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# Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing

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VULNERABLE, NOT VOICELESS: OUTSIDER  
NARRATIVE IN ADVOCACY AGAINST DISCRIMINATORY  
POLICING\*

NICOLE SMITH FUTRELL\*\*

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\*\* Clinical Law Professor, The City University of New York School of Law. I thank Professor Birckhead and Dr. Pryal, the *North Carolina Law Review* staff, and the participants of this symposium for the opportunity to bring attention to the voices of those made vulnerable by the criminal justice system. I would be remiss not to acknowledge Leroy Downs, Cornelio McDonald, Tyquan Brehon, and Alvin Cruz, whose narratives I highlight in this Article, for bravely sharing their personal experiences with aggressive policing in the public domain. I also thank Jessica Prince for her superb research and writing assistance. For their insightful comments and guidance, I extend my sincere gratitude to Amna Akbar, Sameer Ashar, Samantha Buckingham, Eve Hanan, Melanie Hart, Babe Howell, Donna Lee, Michael Pinard, Kate Weisburd, and Steve Zeidman. This Article benefited greatly from presentations at the NYU Clinical Writers' Workshop and the NEPOC Conference. Finally, I am deeply indebted to Darian Futrell, as well as my parents, family, and friends for their constant support.

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## INTRODUCTION

*[They] told us to stand up[,] take off our shoes, socks, hoodies, and told everybody to take their top shirt off and leave only their undershirt or one shirt on. They told us to unbutton our pants and roll the waistband down. Three of us were in pajamas. They made us stand and wait with backs turned until a female officer came. She turned us around by our necks and frisked us. They were looking for weed. They found nothing, but took us to the precinct anyway, where our mother had to come get us.*

—Brianna E.<sup>1</sup>

Public defenders and criminal defense advocates hear personal accounts like the one above from their clients on a regular basis.<sup>2</sup> It is a familiar narrative, with a familiar conclusion: a client of color, usually from a low-income community, targeted by the police and left dehumanized and disempowered by the experience.<sup>3</sup> Yet, because

1. CTR. FOR CONSTITUTIONAL RIGHTS, STOP AND FRISK: THE HUMAN IMPACT 13 (2012), available at <http://stopandfrisk.org/the-human-impact-report.pdf> (retelling the experience of Brianna E. (pseudonym) with her sisters and cousins, ages eight to sixteen, when the New York Police Department (“NYPD”) stopped them, as told to the Center for Constitutional Rights in an interview on August 31, 2012, in New York City, New York).

2. In New York City, public defenders typically meet their clients after an arrest has occurred. During the height of the NYPD’s stop and frisk program, the overwhelming majority of stop and frisks like the one described above resulted in no arrest. Public defenders hear these accounts from clients as experiences they have had previously (or regularly) or during the course of explaining the basis for a stop where an arrest does occur. Where an arrest occurs, the charges usually involve a minor infraction, such as trespass or possession of a gravity knife. It is not uncommon to see charges such as resisting arrest or obstruction of governmental administration, which are typically regarded as overstated charges that stem from a client being less than cooperative and docile during a stop. For a general discussion of arrests related to stop and frisk, see generally ERIC T. SCHNEIDERMAN, N.Y. STATE OFFICE OF THE ATT’Y GEN., REPORT ON ARREST ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT’S STOP AND FRISK PRACTICES (2013), available at [http://www.ag.ny.gov/pdfs/OAG\\_REPORT\\_ON\\_SQF\\_PRACTICES\\_NOV\\_2013.pdf](http://www.ag.ny.gov/pdfs/OAG_REPORT_ON_SQF_PRACTICES_NOV_2013.pdf) (analyzing the stop and frisk technique of the NYPD).

3. See Naima Ramos-Chapman, *Voices from Brooklyn: Racial Profiling’s Part of Everyday Life Here*, COLORLINES (Aug. 2, 2010, 1:00 PM), [http://colorlines.com/archives/2010/08/voices\\_from\\_brooklyn\\_racial\\_profiling\\_part\\_of\\_everyday\\_life\\_here.html](http://colorlines.com/archives/2010/08/voices_from_brooklyn_racial_profiling_part_of_everyday_life_here.html); see also POLICE REFORM ORG. PROJECT, URBAN JUSTICE CTR., IN THEIR OWN WORDS: “THE BIGGEST GANG

these stories become so familiar to defenders, who have a limited ability to provide meaningful recourse, the transformative potential of these personal narratives can go unrecognized.

Scholars discussing legal narrative in disciplines such as critical race theory, social justice lawyering, and clinical practice have long recognized that stories and storytelling can serve as a platform for marginalized members of society to challenge the legal status quo in order to effect change.<sup>4</sup> Narratives from vulnerable individuals have a particularly vital role to play in addressing the racial subordination that can be manifested in aggressive urban policing practices. Thus, it is critical that lawyers and social justice advocates understand and promote outsider narrative in supporting resistance against aggressive, discriminatory policing.<sup>5</sup>

The use of stop and frisk in New York City provides a stark representation of a policing practice that reifies racial discrimination and hierarchy.<sup>6</sup> In 1967, the Supreme Court of the United States first recognized the stop and frisk as a legitimate police-citizen encounter in the case of *Terry v. Ohio*.<sup>7</sup> In *Terry*, the Court held that officers may conduct a stop when they have reasonable suspicion that a crime has been or is about to be committed.<sup>8</sup> However, the Court made clear that reasonable suspicion amounted to articulable facts indicative of criminal activity, requiring more than a simple hunch.<sup>9</sup> The Court also

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HERE IN NEW YORK CITY” 3 (2013), available at <http://www.policereformorganizingproject.org/wp-content/uploads/2013/06/In-Their-Own-Words-Peoples-Edition-Final-Draft.pdf> (describing interactions with NYPD). See generally CTR. FOR CONSTITUTIONAL RIGHTS, *supra* note 1 (describing the impact of stop and frisk policies on both individuals and communities).

4. Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255, 267 (1994) (“Those interested in effecting change can consciously and strategically use stories to counteract the substantive and stylistic limitations of law as it currently exists.”).

5. Similar to Carolyn Grose’s work, this Article discusses outsider narrative in the context of legal advocacy as an effort “to incorporate the voices of ‘outsiders’ into mainstream legal dialogue. By ‘outsider,’ I mean to describe someone who does not have access to the channels of power and communication in this society.” Carolyn Grose, *A Field Trip to Benetton . . . and Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 CLINICAL L. REV. 109, 110 n.4 (1997).

6. See Paul Butler, *Stop and Frisk and Torture-Lite: Police Terror of Minority Communities*, 12 OHIO ST. J. CRIM. L. 57, 66 (2014) (discussing how a stop and frisk encounter “fits into a historical lineage of racial subordination of African-Americans”).

7. 392 U.S. 1 (1967).

8. *Id.* at 30; see also DELORES JONES-BROWN ET AL., *STOP, QUESTION & FRISK POLICING PRACTICES IN NEW YORK CITY: A PRIMER 2* (2010), available at [http://www.jjay.cuny.edu/web\\_images/PRIMER\\_electronic\\_version.pdf](http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf) (explaining both the history and procedure of the *Terry* stop).

9. *Terry*, 392 U.S. at 22.

found that an officer may go further than a stop and conduct a pat-down frisk of the person if there is reason to believe the person is armed and poses a risk to officer safety.<sup>10</sup> In outlining the parameters of these street encounters, the Court acknowledged the likelihood that the person stopped would experience degradation:

[I]t is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a “petty indignity.” It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.<sup>11</sup>

In New York City, under the administration of Mayor Michael Bloomberg, the New York Police Department (“NYPD”) took on a high-volume approach to executing stops and frisks under the rationale that stopping, questioning, and frisking more people on the street was an effective way to both prevent crime and recover dangerous weapons.<sup>12</sup> Over the course of Bloomberg’s administration, annual stops were at a low of 97,000 in 2002 and rose to a high of 685,000 by 2011, with Blacks and Latinos accounting for the overwhelming majority of people stopped.<sup>13</sup> As the use of stop and frisk rose steadily, observers began to develop concerns about its overbroad use, particularly in connection with racial minorities. Data on the use of stop and frisk lent support to these concerns: of the over 4.4 million people stopped from 2004 to 2012, eighty-eight percent were innocent of any criminal wrongdoing as measured by the fact that they were not arrested or given a

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10. *Id.* at 30.

11. *Id.* at 16–17.

12. See N.Y. CIVIL LIBERTIES UNION, BEYOND “DELIBERATE INDIFFERENCE”: AN NYPD FOR ALL NEW YORKERS 5 (2013), available at [http://www.nyclu.org/files/publications/nypd\\_report\\_final\\_0.pdf](http://www.nyclu.org/files/publications/nypd_report_final_0.pdf).

13. See *id.* In this Article I have chosen to capitalize the word Black as an acknowledgement of the ethnic cohesion of people of the African diaspora. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (explaining that “Blacks, like Asians [and] Latinos . . . constitute a specific cultural group”); see also Lori L. Tharps, *The Case for Black with a Capital B*, N.Y. TIMES (Nov. 18, 2014), [http://www.nytimes.com/2014/11/19/opinion/the-case-for-black-with-a-capital-b.html?\\_r=0](http://www.nytimes.com/2014/11/19/opinion/the-case-for-black-with-a-capital-b.html?_r=0) (placing the capitalization of “Black” in a historical context). All citations will retain their original capitalization.

summons.<sup>14</sup> Further, Blacks and Latinos accounted for just short of ninety percent of the 4.4 million stops.<sup>15</sup>

As a result of the disproportionate impact on the city's racial minorities, grassroots organizations developed to challenge the practice of stop and frisk in New York as an unlawful form of racial profiling. The federal class action suit, *Floyd v. City of New York*,<sup>16</sup> which followed and was supported by community organizing efforts, forced the NYPD to directly address persistent charges of racial profiling and suspicionless street stops.<sup>17</sup> Following a lengthy bench trial, the federal district court found that many Black and Latino New Yorkers had been detained and searched by New York City police officers without the requisite level of reasonable suspicion.<sup>18</sup> The court specifically noted that the city was liable for allowing race to be used as a primary consideration in stopping "the right people."<sup>19</sup> It determined that the NYPD's stop and frisk program was an unconstitutional violation of both the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment.<sup>20</sup> In addition to other remedies, the court ordered the creation of a community-based joint remedial process aimed at obtaining community input in developing supplemental reforms.<sup>21</sup>

The court's recognition of the disproportionate effect of stop and frisk policing on people of color was the result of diverse advocacy efforts. While the statistical data demonstrating the overbroad and disproportionate impact of the NYPD's stop and frisk practice<sup>22</sup> was of critical importance to the anti-stop and frisk movement and litigation, it was the detail of the dehumanizing police interactions shared by the

14. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 559 (S.D.N.Y. 2013). Additionally, when a frisk was conducted, weapons were obtained only 1.5% of the time. *Id.* at 558.

15. *Id.* at 558-59 (stating the undisputed facts that "[b]etween, January 2004 and January 2012, the NYPD conducted 4.4 million *Terry* stops," that "[i]n 2010 New York City's resident population was roughly 23% black, 29% Hispanic, and 33% white," and that "[i]n 52% of the 4.4 million stops, the person stopped was black, in 31% the person was Hispanic, and in 10% the person was white").

16. 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

17. For a timeline outlining events relevant to the history of the anti-stop and frisk movement and related litigation, see N.Y. CIVIL LIBERTIES UNION, *supra* note 12, at 2-4.

18. *Floyd*, 959 F. Supp. 2d at 561-62.

19. *Id.* at 660.

20. *Id.* at 667.

21. *Id.* For a critical assessment of the procedural irregularities related to the dismissal of Judge Schiendlin, the author of the *Floyd* decision, see Anil Kalhan, *Stop and Frisk, Judicial Independence, and the Ironies of Improper Appearances*, 27 GEO. J. LEGAL ETHICS 1043, 1046 (2014).

22. See *supra* notes 12-15 and accompanying text.

men and women most impacted by aggressive policing that helped to expose the physical, emotional, social, and economic damage caused by stop and frisk.<sup>23</sup> Through community meetings, marches, testimony, and media and organizational reports about these law enforcement encounters, the human toll of stop and frisk was exposed as a prominent and defining feature of stop and frisk policing.<sup>24</sup> Descriptions of demeaning police interactions experienced by everyday people, from school children to the elderly, revealed the real harms of the NYPD's stop and frisk policy and extended the public debate beyond considerations of effectiveness and legality.<sup>25</sup> These narratives revealed the personal impact of aggressive police interactions on individuals, bringing vivid and intimate dimensions to the movement. Through various modes of advocacy, the anti-stop and frisk movement wielded themes from narrative theory to draw attention to and fight the aggressive, discriminatory policing of people of color in New York City.<sup>26</sup> As such, these narratives played a significant role in changing the political, legal, and social discourse about race and stop and frisk policing.<sup>27</sup>

23. See generally Transcript of Opening Statement, *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08 CIV 1034), available at [http://ccrjustice.org/files/3\\_18\\_2013\\_Floyd\\_Transcript.pdf](http://ccrjustice.org/files/3_18_2013_Floyd_Transcript.pdf) (urging that stop and frisk policies, which have occurred for years and have caused societal damage, should be amended).

24. See J. David Goodman, *As Critics United, Stalled Battle Against Frisking Tactic Took Off*, N.Y. TIMES (Aug. 13, 2013), [http://www.nytimes.com/2013/08/14/nyregion/in-a-crescendo-the-citys-crime-policy-changed.html?\\_r=0](http://www.nytimes.com/2013/08/14/nyregion/in-a-crescendo-the-citys-crime-policy-changed.html?_r=0); Hugh Hogan, *How Investing in Grass-Roots Advocacy Helped Put an End to a Racist Practice*, CHRON. PHILANTHROPY (Sept. 5, 2013), <http://philanthropy.com/article/Victory-Over-Stop-and-Frisk/141387/>; see also Jim Dwyer, *Protesting Police Tactic, in Silence*, N.Y. TIMES (June 12, 2012), <http://www.nytimes.com/2012/06/13/nyregion/silently-a-fathers-day-parade-may-turn-into-a-protest.html> (reporting on a stop and frisk protest). See generally POLICE REFORM ORG. PROJECT, *supra* note 3 (providing victim statements as examples of the human toll of stop and frisk policies); COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org> (last visited Apr. 20, 2015) (explaining local police reform efforts).

25. See Ramos-Chapman, *supra* note 3. See generally CTR. FOR CONSTITUTIONAL RIGHTS, *supra* note 1 (describing the impact of stop and frisk policies on both individuals and communities); ELIOT SPITZER, ATT'Y GEN. OF THE STATE OF N.Y., THE NEW YORK CITY POLICE DEPARTMENT'S "STOP AND FRISK" PRACTICES (1999), available at [http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil\\_rights/stp\\_frsk.pdf](http://www.oag.state.ny.us/sites/default/files/pdfs/bureaus/civil_rights/stp_frsk.pdf) (describing stop and frisk policies in New York in 1999).

26. For a discussion of responses to stop and frisk policing in New York City, see generally Panel Discussion, *Suspect Fits Description: Responses to Racial Profiling in New York City*, 14 CUNY L. REV. 57 (2010).

27. See Kalhan, *supra* note 21, at 1045 (discussing how then-mayoral candidate Bill deBlasio's outspoken position on ending stop and frisk contributed to his decisive victories in both the Democratic primary and the general election in September 2013). According to

Despite significant declines in the reported use of stop and frisk and the hope for post-litigation policing reform,<sup>28</sup> it is evident that there are a number of ways in which aggressive, discriminatory policing remains a concern in New York City and in other cities around the nation.<sup>29</sup> This Article suggests that legal advocates must understand and promote the role of narrative in their efforts to address the criminalization of vulnerable communities. Specifically, the transformative nature of outsider narratives from the anti-stop and frisk context provides valuable insights for mobilization lawyering against racialized policing.<sup>30</sup>

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Kalhan, “[i]n exit polls, a solid majority of the City’s voters signaled their agreement with de Blasio’s position that the NYPD’s stop and frisk practices had become excessive.” *Id.*

28. Mike Bostock & Ford Fessenden, ‘*Stop-and-Frisk*’ is All but Gone from New York, N.Y. TIMES (Sept. 19, 2014), [http://www.nytimes.com/interactive/2014/09/19/nyregion/stop-and-frisk-is-all-but-gone-from-new-york.html?\\_r=0](http://www.nytimes.com/interactive/2014/09/19/nyregion/stop-and-frisk-is-all-but-gone-from-new-york.html?_r=0). See generally *Timeline: Floyd v. City of New York*, CTR. FOR CONSTITUTIONAL RIGHTS, [http://www.ccrjustice.org/files/CCR\\_Floyd\\_Timeline-20140130.pdf](http://www.ccrjustice.org/files/CCR_Floyd_Timeline-20140130.pdf) (last visited May 6, 2015) (outlining the evolution and decline of the stop and frisk policy in New York City).

29. See generally CTR. FOR CONSTITUTIONAL RIGHTS, *ADVOCATING FOR JUSTICE: CASE STUDIES IN COMBATING DISCRIMINATORY POLICING* (2010), available at [http://ccrjustice.org/files/CCR\\_Racial\\_Profiling\\_White\\_Paper.pdf](http://ccrjustice.org/files/CCR_Racial_Profiling_White_Paper.pdf) (highlighting strategies for combatting racial profiling); Jack Healy, *Ferguson, Still Tense, Grows Calmer*, N.Y. TIMES (Nov. 26, 2014), <http://www.nytimes.com/2014/11/27/us/michael-brown-darren-wilson-ferguson-protests.html> (describing social unrest after a police officer’s shooting of a Black man did not result in an indictment); Derrick Z. Jackson, ‘*Broken Windows, Broken Policy*’, BOSTON GLOBE (Dec. 29, 2014), <http://www.bostonglobe.com/opinion/2014/12/29/broken-windows-broken-policy/WM8hUySUL0YerJq2S2Ay1N/story.html> (describing “broken windows” policing and the racially discriminatory effect it has caused).

30. There are two important points to acknowledge. First, aggressive, profile-oriented policing affects various intersecting identities, such as immigration status, sexual orientation, and religion. See POLICE REFORM ORG. PROJECT, URBAN JUSTICE CTR., *CRIMINALIZING COMMUNITIES: NYPD ABUSE OF VULNERABLE POPULATIONS 6* (2013), available at <http://www.policereformorganizingproject.org/wp-content/uploads/2014/12/Criminalizing-Communities.pdf>; see also DIALA SHAMAS & NERMEEN ARASTU, MUSLIM AM. CIVIL LIBERTIES COAL., *MAPPING MUSLIMS: NYPD SPYING AND ITS IMPACT ON AMERICAN MUSLIMS 7–11* (2013), available at <http://aaldef.org/Mapping%20Muslims%20NYPD%20Spying%20and%20its%20Impacts%20on%20American%20Muslims.pdf> (describing the impact of an NYPD surveillance program targeting New York’s Muslim-American communities); Amna Akbar, *Policing “Radicalization,”* 3 U.C. IRVINE L. REV. 809, 872–74 (2013) (discussing how NYPD counter-radicalization techniques stigmatize Muslim American communities and increase law enforcement-community tension). While a discussion of the transformative nature of storytelling in advocacy efforts is applicable to these communities, this Article focuses on narrative related to racialized policing as experienced by Blacks and Latinos. Second, while this Article focuses on the importance of the narrative element, it should be noted that there is a dynamic nature to narrative theory and movement lawyering. The voices featured would not have emerged as powerfully as they did without the platform provided by the larger stop and frisk campaign. See generally Dwyer, *supra* note 24 (describing the platform of the campaign against stop and frisk); Goodman, *supra* note 24 (same); Hogan, *supra* note 24 (same).



Part I grounds the discussion through a brief overview of scholarship that explores the potential of legal narrative to serve as an exercise of power by the marginalized. The “connection between storytelling and power” is significant in all legal contexts; however, it is particularly meaningful to those who lack voices recognized in traditional legal forums.<sup>31</sup> Narrative theory from critical race, lawyering, and clinical practice literature discusses how giving voice to the personal experiences of marginalized individuals and communities can serve to expose inequities and encourage social and legal change.<sup>32</sup> The Article identifies and develops core outsider narrative themes from these disciplines. In Part II, the Article presents examples of legal narratives that operate as an exercise of power. Selected personal narratives from the anti-stop and frisk movement show how the core outsider narrative themes identified in Part I are applied in the stop and frisk context. Finally, Part III briefly notes some of the ways in which communities of color in New York City and across the country still remain at risk for aggressive, race-based policing. It also examines the impact of outsider narratives from the anti-stop and frisk movement in order to highlight insights for legal advocates supporting advocacy efforts against the criminalization of vulnerable communities. While much of narrative theory scholarship in the clinical and lawyering contexts focuses on the complexities of engaging client narrative in individual, direct legal advocacy, this Article contributes to the literature by exploring the lawyer’s role in understanding and promoting narrative in mobilization against aggressive policing.

#### I. THE PROMISE OF OUTSIDER NARRATIVE IN COMBATING MARGINALIZATION

Scholars have long recognized that narrative has the power to make human experience accessible and universal and that it can reveal social inequities in a way that stimulates change.<sup>33</sup> Rooted in notions of empathetic understanding, narratives work to motivate action because

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31. Baron, *supra* note 4, at 267.

32. See Nancy L. Cook, *Outside the Tradition: Literature as Legal Scholarship*, 63 U. CIN. L. REV. 95, 103–04 (1994); Richard Delgado, *Storytelling for Oppositionalists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2437–38 (1988).

33. David O. Friedrichs, *Narrative Jurisprudence and Other Heresies: Legal Education at the Margin*, in NARRATIVE AND THE LEGAL DISCOURSE 43, 45 (Deborah Charles Publications ed., 1991) (“Such stories are great equalizers insofar as they vividly and powerfully compel readers, whatever their status, to confront their common humanity in a way which no other form of discourse can accomplish. They challenge taken-for-granted hierarchies . . . by exposing so fully the cruel consequences of such hierarchies . . .”).

they “com[e] closest to actual experience and so may evoke our empathetic distress response more readily than abstract theory.”<sup>34</sup> When employed in the legal context, narrative has also been noted for its ability to transform the application and enforcement of laws, particularly those laws that impact traditionally vulnerable groups.<sup>35</sup>

As an initial matter, it merits noting that the concept of employing narratives or stories<sup>36</sup> in the law has an expansive meaning and can be divided into a variety of approaches and subtopics.<sup>37</sup> In a general sense, legal narrative theory examines the construction of stories and the practice of storytelling<sup>38</sup> in contexts that range from literary modes<sup>39</sup> to

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34. Toni Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds*, 87 MICH. L. REV. 2099, 2105 (1989). *But see* Dorothy E. Roberts, *Sources of Commitment to Social Justice*, 4 ROGER WILLIAMS U. L. REV. 175, 192–93 (1998) (noting the limitations of empathy in motivating others to act against racism).

35. Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mothers’ Testimony Project, Women’s Narratives and Court Reform*, 37 ARIZ. ST. L.J. 709, 732 (2005); Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform*, 21 HOFSTRA L. REV. 1243, 1246 (1993).

36. In general, this Article uses the terms “narrative,” “story,” and “client voice” interchangeably. The Article will note where more particularized meaning is employed. For a discussion of precision in terminology, see Jane B. Baron & Julia Epstein, *Is Law Narrative*, 45 BUFF. L. REV. 141, 147–48 (1997):

[T]he term “story” means an account of an event or set of events that unfolds over time and whose beginning, middle, and end are intended to resolve (or question the possibility of resolving) the problem set in motion at the start . . . . The narrative consists of the cumulative effects of these separate stories as their aggregate meaning comes to light. By organizing discrete stories and constructing their “point,” narrative is interactive and social; it represents one collective way of knowing things, one communal mechanism for grasping the world.

*Id.*; see also Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to Classroom*, 7 J. ASS’N LEGAL WRITING DIRECTORS 37, 39 (2010) (discussing the elements of a story as defined by legal scholars Amsterdam and Bruner); Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 1 (2000) (“Stories are the raw material of personal experience; narratives are a construction from those stories.”).

37. Narrative in the law is discussed in a variety of different ways including: law and literature, construction of litigation and case theory, applied legal storytelling, narrative and rhetoric in judicial opinions, fictional accounts, and client stories. See, e.g., Richard A. Posner, *Legal Narratology*, 64 U. CHI. L. REV. 737, 737 (1997); see also Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law’s Response to Racism*, 42 U. MIAMI L. REV. 127, 127–29 (1987) (using the author’s experience with racial bias to introduce scholarship on rhetoric). See generally Cook, *supra* note 32 (describing trends in narrative scholarship in the legal field); Delgado, *supra* note 32 (addressing the need for counter-stories in movements for racial reform); Miller, *supra* note 36 (discussing the ethics of client narrative in legal scholarship and practice).

38. Grose, focused on narrative in the context of advocacy and lawyering skills, makes the distinction between narrative theory as the study of story construction—putting together the elements that comprise the story and then writing it down—as opposed to

legal advocacy modes.<sup>40</sup> For legal narratives, the storyteller and audience can be just as varied as the mode: “Some are stories told by legal scholars, which are directed at other members of the academic community. Other stories are told by lawyers to judges or juries.”<sup>41</sup> Legal narratives can also take a broader approach, creating discourse between legal participants, such as judges, attorneys and litigants, and the larger community.

This Part will highlight themes that emerge from an examination of the use of narrative in the empowerment of marginalized individuals and groups across various disciplines. Drawing from discussions of narrative and client voice in critical race, clinical legal practice, lawyering and social justice, and legal narrative scholarship, these core themes are developed in order to provide a theoretical framework for understanding the importance of outsider narrative in movements against aggressive policing.

#### A. *Narratives Reveal and Counter Assumptions*

The narratives of vulnerable or silenced groups are a particularly compelling vehicle for revealing and neutralizing the imperceptible ways that racial prejudice is reinforced in law and society.<sup>42</sup> Legal narrative theory suggests that narrative influences the law by either

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storytelling as the craft of putting the theory into practice, the act of construction, making choices, and then the act of telling the story. *See* Grose, *supra* note 36, at 39.

39. Literary modes include autobiography, metaphorical chronicles, and allegory. *See* PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 44–51 (1991). *See generally* DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992) (utilizing literary modes such as allegory to present legal issues); Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229 (1995) (discussing the use of autobiographical narratives in law review articles).

40. Legal advocacy modes employ methods such as case theory development, plea negotiation, trial practice, and brief writing. *See generally* Paul Holland, *Sharing Stories: Narrative Lawyering in Bench Trials*, 16 CLINICAL L. REV. 195 (2009) (extending narrative lawyering theory to the area of litigation at bench trials); Bernard S. Jackson, *Narrative Theories and Legal Discourse*, in *NARRATIVE IN CULTURE: STORYTELLING IN THE SCIENCES, PHILOSOPHY AND LITERATURE* 23 (Christopher Nash ed., 1994) (describing the various modes of narrative and purposes employed in legal work); Douglas W. Maynard, *Narratives and Narrative Structure in Plea Bargaining*, 22 LAW & SOC'Y REV. 449, 450 (1988) (describing the structure of narratives and analyzing how narrative structure works in plea negotiations); John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer to Do When His Two Favorite Theories Collide?*, 6 CLINICAL L. REV. 85, 104 (1999) (discussing and applying a model of narrative theory used in criminal defense clinic advocacy).

41. Massaro, *supra* note 34, at 2104.

42. *See* BELL, *supra* note 39, at 1–12; Delgado, *supra* note 32, at 2440; Williams, *supra* note 37, at 127–28.

maintaining the status quo or by challenging it.<sup>43</sup> Legal discourse continues to exclude the perspectives of the vulnerable by perpetuating the notion that the law applies equally and universally to everyone. These principles, which represent the dominant societal and legal narratives, frequently framed as concepts such as formal equality, colorblindness, or procedural justice, “often conceal, or at least fail to take into account, structural dynamics in the law which perpetuate systemic racial subordination.”<sup>44</sup>

These dominant narratives or stock stories are communicated both consciously and subconsciously within society and impact the way that legal institutions interact with the vulnerable. Professor Richard Delgado explains how these dominant narratives operate behind the law:

In legal discourse, preconceptions and myths, for example, about black criminality or Muslim terrorism, shape mind-set—the bundle of received wisdoms, stock stories, and suppositions that allocate suspicion, place the burden of proof on one party or the other, and tell us in cases of divided evidence what probably happened. These cultural influences are probably at least as determinative of outcomes as are the formal laws, since they supply the background against which the latter are interpreted and applied.<sup>45</sup>

As such, these dominant narratives or stock stories are deeply embedded in the legal standards and interpretation and have a powerful, subordinating effect on marginalized groups.

Outsider narrative has the potential to uncover false claims of universality and allows for recognition that the “law disguises the extent to which it is premised on the perspectives of the powerful.”<sup>46</sup> The stories of vulnerable individuals told in public and legal spaces

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43. Susan Bandes, *Empathy, Narrative and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 384–85 (1996).

44. Margaret Russell, *Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice*, 43 HASTINGS L.J. 749, 752 (1992).

45. RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 49 (2d ed. 2012).

46. Kathryn Abrams, *Hearing the Call of Stories*, 79 CALIF. L. REV. 971, 976 (1991) (“[T]he narratives of those who occupy a comparatively powerless position are not only evidence of what has been excluded, but testimony to the law’s relentless perspectivity.”); Christine Metteer Lorillard, *Stories that Make the Law Free: Literature as a Bridge Between the Law and the Culture in Which It Must Exist*, 12 TEX. WESLEYAN L. REV. 251, 256 (2005) (“[A] judge’s choice to privilege one story over another has often been found to be a privilege of the stories of the powerful at the expense of the stories of the ‘weak and marginal.’ . . . [T]he law becomes a tool by which majorities often subjugate minorities.”).

serve to directly expose and counter the preconceptions that shape the dominant narratives behind the law. Critical race scholars in particular have recognized that promoting the narratives of outsiders—those whose experiences are routinely discredited, disbelieved, or not heard<sup>47</sup>—is a vital way to reveal and counter the racial subordination perpetuated by the law.<sup>48</sup> To that end, outsider narratives serve a neutralizing, counter-story function by not only acknowledging the bias behind the dominant narrative but also providing alternative accounts that can begin to transform that bias.<sup>49</sup> These counter-stories may be told in a number of ways that can influence legal discourse. Outsiders can tell these stories to other outsiders, or they can direct them at “‘ingroups’ in an effort to convert, or even deconstruct, the stock story.”<sup>50</sup>

Accordingly, in an effort to push against the status quo, the racial assumptions and bias that lie beneath the way the law is interpreted and applied can be exposed by “open[ing] up the legal arena to otherwise silenced or marginalized voices.”<sup>51</sup> Professor Binny Miller acknowledges the deconstructive and transformative features of narrative:

Stories can change the legal status quo by challenging its assumptions and creating a new way of looking at the world. . . . [S]tories demonstrate that standards that seem neutral in the

47. Delgado, *supra* note 32, at 2412 (“Many, but by no means all, who have been telling legal stories are members of what could be loosely described as out-groups, groups whose marginality defines the boundaries of the mainstream, whose voice and perspective—whose consciousness—has been suppressed, devalued, and abnormalized.”).

48. Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2079–80 (1989). Those in power have the ability to shape whose stories are believed and whose are not. This sanctioning of stories does not change a person’s self-believed story, however. Scheppele explains, “[T]here are few things more disempowering in law than having one’s own self-believed story rejected, when rules of law (however fair in the abstract) are applied to facts that are not one’s own, when legal judgments proceed from a description of one’s own world that one does not recognize.” *Id.* at 2080.

49. Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1373 (reviewing GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992)) (“Progressive legal theorists have embraced narrative as an important medium for transforming legal doctrine: ‘Stories, parables, chronicles and narratives are powerful means for destroying mindset . . . .’”); Daniel G. Solórzano & Tara J. Yosso, *Critical Race Methodology: Counter-Storytelling as an Analytical Framework for Education Research*, 8 QUALITATIVE INQUIRY 23, 32 (2002) (“The counter-story is also a tool for exposing, analyzing, and challenging the majoritarian stories of racial privilege. Counter-stories can shatter complacency, challenge the dominant discourse on race, and further the struggle for racial reform.”).

50. Massaro, *supra* note 34, at 2105.

51. Bandes, *supra* note 43, at 384–85.

abstract are rarely so in practice. Stories can build bridges across gaps of race, class, gender, sexual orientation, and other differences. Circulating the stories and perspectives of the “other” can open the eyes of the majority to those perspectives. They can also make possible coalitions across oppressed groups and social change. Personal experience almost always makes a concept more powerful than abstractions.<sup>52</sup>

As such, personal stories are a powerful methodology for revealing and countering this perpetuation of racial subordination and exclusion of perspectives of color.

The next Part highlights the complexity of representing marginalized perspectives in legal fora. It explores how advocacy efforts can use outsider narrative to bring these voices into the legal foreground.

#### B. *Narratives Enrich and Connect Advocacy Efforts*

Narrative can also work to combat marginalization by enhancing and connecting advocacy efforts in both legal and nonlegal settings. The experiences of clients and communities affected by systemic, underlying racial bias often go unheard because of the limited substantive and procedural ways that harm can be expressed within the justice system.<sup>53</sup> Scholarship exploring the practice of social justice lawyering contemplates how attorneys can be mindful of these limitations in their representation. It also emphasizes the importance of understanding how marginalized voices can offset the limitations of legal fora and build connections to other advocacy modes.

##### 1. Outsider Narratives in Legal Advocacy

Legal fora have been noted for their limited capacity to capture “the full range of client stories” and experiences.<sup>54</sup> On a substantive

52. Miller, *supra* note 36, at 20.

53. See George A. Martinez, *Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683, 684–85 (1999) (discussing how prevailing concepts of justice can deprive the subordinated of a “voice that can be heard on terms which the system will understand” (internal quotation marks omitted)).

54. Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 516 (1994); see also Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 861–62 (1990) (discussing how advocacy inherently subordinates clients); Lucie E. White, *Mobilization on the Margins of a Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 545–46 (1988) [hereinafter White, *Mobilization*] (explaining how legal claims in the welfare reform context can often undermine the concerns and perspectives of poor litigants).

level, this happens when claims of discrimination stemming from structural racial bias are unable to be maintained through the legal process.<sup>55</sup> Civil lawsuits frequently have a number of initial barriers that seem to impede legal challenges of aggressive policing.<sup>56</sup> Even when civil suits can surpass the initial hurdles, the issues presented for adjudication can become extremely narrow in focus.<sup>57</sup> However, when plaintiffs can assert claims, the conventions of litigation and formal legal settings can still serve to limit client voice.<sup>58</sup> Specifically, the principles of “legal narrative govern not only which narratives are appropriate or permitted in which legal settings, but also *how* these stories are told, including who may tell them, when interruption is permitted, which amounts and types of information are included and which are deemed irrelevant.”<sup>59</sup>

With an awareness of the constraints that the formal rules and processes of legal fora impose on client narrative, scholarship focused on social justice lawyering explores how lawyers who seek to use the law as a tool for social change can offset these limitations. Understanding and promoting the narratives of the subordinated in advocacy is deemed to be of critical importance.<sup>60</sup> Rebellious

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55. See, e.g., Marshall Miller, *Police Brutality*, 17 YALE L. & POL'Y REV. 149, 155 (1998) (explaining why a civil suit against police officers under 42 U.S.C. § 1983 is often unsuccessful and even successes fail to lead to any systemic changes in police misconduct); Brando Simeo Starkey, *A Failure of the Fourth Amendment & Equal Protection's Promise: How the Equal Protection Clause Can Change Discriminatory Stop and Frisk Policies*, 18 MICH. J. RACE & L. 131, 137 (2012) (suggesting that “the Court’s equal protection decisions have made it nearly pointless for racial minorities to take their grievances to court” and advocating for a change to the “Intent Doctrine”).

56. See Reenah L. Kim, *Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Councils*, 36 HARV. C.R.-C.L. L. REV. 461, 474 (2001) (suggesting that civil litigation against the police for racial profiling or other harms is initially difficult because “[c]omplainants often are unwilling or unable to initiate civil lawsuits against the police due to lack of personal funds, scarcity of corroborating witnesses, and the small likelihood of receiving sizeable recovery in damages”); see also Douglas L. Colbert, *Bifurcation of Civil Rights Defendants: Undermining Monell in Police Brutality Cases*, 44 HASTINGS L.J. 499, 574–75 (1993) (concluding that bifurcation of *Monell* claims often “frustrates civil rights litigants’ attempts to secure redress for constitutional wrongs committed by municipalities [because] [m]ost litigants lack the resources, fortitude, and commitment necessary to proceed . . . [with the claim]”).

57. See, e.g., *City of Los Angeles v. Lyons*, 461 U.S. 95, 105–06 (1983) (dismissing suit seeking an injunction preventing police from using illegal chokeholds because plaintiff could not establish real and immediate threat that he would be stopped by the police and be choked into unconsciousness in the future).

58. Miller, *supra* note 54, at 517.

59. Bades, *supra* note 43, at 384.

60. See Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861, 864 (1992) (“The project of

lawyering<sup>61</sup> in particular conveys the significance of emphasizing the stories of the marginalized in legal representation.<sup>62</sup> The rebellious lawyering approach to advocacy highlights the transformative nature of narrative in addressing racial bias: “By looking at the lives of people of color, at their real life stories, one gains a better understanding of how racism pervades the law, how law affects people’s lives, and how it might be transformed to counter racism.”<sup>63</sup> Thus, despite the shortcomings of the legal process, advocacy that privileges outsider narrative can be a “primary vehicle for persuading others to act.”<sup>64</sup>

Understanding the importance of narrative in legal settings also requires that well-meaning social justice advocates consider that their advocacy holds the potential for further marginalization.<sup>65</sup> The process of selecting, interpreting, and preparing personal experiences for presentation in a legal setting can unwittingly limit the empowerment of marginalized voices.<sup>66</sup> Client narratives are told and adapted by

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critical practice and theory, however, is to develop theory rooted in practice in order to learn from and about, and then improve upon, the lawyer’s participation as representative of those who are disempowered by the operation and interpretation of law.”). *See generally* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991) (focusing on lessons learned in interpretive client narrative).

61. Jessica A. Rose, *Rebellious or Regnant: Police Brutality Lawyering in New York City*, 28 FORDHAM URB. L.J. 619, 623–24 (2000) (citing GERALD P. LOPEZ, *REBELLIOUS LAWYERING, ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 38 (1992)) (“[T]hose who would ‘lawyer rebelliously’ must . . . ground their work in the lives and in the communities of the subordinated themselves . . .”); *see also* SARUMATHI LAVARAMAN & IMMANUEL NESS, *THE NEW URBAN IMMIGRANT WORKFORCE: INNOVATIVE MODELS FOR LABOR ORGANIZING* 121 (2005) (“[A] ‘rebellious’ practice must create a collaboration between lawyer and client that draws on both of their experiences and lawyering skills in order to alleviate the client’s subordinated position in society.”).

62. *See* Ancheta, *supra* note 49, at 1375 (“If they are willing to listen, legal decision makers—among the most powerful members of society—do respond to stories. If they are sufficiently compelling, stories do change even deeply rooted mindsets. The goal of the progressive practice of law is to ensure that the voices and stories of subordinated people are heard, even if initially in the language of professional lawyers.”).

63. *Id.* at 1373–74.

64. *Id.* at 1372.

65. *See id.* at 1374 (“The progressive lawyer, albeit well-intentioned, exercises inordinate power over a client, controlling the exchange of narratives and so limiting client empowerment.”); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 348 (1997) (explaining how client-centered models of counseling continued to marginalize clients of color).

66. Much has been written about the tension that exists when a lawyer tells a client’s story. With attorneys serving as the intermediary for the client voice in legal representation contexts, much of this scholarship focuses on dynamics within the attorney-client relationship and how attorneys might develop practices that highlight client perspectives without creating further subordination. *See* Miller, *supra* note 54, at 516 (“Lawyers reject client stories as implausible unless they fit into lawyer-endorsed strategies in which legal



lawyers to become legal narratives appropriate for presentation in these settings.<sup>67</sup>

Even the act of determining which client stories are selected for presentation in legal fora presents an opportunity for further marginalization. For example, in racial justice movements, from abolition to civil rights, the strategic approach has always involved promoting the stories of representative litigants that would be viewed as “good” and “respectable” and “beyond reproach” by the mainstream audiences that they aimed to sway.<sup>68</sup> While it may make strategic sense to highlight the narratives of the most attractive and unassailable litigants to advance a claim, this approach has the potential to devalue the valid narratives of the most vulnerable and most marginalized of the outsiders, ultimately leaving their experiences unheard in legal settings.

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doctrine predominates... Lawyer narratives drown out the voices of client narratives, marginalizing and subordinating them.”); *see also* Gilkerson, *supra* note 60, at 883 (“Universalized legal narratives of victim, work, and family impede and constrain the stories that can be heard in legal fora.”); Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 727–29 (1992) (discussing formalism and informalism and how this informs legal outcomes); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1748 (1993) (discussing Gerald Lopez’s work, which places clients “at the center of a multifaceted vision of the legal world”); Abbe Smith, *Rosie O’Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1, 8 (1993) (explaining the features and importance of storytelling, according to the feminist method).

67. Miller, *supra* note 54, at 515–17 (“[C]lient narratives inform, but do not overthrow, legal narrative. The lawyer translates the client’s story so it can be heard and understood in the legal system.”).

68. Michelle Alexander explains, “Since the days when abolitionists struggled to eradicate slavery, racial justice advocates have gone to great lengths to identify black people who defy racial stereotypes, and they have exercised considerable message discipline, telling only those stories of racial injustice that will evoke sympathies among whites.” MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 227 (2010); *see, e.g.*, Margot Adler, *Before Rosa Parks, There Was Claudette Colvin*, NPR (Mar. 15, 2009, 12:46 AM), <http://www.npr.org/templates/story/story.php?storyId=101719889> (discussing the experiences of Claudette Colvin and Rosa Parks in the legal battle to eliminate segregation on Montgomery, Alabama buses); *see also* Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1535–36 (2013) (“As Carbado and Gulati argue, the focus on the wrongs of racial profiling for respectable or ‘good’ Blacks and Latinos reinforces the distinctions... [and] perpetuates the stereotypes of black and brown criminality... [doing] little to help those who are... most vulnerable to the severe consequences... those ‘about which the public must come to care.’”).

## 2. Connections Between Legal and NonLegal Advocacy

Despite the limitations of legal fora and the complexity of adapting and representing client experiences, legal advocacy still holds potential for promoting outsider narratives and connecting with social justice mobilization in nonlegal spaces. Impact litigation, whether successful on the legal merits or not, provides one example of how client experience can be elevated in a way that impacts the larger legal, social, and political climate.<sup>69</sup> In court, litigants have an opportunity to be heard and to present testimony in a way that confronts institutional actors and demands accountability.<sup>70</sup> This “bearing witness” holds its own power and has the potential to mobilize<sup>71</sup> speakers and hearers of this testimony to connect and expand the drive for change in spaces outside of the courtroom.<sup>72</sup> As Professor Lucie E. White has noted:

[A] lawsuit might be an occasion for poor people to join together, outside of the formal boundaries of the litigation, in spaces that are parallel to it, to engage among themselves in reflective conversation and strategic action. In these “parallel spaces,” clients could speak their own stories of suffering, accountability and change, free from the technical and strategic constraints imposed by the courtroom. They would be free to speak in their own language and act in their own cultural forms on the subjects that are important to them. These rituals would not be instrumental in the narrow sense of causing a court to order change. But they would serve the broader goals of teaching

69. See Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 944 (2011) (“[W]ins in court may not directly produce the desired results but may nonetheless provide a favorable environment for the social movement’s broader reform campaign.”).

70. See White, *Mobilization*, *supra* note 54, at 538–39, 545–46; see, e.g., *id.* at 539 (explaining that litigation can “raise public consciousness about the experience of poverty” and expose the harms to “create momentum” for change).

71. Professor Lucie E. White defines mobilization as

a transformation of consciousness and behavior on two levels. On the first level, the dominant ideology, “the system,” loses its legitimacy. Subsequently, participants lose their fatalistic sense that they are trapped within the system; they come to believe that they have “rights” and can change their situation. On the second level, participants violate traditions, discount sources of cultural authority, and act collectively, rather than as isolated individuals.

*Id.* at 551–52 n.66.

72. See *id.* at 540 (suggesting that because group lawsuits are “community event[s],” actions including “bearing witness” and holding systemic actors accountable will “mobilize speakers” while creating a factual record).

others about themselves and their reality and giving the participants a momentary experience in the exercise of power.<sup>73</sup>

Thus, outsider narrative holds significant potential when used outside the courtroom. It can serve to offset some of the limitations of litigation by connecting the litigants' stories to the stories and experiences of others impacted within the community.<sup>74</sup>

In creating these links between legal and nonlegal advocacy, narrative can expand the opportunities for people's experiences to be heard, broaden the base of allies and supporters,<sup>75</sup> and maintain a focal point that is rooted in community voice. As social justice attorneys increasingly engage in nonlegal approaches to advocacy, this anchoring to marginalized voices and grassroots advocacy remains essential. Professor Sameer Ashar has observed, "Most public interest lawyers no longer operate in a single forum or use a single mode of advocacy. These lawyers develop campaigns on parallel tracks, including litigation, policy and legislative advocacy, community and public education, media advocacy, and international or transnational advocacy."<sup>76</sup> Given this merging of legal and nonlegal strategies, a privileging of outsider narrative ensures that the experiences of the marginalized remain a stabilizing focal point.

An orientation around perspectives of the affected is a particularly important consideration in legal advocacy for marginalized people.

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73. *Id.* at 545–46.

74. Miller, *supra* note 54, at 516–17; see Avi Brisman, *The Criminalization of Peacemaking, Corporate Free Speech, and the Violence of Interpretation: New Challenges to Cause Lawyering*, 14 CUNY L. REV. 289, 296–97 (2011) (quoting John Kilwein, *Still Trying: Cause Lawyering for the Poor and Disadvantaged in Pittsburgh, Pennsylvania*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 181, 185–86 (Austin Sarat & Stuart Scheingold eds., 1998)) ("Clients . . . suffer similar problems as a result of the hegemonic structure of society. Ideally, similarly situated clients would [help mobilize others] . . . allow[ing] clients to learn about themselves and people like them, about the (in)efficacy of litigation, and the use of power . . ." (internal citations omitted)).

75. See Martinez, *supra* note 53, at 685. Many victims of racial discrimination suffer in silence or blame themselves for their predicament. See *id.* at 684. Stories can give them voice and reveal that others have similar experiences. See *id.* at 684–85. Stories can name a type of discrimination; once named, it can be combated. See *id.* at 686–87.

76. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 399 (2007); see also Peter Margulies, *The Detainees' Dilemma: The Virtues and Vices of Advocacy Strategies in the War on Terror*, 57 BUFF. L. REV. 347, 357 (2009) ("One persistent strand of criminal defense strategy has sought to ignite public indignation over a purportedly unjust prosecution. In addition, public interest law has oscillated between a mode that favored elite litigation and a more eclectic mode that included organizing, deal-making, media relations, and political change."). See generally Alfieri & Onwuachi-Willig, *supra* note 68, at 1532–53 (discussing strategies for a new generation of civil rights lawyers).

Progressive scholars have noted that social change is most enduring when it is guided by those who are most directly affected by subordination and not by lawyers.<sup>77</sup> When voices of the affected community and grassroots advocacy are displaced by legal advocacy and not firmly kept at the fore of the movement, critical opportunities to stimulate public opinion and advance actual social change can be lost.

Civil rights activism in the United States provides some historical context for the shortcomings that can result when a movement is propelled by the force of a one-dimensional legal crusade rather than a moral one. As discussed by Professor Michelle Alexander in *The New Jim Crow*, gains brought about by the legal strategy behind *Brown v. Board of Education*<sup>78</sup> and the Civil Rights Act of 1965 produced a general conception that lawyers played a dominant role.<sup>79</sup> She states, “[A]s public attention shifted from the streets to the courtroom, the extraordinary grassroots movement that made civil rights legislation possible faded from public view.”<sup>80</sup> This shift in perception served to undermine the importance of the grassroots organizing and strategic mobilization of public opinion that came most powerfully from impacted individuals.<sup>81</sup> It also diminished the impact that the voices of the affected had in sparking actual social gains.<sup>82</sup> Thus, the moral potency that drives a social justice movement is best captured through the voices of the people impacted.<sup>83</sup> Their stories are a vital and anchoring force that cannot be separated from legal advocacy.

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77. See, e.g., Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 384 (2013) (“[S]ocial change comes when people without power, particularly poor people or oppressed people, organize and recognize common grievances. Social change can only be lasting when it is led and directed by the people most affected.”).

78. 349 U.S. 294 (1955).

79. ALEXANDER, *supra* note 68, at 225. But see William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 7, 20 (2007) (“Civil rights lawyers and legislators . . . were a small part of a much bigger struggle. Suggesting that lawyers led and shaped the civil rights movement is not accurate history . . . [I]t does no one a service to misinterpret what is involved in the process of working for social justice.”).

80. ALEXANDER, *supra* note 68, at 225.

81. See *id.*

82. See Elsesser, *supra* note 77, at 382 (“[I]ntegration failed to follow *Brown* and it was not until the next decade during the organized people’s movement that actual change began to occur.”).

83. Professor Lani Guinier reflected on the phenomenon when “lawyers took over” the “extraordinary movement that made civil rights possible”:

We then disembodied plaintiffs claims in judicially manageable or judicially enforceable terms. . . . We isolated ourselves from the people who were our anchor

## II. USING OUTSIDER NARRATIVES: THE ANTI-STOP AND FRISK MOVEMENT

As discussed in Part I of this paper, a critical approach to advocacy for the vulnerable requires careful attention to “the untold narratives of individual clients and communities disadvantaged by legal and institutional practices.”<sup>84</sup> Understanding how these narratives function and why they should be promoted is of critical importance for advocates of policing reform. The anti-stop and frisk movement provides a worthy basis for examination.

This Part will provide four selected narratives, two from *Floyd* trial testimony and two multi-media pieces featured outside of the litigation. These vivid personal accounts from marginalized perspectives convey the human context of stop and frisk in a way that abstract legal principles cannot. After detailing the selections, this Article will apply core outsider narrative themes to consider the extent to which they reveal and neutralize legal and social assumptions about race, and build links between advocacy efforts that encourage mobilization. Each of these narratives will serve to illustrate how the privileging of outsider narrative operated effectively in the anti-stop and frisk movement context.

A. *Narrative Accounts from Floyd v. City of New York*

While there were a number of plaintiffs who provided testimony during the *Floyd* trial,<sup>85</sup> the narratives of Leroy Downs and Cornelio McDonald are particularly useful because they are representative of the way individuals experience aggressive police encounters as arbitrary, demeaning, and imbued with racial undertones. These stories also provide a glimpse into more personal elements of each

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and on whose behalf we had labored. We not only left people behind; we also lost touch with the moral force at the heart of the movement itself.

*Id.* at 383 (quoting ALEXANDER, *supra* note 68, at 226).

84. Russell, *supra* note 44, at 759.

85. See generally *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (summarizing plaintiffs’ testimony). David Ourlicht, Lalit Clarkson, and Deon Dennis joined David Floyd in filing the class action on behalf of thousands of other individuals who were unlawfully stopped by NYPD. See *id.* at 540; *Floyd, et al. v. City of New York, et al.*, CCRJUSTICE.ORG, <http://ccrjustice.org/floyd> [hereinafter *Floyd Overview*] (last visited Mar. 1, 2015). In addition to the four main plaintiffs, eight other Black and Latino witnesses testified at trial to describe their experiences with New York City’s stop and frisk policy. See Ryan Devereaux, *New York’s Stop-and-Frisk Trial Comes to a Close with Landmark Ruling*, GUARDIAN (Aug. 12, 2013), <http://www.theguardian.com/world/2013/aug/12/stop-and-frisk-landmark-ruling>.

man's identity, which serves to extend our understanding of each man beyond a sole focus on his race and gender.

### 1. Leroy Downs

*[I]t's sad when you can't stand in front of your house and be on a cell phone without being accused.*<sup>86</sup>

Leroy Downs was a testifying plaintiff in the *Floyd* class action suit. He is described as a Black man in his mid-thirties, who resides in the New York City borough of Staten Island and works as a substance abuse counselor.<sup>87</sup> Mr. Downs provides testimony detailing the experience of being stopped and frisked while standing outside of his home after a day at work.<sup>88</sup> His narrative, presented during trial testimony, conveys how policing encounters can be experienced as racialized and humiliating.

Mr. Downs testified as follows: Before entering his home after a day at work he stood by a fence out front and spoke to a friend on his cellphone by using an earpiece connected to a mouthpiece by a cord.<sup>89</sup> Two officers drove past him in an unmarked police car before reversing back and approaching him.<sup>90</sup> As they walked toward him they told him that he looked like he was smoking marijuana despite the fact that there was no odor of marijuana or smoke around him.<sup>91</sup> They told him to "get the [fuck] against the fence," then pushed him backwards until his back was against the fence.<sup>92</sup> He attempted to explain that he was talking on his cellphone, but the officers proceeded to pat down the outside of his clothing around his legs and torso.<sup>93</sup> They reached into his pockets and removed his wallet, keys, and a bag of cookies.<sup>94</sup> They also searched his wallet.<sup>95</sup> After finding no illegal items, the officers walked away.<sup>96</sup> When Mr. Downs asked for their

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86. Transcript of Record at 4119, *Floyd v. City of New York*, 959 F. Supp.2d 540 (S.D.N.Y. 2013) (No. 08 CIV 1034), available at <http://www.ccrjustice.org/floyd-trial-transcript-index> (click April 19 for Mr. Downs' testimony).

87. *Id.* at 4093-94, 4119.

88. *Id.* at 4094-96, 4119.

89. *Id.* at 4097.

90. *Id.*

91. *Id.* at 4101.

92. *Id.* at 4102.

93. *Id.* at 4101, 4103.

94. *Id.* at 4103-04.

95. *Id.* at 4105.

96. *Id.* at 4106.

badge numbers, the officers said he was “lucky they didn’t lock [him] up.”<sup>97</sup>

During the trial, attorneys representing the class asked Mr. Downs why he decided to be a witness in the case. He responded:

I am passionate about this situation because I believe stop, question and frisk is a violation of our rights. I mean, I feel many times it’s a sad situation, but young black males are being profiled in this city, and I have been through not just one stop, it’s been all my life . . . . I have—like I said, I have a son, a newborn son coming into this world, and I pray that they don’t get profiled, not just him, but any other child. People growing up in this world, it’s sad when you can’t stand in front of your house and be on a cell phone without being accused. It’s just ridiculous.<sup>98</sup>

Thus, Mr. Down’s narrative not only shares the experience of being stopped and searched in front of his home but also signals his recognition of the power of advocacy that incorporates his personal experience.

## 2. Cornelio McDonald

*“[I felt] [e]mbarrassed, ashamed.”*<sup>99</sup>

Cornelio McDonald is a middle-aged Black man who lives in the borough of Queens.<sup>100</sup> He lives with his fiancée and daughter in a private apartment building located across the street from his mother, who lives in a New York City Housing Authority building.<sup>101</sup>

In recounting the events leading up to his stop by the police, Mr. McDonald testified: “I was taking care of my moms . . . . Feeding her, giving her a shower, cleaning up the house for her.”<sup>102</sup> He left her building at about 1:00AM and began to walk across a busy intersection to his home.<sup>103</sup> The weather was below freezing, and he kept his hands in the pockets of his coat as he walked.<sup>104</sup> Mr. McDonald testified:

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97. *Id.*

98. *Id.* at 4119.

99. *Id.* at 3689 (click April 17 for Mr. McDonald’s testimony).

100. *Id.* at 3676.

101. *Id.* at 3676, 3678–79.

102. *Id.* at 3677–78.

103. *Id.* at 3679.

104. *Id.* at 3681–82.

I left my mom's house, walked down the steps. I was getting ready to cross the street. I see a van make a U-turn and as I was getting ready to cross the second street, it stopped right in front of me . . . .<sup>105</sup> Once I said, why you stopping me for and they said, you're a wise guy, they came out and they started searching me . . . .<sup>106</sup> They wanted to know what was in my pocket and told me to take out my keys.<sup>107</sup>

**Q.** Mr. McDonald, did the men find any weapons on you?

**A.** No.

**Q.** Did they find any drugs on you?

**A.** No.

**Q.** While the man in the back was touching your body, were you moving any part of your body?

**A.** No.

**Q.** So what happened after the man finished touching you?

**A.** He asked me for identification.<sup>108</sup>

Later in his testimony, Mr. McDonald was asked about his impressions of whether race played a role in his being stopped on that occasion:

**Q.** Mr. McDonald, do you believe you were stopped because of your race?

**A.** That night, yes. . . . Because I was the only one out there, and they had people coming from the bowling alley. . . .

**Q.** So just because there were other people out there in the bowling alley, why do you think that means you were stopped because of your race?

**A.** Well, they didn't bother with anybody coming from the bowling alley. They was bothering me, and I was going home.

**Q.** Do you remember the race of anyone that was coming out of the bowling alley?

**A.** It could have been Asian, white.

**Q.** Mr. McDonald, how did you feel after the encounter ended?

**A.** Embarrassed, ashamed.

**Q.** Why is that?

**A.** Because there was no reason to stop me. I didn't do anything.<sup>109</sup>

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105. *Id.* at 3679.

106. *Id.* at 3685.

107. *Id.* at 3686.

108. *Id.* at 3686–87.

109. *Id.* at 3688–89.



Thus, Mr. McDonald's narrative shares not only his recognition of the racialized nature of the stop, but also the shame that he felt and continues to feel as a result of the police interaction.

*B. Narrative Accounts from Selected Media*

The two narratives in this section come from major national media sources and were published before the commencement of the *Floyd* trial. Each narrative was featured in an article that was supported by a short film, allowing the reader to experience the telling firsthand. The narratives reveal the experiences of Tyquan Brehon and Alvin Cruz as teenagers living in New York City who have faced aggressive police encounters on numerous occasions. Their experiences, told outside of the parameters of the legal process, hold tremendous power and value. Mr. Brehon's narrative conveys the general experience and impact of being stopped numerous times as well as the process of being detained and released without charge. Mr. Cruz's narrative, supported by an audio recording, provides direct presentation of an aggressive police encounter. Implicit in both of their narratives is the sentiment that, while they experienced frustration, they have grown accustomed to discriminatory treatment. Both narratives provide a vivid portrayal of the impact of stop and frisk on the humanity of these young men.<sup>110</sup>

1. Tyquan Brehon

*"When you're young and you're Black, no matter how you look, you fit the description."<sup>111</sup>*

On June 12, 2012, *The New York Times* featured a short opinionated documentary film and article entitled "The Scars of Stop and Frisk" by Julie Dressner and Edwin Martinez.<sup>112</sup> The short film and article focus on the experiences of Tyquan Brehon, a young man from Brooklyn, who recounts being stopped by the police more than sixty

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110. The limited background information provided in the narratives for Mr. Brehon and Mr. Cruz, as compared to the narratives of Mr. Downs and Mr. McDonald, is simply reflective of the fact that these narratives came from media sources as opposed to trial transcripts, which provide more information.

111. Julie Dressner & Edwin Martinez, *The Scars of Stop and Frisk*, N.Y. TIMES 1:08 (June 12, 2012), <http://www.nytimes.com/2012/06/12/opinion/the-scars-of-stop-and-frisk.html> [hereinafter *Scars of Stop and Frisk Video*] (referencing the embedded video).

112. *Id.* at 1:10.

times before his eighteenth birthday.<sup>113</sup> He details the stops as a product of suspicion based solely on his race: “Most of the times when I get stopped, I’m walking down the block. They never say ‘this is why I’m stopping you.’ When you’re young and you’re Black, no matter how you look, you fit the description.”<sup>114</sup> On several occasions, merely because he questioned the reasons for his stop, he was detained at the precinct.<sup>115</sup> In the film, Mr. Brehon shares:

I have been taken in a lot of times because if you are stopping me I am gonna want to know why and that is when you hear a change in their tone. They start to get a little more aggressive. You get threatened. They are like “if you are gonna talk back we are gonna take you in. If you are gonna ask questions we are gonna take you in.” And you sit in the precinct for like, I would say eight, nine hours, with a bunch of people you don’t know. They put the cuffs on really tight. And it stinks. And you don’t get fed. All this time I know I am innocent. They just kept me there until like four in the morning and then let me out the back door.<sup>116</sup>

These experiences made Mr. Brehon avoid interactions with the police and left him feeling as if he were “a prisoner in his home.”<sup>117</sup> His fear of the police also contributed to setbacks in his education.<sup>118</sup>

Accordingly, through his narrative, Mr. Brehon conveys how frequent stops and arrests by the police have affected his feelings about himself and how he moves around in the world. The impact is a further silencing and marginalization of a young man of color.

## 2. Alvin Cruz

*‘I’m like, ‘You’re going to arrest me for what?’ He’s like, ‘For being a mutt.’*<sup>119</sup>

113. *Id.* at 2:30.

114. *Id.* at 0:54–1:06.

115. *Id.* at 1:27.

116. *Id.* at 1:38–2:11.

117. Julie Dressner & Edwin Martinez, *The Scars of Stop and Frisk*, N.Y. TIMES (June 12, 2012), <http://www.nytimes.com/2012/06/12/opinion/the-scars-of-stop-and-frisk.html> [hereinafter Dressner & Martinez] (referencing the article).

118. *Scars of Stop and Frisk Video*, *supra* note 111, at 3:45.

119. Ross Tuttle & Erin Schneider, *Stopped-and-Frisked: ‘For Being a F\*\*king Mutt’* [VIDEO], NATION 5:06 (Oct. 8, 2012), <http://www.thenation.com/article/170413/stopped->

Alvin Cruz, a sixteen-year-old student from Harlem, provided a compelling firsthand perspective of a stop and frisk experience through his surreptitious recording of an aggressive, racially suggestive encounter with NYPD officers in June of 2011.<sup>120</sup> The two-minute audio recording was featured as a part of an investigative documentary video and article published by *The Nation* in October of 2012.<sup>121</sup> In the video, Alvin describes the interaction and explains why he decided to record it:

I was walking home from my girlfriend's house, and a cop car went past me. A couple of seconds later, I heard the car turn around, and they just popped out. They all jumped out of the car. I decided to record it because I was getting stopped a lot, and I didn't have evidence of cop being disrespectful or anything, so I would hit the button and record the whole thing.<sup>122</sup>

Alvin manages to record the entire exchange with NYPD officers in what is presumed to be the only known recording of a stop and frisk encounter.<sup>123</sup> In the stop, the officers provided no legal basis for the stop, used racially charged language, and threatened Alvin with violence.<sup>124</sup>

**Officer 1:** Oh you again, man.

**Alvin:** I just got stopped like two blocks ago.

**Officer 1:** You know why? You look very suspicious.

**Alvin:** Because you're always looking I'm crazy.

**Officer 1:** Because you keep looking back at us, man. Don't do that shit.

**Sergeant:** Why does he have an empty book bag?

**Alvin:** Because you're always looking crazy, yo, coming up the block. Always.

**Officer 1:** Cops are looking for a jogger, man.

**Alvin:** [inaudible 00:03:20]

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and-frisked-being-fking-mutt-video [hereinafter *Stopped-and-Frisked Video*] (referencing the embedded video).

120. Ross Tuttle & Erin Schneider, *Stopped-and-Frisked: 'For Being a F\*\*king Mutt' [VIDEO]*, NATION (Oct. 8, 2012), <http://www.thenation.com/article/170413/stoped-and-frisked-being-fking-mutt-video> [hereinafter Tuttle & Schneider] (referencing the article).

121. *Id.*

122. *Stopped-and-Frisked Video*, *supra* note 119, at 2:43–3:03.

123. Tuttle & Schneider, *supra* note 120.

124. Darius Charney, lead counsel for the plaintiffs in *Floyd*, discusses the lack of legal basis and obvious racial undertones present in the stop of Alvin Cruz: "The only reason they give is: 'You were looking back at us...' That does not rise to the level of reasonable suspicion, and there's a clear racial animus when they call him a 'mutt.'" Tuttle & Schneider, *supra* note 120.

**Officer 1:** Listen to me. Our job is to look for suspicious behavior. When you keep looking at us like that, looking back . . .

**Alvin:** Because you're always stopping . . . I just got stopped like two blocks away.

**Sergeant:** Put your hands up.

**Officer 1:** Because you keep doing that shit, man. Listen to me. When you were walking the block with your hood up, and you keep looking back at us like that. . . .

**Sergeant:** Why do you have a fuckin' empty book bag?

**Officer 1:** We think you might have something.

**Alvin:** Because I have my hoodie in there.

**Sergeant:** They do that. You have your hoodie on your body. Why you a fuckin' wise ass?

**Alvin:** Well, It was cold.

**Sergeant:** You want me to smack you?

**Alvin:** You're going to smack me?

**Sergeant:** Yeah.

**Alvin:** You're going to smack me?

**Officer 1:** You a wise ass?

**Alvin:** No, you asked me why I had a book bag on.

**Officer 1:** Who the fuck are you talking to?

**Alvin:** You asked me why I had a book bag on.

**Officer 1:** Who the fuck do you think you're talking to man?

**Alvin:** You asked me if I had a book bag on.

**Officer 1:** Who the fuck do you think you're talking to?

**Sergeant:** Shut your fuckin' mouth. Come on.

**Alvin:** Why are you touching me for?

He was holding me. He was going through my pockets. He was going up, down, he was going through my sweater. That's when he told me keep my hands on my head, so I was like this the whole time.

**Officer 1:** You want to go to jail?

**Alvin:** What for?

**Officer 1:** Shut your fuckin' mouth, kid.

**Alvin:** What am I getting arrested for?

**Officer 1:** Shut your mouth.

**Alvin:** What am I getting arrested for?

**Officer 1:** For being a fucking mutt! You know that?

**Alvin:** That's a law, being a mutt?<sup>125</sup>

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125. *Stopped-and-Frisked Video*, *supra* note 119, at 3:05–4:07 (abridged for space and clarity).

This narrative, supported by the transcript of the interaction recorded to audio, shows just how aggressive and arbitrary these stops can be. Just as with Mr. Brehon's narrative, it also demonstrates how attempting to ask questions and assert rights can potentially escalate an interaction.

C. *Applying Outsider Narrative Themes to the Anti-Stop and Frisk Movement Narratives*

The selections detailed above convey the power of personal narratives in social justice advocacy against aggressive policing. Through vivid personalized accounts embodied by the people who experienced them, these narratives take stop and frisk policing out of the realm of an abstract notion and provide it with human dimensions and contours. They demonstrate compellingly how these kinds of practices, experienced as anything but neutral, take on an empowered quality when situated within a larger campaign. This Article will now explore how the central themes from outsider narrative theory apply to the above first-person narratives from the *Floyd* litigation and anti-stop and frisk movement. Specifically, it will explore how these narratives operate to reveal and neutralize racial assumptions underlying the application of law and to enhance and connect legal and nonlegal advocacy efforts.

1. Narratives Reveal and Counter Racial Assumptions

These selections show how narratives both display and defy the racial assumptions and biases operating beneath the surface of many stop and frisk encounters. A policing approach that is based on the facially dispassionate concept of individualized reasonable suspicion is often carried out in ways that automatically presume the criminality of men of color.<sup>126</sup> This presumption of criminality comes from an underlying dominant narrative about Black males that is well-rooted in

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126. The weakened standard for warrantless searches crafted in *Terry* caused many to note the potential for a disproportionate racial impact. *E.g.*, Jeffrey Kirchmeier, *Stop and Frisk: Public Opinion, Litigation Working to Protect Constitutional Rights*, JURIST (Feb. 23, 2014, 12:20 AM), <http://jurist.org/forum/2014/02/jeffrey-kirchmeier-stop-frisk.php> (explaining that critics of *Terry's* "reasonable suspicion" standard argued that it "allowed more privacy intrusions to fall unfairly on the poor and on people of color" and "created an atmosphere that could permit some police officers to abuse that discretion either consciously or subconsciously, using race as a factor in deciding whom to stop"). *See generally* Adina Schwartz, *Just Take Away Their Guns: The Hidden Racism of Terry v. Ohio*, 23 FORDHAM URB. L.J. 317 (1996) (discussing racism in *Terry* stops).

the social and historical fabric of this country dating back to Black enslavement.<sup>127</sup>

In American society, there is a perception that Black men are the primary perpetrators of drug abuse and crime.<sup>128</sup> As sociologist Kelly Welch notes, “[P]erceptions about the presumed racial identity of criminals may be so ingrained in public consciousness that race does not even need to be specifically mentioned for a connection to be made between the two because it seems that ‘talking about crime *is* talking about race.’”<sup>129</sup> This racialized identity of criminality has also been observed as extending to Latino males.<sup>130</sup> It produces assumptions that operate at every level of the criminal justice system from arrest through incarceration.<sup>131</sup> Police officers are far from immune from this bias. Racial stereotypes influence police to arrest minorities more frequently than non-minorities, thereby generating statistically disparate arrest patterns that, in turn, form the basis for further selectivity.<sup>132</sup>

The stop and frisk selections demonstrate how outsider narratives are effective in exposing the racialized assumptions beneath the surface of aggressive policing policies and practices. The narratives from the *Floyd* trial testimony reveal that both Mr. Downs and Mr. McDonald were men near their homes engaging in nonthreatening behaviors that were nonetheless regarded with suspicion by the

127. See Erika L. Johnson, “A Menace to Society:” *The Use of Criminal Profiles and Its Effects on Black Males*, 38 HOWARD L.J. 629, 635–36 (1995).

128. Kelly Welch, *Black Criminal Stereotypes and Racial Profiling*, 23 J. CONTEMP. CRIM. JUST. 276, 276 (2007).

129. *Id.*

130. See VICTOR M. RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS (NEW PERSPECTIVES IN CRIME, DEVIANCE, AND LAW), at xv, 28–42 (2011) (using an ethnographic study of inner city Oakland to show the effects of criminalization on Latino youth).

131. Joan W. Howarth, *Representing Black Male Innocence*, 1 J. GENDER RACE & JUST. 97, 106 (1997) (“Whether grounded in psychological needs, ideological battles or something else entirely, the deeply imbedded idea of a frightening Black man has some influence on every person in America, including every person in the criminal justice system. Each stage of our criminal justice process reflects and reinforces the ‘knowledge’ that Black male means criminal.”).

132. NAZGOL GHANDNOOSH, THE SENTENCING PROJECT, RACE AND PUNISHMENT: RACIAL PERCEPTIONS OF CRIME AND SUPPORT FOR PUNITIVE POLICIES 13–17 (2014) (explaining how gross overestimations of Black and Hispanic crime rates have led to implicit bias amongst law enforcement and the general public); see also James B. Conley, Dir., FBI, Hard Truths: Law Enforcement and Race (Feb. 12, 2015), available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

police.<sup>133</sup> Mr. Downs, a Black man, was standing near a fence speaking on a cellphone.<sup>134</sup> The police aggressively searched him and presumed him to be in possession of marijuana despite the lack of any odor or other indication of marijuana.<sup>135</sup> Mr. McDonald was crossing the street in order to return to his apartment when he was stopped and searched.<sup>136</sup> He describes himself as the only person searched on the street despite the presence of people of other races walking on the block.<sup>137</sup> The media narratives of Mr. Brehon and Mr. Cruz also reveal how racialized assumptions operated behind their stops.<sup>138</sup> In Mr. Brehon's narrative, this assumption comes through in his discussion of how his race and his youth alone were enough to ensure that he "fit[s] the description."<sup>139</sup> Mr. Cruz's narrative, in which the police call him "a mutt," presents a much starker example of how narrative can expose the racial bias present in these interactions.<sup>140</sup>

Yet, each of the narratives presented also serves as a counter-story to the dominant, stock story about the criminality of men of color. The narratives show an alternative view that deconstructs the image of the violent, menacing thug. These are men who show concern for their families and for their own sense of personal dignity. These narratives work to illustrate that despite their "otherness," they are men who have lives grounded in accessible identities. Leroy Downs is an expectant father,<sup>141</sup> and Cornelio McDonald is a care-taking son to his elderly mother.<sup>142</sup> They are men who work and support families. Tyquan Brehon and Alvin Cruz are both young men and high school students who, like anyone else stopped by the police, just want to

133. See Transcript of Record, *supra* note 86, at 4104–06 (Mr. Downs' testimony on April 19); *Id.* at 3685 (Mr. McDonald's testimony on April 17). For more discussion, see *supra* Parts II.A, II.B.

134. Transcript of Record, *supra* note 86, at 4104–06 (Mr. Downs' testimony on April 19); see *supra* note 89 and accompanying text.

135. Transcript of Record, *supra* note 86, at 4101 (Mr. Downs' testimony on April 19); see *supra* notes 90–95 and accompanying text.

136. Transcript of Record, *supra* note 86, at 3677–79 (Mr. McDonald's testimony on April 17); see *supra* notes 102–07 and accompanying text.

137. Transcript of Record, *supra* note 86, at 3688–89 (Mr. McDonald's testimony on April 17); see *supra* note 109 and accompanying text.

138. See Dressner & Martinez, *supra* note 117; Tuttle & Schneider, *supra* note 120.

139. *Scars of Stop and Frisk Video*, *supra* note 111, at 0:54–1:06.

140. *Stopped-and-Frisked Video*, *supra* note 119, at 4:06–4:08.

141. Transcript of Record, *supra* note 86, at 4119 (Mr. Downs' testimony on April 19); see *supra* Part II.A.1.

142. Transcript of Record, *supra* note 86, at 3677–79 (Mr. McDonald's testimony on April 17); see *supra* Part II.A.2.

know why they were being targeted.<sup>143</sup> Thus, each of these narratives conveys the message that simply being a man of color should not justify his identification and treatment as a criminal suspect.

## 2. Narratives Enhance and Connect Legal and Nonlegal Advocacy

The stop and frisk accounts demonstrate how outsider narratives can enhance and connect advocacy efforts in both legal and nonlegal settings. The harms experienced as a result of aggressive policing sometimes fit into terms that our legal system can interpret or respond to, but many times, they do not.<sup>144</sup> These narratives demonstrate how advocacy that values the perspectives of outsiders can offset the limitations of the legal system, expand the kinds of speakers and harms that can be addressed, and encourage a single focal point for mobilization efforts.

The narratives from Leroy Downs and Cornelio McDonald come directly from *Floyd* trial testimony and demonstrate the challenges and strengths of narratives presented in the more formal group litigation context. The progression of *Floyd* to the trial stage would suggest that some of the substantive limitations that have become characteristic of using litigation to address racial bias were overcome. Yet, the testimonies of Mr. Downs and Mr. McDonald nonetheless lay bare the procedural tensions contemplated in clinical and lawyering literature. These narratives, told in the course of a complex, high-profile federal trial, are surely the result of careful thought and negotiation about who the storyteller would be, how each story would be told as testimony within the conventions of trial advocacy, and what information would be relevant for the legal questions being considered.<sup>145</sup> As a result, the narratives are constructed and filtered with a legal orientation that may be viewed as processed and constrained.

Yet, even with these limitations, the transformative nature of narratives is profound. For the two men sharing their personal stories, it is an opportunity to participate in holding the New York City and its police force—seemingly intractable actors—accountable for the harms they cause.<sup>146</sup> It is also an opportunity to bear witness, an act that is powerful by itself. It is an occasion to speak personal truths that largely

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143. See generally Dressner & Martinez, *supra* note 117 (explaining Mr. Brehon's experiences); Tuttle & Schneider, *supra* note 120 (showing Mr. Cruz's experiences). These narratives were discussed previously in this Article. See *supra* Part II.B.

144. See Martinez, *supra* note 53, at 688–89.

145. See *supra* Parts II.A.1, II.A.2.

146. See White, *Mobilization*, *supra* note 54, at 538–39, 545–46.



go unheard in legal settings. Mr. Downs, for example, in responding to the question of why he decided to be a witness in the case, shares his impressions of why racially profiling young Black males is wrong and shares his hopes for a world free from discrimination for his newborn son.<sup>147</sup> Such an act can be meaningful irrespective of legal victory.<sup>148</sup> Taking the narratives of Mr. Downs and Mr. McDonald along with the testimony from other plaintiffs and witnesses, the result is a more empowered, more persuasive collective voice. Providing testimony and presenting a marginalized narrative in legal spaces serves to inspire people with similar experiences who are not able or welcome to speak in formal settings and opens a richer discourse about the way that race is policed in urban environments.

The accounts from the media also show how outsider narrative can be employed through nonlegal modes of advocacy to expand the kinds of storytellers and experiences that are heard. Even more so than Mr. Downs and Mr. McDonald, the perspectives of Mr. Brehon and Mr. Cruz are exactly the kinds of experiences that are not typically heard in legal settings. The very identities that make these young men of color the targets of aggressive policing, leading to frequent interactions with the criminal justice system, are the same identities that prevent their voices, and other stories from low-income communities of color, from being heard.<sup>149</sup>

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147. See Transcript of Record, *supra* note 86, at 4119 (Mr. Downs' testimony on April 19); *supra* note 98 and accompanying text.

148. When the testimony leads to a favorable legal outcome, the affirmation that results from court recognition of wrongs that have long gone unnoticed can be significant. In an article written after the decision, Mr. Downs acknowledged the significance of the *Floyd* ruling:

My initial feeling about Judge Scheindlin's ruling in our case is that I'm very happy she agreed that the stop-and-frisk policy is outrageous. This is something that people in our community are going through every single day, so I feel good that the judge affirmed that we're not lying; we're not making it up; it's not that so-and-so witness has a grudge against the police. These things are happening to us and it's impeding our lives. I just want to be able to go to the store and walk home without being accused of something. So I'm very happy about the verdict.

Leroy Downs, *We Won Against Stop-and-Frisk, but Policing in New York Needs to Change*, *GUARDIAN* (Aug. 12, 2013), <http://www.theguardian.com/commentisfree/2013/aug/12/stop-and-frisk-nypd-tactics>.

149. See Heather Mac Donald, *The Times' Stop-and-Frisk Victim: Not Exactly Innocent*, *MANHATTAN INST.* (June 13, 2012), <http://www.manhattan-institute.org/html/miarticle.htm?id=8216#.VSLNW5TF9Zk> (suggesting that a young man's prior history means that he should be without both the right to live without or speak about unwarranted police interference).

The increased criminalization of youth of color in urban neighborhoods contributes to the devaluing of their experiences in advocacy efforts:

The new caste system labels black and brown men as criminals early, often in their teens, making them “damaged goods” from the perspective of traditional civil rights advocates. With criminal records, the majority of young black men in urban areas are not seen as attractive plaintiffs for civil rights litigation or good “poster boys” for media advocacy.<sup>150</sup>

As a result, majority audiences that social justice movements seek to affect do not hear from young men of color, who best represent the kind of harms that result from aggressive policing.

Yet, these narratives, published in two mainstream news outlets in 2012, after the filing of the *Floyd* complaint, but before the commencement of the trial,<sup>151</sup> are representative of the ways that outsider narratives can function powerfully in spaces outside of litigation. Mr. Brehon’s and Mr. Cruz’s shared experiences expand the speakers that are heard and the kinds of harms that can be expressed by detailing how frequently young men of color experience interactions with the police. These are expressions that they may share with friends, family members, or lawyers but that otherwise largely go unheard and unaddressed.

For Mr. Brehon, the narrative is a very internalized one. It does not reference a specific encounter but rather conveys the cumulative effect of being stopped more than sixty times before the age of eighteen, for what he perceives to be due to his race.<sup>152</sup> His narrative’s focus is not on harms recognized by the law but rather harms he has experienced to his sense of personhood, which have caused him to retreat and withdraw.<sup>153</sup> Similarly, in Mr. Cruz’s narrative, while questions of the legality of the interaction are apparent, the emphasis is on the frustration he experiences from being repeatedly stopped and treated disrespectfully.<sup>154</sup> Yet, implicit within the narrative is an acknowledgement of his marginalized identity: Mr. Cruz recognizes

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150. ALEXANDER, *supra* note 68, at 216; Alfieri & Onwuachi-Willig, *supra* note 68, at 1535.

151. Plaintiffs filed the initial complaint in January 2008, and the *Floyd* trial commenced in March 2013. See *Floyd Overview*, *supra* note 85.

152. See Dressner & Martinez, *supra* note 117.

153. See *id.*

154. See Tuttle & Schneider, *supra* note 119.

that his recounting of these stops alone is insufficient as shown by his need to secure actual recorded evidence to serve as verification.<sup>155</sup>

These selections also show how outsider narrative can serve to connect different advocacy efforts in a way that keeps the experiences of outsiders at the center. Although each of these narratives comes from different sources and different points within the anti-stop and frisk movement, themes of frustration, humiliation, and racialized marginalization serve to connect each of them. In this way there is a sustained anchoring to outsider experience, the moral force at the center of the movement.<sup>156</sup>

The narrative from Mr. Cruz provides a prime example of how this point of orientation can facilitate connections between legal and nonlegal advocacy efforts. Mr. Cruz's narrative and accompanying short film were featured in *The Nation* in October 2012.<sup>157</sup> At three New York City Council hearings later that month, several community members providing testimony referenced Mr. Cruz's experience, comparing it to their own.<sup>158</sup> Further, plaintiffs' attorneys in the *Floyd* case requested permission to add Mr. Cruz as a trial witness, having first contacted him in December 2012, after his narrative had been published.<sup>159</sup> Although the court did not ultimately grant their request, Mr. Cruz's narrative was cited in the final decision as a part of the NYPD's "frequent and ongoing notice of troubling racial disparities in stops."<sup>160</sup>

Thus, these selections convey how outsider narrative can enhance the kinds of experiences of shared marginalization and can build connections between diverse advocacy efforts.

### III. THE IMPACT OF PRIVILEGING OUTSIDER NARRATIVE

Stop and frisk in New York City is but one manifestation of the countless ways that poor communities of color are aggressively policed

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155. *See id.*

156. ALEXANDER, *supra* note 68, at 214 (discussing moral force ideology); *see also supra* Part I.B.2 (outlining the components of an outsider narrative campaign and its anchor to a moral force as opposed to a one-dimensional legal approach).

157. Tuttle & Schneider, *supra* note 119.

158. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 665 n.774 (citing Brief for the Black, Latino, and Asian Caucus of the Council of the City of New York as Amicus Curiae Supporting Plaintiff-Appellees at 4, *Floyd v. City of New York*, 959 F. Supp. 2d 540 (2013) (No. 08 CIV 1034)).

159. *Id.*

160. *Id.* at 665-66.

within the city and around the country.<sup>161</sup> Whether it is through patrolling styles that result in targeting of “outsiders”<sup>162</sup> or through disproportionate reliance on the excessive use of force when

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161. The NYPD’s persistent reliance on so-called quality of life policing serves as a prime example of the way race and poverty continue to be aggressively policed in New York City. The approach, which is based on the broken windows theory of policing, involves the aggressive pursuit of very minor offenses at the misdemeanor or noncriminal infraction level, such as jay-walking, simple marijuana possession, or disorderly conduct. While the approach may appear neutral on the surface, the practice places overwhelming focus on individuals and neighborhoods of impoverished racial minorities. Patricia J. Williams, *It’s Time to End ‘Broken Windows’ Policing*, NATION (Jan. 8, 2014), <http://www.thenation.com/article/177842/its-time-end-broken-windows-policing> (“‘Take just three neighborhoods in Brooklyn,’ says Levine. ‘From 2008 through 2011, Park Slope (Precinct 78) averaged eight bike-on-sidewalk summonses a year, Ocean Hill–Brownsville (Precinct 73) averaged 1,062 and Bedford–Stuyvesant (Precinct 79) averaged 2,050.’ As one might guess, Park Slope is a mostly white neighborhood; Ocean Hill–Brownsville is 90 percent black and Latino; Bedford–Stuyvesant is 80 percent black and Latino.”).

162. Research reveals that police patrol differently in different neighborhoods and view residents with more suspicion in communities that have higher crime rates. In disadvantaged, higher-crime areas, police are more likely to use obtrusive patrolling styles, employ physical force, and engage in misconduct. See Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URBAN L.J. 457, 463–64 (2000); Douglas A. Smith, *The Neighborhood Context of Police Behavior*, 8 CRIME & JUST. 313, 313–41 (1986).

interacting with these groups,<sup>163</sup> the impact is a continued and deepening sense of marginalization.<sup>164</sup>

As struggles against aggressive policing continue both locally and nationally, it makes sense for policing reform advocates to take stock of discrete moments of progress, so as to better inform ongoing efforts. This section will examine the results of the anti-stop and frisk movement's engagement of outsider narrative. In doing so, it will also provide key insights for legal advocates using outsider narratives to combat racialized policing.

#### A. *Centered Advocacy and Reform Efforts*

By emphasizing outsider narrative, the anti-stop and frisk movement developed into a campaign that was centered on the experiences and priorities of those impacted by aggressive policing.<sup>165</sup> Advocates engaged outsider narrative in a way that helped to offset some of the limitations of legal forums and created links to other advocacy efforts.<sup>166</sup> Maintaining focus on the voices of the impacted

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163. Joseph Goldstein, *'Stop-and-Frisk' Ebbs, but Still Hangs over Brooklyn Lives*, N.Y. TIMES (Sept. 19, 2014), [http://www.nytimes.com/2014/09/20/nyregion/friskings-ebb-but-still-hang-over-brooklyn-lives.html?\\_r=0](http://www.nytimes.com/2014/09/20/nyregion/friskings-ebb-but-still-hang-over-brooklyn-lives.html?_r=0) ("And it is a strategy [Commissioner William J. Bratton] has shown little sign of abandoning, even after Eric Garner died in July after a struggle with police officers on Staten Island who were trying to arrest him for selling loose, untaxed cigarettes."); see also CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 3, 48 (2014), available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland\\_division\\_of\\_police\\_findings\\_letter.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf) (finding a pattern of excessive force and highlighting the distrustful relationship between the Cleveland Police Department and minority communities in the city); CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 2 (2014), available at [http://www.justice.gov/crt/about/spl/documents/newark\\_findings\\_7-22-14.pdf](http://www.justice.gov/crt/about/spl/documents/newark_findings_7-22-14.pdf) (finding that "black individuals in Newark bear the brunt of the NPD's pattern of unconstitutional stops and arrests" and that unreasonable or excessive force was used in more than twenty percent of all incidents reviewed); CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT, at x (2014), available at [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf) ("NOPD use of force data also shows a troubling racial disparity that warrants a searching inquiry into whether racial bias influences the use of force at NOPD."); CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE SEATTLE POLICE DEPARTMENT 6, 27-28 (2011), available at [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf) (citing statistics that suggest police use excessive force disproportionately against minorities).

164. For a discussion of how aggressive policing strategies create a culture that cultivates misconduct within police departments, further marginalizing communities of color, see Kami Chavis Simmons, *The Legacy of Stop and Frisk: Addressing the Vestiges of A Violent Police Culture*, 49 WAKE FOREST L. REV. 849, 865-68 (2014).

165. See discussion *supra* Part II.

166. See discussion *supra* Part II.

facilitates a common point of orientation and ensures that marginalized perspectives remain involved in reform efforts.<sup>167</sup>

The challenges of holding governmental actors responsible for aggressive, race-based policing has prompted legal advocates to look beyond formal mechanisms to address the direct and indirect harms experienced by people of color.<sup>168</sup> This more expansive view of advocacy requires engagement with a cross section of approaches and collaborations. Outsider narrative can build critical links between policing reform efforts.

There are a number of formal mechanisms that are tasked with oversight and regulation of police authority, such as the judiciary, the legislature, and civil complaint review boards.<sup>169</sup> However, these institutions have practical limitations on their ability to affect discriminatory policing practices.<sup>170</sup> Given the hurdles that stand in the way of addressing aggressive policing through formal channels alone, advocates must engage in multifaceted strategies that adopt both traditional and nontraditional methods. In doing so, privileging

167. See Martinez, *supra* note 53, at 692.

168. See *infra* notes 170–73 and accompanying text.

169. See Stephen Clarke, Note, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails*, 43 COLUM. J.L. & SOC. PROBS. 1, 2, 6–9 (2009).

170. The reliance on guilty pleas in criminal courts in New York City, for example, has limited the opportunities for judicial scrutiny of police practices. See Steven Zeidman, *Policing the Police: The Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 330–31 (2005) (discussing the role that guilty pleas have in foreclosing trials that would otherwise provide an opportunity to reveal racial profiling or other kinds of police misconduct); see also M. Chris Fabricant, *Rethinking Criminal Defense Clinics in “Zero-Tolerance” Policing Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE 351, 376–77 (2012) (describing the practice of offering non-criminal pleas on questionable arrests for criminal trespass and that “[d]eclining this offer and contesting the charges requires a commitment of resources and perseverance that privilege assumes and poverty precludes”). Additionally, state legislative bodies could have a broader impact on policing oversight than criminal courts due to the influence of nonprofit advocacy groups for marginalized groups. See David M. Jaros, *Preempting the Police*, 55 B.C. L. REV. 1149, 1159–61 (2014) (“So long as not-for-profit organizations exist at the state level and can voice less influential constituents’ concerns, legislators can gather and assimilate vast quantities of information when they are adequately motivated to investigate police activities.”). But see Andrew E. Taslitz, *Fourth Amendment Federalism and the Silencing of the American Poor*, 85 CHI.-KENT L. REV. 277, 283 (2010) (“Poor urban racial minorities face terrific challenges in being heard at all, but their voices are particularly muted before state and federal legislatures.”). Local legislative bodies may provide greater opportunities for impacting oversight. See, e.g., *New York City Council Overrides Mayor in Vote for Greater Police Oversight*, GUARDIAN (Aug. 22, 2013, 5:22 PM), <http://www.theguardian.com/world/2013/aug/22/new-york-council-votes-watchdog-nypd>. See generally Clarke, *supra* note 169 (discussing the strengths and weakness of different civilian oversight bodies and the failure of New York City’s civil oversight system).

outsider narrative provides for an important unifying point between advocacy modes.

The anti-stop and frisk movement provides an example of how organizing, community and public education, political advocacy, and media engagement were used—both in conjunction with and independent of—more formal legal and legislative approaches. Notwithstanding the involvement of various individuals and groups using these different modes, the common feature was that the voice and story of a person directly impacted by stop and frisk remained highlighted.

This privileging of narrative across different advocacy modes and groups is important because social justice movements can be dynamic and diverse. Yet, even as the messenger, forum, or audience changes, the theme remains consistent: there is a deep human impact and cost of aggressive policing. Maintaining this emphasis on this human impact, as revealed through the narratives of those affected, serves as a common point of orientation. It helps to ensure that multi-mode advocacy efforts do not become disengaged from one another or from the “the moral force at the heart of the movement itself.”<sup>171</sup>

Importantly, focusing on marginalized experience also provides a natural entry point for those who are routinely excluded from legal and social discourse to remain firmly grounded in reform efforts.<sup>172</sup> In *Floyd*, the court’s ordering of a joint remedial measure process that includes input from impacted communities acknowledges this reality: “The communities affected by the NYPD’s use of stop and frisk have a distinct perspective that is highly relevant in crafting effective reforms. No amount of legal or policing expertise can replace a community’s understanding of the likely practical consequences of reforms in terms of both liberty and safety.”<sup>173</sup>

### B. *Expanded Recognition of Harms*

The prominence of outsider narrative in the anti-stop and frisk movement has helped to expose the broad cross section of harm that is caused by aggressive policing. Discriminatory policing affects not only

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171. See Elsesser, *supra* note 77, at 383 (quoting ALEXANDER, *supra* note 68, at 226).

172. See Russell, *supra* note 44, at 766–67 (“Often the so-called ‘solutions’ to community problems proposed by lawyers . . . are seriously lacking in responsiveness to the concerns of the communities themselves . . . [S]torytelling can elicit perspectives rarely taken into account in more conventional forms of litigation, policymaking and organizing. Increased attention to client narratives . . . can serve to focus priorities in addressing legal problems.”).

173. *Floyd v. City of New York*, 959 F. Supp. 2d 668, 686 (S.D.N.Y. 2013).

the individuals who directly experience it, but also the families and communities of which they are a part. The types of harm suffered by impacted individuals and groups can be wide-ranging and well beyond the reach of legal adjudication. Advocacy that promotes outsider narrative can identify and highlight the extensive reach of aggressive policing's more elusive harms.<sup>174</sup>

The outsider narratives of the anti-stop and frisk movement uncover the ways that aggressive policing causes psychological damage to both individuals and communities. For any individual that personally experiences an aggressive policing encounter—even one that does not result in an arrest or other adverse outcome—the impact can be significant and enduring.<sup>175</sup> For many people, the experience of being stopped feels like a kind of public shaming—an unjustifiable exertion of state power and control on a public stage.<sup>176</sup> It is a reality frequently highlighted in the selected narratives related to stop and frisk policing and in narratives about aggressive policing in general.<sup>177</sup> The result is a sense of degradation, fear, and humiliation that ultimately affects the way a person moves about in the world.<sup>178</sup>

Even for those who do not personally experience an aggressive policing encounter but live within the impacted communities, outsider narrative reveals a wide-reaching psychological impact. For many, the structures of aggressive policing that are present within their neighborhoods on a regular basis are experienced as beyond their control and contribute to the notion of aggressive policing as a community event.<sup>179</sup> Perceptions and attitudes about self, safety, and

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174. The effect on civic engagement with the police and on policing legitimacy, another more “elusive” harm of aggressive tactics, has also been revealed through outsider narrative. See discussion *infra* Part III.C.

175. Amy E. Lerman & Vesla M. Weaver, *Staying Out of Sight? Concentrated Policing and Local Political Action*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 202, 205 (2014).

176. *Id.* (“[B]eing stopped by the government in a public space also suggests public discounting of worth. It appears to the person stopped to be a form of public shaming that derives from the feeling that the state has no problem displaying its power and control over the citizen on a public stage.”).

177. See *supra* Parts II.A.1, II.A.2.

178. Nicholas K. Pert, *Why Is the N.Y.P.D. After Me?*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html> (“Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer’s gun at my head.”); see *supra* Parts II.A.1, II.B.1.

179. See Lerman & Weaver, *supra* note 175, at 202–03 (“[T]he infrastructure of surveillance—from police substations to squad cars to policemen descending through residents’ buildings in vertical patrols—is a pervasive part of the architecture of community



liberty of movement can come from indirect experience with the police just as readily as from direct experience.<sup>180</sup> This can be observed in the narratives of parents of color who have resorted to restraining their sons' movements outdoors out of concern for the outcome of an encounter with the police.<sup>181</sup>

The accounts featured from the anti-stop and frisk movement demonstrate how outsider narrative uniquely captures and conveys the full range of these more immeasurable harms that can be experienced both individually and collectively. For legal advocates supporting reform movement efforts, an emphasis on harms that can only be conformed into claims for legal adjudication can limit opportunities to inform and expand the public debate about aggressive policing. It can also diminish the mobilizing potential that comes from engaging a wider base of impacted individuals.

### C. *Deepened Civic Engagement and Mobilization*

The use of outsider narrative in the anti-stop and frisk movement played a significant role in deepening the engagement of vulnerable groups on issues of race and policing. Whereas aggressive policing tends to intensify marginalization and limit civic engagement,<sup>182</sup> outsider narrative can stem isolation and encourage activism. As such, policing reform advocacy that is guided by and promotes the voices of outsiders contributes to broader mobilization of affected individuals.

There is an observable connection between aggressive policing and the civic disengagement of communities of color. When individuals are involved in or witness a police encounter that is experienced as

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life. In these neighborhoods, citizens regularly encounter the police in their daily routines, through involuntary and largely unwelcome interactions.”).

180. See, e.g., Brett C. Stoudt, Michelle Fine & Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. SCH. L. REV. 1331, 1341 (2011) (“These are severe moments of contact and are felt not only by the individual young person, but also by the onlookers in the community and family and friends who linger after the police have moved on.”); Dennis P. Rosenbaum et al., *Attitudes Toward the Police: The Effects of Direct and Vicarious Experience*, 8 POLICE Q. 343, 343–65 (2005).

181. See Michael Martinez, *Within Black Families, Hard Truths Told to Sons Amid Ferguson Unrest*, CNN (Aug. 21, 2014, 12:09 AM), <http://www.cnn.com/2014/08/15/living/parenting-black-sons-ferguson-missouri>; Nicole Smith Futrell, *Stop and Frisk From a Mother's Perspective*, GOTHAM GAZETTE (June 30, 2013), <http://www.gothamgazette.com/index.php/opinions/4295-op-ed-on-raising-a-black-son-in-the-era-of-stop-and-frisk>.

182. Richard P. Adler & Judy Goggin, *What Do We Mean by “Civic Engagement”?*, 3 J. TRANSFORMATIVE EDUC. 236, 239 (2005) (“Civic engagement is individual and collective actions designed to identify and address issues of public concern . . . . It can include efforts to directly address an issue, work with others in a community to solve a problem, or interact with the institutions of representative democracy.” (internal citation omitted)).

lacking in justification or employing unnecessary force, it can deepen a sense of alienation from government and diminish a person's willingness to become involved with issues of public concern.<sup>183</sup> Scholars have examined this disaffection through a community's decreased willingness to call on governmental services, such as policing<sup>184</sup> and municipal amenities,<sup>185</sup> and through a community's lack of proactive involvement in political organizing and participation.<sup>186</sup>

Professor David Kennedy observes the effect of alienation on aggressively policed communities: "[T]hey do not organize. They don't march. They don't pull out their cellphones; they just withdraw. And that is the mark of a community that does not feel any longer like they are part of America. They don't feel like citizens."<sup>187</sup> Even when there is still a willingness to engage civically, aggressive policing and the web of collateral consequences that results from even the most minor criminal justice encounter<sup>188</sup> can create significant instability in a person's life, making meaningful participation less possible.<sup>189</sup> Indeed, aggressive encounters with law enforcement and the criminal justice

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183. Lerman & Weaver, *supra* note 175, at 206 (discussing the impact that an unfair or arbitrary experience with law enforcement can have on a person's perception and support of government institutions).

184. See generally Jacinta M. Gau & Rod K. Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men's Perceptions of Police Legitimacy*, 27 JUST. Q. 255 (2010) (finding that those who have been harassed by the police find the police to be less effective at their jobs, using a disadvantaged St. Louis neighborhood as an example).

185. See Lerman & Weaver, *supra* note 175, at 204 (measuring civic engagement through willingness to reach out for local support via 311).

186. *For People of Color, Relationships with Police Are Complicated*, NPR (Aug. 15, 2014), <http://www.npr.org/2014/08/15/340562861/for-people-of-color-relationships-with-police-are-complicated>.

187. *Id.*

188. Aggressive policing often leads to countless numbers of people being drawn into the criminal justice system and its vast network of collateral consequences, which may have the impact of cutting off vital civil and social opportunities. Benign offenses suddenly trigger arrest records and often-unforeseen repercussions, such as deportation or ineligibility for housing, benefits, or employment licenses. See K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 300-15 (2009); Steven Zeidman, *Equal Protection Examined in the Context of Policing*, N.Y. L.J. (Feb. 7, 2014), <http://www.newyorklawjournal.com/id=1202641893657/Equal-Protection-Examined-in-the-Context-of-Policing>.

189. See Vesla M. Weaver, Jacob S. Hacker & Christopher Wildeman, *Detaining Democracy? Criminal Justice and American Civic Life*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 12 (2014) ("Criminal justice interventions make people less prepared and capable of being engaged citizens . . . by making them more troubled in a host of social domains [such as] their ability to maintain jobs, housing, and stable families . . . . These effects are not contained to individuals directly in contact with criminal justice institutions.").

system can weaken the social involvement of vulnerable communities by communicating a tacit message that their perspectives and experiences are of little political or civic importance.<sup>190</sup>

However, as the anti-stop and frisk movement demonstrates, advocacy efforts that privilege outsider narrative have the ability to stimulate civic engagement and enrich mobilization that might otherwise be stifled. Elevating the narratives of outsiders can help to combat vulnerability by drawing those who have experienced aggressive policing into the “civic fabric” of the community, as opposed to continuing to push them out.<sup>191</sup> When individual experiences are shared, they can lessen alienation and contribute to a collective movement for action.<sup>192</sup> An outsider narrative shared by one individual may inform and encourage others to share their stories in other settings.<sup>193</sup> This helps to mobilize supporters and build a wider coalition with broader influence. Civic engagement enhanced the impact of *Floyd*, for example, through the broad coalition of cultural and community groups that packed the courtroom during the trial and held rallies outside of the court house.<sup>194</sup> This diverse coalition expanded civic participation and helped signal to legal and political power holders that the base of support that rallied against the tactic was wide-ranging and diverse.<sup>195</sup> As such, outsider narrative can stimulate civic engagement and mobilization in ways that both

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190. Weaver, Hacker, and Wildeman note:

The key to seeing the socializing effects of criminal justice policies is to look at the types of contact that mainly low-income citizens have with political authority. As pervasive as incarceration is in some communities, it pales in frequency to the regular interactions between disadvantaged citizens, and police and other criminal justice authorities. And while these interactions may be less dramatic or prolonged, they join with incarceration to become a fundamental driver of the attitudes and behaviors that citizens develop in the political world . . . It shapes individual civic capacities, feelings of political efficacy, and trust in officials; and endows citizens with a hidden curriculum.

*See id.* at 13.

191. *For People of Color, Relationships with Police Are Complicated*, *supra* note 186.

192. *See* Martinez, *supra* note 53, at 684–85. For more, see Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 *BUFF. L. REV.* 1275, 1318 (1999) (“When governmental misconduct is fragmented and anecdotalized, it is less threatening and easier to dismiss.”); *supra* Part I.B.2.

193. *See* discussion *supra* Part II.C.2.

194. For an example of community calls to action in connection with the *Floyd* trial, see *NLG-NYC Muslim Defense Project Calls for an End to NYPD’s “Stop and Frisk”*, NAT’L LAW. GUILD: N.Y.C. CHAPTER (Mar. 29, 2013, 6:59 PM), <http://nlgnyc.org/2013/03/29/nlg-nyc-muslim-defense-project-calls-for-an-end-to-nypd’s-stop-and-frisk/>.

195. *See Timeline: Floyd v. City of New York*, *supra* note 28.

empower those who are marginalized and support ongoing legal advocacy efforts.

CONCLUSION

Now more than ever, the marginalized perspectives of people of color must remain at the forefront of advocacy efforts aimed at addressing racially discriminatory policing. The national protests that followed the deaths of Michael Brown and Eric Garner, and the nonindictment of the officers responsible, show that communities are actively mobilizing to reform the way that Blacks and Latinos are policed. As legal advocates engage with these movements, understanding and promoting the role of narrative is critical. The anti-stop and frisk movement in New York City provides important considerations for understanding the transformative potential of outsider narrative.

