

# REFORMING POLICING

*andré douglas pond cummings\**

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*"Dear Mr. Policeman, Ay, am I wrong, ain't you supposed to keep the peace, man?"*<sup>1</sup>

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1. J. Cole, *Problems*, YOUTUBE, <https://www.youtube.com/watch?v=DXhcEmqriC8> (last visited Mar. 24, 2018). In a cut that was originally to appear on Cole's debut album, *Cole World: The Sideline Story*, but was leaked prior to release, the following verse appears:

Hey, Dear Mr. Policeman;  
Ay am I wrong, ain't you suppose to keep the peace man?;  
I could've swore that I was driving pretty peaceful;  
So why the hell is you pulling over me for?;  
Is it this black Mercedes?; Oh, now I get it, I get it, I get it;  
Or 'cause I'm Black, hmmm, maybe? Yeah;  
Hey, tell me why my hands start sweating;  
And I hold my breath every time that you get behind me;  
I turn my music down so you won't hear a sound;  
Man, I'm nervous like I got a couple pounds on me;  
You pulled me over, you frown on me;  
With your flashlight, tell me what do you see?;  
Thug niggas, drug dealers, it's a trip;  
Every nigga in this whip gotta motherfucking college degree.

*Id.*

## INTRODUCTION

Law enforcement killing of unarmed black men and police brutality visited upon minority citizens continues to confound the United States.<sup>2</sup> Despite protests,<sup>3</sup> clarion calls for

2. See andré douglas pond cummings, “*Lord Forgive Me, But He Tried to Kill Me*”: *Proposing Solutions to the United States’ Most Vexing Racial Challenges*, 23 WASH. & LEE J. C.R. & SOC. JUST. 3, 8–22 (2016) [hereinafter *Lord Forgive Me*] (describing police killing of unarmed black men, mass incarceration, and violent homicide deaths in the African American community as the three most pressing racial tragedies confronting U.S. politicians, citizens, law enforcement agencies, officers, policymakers, and lawyers); see also *Taking Cover: How Cops Escape Discipline For Shootings In Suburban Chicago*, WBEZ, <https://interactive.wbez.org/taking-cover> (last visited Mar. 24, 2018) (chronicling investigative reports that uncover suburban police forces outside Chicago, IL engaging in common citizen shootings where officer discipline is non-existent, including the following stories: “113 Suburban Cop Shootings, Zero Discipline,” “Deadly Force Policies Ignored in Suburban Chicago,” and “The Revolving Door: Troubled Officers Get Frequent Career Chances”).

3. See, e.g., James Cullen, *It’s Not About the Flag or the Anthem. It’s About Justice*, BRENNAN CTR. FOR JUST. (Nov. 27, 2017), <https://brennancenter.org/blog/guide-what-nfl-players-are-fighting-protests-and-why> (“But these protests have never been about disrespect. Players have always been clear about their goal: to draw attention to and change systemic injustices that plague America’s criminal justice system.”); see also Eric Reid, *Why Colin Kaepernick and I Decided to Take a Knee*, N.Y. TIMES (Sept. 25, 2017), <https://www.nytimes.com/2017/09/25/opinion/colin-kaepernick-football-protests.html>. Eric Reid, one of the first NFL athletes to join Colin Kaepernick in protesting during the national anthem, wrote about his motivations in *The New York Times*:

In early 2016, I began paying attention to reports about the incredible number of unarmed black people being killed by the police. The posts on social media deeply disturbed me, but one in particular brought me to tears: the killing of Alton Sterling in my hometown of Baton Rouge, La. This could have happened to any of my family members who still live in the area. I felt furious, hurt and hopeless. I wanted to do something, but didn’t know what or how to do it. All I knew for sure is that I wanted to be as respectful as possible.

A few weeks later, during preseason, my teammate Colin Kaepernick chose to sit on the bench during the national anthem to protest police brutality . . . .

. . . .

I approached Colin the Saturday before our next game to discuss how I could get involved with the cause but also how we could make a more powerful and positive impact on the social justice movement. We spoke at length about many of the issues that face our community, including systemic oppression against people of color, police brutality and the criminal justice system. We also discussed how we could use our platform, provided to us by being professional athletes in the N.F.L., to speak for those that are voiceless.

. . . .

After hours of careful consideration . . . we came to the conclusion that

reform,<sup>4</sup> admitted training shortcomings and deficiencies among U.S. law enforcement officers,<sup>5</sup> conferences,<sup>6</sup> summits,<sup>7</sup> and movements to reform policing,<sup>8</sup> the solution to ending undisciplined police violence and the hostile killings of unarmed minority individuals at the hands of U.S. police seems to elude us. Why should this be? The United States is home to some of the most creative, innovative, pathmarking, and course-changing thinkers the world has ever known.<sup>9</sup> This challenge – police

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we should kneel, rather than sit, the next day during the anthem as a peaceful protest. We chose to kneel because it's a respectful gesture. I remember thinking that our posture was like a flag flown at half-mast to mark a tragedy.

*Id.*

4. See Mitch Smith, *Mayor of Chicago Announces Measures to Curb Use of Deadly Force by the Police*, N.Y. TIMES (Dec. 30, 2015), <https://www.nytimes.com/2015/12/31/us/mayor-rahm-emanuel-announces-measures-to-curb-use-of-deadly-force-by-chicago-police.html> (quoting Mayor Rahm Emanuel as stating that the trust between the city of Chicago and its police “has been frayed to the point where it is broken”); see also David Dishneau, *Baltimore Mayor Calls for Federal Investigation into Police*, NBC WASH. (May 6, 2015), <https://www.nbcwashington.com/news/local/Baltimore-mayor-to-Announce-DOJ-Partnership-302732701.html>.

5. See Casey Toner & Jared Rutecki, *Failed Oversight Follows Suburban Police Shootings*, WBEZ91.5CHI (Jan. 8, 2018), [interactive.wbez.org/taking-cover/oversight/](http://interactive.wbez.org/taking-cover/oversight/).

6. Drexel University’s Thomas R. Kline School of Law convened a 2017 conference entitled “Race & Policing: Defining the Problem and Developing Solutions,” held on October 20, 2017. This conference, sponsored by *Drexel Law Review*, brought scholars and activists from around the country together to engage in thoughtful debate about the problems that envelop policing minority communities. See dré cummings, *Race & Policing: Defining the Problem and Developing Solutions*, CORP. JUST. BLOG (Oct. 20, 2017), <http://corporatejusticeblog.blogspot.com/2017/10/race-policing-defining-problem-and.html>.

7. See generally *Use of Force Summit 2018*, USE FORCE SUMMIT, <https://useofforcesummit.com> (last visited Apr. 18, 2018) (“The Use of Force Summit focuses on identifying proper legal and operational standards for use of force incidents, including the development of standard police practices for the use of force and force related policies.”); see also Gary W. Sykes, *National Summit: Police Use of Force, A Dialogue on Less-Lethal Weapons and In-Custody Deaths*, INST. FOR L. ENFORCEMENT ADMIN. (2006), [https://www.cailaw.org/media/files/ILEA/Publications/National\\_Summit\\_Police\\_Use\\_Of\\_Force\\_Report06.pdf](https://www.cailaw.org/media/files/ILEA/Publications/National_Summit_Police_Use_Of_Force_Report06.pdf).

8. *Compare What We Believe*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/what-we-believe/> (last visited Mar. 26, 2018) (relating to the non-governmental activist group that promotes justice and equality for African Americans), with *Blue Lives Matter Mission and Values*, BLUE LIVES MATTER, [https://www.themaven.net/bluelivesmatter/pages/blue-lives-matter-mission-and-values-gw3sZ21MLkylZGU-\\_mlllg](https://www.themaven.net/bluelivesmatter/pages/blue-lives-matter-mission-and-values-gw3sZ21MLkylZGU-_mlllg) (last visited Mar. 26, 2018) (a pro-police movement that promotes the safety of police officials). See also *Our Mission*, LAW ENFORCEMENT LEADERS, <http://lawenforcementleaders.org/our-mission/> (last visited Apr. 18, 2018).

9. See *All Lives Have Equal Value*, BILL & MELINDA GATES FOUND., <https://www.gatesfoundation.org/> (last visited Mar. 26, 2018); see also Randall Lane, *The 50 Philanthropists Who Have Given Away the Most Money*, FORBES (Nov. 18, 2013), <https://www.forbes.com/sites/>

killing of unarmed minority citizens and law enforcement brutality – could be one that this nation can solve; that is, if there is a political and moral will to do so.<sup>10</sup>

This article proposes a radical restructuring of United States law enforcement policies, procedures, and applications in order to address this critical challenge. After comparing some of the nation's most innovative police reform efforts, this article will provide policymakers, legislators, officers, leaders, judges, and lawyers the most effective reform efforts and best thinking that have been implemented to date in connection with saving the lives of residents who face danger from those trained to protect and serve them. This article may serve as a signal to a potential sea change in failed police practices that have endured for decades in the United States.

This proposal unfolds as follows: Part I describes the historical evolution of policing practices in the United States, including the influence of slave catchers in the South during the slave trade and tracing back to the nation's founding. This historical analysis will demonstrate the deep-seated bigotry and race-hatred that influenced many early law enforcement practices throughout the nation. Part II reviews the historical racial difficulties and will reflect on how they manifest today, where policing in many departments still centers around controlling black and brown individuals. Part III then surveys some of the

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randalllane/2013/11/18/the-50-philanthropists-who-have-given-away-the-most-money/#206ce7f31f5a.

10. See Dan Balz & Scott Clement, *On Racial Issues, America is Divided Both Black and White and Red and Blue*, WASH. POST (Dec. 27, 2014), [https://www.washingtonpost.com/politics/on-racial-issues-america-is-divided-both-black-and-white-and-red-and-blue/2014/12/26/3d2964c8-8d12-11e4-a085-34e9b9f09a58\\_story.html?utm\\_term=.502d4387e5cf](https://www.washingtonpost.com/politics/on-racial-issues-america-is-divided-both-black-and-white-and-red-and-blue/2014/12/26/3d2964c8-8d12-11e4-a085-34e9b9f09a58_story.html?utm_term=.502d4387e5cf) ("Blacks and whites live in different worlds when it comes to perceptions of the criminal justice system and the role that police play in society. But divisions within the white community are almost as stark, with opinions heavily shaped by partisan identification and ideology . . ."); see also Emily Ekins, *Who Really Likes the Police? Older, Richer, White, Conservative Republicans.*, REASON (Oct. 24, 2014), <http://reason.com/poll/2014/10/24/who-really-likes-the-police-older-richer> ("Americans like the police, but older, more affluent, white, conservative Republicans *really* like the police . . . Fully 80 percent of white Americans have a positive view of the police, with 43 percent who are *very* favorable. However only 52 percent of black and Hispanic Americans share this favorable view, and only 2 in 10 have a strongly favorable opinion of the police. Forty-three percent of African-Americans and 46 percent of Latinos have an unfavorable view of the police, compared to 17 percent of Caucasians.").

most influential and innovative police reform efforts that have been undertaken by cities, municipalities, and states around the country, particularly those that are revolutionizing policing in a way that recognizes the historical racism and seeks to reform policing in a meaningful and human-centered way. Finally, Part IV recommends a battery of policies and reforms that may deeply influence the way policing is conducted currently and provide a better way forward. The Article ends with concluding thoughts.

#### I. HISTORICAL EVOLUTION OF POLICING IN THE UNITED STATES

Capturing runaway slaves and controlling the black male once freed is deeply embedded in the fabric of law enforcement agencies and the psyche of law enforcement officers across the United States.<sup>11</sup> As scholars recognize:

[T]he literature clearly establishes that a legally sanctioned law enforcement system existed in America . . . for the express purpose of controlling the slave population and protecting the interests

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11. See KATHERYN RUSSELL-BROWN, *THE COLOR OF CRIME* 32 (2d ed., 2008) (discussing how the representation of Blackness across society causes racial branding that has a direct effect on the criminal justice system, the end result being a racially skewed criminal justice system); see also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 4–8, 13 (2010) (discussing how the U.S. criminal justice system functions as a contemporary system of racial control by targeting black men through the War on Drugs and decimating communities of color); COMM. ON CAUSES & CONSEQUENCES OF HIGH RATES OF INCARCERATION, NAT'L RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 91 (J. Travis, B. Western & S. Redburn eds., 2014) (describing many features of the U.S. criminal justice system—including unwarranted disparities in imprisonment, individual bias and racial stereotypes, drug arrest practices and racial profiling—disproportionally affect Blacks); AMY FARRELL & DONNA M. BISHOP, *RACIAL DIVIDE: RACIAL AND ETHNIC BIAS IN THE CRIMINAL JUSTICE SYSTEM* 83–107 (Michael J. Lynch et al. eds., 2008); John S. Goldkamp, *Minorities as Victims of Police Shootings: Interpretations of Racial Disproportionality and Police Use of Deadly Force*, 2 *JUST. SYS. J.* 169, 169–73 (1976) (discussing the disproportionality of use of deadly force of white suspects vis-à-vis visible minorities).

While this article focuses on U.S. law enforcement's desire and need to control black male bodies, it is crucial to acknowledge here the concomitant focus of law enforcement on controlling and brutalizing black female bodies both historically and currently (as exemplified by the recent death of Sandra Bland and the police killings of Rekia Boyd and Miriam Carey, among so many others). See PATRISSE KHAN-CULLORS & asha bande, *WHEN THEY CALL YOU A TERRORIST: A BLACK LIVES MATTER MEMOIR* 186, 226–29 (2018).

of slave owners. The similarities between the slave patrols and modern American policing are too salient to dismiss or ignore. Hence, the slave patrol should be considered a forerunner of modern American law enforcement.<sup>12</sup>

Many police departments in the South began as slave patrols.<sup>13</sup> Virginia enacted more than 130 slave statutes, and the federal government enacted the Fugitive Slave Laws in 1793 and 1850, all in an effort to control black slaves.<sup>14</sup>

The essence of controlling black bodies was written into the nation's founding documents, including the Constitution, and has animated lawmakers' thinking and mythmaking since the early days of this nation.<sup>15</sup> "Black criminality is literally written into the American Constitution . . . ."<sup>16</sup> Article IV, Section 2 of the Constitution, commonly known as The Fugitive Slave Clause, unequivocally states:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.<sup>17</sup>

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12. VICTOR E. KAPPELER & LARRY K. GAINES, COMMUNITY POLICING: A CONTEMPORARY PERSPECTIVE 58–59 (2009) (citing a 2006 paper by Turner, Giacomassi & Vandiver).

13. *See id.*

14. *See id.* at 58.

15. *See* TA-NEHISI COATES, WE WERE EIGHT YEARS IN POWER: AN AMERICAN TRAGEDY 223–81 (2017) (chronicling with care the historical roots of mass incarceration, including the primary motivations that inspired slavery-era policing, which animates modern policing in the United States today). While not explicitly about policing, Coates' essay titled *The Black Family in the Age of Mass Incarceration*, provides a comprehensive and unflinching historical examination of the biases, discriminations, myths, fears, and outright hatred that has animated US policymakers and legislators against free blacks and other minorities for decades.

16. *See id.* at 242.

17. U.S. CONST. art. IV, § 2.

Thus, “[f]rom America’s very founding, the pursuit of the right to labor, and the right to live free of whipping and of the sale of one’s children, were verboten for blacks.”<sup>18</sup> Further, as a 1787 Constitutional Convention compromise allocating Congressional representation based on population determined, enslaved blacks were to be counted as three-fifths of a person for purposes of populace representation.<sup>19</sup> Article I, Section 2 of the Constitution states, “Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . excluding Indians not taxed, three fifths of all other Persons.”<sup>20</sup> The 1787 compromise was memorialized in the Constitution and continued until the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, thus cementing the less-than-a-whole-person categorization in the most important founding document.<sup>21</sup> The U.S. Constitution then, as written, dehumanizes blacks and entrenches their criminality for nothing more than simply insisting upon their right to be free from bondage.

Additionally, while white male slaveholders routinely raped and sexually assaulted their black female slaves, they concomitantly fretted, worried, and legislated that black males and slaves show no attention or intimacy toward white females.<sup>22</sup>

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18. See COATES, *supra* note 15, at 242.

19. See U.S. CONST. art. I, § 2, cl. 3.

20. *Id.*

21. See *The Three-Fifths Clause of the United States Constitution (1787)*, BLACKPAST.ORG, <http://www.blackpast.org/aah/three-fifths-clause-united-states-constitution-1787> (last visited Mar. 20, 2018) (“With the convention seemingly at an impasse Charles Pinckney proposed a compromise: ‘Three-fifths of the number of slaves in any particular state would be added to the total number of free white persons, including bond servants, but not Indians, to the estimated number of congressmen each state would send to the House of Representatives.’ The Pinckney compromise was not completely original. This ratio had already been established by the Congress which adopted the Articles of Confederation in 1781 as the basis for national taxation.”).

22. See COATES, *supra* note 15, at 242–47; see also Jennifer Latson, *How Emmett Till’s Murder Changed the World*, TIME (Aug. 28, 2015), <http://time.com/4008545/emmett-till-history/> (recounting the story of Emmett Till, including how he was murdered for whistling at a white woman).

Indeed, much of the control exhibited by white lawmakers toward black males, particularly after emancipation, was motivated by fear of black male sexuality toward white women and in large measure resulted in the nation's legacy of lynching, Jim Crow laws, and mass incarceration.<sup>23</sup> One 1860 report from *The New York Herald* reported that black males were particularly vicious and inclined to rape, stating, "When the lust comes over them they are worse than the wild beast of the forest."<sup>24</sup> The white male secretary of the Virginia Historical Society, Philip Alexander Bruce, is on record as stating that a black male's compulsion to assault white women came with a "malignant atrocity of detail that [has] no reflection in the whole extent of the natural history of the most bestial and ferocious animals."<sup>25</sup> The same brutality that attended the policing of runaway slaves and the same terrorization that attended the lynching of freed black males informs and inspires the United States' policing of black males and minority citizens today.<sup>26</sup>

The United Nations Working Group of Experts on People of African Descent, at the conclusion of its official visit to the United States in January 2016, recognized and acknowledged this connection when it wrote the following in its official report about the African American experience in the United States:

The colonial history, the legacy of enslavement, racial subordination and segregation, racial terrorism, and racial inequality in the US remains a serious challenge as there has been no real commitment to reparations and to truth and reconciliation for people of African descent. Despite substantial changes since the end of the enforcement

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23. See COATES, *supra* note 15, at 243–46 (citing nineteenth century white male secretary of the Virginia Historical Society Philip Alexander Bruce as stating: "There is something strangely alluring and seductive to [black men] in the appearance of a white woman"; and, "It moves them to gratify their lust at any cost and in spite of every obstacle.").

24. See *id.* at 244–45 (citing an 1860 edition of *The New York Herald*).

25. See COATES, *supra* note 15, at 245 (quoting nineteenth century white male secretary of the Virginia Historical Society, Philip Alexander Bruce).

26. See *supra* note 11.

of Jim Crow and the fight for civil rights, ideology ensuring the domination of one group over another, continues to negatively impact the civil, political, economic, social and cultural rights of African Americans today. The dangerous ideology of white supremacy inhibits social cohesion amongst the US population. Lynching was a form of racial terrorism that has contributed to a legacy of racial inequality that the US must address. Thousands of people of African descent were killed in violent public acts of racial control and domination and the perpetrators were never held accountable.<sup>27</sup>

The United Nations Working Group recognized as recently as 2016 that the historical oppression, terrorization, and discrimination visited upon black U.S. citizens has never been seriously addressed or remedied and this oppressive legacy is continued by police departments across the nation.<sup>28</sup> The Working Group found that “[c]ontemporary police killings and the trauma it creates are reminiscent of the racial terror lynching of the past. Impunity for state violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.”<sup>29</sup>

As policing has evolved as described above, from deep roots in slave patrols and lynching, then U.S. policing is culturally and historically infected with a sickness. Reforming policing that is infected will require recognition and acknowledgment of the anti-blackness that permeates policing today. The next Part will connect the roots of slave patrols and anti-black law enforcement with the current deluge of unarmed black men dying at the hands of law enforcement officers.

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27. *Statement to the Media by the United Nations' Working Group of Experts on People of African Descent, on the Conclusion of its Official Visit to USA, 19-29 January 2016*, U.N. HUM. RTS. OFF. OF HIGH COMMISSIONER (Jan. 29, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000>.

28. *See id.*

29. *Id.*

## II. CONNECTING HISTORY WITH CURRENT PRACTICES

The fascination with and intense desire to control the black male body continues today as police departments and law enforcement agencies across the United States follow this time-worn tradition of concomitant enthrallment coupled with brutal control.<sup>30</sup> The social order and coherence of U.S. history is anchored in controlling and brutalizing black bodies.<sup>31</sup> Anything that acts to reject or counter this anchoring factor is met with swift condemnation and repulsion.<sup>32</sup> The police killings of

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30. See Tryon P. Woods, “Sexual Poetic Justice”: Hip Hop, Antiracist Desire, and Legal Narratives, in *HIP HOP AND THE LAW* 125, 125–26 (Pamela Bridgewater, andré douglas pond cummings & Donald F. Tibbs eds., 2015) (describing the evolution of white fascination with controlling the black male body from slavery, through emancipation, lynching, and Jim Crow to modern-day policing).

31. See *id.* at 125.

32. See *id.* at 126. For Hollywood’s recent examination of law enforcement’s brutalization of black men, see *DETROIT* (Annapurna Pictures 2017) (memorializing the police torture and killing of three black teenagers, Aubrey Pollard (age nineteen), Fred Temple (age eighteen), and Carl Cooper (age seventeen), at the Algiers Motel during the Detroit Riots of 1967). For hip hop’s recent examination of law enforcement’s brutalization of black men, see The Game ft. Rick Ross, 2 Chainz, Diddy, Fabolous, Wale, DJ Khaled, Swizz Beatz, Yo Gotti, Curren\$y, Problem, King Pharaoh & TGT, *Don’t Shoot*, YOUTUBE, <https://www.youtube.com/watch?v=N-QWI-Iy1ns> (last visited Mar. 26, 2018). On *Don’t Shoot*, artists Fabolous, Yo Gotti, and Curren\$y memorialize Michael Brown as follows:

Fabolous: Yeah, I seen a lot of ice water tossed and I know it’s for a cause;  
 My only question is, what we doing for the loss;  
 Of Mike Brown?;  
 Cause right now, I challenge you to use your talents to;  
 Speak up, and don’t you ever let ‘em silence you;  
 ‘Cause action speaks louder than words, that’s what I heard;  
 Shot down with his hands up, that’s what occurred?;  
 Man that sound absurd;  
 Matter fact to me that sound like murder;  
 We want justice.

Yo Gotti: Ay yo Game, I had a crib out there;  
 I used to live out there;  
 So I know how niggas feel out there;  
 People stressing, protesting, unity is a blessing;  
 So it’s time we come together;  
 Use our voice as a weapon;  
 I am Michael Brown, ‘cause I stand for what he stand for;  
 News say we’re looting;  
 Paint pictures like we some animals;

Alton Sterling, Eric Garner, Oscar Grant, Walter Scott, Philando Castile, Tamir Rice, Freddie Gray, Michael Brown, Samuel Dubose, Brendan Glenn, and Laquan McDonald, among so many others not named, exemplify U.S. law enforcement's anti-black orientation and anchoring policy of brutal control of black men.<sup>33</sup>

The same attraction and anti-black desire that inspired the above quoted "bestial" comments from *The New York Herald* and Philip Alexander Bruce in the eighteenth century are directly paralleled in the modern-day police responses to twelve-

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On my NWA CMG;  
Holler'in' "Rest in peace Eazy and fuck the police."

Curren\$: I heard he surrendered but we all saw how they did him;  
Television broadcasts, a confused country;  
I'm a resident of a nation that don't want me;  
What's done is done the town erupts in fury;  
And I'm already hearing 'bout this lopsided jury;  
Three faces like his, the rest another story;  
A lot of motherfuckers need to act more worried.

Chorus: Time to take a stand and save our future;  
Like we all got shot, we all got shot;  
Throwing up our hands don't let them shoot us;  
'Cause we all we got, we all we got;  
God ain't put us on the Earth to get murdered, it's murder;  
God ain't put us on the Earth to get murdered, it's murder;  
Don't point your weapons at me.

*Id.*

33. See Daniel Funke & Tina Susman, *From Ferguson to Baton Rouge: Deaths of Black Men and Women at the Hands of Police*, L.A. TIMES (Jul. 12, 2016), <http://www.latimes.com/nation/la-na-police-deaths-20160707-snap-htmlstory.html> (describing the police killing of each of the unarmed black men named).

year-old black child Tamir Rice<sup>34</sup> and large black men Eric Garner<sup>35</sup> and Michael Brown.<sup>36</sup> That both a black child and black men are dead at the hands of modern police for playing with a toy gun in a park, selling loose cigarettes, and jaywalking, respectively, instructs as to the continuing fear, fascination, and anti-blackness that pervades current law enforcement officers and agencies in America.<sup>37</sup>

Tamir Rice was shot dead within two seconds of Police Officer Timothy Loehmann and his partner's police cruiser arriving onto the scene of the park where young Rice was playing.<sup>38</sup>

34. See Ashley Fantz, Steve Alasy & Catherine E. Shoichet, *Tamir Rice Shooting: No Charges for Officers*, CNN (Dec. 28, 2015), <https://www.cnn.com/2015/12/28/us/tamir-rice-shooting/index.html>; James Hill & Emily Shapiro, *Tamir Rice Case: Officer Says He 'Knew It Was a Gun' and Aimed for Weapon, According to Statement*, ABC NEWS (Dec. 1, 2015), <http://abcnews.go.com/US/tamir-rice-case-officer-knew-gun-aimed-weapon/story?id=35518961>.

35. See Melanie Eversley and Mike James, *No Charges in NYC Chokehold Death; Federal Inquiry Launched*, USA TODAY (Dec. 4, 2014), <https://www.usatoday.com/story/news/nation/2014/12/03/chokehold-grand-jury/19804577/>; Jeffery C. Mays, *3½ Years After Eric Garner's Death, Family Still Waits for Closure*, N.Y. TIMES (Feb. 25, 2018), <https://www.nytimes.com/2018/02/25/nyregion/eric-garner.html>.

36. See *infra* notes 46–47 and accompanying text.

37. See *supra* notes 33–35; see also Kendrick Lamar, *Good Man ft. Nas, Jadakiss, and Pusha T (DJ Forgotten Remix)*, YOUTUBE, <https://www.youtube.com/watch?v=mW5alppyLT0> (last visited Mar. 26, 2018). In this DJ Forgotten remix of *Good Man*, Nas raps the following:

If I can teach something so big, I hope somebody learn something from it;  
And give it back;  
The problem is getting worse; Ahmad in 1970s Johannesburg;  
Man it hurts to see a cop kill a black man;  
Alert, news flash, police shoot blacks, distort facts;  
. . . Unarmed men, murdered them; It's captured on cell phone video;  
And they still let 'em go;  
When will they stop killin' 'em? Ask 'em why is they killing for?;  
White man with a gun—apprehended, he's still alive;  
Black man with a gun—he has no chance to survive;  
They gonna shoot him dead as soon as they see the brown of his eyes;  
And they ask me why you ain't smiling Nas;  
'Cause I have a son and I die inside;  
When I gotta tell him what was told to me; "Can't play with your water  
gun son;  
'Cause the police see a seven-year old as a threat";  
They think it's right to kill a seven-year old on sight;  
'Cause he ain't white.

Kendrick Lamar, *supra* note 37.

38. *Tamir Rice: Police Release Video of 12-Year-Old's Fatal Shooting – Video*, GUARDIAN (Nov. 26, 2014), <https://www.theguardian.com/us-news/video/2014/nov/26/cleveland-video->

Killing a child exemplifies the fear of a black planet and anti-black orientation together with the well-known stereotype of white police officers mistaking young black children as much older.<sup>39</sup> Without driving onto the scene at a surveyable distance to assess the surroundings, the squad car arrived mere feet from the twelve-year-old, and Loehmann jumped out of his car, shooting the child dead within two seconds, no questions asked.<sup>40</sup> Fear, loathing, anti-blackness, and tradition likely clouded the mind of Loehmann as he killed a black child two seconds after arriving on the scene. Several experts later reported that Loehmann acted reasonably under the circumstances, and charges for murder or manslaughter were never brought against Loehmann.<sup>41</sup>

This killing of a child did not end Loehmann's career with the Cleveland Police Department. Rather, he was fired three years later after an investigation uncovered that he lied on his Cleveland Police Application regarding the circumstances under which he was previously terminated by the Independence Missouri Police Department.<sup>42</sup> As will be discussed in detail later, the circumstances of Loehmann killing Rice exemplifies two of the reform efforts that must be implemented by U.S. law enforcement agencies immediately. First, Loehmann was a Cleveland police officer when he killed Tamir Rice, even though he had been fired from the Missouri Police after being found "unfit to be a police officer."<sup>43</sup> Consequently, the practice of re-hiring failed police officers terminated from other police departments must end. Second, the standard for use of deadly force, under

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tamir-rice-shooting-police [hereinafter *Tamir Rice*].

39. See *Black Boys Viewed as Older, Less Innocent than Whites, Research Finds*, AM. PSYCHOL. ASS'N (Mar. 6, 2014), <http://www.apa.org/news/releases/2014/03/black-boys-older.aspx>.

40. See *Tamir Rice*, *supra* note 38.

41. See Nick Castele, *Officer Acted 'Reasonably' in Shooting of Tamir Rice, 2 Experts Say*, NPR (Oct. 12, 2015), <https://www.npr.org/2015/10/12/447911245/officer-acted-reasonably-in-shooting-of-tamir-rice-2-experts-say>.

42. See Colin Dwyer, *Officer Who Killed Tamir Rice Fired for Rule Violations on Job Application*, NPR (May 30, 2017), <https://www.npr.org/sections/thetwo-way/2017/05/30/530733542/officer-who-killed-tamir-rice-fired-for-rule-violations-on-job-application>.

43. See *id.*; see also *infra* Section IV.C.

which Loehmann was found to be acting reasonably, must be reformed.<sup>44</sup>

Unarmed Eric Garner was strangled to death by New York City police officer Daniel Pantaleo for allegedly selling loose cigarettes.<sup>45</sup> Unarmed Michael Brown was shot to death after being confronted by Ferguson police officer Darren Wilson for jaywalking.<sup>46</sup> The police killings of these two unarmed black men ended with no indictments or criminal prosecution for either officer as both were found to have been acting reasonably according to current police policy.<sup>47</sup> These two killings by police are emblematic of the social control and anti-black fascination that infuses U.S. police agencies.

Eric Garner was choked to death while muttering “I can’t breathe.”<sup>48</sup> Officer Pantaleo used an outlawed chokehold to attempt to control Garner, whose alleged crime was selling loose cigarettes on a street corner in New York City.<sup>49</sup> That Pantaleo would jump on Eric Garner’s back and literally choke him to death—in front of a crowd of New Yorkers and while being filmed by a cell phone camera—shows his desire to control an unarmed black man with brutality. Exacerbating the brutality of the killing is the fact that several witnesses made clear that moments before police approached him, Garner had broken up

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44. See *infra* Section IV.D.

45. David K. Li, *Eric Garner Chokehold Cop Ties the Knot*, N.Y. POST (June 19, 2017), <https://nypost.com/2017/06/19/eric-garner-chokehold-cop-ties-the-knot/> (detailing how Daniel Pantaleo continues to work for the New York Police Department despite killing Eric Garner and how the city of New York settled a wrongful death claim for \$5.9 million).

46. See Jake Halpern, *The Cop*, NEW YORKER (Aug. 10 & 17, 2015), <https://www.newyorker.com/magazine/2015/08/10/the-cop> (describing the background of Darren Wilson, the officer who killed Michael Brown).

47. See Elliot Hannon, *Darren Wilson Will Not Be Indicted for Killing Michael Brown*, SLATE (Nov. 24, 2014), [http://www.slate.com/blogs/the\\_slatest/2014/11/24/darren\\_wilson\\_not\\_indicted\\_grand\\_jury\\_decision\\_announced.html](http://www.slate.com/blogs/the_slatest/2014/11/24/darren_wilson_not_indicted_grand_jury_decision_announced.html); Josh Voorhees, *Of Course It Happened Again*, SLATE (Dec. 3, 2014), [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/12/daniel\\_pantaleo\\_not\\_indicted\\_why\\_the\\_nypd\\_officer\\_wasn\\_t\\_indicted\\_in\\_the.html](http://www.slate.com/articles/news_and_politics/politics/2014/12/daniel_pantaleo_not_indicted_why_the_nypd_officer_wasn_t_indicted_in_the.html).

48. See generally MATT TAIBBI, *I CAN’T BREATHE: A KILLING ON BAY STREET* (2017) (providing an in-depth narrative of Eric Garner’s life leading up to his killing by the New York Police).

49. See Terry Gross, *“I Can’t Breathe” Examines Modern Policing and the Life and Death of Eric Garner*, NPR (Oct. 23, 2017), <https://www.npr.org/2017/10/23/559498678/i-can-t-breathe-explores-life-and-death-at-the-hands-of-police>.

a fight and was merely leaning against the wall catching his breath—not selling contraband cigarettes.<sup>50</sup> Aggravating the circumstances of the killing even further is the ruthlessness by which Garner was choked out: his head was pushed into and bounced off the concrete when he fell, and the officers stood about callously after Garner suffocated and died of heart failure.<sup>51</sup>

Michael Brown was shot to death by Officer Darren Wilson after Officer Wilson confronted Brown for jaywalking.<sup>52</sup> While Wilson's account of the confrontation contained key terms of fear likening Brown to a "demon" possessed, "Hulk-like" in appearance and menacing,<sup>53</sup> a completely different narrative emerged from the only other eyewitness to the encounter, Dorian Johnson, the friend accompanying Michael Brown that day.<sup>54</sup> Johnson's narrative differed from Officer Wilson's story of a maniacal Michael Brown stomping menacingly through the streets of Ferguson.<sup>55</sup> Instead, Johnson described an out-of-control, authoritarian police officer that bellowed at the two jaywalking black men to "Get the fuck on the sidewalk," and after slow compliance by the two, whipped his police vehicle dangerously backward, almost hitting them.<sup>56</sup> Johnson then recounted how Officer Wilson "open[ed] the door so violently it bounce[d] against both young men and closed [on Wilson]

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50. See *id.* ("Fights [in that area] happen fairly regularly, but Garner, one of his roles in that neighborhood was to break up fights, because fights attracted police. He used to say he tried to 'keep the block from getting hot,' that was his expression. So he broke up this fight between these two characters, and as soon as he was done doing that he went up and leaned up against the wall to catch his breath, and it was that exact moment that he was approached by police. The timeline here is important, because despite what's been reported in the news, there is no area in this entire timeline where Garner could possibly have been committing a crime, even though the crime itself, had he been doing it, was not even a misdemeanor.").

51. See TAIBBI, *supra* note 48.

52. See Halpern, *supra* note 46.

53. See Josh Sanburn, *All the Ways Darren Wilson Described Being Afraid of Michael Brown*, TIME (Nov. 25, 2014), <http://time.com/3605346/darren-wilson-michael-brown-demon/>.

54. David Dante Troutt, *Is Racial Justice Possible in America?*, NATION (Dec. 10, 2014), <https://www.thenation.com/article/racial-justice-possible-america/>.

55. See *id.*

56. *Id.*

again.”<sup>57</sup> By then incensed, Johnson stated that Wilson angrily growled, “What did you say?” to Brown before grabbing Brown around the neck through his police vehicle window.<sup>58</sup> A scuffle then ensued between Wilson and Michael Brown, ending in the shooting death of an unarmed Brown.<sup>59</sup>

If Dorian Johnson’s account of the encounter is to be believed—and there is no good reason it should not be, considering Officer Wilson had all of the motivations to misrepresent—then Johnson’s narrative falls perfectly into the anti-blackness and brutal control of black men that is present in all U.S. law enforcement agencies. Two young, unarmed, black men crossing the street outside of the crosswalk are barked at by a white law enforcement officer who, after arguably being ignored, turns rabid.<sup>60</sup> If the control of a black man is rooted in Wilson’s training and culture, then the simple act of two black men refusing to comply immediately causes an unreasonable anger to well up that leads to the officer losing self-control and committing an unnecessary and unjustified deadly shooting—despite the grand jury’s failure to indict Wilson.<sup>61</sup> Fear, loathing, anti-blackness, and tradition likely clouded the mind of Wilson as he killed an unarmed black man for jaywalking and being slow to comply with an instruction to stop jaywalking.

This article could continue for dozens of pages, tracing the historical, deeply embedded anti-blackness permeating modern law enforcement agencies by detailing the police killings of Philando Castile,<sup>62</sup> Terence Crutcher,<sup>63</sup> Samuel Dubose,<sup>64</sup> Oscar

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57. *Id.*

58. *Id.*

59. *Id.*

60. *See id.*

61. *See id.*

62. *See* Sharon LaFraniere & Mitch Smith, *Philando Castile Was Pulled Over 49 Times in 13 Years, Often for Minor Infractions*, N.Y. TIMES (July 16, 2016), <https://www.nytimes.com/2016/07/17/us/before-philando-castile-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html>.

63. *See* Max Blau, Jason Morris & Catherine E. Shoichet, *Tulsa Police Shooting Investigated by Justice Department*, CNN (May 18, 2017), <https://www.cnn.com/2016/09/20/us/oklahoma-tulsa-police-shooting/index.html>.

64. *See* Richard Pérez-Peña, *University of Cincinnati Officer Indicted in Shooting Death of Samuel Dubose*, N.Y. TIMES (July 29, 2015), <https://www.nytimes.com/2015/07/30/us/university-of>

Grant,<sup>65</sup> Sean Bell,<sup>66</sup> Amadou Diallo,<sup>67</sup> Walter Scott,<sup>68</sup> Stephon Clark<sup>69</sup> and so many others. Suffice it to say that the historical fear and loathing of the freed black male can be connected to the police killing of each of the black men above and so many more.

Because U.S. law enforcement is truly rooted in anti-blackness and brutal control of African American and other minority men, then reform efforts cannot simply be cosmetic or by buzzword (e.g., “all police must receive implicit bias training,” and “all police must wear body cameras”). Although requiring all police to undertake implicit bias training could be useful and all police should wear body cameras, the very nature of policing in the United States must be radically reconstructed. Only when a radical restructuring of law enforcement efforts is undertaken – including hiring policies, retention procedures, training programs, pay structuring, and true elimination of hiring racist, sexist, homophobic, and hateful individuals – will the violent deaths of minority citizens at the hands of the police be curtailed. Only a radical reimagining of policing can find true reform success in this nation. As discussed below, some forward-

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cincinnati-officer-indicted-in-shooting-death-of-motorist.html.

65. See Tom Head, *The Shooting Death of Oscar Grant: What You Need to Know*, THOUGHTCO. (Dec. 28, 2017), <https://www.thoughtco.com/shooting-death-of-oscar-grant-721526>; FRUITVALE STATION (The Weinstein Company 2013) (written and directed by African American filmmaker Ryan Coogler); Donald F. Tibbs, *Who Killed Oscar Grant?: A Legal-Eulogy of the Cultural Logic of Black Hyper-Policing in the Post-Civil Rights Era*, 1 J. RACE GENDER & POVERTY 1, 1–7 (2010).

66. See Veronika Belenkaya et al., *Sean Bell is Killed After Cops Blasted 50 Bullets in 2006*, N.Y. DAILY NEWS (Nov. 24, 2015, 12:00 PM), <http://www.nydailynews.com/new-york/queens/cops-shoot-groom-dead-2-pals-injured-50-bullet-barrage-article-1.549620>.

67. See Jane Fritsch, *The Diallo Verdict: The Overview; 4 Officers in Diallo Shooting Are Acquitted of All Charges*, N.Y. TIMES (Feb. 26, 2000), <http://www.nytimes.com/2000/02/26/nyregion/diallo-verdict-overview-4-officers-diallo-shooting-are-acquitted-all-charges.html>.

68. See Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html>.

69. See Charles M. Blow, *Stephon Clark: Rhythms of Tragedy*, N.Y. TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/opinion/stephon-clark-tragedy.html> (“Clark is the unarmed black man, a young father of two boys, who was shot to death . . . in his grandmother’s backyard. The police were investigating a vandalism complaint when they encountered Clark, firing 20 shots at him. According to an independent autopsy commissioned by Clark’s family, eight of the bullets found their mark, six of them entering his body through his back. No weapon was found on Clark – only his cellphone.”).

looking police department and law enforcement agencies have undertaken efforts that could lead to radical reform and lasting change. A survey of some of the most successful reform efforts follows.

### III. NATIONWIDE POLICE REFORM EFFORTS FINDING SUCCESS

Of the many police reform efforts across the United States that were surveyed, several show promise. These include the Policing in a Multiracial Society Project implemented at the University of Illinois, the data collection undertaken at The Use of Force Project, aggressive community policing adopted in Cincinnati, and the telling de-escalation data gathered and analyzed in Spokane.

#### A. *Policing in a Multiracial Society Project*

The University of Illinois' Police Training Institute has created the "Policing in a Multiracial Society Project" through which a nine-hour police training unit exposes new police recruits to ideas that they may have never before encountered, such as individual, racial, and cultural bias.<sup>70</sup> This unit, which has been implemented by several of the State of Illinois' Police Academies, asks new law enforcement officers to consider their own and others' innate racial biases, and suggests to these new recruits that potential harm can accrue from these biases.<sup>71</sup> The purpose of the Institute is to challenge new Illinois police recruits by educating them about race and racism, introducing them to critical race theory, and instructing them in ways to de-escalate potentially volatile encounters with members of minority groups.<sup>72</sup>

The Policing in a Multiracial Society Project (PMSP) was first

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70. See Diana Yates, *Police Training Institute Challenges Police Recruits' Racial Biases*, ILL. NEWS BUREAU (Aug. 1, 2016, 9:15 AM), <https://news.illinois.edu/view/6367/388568>.

71. See *id.*

72. See *id.*

implemented at the University of Illinois' Police Training Institute in 2011.<sup>73</sup> Educators in the University of Illinois' departments of Educational Psychology, African American Studies, and History joined forces with the director of the Police Training Institute to address issues of police brutality and to develop a strategy to educate police recruits on community and racially aware policing.<sup>74</sup> The Police Training Institute is a police academy located on the University of Illinois Urbana Champaign campus.<sup>75</sup> The Institute trains police recruits from across the State of Illinois, who are assigned to that Academy after first being hired and vetted by their own local police departments.<sup>76</sup> While the vast majority of the recruits are white men in their low- to mid-twenties, the recruits do represent diverse police jurisdictions in that the departments that educate their officers at the Police Training Institute are from all corners of Illinois. These recruits will return to their specific jurisdictions of hire and work in communities that are distinct and diverse from each other. Therefore, PMSP's objective is to educate the recruits, no matter what community they serve, on how to recognize racial bias in policing so they may better serve the needs of their individual communities and systematically decrease discriminatory police practices.<sup>77</sup>

To educate new recruits successfully regarding their own racial biases and to teach them how not to engage in discriminatory police practices, the founders and educators of the PMSP collaborated and designed an intervention program that seeks to accomplish three goals. First, the intervention is designed to make police recruits aware of their personal racial biases and social identities. Second, it educates the recruits on the socio-

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73. Michael D. Schlosser et al., *Improving Policing in a Multiracial Society in the United States: A New Approach*, 10 INT'L J. CRIM. JUST. SCI. 115, 118 (2015).

74. *See id.*

75. U. ILL. URBANA-CHAMPAIGN POLICE TRAINING INST., <http://www.pti.illinois.edu> (last visited Mar. 25, 2018).

76. Memorandum from Julia M. Keenan, Student, PMSP Review 1, 3 (Jan. 10, 2018) (on file with author).

77. *See id.* at 1.

historical impact of racialized policing through American history—specifically, to increase the recruits’ knowledge about current theory and research regarding such topics. Third, the intervention helps recruits build skills necessary to utilize the knowledge learned through the modules effectively.<sup>78</sup> The PMSP team utilizes the model of awareness, knowledge, and skills as a framework for its intervention training program and is implemented in three separate three-hour courses, which include time for instruction, discussion, and assessment.<sup>79</sup>

The three learning modules are structured first to have the recruits reflect on their own personal biases, then to provide lessons in African American history regarding the threads between slavery, Jim Crow laws, and the civil rights movement, including the modern impact of this history on modern-day policing.<sup>80</sup> Emblematic of the program would be the following typical scenario: to increase awareness, the module instructor would teach recruits about implicit biases and how socio-historical contexts influence a person’s view of race; to incorporate knowledge, the instructor would ask the recruits to participate in Harvard’s Implicit Bias Assessment<sup>81</sup> so that each recruit would have individual results reflecting their own biases; finally, the team would have the recruits review their assessments and open space to discuss the individual results.<sup>82</sup> The discussion would allow the recruits to compare their results among those of their peers and would provide skill building activities to combat implicit racial biases on a personal level as well as systematically in their departments. During discussion, it is common for officers to ask questions regarding the real world encounters they may have with issues of race in their departments, including policing communities of color or lacking

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78. See Schlosser et. al., *supra* note 73.

79. See *id.* at 118–19.

80. See *id.* at 118; see also Keenan, *supra* note 76.

81. See *About Us*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/aboutus.html> (last visited Apr. 23, 2018); see also Schlosser et. al., *supra* note 73, at 119–20.

82. See Keenan, *supra* note 76, at 2.

diversity in the department.<sup>83</sup> In response, the instructor assists the recruits in critically analyzing the hypothetical situations and offers suggestions on how the recruits may use their knowledge gained from the course in addressing diverse situations.<sup>84</sup>

The founders of the Policing in a Multiracial Society Project deliberately structured the modules to promote critical thinking in policing. The team based the intervention on the hypothesis that an education in race and implicit bias would challenge the recruits' worldviews on race and diversity, and in response, the recruits may be more willing to check their own biases and speak out against discriminatory police practices in their departments.<sup>85</sup> The team also structured the discussion to promote empathy for and understanding of the many underprivileged communities they would inevitably serve.<sup>86</sup>

Since 2011, the PMSP program has educated six cohorts of fifty to sixty recruits per cohort.<sup>87</sup> The PMSP collects data pre- and post-intervention to assess the effectiveness of the course.<sup>88</sup> The survey responses include sections wherein the recruits include suggestions on how to improve the modules, as well as provide feedback on lessons or examples they appreciated or felt were not worthwhile.<sup>89</sup> In published work, the project reports that some recruits felt the educational modules were helpful and challenged their thinking while others indicated that the modules were irrelevant to policing and even "hurtful."<sup>90</sup> On average, only 17.3% of recruits in the first three cohorts found the intervention to have a "high" value.<sup>91</sup> However, updated data is necessary to determine whether the program is effective in meeting the goals to which it aspires. Despite the early mixed

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83. *See id.*

84. *See id.*

85. *See* Schlosser et al., *supra* note 73.

86. *See id.*

87. *Id.* at 119.

88. *Id.*

89. *Id.* at 120.

90. *Id.*

91. *Id.*

feedback, Illinois has attempted to be proactive in including cultural bias training and de-escalation techniques in minority interactions that can potentially influence the mindset of the new police recruits.

Despite both the promise and the difficulties in the PMSP, the unit constitutes only nine hours of the twelve-week training Illinois police recruits undertake.<sup>92</sup> As mentioned previously, the early data also seems to indicate that many of the officers resent the training or claim it is not helpful.<sup>93</sup> Nevertheless, the project is attempting to bridge the ever-present gap between minority communities and the individuals charged with protecting them.

### B. *The Use of Force Project*

In addition to individual bias and cultural sensitivity training as potentially useful reforms addressing the problem of police brutality, another reform that has been implemented is carefully regulating use of force and instituting policies that require specific regulation.<sup>94</sup> Campaign Zero, through its Use of Force Project, has collected promising data that examines policies adopted by law enforcement agencies across the United States.<sup>95</sup> Moreover, it has marshalled these policies to indicate when and how often certain police forces use force and to what effect.<sup>96</sup>

A group of experts, including lawyers, academics, and police reformers have worked together to identify eight policy implementation restrictions that they deem relevant and useful to use of force among law enforcement agencies.<sup>97</sup> Most promising is that data collected by The Use of Force Project shows that of the

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92. *Id.* at 118.

93. *Id.*

94. DERAY MCKESSON ET AL., CAMPAIGN ZERO PLANNING TEAM, POLICE USE OF FORCE POLICY ANALYSIS (2016), <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e1b5cc2994ca4ac1d97700/1474409936835/Police+Use+of+Force+Report.pdf>.

95. *Id.* at 7.

96. *Id.*

97. See SAMUEL SINYANGWE, EXAMINING THE ROLE OF USE OF FORCE POLICIES IN ENDING POLICE VIOLENCE 2 (Sep. 20, 2016), <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e17531725e25ec2e648650/1474393399581/Use+of+Force+Study.pdf>.

eight policy implementations identified below, in cities and municipalities where four or more of the policy implementations have been adopted, police killings and unlawful use of police force has dropped in statistically significant ways.<sup>98</sup> Critically, this data point tends to show that in law enforcement departments where use of force is top-of-mind and carefully regulated, the citizenry served by those departments is safer and less exposed to law enforcement officer use of force. The eight policy implementations are as follows:

1. Require officers to de-escalate situations, when possible, before using force;
2. Adopt an Use of Force Continuum or Matrix that defines/limits the types of force and specific weapons that can be used to respond to specific levels of resistance;
3. Restrict chokeholds and strangleholds (including carotid restraints) to situations where deadly force is authorized or prohibiting them altogether;
4. Require officers to give a verbal warning, when possible, before using deadly force;
5. Prohibit officers from shooting at people in moving vehicles unless the person poses a deadly threat by means other than the vehicle (for example, shooting at people from the vehicle);
6. Require officers to exhaust all other reasonable alternatives before resorting to using deadly force;
7. Require officers to intervene to stop another officer from using excessive force;
8. Require officers to report both uses of force and threats/attempted uses of force (for

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98. *See id.*

example, reporting instances where an officer intentionally points a firearm at a civilian) (referred to in this study as ‘Comprehensive Reporting’).<sup>99</sup>

Of these eight policy implementations, only 33% of the largest cities in the United States have implemented four or more, which matters statistically.<sup>100</sup> Those cities that have adopted four or more of these policies have seen clear benefits to both law enforcement officers and citizens: for citizens, civilian killings by police officers are reduced by 5%–25%;<sup>101</sup> for law enforcement officers, the number of police officers killed and assaulted in the line of duty is reduced significantly.<sup>102</sup> This data tends to indicate that if law enforcement agencies commit to implement as many of the policy directives outlined above as possible, ensuring that at least four of the policies are required together with appropriate training, those communities can expect both violence upon citizens and assaults upon police officers to reduce.<sup>103</sup>

### C. Community Policing in Cincinnati

The city of Cincinnati, while forced to change its brutal policing approach, has had some solid success since 2008 implementing community policing and in profoundly changing its approach to policing.<sup>104</sup> Due to rioting and abysmal relation-

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99. *See id.*

100. *See id.* at 4; *see also* Appendix A.

101. MCKESSON ET AL., *supra* note 94, at 9; *see also* Appendix A.

102. *See* MCKESSON ET AL., *supra* note 94, at 10; *see also* Appendix B.

103. *See* MCKESSON ET AL., *supra* note 94, at 10; *see also* Appendices A & B.

104. *See* Alana Semuels, *How to Fix a Broken Police Department: Reforms Were Slow to Take Hold in Cincinnati, but When They Did, They Drove Down Crime While Also Reducing Arrests*, ATLANTIC (May 28, 2015), <https://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/> (detailing the police transformation that has taken place in Cincinnati since 2008). Semuels reports:

Though they were required by the Justice Department to reform their procedures, police still chafed at being told to fix a problem they didn't think

ships between the Cincinnati Police Department and the residents of the city, the Justice Department required the Cincinnati Police to enter into a consent decree to begin changing its “broken” police department.<sup>105</sup> As one commenter noted:

The changes Cincinnati adopted were nothing short of a complete turnaround in how the city approached incarceration, crime, and its relationship with its residents. And to make sure they were adopted, the federal government had to apply constant pressure, reminding all parties involved about the need to stay vigilant about reform.<sup>106</sup>

The lessons of community policing that can be learned from Cincinnati are complicated by the difficulties in implementing community policing in the face of entrenched law enforcement and policing systems.<sup>107</sup>

That said, since implementing an anchoring system of community policing and establishing genuine relationships between the Cincinnati police and its residents, particularly minorities, the city can report what are nothing short of heartening statistics:

Between 1999 and 2014, Cincinnati saw a 69 percent reduction in police use-of-force incidents, a 42 percent reduction in citizen complaints and a

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existed. Even now, police reform in Cincinnati remains a delicate issue. The various stakeholders, including the African American community, elected officials, civil-rights lawyers and law-enforcement leaders, constantly discuss and evaluate their progress. As part of the reforms, police agreed to adopt a strategy that required them to interact frequently with members of the community, and continually re-affirmed their commitment to that strategy.

*Id.*

105. *See id.*

106. *See id.*

107. *See id.*

56 percent reduction in citizen injuries during encounters with police, according to a report by Robin S. Engel and M. Murat Ozer of the Institute of Crime Science at the University of Cincinnati. Violent crimes dropped from a high of 4137 in the year after the riots, to 2352 last year. Misdemeanor arrests dropped from 41,708 in 2000 to 17,913 [in 2014].<sup>108</sup>

The primary radical change made by the Cincinnati Police department was its adoption of the “Collaborative,” a settlement agreement with the American Civil Liberties Union (ACLU) that mandated “Cincinnati police to adopt community problem-oriented policing, or CPOP. The strategy required them to do fewer out-and-out arrests, and instead focus on solving the problems that cause people to commit crimes in the first place.”<sup>109</sup> This new strategy has thoroughly altered policing in Cincinnati according to both officers and citizens, leading to the astonishing data related above – including the drop from 41,000 misdemeanor arrests in 2000 to 18,000 misdemeanor arrests in 2014 and the 69% reduction in police use-of-force incidents.<sup>110</sup> Broken window policing<sup>111</sup> apologists will have a difficult time accounting for this data, particularly in light of the concomitant drop in violent crime since community policing was mandated and adopted by the Cincinnati police.<sup>112</sup> The community problem-oriented policing approach requires police to engage the community’s members by listening to their concerns, conduct-

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108. *Id.*

109. *Id.*

110. *Id.*

111. See Sarah Childress, *The Problem with “Broken Windows” Policing*, PBS: FRONTLINE (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/> (explaining that the theory of broken windows policing, which argues that maintaining order by policing low-level offenses can prevent more serious crimes, is flawed and ultimately ineffective).

112. See Semuels, *supra* note 104.

ing outreach on the streets, and collaborating with local businesses and community groups, among other strategies.<sup>113</sup>

The success of the Collaborative and community problem-oriented policing included other critical changes as well. The Cincinnati Police Department vowed to begin holding press conferences within twelve hours of any officer-involved shooting and to provide relevant information and camera footage from the event.<sup>114</sup> Cincinnati police agreed to collect further data, track officers who received an inordinate number of citizen complaints or who violated policies, and discipline these officers if necessary.<sup>115</sup> Additionally, the Cincinnati Police established a Citizen Complaint Authority with investigative and subpoena powers over police<sup>116</sup> and adopted new policies and procedures regarding use of force, chemical agents, and the mental-health response terms.<sup>117</sup> Each of these policies, while loathed by the officers when first adopted,<sup>118</sup> is crucial to bridging community divisions that have existed in the United States for centuries.<sup>119</sup>

#### D. *De-escalation Research in Spokane*

A philosophy doctoral student at Arizona State University undertook a dissertation focused on de-escalation techniques used by the Spokane Washington Police Department.<sup>120</sup> The study included multiple interviews with Spokane Police offic-

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113. *Id.*

114. *See id.*

115. *See id.*

116. *See id.*

117. *Id.*

118. *See id.* Shortly after implementation of the Collaborative, "the police pushed back against change. A survey of police conducted in 2004 found that one-third of police wanted to leave the department, and that 85 percent thought that 'the collaborative agreement to micromanage their jobs has been a waste of time,' according to a Cincinnati Enquirer column at the time." *Id.*

119. *See supra* Part I.

120. *See* Natalie Todak, *De-Escalation in Police-Citizen Encounters: A Mixed Methods Study of a Misunderstood Policing Strategy* (Aug. 2017) (unpublished Ph.D. dissertation, Arizona State University), <http://repository.asu.edu/items/45039>.

ers and thirty-five ride-alongs with twenty-nine different officers focusing on de-escalation techniques employed by various officers.<sup>121</sup> This dissertation, published in 2017, is particularly important because very little empirical and ethnographic research exists in connection with policing techniques, especially de-escalation and community policing.<sup>122</sup> The dissertation uncovered some important factors that can be used as a starting place for further studies.

First, the study indicates that few factors predict whether an officer uses de-escalation, which suggests that officers in the Spokane police department “are not consistent in using de-escalation when faced with particular problems, most likely because de-escalation tactics are not trained in the academy.”<sup>123</sup> In fact, all eight individual officers identified as particularly effective in de-escalation techniques said they largely developed these skills on their own while out on the job.<sup>124</sup> White officers were significantly more likely than nonwhite officers to use de-escalation.<sup>125</sup> Critically, those officers recognized by their peers as being effective de-escalators — all of whom had at least fifteen years of service — claimed they received no training in de-escalation techniques at the police academy and had to learn and develop those skills on the job.<sup>126</sup>

Another of the author’s findings was particularly interesting:

Binary logistic regressions estimated correlates of police use of de-escalation tactics and de-escalation effectiveness. Findings from [the] first set of regression models . . . indicate that few variables predict whether officers in Spokane use de-escalation tactics. This most certainly reflects the fact

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121. *See id.* at 78.

122. *Id.* at 7.

123. *Id.* at 145.

124. *Id.*

125. *Id.*

126. *Id.* at 134–35.

that officers in this agency do not receive systematic de-escalation training, and instead employ tactics they have honed themselves in an ad hoc fashion on the job. The first models indicate that officers who were white were more likely to use de-escalation tactics, while officers who took time to develop an entry plan before making citizen contact were less likely to use de-escalation.<sup>127</sup>

Of interest here is the finding that if the police officers had time to develop an entry plan before encountering citizens they were less likely to implement de-escalation tactics. The author observed:

This finding makes intuitive sense. When officers take the time to develop a plan, they are more prepared to take a specific tactical action to solve the problem. Making an entry plan is also indicative that the situation is potentially violent, so officers are more likely to call in additional resources and talk through the situation. De-escalation, in this department, seems to be more defensive, used when officers make immediate entry and perhaps must then “talk themselves out” of the problem.<sup>128</sup>

A final finding of critical importance centered on the Supreme Court standard for justifying police use of force and the problems inherent in that standard:

[T]he U.S. Supreme Court’s ruling in *Graham v. Connor* (490 U.S. 386 1989) held that police actions should be measured based on the facts of the *situation as experienced by the officer in the moment* they made the decision. Fyfe (1986) labeled this problem the “split second syndrome” and argued it

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127. *Id.* at 155.

128. *Id.* at 147.

gives rise to numerous negative consequences. Terrill (2016) likewise argued this standard opens evaluations up to considerable subjectivity on the part of the viewer. Consequently, police behaviors are most often justified, because evaluators find it difficult to prove the officer *did not perceive* a threat in the final moments, as the standard requires. Additionally, the split-second syndrome prevents researchers and practitioners from learning from mistakes and identifying methods for reducing unnecessary, yet legally justified, force (Fyfe, 1996).<sup>129</sup>

Thus, the Supreme Court's standard that leads to the "split-second syndrome" makes it nearly impossible to prove whether an officer properly perceived a threat or was in fear for his/her life. As described above and below, this is particularly harmful to minority citizens that suffer assault or death at the hands of police officers.

As one of the first studies of its kind, this dissertation data is critical toward understanding what motivates police officers in de-escalation use and effectiveness. Most telling, nearly every officer interviewed for this dissertation and consulted for this article, to a person, describes receiving little to no police academy or on-the-job training as to de-escalation techniques and non-military style engagement training. This unfortunate truth is among the most important reform efforts that should be undertaken by police departments across the United States. The next Part, taking its cue from the above reported uncompromising reform efforts, will propose several aggressive reform strategies that, if implemented, could transform policing in the United States, making life safer for both minority residents and the police officers charged with safeguarding them.

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129. *Id.* at 157-58.

## IV. REFORMING POLICING

No fair discussion of reforming policing in the United States can be approached without recognizing the historical race-hatred and anti-black bias that has served as the foundation for law enforcement hiring, training, and enforcement since slavery.<sup>130</sup> As an army of scholars have noted time and again,<sup>131</sup> and as detailed above, law enforcement in the United States has historically been rooted in controlling black bodies (and, to a lesser extent, minority individuals), and is currently animated by those same concerns and myths that were foundational to law enforcement from the nation's origin.<sup>132</sup>

With the above paragraph in mind, the below recommendations are proffered from the perspective of radical reform of policing being one option in which this historical animus and anti-black sentiment can be mitigated or ameliorated in important ways. Yes, a complete reboot is likely the best antiseptic to the ills that plague race relations and policing in the United States, but absent a reboot, I offer the following reforms as small pieces to a puzzle that might eventually lead this nation to a hoped-for "Promised Land."<sup>133</sup>

As the above accentuated successful policies highlight, radical reform of traditional policing must be considered and adopted across the United States. This Part will detail a radical yet sensible approach to reforming policing.

A. *Hiring*

The first and immediate reform that must be adopted is that of thoroughly changing the hiring profile and retention regime

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130. See *supra* Part I; see also COATES, *supra* note 15 (detailing the historical roots of mass incarceration, including the primary motivations that inspired slavery era policing which animates modern policing in the United States today).

131. See *supra* note 11 and accompanying text.

132. See RUSSELL-BROWN, *supra* note 11, at 31–34; see also COATES, *supra* note 15.

133. See Dr. Martin Luther King Jr., *I've Been to the Mountain Top*, Address at the Bishop Charles Mason Temple (Apr. 3, 1968), <http://drmartinlutherkingjr.com/ivebeentothemountaintop.htm>; see also Matthew Siegfried, *Martin Luther King Speaks! 'I've Been to the Mountaintop' (Full)*, YOUTUBE (June 10, 2015), [https://www.youtube.com/watch?v=TmZvkHpX\\_Q4](https://www.youtube.com/watch?v=TmZvkHpX_Q4).

of law enforcement officers across the country. Education must be emphasized. Cultural diversity and cultural sensitivity must be prized. Personality profiles and interviews must weed out the racially hostile, the sexist, and the homophobic. The entire police hiring regime must be overhauled.

Racist, sexist, islamaphobic, and homophobic candidates need not apply. With the expansive psychological profiling that exists today, a battery of tests, interviews, and bias testing can root out those that would use the office of law enforcement to brutalize and terrorize, particularly minority citizens. If after extensive testing and profiling, a potential officer cannot prove cultural competency and a strong desire to police without bias, then this candidate should be confidently passed over. Similar testing and profiling should also be applied to sitting police officers that receive multiple citizen complaints for excessive use of force, harassment, or hostility. If the currently serving officers cannot show cultural competency and a desire to police bias-free, they should be cut loose from the important call to police and protect U.S. residents.

Further, boosting the pay/annual salary of entry-level law enforcement as well as requiring a college degree to apply will fundamentally change the pool of applicants. The current applicant pool is dominated by former military members who have not spent much time attending college. Reliance on former military as the primary hiring pool for police officers must be reduced as the mind-sets of many former military members are inclined toward a "warrior" and "siege" mentality and disinclined toward problem-solving and de-escalation mentality.<sup>134</sup>

Crucial to reforming police hiring is a requirement of cultural competency ensuring that those that police America's streets have spent some time on them and have gained cultural awareness and competency. Seeking the types of men and women that will serve fairly, without bias, particularly without an anti-

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134. See RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* 327 (2013) ("Police today are also given too little training in counseling and dispute resolution, and what little training they do get in the academy is quickly blotted out by what they learn on the street in the first few months on the job.").

black bias, must be where hiring efforts are freshly targeted. Failing on cultural competency either at the hiring stage or the retention stage should see such officers jettisoned.

### B. Training

Police training is often targeted as one of the primary areas that should be changed to humanize policing in the United States in order to move beyond the Warrior Police model and “siege mentality”<sup>135</sup> that has been adopted by so many law enforcement departments nationwide.<sup>136</sup> Despite recent arguments that “the problem is not police training,”<sup>137</sup> nearly every law enforcement officer that this author has discussed and debated this issue with admits, sometimes begrudgingly, that law enforcement officer training today seriously discounts de-escalation training and significantly overemphasizes military style safety and weapon tactics training.<sup>138</sup> As Alex Vitale argues in *The End of Policing*, despite his contention that police training is not *the* problem:

In some ways, training is actually part of the problem. In recent decades, the emphasis has shifted heavily toward officer safety training . . . . [O]fficers are repeatedly exposed to scenarios in which seemingly innocuous interactions with the

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135. See andré douglas pond cummings, *Just Another Gang: “When the Cops are Crooks, Who Can You Trust,”* 41 HOWARD L.J. 383, 407–08 (1998) (describing siege mentality as an “us versus them” phenomenon that incubates a dehumanizing view toward criminals or “the enemy” as if in a war zone).

136. See generally BALKO, *supra* note 134 (describing the rise of military style police forces during the War on Drugs and later War on Terror, including the advent of Special Weapons and Tactics Units (SWAT) during this time).

137. See ALEX S. VITALE, *THE END OF POLICING* 4–11 (2017) (arguing that the problem with policing is not police training or police diversity, but rather the overwhelming expansion and intensity of policing in the past forty years (since the 1980s)). Vitale argues that changing police training and increasing diversity among law enforcement officers will not fundamentally change the paramilitary style and mentality of policing that has taken over U.S. law enforcement since the 1980s.

138. See *id.* at 9–10.

public, such as traffic stops, turn deadly. The endlessly repeated point is that any encounter can turn deadly in a split second if officers don't remain ready to use lethal force at any moment. When police come into every situation imagining it may be their last, they treat those they encounter with fear and hostility and attempt to control them rather than communicate with them – and are much quicker to use force at the slightest provocation or even uncertainty.<sup>139</sup>

In spite of this hyper-aggressive training regime that emphasizes that officers focus on “returning home alive each night,”<sup>140</sup> many officers, a vast majority, report never firing their service weapons during their careers.<sup>141</sup>

One major disconnect in policing, that of dehumanization of U.S. residents, is exacerbated through outdated, outmoded, military-style training. On average, police academies spend 110 hours training police recruits on military-style training, including the use of firearm skills and self-defense, while spending only eight hours on conflict management and mediation, including de-escalation techniques.<sup>142</sup> To this end, a reform that

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139. *Id.*

140. See *Lord Forgive Me*, *supra* note 2, at 45 (describing the oft-repeated refrain that police officers simply want to “return home” safely each evening and if returning home comes down to me or you, then I will use the lethal force that allows that return home to be made by me).

141. Rich Morin & Andrew Mercer, *A Closer Look at Police Officers Who Have Fired Their Weapon on Duty*, PEW RES. CTR. (Feb. 8, 2017), <http://www.pewresearch.org/fact-tank/2017/02/08/a-closer-look-at-police-officers-who-have-fired-their-weapon-on-duty/> (“In fact, only about a quarter (27%) of all officers say they have *ever* fired their service weapon while on the job, according to a separate Pew Research Center survey conducted by the National Police Research Platform.”).

142. See Alvin Chang, *Police Academies Spend 110 Hours on Firearms and Self-Defense. They Spend 8 Hours on Conflict Management.*, VOX (Jul. 7, 2016, 12:50 PM), <https://www.vox.com/2016/7/7/12118906/police-training-mediation> (“Police academies spend about 110 hours training their recruits on firearms skills and self-defense – but just eight hours on conflict management and mediation. This is according to a 2006 report from the Department of Justice, which looked at the median time state and local academies spent on various law enforcement skills.”). As reported by Chang:

The [2006 DOJ] report is a decade old, but it's the most recent data we have on how much time is usually spent training police officers to diffuse

should be undertaken across the nation is eschewing the military style training, complete with boot camps and barracks, and instead adopting a professionalized model of police training.<sup>143</sup> As proposed, reformed training would include suits and ties, an academic setting with an emphasis on learning the laws the officers will be charged with enforcing, de-escalation, diversity and cultural bias training, and weapons training that includes laddering the force that should be used based on the circumstances as encountered.

As I have argued previously,<sup>144</sup> perhaps the best way that American law enforcement officers could effectively police African American communities is by adopting the community policing model as demonstrated by the city of Cincinnati.<sup>145</sup> Different groups, particularly minorities, adhere to cultural norms which are in many cases much different than those experienced by the typical law enforcement officer, generally a white male and military veteran.<sup>146</sup> Because of the anti-black culture that exists in U.S. law enforcement, a deep-seated distrust exists between black citizens and the police.<sup>147</sup> The first lesson to be

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tense situations. This is especially important to know after the police shooting deaths of Philando Castile in Minnesota and Alton Sterling in Louisiana. In both cases, officers killed the men even though there appeared to be no immediate threat.

*Id.*

143. This reform proposal was further articulated to me by Officer Scott Walter of the Arizona State Troopers in a conversation that took place on February 10, 2018.

144. See *Lord Forgive Me*, *supra* note 2, at 32.

145. See *supra* Section III.C.

146. See MATTHEW J. HICKMAN & BRIAN A. REAVES, LOCAL POLICE DEPARTMENTS 2000, at 6 (2003), <http://www.bjs.gov/content/pub/pdf/lpd00.pdf> (noting that as of the year 2000, “[f]ifteen percent of departments had some type of college requirement, usually a 2-year degree (8%)” and that “[j]ust 1% required new recruits to have a 4-year college degree”); see also Mark Clark, *Military Vets Joining Law Enforcement*, POLICE (Jan. 30, 2014), <http://www.police-mag.com/channel/careers-training/articles/2014/01/military-vets-joining-law-enforcement.aspx> (noting that Military Veterans are applying for law enforcement positions “in numbers unseen since the closing days of the Vietnam War”).

147. See Nikole Hannah-Jones, *Yes, Black America Feels The Police. Here's Why*, HUFFINGTON POST (Mar. 5, 2015, 10:46 AM), [http://www.huffingtonpost.com/2015/03/05/black-america-police\\_n\\_6808506.html](http://www.huffingtonpost.com/2015/03/05/black-america-police_n_6808506.html) (“[Black and Latino] citizens in the United States of America have little expectation of being treated fairly by the law or receiving justice.”).

learned and understood by law enforcement officers in a community policing model is that in patrolling black neighborhoods, a fundamental and rational distrust exists between black citizens and the police.<sup>148</sup> As described by author Khalil Gibran Muhammad:

White people, by and large, do not know what it is like to be occupied by a police force. They don't understand it because it is not the type of policing they experience. Because they are treated like individuals, they believe that if "I am not breaking the law, I will never be abused."<sup>149</sup>

Journalist Nikole Hannah-Jones writes, "We are not criminals because we are black. Nor are we somehow the only people in America who don't want to live in safe neighborhoods. Yet many of us cannot fundamentally trust the people who are charged with keeping us and our communities safe."<sup>150</sup> These statements illustrate what any police officer protecting African American communities should clearly understand: You are not trusted. This is a cultural lesson that is often difficult for young, non-black law enforcement officers to comprehend.<sup>151</sup>

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148. See Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, ATLANTIC (Dec. 12, 2014), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>. Former police officer Stoughton states:

Police reform requires more than changes to training, of course. The policing mission needs to be focused on keeping communities safe and free from fear – including from fear of officers themselves. There are deep racial tensions in law enforcement that will only be healed through a long-term, sustained commitment to cooperative policing and community engagement. We need to rethink the many legal, structural, and social impediments to investigating officer-involved violence and the institutional reluctance to accept independent oversight, particularly civilian review.

*Id.*

149. See Hannah-Jones, *supra* note 147 (quoting Khalil Gibran Muhammad).

150. *Id.*

151. See John McWhorter, *What O.J. Simpson Taught Me About Being Black*, N.Y. TIMES (Feb. 3, 2016), [http://www.nytimes.com/2016/02/04/opinion/what-oj-simpson-taught-me-about-being-black.html?\\_r=0](http://www.nytimes.com/2016/02/04/opinion/what-oj-simpson-taught-me-about-being-black.html?_r=0) (describing his awakening as a conservative African-American writer to the reality of the brutality exhibited by the police toward black citizens). Professor McWhorter describes:

Armed with a badge and a gun and sent forth from the police academy to protect citizens and fight crime, most law enforcement rookies simply do not understand that their presence in the black community is viewed suspiciously, if not with disdain and distrust.<sup>152</sup> Further, many additional cultural norms are misunderstood by traditional law enforcement officers when they police black or Latino communities.<sup>153</sup> Familial norms are

What I found when I spoke with people after the Simpson verdict, though, and have found since with numbing regularity, is that what prevents real racial conciliation and understanding in America is the poisonous relations between blacks and the police.

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Racism is experienced in many ways, but as Ellis Cose has put it, "Rage does not flow from dry numerical analyses of discrimination or from professional prospects projected on a statistician's screen." Talk to most black people about racism and you need only count the seconds before the cops come up.

*Id.*; see LZ Granderson, *Why Black People Don't Trust the Police*, CNN (Mar. 23 2012), <http://www.cnn.com/2012/03/22/opinion/granderson-florida-shootings/> (explaining why African American citizens do not trust the police). Granderson explains:

I don't trust cops and I don't know many black people who do. I respect them.

I sympathize with them. I am appreciative of the work they do.

But when you've been pulled over for no good reason as many times as I have; when you've been in handcuffs for no good reason as many times as I have; when you run out to buy some allergy medication and upon returning home, find yourself surrounded by four squad cars with flashing lights and all you can think about is how not to get shot, you learn not to trust cops.

*Id.*

152. See Hannah-Jones, *supra* note 147; Stoughton, *supra* note 148.

153. See generally Mike Maciag, *Where Police Don't Mirror Communities and Why It Matters*, GOVERNING (Aug. 28, 2015), <http://www.governing.com/topics/public-justice-safety/gov-police-department-diversity.html>. Maciag wrote:

So how much does a deficiency in the racial or ethnic diversity of a police department contribute to an agency's woes?

Peralta, who also serves as a lieutenant with the Las Vegas Metropolitan Police Department, said it plays out in day-to-day interactions, with some citizens less likely to trust police. "Once trust is eroded," he said, "everything deteriorates from there." It also puts departments at a recruiting disadvantage, he said, because officers are an agency's best recruiters.

Irving's Mitchell said language barriers also arise when police are called to a scene and can't wait for translators to arrive. John Jay College's Jones-Brown added that some black officers react differently than their white counterparts to certain situations. They may be able to better differentiate, for example, between behavior that is and is not suspicious, she said.

*Id.*

different, attitudes regarding crime are different, incentives and motivations for engaging with law enforcement are different, and historical patterns of discrimination are different.<sup>154</sup> Culture and sensitivity training is crucial for all law enforcement professionals, and yet few receive any substantive training of the sort.<sup>155</sup> Adopting a community problem-oriented policing model, such as the Collaborative in Cincinnati, would assist on-the-ground policing, forcing police officers to interact with community members in a problem-solving manner. This, coupled with police academy training on cultural and implicit bias—as enacted at the University of Illinois through the Policing in a Multiracial Society Project—could pay cognizable dividends when it comes to citizen and community safety.

Additionally, much greater training is necessary on the appropriate use of force in most police departments. In so many of the police killings of unarmed black men examined herein, the officer began with his or her deadliest weapon drawn, rather than a non-deadly weapon. This is instructive, as in so many of the encounters described above the black man or child approached by the police was unarmed. Recent evidence seems to indicate that significantly more emphasis should be placed on de-escalation tactics and techniques in the police academy and thereafter, as shown by the successful Spokane officers who learned de-escalation in the field rather than in the academy.<sup>156</sup>

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154. See *id.*; see also Kate Abbey-Lambertz, *The Simple Strategies That Could Fundamentally Change How Communities View Their Police*, HUFFINGTON POST (Feb. 17, 2015, 7:35 AM), [http://www.huffingtonpost.com/2015/02/17/community-policing-police-trust\\_n\\_6607766.html](http://www.huffingtonpost.com/2015/02/17/community-policing-police-trust_n_6607766.html) (“The public remains outraged over the deaths of Michael Brown and Eric Garner and the subsequent failure to indict the police officers who killed them. [There is one thing] nearly everyone agrees on after the months of protests those killings inspired: The relationships between American police and the communities they protect, particularly minority communities, are in need of serious repair.”); CARLOS FIELDS, INT’L ASS’N CHIEFS OF POLICE, AWARD-WINNING COMMUNITY POLICING STRATEGIES 11–12 (2007), <https://ric-zaiinc.com/Publications/cops-w0451-pub.pdf> (describing ways in which police departments are attempting to educate themselves about cultural differences).

155. See Destiny Peery, *Implicit Bias Training for Police May Help, but It’s Not Enough*, HUFFINGTON POST (Mar. 14, 2016, 9:29 PM), [https://www.huffingtonpost.com/destiny-peery/implicit-bias-training-fo\\_b\\_9464564.html](https://www.huffingtonpost.com/destiny-peery/implicit-bias-training-fo_b_9464564.html).

156. See Todak, *supra* note 120, at 155–56.

Here again, the PMSP could be extremely useful and instructive, particularly if police departments across the country adopt particularized culture and bias training before officers enter the field.<sup>157</sup>

Crucially, most police academies teach their new cadets that “double tap to center mass” is always the appropriate shot to take when a particular danger seems present in civilian encounters.<sup>158</sup> Police academy training today still includes an exhaustive dose of preserve-your-life, protect-each-other, and do-not-hesitate in dangerous situations.<sup>159</sup> This training is outdated and

157. See *supra* Section III.A.

158. See Stoughton, *supra* note 148; see also Julia Jacobo, *Experts on Why Police Aren't Trained to Shoot to Wound*, ABC NEWS (July 7, 2016, 7:46 PM), <http://abcnews.go.com/US/police-trained-shoot-wound-experts/story?id=40402933>. Jacobo explains:

Because of the potential risks, it would be “very difficult” to train officers to shoot to wound instead, Kelly said. If someone’s life is in jeopardy, shooting to maim or injure will have little effect on the actions of the individual who is trying to kill, Klinger added.

Additionally, if an officer aims at anything other than the torso area, the odds that he or she will miss increase greatly, Klinger said. But aiming for the chest means that the type of wounds suspects usually sustain are likely to be fatal, he added.

*Id.*

159. See Stoughton, *supra* note 148 (describing that a common police academy mantra is “[b]etter to be judged by twelve than carried by six”). Former Officer Stoughton argues:

American police officers are among the best-trained in the world, but what they’re trained to do is part of the problem.

Police training starts in the academy, where the concept of officer safety is so heavily emphasized that it takes on almost religious significance. Rookie officers are taught what is widely known as the “first rule of law enforcement”: An officer’s overriding goal every day is to go home at the end of their shift. But cops live in a hostile world. They learn that every encounter, every individual is a potential threat. They always have to be on their guard because, as cops often say, “complacency kills.”

Officers aren’t just told about the risks they face. They are shown painfully vivid, heart-wrenching dash-cam footage of officers being beaten, disarmed, or gunned down after a moment of inattention or hesitation. They are told that the primary culprit isn’t the felon on the video, it is the officer’s lack of vigilance. And as they listen to the fallen officer’s last, desperate radio calls for help, every cop in the room is thinking exactly the same thing: “I won’t *ever* let that happen to me.” That’s the point of the training.

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In most police shootings, officers don’t shoot out of anger or frustration or hatred. They shoot because they are afraid. And they are afraid because they are constantly barraged with the message that that they should be

has led to unjustified loss of human life repeatedly.<sup>160</sup> The focus must change to valuable time spent on the consequences of acting rashly in dangerous situations.<sup>161</sup> Training on how to de-escalate encounters that often become heated based on poor officer training is critical and needed.

The oft-heard refrain that law enforcement officers simply “want to return home safely” each day or night after work is hyper-emphasized. There is no reason police officers could not accomplish this each day and night while simultaneously respecting and dignifying human life as their motivating principle. Thus, police training reform should include valuing and preserving human life above all else. David Dante Troutt agrees: “And when the local politics are insurmountable, we need an amended federal statute with a legal standard that cherishes the protection of life—the greatest civil right. These reforms would bring a lot less shooting and a lot more accountability. That would bring us closer to justice.”<sup>162</sup>

The law needs to change dramatically in order to value and

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afraid, that their survival depends on it. Not only do officers hear it in formal training, they also hear it informally from supervisors and older officers. They talk about it with their peers. They see it on police forums and law enforcement publications. For example, three of the four stories mentioned on the cover of this month’s *Police Magazine* are about dealing with threats to officer safety. Officers’ actions are grounded in their expectations, and they are taught to expect the worst.

*Id.*

160. See *supra* Parts II & III.

161. See Stoughton, *supra* note 148 (“Police training needs to go beyond emphasizing the severity of the risks that officers face by taking into account the likelihood of those risks materializing.”). Stoughton goes on to propose:

Training also needs to compensate for the unconscious racial biases that lead officers to perceive a greater threat from black men than from others. Officers are not unique in that regard; implicit racial animus is depressingly common in society. But it is of special concern in the context of policing. Because officers use more force when they perceive a greater threat, unconscious bias can lead officers to react more aggressively when confronting black men than they would when confronting others in otherwise identical situations. As we’ve seen too many times, the results are beyond tragic.

*Id.*

162. Troutt, *supra* note 54.

preserve human life above all else. Because of the very low hurdle necessary for law enforcement to use deadly force, the law itself does not appear to value human life and dignity above all else.<sup>163</sup> When referencing the laws of Missouri in light of the killing of Michael Brown by Darren Wilson, Troutt describes how the law could change to value the life of Michael Brown rather than allow justification for the taking of his life by Wilson:

The law in Missouri doesn't have to make indictment so difficult. It could say "may use force only in rare circumstances," which would guide a police officer's judgment toward the value of preserving life at all costs. It could emphasize life over death with adjectives that emphasize the suspect must be a "verifiable" or "demonstrable" threat. It could single out unarmed suspects for mercy. As it is, the law does not imagine innocence or urge de-escalation. Instead, it's a vague and malleable standard that privileges police justification and promotes narratives that render even the innocent justifiably dead.<sup>164</sup>

In each police killing scenario described above, where officers have cut short the life of an unarmed African American man or child, the officer has unjustifiably and unnecessarily acted as prosecutor and judge, finding guilt and exacting a sentence of death in each case. The law and our peace officers must adopt a standard baseline where preserving and valuing human life is the most important principle and is adhered to scrupulously.

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163. See *supra* Parts II & III; see also generally Michelle Alexander, *The New Jim Crow*, AM. PROSPECT (Dec. 6, 2010), <http://prospect.org/article/new-jim-crow-0>; Donald F. Tibbs, *From Black Power to Hip Hop*, in *HIP HOP AND THE LAW* (Pamela D. Bridgewater, andré douglas pond cummings & Donald F. Tibbs eds., 2015); Marion Fourcade, *The Political Valuation of Life*, 3 REG. & GOVERNANCE 291 (2009); W. Kip Viscusi, *The Devaluation of Life*, 3 REG. & GOVERNANCE 103 (2009).

164. Troutt, *supra* note 54.

### C. Retention

One immediate reform that could assist in reversing biased and vicious policing would be the permanent expulsion of violating police officers from continuing service as law enforcement agents. The “bad apples” must be permanently terminated, rather than consistently recycled.<sup>165</sup> A common practice across all law enforcement divisions—particularly within city and municipal police departments—is the recycling of offending officers from one department to another.<sup>166</sup> When an officer is terminated for violating police policy, such as the unnecessary use of force or weapons, that officer is typically unloaded into a smaller police department or lesser known agency and is allowed to continue in their brutality and unnecessary use of force against civilians rather than drummed out of policing completely.<sup>167</sup>

Although the “bad apple” explanation for overviolent and brutal officers is trotted out each time an officer like Michael Slager or Ray Tensing is caught on camera killing an unarmed African American male,<sup>168</sup> the anti-black orientation of all U.S. law enforcement agencies belies such an explanation.<sup>169</sup> Further, the “bad apple” analogy when invoked, often fails to recall that

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165. See Casey Toner & Jared Rutecki, *The Revolving Door: Troubled Officers Get Frequent Career Chances*, WBEZ (Jan. 8, 2018), <http://interactive.wbez.org/taking-cover/revolving-door/> (chronicling investigative report that describes the revolving hiring door for law enforcement officers that get terminated from one department for violating police policy just to pop up employed at another department).

166. See *id.*

167. See *id.*

168. See *infra* notes 164–73 and accompanying text (describing Michael Slager’s killing of Walter Scott and Ray Tensing’s killing of Samuel DuBose).

169. See *supra* Part I; see also LAW ENFORCEMENT IN THE AGE OF BLACK LIVES MATTER: POLICING BLACK AND BROWN BODIES 3 (Sandra E. Weissinger & Dwayne A. Mack eds., 2018); Jay Stanley, *We Need to Move Beyond the Frame of the “Bad Apple Cop,”* AM. C.L. UNION (Mar. 19, 2015, 6:30 AM), <https://www.aclu.org/blog/national-security/we-need-move-beyond-frame-bad-apple-cop>. See generally CARL B. KLOCKARS ET AL., NAT’L INST. OF JUSTICE, THE MEASUREMENT OF POLICE INTEGRITY (May 2000), <https://www.ncjrs.gov/pdffiles1/nij/181465.pdf> (exploring “police officers’ understanding of agency rules and the extent of their support for these rules”); Gary E. Marché, *Integrity, Culture, and Scale: An Empirical Test of the Big Bad Police Agency*, 51 CRIME L. & SOC. CHANGE 463 (2009) (discussing the lack of evidence supporting the theory that police misconduct is attributable to “bad apples” and is instead attributable to police culture).

the proverb in total finishes with “spoils the whole bushel/bunch.” If “bad apples” persist when they should be discarded, a frightening potential exists that their poison will infect the entire lot. “Bad apple” officers should be rooted out, not recycled, thus enabling police departments to coalesce around principles of respect, de-escalation, community, and dignity, free from infection. While some scholars argue that no current police officer can be immune from biased and anti-black policing practices due primarily to the orientation of policing in the United States as described above,<sup>170</sup> profound reform of police hiring together with the permanent expulsion of officers that violate use of force and brutality rules and policies can serve as a useful start to reforming policing as currently practiced in the United States.

By way of example, Officer Timothy Loehmann, who killed twelve-year-old Tamir Rice, was a recycled police officer. After having been terminated from the Independence Missouri Police Department for exhibiting behavior “unfit” for a police officer, Loehmann was later hired by the Cleveland Police Department where he was in training at the time that he shot and killed young Rice two seconds after arriving onto the scene.<sup>171</sup> If the Cleveland Police Department had a policy against hiring failed police officers terminated from a former law enforcement agency for conduct unbecoming a police officer, it would never have had to experience the Tamir Rice killing. In addition, Michael Brown’s killer, Officer Darren Wilson, is currently applying for law enforcement jobs, after resigning from the Ferguson Police Department in the aftermath of the killing.<sup>172</sup> Wilson re-

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170. See *supra* Part I. Professor Cecil Hunt has argued that it is currently impossible or nearly impossible to cull the anti-black policing from now-serving officers who have been inculcated with the historical baggage of policing black men and women in the United States. Professor Hunt argues that a completely new breed of officer must be hired and trained in the United States to completely see effective police reform. Professor Cecil Hunt, Comments made at the John Marshall Law School (Feb. 20, 2018) (discussing historic bias in U.S. police departments during his Human Rights, Race & Mass Incarceration course, spring 2018).

171. See Dwyer, *supra* note 42.

172. See Halpern, *supra* note 46 (describing Darren Wilson’s life since he killed Michael

ports that he has not secured a new police position—not because he killed an unarmed black man, but because, as has been reported to him by police leaders, the “heat” from the media attention would be too great.<sup>173</sup>

A policy against rehiring officers that have exhibited brutal and violent aggression unnecessarily against the citizens they are hired to safeguard could significantly change the policing game. Officers that are terminated for brutality and unjustified use of force are routinely recycled,<sup>174</sup> which puts the public at danger. This practice should end.

#### D. *Reforming Use of Deadly Force Law*

As I have argued previously,<sup>175</sup> the use of deadly force law in the United States must be thoroughly and functionally reformed in order to preserve human life at all cost rather than allow law enforcement officers to kill because they are in fear or because they can make a case that they are in fear. Since 1985, the U.S. Supreme Court has held—and most state courts/legislators have agreed—that law enforcement officers are justified in using deadly force if they find themselves in a situation where they are in fear of serious physical injury or death.<sup>176</sup>

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Brown).

173. *See id.*

174. *See* Toner & Rutecki, *supra* note 5 (chronicling investigative report, “The Revolving Door: Troubled Officers Get Frequent Career Chances”).

175. *See Lord Forgive Me, supra* note 2, at 25–30.

176. *See* *Tennessee v. Garner*, 471 U.S. 1, 22 (1985) (holding that under the Fourth Amendment, when a law enforcement officer is pursuing a suspect that is fleeing, the officer may not use deadly force to prevent the suspect from escaping unless “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”); *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)) (“Because ‘the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”); *Rose v. State*, 431 N.E.2d 521, 523 (Ind. 1982) (referring to IND. CODE § 35-41-3-3 (1979) and applying IND. CODE § 35-41-3-2 (1979)) (“The justified deadly force is to prevent injury, the imminent danger of injury or force, or the threat of force, not to effect an arrest or prevent escape.”); *Julian v. Randazzo*, 380 Mass. 391, 396 (1980) (“The person attempting a valid arrest has the right to use the force that is reasonably necessary to overcome physical resistance by the person sought

Long-time evidence suggests that this standard has proven ineffective and has led directly to many of the tragic police killings of unarmed African American men witnessed in the past several years.

When Officer Michael Slager shot Walter Scott in the back, as Scott was running slowly away from Slager, the first thing that Slager did was claim over police radio that Scott had wrestled his taser away from him, beginning the justification that Slager was in fear for his life.<sup>177</sup> Following this claim over police radio, Slager thereafter walked his taser more than fifteen feet to the body of Walter Scott and dropped it directly next to Scott's lifeless body.<sup>178</sup> When Officer Wilson shot and killed the unarmed Michael Brown in Ferguson, Missouri, the first thing Wilson did when interviewed after the killing was attempt to justify the shooting of the unarmed Brown by describing how he was in fear for his life when the large black man allegedly reached into his police vehicle to grab his gun.<sup>179</sup> Wilson's narrative at grand-jury proceedings described a maniacal, wild-eyed Michael Brown and proceeded to follow Missouri's deadly force standard chapter and verse, inculcating the necessary fear for life facts and describing how Brown potentially endangered Wilson's life or could have inflicted serious injury.<sup>180</sup> Michael Brown was never in possession of a weapon and was fleeing, both facts undermining Wilson's narrative that he was in "fear

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to be arrested. In cases of arrest by a private person, the trial court shall limit the justification for the use of deadly force to prevent escape in accordance with Model Penal Code § 3.07."); *Kortum v. Alkire*, 69 Cal. App. 3d 325, 333 (Cal. Ct. App. 1977) ("[CAL. PENAL CODE §§ 196, 197, and 837 (1872) and CAL. PENAL CODE § 835a (1957)], as construed by the courts of [California], prohibit the use of deadly force by anyone, including a police officer, against a fleeing felony suspect unless the felony is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.").

177. Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer Is Charged with Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <http://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>.

178. *See id.*

179. David Dante Troutt, *Is Racial Justice Possible in America?*, NATION (Dec. 10, 2014), <https://www.thenation.com/article/racial-justice-possible-america/>.

180. *Id.*

for his life” and that Michael Brown was “inflicting serious injury.”<sup>181</sup> Instead as detailed above, Officer Wilson described Michael Brown as a “demon” and like “Hulk Hogan” in order to justify the “fear” that he felt justified the kill shots.<sup>182</sup>

When university police officer Ray Tensing shot and killed the unarmed Samuel DuBose at a routine traffic stop in Ohio,<sup>183</sup> Officer Tensing’s immediate action thereafter was to claim over police radio that the car DuBose was driving had begun to speed away, that Tensing was “dragged” by the car, and that, therefore, he was in fear for his life.<sup>184</sup> Tensing, aware that the

181. *Id.*

182. Josh Sanburn, *All the Ways Darren Wilson Described Being Afraid of Michael Brown*, TIME (Nov. 25, 2014), <http://time.com/3605346/darren-wilson-michael-brown-demon/>. Meanwhile a counter-narrative offered by Mr. Brown’s friend and an eyewitness, which was ignored and challenged by prosecutors at the grand-jury proceeding, alleged that it was Officer Wilson who was out of control in the confrontation and that Wilson initiated the scrum at the door of the police vehicle. See Troutt, *supra* note 179. According to Professor Troutt:

And then there is the counternarrative offered by Dorian Johnson, the only other eyewitness to the entire encounter, who can provide important context, yet whose version has been overshadowed by Wilson’s. Johnson’s story supports another stereotype, that of the outsider policeman who demands complete surrender to his authority and gets mad—violently mad—when it doesn’t follow.

According to Johnson, Wilson tells them to “Get the fuck on the sidewalk” (again, nothing about cigarillos or the convenience store). When they don’t immediately comply, he whips his truck dangerously backward, almost bumping them, opening the door so violently it bounces against both young men and closes again. “What did you say?” Wilson says, obviously angry. From the window, he then grabs Brown around the neck and the scuffle ensues.

*Id.*

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

184. See Maureen Hagrman, *Prosecutor: Officer Ray Tensing Indicted on Murder Charge in Death of Sam DuBose*, WLWT NEWS (July 29, 2015, 7:54 PM), <http://www.wlwt.com/article/prosecutor-officer-ray-tenzing-indicted-on-murder-charge-in-death-of-sam-dubose/3556532> (“Tensing claimed in the incident report that he was dragged by the car DuBose was driving and he was forced to fire the shot that hit DuBose in the head, killing him”); Adrienne Kelly, *Incident Report: UC Officer Dragged Before Fatal Shooting*, WLLT NEWS (July 29, 2015, 12:00 AM), <http://www.wlwt.com/article/incident-report-uc-officer-dragged-before-fatal-shooting/3556445> (describing that over the police dispatch radio Tensing claimed “I am not injured. I almost got run over by the car. He took off on me. I discharged one round. [S]truck the male in the head”).

university Police Department regulations mandate campus officers “not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another when the suspect is using deadly force,”<sup>185</sup> immediately began crafting his “fear for life” narrative by falsely claiming that the car was being driven at a high speed and that he thought he was going to be run down.<sup>186</sup> In fact, Tensing’s body camera proved both of these claims false: DuBose began driving away at a very slow speed and Tensing was clear of the car and in no immediate danger when he shot DuBose in the head.<sup>187</sup>

These scenarios highlighted above demonstrate how the use of deadly force standard fails to provide concrete guidance to law enforcement officers but instead has become a defensive tool used by officers to kill first and then justify later. Had cell phone video or body camera visual evidence not been available in the Walter Scott and Samuel Dubose scenarios, both Slager and Tensing would have undoubtedly been able to successfully assert “fear for life” justifications for what amounted to cold-blooded killings (as Officer Wilson was able to escape indictment because of no concrete video evidence available).

When national and state use of deadly force law incentivizes law enforcement officers to justify a killing by creating a narrative that matches the law, then we must work to change the law. The foregoing cases illustrate that deadly force standards fail to provide meaningful guidance to law enforcement officers in tense, real-life situations. Specifically, these statutes need to be

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185. See U. OF CINCINNATI, PUBLIC SAFETY POLICE OPERATIONS POLICIES AND PROCEDURES 3 (2014), <https://www.uc.edu/content/dam/uc/ucomm/docs/firearms-and-deadly-force-rev-101414.pdf>.

186. See generally *supra* note 184 and accompanying text (describing the circumstances of the DuBose shooting).

187. See Hagrman, *supra* note 184. District Attorney Teters, in charging Officer Tensing for murder stated:

Tensing was never dragged, according to Deters and the video evidence. Deters said the officer fell backwards as he fired the fatal shot.

“Mr. DuBose simply did not follow simple, non-violent commands. He was subdued, the cop had his license plate number. I mean, it was so unnecessary for this to have occurred,” Deters said.

*Id.*

reformed and rewritten to offer concrete guidance that seeks the preservation of human life as the penultimate consideration.

Deadly force standards across the country should be immediately rewritten to include a standard that requires first using all available alternative measures of force before using deadly force, that is, requiring use of de-escalation tactics, tasers, or night sticks before using the deadly weapon. The Use of Force Project shows that police forces that have adopted four or more de-escalation policies significantly decrease the number of police killings and police use of deadly force.<sup>188</sup> Two of the policy implementations include a Use of Force Continuum that mandates an escalating weapon measure as well as an Exhaust All Other Means policy before shooting.<sup>189</sup> Simply implementing these policies brings use of deadly force to top-of-mind and empirically reduces the number of police killings—as well as the number of citizen assaults on police.<sup>190</sup>

Requiring that law enforcement officers use all other available measures first will reduce the ability of officers to create after-the-fact justification of “fear for life.” Applying this revised “all other available measures first” standard could have meant dramatically different outcomes in each case described above. For example, Walter Scott would most likely not have been killed, but instead tased. Michael Brown would potentially not have been killed, but instead allowed to flee (and picked up later) or, alternatively, tased. Samuel DuBose could have been allowed to drive slowly away (and picked up later). Each black man would potentially be alive and answerable to the courts for driving with a broken taillight (Scott), for jaywalking and then allegedly fighting with a police officer (Brown), and for driving without a front license plate and potentially under the influence (DuBose). Adopting a standard that requires law enforcement officers to preserve life above all else—thus allowing judges and juries to allocate guilt and punishment—seems to be one

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188. See Appendix A.

189. See *How Police Use of Force Policies Can Help to End Police Violence*, USE FORCE PROJECT, <http://useofforceproject.org/#review> (last visited Apr. 20, 2018).

190. See Appendices A & B.

part of the answer to the problem of law enforcement killings of unarmed African American citizens.

A standard that allows for after-the-fact justification, only to be refuted by cell phone or dash cam video evidence later, is a law that must be seriously reconsidered and rewritten as described above.

### E. *De-militarizing Police Forces*

The failed War on Drugs invited and actualized a debilitating militarization of police forces across the nation.<sup>191</sup> The same failed War on Drugs brought militarized Special Weapons and Tactics (SWAT) units into the communities of the United States, where simple search warrants for drugs and low-level dealers are now carried out by tanks, battering rams, and military style raids.<sup>192</sup> SWAT units were originally created in the 1970s to handle rare instances of extremist violence, barricaded suspects, or armed confrontations with law enforcement officers.<sup>193</sup> Increasingly however, SWAT units have been tasked with nearly exclusively serving drug warrants and at times engaging in regular patrol activity, albeit outfitted with automatic weapons and body armor.<sup>194</sup> SWAT units regularly violate U.S. citizens' constitutional rights, often killing and maiming innocents.<sup>195</sup> Instances of SWAT raids gone horribly awry are legion.<sup>196</sup>

Examples include a young mother in Lima, Ohio, baby in arms, killed when shots were fired after a no-knock warrant was executed where no drugs were recovered nor drug dealers arrested;<sup>197</sup> an infant in Atlanta, Georgia, horribly burned and

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191. See andré douglas pond cummings, *All Eyez on Me: America's War on Drugs and the Prison Industrial Complex*, 15 IOWA J. GENDER RACE & JUST. 417, 428 (2012).

192. See *The War Comes Home: The Excessive Militarization of American Policing*, AM. C.L. UNION (June 2014), [https://www.aclu.org/sites/default/files/field\\_document/jus14-war-comeshome-text-rel1.pdf](https://www.aclu.org/sites/default/files/field_document/jus14-war-comeshome-text-rel1.pdf).

193. See VITALE, *supra* note 137, at 10–11 (citing BALKO, *supra* note 134).

194. See *id.* at 11.

195. See *id.*

196. See *The War Comes Home: The Excessive Militarization of American Policing*, *supra* note 192.

197. See Christopher Maag, *Police Shooting of Mother and Infant Exposes a City's Racial Tension*, N.Y. TIMES (Jan. 30, 2008), [www.nytimes.com/2008/01/30/us/30lima.html](http://www.nytimes.com/2008/01/30/us/30lima.html); see also John

nearly killed when flashbang grenades, thrown through a battered down front door, landed in the baby's crib and no drugs were recovered nor drug dealers arrested;<sup>198</sup> a grandfather of twelve shot dead in Framingham, Massachusetts after a no-knock raid where no drugs were recovered nor drug dealers arrested;<sup>199</sup> children traumatized at gunpoint and family dogs shot and killed after no-knock warrants executed where no drugs were recovered nor drug dealers arrested;<sup>200</sup> a seven-year-old child killed by a single SWAT bullet fired after a flashbang grenade detonated next to her as she slept in the living room of her home where no arrests were made.<sup>201</sup> In each example described above, the victims of the rogue SWAT unit policing were black or minority citizens.<sup>202</sup> In nearly every instance, the SWAT officers were never charged with wrongdoing or were acquitted.<sup>203</sup> Dozens of pages could be spent here chronicling SWAT raids that have resulted in the deaths of innocent

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Seewer, *Lima Officer Acquitted in Deadly Shooting During SWAT Raid*, AKRON BEACON J. (Aug. 4, 2008), <https://www.ohio.com/akron/news/lima-officer-acquitted-in-deadly-shooting-during-swat-raid> (“A white police officer was acquitted today in the drug-raid shooting death of an unarmed black woman that set off protests about how police treat minorities . . . . The all-white jury found Sgt. Joseph Chavalia not guilty on misdemeanor charges of negligent homicide and negligent assault . . . . Chavalia shot and killed Tarika Wilson and injured her year-old son who she was holding while SWAT officers stormed her house in January looking for her boyfriend, a suspected drug dealer.”).

198. See Philip Caulfield, *Georgia Toddler Injured by SWAT Team's Flash Bang Grenade Released from Hospital*, N.Y. DAILY NEWS (July 1, 2014, 3:03 PM), <http://www.nydailynews.com/news/national/toddler-injured-swat-team-flash-bang-grenade-headed-home-article-1.1850982>.

199. See Radley Balko, *Raid of the Day: Eurie Stamps, Grandfather of 12, Killed in Botched 2011 Drug Raid*, HUFFINGTON POST (May 14, 2013, 12:15 PM), [https://www.huffingtonpost.com/2013/05/14/raid-of-the-day-eurie-sta\\_n\\_3273127.html](https://www.huffingtonpost.com/2013/05/14/raid-of-the-day-eurie-sta_n_3273127.html).

200. See *The War Comes Home: The Excessive Militarization of American Policing*, *supra* note 192, at 23.

201. See Rose Hackman, *'She Was Only a Baby': Last Charge Dropped in Police Raid that Killed Sleeping Detroit Child*, GUARDIAN (U.S.) (Jan. 31, 2015), <https://www.theguardian.com/us-news/2015/jan/31/detroit-aiyana-stanley-jones-police-officer-cleared> (“Seconds after entering the house, where the grenade had caused [seven-year old] Aiyana's blanket to catch fire, [Officer] Weekley fired one fatal shot. It went straight through the child's head. Weekley said it was an accident and accused [Grandmother] Jones of wrestling with his gun immediately as he entered the abode, causing the fatal shot.”).

202. See *The War Comes Home: The Excessive Militarization of American Policing*, *supra* note 192, at 23.

203. See *supra* notes 196–201.

individuals and destruction of innocents' property. Suffice it to say, the examples outlined above are common, not occasional. The militarization of police departments across the nation can only be characterized as a monumental mistake in judgment and policy. Thus, there does not appear to be any good law enforcement reason to continue to employ SWAT units and military style raids in policing citizens and communities of the United States of America.

Imagine if the War on Drugs had been waged on Wall Street and among university dorm rooms across the nation rather than in America's poorest cities and minority communities. Imagine SWAT raids as described above conducted in Manhattan or Cambridge with battering rams and flashbang grenades being thrown into penthouses and fraternity houses. Evidence substantiates that drug use is rampant on Wall Street<sup>204</sup> and on college campuses across the country.<sup>205</sup> If SWAT or law enforcement focused their drug war efforts on Wall Street or university residence halls and fraternity houses, as many drugs, if not more, would likely be confiscated and an equal number of "drug dealers" would likely be arrested.<sup>206</sup> But the very idea of tanks rolling down Wall Street or battering rams crashing

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204. See *Wall Street Millennials Living Fast and Hard*, BARRON'S (Mar. 9, 2017, 1:15 PM), <https://www.barrons.com/articles/wall-street-millennials-living-fast-and-hard-1489083342> (Wall Street therapist Jonathan Alpert notes, "In an effort to cope with job stress and self-imposed pressure, these Type A's are working murderous hours while relying on prescription medication and—primarily among the men—street drugs, such as cocaine and crystal meth, to help them focus and reach peak job performance . . . ."); see also Linette Lopez & Mike Nudelman, *Drug Use on Wall Street—the History*, BUS. INSIDER (Jan. 14, 2014, 10:42 AM), <http://www.businessinsider.com/drug-use-on-wall-street--the-history-2014-1>. For a Hollywood take on rampant drug use amongst the financial elite, see generally *THE WOLF OF WALL STREET* (Paramount Pictures 2013).

205. See Donna Leinwand, *College Drug Use, Binge Drinking Rises*, USA TODAY (Mar. 15, 2007) [http://usatoday30.usatoday.com/news/nation/2007-03-15-college-drug-use\\_N.htm](http://usatoday30.usatoday.com/news/nation/2007-03-15-college-drug-use_N.htm) ("Nearly half of America's 5.4 million full-time college students abuse drugs or drink alcohol on binges at least once a month, according to a new study that portrays substance and alcohol abuse as an increasingly urgent problem on campuses across the nation."); see also *Drugs Commonly Abused by College Students*, DUALDIAGNOSIS.ORG, <https://www.dualdiagnosis.org/drug-addiction/college-drug-abuse/> (last visited Mar. 27, 2018).

206. See generally ALEXANDER, *supra* note 11 (describing the War on Drugs and militarization of police as a function of controlling black Americans).

through fraternity or sorority house doors borders on the absurd. Why though, should this appear absurd? If ridding the nation of drugs was the motivation behind the implementation of the War on Drugs, then why did law enforcement always choose to prosecute it in poor neighborhoods and urban communities<sup>207</sup> — never on Wall Street, mainstream university campuses or suburban America? Drug use and its prevalence permeates Wall Street culture and colleges across the country just like it does in Baltimore, Compton, and the west and south sides of Chicago. So, why have there never been SWAT raids in Skokie, Evanston, Hermosa Beach, Ocean City, Westwood, or Cambridge? Why do Wall Street traders, surfers in Huntington Beach, and fraternity boys and sorority girls receive a get-out-of-jail-free card when it comes to using and selling drugs?

The answer is simple. Law enforcement policy and culture is rooted in anti-blackness and controlling black and minority bodies.<sup>208</sup> No greater proof of this exists than in the way that law enforcement has failed to execute the War on Drugs effectively, instead using this “war” as a mechanism to incarcerate, oppress and disaggregate the black family and urban communities across the United States.<sup>209</sup> It is almost unthinkable to imagine the War on Drugs being prosecuted on Wall Street, in fraternity and sorority houses, or along the many wealthy beach cities in the United States. Elite America would simply not stand for it. So long as police abuse and killing occurs in urban communities and upon blacks, minorities, and poor Americans, then policing is functioning as it was intended.

Thus, in an appeal to fairness and equal protection, the era

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207. See *id.* at 121 (explaining that the War on Drugs could have been prosecuted on suburban housewives or college students, but was explicitly decided to be waged on urban communities). Alexander states, “[W]hen police go looking for drugs, they look in the ‘hood. Tactics that would be political suicide in an upscale, white suburb are not even newsworthy in poor black and brown communities.” *Id.*

208. See *supra* Part I; see also Woods, *supra* note 30, at 125–27.

209. COATES, *supra* note 15 (detailing how policing and mass incarceration — hyper-focused on black Americans — has devastated black communities and families); see generally ALEXANDER, *supra* note 11 (describing how mass incarceration through the War on Drugs has led to massive disruption in black families and minority communities throughout the United States).

when federal leaders like Ronald Reagan and Bill Clinton – as well as the Department of Defense – incentivize prosecution of the War on Drugs by offering local cities and municipalities military weaponry must come to an end. Policing the streets of the United States does not, and never did, require tanks, grenades, battering rams, and military style raids. The War on Drugs has failed, and the militarization of U.S. police departments has proven to be a colossal civil liberties blunder.<sup>210</sup>

### CONCLUSION

Police brutality and law enforcement killing of unarmed black men at times seems indecipherable and inevitable in today's environment. Because law enforcement in the United States traces its evolution back to slave catchers and anti-black control of freed black men, rooting discrimination and race hatred out of American policing can sometimes appear unattainable. Still, in a nation that promises in its founding documents that "all" people are created equal, battling for equality and humane policing seems a mandatory call for those that believe in that equal promise.

Glimmers of hope are available in cities like Cincinnati where community problem-oriented policing has taken root and significantly reduced crime, harassment, and police brutality against minority residents. Further hope can be seen in Cincinnati (and hundreds of other cities across the U.S.) where a Citizen Complaint Authority has been created (or, similarly, citizen police oversight boards), some with subpoena and discipline power, to review police action and provide oversight and direction to police chiefs.<sup>211</sup> While early evidence is mixed as to their

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210. See generally *The War Comes Home: The Excessive Militarization of American Policing*, *supra* note 192 (describing the War on Drugs and how it has unfairly impacted communities of color and harmed more than helped those communities).

211. See Semuels, *supra* note 104; see generally J.B. Wogan, *The New, More Powerful Wave of Civilian Oversight of Police*, GOVERNING (Feb. 27, 2017), <http://www.governing.com/topics/public-justice-safety/gov-police-civilian-oversight-oakland-seattle.html> ("In Oakland, Calif., police will soon answer to civilians newly entrusted with the power to discipline officers and fire the chief. Last November, the city's residents voted to create a civilian-run commission with

effectiveness, a Citizen Complaint Authority or similar citizen oversight board offers a community the opportunity to reform policing in concert with community norms and expectations.<sup>212</sup> Courage can be taken when considering that the police academy at the University of Illinois employs a cultural bias training program that challenges new hires to confront their own biases while learning about the history of racism and discrimination against minorities in U.S. policing. Optimism is attainable when reviewing the Use of Force Project and recognizing that if police forces will adopt careful policies in connection with using a gun against the citizens they are charged to protect, then significant reduction in citizen and police injury is possible. Officers in Spokane are learning de-escalation techniques on their own, suggesting that if police training is fundamentally reformed in police academies across the country, then a new day might dawn where police officers are trained to cool down tense situations instead of adding fuel to already heated scenarios.

If there is the political will to value and preserve human life above all other considerations, then reforming policing in the United States is possible. Reform efforts must focus both on who is hired to become police and on how those new recruits are trained. Both hiring and training must change drastically, as described above.<sup>213</sup> A further reform must focus on changing

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a level of authority over law enforcement that is rare in this country.”).

212. See Wogan, *supra* note 211 (“In its present form, civilian oversight usually doesn’t guarantee a meaningful check on police. Some places only have a passive agency that receives and reviews citizen complaints but has little independence or authority over the police department. Others have an auditor that can proactively investigate and make public recommendations about systemic issues. But regardless of their structure, most commissions can’t force the department to adopt their advice.”); Charles Blain, *What Does Actual Police Reform Look Like? More Training and More Oversight*, HILL (July 5, 2017, 2:20 PM), <http://thehill.com/blogs/pundits-blog/crime/340699-what-does-actual-police-reform-look-like-more-training-and-more> (“Out of 18,000 police departments in the country, only about 200 have an independent or civilian oversight board. Most major cities have one to review civilian complaints against officers and recommend disciplinary actions to administration officials or the chief, but not all are provided the same scope or authority. Independent oversight boards are valuable, public trust in the outcome of investigations on officer-involved shootings directly impacts the community’s response. All too often internal investigations result in justification for a shooting and communities are left feeling as though justice was not served.”).

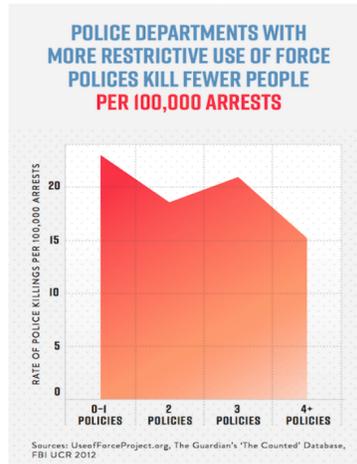
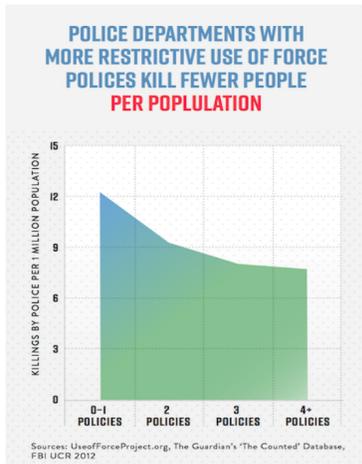
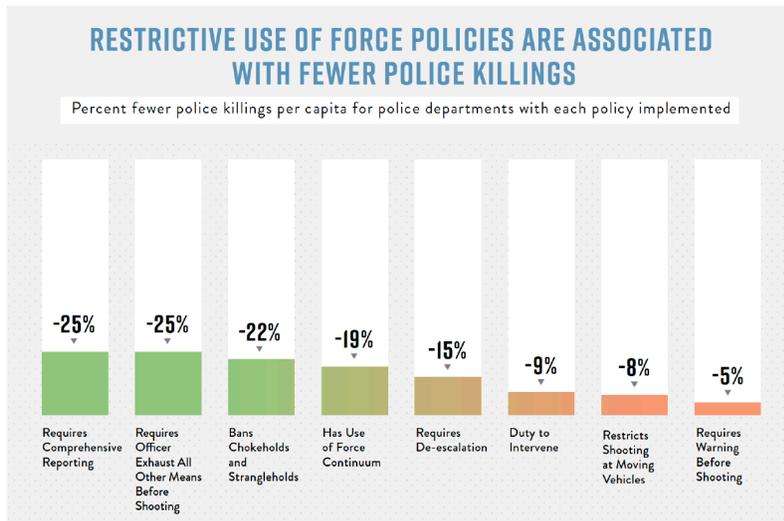
213. See *supra* Part IV.

the retention policies of national police forces that close the revolving door of failed police officers finding new law enforcement jobs after engaging in unfit conduct. This revolving door must be forever locked. We can also change the law as a primary reform effort, reframing "use of deadly force" away from the "fear for life" standard and toward a standard of valuing human life above all else. Finally, police agencies from coast to coast must accept and embrace demilitarization. Tanks, battering rams, flashbang grenades, and military-style raids must become a thing of the past. Military style policing is antithetical to community problem-oriented policing. As Cincinnati learned well during its evolution from "broken" to "model," they cannot co-exist.

If in fact these reform efforts are adopted, then it is possible that the anti-black foundation that continues to actualize American policing can be rooted out and a new, humane policing model can emerge.

APPENDIX A

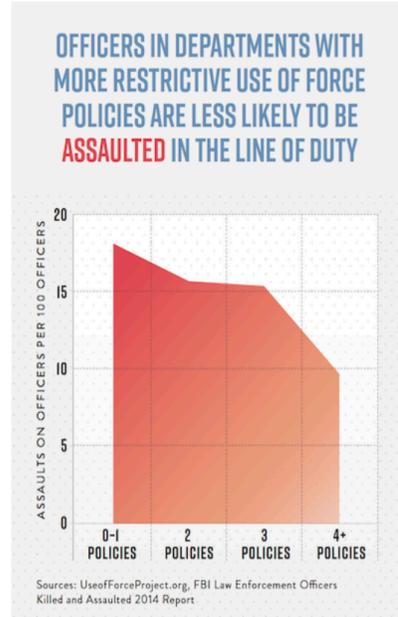
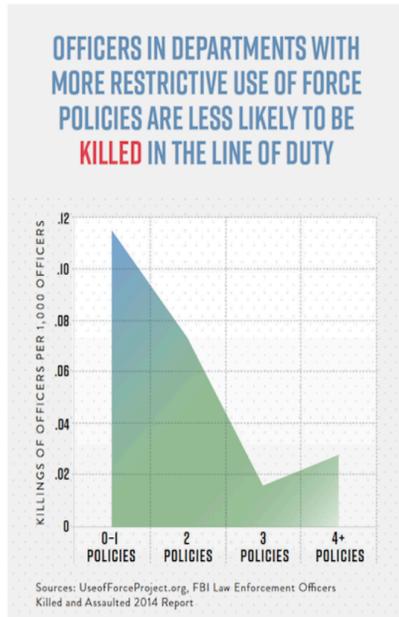
*Reduction in Police Killings per Implementation of More Restrictive Use of Force Policies<sup>214</sup>*



214. See MCKESSON ET AL., *supra* note 94.

## APPENDIX B

*Reduction in Police Deaths and Assaults While in the Line of Duty*<sup>215</sup>




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215. *See id.*