

Police Brutality: The Mechanics of Unaccountability, the Emptiness of Proposed Reforms, and a Paradox of Policing Theory

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Abstract

We appear destined to be periodically sickened by videos of the life being beaten, stomped, and choked out of defenseless victims detained by police in poor, minority communities no matter how many people—sincerely or as flak to cover up their indifference—clamor for unity and change. Given our Pollyannaish view that the mission of police is based on the social consensus theory that they exist to serve and protect all communities, we cannot effectively fashion change that will significantly curtail the brutality. This Essay will reveal the hidden practices that police in our marginalized communities have improvised to veil the brutality not caught on video and the psychodynamics of policing that, in addition to racial bias, foster gratuitous aggression. The Essay argues that, consistent with police brutality’s actual underpinning in conflict theory, the most popularly espoused solutions are token palliatives. And finally, it posits that, as a form of community control, conflict theory entails a paradox.

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I. INTRODUCTION

To successfully tackle a problem, one must first understand it. Though we decry the sadistic murder of a George Floyd or an Eric Garner or a Tyre Nichols at the hands—and boots and police batons—of those sworn to serve and protect

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and we double down on calls to reform or restructure policing, we have failed to understand the grisly dynamics behind the brutality and the dark, unwritten practices that help to cover up most such atrocities.

Moreover, those who work within the criminal justice system have little incentive to disclose the *ultra vires* workings of the system lest they rock the boat in an enterprise where the players —police, investigators, prosecutors, and their staffs—must work cooperatively together to carry out their respective responsibilities.¹ Part I of this Essay will shed light on hidden dynamics that help spawn the brutality.

There is a constant din among pundits and politicians for change, most often in the form of enhanced police training, the review of apprehension and detention policies, and a greater accountability and dismissal of offending officers.² Part II will describe the futility of each. Finally, for the sake of effectively addressing the racially biased carnage in our marginalized communities, Part III places the problem in its proper theoretical perspective.

II. THE MECHANICS OF UNACCOUNTABILITY

A. *The Unwritten Rules of Evidence and Procedure*

One can begin to unravel the workings of this grim, closed system by observing the high correlation between the physical condition of many defendants from our marginalized communities and the charges brought against them. Whatever the initial charge —burglary, theft, and so on—an arrestee who was subject to a beating is often also charged with resisting arrest.³ Whether the suspect ran from or scuffled with the police or not, they often pay, as did Mr. Nichols, with a beating on a dark street after they are under complete control and well before they are transported to the station.⁴ As one veteran criminal

¹ Jay Sterling Silver, Opinion | *Fixing the Conflict of Interest at the Core of Police Brutality Cases*, WASH. POST (Dec. 4, 2014), http://www.washingtonpost.com/opinions/jay-sterling-silver-fixing-the-conflict-of-interest-at-the-core-of-police-brutality-cases/2014/12/04/0233e6e2-7b1d-11e4-b821-503cc7efed9e_story.html [https://perma.cc/7C6T-U3HP].

² See Anumita Kaur, Newsletter: Essential Politics: *From ‘Reform the Police’ to ‘Fund the Police’*, L.A. TIMES (Sept. 7, 2022), <https://www.latimes.com/politics/newsletter/2022-09-07/essential-politics-fund-the-police-090622-essential-politics> [https://perma.cc/RNM9-QB8U] (noting politicians’ calls for police reform); Joanna R. Lampe, CONG. RSCH. SERV., LSB10914, CONGRESS AND POLICE REFORM: RECENT PROPOSALS 1–3 (2023) (generally noting calls for police reform and describing a variety of proposed reforms).

³ Jerry L. Steering, *Police Brutality Is Encouraged by Bogus Resisting Arrest & Battery on Officer Prosecutions*, STEERING LAW, (Jan. 29, 2023), <https://steeringlaw.com/police-brutality-is-encouraged-by-public-prosecutors-by-prosecuting-innocents-for-resistance-offenses/> [https://perma.cc/L6VE-TM3J].

⁴ See, e.g., Jessica Jaglois, Nicholas Bogel-Burroughs, & Mitch Smith, *Initial Police Report on Tyre Nichols Arrest Is Contradicted by Videos*, N.Y. TIMES (Jan. 30, 2023); see Sam Levin, *‘Hunted’: One in Three People Killed by US Police Were Fleeing*,

defense attorney puts it: “[W]hen the police beat you badly, or even shoot you, they will often charge you with [resisting arrest] . . . so as to justify their use of severe violence upon you”⁵ Except on the rare occasion that a body camera or a bystander video reveals the truth, the accused has little hope of revealing the subterfuge.⁶

In turn, this unwritten rule provides a handle on much of the rest of the story. There is a gruesome logic to the beatings. When a detainee flees or struggles to avoid arrest, the beating ostensibly acts as a deterrent to others in the community who might attempt to flee and thereby endanger the officers in pursuit. To the contrary, though, the practice, as we seem to have seen with Tyre Nichols, may often work in reverse.⁷ Knowing that one has been pulled over for, as an example, the *de facto* violation of driving while black and knowing that one needn’t give the police any excuse in order to become a punching bag may impel some detainees to flee for their safety.⁸ As Tyre Nichols’ father explained, “Our son ran because he was scared for his life. He did not run because he was trying to get rid of no drugs, no guns, no any of that. . . . And when you see the video, you will see why he was scared for his life.”⁹

Data Reveals, GUARDIAN (July 28, 2022), <https://www.theguardian.com/us-news/2022/jul/28/hunted-one-in-three-people-killed-by-us-police-were-fleeing-data-reveals> [https://perma.cc/2YDZ-KLDH].

⁵ Steering, *supra* note 4; see, e.g., Dan Noyes, *San Rafael Police Officers Placed on Paid Leave After Bloody Takedown of Gardener with Open Beer*, ABC7 NEWS (Sept. 2, 2022), <https://abc7news.com/san-rafael-police-use-of-force-bodycam-video-officers-on-leave-protest/12191615/> [https://perma.cc/6RYU-Z2Q8] (referencing “a video of San Rafael police officers approaching a man who had an open beer, taking him down and beating him, then charging him with felony resisting arrest.”).

⁶ See Josiah Bates, *Police Killings Happen Far More Often Than What’s Widely Reported. Here’s Why the Numbers Are Off by So Much*, TIME (Oct. 1, 2021), <https://time.com/6102324/study-police-killings-significantly-underreported/> [https://perma.cc/CNM5-QJ2V]; see generally Nicol Turner Lee, *Where Would Racial Progress in Policing be Without Camera Phones?*, BROOKINGS (June 5, 2020), <https://www.brookings.edu/articles/where-would-racial-progress-in-policing-be-without-camera-phones/> [https://perma.cc/9FP9-XVC2].

⁷ Collin M. Calvert, Sonya S. Brady, & Rhonda Jones-Webb, *Perceptions of Violent Encounters Between Police and Young Black Men Across Stakeholder Groups*, 97 J. URB. HEALTH 279, 282 (2020).

⁸ *Id.* As for crimes like driving while black or walking in a predominantly white neighborhood while black, the news media and YouTube are riddled with examples, though they reflect only a tiny fraction of such detentions. See, e.g., David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. R. 265, 265 (1999); David Kocieniewski & Robert Hanley, *An Inside Story of Racial Bias and Denial; New Jersey Files Reveal Drama Behind Profiling*, N.Y. TIMES (Dec. 3, 2000), <https://www.nytimes.com/2000/12/03/nyregion/inside-story-racial-bias-denial-new-jersey-files-reveal-drama-behind-profiling.html> [https://perma.cc/BC4K-8E2D].

⁹ Katie Riordan, *Video of Tyre Nichols’ Deadly Traffic Stop Expected to be Released Within 2 Weeks*, NAT’L PUB. RADIO (Jan. 24, 2023),

Hand in hand with such practices is their whitewashing of them. Indeed, the systemic cover up of police brutality in communities of color begets more brutality. The process begins with lengthy delays in prosecutorial and internal police investigations into even the most clearly documented cases of needless or excessive force.¹⁰ In many instances, the investigations evaporate into thin air over time, with no trace that it ever occurred beyond a tepid note placed in an officer's employment file, if that.¹¹ *The Washington Post*, for example, compiled a database of civilians killed since 2015 by police, finding the number to be around a thousand each year.¹² Yet, out of the roughly 8,000 fatal shootings by federal officers in that period, charges were levied against a mere 110 officers.¹³ To take the heat off of themselves when there's a public cry for justice with a sensational case, prosecutors often program the grand-jury vending machine to return a "no bill of indictment,"¹⁴ as in the deaths at the hands of police of Michael Brown in Ferguson, Missouri¹⁵ and Eric Garner on Staten Island.¹⁶ This institutional tolerance of police brutality "likely stems from the prosecutor's interest in maintaining smooth working relations with police,

<https://www.npr.org/2023/01/24/1150942776/video-of-deadly-memphis-traffic-stop-wont-be-made-public-for-at-least-a-week> [<https://perma.cc/56FV-N67F>].

¹⁰ See, e.g., Jayson Hawkins, *Investigation Delays Let Cops Kill Again*, CRIM. LEGAL NEWS (Mar. 15, 2023), <https://www.criminallegalnews.org/news/2023/mar/15/investigation-delays-let-cops-kill-again/> [<https://perma.cc/5S2L-7Q58>] (detailing investigative delays into the use of deadly force by the Vallejo, California Police Department).

¹¹ See John Kelly & Mark Nichols, *We Found 85,000 Cops Who've Been Investigated for Misconduct. Now You Can Read Their Records*, USA TODAY (Apr. 24, 2019), <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/> [<https://perma.cc/D2RA-SQ8D>].

¹² John Sullivan, Zane Anthony, Julie Tate, & Jennifer Jenkins, *Nationwide, Police Shot and Killed Nearly 1,000 People in 2017*, WASH. POST (Jan. 6, 2018), https://www.washingtonpost.com/investigations/nationwide-police-shot-and-killed-nearly-1000-people-in-2017/2018/01/04/4eed5f34-e4e9-11e7-ab50-621fe0588340_story.html [<https://perma.cc/N5FV-C6N5>].

¹³ *Pulitzer Prize-Winning Fatal Force Database Updated with Federal IDs of Police Departments Involved in Fatal Shootings*, WASH. POST (Dec. 6, 2022), <https://www.washingtonpost.com/pr/2022/12/06/pulitzer-prize-winning-fatal-force-database-updated-with-federal-ids-police-departments-involved-fatal-shootings/> [<https://perma.cc/R5ZF-UGD6>]; Timothy Bella, *Five Oklahoma City Officers Charged in Fatal Shooting of 15-Year-Old Boy*, WASH. POST (Mar. 11, 2021), <https://www.washingtonpost.com/nation/2021/03/11/oklahomacity-police-stavian-rodriguez-charged/> [<https://perma.cc/QY8T-CB9E>].

¹⁴ There is a well-known adage, coined by former Chief Judge of the New York Court of Appeals Sol Wachtler, to the effect that, if a prosecutor wants to, he or she could get a grand jury to "indict a ham sandwich." Josh Levin, *The Judge Who Coined 'Indict a Ham Sandwich' Was Himself Indicted*, SLATE (Nov. 25, 2014), <https://slate.com/human-interest/2014/11/sol-wachtler-the-judge-who-coined-indict-a-ham-sandwich-was-himself-indicted.html> [<https://perma.cc/8NGM-RJTU>].

¹⁵ Silver, *supra* note 2.

¹⁶ *Id.*

who gather the government's evidence and are often its most important witnesses at trial, and from the prosecutor's own competitive drive to win and to advance professionally."¹⁷

Covering up police assaults and killings often requires more than a slow prosecutorial trip down a dead-end street. Another means to that end is the carefully sculpted testimony and police report of the officer under review and of any additional accounts of his or her colleagues who were present on the scene.¹⁸ Normally no need is seen for the internal police review panel or prosecutors to quiz civilian bystanders or the victim, assuming the incident happened not to be fatal.¹⁹ Indeed, among officers, their police reports are often referred to as "creative writing," and contain conjured accounts of provocation

¹⁷ Jay Sterling Silver, *Truth, Justice, and the American Way: The Case Against the Client Perjury Rules*, 47 VAND. L. REV. 339, 358 n.75 (1994). That calculus may be shifting a bit, perhaps out of political expediency, with highly publicized cases of police violence, whereby prosecutors are quicker to act and more willing to secure indictments or directly charge police in order to avert public criticism. Compared to the failure to indict the police in the Ferguson, Mo., and Staten Island cases, the next year prosecutors took a month to indict Walter Scott's killer in North Charleston, S. C., and a little over a year and a month to indict police in the Freddie Gray case in Baltimore. George Floyd's killing led to an indictment within days and, most recently, charges against the police who inflicted Tyre Nichols' fatal beating were brought within three weeks. See Indictment at 1, *United States v. Michael Slager*, No. 2:16-cr-00378-CRI (D.S.C. May 10, 2016) (showing that the officer who killed Walter Scott was indicted in one year and one month); Jean Casarez, *The Outcome of the Freddie Gray Case is a Cautionary Tale for Prosecutors in the George Floyd Case*, CNN (July 17, 2020), <https://www.cnn.com/2020/07/17/us/freddie-gray-george-floyd-comparison/index.html> [<https://perma.cc/Y8Z6-LD2U>] (showing that the officers who killed Freddie Gray were indicted within a month and that the officer who killed George Floyd was arrested within days); Adrian Florido, *All 5 Ex-Memphis Officers Plead Not Guilty in the Beating Death of Tyre Nichols*, NAT'L PUB. RADIO (Feb. 17, 2023), <https://www.npr.org/2023/02/17/1157756023/memphis-tyre-nichols-police-officers-court-charges> [<https://perma.cc/G4Y9-VAA5>] (showing that the officers who killed Tyre Nichols were indicted in just over a month).

¹⁸ Tom Barker & David Carter, "Fluffing Up the Evidence and Covering Your Ass:" *Some Conceptual Notes on Police Lying*, 11 DEVIANT BEHAV. 61, 69–70 (1990).

¹⁹ See "On Our Watch," a Podcast About How a Secret Internal Affairs System Protects Police, NAT'L PUB. RADIO (May 13, 2021), <https://www.npr.org/about-npr/995417792/on-our-watch-a-podcast-about-how-a-secret-internal-affairs-system-protects-police> [<https://perma.cc/YE77-SAMT>] ("[I]nvestigators . . . take the word of an officer over the testimony of subjects, witnesses and video evidence . . ."); Brian Zeiger, *Why You Cannot Trust Internal Investigations After the Use of Deadly Force by Police Officers*, BRIAN ZEIGER, LLC (Mar. 5, 2020), <https://brianzeiger.com/blog/use-of-deadly-force-investigation/> [<https://perma.cc/BM5Q-42QG>] ("Here in the real world, law enforcement officers and leadership officials are likely to prioritize upholding police prestige rather than seeking justice. Which is to say, they will try to rationalize, minimize, cover-up, and move on without being held accountable."); U.S. COMM'N ON C.R., REVISITING WHO IS GUARDING THE GUARDIANS?, 62 (2000) ("Without some form of external review, investigation and discipline of police officers will be left up to the discretion of other officers or police officials who may be sympathetic to or biased in favor of the accused officers.").

for the injuries they inflicted on a helpless suspect.²⁰ Unless the case has fallen into the public spotlight, these reports and testimony serve as rebuttals of any assertions of brutality civil suits arising out the encounter.²¹ The report of the Nichols’ “encounter with five officers,” for example, describes a reckless driving stop, and claims that Tyre “started to fight” with the officers, then “refus[ed] a lawful detention” and grabbed at an officer’s gun in the struggle, all of which was later contradicted by the police chief and none of which showed up on the various videos.²²

A corollary of the creative writing and testimony of police is the willful blindness of prosecutors and judges to the often-blatant perjury of officers on the witness stand.²³ For example, the late and venerable Professor Irving Younger, who had been a prosecutor and judge, candidly noted that:

Every lawyer who practices in the criminal courts knows that police perjury is commonplace. . . . And even if his lies are exposed in the courtroom, the policeman is as likely to be indicted for perjury by his co-worker, the prosecutor, as he is to be struck down by thunderbolts from an avenging heaven.²⁴

In his list of the “Rules of the Justice Game,” Professor Alan Dershowitz includes the following:

Rule IV: Almost all police lie about whether they violated the Constitution in order to convict guilty defendants. Rule V: All prosecutors, judges, and defense attorneys are aware of Rule IV. Rule VI: Many prosecutors implicitly

²⁰ Samuel Dunkle, “*The Air was Blue with Perjury*”: *Police Lies and the Case for Abolition*, 96 N.Y.U. L. REV. 2048, 2062–64, (2021); Dick Lehr, Opinion, *A New ‘Bright-Line Rule’ Against Lying*, BOS. GLOBE, July 31, 2009, at 15.

²¹ See Mark Joseph Stern, *The Police Lie. All the Time. Can Anything Stop Them?*, SLATE (Aug. 4, 2020), https://slate.com/news-and-politics/2020/08/police-testilying.html?pay=1694397610471&support_journalism=please [<https://perma.cc/UMQ3-S8EX>].

²² Jaglois, Bogel-Burroughs, & Smith, *supra* note 5.

²³ See Joseph Goldstein, “*Testilying’ by Police: A Stubborn Problem*,” N.Y. TIMES (Mar. 18, 2018), <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html> [<https://perma.cc/P524-5XPT>]; Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 263–65 (1998); Kevin R. Reitz, *Testilying as a Problem of Crime Control: A Reply to Professor Slobogin*, 67 U. COLO. L. REV. 1061, 1066 (1996).

²⁴ Irving Younger, *The Perjury Routine*, 3 CRIM. L. BULL. 551, 551 (1967); Susan Bandes, “*It Is an Open Secret Long Shared by Prosecutors, Defense Lawyers, and Judges That Perjury Is Widespread Among Law Enforcement Officers*”: *Why Judges so Rarely Second-Guess Police Testimony*, SALON (Dec. 16, 2015), https://www.salon.com/2015/12/16/it_is_an_open_secret_long_shared_by_prosecutors_defense_lawyers_and_judges_that_perjury_is_widespread_among_law_enforcement_officers_why_judges_so_rarely_second_guess_police_testimony/ [<https://perma.cc/3Y8F-VBHF>].

encourage police to lie about whether they violated the Constitution in order to convict guilty defendants. Rule VII: All judges are aware of Rule VI.²⁵

One judge who did address the problem of police perjury was the late Judge Skelly Wright of the District of Columbia Circuit Court of Appeals. In *Veney v. United States*, Judge Wright observed:

For some time now I have been curious and concerned about evidence offered by the Government, appearing again and again in criminal case records, showing that the defendant, at the lineup or other confrontation with the complaining witness, had, while in the presence and custody of the police, “spontaneously and voluntarily” apologized for his misdeed. . . . [I]t seemed more than passing strange, to me at least, that this phenomenon of contrition should assert itself so soon after the offensive act. I began a search to solve the mystery. . . . “[S]pontaneous” apologies by defendants have been offered by the Government and received in evidence in criminal cases with unusual frequency – usually supported by testimony that the apologies were not suggested or inspired by the police. . . . In view of the above, it appears to me that the time is ripe for some soul searching in the prosecutor’s office before it offers any more “spontaneous” apologies in evidence.²⁶

Beyond these *de facto*, self-serving practices of law enforcement lies a dark, police-specific rationalization —impervious to enhanced training or diversity workshops —that is a contributing factor to brutality. Officers frequently experience frustration in the outcome of their cases.²⁷ They have not only nabbed the bad guys and the evidence against them, but have endangered themselves in the process. For a variety of reasons —plea bargains, lenient judges, the suppression of evidence and other so-called “technicalities” that appear to them to frustrate justice —the protection of society for which they jeopardize their own safety turns out to be for naught.²⁸ Accordingly, the summary punishment on the street administered to a voiceless, disenfranchised suspect becomes, in effect, a hideous version of “rough justice.”²⁹ Their thinking is, if courts won’t do their job, the police will. Another rationalization, whether it registers consciously or not (and is even, on occasion, candidly conceded) is that if the summary punishment of an arrestee happened to be undeserved with respect to a particular charge, it wasn’t a net injustice in the

²⁵ ALAN M. DERSHOWITZ, *THE BEST DEFENSE* xxi–xxii (1982).

²⁶ *Veney v. United States*, 344 F.2d 542, 542–43 (D.C. Cir. 1965) (Wright, J., concurring in the result).

²⁷ *Barker & Carter*, *supra* note 19, at 67.

²⁸ *See id.* at 69.

²⁹ *See* Sean P. Griffin & Thomas J. Bernard, *Angry Aggression Among Police Officers*, 6 *POLICE Q.* 3, 9–10 (2003).

larger scheme since if he didn't do what he was charged with this time, he's done it in the past.³⁰

And finally, an unseen safety net exists for brutal cops. Professor Steve Plass has written extensively about the problem wherein, on the happenstance that a police chief or an internal departmental probe holds an abusive cop's feet to the fire, the mandatory arbitration called for in collective bargaining agreements between the town and the police union almost always ends with the arbitrator reversing the termination or disciplinary measures meted out by the department.³¹ As Plass explains,

The first factor [behind these reversals] is arbitral failure to incorporate the public interest when assessing discipline because they are not legally obliged to do so. The second is the procedural discretion arbitrators have to exclude incriminating evidence under the labor contract. And the third is Supreme Court doctrine that limits the ability of judges to vacate arbitral awards that are repugnant to justice.³²

B. *Institutional Psychodynamics Behind Police Brutality*

A cauldron of psychodynamics augment the overt, implicit, and institutional racism that unrelentingly plays out in police encounters with residents in poor, minority communities. Sustained stress and periodic trauma, for example, are directly linked to heightened aggression and police periodically face very real danger.³³ News outlets and social media are rife with examples of officers making mundane, justified stops who are shot dead by surprise.³⁴ In addition to any perilous encounters, they must exercise constant vigilance, which is itself a source of stress.³⁵ Moreover, as one former police chief put it: "The constant barrage of injustice and obstruction that comes as the nature of the work is added to frustrations from department bureaucrats, lackadaisical coworkers and the tensions of homelife."³⁶ Add to that the current, widespread condemnation of

³⁰ See William B. Waegel, *How Police Justify the Use of Deadly Force*, 32 SOC. PROBS. 144, 148 (1984).

³¹ Stephen A. Plass, *Police Arbitration and the Public Interest*, 37 HARV. BLACKLETTER L.J. 31, 31 (2021).

³² *Id.*

³³ Griffin & Bernard, *supra* note 30, at 9–10.

³⁴ See, e.g., Melissa Gaffney, *Indiana Cop Shot and Killed During Traffic Stop*, ABC NEWS (July 31, 2022), <https://abcnews.go.com/US/indiana-cop-shot-killed-traffic-stop/story?id=87730732> [<https://perma.cc/BU8R-MK82>].

³⁵ See *Stress and Aggression Reinforce Each Other at the Biological Level, Creating a Vicious Cycle*, AM. PSYCH. ASS'N (2004), <https://www.apa.org/news/press/releases/2004/10/feedback-cycle> [<https://perma.cc/3ACJ-DXR2>].

³⁶ Joel F. Shults, *Is Anger a Necessary Poison in Policing?*, POLICE1 (Oct. 10, 2019), <https://perma.cc/VEB5-YUPP>.

police, and if a cop didn't have a deep well of anger and resentment just below the surface before they signed up for the job, they often develop one over time.³⁷

The “frustration-aggression hypothesis” reiterates what we intuitively know: in moments of intense anger, anxiety, or peril, “stress hormones rise, facilitating the onset of aggression and making [individuals] become violent in seemingly benign settings.”³⁸ Hence, the age-old reference to “kicking the cat.”³⁹ A key finding is that “people who are chronically aroused tend to interpret a wider variety of events as threatening than do other people.”⁴⁰ In addition, this research finds that “chronically aroused people tend to respond to threatening events more aggressively than do other people.”⁴¹ The researchers posit that, “when chronically aroused people cannot respond to the actual sources of arousal, they tend to transfer aggression onto visible and vulnerable targets in their immediate environments.”⁴² Unable to take their anger and frustration out on their superior officers, the courts, the bureaucracy, and so on, what better target for an officer's aggression than a vulnerable community member distortedly perceived as a threat . . . or, for that matter, a target of their racist animus?

Several other factors are at play in disproportionate or redirected hostility. One is that the chances that the most scary examples of the past perils one has faced will occur again are blown out of proportion. This tendency represents a:

cognitive rule of thumb known as the *availability heuristic*, which stipulates that there is a common human tendency to judge the likelihood of occurrences in terms of how readily instances come to mind. Vivid events stick in our memories, and their greater ease of recall misleads us to overrate their frequency relative to less dramatic, but actually more pervasive events.⁴³

³⁷ See Rich Morin, *Roughly One-In-Five Police Frequently Feel Angry and Frustrated on the Job*, PEW RSCH. CTR. (Mar. 9, 2017), <https://www.pewresearch.org/short-reads/2017/03/09/roughly-one-in-five-police-frequently-feel-angry-and-frustrated-on-the-job/> [<https://perma.cc/5W2F-D2JP>].

³⁸ See AM. PSYCH. ASS'N, *supra* note 36.

³⁹ Emma Lu, *How to Avoid the 'Kick the Cat' Effect*, NSPIREMENT (Jan. 28, 2021), <https://www.nspirement.com/2021/01/28/how-to-avoid-kick-the-cat-effect.html> [<https://perma.cc/5M3C-3JR2>].

⁴⁰ Griffin & Bernard, *supra* note 30, at 8.

⁴¹ *Id.*

⁴² *Id.* at 4. An example of the relationship of stress and aggression may well be the spike in displaced aggression on the part of many airplane passengers following the travel restrictions during the height of the Covid-19 pandemic. *Id.*

⁴³ STEPHEN M. ROSOFF, HENRY N. PONTELL, & ROBERT TILLMAN, *PROFIT WITHOUT HONOR: WHITE-COLLAR CRIME AND THE LOOTING OF AMERICA* xiv (Pearson 7th ed. 2020), <https://www.pearsonhighered.com/assets/preface/0/1/3/4/0134871421.pdf> [<https://perma.cc/K5WC-9G22>].

Science has set about understanding the neurophysiological link between stress and aggression, and has recently made several breakthroughs. The neurophysiology of rats is similar to humans, and one vaunted study of a rat population reveals that “there appears to be a fast, mutual, positive feedback loop between stress

A tougher question is whether the displaced expression of aggression is cathartic, and thus experienced as the relief of stress,⁴⁴ or whether it generates more stress and aggression,⁴⁵ resulting in a “cycle of violence.” Either dynamic—both of which fall under what is termed as the “frustration-aggression hypothesis,”⁴⁶ bodes poorly for a member of a poor black or brown neighborhood. While the generation of more aggression is a gruesome prospect, a resulting sense of relief would incentivize allowing the lid to fly off the pressure cooker.

Finally, another stressor is the social isolation of police⁴⁷ stemming from the suspicion they view, and are viewed by, community members, their arms-length relationships with their superior officers, and the tensions that can arise at home between their need to decompress from their work and the demands of family life.⁴⁸ Moreover, few beyond their colleagues can understand the stresses and perils they are subject to on the job. As the former officer explains, “[y]our fellow cops end up becoming your real family [and s]upporting and protecting your fellow cops become your primary goal in life. . . . To hell with everyone else.”⁴⁹

As far as formal mental disorders go, the intensive trauma experienced by officers whose lives have been truly endangered or who respond to unthinkably gruesome crime scenes makes such individuals prime candidates for post-traumatic stress disorder.⁵⁰ “[O]fficers with post-traumatic stress disorder (PTSD) from job-related stressors and trauma may have an increased startle response, a tendency toward suspicion, and problems with aggression. These

hormones and a brain-based aggression-control center” See AM. PSYCH. ASS’N, *supra* note 36.

⁴⁴ See George K. Morlan, *A Note on the Frustration-Aggression Theories of Dollard and His Associates*, 56 PSYCH. REV. 1, 1 (1949), <https://psycnet.apa.org/fulltext/1949-03113-001.pdf> [<https://perma.cc/7NRR-W94G>].

⁴⁵ *Id.*; see Brad Bushman, *Does Venting Anger Feed or Extinguish the Flame? Catharsis, Rumination, Distraction, Anger, and Aggressive Responding*, 28 PERSONALITY AND SOC. PSYCH. BULL. 724, 724 (2000), [https://faculty.washington.edu/jdb/345/345%20Articles/bushman\(2002\).pdf](https://faculty.washington.edu/jdb/345/345%20Articles/bushman(2002).pdf) [<https://perma.cc/4VT2-96CQ>].

⁴⁶ JOHN DOLLARD, NEAL MILLER, LEONARD DOOB, O.H. MOWRER, & ROBERT SEARS, *FRUSTRATION AND AGGRESSION 1-3* (Yale U. Press 1939); see also Charlotte Nickerson, *Frustration-Aggression Hypothesis*, SIMPLYPSYCHOLOGY (Dec. 17, 2021), <https://www.simplypsychology.org/frustration-aggression-hypothesis.html> [<https://perma.cc/7NRR-W94G>].

⁴⁷ Griffin & Bernard, *supra* note 30, at 3.

⁴⁸ See Stephanie A. Habersaat, Ashley M. Geiger, Sid Abdellaoui, & Jutta M. Wolf, *Health in Police Officers: Role of Risk Factor Clusters and Police Divisions*, 143 SOC. SCI. & MED. 213, 214, 218 (2015).

⁴⁹ Darren M. Slade, *I’m a Former Cop. This is Not Just a Few Bad Apples*, GLOB. CTR. FOR RELIGIOUS RSCH. (May 31, 2020), <https://www.gctr.org/post/fewbadapplesmyth> [<https://perma.cc/B5J4-BX4Q>].

⁵⁰ Tina B. Craddock & Grace Telesco, *Police Stress and Deleterious Outcomes: Efforts Towards Improving Police Mental Health*, 37 J. POLICE & CRIM. PSYCH. 173, 173–74 (2022).

traits can make it more likely that they will overreact and use deadly force when not necessary.”⁵¹

As if that isn’t enough, studies have found disturbingly elevated rates of psychopathy among police⁵² and that “a significant relationship exists between psychopathy and time” served on the force.⁵³ The best-known survey found that, of the long list of the various professions, the job containing the seventh largest proportion of individuals with psychopathological personalities was police officer.⁵⁴ One well-regarded study found that “‘traits’ of ‘psychopathy’ . . . such as ‘fearless dominance’ or ‘cold-heartedness’ can be adaptive in dangerous or emotionally charged situations, but they can also make an individual more likely to engage in excessive use of force or to feel that they do not need to follow the rules.”⁵⁵

Curbing police brutality is thus more than a matter of weeding out a number of aggressive, racist police, although doing so would be an important step forward. As the former officer lamented: “It’s time we stop rationalizing police brutality as being the fault of only a couple of misfits. It’s not. It is an institutionalized and pervasive method of conditioning police officers to eliminate empathy and to view the public as a threat.”⁵⁶ Ultimately, between qualified immunity, the justice system’s tolerance of officers’ mendacious accounts of instances of brutality, and the stress-based dynamics of aggression, the residents of poor, minority neighborhoods live with the fox guarding the henhouse.

III. THE EMPTINESS OF PROPOSED REFORMS

The current set of policy initiatives espoused by commentators and office holders will, in reality, do little to curtail the problem. Outfitting police with body cameras, for example, seemed to hold great promise in curtailing police

⁵¹ Arlin Cuncic, *Understanding What Police Brutality Is and Why It Occurs*, VERYWELLMIND (Jan. 28, 2023), <https://www.verywellmind.com/the-psychology-behind-police-brutality-5077410> [<https://perma.cc/3FVB-K68D>]; see also Jordan DeVlyder, Monique Lalane, & Lisa Fedina, *The Association Between Abusive Policing and PTSD Symptoms Among U.S. Police Officers*, 10 J. SOC’Y SOC. WORK & RSCH. 261, 270 (2019).

⁵² KEVIN DUTTON, *THE WISDOM OF PSYCHOPATHS: WHAT SAINTS, SPIES, AND SERIAL KILLERS CAN TEACH US ABOUT SUCCESS* 162 (Farrar, Straus, and Giroux 2012).

⁵³ Hunter N. Moore, *Psychopathy and Police Officers: A Cross-Sectional Analysis of the Relationship Between Psychopathic Traits and Police Work Across Temporal Factors*, 4 (2020) (MA Thesis, City of University of New York), https://academicworks.cuny.edu/jj_etds/162/ [<https://perma.cc/EA5S-NGUT>].

⁵⁴ See Dutton, *supra* note 53.

⁵⁵ Cuncic, *supra* note 52; see generally Diana M. Falkenbach, Justin Balash, Maria Tsoukalas, Stephanie Stern, & Scott O. Lilienfeld, *From Theoretical to Empirical: Considering Reflections of Psychopathy Across the Thin Blue Line*, 9 PERSONALITY DISORDERS: THEORY, RSCH. & TREATMENT 420 (2018), <https://pubmed.ncbi.nlm.nih.gov/29722995/> [<https://perma.cc/GM5F-356G>].

⁵⁶ Slade, *supra* note 50.

violence.⁵⁷ But where there is a will to circumvent policy manuals and accountability measures in community encounters, there's a way. And in this particular case, a very easy way: simply do not turn the device on. No one, for example, outside George Floyd's south Minneapolis neighborhood would have heard of his barbaric death if the officers' body cams had to be relied on to reveal the interminable chokehold he was subjected to,⁵⁸ nor would the world have learned of Tyre Nichols' fatal beating if not for the city camera perched high atop a light pole. As CNN reported and the footage of the killing reflect, the "videos of Tyre Nichols' police beating . . . consist of three shorter body camera clips and one roughly 31-minute video taken from a utility pole camera, which appears to capture most of the violence that unfolded just steps from Nichols' home in Memphis."⁵⁹

Specially trained tactical units also seemed promising in providing measured responses to encounters with community members.⁶⁰ Not so, for example, with the Memphis tactical unit that beat the life out of Mr. Nichols and has been shut down.⁶¹ The name of the unit is straight out of Orwell:⁶² "Scorpion," an anagram for "Street Crimes Operation to Restore Peace in Our Neighborhoods."⁶³ And the irony doesn't stop there. As part of the universal call for the better vetting and training of officers, the appellation is eerily reminiscent of the old story of the scorpion and the frog.⁶⁴ In it, a scorpion asked

⁵⁷ See, e.g., Cheryl Corley, *Study: Body-Worn Camera Research Shows Drop in Police Use of Force*, NAT'L PUB. RADIO (Apr. 26, 2021), <https://www.npr.org/2021/04/26/982391187/study-body-worn-camera-research-shows-drop-in-police-use-of-force> [<https://perma.cc/579F-VYJ4>].

⁵⁸ See Editorial, *George Floyd Anniversary: Release Police Body Camera Videos of Deadly Arrests*, USA TODAY (May 25, 2021), <https://www.usatoday.com/story/opinion/todaysdebate/2021/05/25/george-floyd-release-police-body-cam-videos-deadly-arrests/5164809001/> [<https://perma.cc/9AN2-L6AX>].

⁵⁹ Christina Maxouris, *A Brutal Beating. Cries for His Mom. 23-Minute Delay in Aid. Here Are the Key Revelations from the Tyre Nichols Police Videos*, CNN (Jan. 28, 2023), <https://www.cnn.com/2023/01/28/us/tyre-nichols-beating-video-takeaways/index.html> [<https://perma.cc/2BAV-4K6B>].

⁶⁰ See Chandelis Duster, *Memphis Special Police Unit Accused in Tyre Nichols' Death Faces Scrutiny*, CNN (Jan. 29, 2023), <https://www.cnn.com/2023/01/27/us/memphis-police-scorpion-unit-tyre-nichols/index.html> [<https://perma.cc/VWE4-G5R1>].

⁶¹ Hannah Rabinowitz & Emma Tucker, *5 Former Police Officers Involved in Deadly Beating of Tyre Nichols Indicted on Federal Charges*, CNN (Sept. 12, 2023), <https://www.cnn.com/2023/09/12/us/tyre-nichols-police-officers-indicted/index.html> [<https://perma.cc/4GMF-HVGL>].

⁶² In George Orwell's dystopian novel *1984*, the government communicated in *newspeak* as a means of contorting its oppressive practices into justified measures. In the novel, for example, the inscription on the side of the Ministry of Truth is "WAR IS PEACE. FREEDOM IS SLAVERY. IGNORANCE IS STRENGTH." GEORGE ORWELL, 1984 16 (1949).

⁶³ Duster, *supra* note 61.

⁶⁴ See GEORGIL TUSHKAN, *THE HUNTER OF THE PAMIRS* 320 (1944).

a frog who was about to cross a river if he could ride across on the frog's back.⁶⁵ Leary of the scorpion's sting, the frog nonetheless agrees when the scorpion explains that if he were to sting the frog, he would drown in the river, as well.⁶⁶ Nonetheless, half way across, the scorpion stings the frog, who then asks the scorpion why he did so.⁶⁷ To which the scorpion replied, "because it's my nature."⁶⁸ As we see, the Derek Chauvins of the nation's police forces will revert to the their nature, heightened training and the risk of viral videos be damned.

Finally, the stated mission of policing needn't be overhauled; it is the system that must be. The current pledge of the Memphis police department, for example, includes the noble assurance that, "[C]ulturally sensitive, we are a proactive police force that solves problems by building trust, communication and cooperation with the communities we serve."⁶⁹ And the sacred promise printed on the side of the police car of the Minneapolis officers who asphyxiated George Floyd, as it is on the side of all the departments' vehicles, is "To Protect with Courage, To Serve with Compassion."⁷⁰

Likewise, a disheartening number of the ubiquitous cries of lawmakers for change are empty words. As a crystal clear example, although many members of Congress have publicly lamented the killing of innumerable, non-threatening young men by local police and called for unity in overcoming gratuitous violence in law enforcement,⁷¹ the "George Floyd Justice in Policing Act of 2021" outlawing choke holds, limiting qualified immunity, and instituting other reforms barely made it through the House and, despite Democratic control of the upper chamber, died in the Senate.⁷²

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ The fable believed to have first appeared in Georgil Tushkan's "The Hunter of the Pamirs" (1944) and has made its way into American Culture, film, books, and so on. *Id.*; Matt Jacobs, *The Scorpion and the Frog Story? Everything you Need to Know about the Fable*, FILMAKING LIFESTYLE MEDIA, <https://filmlifestyle.com/scorpion-and-the-frog-story/> [<https://perma.cc/6HNG-UQGH>] (2022).

⁶⁹ *About the MPD*, MEMPHIS POLICE DEP'T, <https://memphispolice.org/about/> [<https://perma.cc/4R6R-SZBG>] (last visited Jan. 4, 2024).

⁷⁰ *Minneapolis Police Squad Cars Get New Look, Go High Tech*, GOV'T TECH. (July 27, 2010), https://www.govtech.com/public-safety/minneapolis-police-squad-cars-get-new-look_go_high_tech.html [<https://perma.cc/587H-8C2P>].

⁷¹ See generally Lampe, *supra* note 3, at 1–3.

⁷² Felicia Sonmez & Mike DeBonis, *No Deal on Bill to Overhaul Policing in Aftermath of Protests Over Killing of Black Americans*, WASH. POST (Sept. 22, 2021), https://www.washingtonpost.com/powerpost/policing-george-floyd-congress-legislation/2021/09/22/36324a34-1bc9-11ec-a99a-5fea2b2da34b_story.html [<https://perma.cc/G6W7-XFZC>]. Senate Republicans expressed particular opposition to the proposed establishment of a federal database of allegations of police brutality, placing any limits on qualified immunity, and restricting federal subsidies to states that didn't comply with the measures outlined in the bill. See *id.*

IV. A PARADOX IN POLICING THEORY

“To every action there is always opposed an equal reaction.”⁷³

Sir Isaac Newton
Principia

Amidst the torn social fabric of the nation, there can be only spotty progress in cleaning out aggression-prone officers from local departments. From Congress to town councils, from national leaders to assembly-line workers, today’s highly polarized polity lacks the unified will to reform neighborhood policing with effective, broad-brush measures.⁷⁴ On the local scale, however, progressive police chiefs, mayors, and commissioners, as well as prosecutors who don’t drag their feet in the face of police brutality or tolerate their mendacity on the witness stand can, one city or town at a time, more closely align the nature of policing with the noble mission printed on the sides of their patrol cars.

On the larger scale, there are two common theories of the role of law and law enforcement, which, in turn, call for vastly different approaches to curtailing the epidemic of unwarranted police violence.⁷⁵ Both are known by several names, have a number of variants, and are described here in their broadest forms. (Delving deeper into vast wilderness of social theory is beyond the scope of this piece.) The first, *consensus theory*, holds that the role of law enforcement is consistent with the shibboleth that they are here to serve and protect the community.⁷⁶ Under the theory, the efforts of the police to keep a neighborhood safe for its residents are appreciated, officers show respect for those who live there, and police and community members share a bond of trust.⁷⁷ To those who view the consensus model as descriptive of American law enforcement across the board and deny the notion of institutional racism in policing, the steady supply of stomach-turning videos of young black men gratuitously choked to death, fatally beaten, shot in the back, and on and on simply represent the

⁷³ ISAAC NEWTON, *PHILOSOPHIAE NATURALIS PRINCIPIA MATHEMATICA* 19-20(1727) (translated from the Latin: “Actioni contrariam semper et æqualem esse reactionem: sive corporum duorum actiones in se mutuo semper esse æquales et in partes contrarias dirigi,”).

⁷⁴ See generally Sonmez & DeBonis, *supra* note 70.

⁷⁵ Brian C. Renauer, *Neighborhood Variation in Police Stops and Searches: A Test of Consensus and Conflict Perspectives*, 15 *POLICE Q.* 219, 220–21 (2012).

⁷⁶ *Id.* at 220.

⁷⁷ See Nigel G. Fielding, *Concepts and Theory in Community Policing*, 44 *HOW. J. CRIM. JUST.* 460, 460, 465 (2005); see also Mitchell B. Chamlin, *Threat to Whom? Conflict, Consensus, and Social Control*, 30 *DEVIANT BEHAV.* 539, 554 (2009), <https://www.tandfonline.com/doi/abs/10.1080/01639620802467797>

[<https://perma.cc/ZM6A-EMK2>] (“[C]onsensus theories maintain that the police . . . function to meet the social defense needs of society as a whole rather than any particular sub-division within it.”). The consensus perspective is sometimes referred to as “structural functionalism.” Renauer, *supra* note 73, at 220.

anomalous acts of rogue cops, rather than a phenomenon endemic to policing in our poorest areas.⁷⁸

In contrast, *social conflict theory* holds that “law and the mechanisms of its enforcement are used by dominant groups in society to minimize threats to their interests posed by those whom they label as dangerous, especially minorities and the poor.”⁷⁹ Consistent with this, Professor Monica Bell’s “legal estrangement theory” maintains that “[t]he existing police regulatory regime encourages large swaths of American society to see themselves as existing within the law’s aegis but outside its protection. . . . [T]he intuition among many people in poor communities of color [is] that the law operates to exclude them from society.”⁸⁰ That black parents feel compelled to give their children “the talk” about the vital need for immediate compliance and a docile demeanor if they are pulled over or otherwise detained by a cop is one of an endless number of everyday experiences that expose consensus theory, in its descriptive sense, as a cynical fraud, an aspect of Gramscian cultural hegemony at war with the caustic realities of everyday life in our disenfranchised communities.⁸¹

In this sense, the current calls for police reform, whether sincere or mere lip service, arguably take aim at a mirage. Virtually all of the popular proposals bandied about are designed to plug holes in the consensus view of policing.⁸² Enhanced training, culling out violence-prone bigots from the force, ubiquitous body and street cameras, *et al* serve to shore up the myth that, writ large, we are operating under the consensus model, to explain away the reality of the conflict model by reducing social domination to a set of rogue cops and imperfect training procedures, when, in fact, the truth lies closer to a viral tweet circulated after the failure to indict the officer who killed Michael Brown in Ferguson, Missouri: “A system cannot fail those it was never built to protect.”⁸³ While

⁷⁸ See Fielding, *supra* note 75, at 460.

⁷⁹ Matthew Petrocelli, Alex R. Piquero, & Michael R. Smith, *Conflict Theory and Racial Profiling: An Empirical Analysis of Police Traffic Stop Data*, 31 J. CRIM. JUST. 1, 1 (2003).

⁸⁰ Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2054 (2017); *id.* at 2075–76.

⁸¹ *id.* at 2075–76 (“Gramsci argued that governments (and more precisely, capitalist governments) gained legitimacy through ideological and cultural hegemony: legitimation is a bundle of process that elites use to procure public buy-in to oppressive systems.”); see also Leslie A. Anderson, Margaret O’Brien Caughy, & Margaret T. Owen, “The Talk” and Parenting While Black in America: Centering Race, Resistance, and Refuge, 48 J. BLACK PSYCH. 475, 475, 487–88 (2021).

⁸² See Alex S. Vitale, *The Answer to Police Violence is not ‘Reform.’ It’s Defunding. Here’s Why*, GUARDIAN (May 31, 2020), <https://www.theguardian.com/commentisfree/2020/may/31/the-answer-to-police-violence-is-not-reform-its-defunding-heres-why> [<https://perma.cc/KYX9-26NJ>].

⁸³ While often attributed to W.E.B. DuBois, there is no hard evidence of his having said this. One researcher asserts that Dr. Vann Newkirk, the current President of historically black Wilberforce University in Ohio, originally uttered the notion. See Lilly Rothman, *That ‘A System Cannot Fail...’ Quote? It’s Not From W.E.B. DuBois*, TIME (Nov. 25, 2014), <https://time.com/3604241/w-e-b-dubois-quote-ferguson/> [<https://perma.cc/3CE7-XZQK>].

palliative reforms are better than none at all, they are triage, rather than cures, from a conflict-theory point of view; a coat of paint slapped over the brutal realities of systemic domination.

And it is here that we encounter a paradox in the brutality of policing in poor, black and brown neighborhoods. Viral videos of police atrocities spark angry demonstrations and serve as a unifying and consciousness-building force within marginalized communities.⁸⁴ Thus, police brutality and mendacity are, at the very same time, both endemic and anathema to the exercise of dominion over a disempowered class. Moreover, the clash is self-escalating and, from Brazil to China, from France to Myanmar and countless stops in between, a scourge of global dimensions.⁸⁵

While it is true that, in order to fix a problem, one must first understand it, it is also true that, to genuinely understand a problem, one must detach themselves from their own self-interest and social programming—a tall order—in order to recognize the common interest. Only when those who live outside of communities brutalized by police are able to view the problem from this “veil of ignorance” can the genuine, deeply-rooted institutional dynamics of the control model of policing be addressed. As Albert Einstein is credited with saying: “No problem can be solved from the level of consciousness that created it.”⁸⁶

V. CONCLUSION

Perhaps the clearest characterization of the contemporary rules of policing in poor, minority communities was expressed by the former officer quote above:

I personally watched other officers inflict unnecessary pain and torture on people . . . If the police are caught doing these things, then they simply describe their tactics as mere “pain compliance” or some other nonsense. I was repeatedly told by fellow officers that it doesn’t matter what you *do* on the street; it’s how you *articulate* it in your police report. As long as you can justify

⁸⁴ See Michelle Garcia, *The Monumental Impact of George Floyd’s Death on Black America*, NBC NEWS (May 25, 2021), <https://www.nbcnews.com/news/nbcblk/monumental-impact-george-floyds-death-black-america-rcna1021> [<https://perma.cc/2JQY-K6LF>].

⁸⁵ See *Police Violence*, AMNESTY INT’L, <https://www.amnesty.org/en/what-we-do/police-brutality/> [<https://perma.cc/DH5D-2FTQ>] (last visited Jan. 4, 2024).

⁸⁶ This quote, or slight variations on it, is traditionally credited to Albert Einstein, although, as with the prior quote widely attributed to W.E.B. DuBois, researchers have been unable to trace its origin to him. See, e.g., *Did Einstein Say “We Cannot Solve Our Problems with the Same Thinking We Used to Create Them”?*, STACKEXCHANGE (2018) <https://hsm.stackexchange.com/questions/7751/did-einstein-say-we-cannot-solve-our-problems-with-the-same-thinking-we-used-to> [<https://perma.cc/8CED-EKDQ>].

your actions as necessary for “officer safety,” then your actions will be considered legitimate and lawful.⁸⁷

We can stridently condemn the barbarous deaths of defenseless black men, endlessly issue heartfelt pleas for unity, and purchase all the body cams in the world, but until our society is ready to provide these communities with schools, medical care, and employment opportunities on par with those of affluent communities and extinguish institutionalized racial bias in policing, we will have failed to holistically address the plague of police brutality. Moreover, an eye to the psychodynamics of fear and trauma that feed police aggression and help spark violent outbursts is a requisite to institutional reform. And so, short of the structural change whereby our marginalized communities, free of systemic racism, can share in the bounty of the nation, we seem destined to periodically bury more victims of law enforcement who “can’t breathe”⁸⁸ and call out for “mom.”⁸⁹

⁸⁷ Slade, *supra* note 50.

⁸⁸ “I can’t breathe” were the desperate last words of both Eric Garner and George Floyd as police choked them to death. Colleen Long & Deepti Hajela, *‘I Can’t Breathe’: A Rallying Cry for Protests*, WBUR (May 29, 2020), <https://www.wbur.org/news/2020/05/29/i-cant-breathe-eric-garner-george-floyd-protests> [<https://perma.cc/JD4B-KXF2>].

⁸⁹ NBC2 NEWS, *Video Shows Tyre Nichols Calling for His Mother, Beaten by Officers Now Charged in His Death*, YOUTUBE, <https://www.youtube.com/watch?v=4-13gkR5Zpk>.