



Senate Public Safety Committee
Honorable Loni Hancock, Chair

Assembly Public Safety Committee
Honorable Bill Quirk, Chair

Informational Hearing

LAW ENFORCEMENT AND COMMUNITY TRUST IN CALIFORNIA

Tuesday, February 10, 2015
State Capitol, Room 4203
9:30 a.m. – 3:30 p.m.

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

AGENDA

February 10, 2015
9:30 a.m. - 3:30 p.m.
State Capitol, Room 4203

Law Enforcement and Community Trust in California

Morning Session – 9:30 - Noon

- I. Welcoming Remarks and Introductions (10 minutes)***
- II. The Numbers We Know: Statewide and Local Data and Information Collection Relating to Policing (30 minutes)***
 1. Statewide Data Collection
 - Julie Basco, Bureau Chief, Bureau of Criminal Information and Analysis, California Department of Justice
 2. Local Law Enforcement Data Collection
 - Cathy Osgan, President, California Law Enforcement Association of Records Supervisors
- III. Promoting Trust and Confidence through Data: Additional Tools (40 minutes)***
 1. How a Data-Driven Approach Can Improve Police-Community Relations
 - Jessica Saunders, Criminologist, RAND Corporation
 2. Implicit Bias and Policing
 - Jack Glaser, Associate Dean, Goldman School of Public Policy, University of California, Berkeley

IV. *Investigating and Prosecuting Allegations of Officer Misconduct in California*
(70 minutes)

1. Process by which Officers are Investigated and Prosecuted for Misconduct
 - Joey Esposito, Assistant District Attorney of Special Operations, Los Angeles County
 - Mike Durant, President, Peace Officers Research Association of California
2. Issues Encountered with Investigations of Officer Misconduct in California
 - Peter Bibring, Director of Police Practices, American Civil Liberties Union of California
 - Judge LaDoris H. Cordell (Ret.), Independent Police Auditor, San Jose

Afternoon Session: 1:30 – 3:30 p.m.

V. *Building Trust and Confidence between Law Enforcement and the Communities they Serve: Promising Practices and Unresolved Challenges* (90 minutes)

1. Law Enforcement Perspective
 - Adam Christianson, Sheriff, Stanislaus County
 - Allwyn Brown, Deputy Chief, Richmond Police Department
 - Phillip and Emada Tingirides, Los Angeles Police Department
2. Community Leader Perspective
 - Alice A. Huffman, President of the NAACP California State Conference
 - Minister Bryson White, PICO California
 - Jeannette Zanipatin, Legislative Staff Attorney, Mexican American Legal Defense and Educational Fund
3. A Dual Prospective
 - Jinho “The Piper” Ferreira, Author and Alameda County Sheriff’s Deputy

VI. *Public Comment* (30 minutes)

SPEAKER BIOGRAPHIES

JULIE BASCO, Bureau Chief, Bureau of Criminal Information and Analysis, California Department of Justice

Upon completing a Baccalaureate in History Chief Basco began her career working as a Legislative Aide at the California State Assembly for Assembly Member B.T. Collins. In addition to managing Assembly Member Collins' legislative program she served as his subject advisor while he was Vice-Chair of the Assembly Human Services Committee.

In 1993, Chief Basco came to the Department of Justice (DOJ) where for 12 years she worked in the Bureau of Criminal Identification and Information as an analyst and Department of Justice Administrator in applicant background check processing, automation support and bureau administration and operations.

In 2005, Chief Basco moved to the Bureau of Criminal Information and Analysis (BCIA) as an Assistant Chief and was appointed Chief in 2007. Chief Basco now leads the BCIA comprised of three branches that function as California's criminal offender record information repository, maintains the Child Abuse Central Index, processes state and federal level applicant background checks, issues Department certifications, manages the administrative side of the California Law Enforcement Telecommunications System (CLETS) and computes and publishes California crime statistics.

In 2014, Chief Basco also became Chief of the Bureau of Criminal Identification and Investigative Services (BCIIS) comprised of two branches that maintain California's fingerprint and palmprint identification systems, manage the CLETS entered databases (hot files) and the Violent Crime Information Center as well as, providing training and auditing services to law enforcement and criminal justice agencies.

Chief Basco represents the Department in several Federal Bureau of Investigation affiliations: California CJIS Systems Officer, Advisory Policy Board Western Working Group state representative, National Instant Background Check System Subcommittee Chair and as a member of the Advisory Policy Board Executive Committee, the Rapback Focus Group and the Direct Connect Task Force. Also, Chief Basco serves as the California representative to the National Law Enforcement Telecommunications System where she is Vice-Chair of California's regional group. Additionally, Chief Basco is a member of the Board of State and Community Corrections statutorily mandated Juvenile Justice Data Working Group and she serves as the DOJ representative to the CLETS Advisory Committee's Standing Strategic Planning Subcommittee.

CATHERINE OSGAN, President, California Law Enforcement Association of Records Supervisors

Catherine Osgan is the Police Records Manager for the Oceanside Police Department. She has worked in law enforcement for 29 years in Records and promoted through the ranks of Records from a Clerk 1; Police Records Technician, Sr. Records Technician; Police Records Supervisor and in 2006 to Police Records Manager. The Records Unit consists of two Police Record Supervisors, two Senior Police Records Technicians, and 14 Police Records Technicians. One of the primary statistical duties of the Records Unit

is preparing the monthly Return A, FBI Index and a 24 page Monthly Activity Report for the City of Oceanside Department Directors and City Council.

As the Police Records Manager she is the Department Custodian of Records, Security Point of Contact, Agency CLETS Coordinator, conducts routine audits of CLETS related searches, and is responsible for the security and maintenance of all criminal records maintained in the department. Catherine is considered a subject matter expert for CLETS Security, Public Records Act releases and has conducted training for many local agencies including Military installations.

As a member of the California Law Enforcement Association of Record Supervisors – CLEARs for 15 years, Catherine has been the President of the San Diego Border Chapter from 2010 – 2014 and currently serves as the 2015 CLEARs State President. She is also the current Chair of the Automated Regional Justice Information System – ARJIS – Business Working Group and has participated on several committees on data collection and most recently worked with agencies for the new Rape reporting requirements established by FBI CJIS. In addition to data collection responses Catherine is currently working with 33 department officers that use smart phones with facial recognition software and mobile applications to identify subjects of interest.

DR. JESSICA SAUNDERS, Criminologist, RAND Corporation

Jessica Saunders is a criminologist at the RAND Corporation with over fourteen years of experience conducting research related to the criminal justice system. Her research interests include policing, immigration and crime, developmental criminology, evaluation research, and quantitative methods. Saunders has led several large-scale criminal justice and prevention evaluation efforts, including a multi-site open-air drug market intervention evaluation, NIJ's predictive policing evaluation, a large scale NIJ-funded school safety program evaluation, the Law Enforcement and Corrections Technology Center for Small, Rural, Tribal, and Border Criminal Justice Systems, an examination of the Israel National Police, and the effectiveness of correctional education. She spent five months in Afghanistan studying both the development and effectiveness Afghan Local Police and U.S. military women working in combat positions for NATO Special Forces.

Saunders has authored a series of statistical and methodological pieces on emerging statistical techniques for measuring the development of delinquency and youth violence and their implications for youth intervention evaluations, as well as advanced new quantitative methods to overcome sampling bias when using quasi-experimental and observational data at the individual and geographic level in evaluation research.

Saunders teaches criminology and public policy at the Pardee RAND Graduate School and prior to joining RAND, she was an assistant professor of criminology and criminal justice at Arizona State University. She received her Ph.D. in criminal justice from John Jay College of Criminal Justice in 2007 and was the recipient of the Rudin Fellowship for applied criminal justice research from 2005 through 2007.

JACK GLASER, Associate Dean, Goldman School Of Public Policy , University Of California, Berkeley

Jack Glaser is Associate Professor and Associate Dean at the Goldman School of Public Policy at UC Berkeley. He joined the Goldman School faculty in 2000, after receiving his Ph.D. in psychology from Yale University. Glaser is a social psychologist whose primary research interest is in stereotyping, prejudice, and discrimination. He studies these intergroup biases at multiple levels of analysis using multiple methodologies. For example, he investigates the unconscious operation of stereotypes and prejudice using computerized reaction time methods, and is investigating the implications of such subtle forms of bias in law enforcement. In particular, he is interested in the police practice of racial profiling, especially as it relates to the psychology of stereotyping, and the self-fulfilling effects of such stereotype-based discrimination. In addition to teaching and conducting research at UC Berkeley, Professor Glaser has been involved in training California State judges in the psychology of stereotyping, prejudice, and discrimination, and how they might operate implicitly, and undermine fairness, in the courtroom. He is working with the Center for Policing Equity and most of North America's largest police departments to develop a "Justice Database" of police stops and use of force incidents. His book, "Suspect Race: Causes and Consequences of Racial Profiling," was published by Oxford University Press in November, 2014.

JOEY ESPOSITO, Assistant District Attorney of Special Operations, Los Angeles County

Joseph Esposito joined the Los Angeles County District Attorney's Office in 1989 and is currently a member of District Attorney Jackie Lacey's Executive Management Team. During his 25 years as a prosecutor he has served as a felony trial deputy in Central Trials, the Hardcore Gang Division and the Hate Crimes Suppression Unit. He has also served as Special Assistant to the Director of Central Operations, Assistant Head Deputy of the Hardcore Gang Division, Head Deputy of the Major Narcotics Division, Director for the Bureau of Specialized Prosecutions and currently as the Assistant District Attorney of Special Operations where he oversees an operation of nearly 400 specially trained subject matter expert prosecutors. As Assistant District Attorney, Joseph sits as the Chair of the District Attorney's Death Penalty Committee where he is charged with the responsibility of evaluating every death-eligible defendant for the appropriateness of seeking life without the possibility of parole or death. Additionally, as Assistant D.A., Joseph oversees the District Attorney's Grand Jury Unit. In that capacity he reviews all deputy district attorney requests to present cases before the Grand Jury. In recognition of his professional accomplishments, Joseph was awarded Prosecutor of the Decade by Justice for Homicide Victims; Deputy District Attorney of the Month by the Association of Deputy District Attorneys; and, California Prosecutor of the Year by the California Narcotics Officers Association. Joseph has also been on the faculty at Southwestern Law School since 1992 where he is Co-Director of the Trial Advocacy Honors Program.

MIKE DURANT, President, Peace Officers Research Association of California

Michael Durant is a Senior Deputy Sheriff with Santa Barbara County Sheriff's Department. During his more than 30 year career in Law Enforcement, he has been assigned to patrol, field training, investigations, custody, transportation, public information officer and has spent many years in the canine unit. Durant has conducted more than 100 canine demonstrations in classrooms around Santa Barbara County.

Durant was first elected to the PORAC Board of Directors representing the Tri-Counties Chapter of PORAC in November of 2003. In 2005, Durant was elected Vice President of PORAC. As Vice President of PORAC, Durant put to use his public relations skills promoting the recruitment and retention of associations and members of PORAC.

In 2013, Durant was unanimously elected President of PORAC. Durant spends much of his time in Sacramento, educating legislators about the tools necessary for California law enforcement to be successful in their mission to keep our communities safe. Durant has played an integral part in the passage of numerous pieces of legislation that have helped improve public safety.

Durant lives in Santa Barbara County with his wife Roxanne and his three children.

PETER BIBRING, Director of Police Practices, American Civil Liberties Union of California

Peter Bibring is a senior staff attorney at the ACLU of Southern California and director of police practices for the ACLU of California. He joined ACLU SoCal as a staff attorney in 2006.

Peter works on a wide range of police-related issues, including race and bias in policing, gang injunctions, excessive force, search and seizure, police interference with First Amendment rights, national security, civilian oversight, and surveillance.

Peter's cases include *Vasquez v. Rackauckas*, a successful due process challenge to enforcement of a gang injunction in the city of Orange, California; *Fazaga v. FBI*, a challenge to the FBI's surveillance of mosques in Orange County; *Nee v. County of Los Angeles*, a suit on behalf of photographers unlawfully detained for photographing in public; *Gordon v. City of Moreno Valley*, a challenge to racially-targeted, warrantless raids on African American barbershops; and *Fitzgerald v. City of Los Angeles*, a lawsuit targeting unlawful searches and detentions in L.A.'s Skid Row area.

Prior to joining the ACLU, Peter worked in private practice, specializing in civil rights and workers' rights. Peter clerked on the United States Court of Appeals for the Second Circuit and the United States District Court for the Northern District of California. He graduated from New York University School of Law, where he was an editor-in-chief of the NYU Review of Law and Social Change, and from Harvard University.

LADORIS HAZZARD CORDELL, Independent Police Auditor for the City of San Jose

LaDoris Hazzard Cordell, a 1974 graduate of Stanford Law School, was the first lawyer to open a law practice in East Palo Alto. In 1978, she was appointed Assistant Dean for Student Affairs at Stanford Law School, where she implemented a successful minority admissions program.

In 1982, Governor Jerry Brown appointed Ms. Cordell to the Municipal Court of Santa Clara County.

In 1988, Judge Cordell won election to the Superior Court of Santa Clara County, making her the first African American woman to sit on the Superior Court in northern California.

After 19 years on the bench, she retired and began employment at Stanford University as Vice Provost & Special Counselor to the President for Campus Relations. After eight years, she retired from that position in 2009.

In November 2003, Judge Cordell, accepting no monetary donations, ran a grassroots campaign and won a 4-year term on the Palo Alto City Council.

Judge Cordell has been an on-camera legal analyst for CBS-5 television and a guest commentator on Court TV.

Judge Cordell is currently the Independent Police Auditor for the City of San Jose, having been appointed to that position after a national search, in April 2010.

ADAM CHRISTIANSON, Sheriff, Stanislaus County

Sheriff Adam Christianson began his career in public safety, graduating from San Joaquin Delta College with a certification in Paramedicine and worked as a paramedic in Stanislaus County for several years including work as a flight paramedic for Medi-Flight of Northern California. Sheriff Christianson started his law enforcement career with the Ceres Police Department and also worked for the Modesto Police Department before joining the Sheriff's Department in 1996. He has worked a variety of assignments including Patrol, the Reservoir Unit, K9 handler and K9 Unit Supervisor, Bailiff, Field Training Officer, Hi-Tech Crimes Detective, Sergeant and Lieutenant.

The Sheriff has a Bachelor's degree in Criminal Justice Management from Union Institute & University. He is also a graduate of the FBI Law Enforcement Executive Development Course, the POST Executive Development Course, West Point Leadership in Police Organizations and has an Executive Certificate from the Commission on Peace Officer Standards and Training. Sheriff Christianson was sworn into office as Sheriff-Coroner-Public Administrator on July 11, 2006 and after being re-elected in June, 2010, was sworn into office for another four-year term on January 4, 2011. He was re-elected to a third term in office on June 3, 2014.

ALLWYN BROWN, Deputy Chief, Richmond Police Department

Deputy Chief Allwyn Brown has been a sworn member of the Richmond Police Department for 30 years, serving as deputy police chief since 2010. He was promoted to sergeant in 1994 - then later served as acting lieutenant for one year under a new policing system before being promoted to captain in January 2008. Deputy Chief Brown attended POST's Supervisory Leadership Institute (Class 86), and he is a graduate of Police Executive Research Forum's *Senior Management Institute for Police* (SMIP). He holds a Master's Degree in HR Management and an undergraduate degree in Business/HR Management.

ALICE A. HUFFMAN, President, President of the NAACP California State Conference

Alice A. Huffman is a grassroots leader at the local and national level, a manager, a consultant, a community bridge between government policy makers and the community. She employs a win-win strategy on behalf of her clients. She is currently the president of a statewide civil rights organization and a small business owner. She is a past appointee of three democratic and republican governors, and serves on several state and national boards.

Huffman is President, and CEO of her consulting firm A.C. Public Affairs, Inc. (ACPA). ACPA is a California Corporation specializing in initiative campaigns, strategic public policy issues and grass roots organizing. ACPA founded in 1988 can proudly boast of many distinguished national and state clients. Several of her current national clients are Pharmaceutical Research and Manufacturers of America (PhRMA), American University of Antigua (AUA) and AT&T.

Huffman served as a member of the current elected Attorney General's transition team. She shadow assists the Governor in his African American appointments, appointed in 2012 to the She recently concluded a term as appointee of Governor Schwarzenegger's to the State Parks and Recreation Commission. In 2010 she was appointed to University of California President's Council on Campus Climate, Culture, & Inclusion, She also served the Secretary of State's California Complete Count Committee for the 2010 Census. She is on the Board of the Center for Democratic Participation; she is a member of the California Democratic Party Executive Committee; and a member of the Democratic National Committee since 1988.

Huffman began her tenure as President of the California NAACP January 2000. Under her leadership, the organization has accelerated into one of the most sought after organizations in California's policy arena. The State NAACP office is located two blocks from the state Capitol. In 2003 she was elected and began her tenure as a Director on the NAACP National Board.

Huffman, a high school dropout, was admitted to UC Berkeley as an EOP student from which she graduated in 2 ½ years with honors in Social and Cultural Anthropology. She

is a member of Phi Beta Kappa. She did extensive graduate work in University of Pennsylvania, U.C. Berkeley and USC in Anthropology and Public Administration. She believes learning is a lifelong process.

She has many distinguished awards. The most recent received were the CA Legislative Black Caucus Heritage and Legends Award; the Grand Marshall of the San Francisco's Gay Pride Parade, received numerous awards for her work on behalf of the gay community and efforts to regulate drugs. Annually she is included in the 100 most influential California by the Sacramento Observer, in the top 100 in California in Capitol Weekly, and twice the recipient of The National NAACP Thalheimer Award for the best state conference in the nation.

Huffman devotes a significant amount of her time to the NAACP specializing in organizational development and leadership training. She is a resident of Sacramento and after the passing of her late husband in 2005 lives alone with her Yorkie.

MINISTER BRYSON WHITE, PICO California

Born and raised in Fresno, CA, Minister Bryson White received his B.A. degree in Political Science from California University at Northridge, and his master's degrees in Theology and Cross Cultural Studies from Fuller Theological Seminary in Pasadena, California. Minister White received research grants to study in South Africa focusing upon Racial Reconciliation in Post-Apartheid South Africa, as well as a research opportunity to study ancient Egyptian civilization in Egypt. He has published some of his work in, "Black Theology, an International Journal". Currently he is a Lead Community Organizer with Faith In Community, where he does congregation based community organizing, connecting clergy and leaders to issues of human dignity, specifically as it relates to racial and economic justice in Fresno. Faith In Community is an affiliate of PICO California, the largest multi-faith community organizing network in the state.

Minister White also serves on the pastoral staff at Saints Rest Baptist Church in Fresno, California. Bryson desires to see the city of Fresno become a just city where all Fresnoans are valued equally and human dignity is placed at the center of public life. When not advocating for change in his community, Minister White enjoys spending time with his lovely wife Jennifer.

JEANNETTE ZANIPATIN, Legislative Staff Attorney, Mexican American Legal Defense and Educational Fund

Jeannette Zanipatin is the Legislative Staff Attorney for the Mexican American Legal Defense and Educational Fund (MALDEF) in Sacramento, CA. She focuses on policy analysis and coordinating advocacy efforts for MALDEF's priority policy areas such as immigrant rights, civil rights, labor, health and human services, language access and voting rights. Jeannette helped MALDEF reopen its policy office in 2010 and has been instrumental in developing MALDEF's policy portfolio which has included passing legislation to prevent requiring private employers to use E-Verify, passing the TRUST

Act, and passing the driver's license bill to allow undocumented immigrants to obtain a license in CA. Prior to joining MALDEF, Jeannette worked as a policy consultant for several non-profit organizations and previously worked in San Francisco and Washington State as an immigration attorney.

**NUMBERS WE KNOW:
STATEWIDE AND LOCAL DATA
COLLECTION**



California Department of Justice
Bureau of Criminal Information and Analysis
Criminal Justice Statistics Center

The California Department of Justice, Bureau of Criminal Information and Analysis, Criminal Justice Statistics Center (CJSC) provides an important and unique service to the people of California. The role of CJSC is to collect, analyze, and develop statistical reports and information which provide valid measures of crime and the criminal justice process in California, as required by Penal Code Sections 13010-13023.

Additionally, the CJSC is the liaison to the Federal Bureau of Investigation, providing monthly summarized reports for Uniform Crime Reporting (UCR) on arrests and the eight major offenses known to criminal justice agencies: homicide, rape, robbery, assault, burglary, larceny theft, motor vehicle theft, and arson. Also included in the UCR summarized reports are data on law enforcement officers killed or assaulted and hate crime.

The goal of the CJSC is to provide accurate, complete, and timely criminal statistical information to the public, local government, criminal justice administrators and planners, the legislature, the Attorney General, the Governor, state and federal agencies, and criminal justice researchers through four annual publications:

Crime in California
Hate Crime in California
Homicide in
Juvenile Justice in California

In order to provide crime data and annual publications, the CJSC collects and compiles data from more than 1,000 city, county and state criminal justice agencies. All the data collected is stored in one of the 15 databases maintained by CJSC which include:

- **ADULT PROBATION**: The Adult Probation file provides information on adults who are convicted in California courts and are placed under the jurisdiction of either the state correctional system or a correctional system operated by local government. The database provides gross counts that give a statistical profile of the probation function for superior and lower courts by county, type of placement, reasons for removal from probation, and the number of persons in supervision caseloads. Adult probation data are published in Crime in California and the Criminal Justice Profile series. The file contains information from 1972 to the present.
- **ANTI-REPRODUCTIVE-RIGHTS CRIMES**: The Anti-Reproductive-Rights Crimes (ARRC) database contains information on crimes that are committed against reproductive health services providers, clients, assistants, or the facilities where these services are provided or at a place of worship because of the church's beliefs regarding reproductive rights. The data include the location of the crime, victim type (individual/property), race/ethnicity, gender of victims and



suspects, weapon involved, and property loss or damage. ARRC data are published annually in Anti-Reproductive-Rights Crimes in California. The database contains information from 2003 to the present.

- **ARRESTS:** The Monthly Arrest and Citation Register (MACR) database provides information on felony and misdemeanor level arrests for adults and juveniles and status offenses (e.g., truancy, incorrigibility, running away, and curfew violations) for juveniles. The following data elements are included in this file: name, race/ethnicity, date of birth, sex, date of arrest, offense level, status of the offense, and law enforcement disposition. MACR data are published in Crime in California, Homicide in California, and the Criminal Justice Profile series. Age, sex, race/ethnicity, and offense information from the MACR are forwarded to the FBI for publication in Crime in the United States. The MACR database contains information from 1972 to the present.
- **ARSON:** The Arson database provides statistical data on arson offenses. The database includes information on the type of arson (e.g., structural, mobile, or other), the number of actual offenses, the number of clearances, and the estimated dollar value of property damaged. Arson data are published in Crime in California and the Criminal Justice Profile series. The Arson database contains information from 1979 to present.
- **CITIZENS' COMPLAINTS AGAINST PEACE OFFICERS:** The Citizens' Complaints Against Peace Officers (CCAPO) file provides annual statewide summary information on the number of non-criminal complaints reported by citizens against law enforcement personnel, the number alleging criminal conduct of either a felony or misdemeanor, and the number of complaints that were sustained. Data are published annually in Crime in California. The CCAPO file contains information from 1981 to the present.
- **CRIMES:** The Crimes and Clearances database provides statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft. The data include the number of actual offenses and the number of clearances. Supplemental data are collected on the nature of crime and the value of property stolen and recovered. Data are published in Crime in California and the Criminal Justice Profile series. The data are also forwarded to the FBI's Uniform Crime Reporting (UCR) program for publication in Crime in the United States. The Crimes database contains information from 1952 to the present.
- **DEATH IN CUSTODY:** The Death in Custody database contains information on persons who died while in the custody of a local or state law enforcement agency and the circumstances relating to the death. Approximately 580 deaths in custody are reported and processed each year. In addition to an agency's initial report of an inmate death, an annual survey is conducted to verify the total number of inmate deaths per agency per calendar year. The Death in Custody database contains information from 1980 to the present.



- **DOMESTIC VIOLENCE-RELATED CALLS FOR ASSISTANCE:** The Domestic Violence-Related Calls for Assistance (DV) database provides monthly summary statistical data on the total number of domestic violence-related calls received by law enforcement, the number of cases involving weapons, and the type of weapon used during the incident. DV data are published in Crime in California and the Criminal Justice Profile series. The DV database contains information from July 1986 to the present.
- **HATE CRIME PROSECUTION SURVEY:** The Hate Crime Prosecution file provides summary data submitted by district attorneys and city attorneys regarding hate crime complaints filed and convictions secured. The file includes information regarding criminal acts which cause physical injury, emotional suffering, or property damage and there is a reasonable cause to believe that the crime was motivated by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. The Hate Crime Prosecution file contains information from 1995 to the present.
- **HATE CRIMES:** The Hate Crime database contains information on the number of hate crime events reported to California's law enforcement agencies. Data elements include the location of the crime, type of bias-motivation, victim type (individual/property), number of victims/suspects, and victim's/suspect's race. Hate crime data are provided in an annual report to the California Legislature which includes results from the annual Hate Crime Prosecution Survey. Hate Crime data are published in Hate Crime in California and also reported to the FBI for publication in Crime in the United States. The Hate Crime database contains information from 1995 to the present.
- **HOMICIDES:** The Homicide database contains data on the number of criminal homicides known to law enforcement agencies in California. The database contains victim/ offender relationship, day and month of the homicide, location, type of weapon used, and the precipitating event. Homicide data are published in Crime in California, Homicide in California, and the Criminal Justice Profile series. Data are also reported to the FBI for publication in Crime in the United States. The Homicide database contains information from 1974 to the present.
- **JUVENILE COURT AND PROBATION:** The Juvenile Court and Probation Statistical System (JCPSS) database is designed to collect, compile, and report statistical data on the administration of juvenile justice in California. It provides information on a juvenile's process through the juvenile justice system from probation intake to final case disposition. The JCPSS database contains information from 1997 to the present.
- **LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED:** The Law Enforcement Officers Killed or Assaulted (LEOKA) database contains information on peace officers who were killed or assaulted while in the line of duty. The data include the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared, and officers killed by felonious act or by accident or negligence. LEOKA



data are published in Crime in California and Homicide in California. The LEOKA database contains information from 1990 to the present.

- **LAW ENFORCEMENT PERSONNEL AND CRIMINAL JUSTICE PERSONNEL SURVEY:** The Law Enforcement Personnel (LE) file contains information on the number of full-time sworn and non-sworn male and female law enforcement personnel employed by law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments on October 31 of each year. Data are published in Crime in California and the Criminal Justice Profile series. Data are also reported to the FBI's UCR program for publication in Crime in the United States. The LE file contains information from 1980 to the present.
- **VIOLENT CRIMES COMMITTED AGAINST SENIOR CITIZENS:** The Violent Crimes Committed Against Senior Citizens (VCASC) database provides monthly summary information from law enforcement agencies on the total number of persons 60 years of age or older who were victims of homicide, forcible rape, robbery, and aggravated assault. The VCASC database contains information from 1983 to the present.

To access interactive crime data tables, current and historical publications on crime, juvenile justice, homicide, and hate crimes in California

**PROMOTING TRUST AND
CONFIDENCE THROUGH DATA:
ADDITIONAL TOOLS**

***SUMMARY OF POLICE-
COMMUNITY RELATIONS IN
CINCINNATI***

(Written by Greg Ridgeway, Terry L. Schell, Brian Gifford, Jessica Saunders, Susan Turner, K. Jack Riley, Travis L. Dixon; published by RAND Corporation; entire report can be found at www.rand.org/pubs/monographs/MG853)



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Police-Community Relations in Cincinnati

Greg Ridgeway, Terry L. Schell, Brian Gifford,
Jessica Saunders, Susan Turner, K. Jack Riley,
Travis L. Dixon

Sponsored by the City of Cincinnati



Safety and Justice

A RAND INFRASTRUCTURE, SAFETY, AND ENVIRONMENT PROGRAM

The research described in this report was sponsored by the City of Cincinnati and was conducted under the auspices of the RAND Center on Quality Policing within the Safety and Justice Program of RAND Infrastructure, Safety, and Environment (ISE).

Library of Congress Cataloging-in-Publication Data is available for this publication.

ISBN 978-0-8330-4656-7

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Published 2009 by the RAND Corporation
1776 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138
1200 South Hayes Street, Arlington, VA 22202-5050
4570 Fifth Avenue, Suite 600, Pittsburgh, PA 15213-2665

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Summary

Introduction

In 2002, the Cincinnati Police Department (CPD), the Fraternal Order of Police, and the American Civil Liberties Union (ACLU) joined together in a collaborative agreement to resolve social conflict, improve community relations, and avoid litigation in Cincinnati. The collaborative agreement requires the parties (that is, the participants in the agreement) to undertake collective efforts to achieve these goals. Specifically, the agreement requires CPD to implement a variety of changes in pursuit of five primary goals:

- Ensure that police officers and community members become proactive partners in community problem solving.
- Build relationships of respect, cooperation, and trust within and between police and communities.
- Improve education, oversight, monitoring, hiring practices, and accountability of CPD.
- Ensure fair, equitable, and courteous treatment for all.
- Create methods to establish the public's understanding of police policies and procedures and recognition of exceptional service in an effort to foster support for the police (*In re Cincinnati Policing*, S.D. Ohio, 2003, pp. 3–4).

Evaluation is a stipulated component of the agreement. RAND was chosen as the evaluator in 2004 to aid the parties in understanding progress toward the agreement's goals. RAND will conduct the

evaluation for five years, with the results published annually in a report available to the public. The evaluation has used a variety of methods, including the following:

- two surveys of citizen satisfaction with CPD (one in 2005 and another in 2008)
- a survey conducted in 2005 of citizens who have interacted with the police through arrest, reporting a crime or victimization, or being stopped for a traffic violation
- a survey conducted in 2005, 2006, and 2008 of CPD officers about their perceptions of support from the community, working conditions, and other factors related to job satisfaction and performance
- a survey conducted in 2005, 2006, and 2008 of officers and citizens involved in a sample of citizen complaints against the officers and the department
- an analysis of motor-vehicle stops occurring between 2003 and 2007 for patterns of racial disparity in various aspects of the stop
- periodic observations conducted in 2005 of structured meetings between citizens and representatives of CPD
- a review of CPD statistical compilations of CPD data from 2004 to 2007
- analysis of a sample of videotaped interactions between citizens and officers during motor-vehicle stops that occurred between 2005 and 2007
- analysis of CPD staffing, recruitment, retention, and promotion patterns in 2005.

Under the terms of the evaluation protocol, this year 4 report consists of an analysis of a follow-up wave of surveys of the community, officers, and those involved in the complaint processes. The report also includes the review of statistical compilations, analysis of motor-vehicle stops, and analysis of videotaped citizen-police interactions during vehicle stops. This report contains our final assessment of the progress toward the goals of the collaborative agreement. The remaining report,

to be released in 2009, will contain only an analysis of motor-vehicle stops.

A Review of Findings, 2003–2008

Six years have passed since the signing of the collaborative agreement and the many reforms initiated before the start of our evaluation. Since we began analyzing the data and studying the issues in 2005, our analyses indicate that police-community relations in Cincinnati have improved in a number of ways. Relative to the community's long history that precipitated the collaborative agreement, three years is not a long time to expect substantial improvement in police-community relations, but the trends are promising. Cincinnati's black residents reported improvements in perceived police professionalism, although their level of trust in the police is still significantly¹ below that of white residents. Although the city's black residents believe that police often use race in deciding their course of action, the perception of racial profiling is on the decline. We also found that, when comparing stops of black drivers to stops of similarly situated nonblack drivers, racial differences in search rates and the durations of traffic stops that we observed for 2003–2005 did not occur in 2006 and 2007. Finally, we observe some improvement in the communication of CPD officers during traffic stops.

There are a number of potential causes for the observed changes. In this report, we do not aim to determine appropriate attribution for the improvement but wish to point out that many forces have been at work in the past several years.

First, the department has adopted numerous policy changes. Equipping every officer with a TASER[®] electronic control device (ECD) starting in 2004 has completely changed police use of force in the city. While CPD reports about one ECD incident per day on average, some of those incidents are cases that, prior to 2004, might

¹ In this document, *significant* is used in the statistical sense, denoting a change or difference that is unlikely due to chance. This is its common usage in the social sciences.

have concluded with more-serious force. CPD has also implemented the Employee Tracking Solution (ETS), which monitors and reports on officer performance. In addition, RAND researchers have developed and deployed a system at CPD that assesses quarterly whether any officers are stopping a disproportionate fraction of nonwhite drivers. All patrol cars now have mobile video recorders (MVRs), providing the community with assurances that interactions with police are correctly documented. There are numerous other changes in policy, practice, and training, but these highlight some major changes that have had great impact on policing in Cincinnati.

Second, external monitoring by plaintiff attorneys and court-appointed monitors has also prompted changes. The monitoring team closely reviewed use-of-force incidents, monitored policy changes, and spurred CPD's adoption of problem-oriented policing.

Third, the community in Cincinnati shows signs of improvement. Animosity toward the police, which peaked in 2001, is likely declining as the years progress. Crime has decreased substantially, especially in the historically high-crime areas of the city, such as Over-the-Rhine. As crime decreases, the risk of problematic interactions between the community and the police naturally decreases. The longer this trend continues, the greater the trust that can be built between the community and the police.

This report does not aim to determine appropriate attribution for the observed improvements in police-community relations. In this report, we merely document the trends, showing both areas in which we observe improvement and areas that will continue to exacerbate the perception of racial bias.

While we do observe improvements in a number of areas, blacks and whites in Cincinnati experience differences in policing. However, as we note in our previous reports, those differences were based on when, where, and why their stops take place rather than on the driver's race. Nonetheless, these differences can undermine police-community relations. Reducing these differences will likely require a close alignment between police practices and community priorities, the implementation of policies to ensure that white and black officers police black neighborhoods in a similar manner, and efforts by individual officers

and citizens to minimize the inconvenience and irritation caused by traffic stops. For example, the high-crime neighborhoods may want more police assistance with drugs and violent crime, but perhaps they end up feeling like they get more tickets for expired registrations, more time having their passengers investigated, and more instances of being patted down in public. The ongoing challenge to effective policing everywhere is to identify methods of targeting the specific offenses that are a concern to the community while minimizing the impact on community members who are not involved in those offenses.

A critical component of the evaluation is to understand the context of policing in Cincinnati. To that end, CPD provides RAND with statistical compilations that detail arrest and citation activity, calls for service, and crime patterns. These compilations provide insight into how crime and, thus, the allocation of law-enforcement resources vary across neighborhoods. The compilations also feed into other analyses conducted as part of the evaluation.

Crime and Calls for Service

Overall, crime, the associated enforcement activities, and calls for service remained highly clustered in specific portions of the city. Overall crime rates have declined citywide by 9 percent since 2005. Downtown and Over-the-Rhine continue to post large reductions in crime, a 31-percent decrease in downtown and a 37-percent decrease in Over-the-Rhine since 2005. Some areas experienced increases; Fairview, just north of Over-the-Rhine, experienced a 20-percent increase in the same period.

In 2006, we reported that crime rates in Over-the-Rhine dropped by 13 percent after April 2006, when the Over-the-Rhine task force (later renamed Vortex) embarked on a zero-tolerance approach to policing in that neighborhood.

Use of Force

The rate of use-of-force incidents per arrest has remained constant since 2005: approximately 14 uses of force per 1,000 arrests. However, the number of arrests has declined substantially, resulting in much fewer use-of-force incidents than in previous years. ECDs continue to be the

single most commonly used force option, with 394 incidents in 2007. In 90 percent of ECD uses, the device is used in dart mode, the mode that incapacitates the subject's motor abilities, the preferred mode for that reason. Drive-stun mode, accounting for 10 percent of ECD uses, uses pain rather than incapacitation to induce compliance. We found no racial differences in the type of force used or the ECD mode used. Black subjects are involved in 75 percent of use-of-force incidents, nearly matching their representation among arrestees (73 percent). These rates are similar to the rates of arrest and use of force from 2004 to 2006.

Analysis of Vehicle Stops

Our analysis of vehicle stops assessed whether there is a department-wide pattern of bias against black drivers in the decision to stop a vehicle; determined the fraction of CPD officers who disproportionately stop black drivers compared to other officers patrolling the same neighborhoods at the same time; and investigated whether there are racial biases in post-stop outcomes, including citation rates, stop duration, and search rates.

Department-Level Stop Patterns

If CPD officers were actively targeting black drivers, we would expect stops of black drivers to represent a greater share of stops during daylight hours, when race is reasonably visible, than after dark, when race is less visible. Racial differences between stops during daylight and those after dark may also be due to differences in racial differences in drivers on the road at various times of day. To account for this each year, we have closely examined evening stops that occur near the switches to and from daylight saving time (DST). Examining these stops allows us to contrast stops that occur at exactly the same clock time with those during DST occurring during daylight and those during standard time occurring in darkness.

Table S.1 shows the results accumulated in 2003–2007 for stops occurring within four weeks of a change to or from DST. The odds ratio indicates how many times more likely daylight stops are to involve a

Table S.1
The Odds That a Stop in Daylight Involves a Black Driver Relative to a Stop After Dark, Controlling for the Clock Time

Year	Odds Ratio	95% Confidence Interval
2003	1.02	(0.70, 1.47)
2004	1.19	(0.80, 1.77)
2005	1.10	(0.81, 1.51)
2006	0.71	(0.51, 1.00)
2007	1.17	(0.87, 1.60)
Combined	1.00	(0.86, 1.16)

NOTE: Includes all stops occurring within 30 days of the spring or fall DST change during evening hours.

black driver than are nighttime stops. Combining across all five years indicates that the accumulated data show no evidence of a racial bias in the decision to stop. Even excluding the 2006 data, which had a much lower odds ratio than any other, yields a combined odds ratio of 1.07 and still remains not statistically different from 1.0.

Additional analysis that included stops from throughout the year (rather than just those stops occurring near a change to or from DST) yielded the same result. Therefore, we conclude that there appears to be no evidence of a department-wide practice of targeting black drivers for stops.

Individual-Level Stop Patterns

While we found no evidence of a department-wide practice of disproportionately stopping black drivers, each year, our analysis flagged three to five officers with a disproportionate fraction of stops of black drivers. CPD has just more than 1,000 officers; 25 percent of those officers make more than 50 stops per year. We focused our analysis on these officers, who regularly interact with drivers in traffic stops. We compared the stops that these officers made with stops made by other officers at the same times and places and in the same contexts. The

flagged officers were substantially more likely to have stops involving black drivers than the similarly situated stops made by other officers. Table S.2 summarizes our findings for the past four years.

RAND, restricted by federal human subject–protection laws, does not provide identifiers of the officers that the analysis flags. Since 2007, CPD has been using a RAND-designed system to regularly repeat this analysis internally and including the results as part of officers’ regular reviews.

Group-Level Stop Patterns

In our 2007 report (Schell et al., 2007), we conducted analyses in addition to those focusing on department-wide patterns and stop patterns of individual officers. In the 2006 stop data, we examined the stop patterns of a particular group of officers—those involved in Operation Vortex, a “highly visible proactive unit that has a zero tolerance approach to street crimes, drug trafficking, and quality of life issues. The focus of this unit is to seek out and physically arrest both minor and major criminal offenders by enforcing every law available and using every tool at our disposal to inconvenience criminals” (Green and Jerome, 2006, p. 7). The crime-reduction strategy provides saturation patrols to areas with the greatest problems with crime. Our 2006 analysis of this group’s practices (Schell et al., 2007, pp. 46–48) found that Vortex officers were more likely to stop vehicles with black drivers than were other non-Vortex officers patrolling at the same times and places (71 percent versus 65 percent). Another analysis found that Vortex decreased crime in Over-the-Rhine

Table S.2
Findings on Individual Officers

Year	Number of Officers Flagged as Overstopping Black Drivers	Number of Officers Flagged as Understopping Black Drivers
2004	4	4
2005	5	1
2006	3	2
2007	3	1

13 percent more than would be expected, given the crime trends at the time (Schell et al., 2007, p. 9).

This presents a challenging dilemma for police-community relations. A program that appears to be responsible for a substantial decrease in crime consequently results in an increase in stops that involve black drivers. Since black residents exhibit the least trust of policing in Cincinnati, the deployment of programs—even ones that are successful with respect to crime reduction—that result in greater exposure of black residents to police require careful management to avoid deterioration of police-community relations. In spite of this approach, survey respondents from the Over-the-Rhine neighborhood reported that they perceive greater professionalism from CPD in 2008 than they did in 2005.

Post-Stop Patterns

When comparing all stops of black and nonblack drivers, the stops of black drivers take longer on average and black drivers are more likely to be searched. However, much of these differences appear to be driven by the location and time of the stop, the type of stop, whether the driver was a Cincinnati resident, and whether the driver had a valid driver's license. To assess whether race may play a role in officers' post-stop actions, we compared the stops of black drivers with the stops of similarly situated nonblack drivers—that is, white, Hispanic, or other nonblack drivers who were stopped in similar locations, at similar times, and for similar reasons as black drivers.

Comparing black drivers to similarly situated nonblack drivers, Table S.3 shows that both had nearly the same chance of having a stop lasting less than 10 minutes. In 2006 and 2007, the percentage was exactly the same. Similarly, we found that black and nonblack drivers had an almost equal chance of having a stop last more than 20 minutes (9 percent for black drivers and 10 percent for similarly situated nonblack drivers).

Table S.4 shows that black drivers received citations less frequently than did similarly situated nonblack drivers (57 percent, compared with 61 percent in 2007). This pattern has persisted in nearly all of the study years.

Table S.3
Percentage of Stops Lasting Less Than 10 Minutes for Black Drivers and a Matched Set of Nonblack Drivers

Year	Black Drivers	Nonblack Drivers (Matched)
2003	40	43
2004	40	44
2005	45	47
2006	47	47
2007	56	56

Table S.4
Citation Rates of Black Drivers and of a Matched Set of Nonblack Drivers (%)

Year	Black Drivers	Nonblack Drivers (Matched)
2003	75	75
2004	69	70
2005	68	71
2006	63	67
2007	57	61

Between 2003 and 2005, we found that CPD officers were more likely to search black drivers than similarly situated nonblack drivers (see Table S.5). However, in 2006, we found higher search rates for nonblack drivers, and, in 2007, search rates were nearly equal. Based on the two most recent years of data, we find no evidence of racial bias in the selection of stops resulting in searches.

High-discretion searches, such as searches in which the suspect gives consent, are most at risk for racial bias. However, when officers conducted high-discretion searches, they were equally likely to recover contraband, such as weapons or drugs, from black and nonblack drivers (Table S.6). The similarity of these hit rates indicates that there

Table S.5
Search Rates of Black Drivers and a Matched Set of Nonblack Drivers (%)

Year	Black Drivers	Nonblack Drivers (Matched)
2003	5.9	5.4
2004	6.7	6.2
2005	6.1	5.2
2006	6.1	6.7
2007	5.3	5.5

Table S.6
Hit Rates for High-Discretion Searches, by Year and Race (%)

Year	Black Drivers	Nonblack Drivers
2003	28	22
2004	29	27
2005	29	27
2006	23	24
2007	20	21

does not seem to be a racial bias in their selection of which drivers to search.

Even though we found no racial disparities in the hit rates, officers conducted 1,318 high-discretion searches of black drivers in 2007 that recovered no contraband. Such stops, which the motorist likely views as being made for no good reason, disproportionately affect the black community, since more than 1,000 black residents experienced such searches in 2007, nearly twice the number for nonblack drivers. This can contribute to blacks' perceptions of unfair policing that were identified in last year's report (Schell et al., 2007). While recovery of contraband from high-discretion searches, such as 29 weapon and 448 drug recoveries, can have a social benefit for the Cincinnati community, there is a societal cost for searches that result in no recovery of contraband.

Analysis of Videotaped Police-Motorist Interactions

We analyzed a stratified random sample of 325 video records of traffic stops from 2007 to analyze the objective characteristics of the stop (e.g., duration, infraction type, time of day) as well as measures of the communication between the driver and the police officer. The video analysis is not designed to determine whether racial inequalities are uniquely attributable to racial profiling. Instead, the analysis is designed to look for differences that community members are likely to perceive as evidence of racially biased policing, regardless of the actual reason for those differences. This approach highlights the factors that are barriers to improved police-community relations, but it cannot determine whether any differences occur because of race.

This analysis revealed two key differences associated with the officers' and drivers' races: (1) Black drivers were more likely to experience proactive policing (such as asking passengers for identification or searching the vehicle) during the stop, resulting in longer stops that were significantly more likely to involve searches, and (2) white officers were more likely than black officers to use proactive police tactics in incidents involving black drivers.

As noted previously, nonblack drivers stopped at the same times, places, and contexts as the black drivers had equal search rates. The first finding from the analysis of the recordings notes that Cincinnati's black drivers are stopped in times, places, and contexts in which CPD officers are more proactive and take a more investigative approach. Regardless of whether this is good policing strategy, it points out that black drivers in Cincinnati are more likely than nonblack drivers to have a protracted negative interaction with the police.

We continue to find significant evidence of more-intensive policing of black motorists by white officers than by black officers. Again, this may or may not be caused by racial bias but could reasonably lead some black drivers to believe that they are treated with greater suspicion. It may be useful for CPD to investigate how white and black officers are being assigned to, and are conducting, their duties so it can more effectively reduce or eliminate the appearance of racial differences in officer behavior.

These results are largely consistent with the findings in our earlier reports (Riley et al., 2005; Ridgeway et al., 2006; Schell et al., 2007). As noted in earlier reports, these findings cannot answer whether racial bias does or does not exist, but they do help explain why black Cincinnati residents perceive that it does, which may lead to a more negative attitude in future interactions with the police. It is therefore critical to take efforts to ensure that white and black officers act similarly when stopping motorists, so that improvements in relations between CPD and the black community are possible.

In addition to these findings, we found one significant difference over time that is unrelated to the race of the officer or driver: The communication quality of CPD officers has improved between 2005 and 2007. Specifically, officers displayed better listening to what the drivers say, as well as greater evidence of patience and helpfulness. This difference occurs for both white and black officers and for stops involving both white and black motorists. While the causes of this change are unknown, it could be a product of the broader reduction in tensions between CPD and the community, an improvement in police training, or an adaptation to the fact that traffic stops are now videotaped and monitored.

Police-Community Satisfaction Survey

To examine changes in police-community relations in the city of Cincinnati, we conducted a follow-up to the 2005 survey of Cincinnati residents. We conducted a phone survey of 3,000 Cincinnati residents in 2005 and again in 2008.² The results suggest that the relationship between the community and the police is headed in the right direction (see Table S.7).

Black respondents reported greater perceived police professionalism in 2008 than in 2005. Nonblack respondents generally reported

² We obtained a 42-percent response rate in 2005 and a 45-percent response rate in 2008. For both years, we reweighted the responses to match the city's representation by neighborhood, age, race, and sex.

Table S.7
Summary of Community-Survey Responses

Survey Scale	Race	Average Response by Year	
		2005	2008
Police professionalism	Black	2.35	2.50
	Nonblack	2.92	2.94
Active policing	Black	1.61	1.62
	Nonblack	1.50	1.50
Perception of racial profiling	Black	2.88	2.79
	Nonblack	2.15	2.08

NOTE: The three scales reported here are the result of averaging several survey questions. Scales range from 1 to 4, with higher values indicating greater professionalism, more-active policing, and greater perceived racial profiling.

CPD's professionalism as "Good," and that rating was unchanged between 2005 and 2008. Black respondents, on average, gave significantly lower ratings than nonblack respondents, rating CPD's professionalism between "Fair" and "Good," but these ratings were significantly higher than they were in 2005.

Both black and nonblack respondents reported statistically significant decreases in the perception of the use of racial profiling by CPD officers. Black respondents still report that CPD officers treat blacks and whites somewhat unequally and usually use race in deciding how to police, more so than do nonblack respondents. However, the percentage of black residents holding this belief declined.

Police Officer Survey

A key objective of the evaluation was to obtain information from CPD officers whose duties entail significant interactions with citizens. The information was obtained through a survey that asked officers about personal safety, working conditions, morale, organizational barriers to

effective policing, fairness in evaluation and promotion, and attitudes of citizens in Cincinnati.

There were fairly low rates of participation in the survey. Of 300 surveys distributed to officers at their in-service training, only 40 returned completed surveys. As a result, these findings may not correctly reflect the views of those CPD officers who did not respond.

Of the officers who responded to the survey, their responses to questions about good policing practices were generally consistent with the principles of community policing. For example, the overwhelming majority of officers who responded to the survey believe that residents' input is critical to solving neighborhood problems. However, these officers did not express a great deal of confidence that cooperation is likely. Furthermore, few officers (15 percent) reported being aware of the Community Police Partnering Center. Officers generally felt that proactively stopping cars and "checking people out" were components of good police work. Such practices, though, taken to the extreme, may tax the relationship between the police and community members.

Officers who responded to the survey reported experiencing a great deal of stress on the job, including significant disrespect, suspects using physical force to resist arrest, and feelings of serious danger from physical violence. They generally gave high marks to the training that CPD gives them but do not feel that they get sufficient feedback about their performance. Despite the problems that the officers identified, they expressed a high level of commitment and derive personal satisfaction from their jobs. These responses were generally consistent with the responses to our 2006 officer survey (Ridgeway et al., 2006).

Satisfaction with the Complaint Process

We also fielded a survey to assess the perceived fairness of the complaint process, the level of input that citizens and officers had in the process, and justifications for the final resolution. Additionally, the survey asked for input from officers and citizens on improving the internal complaint process. We distributed surveys to each officer and each citizen complainant involved in each complaint handled through the Citizen

Complaint Resolution Process (CCRP) or Internal Investigations Section (IIS) and the Citizen Complaint Authority (CCA). Surveys were mailed with the findings upon closure of the investigations.

Few officers and citizens responded to the survey in 2008, although we received more than in 2006 (23 officer and 12 citizen surveys in 2008, compared to 11 officer and eight citizen surveys in 2006).

Of primary importance, respondents who responded to the survey reported that the complaint-review process is working, in that respondents indicated that investigators followed up on a majority of complaints (100 percent of police officers and 92 percent of complainants).

Officers and citizens who responded to the survey had disparate views on the honesty of the investigators; three-quarters of the officers (but only two-fifths of the citizens) thought that the investigators were honest. These officers and citizens felt that the process allowed them to tell their side of the story, but only half of them thought the investigators understood the facts of the case.

Officers tended to have more-favorable opinions of the investigation than complainants did. Three-quarters of the officers felt that their views were considered and that they were treated with respect and dignity, while only a third of complainants felt their views were considered, and half reported being treated with dignity and respect. Officers were more satisfied with the complaint process and outcome than citizens were. Most complaints generally appear to favor the officer, which is certainly associated with satisfaction with the process.

Summary and Conclusions

Progress Toward the Goals of the Collaborative Agreement

As initially noted, CPD is not the same as the department that policed Cincinnati in 2001. Policy changes, oversight, and a variety of reforms have produced a department that polices differently than it had in 2001. At the same time, the community has also changed, most notably with respect to large decreases in crime, particularly in the Over-

the-Rhine neighborhood. This reduces the risk of problematic interactions between the community and the police.

These developments have produced evidence of small but positive changes in the community's perception of the department. Black residents are reporting greater perceived police professionalism than they had three years ago. In addition, our analysis found no evidence of racial bias in traffic stops, such as in the decision to stop or in the decision to search. Overall, however, black residents still maintain significantly more negative views of the police than white residents do.

That said, there are several ways in which police interactions with the community can exacerbate and perpetuate the perception of racial bias. Every year, our analysis flags three to five officers who stop a disproportionately high number of black drivers relative to other officers patrolling in the same times, places, and contexts. CPD has set up a system to monitor such outliers, and it will be important to investigate and act on outliers as appropriate.

Blacks continue to bear a disproportionate share of the impact of policing services by virtue of the clustering of crime, calls for service, and policing in predominantly black neighborhoods. While we found no evidence that the police systematically or deliberately treat blacks differently, blacks nevertheless experience a different kind of policing from that experienced by whites. In particular, blacks experience more policing and, particularly, more of the proactive policing exemplified by Vortex. While it may not be possible to field a proactive enforcement strategy that is racially neutral, much of CPD's interaction with the citizenry comes through vehicle stops. The quality, tenor, and tone of such stops are largely under police control. CPD should continue to evaluate the intensity of traffic stops (both volume and degree of scrutiny), especially in the high-crime neighborhoods, to ensure that the intensity level balances the investigative and public-safety benefits of the stops with the risks of negative interactions with residents.

Our analysis of the video recordings of traffic stops consistently finds that white officers are more investigative of black motorists and passengers than are black officers. This difference in approach to traffic stops can certainly fuel the perception among stopped black drivers that their race played a role in the stop. The department should thus

pay special attention to training to ensure that these interactions are conducted in a consistent, courteous, and professional manner.

While the trends appear positive, without a concerted effort to ameliorate the disparate impact of these policies, it seems likely that black Cincinnati residents will remain less satisfied with policing services than will their white counterparts.

RACIAL PROFILING

**(Written by Peter H. Schuck, Karin D. Martin, and
Jack Glaser)**

31

Racial Profiling

POINT: Profiling is a legitimate practice if used correctly. It can be an effective and necessary tool for law enforcement.

Peter H. Schuck, Yale University

COUNTERPOINT: Racial profiling is a discriminatory practice that undermines fundamental civil rights while failing to promote law enforcement goals.

Karin D. Martin and Jack Glaser, University of California, Berkeley

Introduction

The practice of racial profiling, which involves singling out a person or persons for special (usually law-enforcement-related) attention based solely on their race or ethnicity, is part of a specific set of issues that the United States has grappled with in protecting the civil rights of minority individuals belonging to a specific group or class. The Fourth Amendment to the U.S. Constitution, protecting against unreasonable search and seizure, and the equal protection provisions of the Fourteenth Amendment make racial profiling per se illegal. But the legal community and law enforcement agencies have worked to define parameters that would allow consideration of race or ethnicity in conjunction with other behaviors or factors.

Given its controversial nature, it is not surprising that definitions of racial profiling vary. The Department of Justice, for example, defines it as "any police-initiated action that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads the police to a particular individual who has been identified as being, or having been, engaged in criminal activity." Far more simply, the General Accounting Office defines it as "using race as a key factor in deciding whether to make a traffic stop." The Office of the Arizona Attorney General, meanwhile, describes it as "use by law enforcement personnel of an individual's race or ethnicity as a factor in articulating reasonable suspicion to stop, question or arrest an individual, unless race or ethnicity is part of an identifying description of a specific suspect for a specific crime."

The issue of racial profiling has been brought into sharp focus in the immigration arena by passage of state laws such as Arizona's S.B. 1070. Although S.B. 1070 specifically forbids racial profiling, critics have widely decried the law as impossible to enforce unless police engage in the practice. The central challenge is that, while the vast majority of illegal immigrants in Arizona are from Mexico and are Hispanics, not all Hispanics of Mexican origin are illegal immigrants. Thus, the probability that S.B. 1070 will result in discrimination by virtue of racial profiling against Hispanics who are either U.S. citizens or foreign nationals legally in the country seems very high.

As in all situations where racial profiling is a concern, there is a power imbalance between law enforcement personnel, who are frequently members of the majority population, and the targets of that enforcement, who are by definition members of a minority population. Proponents of "legitimate" racial profiling argue that it provides law enforcement with a valuable tool. Opponents argue that it is counterproductive and is a fundamental violation of core American values of human rights and dignity.

492 Social and Cultural Debates: Responses to Illegal Immigration

In the Point essay below, Peter Schuck argues that in the post-9/11 era, and with the issue of illegal immigration becoming more and more pressing, it is important for the country to have a rational discussion about the use of racial profiling. "Government may not treat individuals arbitrarily," he argues, "it must base its action on information that is reliable enough to justify its exercise of power over free individuals." He goes on to say, "Context is everything," and when it is used properly and within defined legal parameters, racial profiling can be a legitimate, useful tool of law enforcement.

In the Counterpoint essay, Karin Martin and Jack Glaser contend there are serious social costs incurred both by the targets of racial profiling and by the broader American society. They consider the effectiveness of racial profiling, determining that, in fact, the evidence shows that racial profiling is both ineffective and inefficient. Finally, they argue that the demonstrated ineffective and unjust nature of racial profiling demands that it be rejected, and that a proactive, enforceable ban on its use be enacted.

In reading this chapter, consider not only whether racial profiling is effective, but also to what extent such a practice is valuable, given the rights to equal protection established by the U.S. Constitution. How much safety can be "bought" through racial profiling, and is the price acceptable? Conversely, given the high expectations placed on law enforcement, is it reasonable to expect that consideration of race and ethnicity *not* be a part of standard investigation techniques?

POINT

Since the terrorist attacks of September 11, 2001, racial profiling has become one of the hottest civil rights issues of the day whose prominence that has only been heightened by the subsequent passage of state laws designed to deter undocumented immigrants from entering or remaining in the state. The issue, however, deserves cooler reflection than it has received thus far. Politicians and pundits, regardless of ideology, reflexively denounce the practice, and nary a word is raised in its defense. Some states have already barred any form of profiling, and it is possible that the U.S. Congress could follow suit. Yet, as Dr. Johnson said of the gallows, the events of 9/11 concentrate the mind wonderfully. The disaster that befell the United States on that day—and those that, on a smaller scale have occurred elsewhere since then, and will probably do so in the future—demands a profiling debate that is clear-eyed and hardheaded, not simplistic or demagogic.

One must be clear about the state laws that opponents believe invite profiling. In the case of Arizona's controversial statute (and some or all of the other similar state laws), the law specifically prohibits consideration of race, color, or national origin in its enforcement. Indeed, Arizona's governor, Jan Brewer, signed an executive order directing that law enforcement officials be trained to avoid illegal racial profiling. Further, the law expressly prohibits officials from making stops and arrests when race is the only basis for doing so. A lawful reason for the initial stop must exist other than the suspected immigration status of the detained person. Indeed, the law tracks the 2003 memorandum issued by the U.S. Department of Justice banning racial profiling in federal law enforcement. Therefore, the "racial profiling" argument against such laws serves only to prevent rational discussion of a screening practice that, when used properly and within defined legal parameters, can be a legitimate, effective tool of law enforcement. There are legitimate reasons to criticize the Arizona legislation, but the false assertion that the law permits racial or ethnic profiling is not one of them.

CONTEXT IS EVERYTHING

The furor over racial profiling is easy to understand. Harassment of those who, as the sayings go, "drive while Black" or "fly while Arab," are emblems of the indignities that law enforcement officials are said to inflict on minorities on the basis of demeaning stereotypes and racial prejudice. This is no laughing matter. The state's coercive power creates special responsibilities for law enforcement officials to screen only in accordance with legal guidelines. Respect for the rule of law means that people must not be singled out for enforcement scrutiny simply because of their race or ethnicity.

Or does it? Much turns on the meaning of "simply" in that sentence. Profiling is not only inevitable, it is in fact sensible public policy under certain conditions and with appropriate safeguards against abuse. After September 11, the stakes in deciding when and how profiling may be used and how to remedy abuses when they occur could not be higher.

A fruitful debate on profiling properly begins with the core values of American society. The most important of these, of course, is national defense, without which no other values can be realized. But one should be wary of claims that ideals must be sacrificed in the name of national security; this means that other ideals remain central to the inquiry. The ideal most threatened by profiling is the principle that all individuals are equal before the law. In most but not all respects, the same entitlements are extended to aliens who are present in the polity, whether they are here legally or illegally. Differential treatment must meet a burden of justification—and in the case of racial classification, a very high one.

This ideal has a corollary: government may not treat individuals arbitrarily. To put this principle another way, government must base its action on information that is reliable enough to justify its exercise of power over free individuals. How good must the information be? The law's answer is that it depends. Criminal punishment requires proof beyond a reasonable doubt, while a tort judgment demands only the preponderance of the evidence. Health agencies can often act with little more than a rational suspicion that a substance might be dangerous. A consular official can deny a visa if, in the official's "opinion," the applicant is likely to become a public charge, and, unlike the previous examples, courts may not review this decision. Information good enough for one kind of decision, then, is not nearly good enough for others. Context is everything.

This brings us to profiling by law enforcement officials. Consider the context in which an FBI agent must search for the September 11 terrorists, or in which a security officer at a railroad or airline terminal must screen for new terrorists. Vast numbers of individuals pass through the officer's line of vision, and they do so only fleetingly, for a few seconds at most. As a result, the official must make a decision about each of them within those few seconds, or be prepared to hold all of

them up for the time it will take to interrogate each individual, one by one. The official knows absolutely nothing about these individuals, other than the physical characteristics that can be immediately observed, and learning more about them through interrogation will take a lot of time. The time this would take is costly, and each question that is asked will either allow others to pass by unnoticed or prolong the wait of those in the already long, steadily lengthening line. The time is even more costly to those waiting in line; for them, more than for the official, time is money and opportunity. Politicians know how their constituents hate lines, and security, customs, immigration, and toll officials are constantly pressed to shorten them.

At the same time, the risks of being wrong are dramatically asymmetrical. If everyone is stopped, all of the problems just described may occur, and all of the people (except one, perhaps) will turn out to be perfectly innocent. On the other hand, if the official fails to stop the one person among them who is in fact a terrorist, the result may be a social calamity of immense proportions (not to mention the prospect of the official losing his or her job). In choosing between these competing risks, self-interest and the social interest will drive the official in the direction of avoiding calamity. The fact that society also presses for evenhandedness only adds to the dilemma, while providing no useful guidance as to what to do, given these incentives.

STEREOTYPES ARE OFTEN USEFUL

So what should be done? Each person can get at this question by asking what she or he would do in this situation. To answer this question, one need not engage in moral speculation but can look to our own daily experiences. Each day, we all face choices that are very similar in structure, albeit far less consequential. We all must make decisions very rapidly about things that matter to us. We know that our information is inadequate to the choice, but we also know that we cannot in the time available get information that is sufficiently better to improve our decision significantly. We consider our risks of error, which are often asymmetrical. Because we must momentarily integrate all this uncertainty into a concrete choice, we resort to shortcuts to decision making. Psychologists call these shortcuts "heuristics."

The most important and universal of these tactical shortcuts is the stereotype. The advantage of stereotypes is that they economize on information, enabling us to choose quickly when our information is inadequate. This is a great, indeed indispensable virtue, precisely because this problem is ubiquitous in daily life, so ubiquitous that we scarcely notice it, nor do we notice how often we use stereotypes to solve it. Indeed, few of us live without stereotypes. We use them to predict how others will behave. We may assume that Black people will vote Democratic, for example (though many do not), and we anticipate others' desires, needs, or expectations, perhaps offering help to disabled people (though some of them find this presumptuous). We use stereotypes when we take safety precautions when a large, unkempt, angry-looking man approaches us on a dark street (though he may simply be asking directions), or when we assume that higher-status schools are better (though they often prove to be unsuitable). Such assumptions are especially important in a mass society where people know less and less about one another.

Stereotypes, of course, have an obvious downside: they must sometimes be wrong, almost by definition. After all, if they were wrong all the time, no rational person would use them, and if they were never wrong, they would be indisputable facts, not stereotypes. Stereotypes fall somewhere in between these extremes, but it is hard to know precisely where, because we seldom know precisely how accurate they are. Although all stereotypes are overly broad, most are probably correct much more often than they are wrong; that is why they are useful. But when a stereotype is wrong, those who are exceptions to it naturally feel that they have not been treated equally as individuals, and they are right. Their uniqueness is being overlooked so that others can use stereotypes for the much larger universe of cases where the stereotypes are true and valuable. In this way, the palpable claims of discrete individuals are sacrificed to a disembodied social interest. This sacrifice offends not just them but others who identify with their sense of injustice, and when their indignation is compounded by the discourtesy or bias of bag checkers or law enforcement agents, the wound is even more deeply felt.

This is where the law comes in. When these stereotype-based injustices are viewed as sufficiently grave, they are prohibited. Even then, however, this is only done in a qualified way that expresses a general ambivalence. Civil rights law, for example, proscribes racial, gender, disability, and age stereotyping. At the same time, it allows government, employers, and others to adduce a public interest or business reason strong enough to justify using them. The law allows religious

groups to hire only coreligionists. Officials drawing legislative districts may, to some extent, treat all members of a minority group as if they all had the same political interests. The military can bar women from certain combat roles. Employers can assume that women are usually less suitable for jobs requiring very heavy lifting. Such practices reflect stereotypes that are thought to be reasonable in general, though false as to particular individuals.

Can the same be said of ethno-racial profiling? The answer is, “sometimes,” but again, context is everything. Most would object to a public college that categorically admitted women rather than men on the theory that women tend to be better students—not because the stereotype is false but because the school can readily ascertain academic promise on an individualized basis when reviewing applicants’ files, which it must do anyway. On the other hand, no one would think it unjust for an airport security officer to have screened for Osama bin Laden, who was a very tall man with a beard and turban, by stopping all men meeting that general description. This is so not only because the stakes in apprehending someone like bin Laden are immense, but also because in making instantaneous decisions about whom to stop, the official can use gender, size, physiognomy, and dress as valuable clues. It would be irresponsible and incompetent not to do so, even though every man stopped in this way would likely turn out to be a false positive, and thus feel unjustly treated for having been singled out.

Racial profiling in more typical law enforcement settings can raise difficult moral questions. Suppose that society views drug dealing as a serious vice, and that a disproportionate number of drug dealers are Black men, although of course many are not. Would this stereotype justify stopping Black men simply because of their color? Clearly not. The law properly requires more particularized evidence of possible wrongdoing. Suppose further, however, that police were to observe a Black man engaging in the ostensibly furtive behavior that characterizes most but not all drug dealers, behavior also engaged in by some innocent men. This type of observational deduction is referred to as “behavioral profiling,” and of course it is a perfectly legal means of inferring the likelihood that the suspect has committed the crime in question. Here, the behavioral stereotype would legally justify stopping the man. But what if the officer relied on both stereotypes in some impossible-to-parse combination? What if the behavioral stereotype alone had produced a very close call, and the racial one pushed it over the line?

Likewise, imagine a scenario that takes place in an immigrant-dense region such as Arizona, where a large number of Spanish-speaking males are gathered outside a 7-Eleven store in the morning and are eventually approached by a man in a pickup truck looking for workers for the day. The response of a law enforcement officer who observes this scene will be determined by two types of profiling, working in tandem: behavioral (some but not all Spanish-speaking men engaged in this type of activity would be illegal aliens) and ethnic (the vast majority of illegal aliens in Arizona are of Hispanic descent). When the officer pulls into the parking lot, some of the men run away. Is it legally justifiable for an officer to stop these individuals if this decision is reached based partly on ethnic profiling? And should that depend on a subsequent judicial determination of what percentage of such an inference was based on observed behavior and what percentage on ethno-racial generalization (which, again, would be accurate in the vast majority of such cases)?

Although all of these questions cannot be answered with certainty, most critics of ethno-racial profiling do not even ask them. A wise policy will insist that the justice of profiling depends on a number of variables. How serious is the crime risk? How does the public feel about the relative costs of false positives and false negatives? Is it relevant that members of the group being stereotyped would support such profiling in their capacities as citizens equally concerned about security? How accurate is the stereotype? How practicable is it to pursue the facts through an individualized inquiry rather than through stereotypes? If stereotypes must be used, are there some that rely on less incendiary and objectionable factors?

A sensible profiling policy will also recognize that safeguards become more essential as the enforcement process progresses. Stereotypes that are reasonable at the stage of deciding whom to screen for questioning may be unacceptable at the later stages of arrest and prosecution, when official decisions should be based on more individualized information, and when lawyers and other procedural safeguards can be made available. Screening officials can be taught about the many exceptions to even serviceable stereotypes, to recognize them when they appear, and to behave in ways that encourage those being screened not to take it personally.

It is a cliché that September 11 changed the world. Profiling is bound to be part of the new dispensation. With the debate over illegal immigration persisting and growing increasingly heated, clearer thinking and greater sensitivity to the potential uses and abuses of profiling can help produce both a safer and a more just America.

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Note: This essay was adapted from a chapter in *Meditations of a Militant Moderate* by Peter H. Schuck.

COUNTERPOINT

Racial profiling is law enforcement's use of race, ethnicity, or national origin as a basis for criminal suspicion. Racial profiling is an intuitively appealing idea—target groups with higher offending rates for greater law enforcement—that proves deeply problematic. This essay argues that racial profiling is unjustified because it is discriminatory and unconstitutional, ineffective, and probably counterproductive.

DEFINING RACIAL PROFILING

Racial profiling is the use by law enforcement officials of race, ethnicity, or national origin (or proxies thereof) as a basis of criminal suspicion. This definition is consistent with well-established definitions used at the highest levels of American government. The U.S. Department of Justice, in a 2003 memorandum that specifically banned racial profiling in federal law enforcement, stated, "In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists."

Despite many attempts over the last decade, the U.S. Congress has not passed federal legislation on racial profiling. Nevertheless, the leading proposed legislation, the End Racial Profiling Act (ERPA) of 2010, defines it as

the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.

The definition used by the authors of this essay adds two items to the definition of racial profiling. First, including the use of the phrase "proxies thereof" reflects the reality that law enforcement agents typically do not have direct information regarding suspects' race or ethnicity; they are merely making inferences about race or ethnicity based on appearance, name, or other superficial proxy characteristics like clothing and car type. Second, it is also worth elaborating on the use of the phrase "basis of criminal suspicion." This choice of words is deliberately inclusive, so that racial profiling also includes cases where no actual stop, search, or detention is carried out, but where the likelihood of such actions is

increased. This wording would include as racial profiling any law enforcement procedures, such as consideration of race in compilation of suspect lists or decisions to patrol certain neighborhoods, because they raise the probability of detention and sanction of minorities. On the whole, these would have the same discriminatory effect as an aggregation of stops and searches each of which was determined, in whole or in part, by the race or ethnicity of the individual suspects.

What racial profiling is not. In defining racial profiling, it is important to distinguish it from two law enforcement practices that bear some resemblance to it, but which are legal and, if carried out correctly, nondiscriminatory. The first is “criminal profiling,” which can take two forms. One is the development of a constellation of characteristics that are predictive of a perpetrator of a particular crime. This can be thought of as profiling broadly defined. It is generally a more formal process than racial profiling and can result from either formal agency guidelines (as in the case of early Drug Enforcement Agency drug courier profiles starting in the 1970s) or informal stereotypes of criminals held by individual officers. This practice is also referred to as “behavioral profiling,” although the emphasis in behavioral profiling protocols is, as the name indicates, typically not on *trait* characteristics (e.g., age, gender), but rather on *behaviors* such as loitering, avoiding eye contact, and furtiveness (in the case of drug crimes), or purchasing one-way tickets with cash and then traveling without luggage (in the case of terrorism).

The second form of criminal profiling is an older variety that is qualitatively different. Whereas racial profiling involves searching for suspects of crimes (e.g., drugs or weapons possession, terrorism) that are not yet known to have been committed, classical criminal profiling involves narrowing the pool of suspects for a known (already perpetrated or, based on valid intelligence, imminent) crime. For example, investigators seeking to apprehend serial killers have utilized criminal profilers (sometimes forensic psychologists or psychiatrists) who develop a demographic (and possibly psychiatric) profile of the likely perpetrator. There are some remarkable success stories, but on the whole this kind of criminal profiling has had limited success, at best (Silke, 2001; Winerman, 2004).

Another important distinction is between *racial profiling* and the *use of race in suspect descriptions*. Although some legal scholars (e.g., Banks, 2004) argue that use of race in suspect descriptions can, under some circumstances, be a discriminatory practice akin to racial profiling, the two procedures must be kept distinct from one another. Use of race in suspect descriptions necessarily involves a known crime with specific evidence (e.g., a witness report) of a suspect's race, while racial profiling involves as yet unknown crimes with no direct basis for inference about a possible criminal's race.

Racial profiling must be distinguished from these other practices because they are often conflated, with the effect of confusing the issue and, more troublingly, justifying racial profiling. By arguing that use of race to identify suspects in any form is racial profiling, some seek to raise concerns about throwing out a valuable law enforcement tool. However, using race or ethnicity to describe a known suspect of a known crime is a perfectly legitimate and, no doubt, effective investigatory practice. Similarly, criminal profiling and offender profiling are legitimate tools to narrow the pool of suspects for a known crime, although there is only anecdotal support for this approach and no empirical evidence that it is a reliable practice. Behavioral profiling, which by definition focuses on behaviors and not traits like race, has been found to be effective, at least in the case of counterterrorism (Silke, 2011). A precise definition of racial profiling that avoids conflation with other legitimate law enforcement practices affords a meaningful consideration of the subject on its merits.

One other source of definitional imprecision that can undermine a productive consideration of the subject is the tendency for some commentators to define racial profiling as being law enforcement decisions that are based *solely* on race. Legal scholar R. S. MacDonald, for example, uses the race-as-sole-factor characteristic to distinguish between traffic stop profiling and airport security screening profiling, arguing that the latter is based on multiple factors and, for this and other reasons, is acceptable. This type of definition can enable profiling to be either defined away (“nobody does *that*”) or promote support for a practice that seems, by comparison, to be innocuous. This misses the basic point that using race as the sole basis for decisions to stop and search is not mere “bias” but full blown racial oppression. It also violates the basic semantics of the terminology—a “profile” is by definition a multifaceted depiction. Perhaps most insidiously, the sole-factor definitional approach fails to appreciate that even if race is only one of many factors, its presence in the profile necessarily has the effect of increasing the probability that one racial group will be subject to disproportionate police attention. If the profile is young, male, and Black, then young, Black men will, for reasons to be elaborated further, bear the brunt of the policy.

The argument presented here against racial profiling operates on several fronts, beginning with a brief review of the relevant case law and subsequent options for legal remedy. The remedies, it will be seen, are meager, even though racial

profiling violates basic civil liberties and fundamental American values. This is followed by a discussion of the grave social costs incurred by the targets of racial profiling and by society as a whole. Then the effectiveness and efficiency of racial profiling will be considered, and it will be shown that there is no compelling evidence in this regard; to the contrary, there is evidence that racial profiling is ineffective and inefficient. Finally, it will be argued that the demonstrated ineffective and unjust nature of racial profiling demands not only a lack of support for the practice, but a proactive, enforceable ban on it altogether, and the promotion of policies and practices to remediate it.

CONSIDERATIONS OF LAW AND JUSTICE

Constitutional remedies and case law. The Fourth Amendment to the U.S. Constitution protects citizens against “unreasonable searches and seizures,” and the Fourteenth Amendment forbids any state to “deny to any person within its jurisdiction the equal protection of the laws.” The vast majority of legal cases seeking remedies for those who allege they have been racially profiled make arguments under these two amendments: the Fourth for its mandate for “probable cause,” and the Fourteenth for its prohibition against any action by the state that discriminates on the basis of race. Importantly, the standard of proof is lower for the Fourth Amendment—reasonableness—than it is for the Fourteenth—strict scrutiny for racial discrimination.

As Harris (2002), Withrow (2006), and others have compellingly described, the most relevant case law rests on two cases. In *Terry v. Ohio* (1968), the U.S. Supreme Court ruled that, in order to justifiably detain and search a suspect, a law enforcement officer need only have reasonable suspicion that a person is armed and dangerous, even if this suspicion is not sufficient to be probable cause for arrest. *Whren v. United States* (1996) is probably the most significant court case in terms of leaving open the possibility of legal racial profiling. This case stemmed from an incident in which police officers pulled over a Pathfinder truck, with a young (Black) driver and passenger inside, waiting at a stop sign (for what the police officers claimed was an abnormally long time). After the truck turned and went an “unreasonable” speed, and then stopped at a red light, the police officers pulled it over. One of the officers spotted what appeared to be, and turned out to be, plastic bags containing cocaine, and the truck’s occupants were arrested. Several other types of illegal drugs were also found. In *Whren*, the defendants argued that there had been no probable cause or reasonable suspicion of illegal drug activity and that the officers used a pretext of giving a warning about traffic violations.

The Court of Appeals for the District of Columbia Circuit eventually ruled that a traffic stop is permissible as long as another reasonable officer could have stopped the car for a suspected traffic violation, and the Supreme Court upheld the decision. In essence, the Court ruled that the police officers’ “subjective intentions” did not matter, even if race was a factor, and validated the use of pretexts—using one reason (e.g., minor traffic violation) to more extensively investigate a more serious offense even in the absence of reasonable suspicion (Withrow, 2006). In the Court majority’s words, “We think these [past Supreme Court rulings] foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.”

Because it provides wide latitude for these pretextual stops, *Whren* effectively removes the option of Fourth Amendment–based challenges to racial profiling. Legal scholars tend to characterize the Supreme Court’s rulings as “race-neutral” *to a fault*, because they fail to address the racial attitudes and tensions of both law enforcement and the victims of racial profiling (e.g., Lyle, 2001). Taken together, current case law puts in place rather high legal hurdles that must be cleared in order to prove racial profiling and its subsequent harm. Indeed, almost all racial profiling constitutional challenges have failed or have ended with out-of-court settlements (Harcourt, 2004, p. 1278).

Threat to civil liberties. The inadequacy of the current legal remedies for racial profiling does not obviate its violation of the core American principles of civil liberty, nondiscrimination, and basic fairness. The violation of these principles is obvious to anyone with a basic American civics education. Yet the persistence of support for racial profiling reflects the perennial tension between the necessity of securing public safety and the constitutional mandate to protect against restrictions of individual liberty. Indeed, there are some liberties that need to be abridged (such as speech that incites violence, or littering) to promote public safety. With regard to intrusions by law enforcement, people must and do submit to surveillance and screening, including relatively invasive procedures like those used on airline passengers. However, because racial profiling involves differentiations among racial and ethnic groups in terms of whose liberties are more or less infringed, it concerns *civil* liberties. It is one thing to expect everyone to relinquish the right to yell “fire” in a

crowded theater, or to carry their own beverages through airport security, but it is quite another to deny only one racial or ethnic group that right. Regardless of one's beliefs about the potential effectiveness of racial profiling, even if we were to stipulate that targeted groups have criminal offending rates so high as to pose a threat to public safety, singling them out on the basis of race or ethnicity (as opposed to individual behavior) would violate sacrosanct American constitutional and moral principles.

These principles are enshrined in the statements of America's founders and most respected jurists:

"They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety"
—Benjamin Franklin (1818)

"Civil government cannot let any group ride roughshod over others simply because their consciences tell them to do so" —Justice Robert H. Jackson, *Douglas v. City of Jeannette*, 319 U.S. 157 (1943)

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding" —Justice Louis D. Brandeis, dissenting, *Olmstead v. United States*, 277 US 479 (1928)

"History teaches us that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure" —Justice Thurgood Marshall, dissenting, *Skinner v. Railway Labor Executives Association*, 489 U.S. 602, 635 (1989)

Despite America's strong tradition of and commitment to liberty, the government has, at several points in its history, succumbed to fear and insecurity to engage in policies that have violated basic individual and civil liberties. The Alien and Sedition Acts, Lincoln's suspension of habeas corpus, the internment of Japanese Americans during World War II, and the Congressional persecution of suspected communists and their associates in the early years of the Cold War—were all rationalized by real or perceived dangers. Although the drug war that inspired racial profiling in traffic and pedestrian stops has not been held up as rising to that level of threat, terrorist threats (and the attendant "war on terror") have, and these threats have subsequently been used to justify racial profiling. It is worth remembering that the historical, liberty-violating policies that preceded racial profiling have been judged extremely harshly by history, after the fog of war has cleared.

Racial profiling clearly falls into the same category as these historical lapses because it is an unmistakable breach of the Fourth and Fourteenth Amendments and the core American principles of fair and equal treatment and liberty that these amendments reflect. The notion that a person who happens to be a member of a racial, ethnic, or religious category that is presumed to be populated with a relatively high proportion of perpetrators of some sort of crime should be subject to greater suspicion and law enforcement intrusion because of that coincidence, is unambiguously in contradiction with American law and values. This is reflected not only in the quotes of influential officials like those provided above, but also in public opinion polls, wherein overwhelming majorities disapprove of racial profiling (e.g., 81% in Gallup Organization, 1999).

Not surprisingly, the post-9/11 "war on terror" appears to have engendered a greater sense of threat—and, consequently, willingness to compromise civil liberties—than has the "war on drugs." In a November 2001 Kaiser Family Foundation poll, 66 percent of Americans surveyed approved of profiling "people who are Arab or of Middle Eastern descent." However, in the same survey, only 21 percent approved when asked about a more generic profiling scenario involving traffic stops—an approval rate comparable to the pre-9/11 response. The majority approval of counterterrorism profiling of Middle Easterners has persisted since 2001 (e.g., Quinnipiac University, 2006). The ability of Americans to maintain these paradoxical views is not new when it comes to the public safety–civil liberties tradeoff, and it is not limited to the public. As the Supreme Court majority articulated in *Hirabayashi v. United States* (1943), "Because racial discriminations are in most circumstances irrelevant, and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may, in fact, place citizens of one ancestry in a different category from others." Yet the Court also addressed the offensiveness of discrimination: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Somehow, the court had confidence that the stereotypes causing racial discrimination were "irrelevant" (i.e., spurious) in most domains, but not in the domain of national security. The

flaw in this view was laid bare by subsequent revelations that the U.S. government had, in the Hirabayashi trial upholding Japanese-only curfews, suppressed evidence indicating that, in fact, very few Japanese Americans were actually suspected of treason or espionage. Hirabayashi's conviction was, as a result, later overturned.

There is no reason to believe that specious stereotypes are any more reliable in national security than in ordinary law enforcement. One can argue that the stakes are higher, but the error is the same, and the costs borne by the targets of discrimination are at least as severe.

Fairness and social costs. Because it heaps further disadvantage on groups—particularly African Americans and Hispanics—that are historically disadvantaged due to discrimination, racial profiling raises the issue of basic fairness and social costs. Racial profiling is not the sole source of disproportions in the criminal justice system, but it necessarily exacerbates them insofar as it increases the likelihood that certain racial minorities are targets of suspicion. In being disproportionately subject to suspicion, surveillance, and intrusion, members of these groups are inordinately punished and disenfranchised, with the attendant alienation from economic, political, and civic affairs. The magnitude of the racial disparities is striking. The Bureau of Justice Statistics projected that, assuming that 2003 incarceration rates persisted, 5.9 percent of White men born in 2001 would be incarcerated at some point in their lifetime, while for Latinos it would be 17.2 percent, and for African Americans it would be 32.2 percent (Bonczar, 2003). In an analysis of men born between 1965 and 1969, Petit and Western (2004) estimated that 60 percent of African American men who dropped out of high school would spend time in prison (compared to 11 percent of White high school dropouts). These disparities are reflected in the composition of the state prison population: According to the U.S. Department of Justice, in 2008, African Americans comprised 38.1 percent, Whites were 35.5 percent, and Hispanics were 18.7 percent, even though African Americans represent only 12.6 percent of the US population, Whites (non-Hispanic) 63.7 percent, and Hispanics, 16.3 percent (U.S. Census Bureau, 2010). The myriad collateral consequences of imprisonment compound how troublesome these statistics are.

Chief among these consequences is the effect of incarceration on employment and income. In a clever and careful employment audit experiment, Pager (2003) found that having a criminal record significantly decreased the likelihood that a job applicant would be called back by a real employer, and that this effect is even more dramatic for Black applicants. White applicants had their prospects cut in half by a criminal record, from 34 percent to 17 percent. Black applicants fared worse with or without a criminal record, but their prospects were reduced nearly threefold, from 14 percent to 5 percent. It is further noteworthy that Whites with a criminal record still fared better than Blacks without one, a general, pronounced employment discrimination finding replicated by Bertrand and Mullainathan's (2003) large and highly rigorous employment audit study. It is not surprising then that another study found the employment rate of formerly incarcerated men to be 6 percentage points lower than comparable men who had not been incarcerated, and their hourly wage to be between 14 and 26 percent lower (Geller, Garfinkel, & Western, 2006). Given the perennially higher unemployment rates for African Americans and Hispanics (U.S. Department of Labor, 2009), the repercussions of incarceration are even more calamitous, because they further limit the wage-earning capacity of so many people. The effects of incarceration are magnified in these vulnerable populations, making the collateral damage of racial profiling even greater.

To make matters worse, the effects of incarceration extend beyond the individual who serves time. There are also formidable costs to the families of those who are incarcerated in terms of lost income and employment-related benefits, strains on parenting, social stigma, and the emotional toll of having an absent family member. There is recent evidence that paternal incarceration puts children at greater risk for behavioral and mental health problems, and that the racial disparities in incarceration are a factor in the racial disparities in these childhood problems (Wakefield & Wildeman, 2011). There is also evidence that those who have been incarcerated are more likely to suffer from infectious diseases and illnesses related to stress (Massoglia, 2008). Intimates of incarcerated individuals are also at greater risk. For example, Johnson and Raphael (2006) found that higher incarceration rates among Black men are a significant, unique source of the disparity in HIV infection rates between Black women and women of other racial and ethnic groups.

Contact with the criminal justice system results in a significant, negative effect on political and civic engagement, even when socioeconomic status and criminal propensity are taken into account (Weaver & Lerman, 2010). Having a felony conviction also bars individuals from accessing many types of state assistance, such as housing, welfare, and financial assistance for higher education (Finzen, 2005). Moreover, in 48 states, a felony conviction results in either a temporary

or permanent loss of the right to vote; as a consequence, 1.4 million African American men (13%) are disenfranchised (Sentencing Project, 2011). The systematic disenfranchisement of one ethnic group undermines the representation of that group's interests in government, and there is direct evidence that some elections would have had different outcomes had ex-felons been allowed to vote (Uggen & Manza, 2002).

As will be discussed further, computational modeling shows how racial profiling necessarily causes targeted groups to be incarcerated at rates that are disproportionate to their offending rates (Glaser, 2006). Racial profiling therefore brings additional burdens on minority populations. That racial minorities already face impediments to well-being should prompt an assiduous assessment of the threat to American ideals and social costs posed by racial profiling.

The clear violation of core constitutional principles and American values of liberty and fairness should be sufficient grounds on which to reject and condemn racial profiling in any domain of law enforcement. Nevertheless, the tipping point for the safety–liberty tradeoff resides at different points on the spectrum for different people. Indeed, discourse over racial profiling often turns to questions of police efficiency and effectiveness, in terms of conserving resources and mitigating crime. Even commentators who oppose racial profiling will sometimes stipulate that it is appealing on efficiency grounds (e.g., Kennedy, 1999). However, there is no evidence that racial profiling actually affords the kinds of efficiency and effectiveness gains that it is presumed to, or that would be necessary to pass even a minimal threshold for compromising civil liberty. In fact, there are good reasons to be concerned that racial profiling, if practiced as its defenders commend, has very modest effects on criminal captures and deterrence, and can even have ironic effects.

EFFECTIVENESS

Efficient use of law enforcement resources. Perhaps the most common and straightforward rationale offered to support racial profiling is that it is efficient. The logic goes that if one group (e.g., a racial group) is more prone to committing a particular kind of crime (e.g., drug possession for sale, terrorism), then targeting police resources at members of that group will (1) net more criminal captures and (2) deter crime among those most inclined to commit it. The argument appears sound. However, when considered carefully, there are serious problems with this logic.

The first problem is that in practice it is rarely known, even by law enforcement agencies, what actual criminal offending rates are within a group for the crimes of interest. Racial profiling is typically targeted at drug and weapons possession, and statistics on perpetrators are based on *known* perpetrators. These statistics are going to be skewed by any prior racial bias in policing. To the extent that police are disproportionately stopping and searching a given group, it is a mathematical reality that they will disproportionately arrest members of that group (as illustrated in the mathematical simulations described below; see Glaser, 2006). Surveys, in fact, indicate that Whites and Blacks in the United States report comparable rates of illicit drug use (U.S. Department of Health & Human Services, 2007), and that among youths rates are considerably lower for Blacks (Johnston, O'Malley, & Bachman, 2001). The implication of not actually knowing what the offending rates of different groups are is that when police profile, they are almost certain to rely on informal stereotypes of unknowable accuracy.

The stereotype problem. A stereotype is a belief about the traits that are disproportionately possessed by members of a group. Beliefs (stereotypes) that Blacks are more likely to be engaged in drug crime and Muslims are more likely to be terrorists drive drug interdiction and counterterrorism profiling. Most people have a sense that judgments of individuals based on stereotypes about their groups are inherently misguided, and are particularly intolerable when they engender discriminatory outcomes such as the undue deprivation of material resources, status, or liberty. Consequently, a recognition of the role of stereotyping is usually a sufficient rationale for rejecting racial profiling. Even those who do not object to stereotype-based law enforcement, however, should have concerns about effectiveness.

One could argue that law enforcement agents develop their own stereotypes regarding race and criminal offending, and that these stereotypes, being based on direct experience (e.g., investigating, searching, and arresting suspects) have a good chance of being reasonably accurate. This does not address the fairness problem, but it does allow for the possibility of effectiveness. There are a number of important reasons, however, why police stereotypes are unlikely to be particularly accurate or effectively applied to suspect identification.

Nearly a century of scientific study of stereotyping has provided the field of social psychology with a deep and broad understanding of the phenomenon. Fundamental discoveries include the fact that stereotypes serve as cognitive

shortcuts (“mental heuristics”) for making judgments in the absence of complete information (Fiske & Taylor, 1991), and that this can cause people to make dramatically different assessments of the identical behaviors of individuals (Darley & Gross, 1983; Sagar & Schofield, 1980). Research has shown that entirely spurious stereotypes can be formed via “illusory correlation,” such as when rare events (like minority status and crime) co-occur (Hamilton & Gifford, 1976); and that stereotypes are resistant to change, even in the face of clearly contradictory evidence (Weber & Crocker, 1983). Stereotypes can, ironically, have even more pronounced biasing effects when one attempts to suppress them (MacRae, Bodenhausen, Milne, & Jetten, 1994). It has also been shown that stereotypes can be formed and perpetuated to serve the psychological function of rationalizing inequities between groups and that they are exacerbated by a phenomenon called “outgroup homogeneity,” wherein people tend to overestimate the similarities within groups to which they do not belong (Park & Rothbart, 1982). The mere knowledge of a stereotype, even if it is consciously repudiated, is sufficient to cause stereotype-biased judgments (Devine, 1989). Most recently, scores of studies have shown that stereotypes can operate outside of conscious awareness or control, but nevertheless influence important, discriminatory behaviors (Jost et al., 2009). In other words, there is overwhelming evidence that stereotypes are distortions and, even if based on a “kernel of truth,” present serious obstacles to accurate and fair appraisals of others.

As undesirable as stereotyping may be, the research shows that it is entirely normal to human cognition—most, if not all, people do it. Because law enforcement agents are normal humans with normal cognition, they too are vulnerable to the pitfalls of stereotyping, including the flawed judgments of individuals that result from it. Importantly, research conducted on police samples has directly demonstrated this; police possess race-crime stereotypes and these unduly influence their judgments and behaviors toward minorities (Correll et al., 2007; Eberhardt, Goff, Purdie, & Davies, 2004).

Even if stereotypes are directionally accurate (e.g., if Blacks have a higher rate of drug-related criminal offending, or Arabs have a higher rate of terrorism), employment of them in decisions to stop and search can reflect an error akin to the logical fallacy of “affirming the consequent.” This error takes the form “if A, then B; B therefore A.” In stereotype-based judgments, this translates into, “if criminal, then likely to be Black; Black therefore likely to be criminal.” The error is not unlike the common “base-rate fallacy” (Kahneman & Tversky, 1973), where people fail to account for the general prevalence of something when trying to estimate its likelihood based on some indicator. For example, people who obtain a positive result on a test for a rare disease are likely to overestimate the probability that they have the disease, having failed to account for the low overall probability of the disease. If crime and terrorism are rare events (and they are, especially terrorism), even if race or ethnicity is correlated with them, it will have low diagnostic value at the individual level. This is borne out in the statistics on hit (arrest) rates for stop-and-frisk programs (Jones-Brown, Gill, & Trone, 2009; Office of the Attorney General of New York, 1999); these analyses tend to reveal low hit rates, typically around 10 percent, and paradoxical racial disproportions—stop/search rates are higher for minorities, but hit rates among those stopped are higher for Whites.

In short, there are many reasons to be skeptical about the accuracy of the stereotypes that cause racial profiling. Furthermore, even if one stipulates the possibility that officers will have a concrete basis for their stereotypes, one should be very skeptical about their accuracy and practicality when it comes to predicting criminality in individual suspects.

Diminishing returns and self-fulfilling prophecies. Even if respective offending rates of different racial groups were known, and assuming one group actually had a higher rate, the long-term effects of profiling are likely to exhibit diminishing returns that yield modest results in terms of criminal captures—and yet profiling would still create racial disproportions in excess of any real differences in offending. In a series of mathematical simulations (necessitated by the lack of information about actual offending or profiling rates), Glaser (2006) found that sustained profiling (i.e., stopping minorities at proportionally higher rates) yielded only modest gains in criminal captures, unless minority-offending rates were dramatically (and implausibly) higher than the rates of others. In scenarios where stop rates were disproportionate to offending (i.e., minorities were stopped at relative rates that were in excess of their relative offending rates), profiling was particularly ineffective and led to overall capture rates that were lower than those in the absence of profiling. Of particular note was the finding that racial profiling causes incarceration disparities that are in excess of any actual offending disparities. This is, of course, most evident and transparently unjust in scenarios where there are no offending disparities (i.e., minorities offend at the same rate as Whites), but it poses a fairness problem even when targeted groups have higher offending rates. Profiling itself causes or exacerbates racial disparities in criminal sanctions, and this is in

addition to the problem of the higher proportions of innocent (non-offending) minorities' lives being disrupted by unwanted contact with police.

Deterrence? The deterrent effect of racial profiling is also dubious. The theory with regard to deterrence is that the increased attention to targeted groups should cause a decrease in offending among those groups, and that this deterrent effect would be especially consequential if those groups had relatively high offending rates. This thesis is consistent with deterrence theory, a key component of criminological canon (Blumstein, Cohen, & Nagin, 1978), which holds that expectations of increased costs of crime (due to increased penalties, increased probability of apprehension, or both) will lead even partially rational criminals to reduce offending, to the extent that they perceive changes in costs.

Racial profiling, however, presents a special case with regard to deterrence because there is no net increase in enforcement, but rather just a shifting of resources from some group or groups to others. As Glaser (2006) and Harcourt (2004) have noted, because profiling necessitates greater focus on one group, there is less focus on other groups. If deterrence works as it is theorized to, with criminals detecting changes in costs of offending, criminals (and marginal criminals) in nonprofiled groups should expect a lower cost, and therefore commit more crime. If the criminality rate in these groups is nontrivial, this could have an upward pressure on crime rates.

Glaser showed in his simulations that, with conservative assumptions about deterrence included in the model, the already modest benefits for criminal captures seen in most racial profiling scenarios are further reduced because the groups receiving the most attention (i.e., minorities) are committing less crime, while groups receiving the least attention (i.e., Whites) are committing more crime. Because nonprofiled groups tend to be larger, this could cause a net increase in crime.

Experimental evidence supports this pattern. Hackney and Glaser (2009) simulated racial profiling in a classroom testing paradigm wherein student cheating could be reliably detected. They found that when White students thought that Black students were being profiled for cheating by the administrator, they cheated *more* than when White students were ostensibly being profiled or in a no-profiling control condition. In contrast, Black students cheated at comparable (low) rates across all three experimental conditions (perhaps not inferring race-based profiling in the Whites-profiled condition because there is no preexisting schema for that). The net effect of profiling, therefore, was an increase in cheating, what Hackney and Glaser call "reverse deterrence." Racial profiling will not necessarily lead to a net increase in crime. If the targeted group is deterred and has an offending rate much higher than other groups, it could yield a net decrease. However, given that targeted groups tend to be numerical minorities, and the oft-targeted crimes (e.g., drug possession) do not appear to have dramatic offending rate differences between groups, there is the very real potential for ironic effects of racial profiling on crime rates and criminal captures. In the realm of counterterrorism, White separatist extremists in the United States, who have a long and deadly history of terrorism, could feel they can act with relative impunity if other ethnic groups are receiving the lion's share of law enforcement attention. The possibility of a more strategic form of reverse deterrence should also be considered, where terrorist groups deliberately exploit and circumvent profiles by recruiting outside of them.

In sum, racial profiling (1) is often targeted at groups that we are not at all confident actually have higher offending rates; (2) yields at best modest gains in criminal incapacitation, but only when targeted groups have higher offending rates; and (3) has the potential to, at best, have moderate aggregate deterrent effects, and at worst, increase crime through reverse-deterrence. Because of these factors, the assumed efficiency of racial profiling is highly questionable.

Crime reduction. The appropriate standard for assessing the effectiveness of any law enforcement strategy is whether or not it reduces crime and its consequences. In arenas where racial profiling might seem compelling—reducing drug trafficking or gun possession, terrorism, illegal immigration—the achievement of ostensible goals is difficult to assess due to the intractable problems with establishing reliable offending base rates, collecting comprehensive data, and conducting reliable analyses. Specifically, in order to determine the ability of racial profiling to capture offenders successfully, the underlying rate of offending by race and ethnicity would need to be known.

With that limitation in mind, it is useful to note that in many jurisdictions studied, targeted groups often yield less evidence of crime (e.g., contraband, weapons) when stopped and searched (see Harris, 2002, citing New Jersey State Police data on turnpike stops; and Center for Constitutional Rights, 2009), while other analyses find approximately equal

hit rates (e.g., Harris, 2002, citing evidence from the Maryland State Police). For example, in Gross and Barnes's (2002) analysis of traffic stops in Maryland, the proportion of car searches that yielded drugs was 37.4 percent for White drivers, 30.6 percent for Black drivers, and 11.9 percent for Hispanics. The lower hit rates for Black and Hispanic drivers indicates that they required a lower threshold of suspiciousness to get stopped or searched, and that offending rates may not be any higher for the targeted groups.

Recent assessments of the "stop, question, and frisk" policies of the New York Police Department further indicate that racial profiling is an ineffective crime reduction strategy. After controlling for a variety of factors that are predictive of police activity (e.g., precinct and its racial composition), Fagan (2010) found that Black and Hispanic individuals were stopped at much higher rates, and that the overall hit rate is less than 6 percent (the rate of gun seizures was only 0.15 percent). An analysis of stops made from 2005 through 2008 found that 80 percent of all stops were of Black and Latino individuals, who, respectively, make up 25 percent and 28 percent of the city's population (Center for Constitutional Rights, 2009). Ten percent of stops during the same time period were of White individuals, who were 44 percent of the city's population. The clearest indication of the ineffectiveness of racial profiling is the report's finding that only 2.6 percent of the stops yielded contraband. Similarly, Jones-Brown, Gill, and Trone (2010) found that even though the number of pedestrian stops in New York City more than tripled between 2003 (<150,000) and 2009 (>500,000), the total number of illegal guns found through these searches remained fairly constant during the same time period. The number of stops of White individuals in 2003 was around 20,000 and grew to 50,000 in 2009. The number of stops of Black individuals went from approximately 80,000 in 2003 to nearly 350,000 in 2009. The additional searches in later years appear to have been highly arbitrary, yielding trivial gains in gun seizures over the results obtained from the earlier, smaller numbers of searches.

The U.S. Customs Service provides an apt example of the ineffectiveness of racial profiling that mirrors the findings from New York City. In 1998 the service made a series of reforms to reduce gender and racial bias in the selection of air travel passengers for personal searches. By 2000 the service had conducted 79.3 percent fewer searches, yet while the overall number of seizures of contraband was roughly the same as before, racial disparities in stops, searches, and seizures decreased.

The conclusion to be drawn from this type of evidence is that subjecting African American and Hispanic individuals to a lower threshold for suspicion and an increased likelihood of being stopped and searched by the police will certainly have a discriminatory impact on those minority groups but is unlikely to reduce crime.

Procedural justice. Another reason to doubt racial profiling's effectiveness is the likelihood that this practice is perceived by its targets as a gratuitous violation of procedural justice, thereby eroding the law-enforcement benefits of good police-community relations. Procedural justice concerns the fairness of how (i.e., the mechanisms or processes by which) an outcome is achieved, as opposed to the fairness of the outcome itself (Lind & Tyler, 1988). At its core, racial profiling involves singling out a person for a nonlegal reason (race is not legally relevant). Importantly, the effects of violating procedural justice extend beyond the original target. While the target may experience the violation as a personal affront (Skitka, 2002), friends and family of the target may experience "empathic anger," which occurs when someone one cares about is harmed (as opposed to the anger caused by being harmed personally) (Batson et al., 2007).

Moreover, a negative emotional response to racial profiling can even occur when an observer does not personally know the target. Just seeing someone being harmed can generate intense anger and a sense of injustice (Hafer, 2000). It follows that the repercussions of racial profiling can be understood as radiating out from the target, affecting not just targets of racial profiling but also those who know them or even just know of them. Psychologists Tom Tyler and Yuen Huo discuss such problems in their book, *Trust in the Law* (2002). They find that "people generalize from their personal experiences to their broader views about the law, legal authorities, others in their community, and society" (p. 206) and that breaches of procedural justice negatively influence what people think of the police and their general respect for the law. To wit, public opinion data reveals that 61 percent of White individuals consider the "honesty and ethical standards" of police to be either "very high" or "high," while only 37 percent of Black individuals hold this view (Gallup Organization, 2010). The upshot is that when communities (e.g., racial or ethnic minority groups) do not trust police, they are less inclined to cooperate with law enforcement activities. This is particularly troublesome in the context of police reliance on assistance from community members during crime investigations.

Indeed, a survey conducted by the Consortium for Police Leadership in Equity (CPLE) found that among White and Latino residents (citizens, as well as documented and undocumented aliens), one in three would not report certain serious crimes if police officers had the authority to check citizenship status (Burbank, 2010). This should be a cause for serious concern among lawmakers considering the laws, like those in Arizona and Alabama, that require police departments to enforce immigration law and promote the use of ethnicity in identifying illegal immigrants.

Because it entails an unfair mechanism—using an individual's race or ethnicity as the basis for heightened scrutiny—racial profiling is procedurally unjust. By violating procedural justice, racial profiling is likely to erode trust in the police and results in decreased cooperation with law enforcement officers. In this way, the effectiveness of racial profiling as a crime reduction strategy is further diminished.

CONCLUSION

In using race, ethnicity, or national origin as a basis of criminal suspicion, law enforcement officials engage in a practice that is especially pernicious because it engenders a false sense of effectiveness in the face of substantial harms that may not be readily evident. The goal of policing is to promote public safety. Insofar as it inflicts harm on particular segments of the population, racial profiling contravenes this goal. The objective here has been to explain the harms to both justice and effectiveness. Specifically, we contend that racial profiling not only violates the U.S. Constitution, but it violates core American principles of liberty and nondiscrimination. By subjecting members of historically disadvantaged groups to increased scrutiny, profiling contributes to the striking overrepresentation of African Americans and Hispanics in the criminal justice system. Moreover, proof of the effectiveness of racial profiling is lacking, especially considering the indications that it may increase crime through reverse deterrence and stifle cooperation with law enforcement as a result of procedural injustice. Taken altogether, the evidence presented here indicates that racial profiling falls far short of any reasonable threshold for trumping liberty in the name of public safety.

Indeed, racial profiling is so objectionable that it is insufficient merely to state that it should not be supported. Rather, affirmative policies to ban its practice, monitor its occurrence, and enforce prohibitions against it are warranted. This is imperative because racial profiling likely occurs, in large part, informally, spontaneously, and in many instances unintentionally. Thus, the mere absence of a formal pro-profiling policy or even the existence of an unenforced prohibition are likely to be insufficient for preventing it.

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***TRENDS IN KILLING OF AND BY
POLICE: A PRELIMINARY
ANALYSIS***

**(WRITTEN BY FRANKLIN ZIMRING AND BRITTANY
ARSINIEGA)**

Trends in Killings of and by Police: A Preliminary Analysis*

Franklin E. Zimring** and Brittany Arsiniega***

This comment reports a preliminary examination of variations over time in reported killings of and by the police. Most of the data we examine was collected from police departments by the Uniform Crime Reporting Program as part of a statistical compilation of lethal violence that has reported yearly since 1976. The data on killings of police officers includes all deaths of police reported by agencies as a result of attacks by other persons, and is a high priority for the Uniform Crime Report [UCR] system. Data related to police officer deaths is carefully compiled separately from data relating to other homicides in a yearly Law Enforcement Officers Killed and Assaulted [LEOKA] subset of the UCR. The data on killings by police officers is incomplete in theory because the deaths reported must be classified as “justifiable” by the reporting agency and the UCR, but the vast majority of killings by police officers are included in this classification.

The data set we use in this analysis of killings by police is problematic in three further respects that significantly hamper its utility. The first problem is that the supplemental homicide reports are always incomplete and also vary over time in the number of agencies that report killings by police. The second problem is that very little information about the circumstances that led to the killings by police is reported to the FBI. The third problem is that there is no auditing process to assure the accuracy of what individual agencies choose to report. Even though the data from this program may be the best information currently available in comparison to the alternatives, it must be upgraded to permit effective policy analysis.¹

This report is divided into four short sections. Part I compares the trends over time in killings of police with time trends in the number of persons killed by police in the almost four decades that both rates have been reported in the United States. A second section discusses the instruments and circumstances that are associated with killings of and by police. A third section examines the changes over time in the ratio of killings of and by police since the mid-1970s. One byproduct of the improvements in protecting police against violence is that while the ratio of

* We thank Lawrence Sherman, Jeffrey Fagan, Josh Dressler, Jonathan Simon, David Johnson, and the Stanford and Berkeley faculty participants in the Kaplan-Kadish seminar for comments on an earlier draft.

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¹ David A. Klinger, *On the Problems and Promise of Research on Lethal Police Violence: A Research Note*, 16 HOMICIDE STUD. 78, 81, 84 (2012).

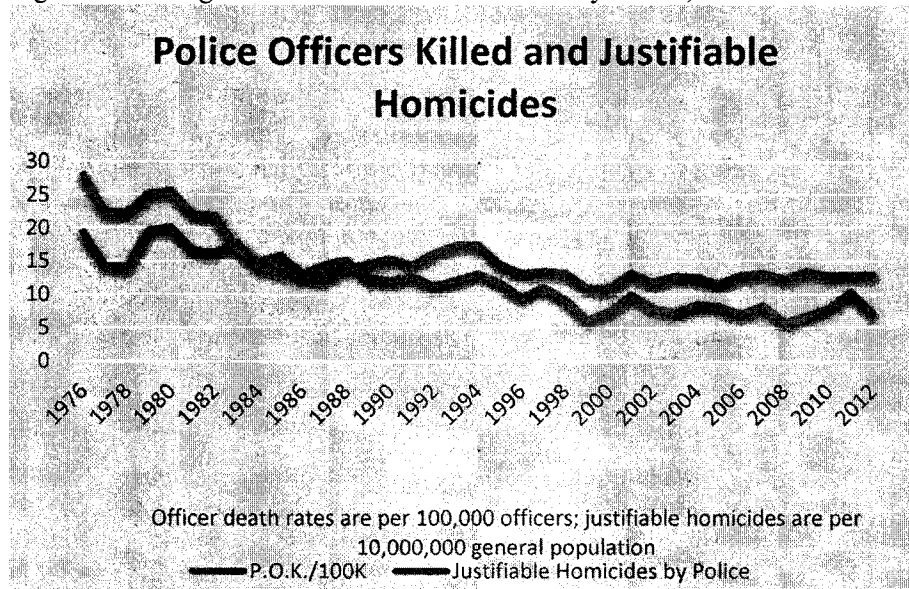
citizens killed by police to police deaths was 3.4 to 1 in the 1970s, it has averaged 7.8 to 1 in the most recent reports.

The final section of our note discusses two asymmetrical patterns in the data we analyzed. We have good information on killings of police. There is not a similar emphasis on the careful collection and analysis of killings by police. There is a clear need for careful documentation and analysis of the 400 to 500 civilians killed each year in encounters with police. The current lack of complete and reliable data on killings by police is a scandal. And there are, in the data we examine, reasons to suggest that police use of deadly force is not a necessity of police safety when citizens brandish knives, blunt instruments, or use personal force.

I. TRENDS OVER TIME

Figure 1 reports the data reported by the UCR on killings of and justifiable killings by police by year from 1976 to 2012. The figure uses annual data on police employees to estimate a death rate per 100,000 officers for each year and census data on total population to estimate a death rate per 10 million citizens for justifiable killings by police.

Figure 1. Killings of and Justifiable Homicides by Police, 1976–2012



Source:²

² 1980–2012 population data taken from December 31 population estimates by the United States Census Bureau. *U.S. & World Population Clock*, U.S. CENSUS BUREAU, <http://www.census.gov/popclock/>. 1976–1979 data taken from the Population Estimates Program of the Population Division of the U.S. Census Bureau, July 1 estimates. See *Historical National Population Estimates: July 1, 1900 to July 1,*

As Figure 1 shows, the trend over time for both killings of and by police is downward, but not in equal measure. Over the 37 years after 1976, the death rate of police from violent assaults dropped from 27.88 per 100,000 to 7.01 per hundred thousand, a decline of almost exactly 75%. During the same period, the drop in killings by police, when adjusted for population, dropped by half, from 19.26 per 10 million population to 9.84.

The downward trend in both rates of killing is evident throughout the period. The first reported rate for both killings of and by the police is highest at the very beginning of the reports in 1976 and the biggest drop in rates for all single year periods for both police deaths and civilian deaths from police happens between the first and second year of the reporting program. This is strong circumstantial evidence that issues relating to the measurements in the first year may have exaggerated the initial rate drop from year 1976 to 1977. One way to correct for

1999, U.S. CENSUS BUREAU (Jul. 28, 2000), <http://www.census.gov/popest/data/national/totals/pre-1980/tables/popclockest.txt>. The total number of active police officers is taken from the University of Michigan's National Archive of Criminal Justice Data [hereinafter NACJD]. See FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING PROGRAM DATA: POLICE EMPLOYEE (LEOKA) DATA (1976-2012), available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/9028>. For the number of law enforcement officers killed from 1976-1998, see JODI M. BROWN AND PATRICK A. LANGAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, POLICING AND HOMICIDE, 1976-98: JUSTIFIABLE HOMICIDE BY POLICE, POLICE OFFICERS MURDERED BY FELONS 22 (2001), available at <http://www.bjs.gov/content/pub/pdf/ph98.pdf>. For the number of officers killed from 1999-2002, see FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS [hereinafter UCR]: LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2002 9 (2002), available at <http://www.fbi.gov/about-us/cjis/ucr/leoka/2002>. The number of officers killed from 2003-2012 is taken from UCR, LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED & ASSAULTED 2012: TABLE 1: LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED: REGION, GEOGRAPHIC DIVISION, AND STATE, 2003-2012, available at http://www.fbi.gov/about-us/cjis/ucr/leoka/2012/tables/table_1_leos_fk_region_geographic_division_and_state_2003-2012.xls. For justifiable homicide data from 1976-2005, see JAMES ALAN FOX & MARIANNE W. ZAWITZ, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES 173 (2007), available at <http://www.bjs.gov/content/pub/pdf/htius.pdf>. For 2006-2012, see UCR, CRIME IN UNITED STATES 2010: EXPANDED HOMICIDE DATA TABLE 14: JUSTIFIABLE HOMICIDE: BY WEAPON, LAW ENFORCEMENT, 2006-2010, available at <http://www.fbi.gov/about-us/cjis/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10shrtbl14.xls> and UCR: CRIME IN THE UNITED STATES 2012: EXPANDED HOMICIDE DATA TABLE 14: JUSTIFIABLE HOMICIDE: BY WEAPON, LAW ENFORCEMENT, 2008-2012, available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2008-2012.xls. The NACJD also publishes yearly supplementary homicide reports containing justifiable homicides. See, e.g., FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING PROGRAM DATA: SUPPLEMENTARY HOMICIDE REPORTS, 2012 (2014), available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/studies/35023>. The NACJD's numbers differ from those published directly by the FBI on the Bureau's website. The NACJD justifiable homicide counts for 2008-2012 are 374, 411, 392, 399, and 426, while the FBI reports 378, 414, 397, 404, and 410 justifiable homicides for the same years. It is also important to note that the state of New York's justifiable homicides are not included in the UCR. This is additional evidence that data reporting the justifiable killing of civilians is less precise than that reporting killings of police officers.

any such distortion is to measure the trends in killing using the second year of reported deaths as the base—1977. This produces a modest decline in the long run trend in killings of police—a 69% drop after 1977 instead of 75% with the additional year. But the single year change in base from 1976 to 1977 has a much larger impact on the decline of killings by the police—the 49% decline in rate from 1976 levels becomes a 31% decline over 35 years when 1977 is the base year, and the very sharp drop in police deaths since 1977 (at 69%) is substantially more than twice the decline of civilian deaths (31% after 1977).

The magnitude of the drop in killings of police (either 75% or 69%) is well beyond declines over time in homicide risk for the general population, but is nonetheless plausible. An on-the-job homicide risk of 28 per 100,000 in 1976 was far in excess of civilian homicide rates in 1976 and twice the death rate for males from homicide that year (14.5 per 100,000).³ By 2012, the on-the-job homicide risk of a police officer, at 7.16 per 100,000, was 15% less than the annual homicide death rate for males in 2010's vital statistics (8.4 per 100,000).⁴ (The two rates are not strictly comparable because the general rate for men includes non-working events.) The sharp reduction in police death risk came during the era when Kevlar vests became a common precaution for urban police.⁵ While the number of police officers has increased in the last generation, the number of violent killings of police has dropped by more than half. Urban policing is a substantially less dangerous job in 2015 than in 1975.

The reduction in the rate of killings *by* police on the job has been much less dramatic. If 1977 is considered a statistically safer start date for trends over time, the 31% drop in the rate of justifiable killings by police is close to the magnitude of general decline in the homicide rate.⁶ There was certainly no equivalent of the Kevlar adaptation to exert any special downward pressure on killings by police after the mid-1970s and there is no short list of circumstances that has been shown to influence the rate of killings by police over time. The list of factors that might

³ See FOX & ZAWITZ, *supra* note 2, at 9, 49 (reporting that in 1976 the homicide rate for the general population was 8.8 per 100,000 population, while the homicide victimization for males was 13.6 per 100,000). The Center for Disease Control's numbers differ slightly for 1976, at 9.1 per 100,000 for the general public and 14.5 per 100,000 for males. See U.S. DEP'T OF HEALTH & HUMAN SERVICES, VITAL STATISTICS OF THE UNITED STATES 1976, 36 (1980), available at http://www.cdc.gov/nchs/data/vsus/mort76_2a.pdf.

⁴ Sherry L. Murphy et al., U.S. DEP'T OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL & PREVENTION, *Deaths: Final Data for 2010*, 61 NAT'L VITAL STATISTICS REPORTS NO. 4, 63 (2013), available at http://www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_04.pdf.

⁵ See Kenna Davis Quinet, David J. Bordua & Wright Lassiter III, *Line of Duty Police Deaths: A Paradoxical Trend in Felonious Homicides in the United States*, 6 POLICING & SOC'Y 283 (1997) (noting that declines in police line-of-duty deaths starting in 1971 may be at least partially explained by the "target-hardening" effects of the use of body armor). A 2003 article states that the 1965 invention of Kevlar had, by 2003, saved 2,749 police officers' lives. See Jon Swartz & Edward Iwata, *Invented to Save Gas, Kevlar Now Saves Lives*, USA TODAY (April 15, 2003, 10:17 PM), http://usatoday30.usatoday.com/money/world/iraq/2003-04-15-kevlar_x.htm.

⁶ See FOX & ZAWITZ, *supra* note 2, at 8.

influence police use of deadly force against civilians includes the rate of serious assaults against police, and perhaps also variations in the rate of serious violent crime, but we have been unable to find attempts to empirically test the impact of any of these potential motivating phenomena on killings by police. Any trends we try to tie to variations in killings by police are early and preliminary attempts to test undocumented influences on the use of deadly force. This difficulty is compounded by the fact that the published count of killings by police is incomplete, unaudited, and varies between sources; estimates say that these killings are underreported by as much as 20%.⁷

There has been one change in the legal and managerial framework for police use of force that might be expected to reduce the rate of justifiable killings by officers. The use of lethal force to stop a “fleeing felon” was a traditional policy in many departments that has been more recently curtailed by police managers and reinforced by signals from federal courts, including the Supreme Court in *Tennessee v. Garner*⁸ in 1985. As well, other restrictions have been imposed on the use of deadly force by courts and police administrators to prevent the commission of a crime that doesn’t itself put life at risk. So, the circumstances that support police use of deadly force have narrowed somewhat in the direction of requiring a threat to life of the officer or another citizen.

What has happened to the rate of serious assaults against police officers? The large drop in fatal assaults of police is not direct evidence that the rate of attacks has also declined that much because target-hardening strategies like protective vests will reduce the death rate per 100 serious assaults. The volume of attacks against police might have not changed much even if the deaths from such assaults had dropped substantially.

II. COMPARING THE INSTRUMENTS AND CIRCUMSTANCES OF POLICE AND CIVILIAN DEATHS

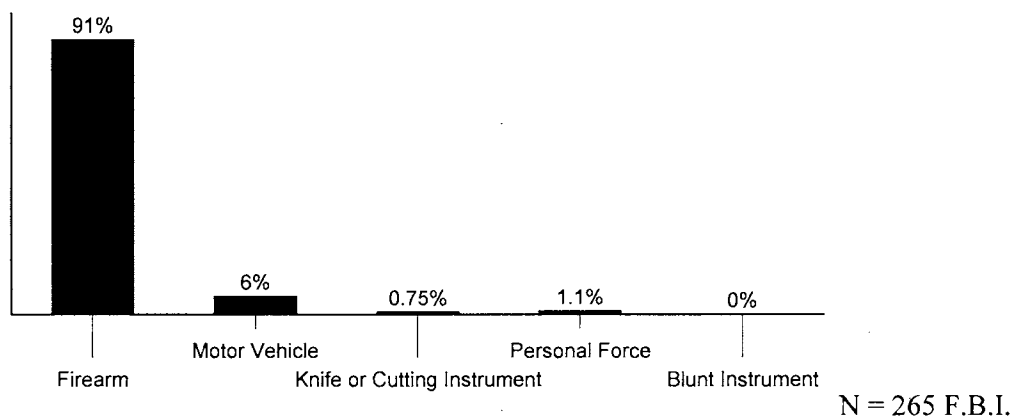
While current Uniform Crime Reporting collects and reports data on killings of and by the police, the data available on killings of police is much more substantial. Any attempt to draw comparisons between the two classes of cases must therefore contend with significant inequalities in availability of data regarding the killing of civilians. This data gap must be supplemented before meaningful comparisons can be made.

Figure 2 reports the weapons used in killings of police for the five-year period from 2008 through 2012.

⁷ See Rob Barry & Coulter Jones, *Hundreds of Police Killings Are Uncounted in Federal Statistics*, WALL. ST. J. (Dec. 3, 2014, 11:26 AM), <http://www.wsj.com/articles/hundreds-of-police-killings-are-uncounted-in-federal-statistics-1417577504>.

⁸ 471 U.S. 1 (1985) (holding that an arrest even one based on probable cause, constitutes an unreasonable seizure of the arrestee if unreasonable force is used to make the arrest).

Figure 2. Weapons Used to Kill Police Officers, 2008–2012 Where Weapon Reported.



More than 90% of all killings of police officers result from an attack with a firearm, and the only other significant fatal instrument in this five-year study was a motor vehicle. Several common weapons used in interpersonal violence have a near-zero presence in killings of police. Personal force and blunt instruments together account for 1.1% of all police fatalities, with three cases of the former and no cases of the latter in a five-year period. Knives and other cutting instruments, a major and dangerous instrument in many violent assaults, account for a total of two police fatalities in five years.

Table 1 compares the profile of causes of death in killings of police with the breakdown of criminal homicides of civilians in 2012, the most recent year included in the police killing survey.

⁹ See UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 27: LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED: TYPE OF WEAPON, 2003–2012 (2012), available at http://www.fbi.gov/about-us/cjis/ucr/leoka/2012/tables/table_27_leos_fk_type_of_weapon_2003-2012.xls.

Table 1. Weapon Use in Criminal Homicides (2012) and Killings of Police (2008–2012).

	All Homicides	Police Victims
Firearm	67.6%	91.3%
Knife	13.1%	0.75%
Blunt Objects	4.2%	0
Personal Force	5.8%	1.1%
Other Instruments and Not Specified ¹⁰	9.2%	6.8%
	100% (N = 12,765)	100% (N = 265)

Source:¹¹

Firearms account for a majority of all homicides but do not dominate the death statistics in general homicide the way that they do in police killings. Unlike killings of police, fatal attacks are spread over a wide variety of weapon types. The starkest contrast concerns knives and other cutting instruments, the second leading murder weapon in general homicide reports with 13.1% of total killings. For police victim killings, knives and cutting instruments play a minor role, responsible for two of 265 killings of police, less than 1% of police fatalities and a proportion of police deaths only 1/16th of the share of total homicides attributed to knives. Blunt objects and personal force cause 10% of civilian killings but 1% of police fatalities.

The comparative statistics in Table 1 show an important contrast and also suggest a cause for the divergent role of knives and blunt instruments in these two types of killings. The prominent role of knife and blunt instrument attacks in most general homicides suggests that cutting instruments and blunt objects are widely used in all sorts of violent attacks. And the even larger proportionate use of knives in aggravated assaults (18.74% in 2012)¹² confirms the widespread use of knives in violent assaults. This and the large volume of non-fatal assaults with knives of

¹⁰ For “All Homicides,” “Other Instruments” includes poison, explosives, fire, narcotics, drowning, strangulation, asphyxiation, and those homicides the FBI has classified as “other weapons or weapons not stated.” For “Police Victims,” “Other Instruments” involves only police officers killed with motor vehicles (16 total for 2008–2012) and bombs (2 total for 2008–2012).

¹¹ Column 1: UCR: CRIME IN THE UNITED STATES 2012: EXPANDED HOMICIDE DATA TABLE 8: MURDER VICTIMS BY WEAPON, 2008–2012 (2012), available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_8_murder_victims_by_weapon_2008-2012.xls. Column 2: UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 27, *supra* note 9.

¹² FBI reports 658,320 aggravated assaults in 2012, 123,344 of which were committed using knives or other cutting instruments. See UCR: CRIME IN THE UNITED STATES 2012: TABLE 15: CRIME TRENDS: ADDITIONAL INFORMATION ABOUT SELECTED OFFENSES BY POPULATION GROUP, 2011–2012 (2012), available at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/15tabledatadecpdf/table_15_additional_information_selected_offenses_2011_2012.xls.

police officers¹³ strongly suggests that the tiny death toll from knife attacks that is observed for police is not merely a result of the lack of people using these weapons against police but rather an indication that police are very unlikely to die when knives and clubs are used against them. This death rate from knives, blunt instruments and personal force is also wholly a function of limited police vulnerability when attacks happen. The limited data on assaults against police in the FBI system show substantial numbers of assaults with knives and other cutting instruments and hundreds of thousands of attacks with personal force.¹⁴ So the status of police officers as hard targets in conflict with attackers not only influences the rate at which police officers die in combat but also the weapons that we know are sufficiently destructive to put police at risk.

III. KILL RATIOS OVER TIME

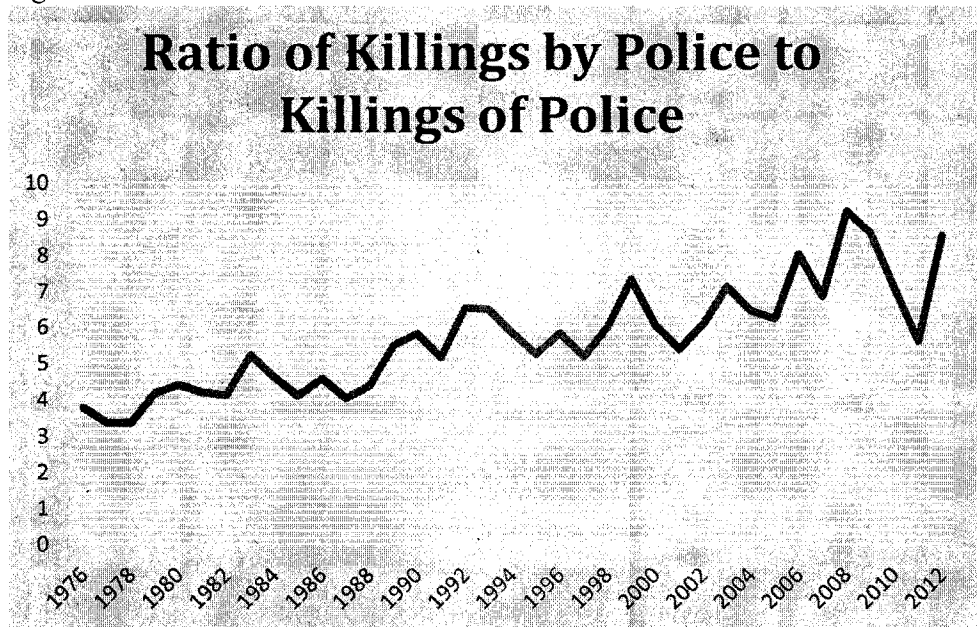
One further indication that police officers have always been relatively hard targets is the ratio of killings of police and by police when conflict occurs. While some data is collected on police who are non-fatally injured in conflicts, there is no count available in any national statistics of non-fatal wounds inflicted by police, so the most complete account of the consequences of police/civilian conflict are in the available data on deaths resulting from use of force against police and use of force by police.

The one constant contrast in comparing killings of police with killings by police is that killings by police always outnumber the killings of police by a ratio greater than three to one. There are two reasons for this lopsided ratio: The superior defensive and offensive capacities of police that make them harder to kill; and the wide range of circumstances where police are permitted to use deadly force—not only when the police officer is under attack but also when others are being attacked and to prevent serious violent crimes. Figure 3 shows the extent to which police kill more than they are killed by calculating a “kill ratio” of the number of police-caused fatalities divided by the number of police killed for each of the 37 years that the FBI gathered data prior to 2013.

¹³ Table 70 of the Uniform Crime Reports web report shows 893 knife assaults of police officers in 2012 compared to 2,259 firearms assaults. See UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 70: LAW ENFORCEMENT OFFICERS ASSAULTED: TYPE OF WEAPON & PERCENT INJURED, 2003–2012 (2012), available at http://www.fbi.gov/about-us/cjis/ucr/leoka/2012/tables/table_70_leos_asltd_type_of_weapon_and_percent_injured_2003-2012.xls (The five year total for knives for the years in which Table 70 reports two officer deaths was 4,658.).

¹⁴ *Id.* Blunt objects are likely included in “other dangerous weapons” which lists 7,341 attacks in 2012. *Id.* For the five-year period (2008–2012) in which Table 1 of this comment reports no officer deaths with blunt objects, there were 39,042 reported attacks and 9,081 reported officer injuries from “other dangerous weapons.” *Id.* For the five years (2008–2012) in which Table 1 of this comment reports three officer deaths from personal force assaults, there were 230,051 reported personal force assaults and 64,796 reported officer injuries. *Id.*

Figure 3. Ratio of Justifiable Homicides to Officers Killed.

Source:¹⁵

The yearly ratio of killings by police to killings of police varies from 3.4 killings by police for every killing of an officer (in 1977) to 9.2 killings by police for every fatality of an officer (in 2008) and the ratio increases markedly over time. The ratio of killings by police to killings of police averages 3.8 to one over the first five years of the FBI homicide program. By 2008–2012, the last five years reported in Figure 3, the average kill ratio has doubled to 7.8 civilian killings for every police fatality. But this substantial expansion in kill ratio is not a result of any increase in the absolute number of reported justifiable killings by police. The volume of such killings averaged 390 a year from 1976–1980 and 400 per year in 2008–2012. As Figure 1 illustrated the rate of killings by police per million population has actually declined over the past generation. So the expanding “kill ratio” in Figure 3 is completely a function of the dramatic drop in police deaths since the 1970s. Because the absolute volume of lethal violence by police officers has apparently not increased, the negative connotation that an increasing “kill

¹⁵ Information regarding the number of officers killed from 1976–1998 is taken from BROWN & LANGAN, *supra* note 2. Information regarding the number of officers killed from 1999–2002 taken from UCR: LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2002, *supra* note 2. Information regarding number of officers killed from 2003–2012 taken from UCR: 2012 LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED: TABLE 1, *supra* note 2. For information regarding justifiable homicides by police from 1976–2005, see FOX & ZAWITZ, *supra* note 2. For 2006–2012, see UCR, 2010 CRIME IN THE UNITED STATES, EXPANDED HOMICIDE DATA TABLE 14, *supra* note 2 and UCR, 2012 CRIME IN THE UNITED STATES, EXPANDED HOMICIDE DATA TABLE 14, *supra* note 2.

ratio” invites might seem completely unjustified.

But perhaps the expanding kill ratios in Figure 3 are an indication of increasing levels of deadly force by police when measured against the threat to police safety. Statistical stability in killings by police might generate legitimate cause for concern if the circumstances where deadly force is necessary to defend against a deadly assault have dropped off substantially. If killings of police are a reliable measure of the necessity for lethal self-defense by police, the sharp drop in the death rate of police and the expansion of the “kill ratio” it produces are cause for concern. Much more detail about the nature of the circumstances that provoke deadly force from police will be necessary to push this question closer to a resolution. The available statistics from the FBI on this question are not sufficiently detailed or audited to stand alone on these issues but what is now known about truly lethal threats to police in the United States provides disturbing evidence that killing persons without firearms is generally not necessary to prevent an officer’s death or life threatening injury.

IV. CIRCUMSTANCES THAT GENERATE KILLINGS BY POLICE

There are a number of reasons why the FBI’s uniform crime reporting program and the supplementary homicide reports program which this study is using does not report in great detail about justifiable killings by police or the circumstances that produced them. The UCR is centrally a crime report and the assumption of the police agencies that provide data on killings by police and of the FBI itself is that these events are *not* crimes. And while most other events in the supplementary homicide reporting program are Part I offenses collected and audited by the Uniform Crime Reporting Programs, these justifiable events are not audited or analyzed in the UCR reports, perhaps simply because the agency doesn’t regard such events as crimes.

To get some detail on the circumstances that produce killings by police officers, the junior author of this study analyzed Wikipedia press records for reports of killings by police.¹⁶ For 2012, 589 events were found in the Wikipedia

¹⁶ The Wikipedia page is titled “List of killings of law enforcement officers in the United States” and states openly that the list contains killings “whether in the line of duty or not, and regardless of reason or method. Inclusion in the lists implies neither wrongdoing nor justification on the part of the person killed or the officer involved. The listing merely documents the occurrence of a death.” See *List of Killings of Law Enforcement Officers in the United States*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_killings_by_law_enforcement_officers_in_the_United_States (last visited Dec. 30, 2014). This page does not aggregate killings or identify them as justifiable or unjustifiable; rather, it lists persons killed by on and off-duty officers, regardless of circumstance, and includes the date, name, city, state, and a brief description of the incident. We applied the definition of “justifiable homicide” used by the FBI: the killing of a felon by a peace officer in the line of duty. See FED. BUREAU OF INVESTIGATION, U.S. DEP’T OF JUSTICE, UNIFORM CRIME REPORTING HANDBOOK 17 (2004), available at <http://www2.fbi.gov/ucr/handbook/ucrhandbook04.pdf>. Using this definition, all the killings listed were narrowed into 504 “justifiable homicides.” As of January 2, 2015, the number of total justified killings listed for 2012 had increased to 595. Given the nature of the source, minor changes in total killings listed is not surprising. We acknowledge the severe limitations in this method of data collection, but assert

search, 179 more than the 410 events counted by the FBI. However, the Wikipedia press records include both justifiable and unjustifiable, line-of-duty and non-line-of-duty killings. Using the UCR's definition of justifiable homicide as "the killing of a felon by a peace officer in the line of duty," we narrowed down the 589 total deaths to 504 apparently justifiable homicides. We could not match the accounts of particular cases in the FBI and Wikipedia sources and thus have no idea of why the difference in totals, or even whether wider discrepancies would be found if we could match FBI and Wikipedia case reports.¹⁷ So our analysis here is a very rough and imprecise adventure, and any analysis resulting from it should be regarded carefully.

With all its flaws, however, the reports we found provide strong evidence that the major provocation of killings by police officers is the threat of assault against the responding officer, another officer, or a civilian. The dominant provocation in the Wikipedia accounts was a violent assault on the officer by the person killed. In 411 of the 504 accounts the officer or officers who used deadly force were the target of an assault, accounting for 82% of all cases. In 33 cases (7%), another police officer was the target of an assault and in 40 cases (8%), a non-police civilian was the target of the attack. For 2012, Supplemental Homicide Reports accessed via the NACJD report 426 justifiable homicides, 16 more than were reported directly by the FBI in the UCR.¹⁸ Of these 426, 252 (59%) are coded as "felon attacked police officer," 32 (8%) are coded as "felon attacked fellow police officer," and 15 (4%) are coded as "felon attacked a civilian." Depending on the use of the NACJD data or the admittedly haphazard Wikipedia data, between 71% and 97% of all killings by police were provoked by a violent assault.

Despite imprecision in these numbers, the potential significance of weapon-specific kill ratios over time seems clear. If the dominant motive for deadly force by police officers is self-defense, a stable number of self-defense killings during an

that this is further proof of the need more a more comprehensive reporting method for killings by police.

¹⁷ Again, some discrepancy could be due to the fact that Wikipedia reports include New York deaths, whereas FBI data does not. From our count, 14 of the 504 Wikipedia justifiable homicides occurred in the state of New York in 2012. This still leaves a large discrepancy which, without the ability to precisely match Wikipedia accounts to specific instances in the UCR dataset, we cannot explain.

¹⁸ The number of total justifiable homicides as reported in Supplementary Homicide Reports in the NACJD are different than those published directly by the FBI in its CRIME IN THE UNITED STATES report. The former lists the number of justifiable homicides as 374, 411, 392, 399, and 426 for the years 2008–2012, while the latter lists 378, 414, 397, 404, and 410 for the same years. See UCR: Crime in the United States 2012: EXPANDED HOMICIDE DATA TABLE 14, *supra* note 2. See also FED. BUREAU OF INVESTIGATIONS, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: SUPPLEMENTARY HOMICIDE REPORTS (2008–2012), available at <http://www.icpsr.umich.edu/icpsrweb/NACJD/series/57/studies?q=Supplementary+homicide+reports&archive=NACJD&paging.startRow=1>. The NACJD, hosted by the University of Michigan, publishes FBI data, yet there is a discrepancy between the numbers published of justifiable homicides published at each source. The source of this discrepancy is also unknown. Neither source contains New York data.

era when the officer's risk of a violent death drops by 70% is both a puzzle and a concern.

Related to the shift in kill ratios explored in Figure 3 is the fragmentary data we were able to assemble from Wikipedia reports of 2012 killings by police on the nature of the threat that was reported to have produced a fatal attack from the police. We attempted, with only limited success (and no method of quality control) to establish in the stories we reviewed the weapon used in the attacks against police that led to killings by police. Table 2 provides a profile of the firearm and knife assaults reported in the Wikipedia accounts.

Table 2. Weapon Used in Gun and Knife Assaults against Police that Produced a Fatal Response, 2012 Wikipedia Survey.

Firearm	73.3%
"Possible Firearm"	7.4%
Knife ¹⁹	18.5%
"Possible Knife"	0.9%
	100% (352 attacks measured)

Source:²⁰

The survey that produced Table 2 searched only for mentions of guns and knives and of course we have no way of confirming the accuracy of reports. But the pattern in Table 2 provides an interesting contrast with the data we reported in Table 1 on the use of weapons in homicides of ordinary citizens and the use of weapons used in killings of police officers. When a weapon causes death in attacks against either civilians or police officer, the cause of death has been confirmed so there are no classifications of "possible gun" or "possible knife" in homicide statistics.²¹ But the ratio of gun attacks to knife attacks that provoke a lethal response from police is just over four to one, much closer to the ratio of

¹⁹ In this category we included not only knives but all cutting instruments, including machetes, swords, hatchets, etc.

²⁰ *List of Killings by Law Enforcement Officers in the United States, 2012*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_killings_by_law_enforcement_officers_in_the_United_States_2012 (last modified Dec. 7, 2014, 4:00 PM). See *supra* note 17 for a description of how killings from the Wikipedia article were coded as "justifiable." For those killings we interpreted as justifiable, we then coded according to what weapon was used by the victim that produced a fatal response. From the authors' examination of the description of each killing, 352 of the 504 victims of justifiable homicides were killed for threatening with guns, knives, or possible guns or knives. See *infra* note 22 for further description of the method of coding.

²¹ We identified "possible gun" and "possible knife" scenarios from Wikipedia as those circumstances in which the victim was killed for *potentially* having a gun or knife; i.e., reaching into a waistband, reaching beneath a car seat, or police seeing a flash of metal. We also included in this category those circumstances in which the victim was killed for reaching for an officer's weapon, because there was a *possibility* that the victim could have accessed the service weapon although they had not yet done so.

knives used in general homicide (67.6% gun to 13.1% knife, or just over five to one) than to the ratio of knife killings as a proportion of all fatalities inflicted on police (less than 1%).

The estimates from Table 2 provide evidence on two issues. First, the percentage of knife attacks provoking the killings by police was much higher (18.5% versus .75%) than its prevalence in killings of police, so it appears that knife attacks are much more frequent when police kill compared to the tiny fraction of police killings by knife. The second inference from the comparison of the low frequency of knife assaults in killings of police is that the 68 knife or possible knife assaults that produced the assaulter's death were unlikely to have killed a police officer. Attacks that very rarely kill police officers nonetheless elicit lethal force from responding officers. This is also the case for assaults against police which involve blunt instruments and personal force. It is probable that more than 100 killings by police each year involve attacks that do not pose a risk to the officer's life.

It could be argued, however, that the low likelihood of a police officer's death from knife and blunt instrument attacks depends on the officer's willingness to shoot and kill that produces about 100 civilian deaths a year in the United States. Yet this seems unlikely on available statistics for two reasons. First, there were only two officer deaths from knives in five years in the United States and these two situations involved an officer alone and a concealed knife at short range rather than the visible brandishing and rushing toward an officer that is more typical in reported knife assaults. So the typical knife and blunt object attacks approaching an officer produced no deaths from 2008 through 2012. What makes this almost complete lack of fatal outcome significant is the high volume of assaults reported by police agencies during the five years beginning in 2008. The volume of knife assaults each year in the period averaged more than 900 and the volume of assaults with "other dangerous weapons" each year exceeds 7,800.²² The total death rate from knife assaults over the period was one per each 2,300 reported knife assaults.

The death rate per 100 gun assaults of a police officer at just under 2% of the assaults is more than 40 times higher than the knife rates.²³ There were no deaths during 2008–2012 from "other dangerous weapons." Yet more than 99% of the knife and other weapon assaults that were reported between 2008 and 2012 did not provoke a lethal response.²⁴ Assaults with knives and blunt instruments generate very low fatality risks for the officer whether or not a lethal response from the officer occurs.

There is a vast amount that we don't know about these cases because there are no officially collected data to consult. The only two cases found of police death

²² UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 27, *supra* note 9; UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 70, *supra* note 13.

²³ UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 27, *supra* note 9; UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 70, *supra* note 13.

²⁴ UCR: LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED 2012: TABLE 70, *supra* note 13.

from knife attacks were situations where the officer was alone with the attacker. How often was this true in the cases where the police killed the assaulter? What are the circumstances when police use force—how many shots are fired over how long a period? We don't know and we should find out. All of this is important data on official conduct that generates hundreds of killings a year.

The data currently reported on the race and ethnicity of the persons killed by police officers provides another indication of the promise as well as the current limits of national statistics on killings by police. A central issue in public concern about killings by police is the apparent concentration of minority males as the victims of these encounters. Table 3 reports the victim's race for killings in the supplemental homicide sample for 2011 and 2012.

Table 3. Race of Persons Killed by Police in 2011 and 2012.

	Killed by Police	U.S. Population, 2010 Census
Black	38%	12.6%
White and Other	62%	87.3%

Sources:²⁵

The concentration of lethal events among Black victims is about three times the proportion of Blacks in the U.S. population but the available data indicates that a substantial majority of victims are not Black. The proportion of victims within the "White and Other" category who are Hispanic cannot be estimated from current data because the ethnicity of victims is not reported for a large number of the killings.

There are a number of reasons why the 38% figure in Table 3 is not a reliable measure of the concentration of lethal events among racial and ethnic minorities. A number of major population centers don't report to the Supplemental Homicide Reports, and even reporting states' data varies significantly between different reporting systems, such as the Supplemental Homicide Report and the National Vital Statistics System.²⁶ There is no decent estimate of Hispanic victims and there is no auditing of submitted reports to assure the accuracy of the classifications by local police agencies. Reliable data on the characteristics of people killed by police is important but unavailable.

²⁵ FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS: SUPPLEMENTARY HOMICIDE REPORTS (2011 and 2012), *available at* <http://www.icpsr.umich.edu/icpsrweb/content/NACJD/guides/ucr.html>; U.S. CENSUS BUREAU, 2010 CENSUS BRIEFS: OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 4 (2011), *available at* <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

²⁶ Klinger, *supra* note 1, at 81–82.

V. ASYMMETRY IN VIOLENCE BY AND AGAINST POLICE

This survey has encountered two empirical asymmetries in the assessment of fatal force against and by the police.

The first and most important asymmetry is a procedural matter. Data on the violent deaths of police are carefully collected and reported. Data on the much larger numbers of killings by the police has not been carefully collected and thus cannot be usefully analyzed.

Why are killings by the police important? They are the most extreme use of force by agencies of government in the United States and much more common than any other lethal force from government in a domestic setting. The 400 to 500 killings by police each year are about 10 times as many fatalities as current rates of execution and five times the peak rate of executions in the modern era. Killings by police officers outnumber the total number of reported “justifiable killings” by all other citizens so that the rate of killing per 100,000 police in the United States each year is about 600 times the rate of justified killings by non-police. So the risk of using lethal force is concentrated among police officers, but the governmental units these officers report to are decentralized, consisting of literally thousands of municipal, county and state law enforcement agencies. The decentralized nature of policing means that large variations in levels of violence, in training of police, and in police use of deadly force might exist and not be known.

Each killing by a police officer in the United States is an important event that can provide information about the nature and quality of police training as well as the nature of police management. Detailed information is needed on the circumstances justifying the use of deadly force and the methods used to investigate those circumstances. Detailed information also needs to be collected on the circumstances of the force used by police—how many police were present, how many shots were fired, how many wounds were inflicted? If the initial use of deadly force was justified, was there also an evaluation of whether the attack by police went on after the initial justifying force had abated.

If a national profile of police use of deadly force is required, the FBI Uniform Crime Reporting Section is the logical office for collecting such data and it should probably be the responsibility of the subsection of that office that compiles the Supplementary Homicide Reports. The federal Department of Justice has a strong regulatory presence in oversight of local police agencies under section 14141 of the Crime Control Act of 1994.²⁷

The rate of lethal force in a local police agency is an important indicator of a local agency’s capacity to train and investigate deadly force by officers. And a clear statistical profile of levels of police use of force and its circumstances can help local departments compare their performance against other departments.

²⁷ Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (1994). See *Conduct of Law Enforcement Agencies*, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/crt/about/spl/police.php> (last visited Jan. 6, 2015).

There is also an important advantage in having the same agency and statistical program collect data on lethal force against police as well as by police. The most important method of evaluating what kinds of circumstances should justify lethal force by police is a detailed look at which types of attacks lead to killings of police. One critical question in evaluating whether deadly force by an officer is warranted is whether the same type of assault against an officer that provoked a killing also frequently led to the death of a police officer. If so, the use of deadly force seems easy to justify. If not, the issue of whether such force was necessary is much more difficult. An obvious example of this is the data presented in the previous section on the weapons that kill police officers. More than nine times out of ten, a firearm is the cause of an officer's death. The danger to life of a loaded gun compared to other weapons is evident in the aggregate weapon-specific data on killings of police. In the next section of this essay we will discuss the impact of statistics that show much lower death rates in knife and other attacks against police. But whether the proportion of officer deaths is high or low, our point here is that having good data on both deaths of police and the deaths that police cause provides valuable comparisons on the justification of violence by police.

But much richer detail than just the weapon used in an attack against a police officer is necessary for the most useful judgments about the extent to which a deadly police response is necessary and desirable. One important detail (missing now from both killings of police and killings by police) is whether the officer was alone or with other police. The larger the police presence, the larger the number of counter-force options might be available instead of extensive gunfire. The larger the number of potential attackers present at the scene, the greater the threat to the officer. The better the detail about the circumstances of lethal force, the more informed can be an assessment of whether and to what extent the police needed to use lethal force.

But the United States of 2015 is a nation in which no confirmed details exist on the hundreds of killings each year that are classified as justifiable by police. Wikipedia is a wonderful resource in the modern world but it is a very inadequate foundation for policy analyses about whether and how a substantial number of killings by police can be safely avoided. A carefully collected and detailed reporting of killings by law enforcement is long overdue as a program of the FBI. Just as that agency now reports on levels of police employment and other collective characteristics of law enforcement in the United States, the life and death details of police force are a high priority for national reporting.

VI. AN ISSUE OF SUBSTANTIVE ASYMMETRY

The data we report in this paper does suggest that reductions in the use of deadly force when knives, blunt objects, and personal force threaten the officer can save lives at minimal risk to police.

For most questions of law enforcement and empirical criminology, the classification of weapons as deadly or not is an issue of general application. If the

issue is whether knives and other cutting instruments should be considered a deadly weapon, it is usually assumed that a single answer to that question should provide clear guidance across a wide variety of different contexts. But Table 1 presented earlier in this analysis suggests that knives represent a very different threat to citizens than to police officers in uniform. Knife and cutting instruments produced 13.1% of all civilian deaths in 2012 and are the second leading cause of death in American criminal homicide. If a citizen is attacked with a knife, the appropriate legal and policy result would be to consider the knife a deadly weapon and to privilege the citizen's response accordingly. But Table 1 also shows that knives kill police officers in only a small number of cases, 0.75% of all killings of police and 1/15th the proportion of general homicides. This is a different context for considering how much force police should use in response to "man with a knife" settings and when police should stop shooting in such cases if they start. This is particularly true if the police officer under attack is not alone when he or she is in peril. (The only two killings of police with knives in the five years after January of 2008 occurred when the officer was alone.)

A more thorough analysis of the proper response to police being threatened with knives and blunt instruments requires exactly the kind of data that is currently not collected when police kill. Those who make policy for police could do their jobs much more effectively with an accurate portrait of when police officers kill and why.

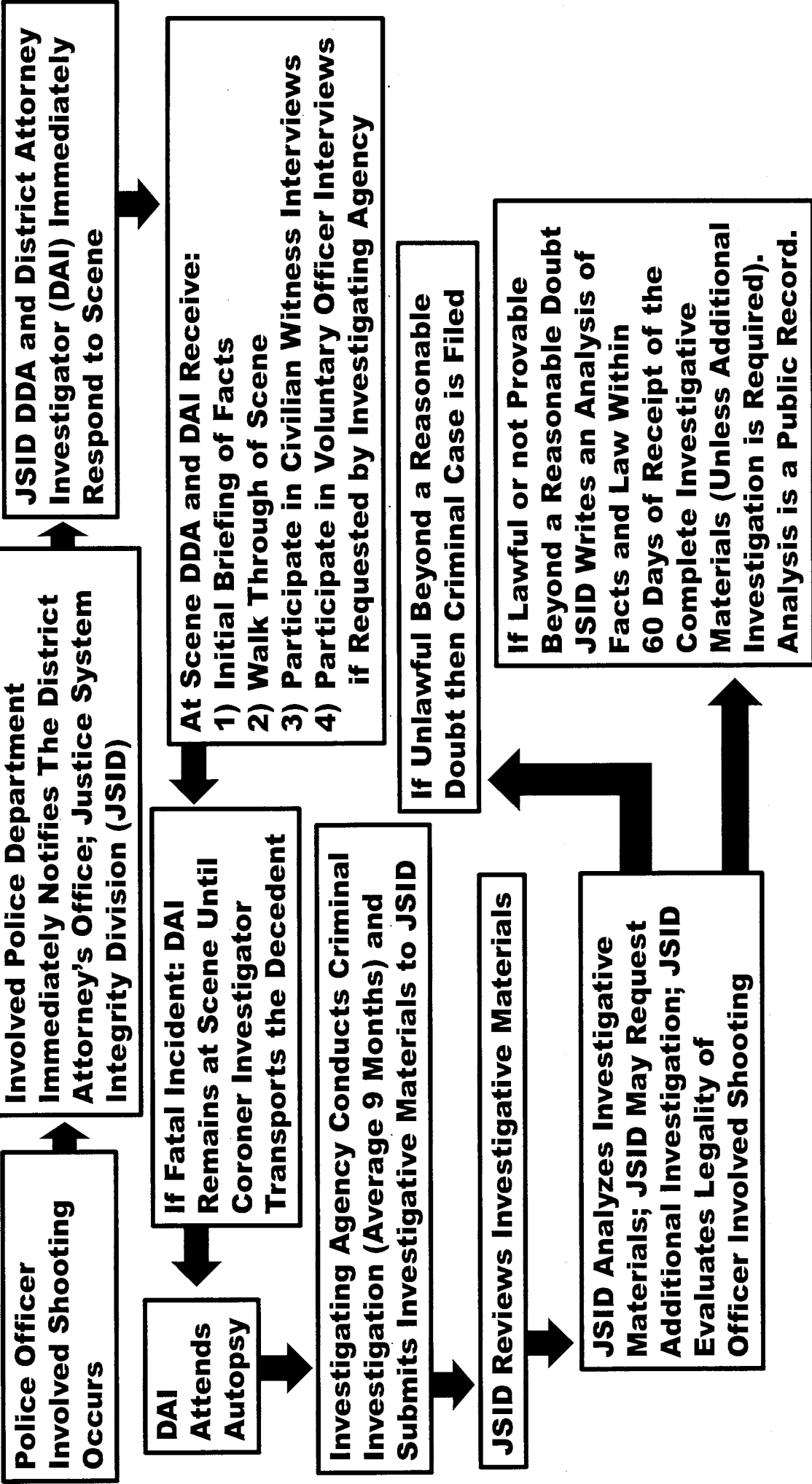
A final note concerns the provenance of the methods used in this analysis. The use of weapon specific death rates from assault in this analysis continues a series of empirical studies that analyzed the importance of the instruments of violence in determining the outcome of attacks.²⁸ The current study adds a new dimension to this set of "instrumentality" studies by showing that the character of the victim of assaults can be a major determinant of the likelihood of a fatal outcome. We hope that this analysis will suggest the value of the approach and motivate the improvement of the data available on killings of and by police so that empirical data can facilitate the protection of both police and citizens.

²⁸ See, e.g., Frank Zimring, *Is Gun Control Likely to Reduce Violent Killings?*, 35 U. CHI. L. REV. 721 (1968); Franklin E. Zimring, *The Medium is the Message: Firearms Caliber as a Determinant of the Death Rate from Assault*, 1 J. LEGAL STUD. 97 (1972); Franklin E. Zimring & James Zuehl, *Victim Injury and Death in Urban Robbery: A Chicago Study*, 15 J. LEGAL STUD. 1 (1986).

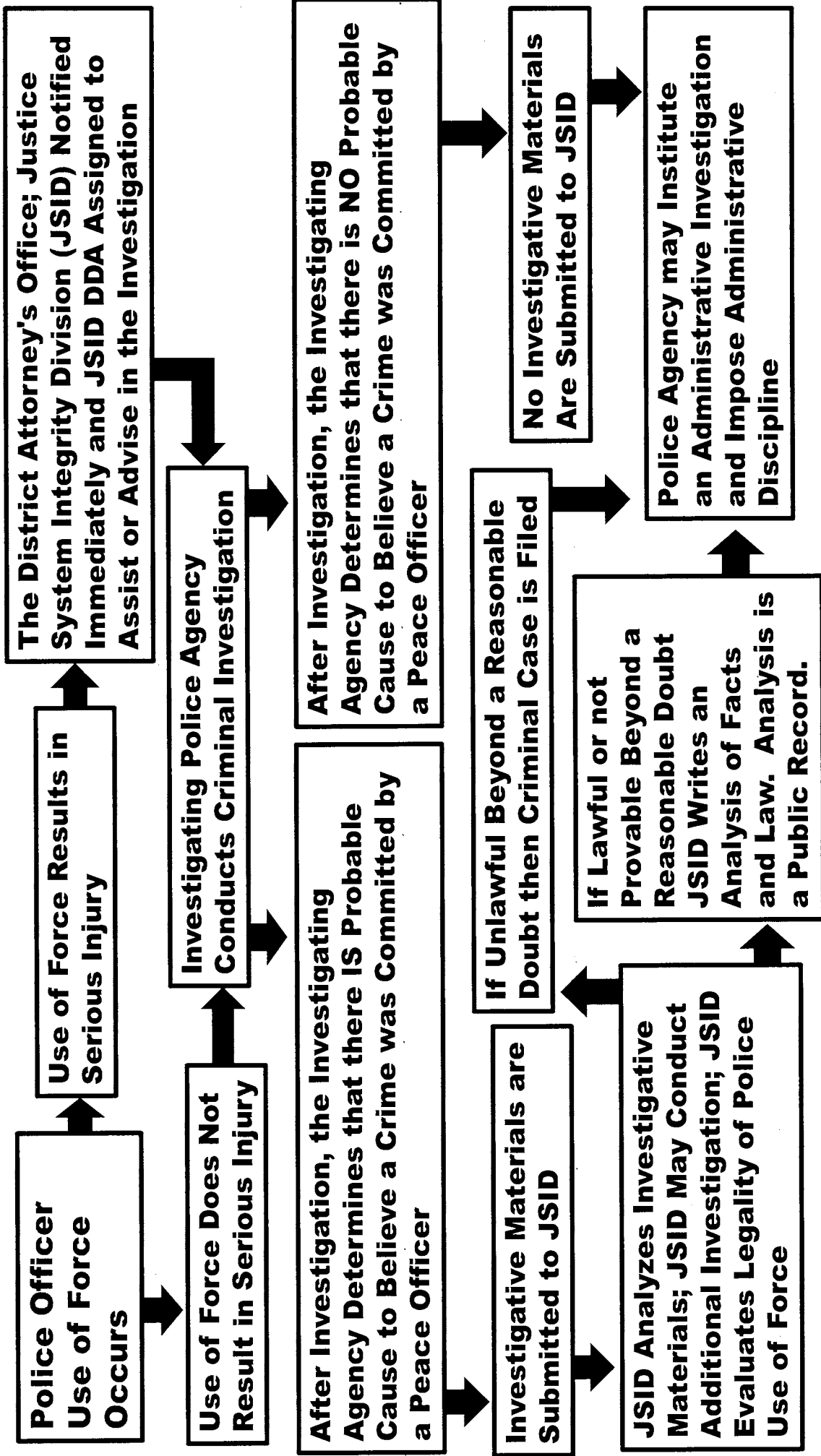
**INVESTIGATING AND
PROSECUTING ALLEGATIONS OF
OFFICER MISCONDUCT IN
CALIFORNIA**

**FLOW CHARTS PROVIDED BY
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ATTORNEY'S OFFICE**

Flowchart



Flowchart



***SO FAR, SOLUTIONS TO POLICE
KILLINGS FALL SHORT OF
NEEDED REFORMS***

**(WRITTEN BY PETER BIBRING; PUBLISHED IN THE
SACRAMENTO BEE)**

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So far, solutions to police killings fall short of needed reforms

BY PETER BIBRING - SPECIAL TO THE BEE

01/11/2015 4:00 PM | Updated: 01/12/2015 12:00 AM



Protesters chained together block the intersection in front of the Oakland police headquarters last month to express their anger at recent police killings in Ferguson, Mo., and New York. BEN MARGOT / THE ASSOCIATED PRESS

Californians are now paying a great deal of attention to policing. While protesters march in the streets and community leaders call for change, lawmakers in Sacramento and Washington, D.C., are trying to find policy solutions.

While there's broad agreement that change is needed, no consensus has emerged about what should be done. That's because the challenges we face are too big for one or two quick fixes. The solutions offered so far are important but fall far short.

Federal legislation to track officer-involved killings is long overdue. But the version enacted last month collects only minimal information, and excludes all information about the officers involved and any specific facts about the encounter, such as a subject's mental illness or language barriers.

Knowing the total number of people killed by police each year is important. But if we are actually going to take steps to prevent police killings, we need to know much more.

Having independent prosecutors make decisions about when police officers should be criminally charged for misconduct also makes sense. Those decisions shouldn't be made by district attorneys who work on a daily basis with officers. But it's also not enough. While the criminal system can protect against the most egregious violations, we need to improve accountability for the much more frequent violations of policies or legal standards that don't rise to the level of criminal prosecutions.

Body cameras for police hold significant promise for improved transparency – letting the public know what really happened, so we can tell whether the system effectively holds officers accountable. But what good are body cameras if the public doesn't have access to video of questionable encounters? Or if the public never knows whether officers were disciplined? Unfortunately, current California law likely allows police to keep that important information secret. That's one broad problem we should address.

California has one of the nation's most restrictive laws for public access to information about police officer misconduct. State law bars disclosure of all police personnel records – a restriction that prevents the public from finding out which officers have engaged in serious misconduct. What's more, courts and police agencies have interpreted that confidentiality broadly to cut off public access to nearly all information that might be used in personnel decisions, including internal affairs investigations and hearings on civilian complaints.

Under California law, civilians who file complaints against officers find out little about what happens next. To avoid violating state law, departments often don't disclose even whether the officer was found to have violated policy, much less exactly what policy the officer violated, what kind of discipline resulted, or any explanation of why the department reached the result it did.

Laws in most other states allow much more transparency. In Florida, Kentucky, Texas and Utah, records are public when the department determines that an officer violated policies or engaged in misconduct. Other states – including Connecticut, Georgia, Louisiana, Michigan, Minnesota and Washington – make records of all misconduct investigations public regardless of the outcome.

Even in California, disciplinary records for public employees who are not peace officers are generally public. So are allegations of misconduct, so long as the alleged misconduct is not trivial and there is reasonable cause to believe the accusation is well-founded. Only when it comes to police is everything about an employee's conduct secret.

Police officers interact with the public, are paid with public funds, and, occasionally, receive complaints from the public. The public should have a right to know about these complaints, as there is for all other public employees.

In addition to transparency, we also need to address the racial disparities endemic in our criminal justice system – including the higher rates at which African Americans and Latinos are stopped, searched and subjected to force; and the significantly higher rates at which they are incarcerated. California law nominally bans racial profiling, but under such a convoluted definition that the law has limited use.

The state should bar the use of race in all discretionary police decisions, other than describing suspects, consistent with new federal standards. To enforce that ban, we should require uniform, statewide tracking of police stops – information on who is stopped, when, where and by which officers, and what happens during the stop (whether evidence is discovered or someone is cited or arrested, plus detailed information on use of force). And we must analyze that data to let the public know what disparities exist and to help police departments reduce them.

For all Californians to have faith in law enforcement, we need to know that allegations of serious misconduct are appropriately addressed and that departments are actively working to end racial disparities.

Peter Bibring is director of police practices at the American Civil Liberties Union of Southern California.

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UNRESOLVED CHALLENGES**

**PROJECT CEASEFIRE:
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Operation Ceasefire and the Safe Community Partnership

Over the past 15 years, numerous cities across the country have successfully reduced relatively high rates of gang and youth gun violence through a strategy that brings together – and assigns specific roles to – criminal justice agencies, organizations that provide employment training and placement, social service agencies, community and faith leaders, and gang outreach programs. Operation Ceasefire was instituted in Boston, Chicago, Cincinnati, and Indianapolis and these cities achieved reductions in gun homicide of 25 to over 60 percent and, here in California, Stockton reduced gun homicide by more than 43 percent between 1998 and 2001. This strategy, based upon extensive research and experience, has evolved from a primary focus on deterring serious gang and youth gun violence, to a comprehensive approach that combines deterrence with workforce training, employment, and other services.

The Operation Ceasefire model is being used in California under the program name Safe Community Partnership (SCP). The SCP is a partnership among the Governor's Office, private funders (including the California Wellness Foundation, the California Endowment, and Kaiser Permanente, Community Benefits, Northern California Region), the Public Health Institute, and six California cities (Modesto, Stockton, Oakland, Salinas, Oxnard and Union City). These partners are working together to implement an evidence-based, data-driven approach designed to reduce serious gang violence in the near term and on a community-wide level. In addition to Oakland and Salinas in the Northern District, East Palo Alto, Richmond and Union City have been added to the Safe Community Partnership/Operation Ceasefire program.

The U.S. Attorney plays an integral role in the program. The U.S. Attorney's office has Assistant U. S. Attorneys assigned to these efforts -- attending Working Group meetings, helping devise strategies and participating with the FBI and ATF in gang "call ins" to deliver the law enforcement message. In addition, the Assistant U.S. Attorneys work closely with the individual District Attorney's offices in deciding which cases would have most impact under federal prosecution.

As part of the comprehensive program, each selected city must implement a strategy based on partnering, planning, and implementation to reduce its relatively high rate of gang and youth gun violence. This involves several steps:

Analyzing of the dynamics of local gun violence: A city will collect and analyze basic data on gun violence, including the geographic location of violent incidents, demographic information on individuals involved in gun violence, and patterns of gang violence. This data will be used by the working group (described below) to design its strategy.

Organizing a working group that will design and implement the local strategy: A city will organize a working group that includes representation from public and private employment training and placement providers, criminal justice agencies (including District Attorney's office, Police Department, Sheriff's Department, and Probation Office, and the U.S. Attorney), community leaders, gang outreach workers, and public and private social service agencies that serve youthful offenders, youth at risk of violence, and gang members. Drawing on the data analysis above, each working group will design and implement a local strategy that includes: (a) directly communicating a violence prevention message to the gang members and youth most likely to commit gun violence, (b) linking these gang members and youth to training and employment opportunities, and (c) coordinating law enforcement efforts.

Communicating directly with the gang members and youth most likely to commit gun violence: A city will communicate directly with selected gang members and young people. This is accomplished primarily at group meetings known as "call ins" or "forums," attended by representatives of the working group and the particular gang members and young people. At these meetings, the working group will set forth a two-part message: (a) gun violence must stop immediately or criminal justice agencies will intervene quickly and forcefully against those responsible; and (b) the group is there to support the gang members and youth with intensive services and employment.

Connecting gang members and young people to employment opportunities: Each city will strengthen its capacity to place the gang members and young people identified as most likely to commit gun violence in quality employment opportunities. This includes providing social services, "soft skills" training, ongoing support (such as mentoring and mutual support programs), and job training and placements.

Building a strategic law enforcement partnership: An essential component of this approach calls for criminal justice agencies to focus their enforcement efforts on the relatively small group of gang members and young people who "drive" gun violence as determined by the problem analysis described above – particularly to the extent that these gang members and young people disregard the message to cease gun violence.

**COMMUNITY SAFETY
PARTNERSHIP: LOS ANGELES
POLICE DEPARTMENT**

LAPD husband, wife to be honored at State of the Union

By VERONICA ROCHA AND KATE MATHER

JANUARY 20, 2015, 12:52 PM

It wasn't long ago when children attending the 99th Street Elementary School in Watts feared police so much they'd run at the sheer sight of a uniformed officer, sometimes screaming, "They are going to arrest us."

When LAPD Capt. Phil Tingirides, commanding officer of Southeast Division, and his wife, Sgt. Emada Tingirides, picked up the challenge of improving relations, they knew it would take a monumental effort to change generations of conditioning and attitudes toward police.

For years, police had been trying to reduce neighborhood crime in Watts by arresting their way out it. But Tingirides says that technique "just wasn't working."

In a mission to work closely with community leaders and its residents, police tried a different approach: fewer arrests, more relationship building.

Now their efforts are about to be recognized on a national level.

The couple has been invited to attend President Obama's State of the Union address Tuesday night in Washington, D.C., where they will be honored for their work with the Community Safety Partnership program.

The couple said they were overjoyed by the invite from First Lady Michelle Obama, calling it a "high honor."

But mostly, they said, the recognition is a boost for the community, which diligently worked alongside officers to better police relations.

"This is not just about LAPD," Capt. Tingirides said. "This is about partnerships with the community."

LAPD Chief Charlie Beck told reporters Tuesday that he was "very, very proud" of the Tingirides' invite, calling the captain and sergeant "a great

representative of the city of Los Angeles and what's going on here.”

“This is a national stage right now. Police legitimacy, public trust, police-community relations are all at the forefront of everybody's thoughts right now,” he said.

“Even though we have much to do in L.A., we have done a lot,” Beck said. “And to recognize that, the president's recognition of that, is very gratifying.”

The city's housing authority gave the LAPD \$5 million in 2011 to create the program. Focusing on some of South L.A.'s toughest housing developments, officers worked alongside residents and community members to repair frayed relationships.

Capt. Tingirides first attended a Watts neighborhood meeting more than eight years ago, and learned how deep frustrations and feelings of hopelessness ran.

“I was getting my butt handed to me,” he said.

So, he said he decided just to listen as residents expressed their frustration. Gradually, he said, he realized the anger wasn't necessarily directed at him, but directed toward the uniform he wore.

“There is a lot of good people in Watts and South L.A.,” the captain said, “and good cops that want to make a difference.”

Violence has dropped, Beck said. One of the developments, Jordan Downs, didn't see a homicide for three years.

The officers help settle neighborhood disputes and lead a Girl Scout troop of about 150. Tutoring was established and a track team was created. A college scholarship program was formed.

Then, the Watts Bears – a football team of children ages 9 to 11— did the unthinkable: banded residents who otherwise would have been foes.

On the football field, gang lines were ignored. It was about the game, he said.

“Watts has turned itself around,” the captain said.

That approach would eventually work to help repair relationships between police and residents.

“It used to be no one wanted to be from Watts,” he said. “Now, everybody wants to be from Watts.”

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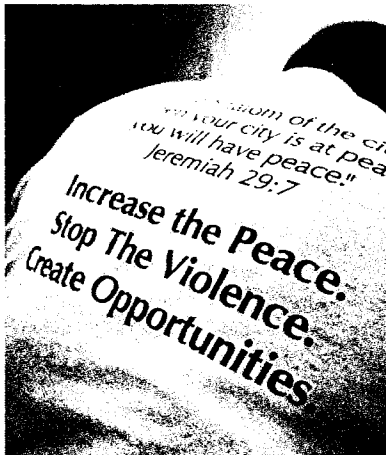
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**PICO CALIFORNIA:
CREATING STRONG AND SAFE
COMMUNITIES**

Creating Strong *and* Safe Communities



COMMUNITY MATTERS

► "It has been my experience that only a process that has a strong community component will yield the historic reductions in gun violence that we are seeing in California," says Reverend Jeffrey Brown, a national expert who was instrumental in the development and implementation of Boston's Ceasefire initiative. Reverend Brown now consults with community groups and law enforcement agencies around the country through his organization, Rebuilding Every Community Around Peace.

"Urban gun violence is not inevitable. We know what's working to solve this crisis. We just need the commitment and the political will to scale it up."

– Reverend Michael McBride

A powerful transformation is taking place in some of California's most dangerous neighborhoods and cities. They're experiencing historic reductions in gun violence and taking slow, but steady steps to build trust and heal fractured relationships between law enforcement and communities of color. They are implementing strategic initiatives grounded in a commitment to collaboration and an understanding that peace is inextricably linked to opportunity.

These initiatives are restoring hope and saving lives. Consider this: In 2013, Oakland experienced a 28 percent reduction in homicides. Richmond, once labeled one of the country's most dangerous cities, reported the lowest murder rate in 33 years, continuing a multi-year trend. Stockton, for its part, saw its homicide rate drop 55 percent, from 71 to 32 deaths in 2013. In these cities, as well as in the San Fernando Valley and elsewhere in California and the country, a key factor in these historic reductions is the implementation of the Ceasefire strategy, a focused approach to urban gun violence rooted in data analysis, deep community-police partnerships, and a commitment to providing the web of supportive services that are critical to breaking cycles of violence and putting an end to the mass incarceration of young men of color. The lessons from these efforts have powerful implications for local, state, and national policymakers about the resources, the systems, and the strategies that can effectively address one of the most pressing moral and public health crises of this century.

Partnerships are Key

When implemented well and with fidelity, Ceasefire "dispels the myth that gun violence is inevitable in communities of color," says Reverend Michael McBride, director of Urban Strategies and the Lifelines to Healing Campaign of the PICO National Network. Throughout California and the country, PICO clergy and community leaders have been key partners in the implementation of Ceasefire as a strategic and cost-effective approach to creating safer communities, reducing recidivism, and rebuilding fractured police-community relations.

"The police on our own can't stop violent crime," says Stockton Police Chief Eric Jones. "We are part of the community and we need to be engaged in deep partnerships with our community to build trust and develop a shared strategy." Under Chief Jones' leadership and in partnership with San Joaquin County, Stockton invested in



SHIFTING CULTURE

► In 2013, clergy, community leaders, and police department representatives from Stockton, Salinas, and Oakland traveled to Chicago to learn about that city's initiative to change policing practices and build trust through training focused on procedural justice and police legitimacy. It's a critical next step to repairing fractured police-community relationships and changing policies and practices. Clergy and community leaders have co-developed their own curriculum and are now partnering in the training of cadets and current officers.

the Ceasefire initiative in early 2013 as part of a comprehensive effort to address the scourge of gun violence in the Central Valley city. "The community had enough. The police had enough," says Chief Jones. "We all knew we needed to do things differently."

In Stockton, as in other cities, the Ceasefire strategy includes several key components, each of which is critical to successful implementation:

- A comprehensive analysis of homicides to understand critical patterns and guide allocation of resources.
- Direct connections to the individuals most likely to be victims or perpetrators of gun violence through street and clergy outreach, night walks, and related community activities.
- Deep community partnership through oversight committees and participation in outreach efforts.
- A commitment to changing police-community relations through procedural justice practices (also known as police legitimacy).
- Investment in the supportive services that are vital to creating opportunity for young men caught up in cycles of violence.

"You can't manage a complex problem without fully understanding it," says Stewart Wakeling, Director of the California Partnership for Safe Communities, an organization that provides technical support to communities implementing Ceasefire. In city after city, he adds, the analysis shows that only a very small proportion of young men of color are driving violence or are at high risk of violence. Unlike indiscriminate practices, such as stop and frisk, curfews, or broad gang injunctions, which have driven a wedge between law enforcement and the community, Wakeling says Ceasefire focusing intense attention on the individuals and groups that the data shows to be most closely connected to violent crime.

Love, Support, and Accountability

The "intense attention" that Wakeling refers to is first about sending a clear and unequivocal message of love and support — not just from clergy and community, but from law enforcement — and then coupling this message with targeted law enforcement and swift accountability.

"I am just as concerned about young men being shot or incarcerated as I am about them shooting someone else," says Stockton's Chief Jones. He shares that message at the start of every "Call-In," a strategic meeting in which community members (those who have been victims of violence and former perpetrators of violent crime) — as well as clergy, law enforcement, and support providers — meet with individuals who have been identified as most closely linked to gun violence.

"We deliver a strong message of caring and concern, coupled with a stern warning from law enforcement," says Reverend Ben McBride, Director of CityTeam Ministries in Oakland, who has participated in Call-Ins and has seen first-hand the impact of the message on young men who are struggling to break free of destructive lifestyles. "Over and over again I hear, 'I have been longing for this

opportunity, from men who have been looking for a way forward but have not found that path," says Reverend McBride.

Terrell Elliott heard the message of opportunity at a Call-In at Lakeshore Avenue Baptist Church in Oakland in September of 2013. The 31-year-old Oakland native got caught up in the criminal justice system when he was young and was working to get his life back on track, but kept hitting barriers. "I had a plan, but I didn't have the resources or the support to make it work," says Elliott.

Following the Call-In, Elliott was connected to Emilio Mena, a case manager at Oakland Unite, who, with Reverend McBride and the CityTeam staff, provided both the bridge to resources and, more importantly, the supportive, respectful relationships that are critical to moving forward. "Having people who believed in me and who kept their word when they said they were going to do something was key," says Elliott. "I'm not on my own. I have a network of support."

With the help of his network, Elliott received a grant that enabled him to finish his course work and obtain his personal trainer certificate. Given the challenges that exist for formerly incarcerated individuals looking for employment, he's now working to develop a business plan, with the goal of starting his own business. He's also connecting friends to CityTeam and other supportive services, understanding the difference the relationships and resources made in his life.

Rehabilitative Services Must Be Prioritized

Although Elliott's story is not unique, the hard reality is that supportive services, including job training, education, and counseling services, are typically the most fragile component of a comprehensive violence-reduction strategy. Too often, the level of support doesn't match the offer of help, as cities, counties, and the state fail to prioritize and adequately fund services and staffing to meet the need.

County-level resources through AB 109 (criminal justice realignment) provide one potential source of funding, but coordination between cities and counties is lacking, says David Muhammad, director of national justice programs for the National Council on Crime and Delinquency. He adds that without state guidelines on how these funds should be used — and with community members poorly represented in AB 109 decision-making structures — counties are overwhelming spending realignment dollars on enforcement and jail expansion, rather than rehabilitative services.

DeVone Boggan understands the challenge and the opportunity of providing comprehensive services and support to meet the needs of individuals most likely to be involved in gun violence. He is the founding director of Richmond's Office of Neighborhood Safety (ONS), a non-law enforcement agency devoted to stopping firearm assaults. Boggan and his team of case managers and street outreach workers are responsible for directing gun violence prevention and intervention initiatives that foster greater community well-being and public safety, including the coordination of services for individuals suspected of being closely associated with firearm assaults.



NIGHT WALKS

► Every Friday evening, clergy and community members in Oakland, Stockton, Fresno, Richmond, and elsewhere around the state gather to walk the streets of some of their cities most dangerous neighborhoods. These Night Walks, as they're known, are a strategic component of a comprehensive violence-prevention strategy. Through Night Walks, participants send a message of love and peace, especially to those young men of color who are most likely to be caught up in the crossfire of gun violence. Night Walks create an antidote to the sense of powerlessness that can paralyze communities. They create opportunities to deepen connections and conversations and to identify needs and strategies to create stronger, safer communities.



POLICY RECOMMENDATIONS:

- ▶ Increase and leverage state funding to **incentivize partnerships** between cities and counties around violence reduction and through expansion of recidivism reduction funds and other resources for supportive services.
- ▶ Expand the capacity of communities and local law enforcement to engage in long-term efforts to reduce gun violence and recidivism by **increasing funding** for the California Gang Reduction and Intervention (CalGRIP) Program, which has provided funding for Ceasefire in many cities.
- ▶ Amend AB 109 to require **community representation** on county-level Community Corrections Partnerships, which make critical decisions regarding resource allocations.
- ▶ Dedicate additional funding to **critical services** for community reintegration that prepare people for self-sufficiency and lifelong liberty.

"We need to create an apparatus that enables us to connect to individuals where they are and then *right now* provide them with the resources and services they need. The window of opportunity is very thin," says Boggan.

Too often, he adds, case managers are overextended or not connected to the clients they serve. They hand a client a referral slip and then hope that the individual gets connected to the services he wants and needs. In contrast, ONS case managers take every step with their clients, including accompanying them to every meeting and helping them navigate a system that is often not set up for their benefit.

Healing Communities, Saving Lives

Tamisha Walker has been a witness to and a partner in the transformation that is taking place in Richmond. She has worked with Boggan and the staff at ONS and has also worked closely with law enforcement in the implementation of Ceasefire, participating in the working group, joining Night Walks, and as one of the community leaders in Call-Ins.

She says community and clergy embarked upon the long and difficult work of partnership and reconciliation with law enforcement because they understood what was necessary to save lives in Richmond.

"We were at the point where we all understood what we had to do," says Walker. "We had to move past the 'us versus them' and sit down together. We understood we needed each other."

Walker comes to the work as both a victim of gun violence — her brother Mark was murdered nearly a decade ago, a crime that still remains unsolved — and as a formerly incarcerated individual committed to being a leader in her community and supporting others in their own personal leadership and development.

"My heart brought me to Ceasefire," says Walker. "This work creates the opportunity for me and for our community to be part of our own rescue and healing."

PICO California is a statewide faith-based organizing effort uniting over 450,000 families and 480 member congregations in more than 70 cities throughout the state. PICO California works to engage grassroots volunteers in our member congregations in efforts to improve policies affecting low income and working families around the state. PICO California is part of the PICO National Network. PICO and its member organizations are non-partisan and do not endorse or support candidates for office. PICO urges people of faith to consult their faith traditions for guidance on specific policies and legislation. Learn more at picocalifornia.org and www.piconetwork.org.

Lifelines to Healing is a faith-based movement to organize local communities across the country to reduce gun violence and end mass incarceration, and to generate the public and political will nationally to end the institutions and policies that contribute to the dehumanization of black and brown Americans. Learn more at www.lifelinestohealing.org

