From Ferguson to Palestine: Disrupting Race-Based Policing

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Table of Contents
I. Introduction……………………………………………………………………………………………………
II. How Did We Get Here? …………………………………………………………………………………
   A. Racism--Driving While Black……………………………………………………………………
   B. War on Drugs…………………………………………………………………………………………
   C. 9/11 – Urban Areas Security Initiative/Urban Shield……………………………………
   D. Broken Windows – Zero Tolerance/Stop and Frisk……………………………………
III. What Has Been The Response?……………………………………………………………………
IV. Proposals for Change……………………………………………………………………………………
   A. Procedural Ideas…………………………………………………………………………………………
      1. Curtailment of sales of military equipment to local law enforcement…. …………………
      2. Transparency…………………………………………………………………………………………
      3. Recruiting better-educated officers…………………………………………………………
      4. Use of Tasers and less-lethal weapons…………………………………………………………
      5. Training on verbal warnings and warning shots………………………………………………
      6. Data reporting by officers involved…………………………………………………………
      7. Civilian review, internal affairs, diversifying personnel……………………………………
   B. Attitudinal Aspirations……………………………………………………………………………………
      1. Promoting non-enforcement activities, sensitivity training, exploring root causes……………………………………
      2. Crisis intervention training…………………………………………………………………………
      3. Implicit bias training……………………………………………………………………………………

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4. Prosecutions and civil suits

C. Community-Oriented Responses

1. Affirmative restorative justice

2. Oakland Power Projects

V. Can Things Change?

VI. Closing – Waging a Disruptive War and Seeking New Allies

I. Introduction

Michael Brown, an unarmed black teenager, was shot dead on August 9, 2014, by Darren Wilson, a white police officer, in Ferguson, Missouri. The shooting inspired protests around the country and especially in Ferguson. Some witnesses say the teenager assaulted the officer at the outset and tried to grab his gun; other witnesses say Wilson was the aggressor. About three months later, the St. Louis County grand jury decided not to indict Officer Wilson. The announcement set off even more protests.

Since Michael Brown’s killing, “Ferguson” has become the battle cry of embattled black communities targeted by over-policing and activists protesting racist policing. The battle cry has been all too important, unfortunately, as more than a dozen other police on black shootings occurred over the next several months. The story has become all too familiar. A traffic stop or a call about someone acting out. The target might answer respectfully, blandly, or with some attitude. He or she might sprint to escape, sit still, or glance away with attitude. Whatever the trigger, the cop’s violent reaction can end with another unarmed black man or woman shot in the head.

Consider Walter Scott. Around 9:30 a.m. on April 4, 2015, in North Charleston, South Carolina, 50-year-old Walter was pulled over by Officer Michael Slager. He was reportedly pulled over for a broken tail-light. A few minutes after being stopped, Walter ran from his vehicle. Officer Slager chased after him and they eventually reached a park. The officer used his Taser on Walter, and a struggle ensued. The officer then shot at Walter eight times. Officer Slager reported that he used his weapon out of “fear for his safety.” However, a bystander who began to film the

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encounter on his cell phone released footage to the family. The footage shows that in fact Walter was already running away, and the officer was firing at him. It shows the officer then going over, handcuffing Walter, and checking his pulse. Officer Slager was let go from the police department and he was charged with murder following a grand jury indictment.6

Consider Sandra Bland. Sandra was an African American woman who was found hanged in a jail cell in Waller County, Texas, on July 13, 2015. Her death was classified as a suicide by police and the county coroner, and was followed by protests against her arrest, disputing the cause of death and alleging racial violence against her.7 Bland was 28 years old when she died. Bland was pulled over for a minor traffic violation on July 10 by state trooper Brian Encina. He arrested her following an escalating conflict, during which he alleged that she had assaulted him, and the encounter was recorded by his dashcam and by a bystander's cell phone.8 The officer was placed on administrative duty for failing to follow proper traffic stop procedures, because the release of the dashcam video demonstrates that normal procedures were not followed by Officer Encina. However, prosecutors have decided not to file charges against Encina.9

Consider Brendon Glenn. Brendon was a 29-year-old homeless man with a history of alcoholism living in Venice Beach, California, with his dog. He had a love for environmental causes. Two officers were responding to a call that a man was harassing customers along the Venice Beach Boardwalk.10 After speaking with Brendon, the officers returned to their car and Brendon walked away. However, the officers turned to see some sort of struggle between Brendon and another person. The officers attempted to arrest Brendon and in the process shot him. After watching the video footage, the Los Angeles Police Chief concluded that the circumstances did not amount to extraordinary circumstances that justified shooting an unarmed man.11

And consider Tamir Rice. Tamir was a 12-year-old boy who was shot because Cleveland police officers thought he had a gun. The gun turned out to be a type of replica gun called an airsoft gun. The 911 caller that reported Tamir actually said it was “probably a juvenile” and that it was a probably toy gun twice.12 The officers responded to the call and Tamir was shot within two seconds after the officers arrived. While he did not say anything or make any physical threat to the officers, he reached toward the replica gun. The gun had no orange safety indicator on the muzzle usually found on toys, and an officer shot him twice. The prosecution investigated the

9 Id.
case, releasing a report of the investigation with contradictory and inconsistent statements. In spite of or perhaps because of discrepancies in timing, the positioning of Tamir’s hands, and the toy gun, two experts hired by the County Prosecutor concluded that the shooting was “reasonable.”

Consider also the experience of 13-year-old Maria Calvillo. On an early November morning, in Oakland, California, as Maria was getting ready for school, SWAT team officers barged into her family’s home, pointed a rifle at her, and searched her family, including her three-month-old sister who was wrapped in a baby blanket. According to Calvillo, “[t]he police had a tank in front of our house, an actual tank. I thought I was in a movie … It made me angry that they were searching my baby sister.” The officers had a warrant, but it turns out that their information was wrong. It was what is known in the trade as a “bad raid” warrant. Calvillo, who lives in West Oakland with pockets of poor African American and Latino communities and high crime, expressed fear of police when talking about the SWAT raid at her house. The image of a tank in front of Calvillo’s house to enforce a drug warrant is reminiscent of the image of tanks rolling down the streets of Ferguson in response to protests over the police shooting of Michael Brown.

This article is based on an understanding that police in many parts of the country often are guilty of abusing their authority in a racist manner. This is not an assumption. For example, although Ferguson, Missouri, is a third white, in the two-year period prior to the killing of Michael Brown, blacks accounted for 85 percent of traffic stops, 90 percent of tickets and 93 percent of arrests. In cases like jaywalking, which often hinge on police discretion, blacks accounted for 95 percent of all arrests. The racial disparity in those statistics was so stark that the Justice Department concluded in a report that there was only one explanation: The Ferguson Police Department was routinely violating the constitutional rights of its black residents.

The 1994 Violent Crime Control and Law Enforcement Act gives the U.S. Department of Justice Civil Rights Division authority to investigate state and local law enforcement agencies that it believes have unconstitutional policies or engage in unconstitutional patterns or practices of conduct. More than twenty-five police departments have experienced some form of DOJ involvement since 1994. The constant in the DOJ’s oversight of police departments, such as those in New Orleans, Seattle, Detroit, Cincinnati, Los Angeles, and Washington, D.C., accused of discriminatory and unconstitutional activity is the primary types of wrongdoing that have

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16 Id.
triggered federal involvement: improper use of force by police, unlawful stops and searches, and biased policing.\textsuperscript{20}

The over-policing of African American communities in many respects can be traced to the “broken windows” model of policing.\textsuperscript{21} The model focuses on the importance of disorder (e.g. broken windows) in generating and sustaining more serious crime. Disorder is not directly linked to serious crime; instead, disorder leads to increased fear and withdrawal from residents, which then allows more serious crime to move in because of decreased levels of informal social control. The idea is that police can play a key role in disrupting this process. If they focus in on disorder and less serious crime in neighborhoods that have not yet been overtaken by serious crime, they can help reduce fear and resident withdrawal.\textsuperscript{22} Promoting higher levels of informal social control will help residents themselves take control of their neighborhood and prevent serious crime from infiltrating. The problem is that this approach has evolved into a zero-tolerance mentality in the cop-on-the-street, manifested in constant harassment of young black males.

Another problem is Urban Shield, a controversial law enforcement training and weapons expo held in Alameda County every year, where companies that make military-style weaponry market their products to local police and fire departments.\textsuperscript{23} Urban Shield is the largest tactical exercise in the world and brings together more than fifty local, national and international law enforcement agencies. The conference features SWAT training, national and transnational police networking, and weaponry marketing. Companies from around the world use the conference to hawk the kind of military-grade equipment that shocked much of the country when it was used in Ferguson. While this equipment often is sold to the public as a tool for high-stakes situations such as active shooters, we now know that it is used for drug raids, to issue search warrants, and against peaceful protestors.\textsuperscript{24} Urban Shield is coordinated by the Urban Areas Security Initiative, a key program in the extreme militarization of police departments seen in Ferguson, Baltimore, and many other black communities nationwide. In short, Urban Shield also inculcates law enforcement officials with a hard core enforcement mentality.

Broken windows policing and Urban Shield represent disruptions in how police work is done. Disruption (a term we may be more familiar with in the technology world) literally uproots and changes how we think, behave, do business, learn and go about our day-to-day. The question for us today is whether we can offer disruptive alternatives to policing that offer real public safety in a manner that is not racist.

Black Lives Matter and others are working on disruptive alternatives to create true community policing that is about public safety for all.\textsuperscript{25} Their rebellious method of organizing recognizes that meaningful, lasting change can only come about through collaboration with allies with common goals and experiences. Working with the labor movement, immigrant rights groups, Latino and Asian American organizations, and pro-Palestinian activists represents a strong foundation for collective change.

\textsuperscript{20} \textit{Lessons Learned, supra} note 19.  
\textsuperscript{21} See \textit{infra} notes 66–85 and accompanying text.  
\textsuperscript{22} See \textit{infra} notes 70–85 and accompanying text.  
\textsuperscript{23} See \textit{infra} notes 56–58 and accompanying text.  
\textsuperscript{24} See \textit{infra} notes 57–58 and accompanying text.  
\textsuperscript{25} See \textit{infra} notes 86–118 and accompanying text.
The purpose of this article is to review some of what has been done and new ideas on what can be done to eliminate violent, race-based policing. Some of the old ideas of civilian review, federal intervention, and internal affairs still play an important role, but must be refurbished. Some new ideas are related to newer problem sources and others, such as training civilians to be first responders and requiring police to engage in non-policing community activities, are particularly noteworthy. I conclude that the multitude of ideas should be implemented and that many new ideas are coming from new leaders and allies.

I begin in Part II with a review of policies and phenomena that have contributed to a policing environment that gives rise to violent, race-based policing. This includes broken windows policing and Urban Shield, but also problems with respect to such things as racism and the war on drugs. In Part III, I discuss the response to the crisis of racist policing from various quarters, including traditional institutions as well as new community movements. Part IV is a review of various proposals for change that I classify as procedural, attitudinal, and community-oriented. In Part V, I contemplate whether significant change is possible, and in Part VI, I close with a call for a disruptive war.

II. How Did We Get Here?

African Americans have become the target of violent, race-based policing as a result of a variety of factors and programs. In this section, I discuss racism, the war on crime and drugs, the effect of September 11, and the broken windows theory of policy. These topics, of course, overlap.

A. Racism – Driving While Black

Racist enforcement can, of course, occur simply because some individual police officers are racist. Other times, the racist action can result from the actions of individuals who are placed in institutions or within structures that have become racist in nature. Those institutions and structures are products of efforts such as the war on crime and drugs and the broken windows theory of policy that are discussed below. Whatever the reason—individual, structural, or institutional—the results of some policing efforts reveal clear racism.

Consider the phenomenon of “driving while black.”27 In a study of thirteen million traffic stops in North Carolina, black and Latino persons were subject to consistently higher rates of search and arrest than whites.28 This is significant for purposes of this article, because police shootings

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27 On the nation’s highways today, police ostensibly looking for drug criminals routinely stop drivers based on the color of their skin. This practice is so common that the minority community has given it the derisive term, “driving while black or brown” – a play on the real offense of “driving while intoxicated.”

of blacks often begin with traffic stops. When officers make stops for seemingly minor reasons, e.g., seat belts or vehicle equipment issues, that have great discretion, and disparities in treatment between black and Latino versus white drivers are greatest. Once the car is stopped, black and brown drivers and passengers are more likely to be searched. For example, when the officer cited a “seat belt violation” as the reason for the stop, blacks are 223 percent and Latinos 106 percent more likely than whites to be searched.29

Officials in Greensboro, North Carolina defend the results on the grounds that any racial disparities in traffic enforcement results from the fact that that more African Americans live in high crime neighborhoods subject to aggressive patrolling.30 Officials admit that pulling over drivers is a standard, and regard these efforts as an “effective form of proactive policing.” As we see below, this standard practice likely follows the “broken windows” theory of policing. “The way we accomplish our job is through contact, and one of the more common tools we have is stopping cars,” acknowledged the Greensboro’s police chief.31

Over the years, police officials in cities like New York and Chicago have used much the same argument to justify controversial pedestrian stop-and-frisk policies in high-crime areas.32 Criminals will be discouraged from hanging out in high-crime spots, the theory goes, if they know that they will be subject to aggressive policing police there.

The Tenderloin district of San Francisco is a good example of police enforcement with a clear racist tinge. Not far from the fancy Union Square shopping district, tourist guide books often label the Tenderloin as the city’s “worst neighborhood,” filled with drug dealers, addicts, prostitutes, and mentally unstable street people.33 Black residents in the Tenderloin are consistently subjected to racial bias and racial slurs. In one case, a joint narcotics sting by the San Francisco police and the federal Drug Enforcement Administration resulted in the indictment of fourteen defendants who claimed that officers routinely referred to them as “black bitches” and used racist slurs to refer to other African Americans. In a court filing, the defendants alleged that police used slurs to refer to them and focused on African Americans when making drug arrests while ignoring suspects of other races.34 ”I have witnessed law enforcement officers in the Tenderloin use racial slurs, such as referring to African Americans as ‘n—–,’” defendant Lakeysha White said. “I have personally been called ‘n—–’ and ‘black bitch’ by police officers in the Tenderloin on multiple occasions.”35 Defendants alleged Tenderloin officers targeted them based on race and used excessive force. Hobert Lee, a black man, said officers have questioned him about his “presence in the Tenderloin” at least 10 times since 2008. His wife, who is white, never faced such questions when she was with him, Lee said.36

31 LaFraniere & Lehren, supra note 29.
32 Id.
35 Id.
36 Id.
Racism among San Francisco police officers apparently is not uncommon. Earlier in 2015, four San Francisco officers were fired, when racist text messages were traced to them.37 In an exchange with another officer in May 2012, Sgt. Ian Furminger asked whether he should be worried that the black husband of one of his wife’s friends was coming to visit. The officer responded, “Get ur pocket gun. Keep it available in case the monkey returns to his roots. It’s (sic) not against the law to put an animal down.” “Well said!” Furminger replied, “You may have to kill the half-breeds too,” the unnamed officer replied, adding, “Don’t worry. Their (sic) an abomination of nature anyway.” “All n— must f— hang,” another unidentified officer texted to Furminger in an unrelated exchange.38 In another text, an officer wrote, “White power” to Furminger, who then repeats the phrase in another text. In a text to a civilian, Furminger described his address as that of a “White power family.”39

B. War on Drugs

Deep concern over drug use has contributed to an enforcement regime that has come to focus on African Americans. President Richard Nixon’s declaration of a “war on drugs” in 1971 was manifested with a dramatic increase in federal drug control agencies, mandatory sentencing, and no-knock enforcement warrants.40 Under President Reagan, rates of incarceration began to explode as his administration expanded the war on drugs. In 1980, when Reagan took office, 50,000 inmates were in prison for nonviolent drug law offenses; by 1997, the figure spiked to more than 400,000.41 In the 1980s, the smoke-able form of cocaine—crack—attracted public attention as the media focused on crack addicts. First Lady Nancy Regan launched media-appealing anti-drug campaign with the catchy slogan “Just Say No.” The stage was set for zero tolerance policies in the mid-to-late 1980s. Political hysteria led to the passage of severe penalties at the state and federal levels, fueling an expansion of the prison population.

 Presidents Bill Clinton and George W. Bush continued the war. Although Clinton spoke of treatment over incarceration in his 1992 presidential campaign, after assuming the presidency, he adopted drug war escalation strategies reminiscent of his predecessors.42 Although the drug war was in somewhat of a decline when he arrived at the White House, Bush invested heavily to reinvigorate efforts. He appointed a “drug czar” who targeted marijuana and called for student


41 Id.

42 Id.
drug testing.\textsuperscript{43} Bush militarized the drug war as well. By the end of his presidency, some 40,000 paramilitary-style SWAT raids were conducted annually, targeting nonviolent drug law offenses, that often were misdemeanors. At the state level, however, reforms began to slow the drug war during the Bush years.\textsuperscript{44}

The drug war has resulted in a disproportionate targeting of and suffering by communities of color by law enforcement. Rates of drug dealing and use are similar across racial groups, yet people of color are stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations far more than whites. Higher arrest and incarceration rates of African Americans and Latinos is not due to higher drug use or sales in these communities; the disproportionate rates flows from police prioritization of urban areas and low-income income neighborhoods, as well as racial inequities in the criminal justice system.\textsuperscript{45} Consider crack cocaine sentencing. Beginning in the 1980s, jail sentences for crack have been 100 times tougher than those for powder cocaine, especially for African Americans—the majority of those arrested for crack. In spite of reforms in 2010, the crack/powder sentencing disparity remains 18:1.\textsuperscript{46}

For many, the war on drugs has devastated black communities while failing to address the root causes of crime and poverty that stem from an economic system based on institutional racism.\textsuperscript{47} According to Drug Enforcement Agency data, African Americans make up 75 percent of crack cocaine suspects, while whites make up 41 percent of methamphetamine suspects.\textsuperscript{48} Latinos are caught up in the racialization of the war on drugs as well. Latinos make up 46 percent of those arrested, compared to white and black suspects who each constitute about a quarter of the

\begin{footnotesize}
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  \item \textsuperscript{43} Id.
  \item \textsuperscript{44} Id.
  \item \textsuperscript{46} Id. According to the ACLU:
    In 2010, Congress passed the Fair Sentencing Act (FSA), which reduced the sentencing disparity between offenses for crack and powder cocaine from 100:1 to 18:1. The scientifically unjustifiable 100:1 ratio meant that people faced longer sentences for offenses involving crack cocaine than for offenses involving the same amount of powder cocaine – two forms of the same drug. Most disturbingly, because the majority of people arrested for crack offenses are African American, the 100:1 ratio resulted in vast racial disparities in the average length of sentences for comparable offenses. On average, under the 100:1 regime, African Americans served virtually as much time in prison for non-violent drug offenses as whites did for violent offenses. The FSA represents a decade-long, and truly bipartisan, effort to reduce the racial disparities caused by the draconian crack cocaine sentencing laws and to restore confidence in the criminal justice system — particularly in communities of color.
  \item \textsuperscript{47} American Civil Liberties Union, \textit{Fair Sentencing Act}, https://www.aclu.org/node/17576 (last visited Mar. 6, 2016).
\end{itemize}
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arrestees.\textsuperscript{49} Of those arrested, Latinos constitute 55 percent related to cocaine powder, 52 percent of the marijuana (52 percent), and 49 percent of those involving opiates.\textsuperscript{50}

Thus, significant blame for this rampant abuse of power must be laid at the feet of the government’s war on drugs. Democratic and Republican presidents and lawmakers have embraced this misguided crusade. From the outset, “the war on drugs has in fact been a war on people and their constitutional rights, with African Americans, Latinos and other minorities bearing the brunt of the damage. It is a war that has, among other depredations, spawned racist profiles of supposed drug couriers.”\textsuperscript{51}

Furthermore, the police, like those in Ferguson or Oakland, were transformed by the military hardware that began to arrive with the “war on drugs” in 1980—tanks, helicopters and assault rifles.\textsuperscript{52} Are we shocked that training police recruits with a mantra of a “war on crime” or “war on drugs” breeds a militaristic attitude in the minds of the cop on the street? Every time that new officer straps on his weapon, he does so with the idea that he is about to go to war.

C. 9/11 – Urban Areas Security Initiative/Urban Shield

The tragic events of September 11, 2001, opened the door for local law enforcement agencies to federal funding and military hardware in the name of national security. For example, the Homeland Security Grant Program (HSGP) is a program established in 2003 and was designated to incorporate all projects that provide funding to local, state, and Federal government agencies by the Department of Homeland Security. The purpose of the grants is to purchase surveillance equipment, weapons, and advanced training for law enforcement personnel in order to heighten security.\textsuperscript{53} The idea is that the HSGP provides funding for the creation and maintenance of national preparedness. That includes the establishment of plans, procedures, policies, training, and equipment at the Federal, State, and local level that is needed to maximize the ability to prevent, respond to, and recover from major events such as terrorist attacks, major disasters, and other emergencies.

Several projects of the Office of State and Local Government Coordination and Preparedness formed the foundation of HSGP. Today, HSGP includes these five projects: State Homeland

\textsuperscript{49} Id.
\textsuperscript{51} On the nation’s roads and highways, police ostensibly looking for criminals routinely stop drivers based on the color of their skin. This practice is so common that the minority community has given it the derisive term, “driving while black or brown” – a play on the real offense of “driving while intoxicated.” David A. Harris, Driving While Black: Racial Profiling on Our Nation’s Highways, AM. CIVIL LIBERTIES UNION (June 1999), https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways.
Security Program, Urban Areas Security Initiative, Operation Stonegarden, Metropolitan Medical Response System Program, and Citizen Corps Program.54

During the 2010 fiscal year, the Department of Homeland Security (DHS) spent approximately $1.8 billion on the Homeland Security Grant Program.55 DHS funding includes the transfer of military weapons and gear, including armored vehicles, bayonets, grenade launchers, and .50-caliber ammunition—the kind equipment associated with foreign battlefields, but now being added to the arsenals available to local police officers.

Urban Shield. A related challenge is Urban Shield, a law enforcement training and weapons gathering held in Alameda County, California, every year since 2008, where companies that make military-style weaponry market their products. Incorporating perhaps the “largest tactical exercise in the world,” Urban Shield brings together local, national and international law enforcement agencies with weapons manufacturers.56 The conference features SWAT training, national and transnational police networking, and weaponry marketing. Hands-on trainings in fire, bomb squad, emergency medical services are available, and anti-terrorism scenarios often are planned at dozens of sites in northern California counties. Companies from around the world use the conference to sell the kind of military-grade equipment that shocked much of the country when it was used in Ferguson. These weapons may be marketed to the public as necessary equipment for high-stakes situations such as those involving mass shooters, but we now know that the use has broadened to “drug raids, to issue search warrants, and against peaceful protestors.”57 Most San Francisco Bay Area law enforcement agencies attend Urban Shield along with some from other states including Massachusetts, Texas, and Florida. Teams from South Korea take part in the exercises, and teams from 10 countries including Jordan, Uruguay, Colombia, Thailand and China observe trainings.58 The Urban Areas Security Initiative coordinates Urban Shield, contributing to the militarization of police departments in Ferguson, Baltimore, and other black communities.

Department of Defense 1033 Program. Surplus U.S. military equipment from places like Iraq and Afghanistan has been turned over to law enforcement agencies across the country free of charge. A congressional program from the 1990s—the Department of Defense’s 1033 program—initially was intended to provide left over equipment for police use in narcotic and terrorism situations. However, even low profile police departments in towns with modest crime rates get mine-
resistant vehicles and weapons along with cars. The equipment is free, but the recipients pay for shipping charges and maintenance.

The public policy Cato Institute has voiced strong opposition to the program. According to its director on criminal justice:

We believe civilian police officers should use the absolute minimum amount of force necessary . . . . The goal of the military is to find the enemy and destroy the enemy using maximum force. When you begin to blur the difference between the two . . . what we find is a violation of constitutional rights and unnecessary injuries.

Recipient departments recognize that the program "blurs" the lines between local law enforcement and the military.

Given these military resources, is the militaristic attitude of police on the streets a surprise? The HSGP program, Urban Shield training, and 1033 program contribute to inculcating law enforcement officers with a hard core enforcement mentality. The 9/11-instilled war on terror has carried over to city police departments—consider the fact that the Ferguson police chief had trained in “counter-terror” strategies in Israel. In fact, hundreds of U.S. local sheriffs and police, along with FBI and border patrol, have traveled to Israel under the auspices of counterterrorism training to receive training in crowd control. The training is provided by the Israeli military on paramilitary and counterinsurgency tactics. When McKinney, Texas, police officer David Eric Casebolt brutally took down a teenage girl at a pool party in June 2015, he was using a form of martial arts called Krav Maga in which he trained exclusively. These combat techniques were developed by the Israel Defense Forces.

D. Broken Windows – Zero Tolerance/Stop and Frisk

The amalgamation of institutional, structural, and individual racism has great roots in the broken windows theory of policing. The ideas is to focus on preventing small crimes, such as vandalism and public drinking, and on creating an orderly atmosphere that would prevent more serious crimes from happening. The idea also is that if you fix the broken windows and clean up the sidewalks, problems will not escalate.

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60 Id.
61 Id.
64 Jeffrey Weiss, McKinney Officer Was No Rookie, DALLAS MORNING NEWS (June 8, 2015), http://www.dallasnews.com/news/community-news/mckinney/headlines/20150608-mckinney-officer-was-no-rookie.ece.
65 Gardner, supra note 63.
The theory has been used as a motivation for several reforms in criminal policy, including the controversial mass use of "stop, question, and frisk" by the New York City Police Department and it has been copied in places like Los Angeles and Boston.\textsuperscript{67} The stop, question, and frisk program, or stop-and-frisk, in New York City, is a practice in which police officers stop and question a pedestrian, then frisk them for weapons and other contraband; this is what is known in other places as the Terry stop. The rules for stop, question and frisk are based on the decision of the United States Supreme Court in the case of\textit{ Terry v. Ohio}.\textsuperscript{68} In New York City, about 684,000 people were stopped in 2011.\textsuperscript{69} The vast majority of these people were African-American or Latino,\textsuperscript{70} a disparity which, according to a 2007 study, persists even after controlling for "precinct variability and race-specific estimates of crime participation."\textsuperscript{71}

However, encouraging regular low-level intervention of police in neighborhoods is severely problematic. The activities that are emblematic of the philosophy evolve into broad police discretion in minority communities that cause harm to the residents that become commonplace. Individuals in these so-called broken window neighborhoods get hassled and arrested for the crime of simply being "undesirable."\textsuperscript{72} Low-level police intervention often is simply a cover for racist behavior.\textsuperscript{73}

The application of the broken windows theory in aggressive policing policies essentially is the criminalization of the poor and homeless. What is classified as disorder under broken windows policing are likely simple physical signs of a low-income neighborhood and the conditions under which residents live. Similarly, those who lack private space may engage in legal conduct that might be considered disorderly when done in public; those individuals then are regarded as criminals. Thus, many critics see the application of the broken windows theory in policing as a war against the poor as opposed to a war against more serious crimes.\textsuperscript{74}

Furthermore, the application of the broken windows theory leads to the criminalization of communities of color, which are typically disfranchised. Consider the inherent dangers of vaguely written ordinances that provide great discretion to the police to determine what is and who engages in disorderly behavior. The results can in turn produce a racially skewed outcome in crime statistics.

\textsuperscript{68} \textit{See generally} 392 U.S. 1 (1968).
\textsuperscript{70} \textit{Id}.
\textsuperscript{71} Andrew Gelman et al., \textit{An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias}, J. of AM. STATISTICAL ASS'N (Sept. 2007), \url{http://www.stat.columbia.edu/~gelman/research/published/frisk9.pdf}.
\textsuperscript{73} \textit{Id.} at 2268–72.
\textsuperscript{74} \textit{Id.} at 2262–63.
The application of the broken windows theory in policing and policy-making also can result in development projects that decrease physical disorder but promote gentrification in a manner that exacerbates dangers of racialized policing:

Often, when a city is “improved” in this way, the development of an area can cause the cost of living to rise higher than residents can afford, thus forcing low income people, often minorities, out of the area. As the space changes, middle- and upper class, often white, people begin to move into the area, resulting in the gentrification of urban, low income areas. The local residents are affected negatively by this application of the broken windows theory, ending up evicted from their homes as if their presence indirectly contributed to the area’s problem of “physical disorder.”

And just as importantly, the emotional effect on residents who are victims of the over-policing that broken windows policing brings is devastating in a way that others in the same city remain clueless about:

Most Americans have never experienced this kind of policing. They haven't had to stare down the barrel of a service revolver drawn for no reason at a routine stop. They haven't had their wife and kids put on an ice-cold sidewalk curb while cops ran their license plate. They haven't ever been told to get the fuck back in their car right now, been accused of having too prominent a "bulge," had their dog shot and their kids handcuffed near its body during a wrong-door raid, watched their seven-year-old dragged to jail for sitting on a dirt bike, or dealt with any of a thousand other positively crazy things nonwhite America has come to expect from an interaction with law enforcement. "It's everywhere," says Christen Brown, who as a 24-year-old city parks employee was allegedly roughed up and arrested just for filming police in a parking lot. "You can be somewhere minding your business and they will find their best way to fuck with you, point blank. It's blatant disrespect."

A major problem with the broken windows, stop and frisk approach was its evolution into a data-driven initiative. In New York, police chief William Bratton implemented CompStat—a statistics-based system requiring that precinct captains report on numbers of arrests, stops and searches. The calculation was simplistic—more stops and searches meant better crime fighting. Stop-and-frisk evolved into a highly “interventionist” kind of policing that became inherently discriminatory based on where the location of the so-called broken windows. When the broken windows approach in poorer neighborhoods was first initiated in New York, crime did decline, but police presence was maintained, and the officers were not inclined to just sit on their hands. In those neighborhoods, police did not wait for a 911 call, instead, they self-initiated action to keep statistics up. In affluent neighborhoods, however, police only responded when

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77 IMPROVING POLICE-COMMUNITY RELATIONS, supra note 67, at 21–24.
78 Id. at 22–23.
79 Id. at 23–24.
they were called, in other words, self-initiating action was not the norm in white neighborhoods.\(^80\)

In practice, the statistics associated with broken windows are staggering. Thousands of police were sent into “tough” neighborhoods, asking for IDs, executing pat-downs, and pushing people to the ground. As one retired NY police officer put it, we were there to “bang the shit” out of locals.\(^81\) In New York, police stopped almost 700,000 people a year (89 percent nonwhite in a population that is more than half white).\(^82\) During Martin O’Malley’s era as Mayor of Baltimore in the early 2000s, his zero-tolerance policing campaign was so aggressive that by 2005, 108,000 of the city’s 600,000 residents were arrested. The obsession with statistics "destroyed police work," forcing cops into the roles not of investigators and protectors, but of strong-armers bent on producing numbers above all else.\(^83\)

In essence, broken windows creates an attitudinal shift akin to that of corrections officers in prisons. Like those in prison, the attitude of police is to control the residents in the broken windows neighborhood. But as a former police officer concedes, "[I]n neighborhoods, you're not supposed to be controlling people. You're supposed to be working with them. You're supposed to be serving them. And that attitude is what's missing."\(^84\)

The results of a post 9/11 policing mindset, Urban Shield, broken windows policing, and racist implementation of laws are evident. Certainly, the results can be measured in terms of the inordinate stops and arrests of blacks. The result also can be measured in terms of the militarization of local police. The Department of Homeland Security's Urban Areas Security Initiative has supplied hundreds of millions worth of equipment, including Bearcat vehicles, speedboats and other items. For example, San Francisco Bay Area police departments got more than $14 million in military surplus, which included grenade launchers, armored vehicles, and a $4.4 million speed boat equipped with machine guns.\(^85\)

The combination of a broken windows approach of over-policing and any individual racism that particular officers may hold toward blacks has resulted in an institutional structure in many police departments that now results in focus—intentional or not—on black and poor communities. When a new police recruit enters into that structure, day-to-day activities focus on those communities, and the effects of those activities are racist—intentional or not. If they individual harbors racist tendencies, those tendencies are reinforced by mandated, normative racial actions. If the individual is not racist, the actions have racist effects nonetheless because of the enforcement focus.

III. What Has Been The Response?

The response on the street to black shootings has been dynamic. From Ferguson and Baltimore to Cleveland and Oakland, the outrage has been apparent. Mass protests, demands for the

\(^{80}\) Taibbi, supra note 76
\(^{81}\) Id.
\(^{82}\) Id.
\(^{83}\) Id.
\(^{84}\) Id.
resignation of police chiefs, and calls to criminally indict police officers involved have been constant. The establishment of the Black Lives Matter (BLM) movement has caught the attention of the entire nation. Rooted in the African American community, BLM has become synonymous with the campaign against violence toward black people. BLM typically is behind the protests of the killings of black suspects by police officers, but also targets the broader issues of racial profiling and racial inequality in the U.S. criminal justice system.

After George Zimmerman was acquitted of shooting to death black teenager Trayvon Martin in 2013, BLM was born, using the hashtag, #BlackLivesMatter, on social media. BLM then attracted widespread notoriety by helping to organize intensive protests in Ferguson over the Michael Brown shooting and in New York City following the 2014 killing of another African American, Eric Garner, in New York City.

By the summer of 2015, BLM was challenging politicians to state their positions on BLM issues. In one pivotal moment, eleven BLM activists had a private meeting with Hillary Clinton, the Democratic frontrunner for the 2016 presidential campaign long in October 2015. In the summer of 2015, BLM became noted for forcing candidates to deal with questions of race and justice, including the disruption of a Clinton event in August. At the October meeting, the activists pushed demands for investments in black communities, accused her of white privilege, and challenged her credibility on prison reform because of certain campaign contributions. The meeting appeared to make a difference. At a Democratic debate days later, the candidate opposed mass incarceration, called requiring body cameras for police, and proposed a “new New Deal” for communities of color.

Clinton’s new criminal-justice platform borrowed BLM language, calling on an end to police militarization and greater federal investigations of alleged police misconduct. She also pledged to refuse donations from the private-prison industry.


87 Mr. Militant Negro, Celebrating Black History Month: Why We Need Black History Month, OBAMACRAT.COM (Jan. 22, 2016), https://theobamacrat.com/2016/01/22/celebrating-black-history-month-why-we-need-black-history-month./


91 Id.

92 Id.

93 Id.
By 2015, BLM had become a political force. The BLM cry for justice was invoked in calls for police chiefs to resign or be fired; college students embraced the energy of BLM across the country. The movement even played a role in the hunger strike at the University of Missouri that incited a boycott by the school’s football team leading to the resignation of the university president.94

The grassroots BLM movement became more organized. National gatherings enabled local groups to meet and exchange strategies. The goals broadened to include campaigns for gender equality, to raise the minimum wage, housing rights, and education policy. A broader story about systemic injustice evolved so that the plight of blacks in America could be understood by more of the American public.95

BLM started on the evening of July 13, 2013, when George Zimmerman was acquitted of murder in the killing of Trayvon Martin. When Alicia Garza, an Oakland, California, workers’-rights activist, heard about the verdict, she posted a message on Facebook, which included: “Black people. I love you. I love us. Our lives matter.” A friend added the hashtag.96 As protests in other parts of the country ensued, banners that were inscribed with #j4tmla (justice for trayvon martin l.a.), included #blacklivesmatter in smaller letters.97

Garza and BLM co-founders Patrisse Cullors and Opal Tometi have not formed a nonprofit legal entity for the movement. Although the network has some thirty chapters, becoming a member simply requires a promise to uphold BLM principles.98 Other protests groups previously existed or emerged subsequent to Ferguson—and often join forces with BLM, but the Black Lives Matter mantra has become the rallying cry for this new civil rights movement.

While BLM has drawn much of the attention insofar as public response is concerned, demonstrations and disruptions involving a range of grassroots activism have erupted. In the San Francisco Bay Area alone, the groups include Critical Resistance, the Arab Resource Organizing Center, the Anti-Police Terrorism Project, the Stop Urban Shield Coalition, and the BlackOUT Collective. For example, on the day after Thanksgiving 2014 (Black Friday), BLM and other activist protesters chained themselves to a train at the West Oakland Bay Area Rapid Transit (BART) station to stand against what they called police brutality, spurred by the high-profile deaths of Michael Brown, Tamir Rice, Eric Garner and others at the hands of police. Although 14 were arrested, 28 were on the platform and more than 250 joined the action.99 BART was the focus of the action due to its perceived role in gentrification, as well as the 2009 killing of Oscar Grant, an unarmed black man shot by a BART police officer.100

94 Id.
95 Id.
96 Id.
97 Id.
98 Id.
99 Id.
100 Id.
Critical Resistance actually was formed in 1997 when activists began to challenge the idea of over policing—particularly in Oakland, California—and the prison crisis. They held their first conference in September 1998, bringing together 3,500 people in the city of Berkeley. The three-day event featured nearly 200 different workshops, cultural events, and a film festival. Today, the movement aims to counter over policing by no longer relying on police solutions. Its core belief revolves around the notion that through prison abolishment and ridding of reliance on the police, citizens will ultimately be safer in the city of Oakland. Critical Resistance now has four chapters based in Oakland, Portland, New York, and Los Angeles.

The disruption and resistance is cultural as well. DarkMatter is an example. A trans South Asian performance art duo comprised of Alok Vaid-Menon and Janani Balasubramanian, DarkMatter has been invited to perform at stages and universities across the world. The duo regularly posts on Facebook articles and statuses that focus on discrimination against people of color, police brutality and over policing, immigrant rights, and LGBT issues. The duo also travels around universities and conducts relevant workshops on some of these subject matters.

Pro-Palestinian groups have supported efforts to denounce police violence against African Americans, and organizations like Black Lives Matter have responded by supporting pro-Palestinian groups. Consider the actions of Dream Defenders. After the 2012 Trayvon Martin shooting in Florida, a new group called the Dream Defenders sprung into action. They marched for miles. They occupied the state capitol in Tallahassee. They pushed for legislative measures that would address racial inequality. With their focus on racism in America, the group helped lead the new BLM demonstrations that occurred after the deaths of Michael Brown and Eric Garner. But the Dream Defenders also broadened their focus by joining U.S. Palestinian rights groups in calling for an end to Israeli human rights abuses. On December 20, 2014, they deepened their commitment to Palestinian rights by unanimously endorsing the call for boycotts, divestment, and sanctions. In 2015, members of Dream Defenders, along with other groups focused on racial injustice like the Black Youth Project, joined a delegation to Palestine organized by the Institute for Middle East Understanding. The trip was meant to expose Black activists to the Israeli occupation.

When news reports in summer 2015 revealed that the tear gas canisters used by police to disband Ferguson protests were the same as those used by Israeli soldiers in occupied Palestinian territories, it boosted the connection—and led to a stunning public statement of African-American solidarity with Palestinians. The Black Solidarity Statement with Palestine was

101 History, CRITICAL RESISTANCE (2016), http://criticalresistance.org/about/history/.
102 Id.
103 Id.
104 Id. See infra notes 213-25, and accompanying text (discussing the Oakland Powers Project).
107 Id.
109 Id.
110 Id.
published in August, a year after the assault on Gaza. The statement defines the struggle for the “liberation of Palestine’s land and people” as “a key matter of our time.” The statement was inspired when Palestinians produced two statements of solidarity with Ferguson and the black struggle in the United States. The gesture was well-received by black activists organizing against police violence. More than 1,000 black scholars, activists, students and artists and nearly 50 organizations have signed. Among them are names like Angela Davis, Cornel West, Mumia Abu-Jamal and Talib Kweli, and groups like the Dream Defenders.

Pro-Palestinian activists have seen striking similarities between Ferguson and Palestine. Their experience with the militarization of police and brutality in Palestine is a daily occurrence. The disclosure that the police chief of Ferguson studied “counter-terror” measures in Israel in 2011 is regarded as part of the same agenda. The proponents of solidarity argue that Black Americans are being targeted by anti-terror funding and training initially designed to control populations from the Muslim and Arab world. Palestinian activist statements of support to black activists were supplemented with practical advice on how to “face tear gas.” They tweeted to Ferguson activists: “keep calm . . . the pain will pass, don’t rub your eyes. . . Remember to not touch your face.” The similarities in arrests of children and raids of family homes is striking to Palestinian activists.

Of course local, state, and federal government institutions have responded to these tragic shootings as well. The reaction of police departments involved in the shootings has varied. Some immediately come to the defense of the shooters; others have suspended officers after videos of the shootings show culpability on the part of the officers. Some departments call for Tasers, body cameras, or better training. President Obama appointed a task force to come up with recommendations. Attorney General Loretta Lynch launched investigations and called for more data collection. Local prosecutors brought criminal charges against the officers in some jurisdictions.

IV. Proposals for Change

Many proposals for change and ideas about what to do in light of the tragic shootings have been put forth. Some proposals update old ideas, while others are new. What remains to be seen is whether the rhetoric will yield results.

An important question to consider is whether any change or proposal can truly disrupt the status quo. I have been intrigued by the use of the term “disruptive” in the business pages as of late. A

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112 Id.
113 Id.
114 Id.
115 Yassin, supra note 62.
116 Id.
120 See infra notes 129–31 and accompanying text.
disruptive technology is one that displaces an established technology and shakes up the industry or is a ground-breaking product that creates a completely new industry. For example, an October 2014 article in Forbes, Ten Companies That Are Disrupting Their Industries Through Technology, noted:

Looking for a competitive advantage? Try crushing the competition by becoming a leader in your category. How can you do that? By changing the rules of the game. By reinventing the way business is done in your industry. And by using technology to scale quickly, forcing your competition to play catch-up. Following are ten companies that have done all of the above. Can you find in their stories best practices that will help you disrupt your industry and become a market leader? . . . 122

Thus, a disruptive innovation in the business and technology arena is one that helps create a new market and value network, and eventually disrupts an existing market and value network (over a few years or decades), displacing an earlier technology. The term is used in business and technology literature to describe innovations that improve a product or service in ways that the market does not expect, typically first by designing for a different set of consumers in a new market and later by lowering prices in the existing market. 123 The term "disruptive technology" has been widely used as a synonym of "disruptive innovation", but the latter is now preferred, because market disruption has been found to be a function usually not of technology itself but rather of its changing application. It literally means to uproot and change how we think, behave, do business, learn and go about our day-to-day, to think outside the box and develop a new framework.

Searching for a disruptive approach to law enforcement that would uproot and change policing in a manner that would clearly and positively reduce the likelihood of the shootings with which we are concerned is something that we must demand. As we know, racialized police shootings did not begin in Ferguson, yet the shootings of Michael Brown, Walter Scott, Sandra Bland, Tamir Rice, and Brendon Glenn all happened in spite of efforts at reforming policing the preceded their deaths. Are any of the proposals for change and ideas on what to do after their shootings likely to bring about the disruption that is needed?

The ideas on how to respond to the types of shootings that are the topic of this article and to stop new ones from occurring fall into three overlapping categories that relate to procedure, attitudinal change in police departments, and community-centered approaches. None of these suggestions is a panacea. In fact, some invite skepticism. But all have some fans and have demonstrated some, perhaps limited, positive impact. A question is whether any of the proposals can be categorized as disruptive in the innovative sense.

A. Procedural Ideas

1. Curtailment of sales of military equipment to local law enforcement

In a move that acknowledges that having military equipment can inspire a dangerous militaristic attitude within police departments, President Obama banned the transfer of federal military-style gear to local police departments in May 2015. The decision was a direct response to the shootings that are fueling distrust of law enforcement officials in communities across the country. The banned items including a wide range of equipment including armored vehicles, bayonets, grenade launchers, high-caliber ammunition, and camouflage uniforms. The transfer of other equipment such as explosives and riot equipment continues, but only if local police certify that the equipment will be used responsibly.

President Barack Obama’s announcement to, in effect, to demilitarize America’s police departments, emphasized that heavily-armed police forces leave local residents feeling alienated and intimidated: “We’ve seen how militarized gear can sometimes give people a feeling like there’s an occupying force . . . “We’re going to prohibit some equipment made for the battlefield that is not appropriate for those police departments.” Obama’s ban signaled an important message to local police about the need to scale back on militarization that was negatively impacting trust between police and communities. Although private purchases of similar equipment by police through programs like Urban Shield are not affected, the curtailment of the free federal equipment program is important.

2. Transparency

In response to the shootings in Ferguson, New York, and other parts of the country, plus the ensuing riots, President Obama saw the need for action. In an effort to build a bridge between affected communities and law enforcement, he signed an executive order establishing the President’s Task Force on 21st Century Policing in December 2014. The goal of the Task Force was to hear testimonials, listen to experts, and gather information from stakeholders and the public to identify the best practices in running law enforcement departments, then to make recommendations. The group included law enforcement officers, social activists, and academics.

In its final report, released in May 2015, the Task Force made clear that police departments must be more transparent about any serious event by communicating with citizens and the media. Initiating activities unrelated to enforcing the law to build trust with society is an important element of the Task Force recommendations. For example, its recommendations led to the


125 Id.


127 Id.


creation of the White House Police Data Initiative that hopes to release information to the public 
of all cases involving shows of force and shootings in which police were involved.\textsuperscript{131}

In an effort to improve transparency and accountability, requiring police to wear recording 
devices or body cameras has become a popular proposal. For example, as President Obama was 
creating the Task Force, he committed $75 million to help police departments purchase 50,000 
body worn cameras.\textsuperscript{132} In one study, use of force by officers wearing cameras fell by 59 percent 
and complaints against officers dropped by 87 percent. Another study in Florida yielded similar 
results: a 53 percent decline in use-of-force incidents resulted for officers who used cameras. In 
fact, civilian complaints against those officers dropped 65 percent.\textsuperscript{133} Reform activists and law 
enforcement officials appear to agree with expanding the use of body cameras.\textsuperscript{134} Not 
surprisingly, body cameras help with evidence collection and accuracy of reporting the incident. 
However, officers also have found that citizens change their behavior when they know a camera 
is rolling, thus helping to de-escalate confrontations. The officers do not view body camera use 
as a burden nor as a disincentive to respond or self-initiate action. In fact, those who use cameras 
feel they have become better officers.\textsuperscript{135} Thus, body camera use can prevent things from getting 
out of hand over concern with too much use-of-force by police or abuse behavior toward 
police.\textsuperscript{136}

Requiring body cameras raises a host of issues. Should policies and regulations be developed by 
the department internally or legislated? When should videotaping begin and end? How should 
courts respond to lost or mishandled video? Should officers be able to access footage prior to 
preparing reports? Should the public have access? What type of hardware is best? The answer to 
these questions likely affective the qualitative effectiveness of body cameras. Yet in spite of the 
challenges and outstanding questions, the use of body cameras apparently promotes 
accountability and community trust, while decreasing controversial incidents because both 
officers and subjects are being videotaped.

Make no mistake. Body cameras do have their detractors. Chiefs of some of the nation’s biggest 
police departments say officers in American cities have pulled back and have stopped policing as 
aggressively as they used to, fearing that they could be the next person in a uniform featured on a 
career-ending viral video. However, no empirical evidence has been offered to establish a 
retraction of police activities or “lackluster policing” that somehow contributed to a violent 
crime.\textsuperscript{137} Police commanders and politicians may claim that the atmosphere in their police

\textsuperscript{131} Final Report of the President’s Task Force on 21st Century Policing (May 18, 2015), 
\textsuperscript{132} The White House, Fact Sheet: Strengthening Community Policing, WHITEHOUSE.GOV (Dec. 1, 2014), 
\textsuperscript{133} Nick Wing, Study Shows Less Violence, Fewer Complaints When Cops Wear Body Cameras, HUFFINGTON POST, 
(Oct. 13, 2015), http://www.huffingtonpost.com/entry/police-camera-study_us_561d2ea1e4b028dd7ea53a56
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{136} Body-worn Camera Study by Executive Fellow Chief Tony Farrar is Published in Scientific Journal, POLICE 
\textsuperscript{137} Janice Malcolm, Frustrated Officials Blame Citizens Recording Officers For Rise In Violent Crime, Calls It 
departments have changed after the highly publicized police shootings of blacks and ensuing riots. But they acknowledge that officers still do their work. Nonetheless, they claim that a “YouTube effect” discourages officers from being too confrontational, because they do not want to end up on the Internet.138

3. Recruiting better-educated officers

The President’s Task Force recommended recruitment of officers with higher education or to offer incentives to those without higher education to get a degree.139 The goal of this recommendation is to encourage a well-educated police force with an active learning culture. The belief is that a higher level of required education could raise the quality of officer performance.

4. Use of Tasers and less-lethal weapons

The President’s Task Force recommended supporting the development of new “less than lethal” technology to help control combative suspects.140 Conductive energy devices (CED) or “Tasers,” also known as stun guns, have been shown to be effective at reducing both officer and civilian injuries. One study found a 70 percent decrease in officer injuries and a 40 percent decrease in suspect injuries.141

After some shootings, officials are quick to propose arming police officers with Tasers. For example, after the fatal shooting of Mario Woods in San Francisco, the police.142 The president of the San Francisco police officers union asserted that if “Tasers were available at shooting, there would have been a totally different outcome.”143

However, Tasers are not a panacea. Their availability is not a guaranteed, non-lethal use of force. A good use of the Taser is when a knife-wielding individual will not drop the weapon. But more often than not, Tasers, instead, become a tool for compliance. Someone who is not a threat but does not comply also gets tased. That person can fall, hit their head, and in some instances even die. So many fall victim simply for not putting their hands up or failing to get out of a car as instructed. Taser use should be confined to situations when the individual is a threat.144

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139 President’s Task Force Report, supra note 131, at 3, 51.
140 Id. at 37–38.
141 Id.
144 Rachel Martin, Police Expert: Tasers Should Be Used Only When Suspects Are Threats, NPR WEEKEND EDITION (Jan. 3, 2016, 7:48 AM), http://www.npr.org/2016/01/03/461818439/police-expert-tasers-should-be-used-only-
Also, sometimes Tasers break down mechanically. Some officer-involved shootings first involved the misuse of a Taser. Once an attempt is made to use a Taser and it does not achieve its desired effect, officers get “a little freaked out,” and then are more willing to use lethal force.\textsuperscript{145}

Counterintuitively, a general reduction in the lethal use of force does not necessarily follow when Tasers are available. They become an additional use of force most often. New York City is very strict about who can Taser; only sergeants and those of higher rank in the police department are allowed, and yet the NYPD has a very low rate of officer-involved shootings. That supports the position that a department can lower the rate of officer-involved shootings without resort to Tasers.\textsuperscript{146}

Important training methods about verbal de-escalation are critical. Police know that they are going to be dealing with non-compliant individuals from time to time, so the issue is having in your head how you will be dealing with those individuals when those situations arise. Officers need to maintain a certain attitude or mindset. They generally have time to be patient in many of these situations. If someone does not comply immediately, the officer can continue talking with the person. It's always going to be tough to stop officer-involved shootings, nothing is ever going to be perfect. The job has a lot of variables. Talking more and exercising patience may not always work, but greater patience is generally a good starting point for everyone’s sake— including the officer’s.\textsuperscript{147}

5. Training on verbal warnings and warning shots

The European Convention on Human Rights requires its European signatories—almost four dozen—to refrain from use of deadly force unless “absolutely necessary” to achieve a lawful purpose.\textsuperscript{148} The Convention’s “absolute necessity” standard would not be met if an officer simply had a “reasonable belief” that the suspect had a gun, for example. Thus, the facts around the shootings of Tamir Rice, Brendan Glenn, and Walter Scott would not have been proper under the European standard. Certainly, the officers who shot a mentally ill Dallas man with a screwdriver would not have been absolved of responsibility.\textsuperscript{149}

In Europe, killing is considered unnecessary if alternatives exist. For example, national guidelines in Spain would have prescribed that [Ferguson police officer Darren] Wilson incrementally pursue verbal warnings, warning shots and shots at nonvital parts of the body before resorting to deadly force. Six shots would likely be deemed disproportionate to the threat that [Michael] Brown, unarmed and wounded, allegedly posed.\textsuperscript{150}

\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
Europe does have the advantage of having centralized training centers that enables consistent teaching about avoiding deadly force as well as uniform restrictions on police behavior. Typically, countries such as the Netherlands, Norway and Finland require training at the national academy for three years.\textsuperscript{151} In three years, meaningful time can be devoted to training on communication and counseling skills needed to deal with distraught individuals. In the United States, total instruction at police academies averages 19 weeks of classroom instruction, and trainees receive 20 times more hours on use of force than on conflict de-escalation.\textsuperscript{152} Strikingly, less than eight hours of training on crisis intervention is required by most programs in the United States.\textsuperscript{153} In fact, psychologists who study U.S. police officers have found that they come out of police academy with a bias for using force.\textsuperscript{154}

6. Data reporting by officers involved

Attorney General Loretta Lynch is among many voices calling for consistent data on law enforcement interactions with the communities they serve, especially data collection on the use-of-force. Not only would this information be useful in monitoring trends, but requiring data collection would “promote accountability and transparency.”\textsuperscript{155} Her voice is consistent with the President’s Task Force recommendation that agencies should be required to collect and report data on all officer-involved shootings, whether fatal or nonfatal.\textsuperscript{156}

In that vein, in October 2015, California Governor Jerry Brown signed data-related bills aimed at reducing racial profiling and the use of excessive force by law enforcement officers. One of the bills, AB 953, requires police officers to collect data on the people they stop, including perceived race and ethnicity, the reason for the encounter, and the outcome.\textsuperscript{157} The bill would require state and local law enforcement agencies to annually report to the attorney general data on all stops, including the time, date, location and reason for the stop, what action was taken and the perceived race or ethnicity, gender and approximate age of the person who was stopped. Governor Brown also signed AB 619 requiring annual reports from agencies that include information on officer-involved shootings that cause serious injury or death.\textsuperscript{158}

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\begin{enumerate}
\item\textsuperscript{151} Id.
\item\textsuperscript{152} Id.
\item\textsuperscript{153} Id.
\item\textsuperscript{154} Nichole, Flatow, \textit{How This California Police Officer Escaped Charges For Shooting A 13-Year-Old Dead}, THINK PROGRESS (July 9, 2014) (citing Psychology Professor Dennis Rosenbaum), http://thinkprogress.org/justice/2014/07/09/3457566/how-this-california-police-officer-escaped-charges-for-shooting-a-13-year-old-dead/.
\item\textsuperscript{156} Task Force Recommendations, supra note 131, § 2.2.4, at 21–22.
\item\textsuperscript{158} Id.
\end{enumerate}
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Assemblywoman Shirley N. Weber (D-San Diego) introduced the bills in response to “the deaths of unarmed black men and other people of color by police.” She believes that collecting and publishing data required by AB 953 will help shed light on the scope of problems and hold those bad officers and departments accountable, while also finding a set of best practices when law enforcement gets it right. AB 953 also would establish a Racial and Identity Profiling Advisory Board charged with analyzing the data and developing solutions to profiling. The bills expands the definition of racial profiling to include “racial or identity profiling” in order to account for identity characteristics beyond race.

The new law won the support of grassroots organizations, hoping that the legislation would help restore trust in law enforcement by the community. According to Patrisse Cullors, founder of the civil rights group Dignity and Power Now, “Our communities have lived experiences with biased policing -- ranging from racial profiling, to excessive, and sometimes lethal, use of force. This inevitably breeds distrust in law enforcement, which in turn undermines the safety of all Californians.” The racial profiling bill drew vigils by dozens of activists from groups including the Communities United Coalition, supporters of the Black Lives Matter movement.

A different kind of data collection issue came up following the Mario Woods shooting in San Francisco. The police chief issued an order requiring officers to file a use-of-force report each time they pointed their firearm at a subject. Like the California state data collection requirement, apparently the idea is that this requirement discourages officers from being too cavalier about drawing their weapons and pointing them at subjects. The San Francisco police union, however, warns that the “more report writing” required, that means more officers “off the streets to complete those reports.”

7. Civilian review, internal affairs, diversifying personnel

Conventional calls for effective, institutional civilian review and internal affairs bodies have been renewed in light of the high-profile coverage of police officer-involved killings. Those recommendations often have included demands for reviewing whether police departments are as diverse as the communities that they serve.

Unfortunately, data disclose that police internal affairs units usually side with police officers. For example, out of more than 10,000 complaints of misconduct in Chicago from 2002 to 2004, discipline of at least seven days suspension was handed out in only 19 cases. The statistics in New York are similar in an evaluation of chokehold incidents that are banned. The NYPD's Inspector General's office and its Civilian Complaint Review Board found that out of 1,048 incidents, only 10 complaints were "substantiated," and none of officers were significantly disciplined.

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159 Id.
161 Ho, supra note 143.
162 Id.
164 Id.
A big reason for this disconnect can be traced to how complaints are processed in many big police departments. Unless and until criminal charges are filed, the complaint is handled in-house. Then, in New York for example, a civilian review panel has to substantiate the complaint and suggest punishment or refer to a court-style judge employed in the police department. The judge can recommend discipline, but even then, the judge’s recommendation is subject to the review and possibly reversal by the police commissioner.\footnote{Id.}

The President’s Task Force adds a hybrid recommendation that departments establish a “Serious Review Board” comprised of sworn staff and community members to review cases involving officer-involved shootings.\footnote{Task Force Recommendations, supra note 131, § 2.2.6, at 22.} The purpose is not simply to analyze the actual facts of the incident, but to go further to identify any administrative, supervisory, training, tactical, or policy issues that need to be addressed in the department.\footnote{Id.}

The President’s Task Force also recommends a simultaneous, less threatening, “nonpunitive” peer review, separate from criminal and administrative investigations.\footnote{Task Force Recommendations, supra note 131, § 2.3, at 22–23.} The idea is to use a nonadversarial, private process to review episodes, including those that may be within department policy, but potentially disastrous in terms of community relations. The education-based process is intended to be cooperative.

B. Attitudinal Aspirations

1. Promoting non-enforcement activities, sensitivity training, exploring root causes

Promoting “community policing” has been very popular. The philosophy of community policing is to develop community partnerships systematically, to use non-violent problem-solving strategies, and to be proactive about addressing community conditions and root causes of crime and social disorder.\footnote{Id. at 41.} Two key elements of community policing are mutual trust and cooperation. Trust and cooperation only come about from knowing the community with whom you work, so that your frame of mind or attitude is open to those relational qualities.

Smart problem-solving is a key element of community policing that begins by seeking collaboration with important institutions and community resource groups, such as schools, community groups, and neighborhood service providers. This lays the groundwork for effective intervention and prevention. This approach promotes connections between law enforcement and key stakeholders to address and improve public safety, thereby broadening the capability of the community to be more resilient if crimes occur. Thus, the proactive approach of community policy begins long before an emergency call or a criminal investigation; it begins day to day on the streets with “respectful interaction between a police officer and a local resident” in discussions about life not about a particular crime.\footnote{Id.}
The President’s Task Force proposes that “police departments proactively promote trust by initiating positive nonenforcement activities to engage communities.” Escolar Especially in communities where police officers engage in many enforcement interactions, the departments should be vigilant about establishing programs and activities for positive, nonenforcement interactions. Examples of these nonenforcement, trust-building opportunities have emerged across the country, including such programs as Coffee with a Cop; Cops and Clergy, Citizens on Patrol Mobile, Students Talking it Over with Police, and the West Side Story Project.

Interacting with the community is another way of enhancing officers’ sensitivity toward the community. For example, after protests against excessive force by police, one of the tools used by New York City’s police department to teach officers to interact with communities of color was the theater. Police Commissioner William Bratton, ironically often criticized for taking broken windows policing too far, has commissioned the cast of the one-act play, Anne and Emmett, to perform in a lecture room at the New York City Police Academy in full costume. The play is about two well-known stories: Anne Frank, a Jew who hid in an attic with her family and later died in a German concentration camp, and Emmett Till, the black teen from Chicago who traveled to Mississippi in the 1960s and was murdered. For Bratton, the goal is about “stepping back, away from our personal prejudices, casual bias and preconceived notions.”

The message has resonated with many recruits. For 23-year-old Michael Palermo, that history reminded him of his responsibility as a police officer, "and how important it is that we stay level-headed throughout our training." For Palermo, Frank's and Till's experiences are the result of "governments abusing their authority and persecuting people." Some organizers understand that some police veterans may “roll their eyes” at these efforts, but to the promoters of this type of training, that just means that supervisors need to be retrained as well.

In large response to the challenge that veteran officers may be hard to sell on the idea of sensitivity and nonenforcement neighborhood engagement, the President’s Task Force highlighted the need to infuse the culture and organizational structure of law enforcement agencies with community policing. Community policing is not an assignment for a special unit; the entire police force needs to buy in. For example, the police chief in Richmond, California—a strong proponent of community policing—demanded that every officer be involved in community policing/problem solving in order to transform department culture and establish an effective partnership with residents. In Richmond, officers stay in the same district for years, in order to is expected to get to know the residents, businesses, community groups, churches, and schools on their beat and work with them to identify and address public safety challenges, including quality of life issues such as blight. Officers remain in the same beat or district for several years or more—which builds familiarity and trust. Other departments have come to realize that hiring, training, evaluating, and promoting officers should be based on their

171 Task Force Recommendations, supra note 131, § 1.5, at 14.
172 Id. at 15.
174 Id.
175 Id.
176 Id.
177 Task Force Recommendations, supra note 131, § 4.2, at 43.
178 Id.
ability and track record in community engagement—not just traditional measures such as the number of arrests or tickets issued. 179

The community policing training and its sensitivity aspect must be enforced and rewarded at the supervisory level, otherwise mixed messages are sent to officers. Training is important for officers to understand the expectations of the department, but the policies have to be reinforced in daily operations. 180 The front-line supervisors are largely responsible for translating the department’s policies, values, mission, rules, and regulations into operational practice. “By emphasizing some things and not others, they establish the organizational expectations for officers and shape the culture.” 181

The President’s Task Force also urges the development of service models that focus on the root causes of crime and include community members. 182 For example, in Los Angeles, a partnership between the community based Advancement Project and the Housing Authority features police officers going into public housing developments at times that are not based on emergency calls or crime investigations; the officers are not there to make arrests. The approach requires active building of a positive relationship. 183 Officers need to reach out and have conversations. A corollary to the approach is recognizing that police training should include critical thinking, social intelligence, dealing with implicit bias, fair and impartial policing, historical trauma, and other topics that address the capacity to build trust and legitimacy in diverse communities. 184

2. Crisis intervention training

In recognition that many police shooting victims are suffering from mental health challenges, in order to enhance police ability to recognize symptoms of mental health crises, the President’s Task Force recommended that Crisis Intervention Training (CIT) be made a part of both basic recruit and in-service officer training. 185 The purpose is to enhance officer confidence in addressing such an emergency and reduce inaccurate beliefs about mental illness. Analyses have shown that after completing CIT orientation, officers felt encouraged to interact with people suffering from a mental health crisis and to delay a “rush to resolution.” 186 Empathy training is an important component of CIT training, as is the opportunity to develop cross-disciplinary training, collaboration, and partnerships with other professionals.

Related training on recognizing the signs of drug addiction and how to respond when interacting with individuals who may be impaired because of addiction is also vital. Given the science on addiction as a disease of the brain and the benefits of equipping officers with overdose-reversal drugs, the President’s Task Force pursued this recommendation as part of the Obama

179 Id.
181 Id. at 4.
182 Task Force Recommendations, supra note 131, § 2.1, at 20.
183 Id.
184 Id. §§ 5.7, 5.9.
185 Id. § 5.6.
186 Id.
Administration’s “smart on crime” approach to drug-related offenses. More than 60 percent of those incarcerated at the state and federal levels regularly used drugs prior to incarceration.187

3. Implicit bias training

Many who are upset about the racism that they feel is inherent in the shootings of black suspects by police, point to social science studies that demonstrate that individuals are faster to pair positive evaluations with white faces and negative evaluations with black faces. More specifically, in the criminal justice system, Americans tend to “associate black people, especially young black men with criminality, dangerousness, and hostility.”188 The concern is that these biases essentially shape whether an officer will stop a person of color; an officer is more likely to perceive “crime in the making,” resulting in the likeliness of such parties to be stopped, interrogated, searched, and arrested. In short, this assessment is made by an officer without relying on any sort of reasonable suspicion. Police officers are more susceptible to implicit biases and are more likely to “shoot more rapidly” when a black suspect is holding a gun.

In response to shootings across the country, police departments in many cities have offered implicit bias trainings to their officers. Officers who have received the training have found such trainings “useful and relevant,” but researchers continue to question whether implicit racial bias training reduces racial biases and, if so, for how long.189 The results have been mixed, and no evidence links reductions in biased behavior with long-term changes.190

For now, implicit bias training should not be treated as a panacea, and the need for more research is clear. However, even though the training may not significantly reduce implicit bias nor reduce disparate outcomes, trainers find that the trainings provide a good opening for discussing disparities and the need for reform generally.

4. Prosecutions and civil suits

The hope that criminal prosecution of officers involved in shootings and civil suits against police departments will bring about attitudinal and procedural changes that will reduce racially-motivated shootings is apparent. Affected communities regularly call for prosecutions as they seek a sense of justice.191 Prosecutions are often difficult, however, because police internal affairs units are not inclined to find fault and the prosecutor is asked to investigate the police department—an entity with whom prosecutors necessarily partner with for their daily work.192

187 Id. § 5.8.
189 Id. at 306.
190 Id. at 305.
192 Chase Madar, Why It’s Impossible to Indict a Cop, THE NATION, Nov. 25, 2014; see also, Jeffrey Benzing, When PA State Police Shoot, It’s Almost Always Ruled ‘Justified,’ PITTSBURG COURIER (Sep. 28, 2015), http://publicsource.org/investigations/when-pa-state-police-shoot-it-s-almost-always-ruled-justified#.VtoIJZMrL-Y.
Skepticism abounds, especially if so-called independent investigators who are recruited to review the facts have histories that suggest a bias toward labeling police shootings justified.\textsuperscript{193}

Even when prosecutions are sought, convictions are not automatic by any means. In the Baltimore prosecution of six police officers for the death of Freddie Gray, the trial of the first officer ended in a hung jury, when jurors could not reach a unanimous decision.\textsuperscript{194} Gray was a young African American man who suffered a fatal injury while placed in the back of a police van without seatbelts, as the driver swerved the van throughout city streets.\textsuperscript{195} Certainly, convictions can result. But when police officers are charged, they are convicted at a lower rate than people in the general populace.\textsuperscript{196}

Successful civil damage suits can, presumably, have a positive effect on cities and police departments in terms of willingness to change. For example, a federal jury awarded $11.3 million in damages to a Vietnamese immigrant who was left permanently paralyzed after a San Jose, California, police officer shot him in the back.\textsuperscript{197} The plaintiff was wielding a knife as he was suffering a mental breakdown; but witnesses insist he posed no danger to anyone but himself.\textsuperscript{198} Although the city may appeal the award, the lawsuit appears to have had some positive effects, because police practices are under review along with discussions on how to prevent similar shootings in the future. San Jose has a large Vietnamese American community whose concerns about police use of force are important to the city.\textsuperscript{199}

Of course, without a commitment to change, even civil damages will not bring about changes in police practices. In a March 2000 report, the Association of the Bar of the City of New York Committee on New York City Affairs reported:

The City paid a total of $140 million in damages for alleged police abuses, through settlements as well as litigated judgments, between the 1994-95 and 1998-99 fiscal years. By contrast, in the five years 1988-92, the City paid out $45.5 million for similar cases. Despite

\textsuperscript{193} To investigate the shooting of 13-year-old Andy Lopez who was brandishing a toy gun, Sonoma County, California, prosecutors paid $10,000 payment to William Lewinski, a Minnesota-based lethal-force adviser who was criticized for siding too often with law enforcement. According to Oakland, California, defense attorney Michael Haddad, Lewinski is known in legal circles as someone who can be relied upon to testify in favor of police officers to help justify fatal shootings. Haddad said agencies who hire Lewinski are not seeking the truth so much as trying to legitimize a pre-determined decision: “Lewinski will find a way to exonerate the officer.” See Paul Payne, Jill Ravitch Spent $63,000 on Andy Lopez Review, PRESS DEMOCRAT (Aug. 7, 2014), http://www.pressdemocrat.com/news/2478782-181/ravitch-spent-63000-on-andy.


\textsuperscript{195} Id.


\textsuperscript{197} Jenna Lyons, Man Shot by San Jose Cop to Get $11.3 million, SAN FRANCISCO CHRONICLE (Dec. 23, 2015), http://www.sfgate.com/bayarea/article/Man-paralyzed-in-San-Jose-police-shooting-awarded-6716234.php

\textsuperscript{198} Id.

\textsuperscript{199} Tracey Kaplan, Jury Awards Vietnamese Man Shot and Paralyzed by San Jose Police $11.3 million, SAN JOSE MERCURY NEWS (Dec. 22, 2015), www.mercurynews.com/portlet/article/html/fragments/print_article.jsp?articleId=29300586&siteId=568.
the substantial sums involved, there is no showing that either the police department or the City administration has made systematic use of the facts or results in such cases either in connection with the discipline of individual police officers or in the shaping of police department policy. Thus the tort system is failing in one of its principal purposes, to shape the actions of those officials on whose behalf damages are paid.200

Most civil actions against police officers for misconduct are filed under 42 U.S.C. § 1983. More than 30 years ago, the U.S. Commission on Civil Rights argued that § 1983 claims have not been effective in deterring police misconduct and without much change in police practices, § 1983 continues to be ineffective in deterring police misconduct.201

One measure for deterrence of police misconduct is the implementation of overall changes in departmental and agency policy. The idea is that one way to bring changes in policy is to impose liability on the department or the agency itself for misconduct of its officers. In Monell v. Department of Social Services of the City of New York,202 the Supreme Court made it possible for victims of police misconduct to sue police departments and impose liability on the municipalities themselves for the actions of their employees.203 The Court held that civil rights violations committed by public employees might impose liability on the government if it is shown the violation is the result of poor training or poor supervision.204 Some commentators believe that the legal standard first articulated in Monell was a catalyst in changing policing by encouraging police administrations to develop a police standard of care in dealing with the public.205 They argue that suits against municipalities have resulted in policy changes that have made a great difference in deterring police misconduct. However, municipal liability faces two important challenges. First, many police chiefs see liability as a cost of doing business and the effect of losing a $10- or $12-million lawsuit does not have an impact on police operations. Second, no one in the police department is made aware of the results of the lawsuit, and none of the policy implications of the lawsuits are acted upon.

Thus, cities and police departments who are forced to pay millions in civil damages for the transgressions of its police officers should make a commitment to change, otherwise their inaction is imprudent.

C. Community-Oriented Responses

1. Affirmative restorative justice

A series of recommendations by the President’s Task Force implicitly lays the blame for high police presence in black communities on the communities themselves. The focus of several recommendations is on children and youth “most at risk for crime or violence” and revolve

203 Id. at 690.
205 Id.
around restorative justice programs that “avoid conflict” and “redirect energy.” These recommendations acknowledge the problem of the negative effects of strictly sending youth down the strict path toward suspensions or the juvenile justice system. But the recommendations can be construed as sending a message that if reducing crime among youth fails, then hard-nose police intervention later in these children’s lives should be expected.

The implicit message is strikingly similar to the direct message sent to the critics of police shootings themselves: the community has created the problem by being so crime infested. For example, Rudy Giuliani, the former New York mayor and Republican presidential candidate, opined that black-on-black crime "is the reason for the heavy police presence in the black community. . . . So why don't (they) cut it down so [that] so many white police officers don't have to be in black areas?" In this view, African Americans have only themselves to blame for the presence and behavior of cops in their neighborhoods. If they would get serious about cleaning up the problems in their own communities, police would not be arresting or killing so many black people.

It’s human nature to not like to be told what to do from someone whom we do not like. So when we are told by police or other authorities that we are to blame for the war zone or that we should take responsibility for the violence in our own communities, that’s tough to hear. That is blame the victim rhetoric.

The responses to Giuliani’s critique are solid. His rhetoric ignores the racism, the militarization, and the clear signs of over-reaction by murderous police officers. The epidemic of unarmed blacks being killed by police comes at a time when black crime is high.

We can certainly reject the message that “blacks created the problem and blacks need to solve it.” We can reject the message that whites are blameless in the situations with which we are concerned. But does that mean that we should be complacent as far as restorative justice programs are concerned? We know in our hearts that with the right touch our preference is to have our families, friends, neighbors, and churches work with troubled or misguided friends. Violent crime rates are significant in the African American community. Criminal offenses are high in some African American neighborhoods. Thus, the President’s Task Force recommendations that relate to working with schools to encourage the use of alternative strategies that involve youth in decision making, such as restorative justice, youth courts, family interventions, positive strategies to avoid conflict, and peer interventions to avoid suspensions and the criminal justice system are important enough to not ignore.

2. Oakland Power Projects

The Oakland Power Projects was conceived by Critical Resistance, a grassroots organization in Oakland, California, to build capacity for Oakland to reject police and policing as the default

206 Task Force Recommendations, supra note 131, §§ 4.6, 4.6.3, 4.6.4.
208 Id.
209 President’s Task Force, supra note 131, at 47–48.
response to harm and to highlight or create alternatives that actually work.\textsuperscript{210} One goal of the Oakland Power Projects is to make the police obsolete by building tools and resources to meet people’s needs in other ways, and by building connections and relationships to keep those resources going and accessible to residents throughout the city. The project has initiated three resources for emergent and preventative health needs for Oakland residents: medical kits that residents can use for first-response emergencies or for everyday use to help alleviate the need to all 911; a workshop that combines basic information about the prison industrial complex with critical health care information for overall health and chronic health problems; and a digital app or other system for up-to-date health resource information to bridge gaps between institutional and community-based knowledge, and provide basic how-to information.\textsuperscript{211} A major part of the project is to train and provide health care workers trained in crisis intervention to serve as first responders to deal with individuals who are having mental health episodes that require immediate attention.

Critical Resistance launched the Oakland Powers Projects in September 2015 as a continuation of its efforts to address the ongoing issues of over-militarization and over policing by collaborating with members of the local community.\textsuperscript{212} The aim of the Oakland Power Projects is to enable residents to “invest in practices, relationships, and resources that build community power and wellbeing.”\textsuperscript{213} The idea is to empower and remind members of the community that they, themselves, can successfully upkeep their neighborhoods, without resorting to the use of police in times of emergency.\textsuperscript{214} The initiative hopes to build “the capacity for Oakland residents to reject police and policing as the default response to harm and to highlight or create alternatives that actually work by identifying current harms, amplifying existing resources, and developing new practices that do not rely on policing solutions.”\textsuperscript{215} In collaboration with other community organizations, training has included material for treating common medical issues. These medical issues include minor injuries, performing CPR, or treating gun or stabbing wounds.\textsuperscript{216} Trainers hope to distribute medical kits to those participating in the training workshops. The trainings for community members also extend to addressing mental health issues and chronic health conditions.\textsuperscript{217}

Critical Resistance initiated the Oakland Powers Project in response to the community. Organizers conducted a survey in 2014 where Oakland residents were asked about their experiences with police and what alternatives would be most suitable.\textsuperscript{218} The first report indicated that members of the community wanted to access medical resources completely

\textsuperscript{210} The Oakland Power Projects, CRITICAL RESISTANCE (2016), http://criticalresistance.org/chapters/cr-oakland/the-oakland-power-projects/#AboutOPP.
\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{216} Id.
\textsuperscript{217} Id.
unconnected to police forces. An alternate model for emergency medical crises was a top priority for residents.\footnote{Id.} This desire is not unfounded. Consider this example in Texas. Jens Rushing was working as an emergency medical technician when he was dispatched in a small nearby city.\footnote{Id.} He recalls the accompanying police officer handcuffing the patient who was suffering mental health crisis. Rushing stated that the officer was completely unaware of the threat of positional asphyxia, a condition that could kill people.\footnote{Id.} “We had to argue with him to get the patient away from [the police], and let us [EMTs] do it our way, chemically sedating the patient rather than physically restraining the patient, and actually tending to them as a patient, rather than as a person committing the 'crime' of having an acute psychotic episode.”\footnote{Id.}

Critical Resistance works with a number of other organizations with similar goals of abolishing the need for police.\footnote{Candice Bernd, Community Groups Work to Provide Emergency Medical Alternatives Separate From Police, TRUTHOUT (Sept. 14, 2015), http://www.truth-out.org/news/item/32782-community-groups-work-to-provide-emergency-medical-alternatives-separate-from-police.} The Youth Justice Coalition, for example, has a “1% Campaign” that advocates for just 1 percent (roughly $100 million) to be diverted from the Los Angeles Police Department budget and directed toward programs and services for young people that are alternatives to youth suppression.\footnote{Rachel Herzing, Big Dreams and Bold Steps Toward a Police Free Future, TRUTHOUT (Sept. 16, 2015), http://www.truth-out.org/opinion/item/32813-big-dreams-and-bold-steps-toward-a-police-free-future.} Another program focuses on the criminalization of youth in schools. The Black Organizing Project has successfully pushed for guidelines for how police can interact with students. Under the guidelines, police also are no longer able to solicit information from schools.\footnote{Policing in Oakland: A Year in Review 2014, CRITICAL RESISTANCE (2014), http://criticalresistance.org/wp-content/uploads/2015/03/Policing_Yr_Review_2014_v2b_WEB.pdf.} Additionally, the Oakland Unified School District is no longer able to call the Oakland Police Department for minor infractions committed by students.\footnote{Id.} This is emblematic of a part of the Critical Resistance mission of reducing the school to prison pipeline for young students of color.

Another project, the Harm Free Zone project in Durham, North Carolina, provides trainings in which community members learn to respond to emergencies without relying on police intervention.\footnote{Rachel Herzing, Big Dreams and Bold Steps Toward a Police Free Future, TRUTHOUT (Sept. 16, 2015), http://www.truth-out.org/opinion/item/32813-big-dreams-and-bold-steps-toward-a-police-free-future.} Similar to the Oakland Powers Project, Harm Free Zone aims to empower community residents to be called upon as the first responders.\footnote{See generally Id. (“Based in Brooklyn, New York, the Safe Neighborhood Campaign focuses on reducing harm to lesbian, gay, bisexual, two spirit, trans and gender-nonconforming people of color by working with local businesses and community spaces to provide safe haven for people in need without contacting the police.”).} The project equips its members with tools and training sessions on how to properly address emergency situations, while also building strong relations with community members. The project is important, given some rather alarming statistics about Durham County. The black population is 38.6 percent of a total population of close to 300,000,\footnote{United States Census Bureau, Quick Facts: Durham County, North Carolina (2014), http://quickfacts.census.gov/qfd/states/37/37063.html.} yet blacks represent over 80 percent of those who are
incarcerated. Of those who live in poverty, 5,546 are white, while, 21,898 are black. Black
students are five times more likely to be suspended from school than white students.

I. Can Things Change?
Can things change? Can the militaristic culture be altered? Can racism be eliminated? Can
conditions be changed to eliminate or reduce the racially-motivated shootings by police officers?
We are reminded of the challenge we face as the words of officers themselves and of those who
have observed them closely.
For example, columnist David Brooks has observed this about the police on the beat:

They ride an emotional and biochemical roller coaster. They experience moments of intense
action and alertness, followed by emotional crashes marked by exhaustion, and isolation. They
become hypervigilant. Surrounded by crime all day, some come to perceive that society is more
threatening than it really is. To cope, they emotionally armor up. Many of the cops I was around
developed a cynical, dehumanizing and hard-edged sense of humor that was an attempt to
insulate themselves from the pain of seeing a dead child or the extinguished life of a young girl
they arrived too late to save . . . Most cops know they walk a dangerous line, between necessary
and excessive force.

Los Angeles police officer Sunil Dutta submits:

An average person cannot comprehend the risks and has no true understanding of a cop’s job. . .
. An average cop is always concerned with his or her safety and tries to control every encounter.
That is how we are trained. While most citizens are courteous and law abiding, the subset of
people we generally interact with everyday are not the genteel types. You don’t know what is in
my mind when I stop you. Did I just get a radio call of a shooting moments ago? Am I looking
for a murderer or an armed fugitive? For you, this might be a “simple” traffic stop, for me each
traffic stop is a potentially dangerous encounter.

In most cases it’s less ambiguous [than in Michael Brown's case] — and officers are rarely at
fault. When they use force, they are defending their, or the public’s, safety. Even though it might
sound harsh and impolitic, here is the bottom line: if you don’t want to get shot, tased, pepper-
sprayed, struck with a baton or thrown to the ground, just do what I tell you. Don’t argue with
me, don’t call me names, don’t tell me that I can’t stop you, don’t say I’m a racist pig, don’t
threaten that you’ll sue me and take away my badge. Don’t scream at me that you pay my salary,
and don’t even think of aggressively walking towards me.

Seattle's Former Police Chief, Norm Stamper tries to explain:
[I]f . . . I'm scared of young black men that I meet on my beat, but with fear being a socially
unacceptable emotion in police work, I can't really express it, then I'm going to sublimate the

mind.html?r=0.
232 Sunil Dutta, I’m a Cop. If You Don’t Want to Get Hurt, Don’t Challenge Me, WASH. POST (Aug. 19, 2014),
https://www.washingtonpost.com/posteverything/wp/2014/08/19/im-a-cop-if-you-dont-want-to-get-hurt-dont-
challenge-me/.
fear, and I'm going to compensate in my behavior. In other words, because I'm scared, I'm going to act tough. I'm going to become the bully.²³³
An anonymous female street cop puts it this way:

If I take a punch and I’m knocked out, they could take my gun. . . . We need to stay a step ahead of them, so we sometimes use a higher-level of force.²³⁴

And this is typical response from cops to the President’s Task Force report:
Wow. You all need to take a few minutes and read this report. Not surprising that all is blamed on the Police. They want to control everything from language used by police during contacts to respect citizens (not ever using commands that direct a criminal to obey and submit avoiding use of force), to giving out our card at each and every contact & getting written consent to search! All OIS/use of force reviewed "independent Prosecutors" (read DOJ). In the end, just a long winded "community organizer" (read Obama) type report with all blame put on LEOs and zero responsibility on the public. They do push training (mostly diversity etc) and having an updated radio system but that’s all that helps LEOs. Take a moment to read how "reflecting the community" is so very important (agreed it really is) yet the makeup of this commission is way disproportionately made up of "persons of color". Only 2 W/M on the main board. Gee what a surprise, another waste of public time & money and is useless.²³⁵

In spite of the challenges, apparently, things can change. Imagine a diverse, metropolitan city with nearly three million residents, with high levels of deprivation and poverty, but where confrontations between police and suspects rarely end in death. Where, in the 40-year history of its police force, the police have only shot two individuals. This is Manchester, Great Britain.²³⁶ A typical Manchester police officer does not carry a gun. She has a “stab vest,” radio, and a few “tools”—a spray can of tear gas, handcuffs, and a black baton.

Make no mistake. British police are not immune from charges of racism. Blacks and South Asians are six times more likely to be stopped and frisked by British police than whites. Blacks are more likely to get tased and more likely to be in prison. Complaints of racial profiling and excessive use of force are common, but they usually do not involve guns. Under Great Britain’s strict gun laws, handguns and semi-automatic weapons are effectively banned²³⁷. Although some criminals in Great Britain have guns and the police have armed response teams, Manchester police are taught to avoid confrontation. The idea is to deal with incidents at the lowest level of de-escalation at all times. Officers are trained to stand back and to assess the situation carefully before moving in on a suspect. In viewing videos of U.S. shootings, the training specialist for Manchester’s police concluded that U.S. officers “move in too fast . . .

²³⁷ *Id.*
putting themselves so close to danger,” likely thinking that they can pull their gun if necessary.\textsuperscript{238}

Similarly, knife violence is a big problem in England, yet British police have fatally shot only one person wielding a knife from 2008 to 2015—a hostage-taker.\textsuperscript{239} By comparison, U.S. police fatally shot more than 575 people allegedly wielding blades and other such weapons just in the years from 2013 to 2015.\textsuperscript{240}

Can things change? Consider the police department in Oakland, California. While community activists still have serious complaints, years of court monitoring, efforts at community policing, and new leadership apparently have made a difference. Complaints about excessive force and the numbers of officer-involved shootings have dropped dramatically in the past several years.\textsuperscript{241} Over a twelve year period from 2000 to 2012, the Oakland police were involved in about eight shootings each year.\textsuperscript{242} But there were only six from the fall of 2013 to September 2015.\textsuperscript{243}

Both use-of-force incidents reported by police and use-of-force complaints by suspects dropped substantially. From 2009 to 2014, the reported use-of-force incidents dropped from almost 4,000 to just under 900.\textsuperscript{244} A record low 49 incidents were reported in July 2015. Use-of-force complaints by suspects who claimed such things as hair pulling, choke holds, and wrist-bending, fell more than 40 percent in a two-year period.\textsuperscript{245} As a result, grievances investigated by the Citizens’ Police Review Board dropped for 90 in 2009 to 15 in 2014.

Oakland arrests rates are about the same, so improvements in bad incident complaints use-of-force incidents are not about the force being less vigilant. The department’s past aggressive enforcement style drew criticism from court-appointed monitors and the public. Critics were especially irked police response to the Occupy Oakland protests; the city had to pay an Iraq War Veteran who blasted in the face with a tear gas canister $4.5 million to settle a civil suit. They city also was chastised for failing to punish bad cops.\textsuperscript{246} A new police chief hired in 2013 brought about positive changes. New trainings on use-of-force, a change in pursuit policies, and the adoption of a broad body camera program helped to forge better community relations.\textsuperscript{247} However, experts warn that Oakland community leaders have to remain vigilant to ensure that the department does not slip backwards.\textsuperscript{248}

\textsuperscript{238} Id.
\textsuperscript{240} Id.
\textsuperscript{242} Id.
\textsuperscript{243} Id.
\textsuperscript{244} Id.
\textsuperscript{245} Id.
\textsuperscript{246} Id.
\textsuperscript{247} Id.
\textsuperscript{248} Id. (citing Samuel Walker, a criminologist at the University of Nebraska who has studied the Oakland Police Department).
Can things change? Increasingly, criminologists and even some police chiefs argue that tactics, such as those embodied by the broken windows approach, needlessly alienate law-abiding citizens and undermine trust in the police. Indeed, in Fayetteville, N.C., 100 miles southeast of Greensboro—the site of aggressive traffic stops—a new police chief has discouraged officers from stopping motorists for minor infractions. Ronald L. Davis, a former California police chief who now runs the Justice Department’s Office of Community Oriented Policing Services, doubts that intensive traffic enforcement in high-crime neighborhoods is beneficial “There is no evidence that just increasing stops reduces crime.”

Can things change? In addition to California’s new legislation requiring police data collection, Wisconsin Governor Scott Walker also signed two relevant pieces of legislation. One makes police reports public, so families will be apprised of their legal rights if their loved ones are killed in an officer involved shooting. Another brings in outside agencies to investigate officer-involved deaths. The new requirements are intended to addresses concerns that police protect their own in investigations involving the use of deadly force.

Can things change? After strong public protests, Chicago Mayor Rahm Emanuel reversed his opposition to possible U.S. Department of Justice (DOJ) review of the Chicago Police Department’s practices, the type of investigation that has led to federal court oversight and sweeping reforms in other troubled, big-city police departments throughout the country. The calls for DOJ intervention came amid the fallout of Emanuel releasing a police dashboard camera video of the October 2014 Laquan McDonald shooting, which shows the African-American teenager getting shot repeatedly as he walked away from a white police officer. Although The calls for DOJ intervention came amid the fallout of Emanuel releasing a police dashboard camera video of the October 2014 Laquan McDonald shooting, which shows the African-American teenager getting shot repeatedly as he walked away from a white police officer. Although Emanuel has refused to resign as demanded by protestors, he has fired the city’s police chief. A civil rights investigation by the DOJ would not be limited to the McDonald case and would represent a deeper review of the police department's practices in the use of deadly and excessive force and how those cases are reported and investigated. In many cases, such investigations result in a federal consent decree, where the Justice Department and the municipality reach an accord on how to right the police department's wrongs and a federal judge oversees the implementation of those changes and appoints a monitor.

250 id.
251 McGreevy, supra note 157.
254 Bill Ruthhart and Annie Sweeney, supra note 253.
to handle the day-to-day aspects. Emanuel also announced changes in police training and department policies on use of force, as well as doubling the number of Tasers available to officers from 700 to 1400.

Can things change? On October 26, 2015, D.C. police officers were called to break up two groups of fighting teenagers who were black. As the crowd lingered, a few minutes later, a female officer approached and told the teens to disperse. That’s when Aaliyah Taylor, a 17-year-old girl with a little attitude, walked up to the officer and started playing “Watch Me (Whip/Nae Nae)” on her phone. Then she did the Nae Nae dance. According to Taylor, while friends capture the encounter on their cell phones, the officer laughed and said she could dance better, essentially challenging the teen to a dance-off. Taylor said the officer told the group that if the teens won, they could stay. If the officer won, they would have to leave. The two danced for a few minutes face-to-face and had a good laugh. Both declared themselves the victors and hugged; then the teens left peacefully.

The interaction was the first time Taylor had a positive experience with the police. She has several siblings who have been arrested or stopped for non-violent offenses. Her siblings experienced unnecessary rudeness and behavior by the police on those occasions. But on this day, “[i]nstead of us fighting, [the officer] tried to turn it around and make it something fun. I never expected cops to be that cool. There are good cops.”

D.C. Police Chief Cathy Lanier declared that the incident was “reflective of the many positive police-community interactions that take place daily in Washington, D.C.” The officer chose to remain anonymous and refused personal publicity; but a D.C. police union official said these examples of positive interactions between officers and residents are common, but generally do not get posted on the Internet. The unidentified officer told reporters, “This is what we do everyday.”

V. Closing – Waging a Disruptive War and Seeking New Allies

At the outset, we were introduced to Walter Scott, Sandra Bland, Brendon Glenn, and Tamir Rice. Walter Scott was a Coast Guard veteran studying massage therapy. He was a devout Christian who sang in his church choir. Scott was remembered by his brother as loving, kind and outgoing, somebody who "knew everybody." He spent two years in the Coast Guard, and had four children. Walter Scott’s life mattered.

255 Id.
258 Id.
259 Id.
260 Id.
261 Id.
Before her fateful encounter with the police, Sandra Bland was taking a new job at Prairie View A&M University in Texas. At Prairie View A&M University, Bland was a member of the Sigma Gamma Rho. She had graduated from the college in 2009 and was returning as a student ambassador. Sandra was a graduate of Willowbrook High School in Villa Park, Illinois, where she ran track and played volleyball. She was also a varsity cheerleader, part of the marching band, and a member of the high school's World Languages Honor Society. She and her family belonged to the DuPage African Methodist Episcopal Church where her funeral was held. Sandra was remembered as someone who was extremely spontaneous, spunky, outgoing, truly filled with life and joy. Her life mattered.

Brendon Glenn was a homeless man living in Venice Beach. He was a New York native and stayed in Venice for months. Brendon enjoyed skateboarding and had a love for the New York Yankees. He was known as a kind man, who constantly expressed his love for others, and adored his black Lab mix, Dozer. He had an alcohol problem according to local friends. He also was known as a peacemaker, one who would not seek confrontation. One friend, Corey, said “Nothing negative ever came out of Brendon’s mouth.” Brendon’s life mattered.

The 12-year-old Tamir Rice was described by neighborhood witnesses as a kid or a “little boy.” Tamir was a well-liked student at Marion C. Seltzer School. His teacher, Carletta Goodwin stated “He would tap on his desk, he would sing to himself. I would say, ‘OK, that’s enough,’ because he would get the rest of the class going.” As a 12-year-old boy, he liked to draw. He also loved sports. His musical side stood out, and he was a well-liked member of the drum line. “Tamir enjoyed life. It just exuded from his very being,” according to his teacher Goodwin. Tamir’s life mattered.

Since the actual convening of the Wiley A. Branton Symposium on October 29, 2015, several other tragic police shootings of African American victims have occurred.

Jamar Clark, a 24-year-old black man, was shot by a Minneapolis police officer early November 15, 2015, under unclear circumstances. Clark was shot by an officer after police and ambulances responded to a domestic-violence call. Police said Clark was a suspect in the domestic assault, and interfered with responders. From there, things get murky. A number of people watched the incident unfold—it was across the street from an Elks Lodge—and several of them say that Clark was handcuffed when he was shot in the head. Police insist he was not cuff ed. Even if Clark was not handcuffed, there is a separate question of whether the use of deadly force was appropriate under the circumstances. Just as the death of Freddie Gray brought new scrutiny on a Baltimore Police Department with a long, troubled history with its citizens—

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265 *Id.*
and particularly citizens of color—the police in Minneapolis are about to come under new scrutiny.266

The events leading to 26-year-old Mario Woods’ death in San Francisco began on December 2, 2015, when a man was injured in a non-fatal stabbing in the city’s Bayview neighborhood.267 Later that afternoon, at least five police officers approached Woods, responding to reports of a man who matched the description of the stabbing suspect.268 Police say Woods was wielding a 6- to 8-inch kitchen knife endangering the officers.269 At a community meeting held two days after the shooting, the police chief displayed a large photo in an attempt to show that Woods’ arm was outstretched with a weapon.270 The officers first tried to disarm Woods using pepper spray and bean bags, police said, but they were unsuccessful. So when one of them stepped into Woods’ path as he tried to walk away from the officers—and toward bystanders—that officer fired his gun. At least 15 shots from police followed and Woods was killed.271

A bystander’s video shows police surrounding Woods as he crouches and stands near a wall. The video does not clearly show a knife in his hands, but the woman filming shouts, “Just drop it!” At the time when the first shot is fired, Woods is slowly walking, almost limping, away from the officers and his hands appear to be at his sides.

In Chicago, a day after Christmas, a 55-year-old woman, Bettie Jones, and Quintonio LeGrier, a 19-year-old male, were both shot and killed. The police were responding to a call made by LeGrier's father, Antonio LeGrier, who had been arguing with his son. LeGrier's family said the Northern Illinois University student suffered from a mental illness and threatened his father with an aluminum baseball bat. The teen's father called police and then called his downstairs neighbor, Jones, to open the door when officers arrived.272

After arriving, officers report that LeGrier was “combative” and they had to discharge their weapons. Apparently, LeGrier was charging down the stairs still carrying the bat. Police opened fire, and both LeGrier and Jones—the neighbor who opened the door—were shot and killed. LeGrier was shot seven times.273

In all likelihood, the lives of Jamar Clark, Mario Woods, and Quintonio LeGrier mattered as well.

266 Id.
268 Id.
269 Id.
270 Id.
271 Id.
As the violent police shootings continue, the question of whether things can change becomes all the more urgent. Racist policing did not start with the shooting of Michael Brown. For African Americans, the history goes back to slavery, through Jim Crow, the war on crime and the new Jim Crow of mass incarceration.274

The history includes Rodney King, the black cab driver who was brutally beaten by Los Angeles police officers following a high-speed car chase on 1991. There were no smart phones at the time, but a witness videotaped much of the beating from his balcony and sent the footage to local news station. The footage shows four officers surrounding King, several of them striking him repeatedly, while other officers stood by. Parts of the footage were aired around the world. Four officers were charged with assault with a deadly weapon and use of excessive force. Three were acquitted of all charges. The jury acquitted the fourth of assault with a deadly weapon but failed to reach a verdict on the use of excessive force. The jury deadlocked at 8–4 in favor of acquittal at the state level.275 The acquittals triggered the 1992 Los Angeles riots, in which 53 people were killed and over 2,000 were injured, ending only when the California national guard was called in.276 However, the acquittals led to the federal government seeking and obtaining grand jury indictments for violations of King's civil rights. The trial of the four in a federal district court ended on April 16, 1993, with two of the officers being found guilty and subsequently imprisoned. The other two were acquitted again.277

In my view, the history of police violence against black Americans also is responsible for establishing the atmosphere condoning hate crimes perpetrated against African Americans. Vigilante racists feel licensed to act in a certain way because of what they see authorities do. For example, reminiscent of lynchings during slavery and Jim Crow, James Byrd was an African American who was murdered by three men—at least two of whom were white supremacists—in Jasper, Texas, in 1998.278 Shawn Berry, Lawrence Russell Brewer, and John King dragged Byrd for three miles behind a pick-up truck along an asphalt road. Byrd, who remained conscious throughout most of the torture, died as his body struck an embankment, as an arm was severed and his head decapitated. The murderers dragged the torso another mile, dumping it in front of an African-American cemetery. Byrd's lynching-by-dragging gave impetus to passage of a Texas hate crimes law.279 The tragedy later led to the federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, commonly known as the Matthew Shepard Act, which was signed into law on October 28, 2009, by President Obama. Lawrence Russell Brewer was executed by lethal injection for this crime by the state of Texas on September 21, 2011. Berry was sentenced to life in prison, and King is on death row pending appeals.280 Among racial groups, African Americans experience the most hate crimes and are the ones most likely to be targeted. Their

276 Id.
chances of being targeted for a hate attack are roughly double any other group and more than 10 times that for white people.\textsuperscript{281}

Given the urgency for immediate change, we need some innovative, out-of-the-box options. Certainly, conventional approaches to change should not be totally dismissed. For example, advocates of community policing understand that depending on the approach, concentrating community policing on some communities and segments of the population to maintain public safety can arouse resentment in these neighborhoods.\textsuperscript{282} Without strong policies and training in place, racial profiling and excessive use of force can result.\textsuperscript{283} Community policing requires conscientious, active attention to positive relationship-building. This can be done by assigning officers to neighborhoods on a regular basis so that officers have the opportunity to know community members and vice versa. Bringing in community based organizations as partners to help facilitate meetings and public service activities can help.\textsuperscript{284}

As the President’s Task Force has recognized, police departments cannot build community trust if they are seen as an occupying force coming in from outside to impose control on the community. Law enforcement culture should embrace a guardian—rather than a warrior—mindset to build trust and legitimacy both within agencies and with the public. Procedural changes such as reducing the availability of military equipment to police departments, requiring body cameras as well as requiring data collection and reporting can only help. The serious potential of crisis intervention training for police and restorative justice efforts in the community is difficult to dismiss.

Some recommendations merit skepticism. Internal affairs units have not proven reliable from the community’s perspective.\textsuperscript{285} Securing indictments, much less convictions, of the officers involved proves difficult, and the lack of success has led to more community frustration. Even multi-million-dollar civil awards appear to fall on deaf ears. The effectiveness of making Tasers available and implicit bias training is not conclusive.\textsuperscript{286}

Broken windows policing and Urban Shield represent disruptions in how police work is done. Those theories and opportunities literally uprooted and changed how police think, behave, learn and go about day-to-day work; but they resulted in an assaultive environment that gave rise to police shooting blacks with alarming frequency. The question for us is whether we can offer disruptive alternatives to policing that offer real public safety in a manner that is not racist.

In fact, some of the ideas and recommendations for change can be classified as out-of-the-box, creative thinking that will bring about effective, disruptive change toward policing. Requiring recruits and experienced officers alike to engage in non-enforcement activities and learning about the sociological backgrounds of the communities served is noteworthy. The European Union’s training on verbal warnings and warning shots, grounded in the philosophy of deadly force as a last resort from the European Convention on Human Rights, appears to have

\textsuperscript{281} Hari Sreenivasan, \textit{Blacks Most Often targeted in hate crimes}, PBS NEWSHOUR (June 20, 2015), http://www.pbs.org/newshour/bb/fbi-blacks-often-targeted-hate-crimes/.
\textsuperscript{282} President’s Task Force Report, \textit{supra} note 139, at 41.
\textsuperscript{283} \textit{Id}.
\textsuperscript{284} \textit{Id} at 42.
\textsuperscript{285} Taibbi, \textit{supra} notes 163–65.
\textsuperscript{286} Martin, \textit{supra} notes 144–46; Smith, \textit{supra} notes 188–90.
achieved remarkable effects in EU policing. The Oakland Powers Project designed and implemented by Critical Resistance is particularly intriguing. The notion of rendering the need to call the police obsolete—at least in some situations as when an individual is suffering a mental health crisis—is terribly intriguing. Witnesses of many of the shooting deaths of blacks claim that the police escalated the situation to the point that the shooting occurred.

Black Lives Matter and others are working on disruptive alternatives to create true community policing that is about public safety for all. Their rebellious method of organizing recognizes that meaningful, lasting change can only come about through collaboration with allies with common goals and experiences. Working with the labor movement, immigrant rights groups, Latino and Asian American organizations, pro-Palestinian leaders, and grassroots groups like Critical Resistance, BlackOUT Collective, Stop Urban Shield Coalition, and Dark Matter represents a strong foundation for collective change. What are the disruptive approaches that will result? More civilian monitoring of the police? Changing structures of command in police forces? Better integration of police forces? Working to decrease the need for police as first responders; to make the police obsolete? Or something much more innovative and unconventional that is yet to be described?

Thanks to social media and the ubiquity of 24/7 CNN news coverage today, images of shootings like those of Walter Scott and Tamir Rice are brought to us in our living rooms or smart phones in an instant. Just as quickly as those images are brought to us and spread across the internet, the substance of racialized policing can be distorted or displaced by the next hot topic or shocking image. One could make a good case that the only reason that racialized policing remains in the consciousness of many Americans is due to a new tragic incident on a regular basis. The risk we run is not that we forget, but that we become jaded—unresponsive—to the illness that apparently pervades so much of policing today.

We may not have the PR firms or professional ad agencies that today can control media content and public consciousness for long periods of time. But perhaps we have something better. We do have the allies. We do have social media. The 24-hour news cycle can be disrupted so that racist policing cannot be displaced from the nation’s psyche. The power to challenge framework of policing and to disrupt the cop’s approach is there.

Most of us raised a skeptical eyebrow when, in Grutter v. Bollinger, the affirmative action case of 2003, Justice O’Connor predicted that “25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.” We are half way into those 25 years. We wished that she was correct, but knew she was wrong. People of color in the United States experience racially insensitive comments or actions too often to know that judgment by character rather than skin color is not guaranteed. Attentive white Americans know their advantages and also hear and sense the racist sentiments or actions of their white neighbors or friends all too often.

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287 Fadel, supra notes 236–38.
290 Id. at 343.
We remain disappointed that in the year 2016 the need for a call to action to combat racism in the institution of law enforcement continues. However, in our lifetimes—in fact just in the past couple years—we have witnessed constant, violent racialized policing; we have witnessed 21-year old white supremacist Dylan Roof killing nine black parishioners and their minister during Bible study at Charleston's Emanuel AME Church; we have witnessed the attempt to hang onto the confederate flag by those who continue to cling to their racist glory days. As the latter examples demonstrate, when violent racist policing continues and goes unpunished, the malevolent actions of racist cops gives license to private vigilante racists who engage in their own brand of hate speech and violence.

This call to action is to address the illness that has plagued the nation since slavery, the institution of Jim Crow, the mass incarceration of the New Jim Crow, and the continued targeting of black men and women in violent racialized policing. This is the same malady that has plagued our nation since the mass annihilation of native Americans, the exclusion of Asian immigrants, and the relentless targeting of Mexicans for deportation.

Law enforcement may resist and argue that a decision had to be made in a millisecond, but we can see from videos of beatings and shootings like those of Rodney King and William Chapman, accused of shoplifting,291 that these are not decisions made in a blink. All too often these decisions are rooted in the evils of structural racism that licenses the individual officer. Other times, these are malicious decisions to simply join in on the fun of beating on a black man.

Given the evil vestiges of the War on Crime and War on Drugs, we need our own war. So I come back to the concept of disruption: We have the power and ability to disrupt. Yes, disruption in the classic take-to-the-streets sense and through social media; but also in the sense of reframing -- of uprooting and changing how police do their work day to day. Disturbance on the streets already has led to a reframing or disruptive approach to how police work gets done in places like Camden, New Jersey, and Oakland, California.

Today more than ever, those of us in the legal community need to recommit to racial justice in our criminal justice system. Today, more than ever, we also need to acknowledge that the ideas to reform policing may come from grass roots groups, from a range of allies, and that the leadership for reform also may come from those sources. We need to listen for those innovative ideas that can disrupt the convention. They may come from that young child on an American street or from some soul resisting similar oppression in the Middle East.

Those disruptive ideas will flow from the sorrow and anger over the racist shootings we have witnessed, as we and our friends turn that outrage into humanistic solutions based on the understanding that these lives mattered, as the souls of those who hold the guns and drive the tanks are transformed, willingly or not, into choosing peacemaking over violence.

We have to believe this is possible. So that the answer is: Yes, things can change.

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