate share of the costs associated with many of our policing and criminal justice policies. 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 should produce similar statements before implementing new crime strategies.

---

283 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, U. of Chi. Law Sch. (Apr. 24, 2015), http://invisible.institute/youth-police-conference/panels [https://perma.cc/P85X-HQP3]. Las Vegas has also experienced success with this training. See also 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/ [https://perma.cc/SSM5-HTTH] (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 person 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."). 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."). 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.

284 Testimony of Jennifer Eberhardt, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 10–11 (Jan. 13, 2015) (training will include review of police/citizen interactions recorded on officer body cameras). 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 & Hazel Rose Markus, Seven Ways to Mitigate Racial Bias (Stanford Univ. 2015) (on file with authors).

and invite public conversation and feedback on the potential racial impact of those strategies.\textsuperscript{286} By making potential harms visible, we ensure that if we choose practices that disproportionately burden Black youth, we will have done so with our eyes open. We cannot pretend not to know about the impact of our decisions.\textsuperscript{287}

D. Share the Power

\textit{Recommendation No. 16: Implement community-driven policing, in which the police are a part of and are accountable to the community.}

If the central theme articulated by the high school students with whom we work is that “the police have all the power,” the obvious remedy is to redistribute power and develop a relationship built on a new reality of shared power.

We strongly support former Seattle Police Chief Norm Stamper’s call for a “community-driven system of policing,” in which police operate in full partnership with the citizenry.\textsuperscript{288} Police departments have deployed the term “community policing” so loosely that it has been rendered essentially meaningless. It is often invoked in connection with various programs designed to improve community relations but with little regard for the distribution of power between police and community.\textsuperscript{289} Real community policing, however, is based on shared power and a mindset in which police officers see themselves as part of and accountable to the communities they serve. Chief Stamper explained: “Too many police agencies claim to operate in accordance with the values and principles of ‘community policing,’ when in reality,

\begin{footnotesize}
\footnotesize
\begin{enumerate}
\item For example, there is a burgeoning movement to dramatically enhance the punishments for individuals found in possession of illegal guns. \textit{See, e.g., Pack a Gun, Go to Prison}, Chi. Trib. (Feb. 12, 2013), http://articles.chicagotribune.com/2013-02-12/opinion/ct-edit-guns-20130212_1-gun-crime-illegal-guns-project-safe-neighborhoods [https://perma.cc/6QFB-R3HY]. What are the likely race and class effects if this becomes our newest war? \textit{See Benjamin Levin, Guns and Drugs, 84 Fordham L.Rev. 2173} (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, \textit{Talk in Chicago of Increasing Mandatory Minimum Sentences for Gun Possession}, Sentencing Law & Pol'y (Feb. 11, 2013), http://sentencing.typepad.com/sentencing_law_and_policy/2013/02/talk-in-chicago-of-increasing-mandatory-minimum-sentences-for-gun-possession.html [https://perma.cc/XA2P-KXFQ] (observing that enhancing prosecutorial discretion via mandatory minimums tends to increase sentencing disparities).
\item NORM STAMPER, \textit{TO PROTECT AND SERVE: HOW TO FIX AMERICA’S POLICE} 14 (2016).
\item Id.
\end{enumerate}
\end{footnotesize}
their operations remain under the exclusive control of the local agency. That’s not community policing.’’

Full partnership means full partnership. It means listening to community members in developing public safety priorities. It means establishing community oversight over police conduct. It means partnering with community in establishing police policy and practice. It means elevating problem-solving over arrests. In the departments that embrace community-driven policing, these functions become the bases for officer hiring, training, and evaluations. They recruit and hire officers with appropriate skillsets and orientations toward mediating conflict, de-escalating tense situations, and building relationships with the communities served by the department. They train their officers to treat people with dignity. And they evaluate their officers based on their interactions with the public, problem-solving and de-escalation success, and engagement with young people and other community members.

Transparency, accountability, and equal treatment—the principles we have advocate in this paper—are essential components. When we question high school students about what they would like from police, they typically offer some variation of “do your job.” While the kids’ blunt assessment may appear overly simplistic, it would be nothing short of transformative if their communities experienced the kind of policing taken for granted in many White, privileged communities, where the presence of police is a reassuring aspect of the community, where expectations are that police will come when called, and that if an officer steps out of line, he or she will be punished. This is not a pipe dream. Police departments around the United States operate within this model every day.

Richmond, California: A Local Example of Community-Driven Policing

290 Id.

291 By empowering 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. See discussion of Cincinnati example supra Section IV.A. The Seattle police reform process also serves as a good example of a community/police partnership. After a series of civil rights violations that fractured community relations, Seattle in 2012 established the Community Police Commission, which gives community representatives and rank-and-file officers equal voice in police policymaking. Samuel Walker, How Seattle Bridged the Community-Police Divide, CRIME REPORT (Aug. 27, 2015), http://www.thecrimereport.org/viewpoints/2015-08-how-seattle-bridged-the-community-police-divide [https://perma.cc/Q6GZ-ETMX]. Reforms in Cincinnati and Seattle cohere to the national recommendations of the President’s Task Force that members of the public and police officers participate in developing police policy and practice. PRESIDENT’S TASK FORCE, supra note 146, at 13–14, 20.
In 2005, when Chris Magnus left Fargo, North Dakota, as police chief to lead the police department in Richmond, California, Fargo and Richmond represented different worlds to people around the country. Fargo, the setting of the famous Coen Brothers movie, was a nearly ninety-five percent White city of approximately 100,000 people in the Great Plains with crime rates far below the national average, and was considered to be one of the safest cities in the U.S.292 Richmond, a city of about 110,000 people, just east of Oakland, on the other hand, was known as one of the nation's most violent cities.293 There was a long history of tense relations between Richmond's predominantly Black and Latino community and the police.294 And the Department had low clearance rates—it was ineffective in solving violent crime. No one trusted the police.295

Notwithstanding the differences between the two cities, Magnus adapted the same community-driven policing model he had implemented in Fargo to Richmond.296 The first thing he did was to “quit it.” He eliminated Richmond’s “street teams” units, which had the reputation of being the most aggressive and corrupt in the city.297 Those 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.298 Officers were trained not just to talk with residents, but also to listen to them—to learn about what residents most wanted from


295 Id.

296 Finz, supra note 292.


298 Id.
the police and to put community priorities into practice. He assigned more experienced officers to neighborhoods with higher crime. Magnus also kept officers in the same neighborhoods for sustained 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.299

Magnus did not simply preach problem-solving over maximizing the number of arrests. He made it the centerpiece of officer performance evaluations, thereby engendering a problem-solving ethos within the institution. Instead of evaluating officers based on the quantity of arrests, performance ratings were tied to officer success in community engagement and relationship building. Officers received recognition for resolving situations without the need for arrest. They were rewarded for community involvement and efforts to build relations, such as talking with students in schools and meeting with people at local churches, businesses, and community organizations. When evaluating arrests, the Richmond Police Department prioritized those that flow from solving violent crime, which tend to require more investigative police work and relationship-building than simply rounding up a bunch of teenagers on low level drug offenses. Similarly, Richmond trained its officers in community-driven policing principles, beginning with the fair and equal treatment of all residents,300 and taught its officers to recognize implicit biases that have resulted in unequal treatment of Black and Brown residents.301

True to the first principles of community-driven policing, Magnus worked to make the police accountable to the community. Residents have seen that the Department does not tolerate police abuse. Officers receive extensive practical situation-based training to ensure that deadly force is used only as a last resort.302 Adherence to the code of silence will end your career as a police officer in Richmond.303

299 Paul Elias, Northern California Chief’s New Approach Revitalizes Force, N.Y. TIMES (Feb. 1, 2015), 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.”).

300 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 & Frank Straub, How to Restore Trust in the Police, CRIME REPORT (Sept. 1, 2015), http://www.thecrimereport.org/viewpoints/2015-08-how-to-restore-trust-in-the-police [https://perma.cc/Q889-P8R9].

301 Eberhardt et al., supra note 284.

302 Robert Rogers & David DeBolt, Use of Deadly Force by Police Disappears on Richmond Streets, CONTRA COSTA TIMES (Sept. 6, 2014), http://www.eastbaytimes.com/news/ci_26482775/use-
The results: when Magnus left Richmond to become the Chief in Tucson, Arizona, in late 2015, police violence and complaints were at all-time lows. No one had been killed by a Richmond Police Officer in more than eight years. Community trust in police had dramatically increased. Residents were talking with police, engaging them, reporting crime, and stepping up as witnesses. Richmond police had never been more effective. Both violent and property crime were at historic lows. And there were fewer and fewer unsolved murders.

Recommendation No. 17: Treat people fairly and respectfully in every encounter. (But don’t forget about police accountability.)

The corollary to the principle that the police should “quit it”—stop treating Black children unfairly—is the affirmative commitment to fair and equal treatment. These are core principles of procedural justice championed by Tom Tyler and Tracey Meares that form the first pillar of the President’s Task Force. Procedural justice is a fancy way of saying that police should treat people in ways that they will perceive as fair and respectful.

While this sounds simple, it requires a fundamental change of mindset in urban policing. Most police departments still train their recruits in a military model designed to prepare them for combat.

303 Magnus, supra note 297.
304 Rogers & DeBolt, supra note 302.
305 Id.
306 Id. When Magnus left to become the police chief in Tucson, Arizona, 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.” 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-costatimes-editorial-chris-magnus-has-been [https://perma.cc/RC9-PK9X]; see also Katherine Wei, Departing Police Chief Built Richmond Legacy on Trust, RICHMOND CONFIDENTIAL (Dec. 8, 2015), https://richmondconfidential.org/2015/12/08/chris-magnus-the-man-that-changed-richmond/ [https://perma.cc/5V8B-W5XZ] (describing Magnus’ legacy, goodwill, and “remarkable record of achievement” in Richmond).
307 PRESIDENT’S TASK FORCE, supra note 146, at 10; Meares & Neyroud, supra note 186; Tyler, supra note 186.
308 Meares & Neyroud, supra note 186, 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).
309 Brian Reaves, State and Local Law Enforcement Training Academies, 2006, BUREAU OF JUST. STATISTICS (Apr. 14, 2009), http://www.bjs.gov/content/pub/pdf/sleeta06.pdf [https://perma.cc/GWJ9-6T93]. The combat-oriented approach is fundamentally inconsistent with community policing models advocated by the DOJ. Community Policing Defined, OFFICE OF CMTY.
Combat is not about fairness. It’s about conquering and controlling one’s enemies. Police command. Subjects comply. If subjects resist, police exert the minimum force necessary to achieve compliance, scaling up until the mission is accomplished. This mindset, in which police view young Black people as potential criminals subject to their control, is evident in nearly every interaction that the kids described to us. In the students’ stories and role-plays, police officers’ core message, conveyed in their words, tone, and body language, is that they are in charge. The police are “not to be messed with.” We saw how this mindset alienated students, led them to believe that the police are unfair, and limited possibilities for building positive relations.

We need to teach officers to stop looking at every Black child as though he or she is a potential enemy or threat. We instead need to train them 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 teenagers as their children, the more effective they will be.

Tracey Meares and Tom Tyler’s research show that when young people feel that they are treated fairly and respectfully, they are far more likely to view the police as legitimate. 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 the police in investigations.

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. In contrast, 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 doing something, we get much less resistance. . . . If we just started to treat people with dignity and respect, things would go much better.” Williams, supra note 274.

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).

Police legitimacy improves the effectiveness of police in addressing crime. It makes us safer.

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. Without accountability, the police will not be seen as fair, legitimate, or just. No doubt positive encounters matter. But when the police department protects abusive officers—when kids see the same officers repeatedly harass their neighbors without fear of consequence—they become the face of the department to young people, not the civil and conscientious officers.

When young people and their families see the police department’s machinery of accountability work the way it is supposed to work, confidence in police grows. With that trust comes cooperation and assistance, more effective police departments, and ultimately greater safety.  

V. CONCLUSION

We return in conclusion to our point of departure: we have an historic opportunity to implement reforms that, taken together, will carry us toward making good as a society on the promise of equal treatment under law for all of our children. The conditions of unequal justice experienced by the young people with whom we work should be offensive to any fair-minded person. The challenge we face is to push past the civic demoralization and moral paralysis that so often overcome us when we are forced to confront the foundational nature of racism in American life. It is to find the moral clarity and political will to address those conditions—something that will require our sustained commitment over time.

Throughout this paper, we have stressed the critical importance of acknowledging the realities. Such acknowledgment is a necessary condition for realizing the full potential of this historic moment. For us, the practice of listening hard to those most affected by police abuse and impunity has yielded unexpected gifts—above all, a sense of possibility that real and enduring change is within reach.

314 A guardian, community-oriented mindset will be rendered ineffective if it is consigned only to individual units within a 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?
Young people have shown us the way. Now it is up to each of us to join in the effort.
Recommendation No. 1: Acknowledge the reality of experience of Black high school students with respect to their encounters with the police.

Recommendation No. 2: Share information with the public within twelve hours of any police shooting or major incident involving alleged misconduct. In most cases, any video of these incidents should be released within twenty-four to forty-eight hours. Such video should always be released within fourteen days.

Recommendation No. 3: 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 incorporate demographic data about the subjects of those incidents.

Recommendation No. 4: Implement credible systems for investigating complaints of abuse.

Recommendation No. 5: Use “pattern evidence” to investigate and root out police misconduct.

Recommendation No. 6: Acknowledge the police code of silence.

Recommendation No. 7: Conduct rigorous training on police ethics in the academy and in service, with a special emphasis on the code of silence.

Recommendation No. 8: Protect and honor officers who expose abuse of police power.

Recommendation No. 9: Establish and strictly enforce written policies that require officers to report serious police abuse. Officers who refuse to report, or lie should be fired.

Recommendation No. 10: Use video to enhance police training, supervision, and accountability, but use it wisely and not exclusively.

Recommendation No. 11: Minimize unnecessary negative police/citizen encounters, and re-examine stop-and-frisk.
Recommendation No. 12: Train officers on de-escalation and implement de-escalation as a matter of policy on use-of-force.

Recommendation No. 13: Train officers about adolescent development and procedures for interacting with youth.

Recommendation No. 14: Train officers on implicit and unconscious racial bias.

Recommendation No. 15: Publish statements on projected racial impact, when evaluating policing policies and practices.

Recommendation No. 16: Implement community-driven policing, in which the police are a part of and are accountable to the community.