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## Traumatic Justice

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# ARTICLES

## TRAUMATIC JUSTICE

*Teri Dobbins Baxter* \*

### INTRODUCTION

In the recent past, allegations of police misconduct have periodically led to widespread community protests, but usually only when the incident is sufficiently high-profile and the harm is severe, such as when a police officer beats or kills an unarmed Black person.<sup>1</sup> More often the spotlight and outrage have faded quickly, as victims were discredited and no charges were brought, or no convictions obtained.<sup>2</sup> But citizens have increasingly harnessed the power of cell phone videos and social media to bring attention to acts of racial violence and hold accountable those who are responsible, particularly in cases of alleged police misconduct.<sup>3</sup> As violent encounters with police are more frequently filmed, posted, and shared on social media—thousands, hundreds of thousands, even millions of

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1. See, e.g., *LAPD Officers Beat Rodney King on Camera*, HIST. (Mar. 4, 2010) [hereinafter *Rodney King Video*], <https://www.history.com/this-day-in-history/police-brutality-caught-on-video> [<https://perma.cc/3KVF-TKPJ>]. The failure to convict any of the officers involved in the videotaped beating of Rodney King led to three days of unrest and violence in Los Angeles. *Id.* Two of the officers were later convicted on federal charges and sentenced to jail time. *Id.*

2. See Sarah Maslin Nir, Jonah E. Bromwich & Benjamin Weiser, *A Special Unit to Prosecute Police Killings Has No Convictions*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/nyregion/new-york-police-accountability.html> [<https://perma.cc/55D4-4B2L>] (“Officers are afforded special legal protections when they use force in the course of their job. And juries are historically deferential to the police and receptive to arguments defending their actions.”).

3. See Yarimar Bonilla & Jonathan Rosa, *#Ferguson: Digital Protest Hashtag Ethnography, and the Racial Politics of Social Media in the United States*, 42 J. AM. ETHNOLOGICAL SOC. 4, 5 (2015) (documenting the rise of “citizen journalism” and social media use to document and bring attention to violent encounters between police and African Americans).

times—calls for justice and reform grow louder and more sustained.<sup>4</sup>

In addition to using social media to pressure officials to investigate, charge, and prosecute officers, ordinary citizens have used cell phone videos to corroborate claims of police misconduct or disprove official police narratives that blame the victim and justify police violence.<sup>5</sup> Videos allow marginalized communities to counter dominant media narratives that demonize and dehumanize crime victims to garner sympathy and support for the police officers who killed them.<sup>6</sup> They can also disprove characterizations of overwhelmingly peaceful protests against police brutality as violent and destructive.<sup>7</sup> The public outcry from videos showing violent interactions with police has led to unprecedented pressure and support for police reform and accountability.<sup>8</sup> The images also have

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4. See Kenya Downs, *When Black Death Goes Viral, It Can Trigger PTSD-like Trauma*, PBS (July 22, 2016, 8:04 PM), <https://www.pbs.org/newshour/nation/black-pain-gone-viral-racism-graphic-videos-can-create-ptsd-like-trauma> [<https://perma.cc/ULD2-DPUB>] (“When video of the Baton Rouge shooting death of Alton Sterling first surfaced on July 5, social media networks became immediately populated with Sterling’s final moments. The following day, the shooting death of Philando Castile was streamed live by his girlfriend on Facebook. The video, which shows Castile gasping for air after being shot four times by a Minnesota police officer, has since been shared on Facebook more than 5 million times.”).

A video of former police officer Derek Chauvin killing George Floyd by kneeling on his neck was posted on YouTube.com and has been viewed over 13 million times. *How George Floyd Was Killed in Police Custody*, YOUTUBE (June 1, 2020), <https://youtube.com/watch?v=vksEJR9EPQ8> [<https://perma.cc/HT8H-RTJB>].

5. Bonilla & Rosa, *supra* note 3, at 5 (noting that widespread availability of cell phones with video recording technology “has provided marginalized and racialized populations with new tools for documenting incidents of state-sanctioned violence and contesting media representations of racialized bodies and marginalized communities”).

6. *Id.* at 8. For example, a *New York Times* profile of Michael Brown described him as “no angel” and described prior drug and alcohol use even though it had no relevance to the circumstances of his death. *Id.* at 9. The police released video completely unrelated to the confrontation that led to his death, in which they accused him of shoplifting. *Id.* In his grand jury testimony about Mr. Brown’s death, Darren Wilson, the officer who shot and killed him, described Mr. Brown as a “demon” and referred to him as “it.” *Id.* at 11 (emphasis added). “Michael Brown and Darren Wilson were both 6’4” tall and weighed 290 pounds and 210 pounds, respectively, yet, in his testimony and in television interviews, Wilson said he felt like ‘a 5-year-old holding on to Hulk Hogan.’ Wilson’s characterization of himself as a child and of Brown as a superhuman monster became part of an exculpatory narrative in which the unarmed teenager was framed as the true threat, not the police officer who shot and killed him.” *Id.*

7. *Id.* at 7 (“It is surely not coincidental that the groups most likely to experience police brutality, to have their protests disparaged as acts of ‘rioting’ or ‘looting,’ and to be misrepresented in the media are precisely those turning to digital activism at the highest rates. Indeed, some of the most important hashtag campaigns emerging out of #Ferguson were targeted at calling attention to both police practices and media representations, suggesting that social media can serve as an important tool for challenging these various forms of racial profiling.”).

8. Julia Munslow, *What Happens When Videos of Police Violence Go Viral?*, YAHOO

been used to exonerate police officers whose actions are deemed justifiable, which can calm inflamed tempers and bolster trust in the police.<sup>9</sup>

But the success of these efforts (to the extent they are successful) comes at the cost of the health and well-being of the very communities that are the catalysts and intended beneficiaries of social media activism.<sup>10</sup> A robust body of research over the last several decades has found an association between racism<sup>11</sup> and negative health outcomes for Black Americans.<sup>12</sup> Recent studies have established a causal connection: racism causes racial health disparities.<sup>13</sup> Further evidence has shown that seeing others suffer racist attacks negatively impacts the viewer's physical and mental health even if the viewer is not a target or even present.<sup>14</sup> Although people of all races watch and are emotionally affected by videos showing racial violence, Black people have stronger negative reactions to perceived racism than Whites and, therefore, suffer greater

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NEWS (July 6, 2020), <https://news.yahoo.com/what-happens-when-videos-of-police-violence-go-viral-165242076.html> [<https://perma.cc/2HMP-N3N7>] (noting that videos of police brutality lead to calls for police reform).

9. See, e.g., Antonio Planas, *Drone Video Shows Police Fatally Shoot California Man Who Pointed BB Gun at Officer*, NBC NEWS (July 20, 2021), <https://www.nbcnews.com/news/us-news/drone-video-shows-moment-police-fatally-shoot-california-man-who-n1274540> [<https://perma.cc/VZ2C-D5M3>] (drone video footage shows man aiming a BB gun that looked like a small handgun at officer before the officer shoots him). The public may not uniformly agree that a shooting was justified, but if the video shows an arguable threat to the officer, the public outcry may be less intense.

10. Downs, *supra* note 4 (discussing negative mental health effects for African Americans watching the videos of the police shooting deaths of Alton Sterling, Philando Castille, Charles Kinsey, and Terence Crutcher). “Traumatic events leading up to each digital activism hashtag (i.e., #ICantBreathe, #HandsUpDontShoot) instill fear, despair, and anxiety throughout the course of ethnic minorities’ lives.” Thema Bryant-Davis, Tyonna Adams, Adriana Alejandre & Anthea A. Gray, *The Trauma Lens of Police Violence Against Racial and Ethnic Minorities*, 73 J. SOC. ISSUES 852, 855 (2017) (internal citations omitted).

11. Alex L. Pieterse, Nathan R. Todd, Helen A. Neville & Robert T. Carter, *Perceived Racism and Mental Health Among Black American Adults: A Meta-Analytic Review*, 59 J. COUNSELING PSYCH. 1, 2 (2012). “Racism has been defined as an ideology of racial superiority followed by discriminatory and prejudicial behavior in three domains: individual, institutional, and cultural.” *Id.*

12. Jacob Bor, Atheendar S. Venkataramani, David R. Williams & Alexander C. Tsai, *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study*, 392 LANCET 302 (2018) (finding that “[p]olice killings of unarmed black Americans have adverse effects on mental health among black American adults in the general population.”).

13. *Id.* at 308 (reporting research findings suggesting “that the population mental health burden from police killings among black Americans is nearly as large as the mental health burden associated with diabetes” which results in 75 million additional poor mental health days each year for Black Americans).

14. *Id.* at 302–10 (studying the effect of awareness of police killings of unarmed African Americans on African Americans not involved in the incident or related to anyone involved).

trauma from watching the same videos.<sup>15</sup> Consequently, when videos or images of Black people being targeted, injured, or killed by police are viewed by other Black people, they can cause trauma that leads to short-term and long-term negative health consequences.<sup>16</sup> The mental health consequences are less obvious but still devastating for Black communities.<sup>17</sup>

These days, socially aware individuals can ingest a steady stream of news stories and video depictions of acts of racism and violence against racial minorities.<sup>18</sup> The publicity may be the most effective means of bringing about social change,<sup>19</sup> but it also inflicts repeated trauma on the Black people who read about and view these incidents.<sup>20</sup> The challenge for activists and reform advocates is to bring attention to police misconduct and unlawful violence against Black people in order to bring about change and accountability, while protecting—to the extent possible—the physical and mental health of those who must view and distribute the violent words and images for the ultimate benefit of their communities.<sup>21</sup>

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15. See Kathryn Freeman Anderson, *Diagnosing Discrimination: Stress from Perceived Racism and the Mental and Physical Health Effects*, 83 SOC. INQUIRY 55, 66 (2013) (finding that “blacks were [more] likely to experience mental or emotional symptoms from experiences of perceived racism when compared to whites”).

16. Monnica T. Williams, *The Link Between Racism and PTSD*, PSYCH. TODAY (Sept. 6, 2015), <https://www.psychologytoday.com/us/blog/culturally-speaking/201509/the-link-between-racism-and-ptsd> [<https://perma.cc/88KK-2D8B>] (“We might see clips on the nightly news featuring unarmed African Americans being killed on the street, in a holding cell, or even in a church. Learning of these events brings up an array of painful racially-charged memories, and what has been termed ‘vicarious traumatization.’”); Patricia Gaines, *Black Americans Experience Deadly Stress as a Pandemic and Violent Racism Collide*, EXPERTS SAY, NBC NEWS (June 29, 2020, 12:55 PM), <https://www.nbcnews.com/news/nbcblk/black-americans-experience-deadly-stress-pandemic-violent-racism-collide-experts-n1231448> [<https://perma.cc/7JYJ-WZY5>]; Downs, *supra* note 4; Alia E. Dastagir, *George Floyd Video Adds to Trauma: ‘When Is the Last Time You Saw a White Person Killed Online?’*, USA TODAY (May 28, 2020, 10:27 AM), <https://www.usatoday.com/story/news/nation/2020/05/28/george-floyd-ahmaud-arbery-covid-emotional-toll-hits-black-families/5270216002/> [<https://perma.cc/TK9R-V6C7>] (“‘I can only describe the continued viewing of racial violence, torture, murder and disregard for the humanity of black bodies as repetitive trauma,’ said Danielle Jackson, a psychiatry resident and board member of the American Psychiatric Association’s Caucus of Black Psychiatrists.”); see also Bryant-Davis et al., *supra* note 10, at 855.

17. Bor et al., *supra* note 12, at 308 (identifying negative consequences of untreated mental illness in the Black community and the barriers to obtaining treatment).

18. Gaines, *supra* note 16 (“Black people today are also suffering from experiencing racism in a way that has not been possible in the past, because of social media and the constant replay of killings.”).

19. Dastagir, *supra* note 16 (“Some mental health experts argue the explosive footage that accompanies many of these violent deaths are vital to raising public consciousness, even if they are disturbing.”).

20. See Bryant-Davis et al., *supra* note 10, at 855.

21. Violence against all people should be exposed and eradicated, but I focus on Black

Of course, such efforts should not be necessary. America's history of racism and racial bias has eroded trust between the government and many Black communities and led to the perceived need to protect themselves from those sworn to protect them.<sup>22</sup> Eradicating that distrust requires a transformation of the criminal justice system and its relationship to Black communities to ensure that the Constitution's equal protection mandate becomes a reality. But efforts to reform the criminal justice system have had mixed results at best.<sup>23</sup> True reform is exceedingly difficult when the system is populated by people with biases cultivated over hundreds of years.

More "radical" changes are worth considering. For example, the abolition movement offers a dramatically different vision and a community-based, restorative justice model that would eliminate the structures that created the current carceral state while fostering healing for those communities.<sup>24</sup> In the meantime, increased understanding of the trauma caused by images and stories of racial violence, and increased access to culturally competent mental health counselors, are vital to reducing the damage caused by those images and fostering healing in Black and other marginalized and traumatized communities.

Part I of this article describes research showing the potential mental and physical trauma suffered by Black people when viewing and reading about acts of racial violence. Part II discusses the troubling history between people of African descent and police in America, from slave patrols to the present day. Part III explores the evolution of the use of images and videos to expose racial violence and garner support for racial justice movements. Finally,

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Americans in this Article because of the unique history of Black people in the United States, and because police have a fraught history with Black communities that differs from that of other communities. Other groups deserve their own discussions that address their unique histories.

22. Debo P. Adegbile, *Policing Through an American Prism*, 126 YALE L.J. 2222, 2225 (2016) (viewing recent violent interactions with police "through a historical lens of poor relations between police and minority communities").

23. See Nir et al., *supra* note 2 (noting the belief by some prosecutors that "even as the demand that the police face more serious consequences has intensified, the legal system remains tilted in favor of law enforcement. . .").

24. See, e.g., 8 TO ABOLITION, <https://www.8toabolition.com/why> [<https://perma.cc/XQU9-SPEL>] ("Honoring the long history of abolitionist struggle, we join in their efforts to divest from the prison industrial complex, invest in our communities, and create the conditions for our ultimate vision: a world without police, where no one is held in a cage, and all people thrive and be well."); see also discussion *infra* notes 199–202 and accompanying text.

Part IV briefly considers the types of reforms that might result in safer and healthier Black communities.

## I. PHYSICAL AND MENTAL EFFECTS OF EXPERIENCING AND VIEWING ACTS OF RACISM

### A. *Racism as a Primary Cause of Health Disparities*

It is well established that there are racial health disparities in the United States.<sup>25</sup> While lifestyle choices and genetics were initially blamed for poorer health and lower life expectancy among Black Americans,<sup>26</sup> research over the last several decades has consistently shown a connection between perceived racial discrimination and poor mental and physical health.<sup>27</sup> Indeed, racism has been identified as a significant cause of racial health disparities in the United States.<sup>28</sup> “A growing clinical and empirical literature

25. See, e.g., David R. Williams & Selina A. Mohammed, *Discrimination and Racial Disparities in Health: Evidence and Needed Research*, 32 J. BEHAV. MED. 20, 20 (2008) (“For most of the 15 leading causes of death including heart disease, cancer, stroke, diabetes, kidney disease, hypertension, liver cirrhosis and homicide, African Americans (or blacks) have higher death rates than whites. These elevated death rates exist across the life-course with African Americans and American Indians having higher age-specific mortality rates than whites from birth through the retirement years.”); see also Tyan Parker Dominguez, Christine Dunkel-Schetter, Laura M. Glynn, Calvin Hobel & Curt A. Sandman, *Racial Differences in Birth Outcomes: The Role of General, Pregnancy, and Racism Stress*, 27 HEALTH PSYCH. 194, 194 (2008) (showing that racial health disparities start at birth).

26. See, e.g., DAYNA BOWEN MATTHEW, JUST MEDICINE: A CURE FOR RACIAL INEQUALITY IN AMERICAN HEALTH CARE 1 (2015) (“[I]t is popular to blame the poor for their poor health by pointing to risky health behaviors . . . .”); IMARI Z. SMITH, KEISHA L. BENTLEY-EDWARDS, SALIMAH EL-AMIN & WILLIAM DARITY, JR., FIGHTING AT BIRTH: ERADICATING THE BLACK-WHITE INFANT MORTALITY GAP 1 (2018) (noting the “common perception that racial disparities in [infant mortality rates] are driven primarily by risky behaviors”).

27. Pieterse et al., *supra* note 11 at 6 (“Narrative and meta-analysis reviews have documented the link between perceived discrimination and mental health. . . . More specifically, the greater the exposure to and appraised stressfulness of racist events, the greater the likelihood of reporting mental distress.”).

28. See Anderson, *supra* note 15, at 77 (concluding that stress caused by experiencing racism negatively impacts African Americans’ physical and mental health); SMITH ET AL., *supra* note 26, at 6 (linking perceived discrimination to increased levels of inflammation and systolic and diastolic blood pressure, depressive systems, and allostatic load); *Fact Sheet: Health Disparities and Stress*, AM. PSYCH. ASS’N, <https://www.apa.org/topics/racism-bias-discrimination/health-disparities-stress> [<https://perma.cc/8ZS4-ZKST>] (“Perceived discrimination . . . has been found to be a key factor in chronic stress-related health disparities among ethnic/racial and other minority groups,” including African Americans.); Pieterse et al., *supra* note 11, at 1 (“[P]erceptions of racism are inversely associated with psychological well-being and positively associated with psychological distress.”). This focus on perception is important because it recognizes that African Americans suffer psychological distress even in the absence of legally sufficient proof that they or others have been discriminated against. *Id.* Every documented incident of racism builds on the microaggressions and blatant racism that is not documented and may be dismissed or doubted by others in society.

attests that People of Color and Indigenous individuals' ("POCI") experiences with racism, discrimination, and microaggressions affect their mental and physical health."<sup>29</sup> The director of the Center for Disease Control has "declared racism a serious public health threat" and announced initiatives to "address racism as a fundamental driver of racial and ethnic health inequities in the United States."<sup>30</sup>

The mental and physical distress caused by racism is only the beginning of the problem, which is exacerbated by the lack of competent treatment for people of color.<sup>31</sup> Research has proved that biases and false beliefs about physiological differences between White and Black Americans lead doctors to provide substandard care to Black people.<sup>32</sup> With respect to mental health treatment, Black people are more likely than Whites to live in high poverty areas without access to mental health services.<sup>33</sup> Many Black people are also uninsured and receive treatment in emergency rooms and from primary care providers, who are less likely to properly diagnose mental health issues than psychologists or psychiatrists.<sup>34</sup> While minority psychologists are more likely to see patients of color and treat them more effectively, as of 2017, only two percent of psychologists in the United States were Black.<sup>35</sup> "Other

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29. Lillian Comas-Díaz, Gordon Nagayama Hall & Helen A. Neville, *Racial Trauma: Theory, Research, and Healing*, 74 AM. PSYCH. (SPECIAL ISSUE) 1 (2019) (citing ALVIN N. ALVAREZ, CHRISTOPHER T. H. LIANG & HELEN A. NEVILLE, THE COST OF RACISM FOR PEOPLE OF COLOR: CONTEXTUALIZING EXPERIENCES OF DISCRIMINATION 14–15 (2016)).

30. Media Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Racism and Health, CTNS. FOR DISEASE CONTROL & PREVENTION (Apr. 8, 2021), <https://www.cdc.gov/media/releases/2021/s0408-racism-health.html> [<https://perma.cc/TJ6W-5A44>].

31. Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 COUNSELING PSYCH. 13, 14 (2007). With respect to mental health treatment, a 2001 report from the U.S. Surgeon General found that "people of Color have less access to and are less likely to receive needed care, and the care they ultimately receive is often of poor quality. The report identified a number of barriers that racial-ethnic people encounter in the mental health system including, 'Clinicians' lack of awareness of cultural issues, bias, or inability to speak the clients' language and the client's fear and mistrust of treatment.'" *Id.* (citing U.S. DEP'T HEALTH & HUM. SERVS., MENTAL HEALTH: CULTURE, RACE, AND ETHNICITY 4 (2001)); *see also* MENTAL HEALTH DISPARITIES: AFRICAN AMERICANS, AM. PSYCHIATRIC ASS'N 2 (2017) [hereinafter MENTAL HEALTH DISPARITIES] ("African Americans often receive poorer quality of care and lack access to culturally competent care.").

32. MATTHEW, *supra* note 26, at 57 (citing the 2003 Institute of Medicine report finding that "[d]octors provide inferior preventative care for blacks when compared to whites").

33. *African Americans Have Limited Access to Mental and Behavioral Health Care*, AM. PSYCH. ASS'N (2017) [hereinafter *African American Health*], <https://www.apa.org/advocacy/civil-rights/diversity/african-american-health> [<https://perma.cc/GQQ7-K6WQ>].

34. *Id.*

35. *Id.*



common barriers include: the importance of family privacy, lack of knowledge regarding available treatments, and denial of mental health problems. Concerns about stigma, medications, not receiving appropriate information about services, and dehumanizing services have also been reported to hinder African Americans from accessing mental health services.<sup>36</sup> The end result is that only one-third of Black people in America who need mental health treatment receive it.<sup>37</sup>

The impact of the mental health burden can be staggering. Results from one study attempt to quantify the effects.

Our estimates suggest that police killings of unarmed black Americans have a meaningful population-level impact on the mental health of black Americans. Specifically, our estimates imply that police killings of unarmed black Americans could contribute 1–7 additional poor mental health days per person per year, or 55 million (95% CI 27 million—87 million) excess poor mental health days per year among black American adults in the USA (calculated on 33 million black Americans affected by four killings per year, leading to 0–14 excess poor mental health days per month for 3 months after each killing).<sup>38</sup>

Disparities in diagnoses can also have negative consequences for individuals and Black communities.<sup>39</sup> Black people are more likely to be diagnosed with schizophrenia than White people with the same symptoms, and “Black people with mental health conditions, particularly schizophrenia, bipolar disorders, and other psychoses are more likely to be incarcerated than people of other races.”<sup>40</sup> Thus, the mental health burden is likely contributing to the over-incarceration of Black people in America and to stereotypes of Black criminality.

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36. MENTAL HEALTH DISPARITIES, *supra* note 31, at 3 (listing lack of diversity among health care providers; lack of insurance; lack of cultural competence among providers; distrust of the health care system; ineffective communication between providers and African American patients; and inappropriate diagnosis and treatment of African Americans as barriers to effective treatment of mental illness among African Americans).

37. *Id.* at 2.

38. Bor et al., *supra* note 12, at 308.

39. “Compared with whites with the same symptoms, African Americans are more frequently diagnosed with schizophrenia and less frequently diagnosed with mood disorders. Differences in how African Americans express symptoms of emotional distress may contribute to misdiagnosis.” MENTAL HEALTH DISPARITIES, *supra* note 31, at 3.

40. *Id.*

### B. *Health Effects of Vicarious Trauma*

Racial trauma is not limited to racially motivated violence against the individual.<sup>41</sup> It is also the cumulative effect of racial microaggressions, vicarious trauma, and historic racism.<sup>42</sup> Vicarious trauma includes seeing others of the same race being discriminated against or suffering from violent attacks.<sup>43</sup> This includes images and video of Black people being violently detained or killed by police.<sup>44</sup> The psychological trauma resulting from witnessing violent police encounters can lead to a variety of psychological disorders and physical illnesses.<sup>45</sup> Even if instances of police brutality are relatively rare, the rates are higher for Black people than for White people,<sup>46</sup> and each incident builds on a long history of racial violence and inequity in America.<sup>47</sup> The result is heightened perception of the risks and consequent stress that adversely affect health.<sup>48</sup>

For example, in a focus group of Black boys aged fourteen to eighteen, participants reported awareness of instances of police officers killing Black people across the nation through news outlets, smart phones apps, and discussions with family and friends.<sup>49</sup>

41. Comas-Díaz et al., *supra* note 29, at 1.

42. *Id.*

43. Bor et al., *supra* note 12, at 302 (“Police killings of unarmed black Americans have adverse effects on mental health among black American adults in the general population.”).

44. Bryant-Davis et al., *supra* note 10, at 854 (“Ethnic minorities who have experienced police brutality, directly or indirectly, may think about these instances when they do not want to think about them (nightmares, flashbacks, etc.), attempt to avoid interface with police officers (running from police, etc.), and remain in a psychological state of high vigilance, on guard against the possibility of abuse at the hands of the police.” (internal citation omitted)).

45. The potential effects include post-traumatic stress disorder, “depression, distrust, affect dysregulation, panic, substance dependence, self-harming behaviors, shame, and difficulty focusing and functioning.” *Id.*

46. “Black Americans are more than twice as likely to be unarmed when killed by police as Whites and Black American boys and men are three times more likely to be killed by a police officer than White boys and men. Native Americans are the only group as likely to be killed by police as Blacks. Excessive force is one of the most common forms of police misconduct.” *Id.* (citing Kevin Johnson, Meghan Hoyer & Brad Heath, *Local Police Involved in 400 Killings Per Year*, USA TODAY (Aug. 14, 2014, 8:39 PM), <https://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/> [https://perma.cc/2PPW-N43P]).

47. See discussion *infra* Part II.

48. Williams, *supra* note 16 (“Even if the specific tragic news item has never happened to us directly, we may have had parents or aunts who have had similar experiences, or we know people in our community who have, and their stories have been passed down.”).

49. Raja Staggers-Hakim, *The Nation’s Unprotected Children and the Ghost of Mike Brown, or the Impact of National Police Killings on the Health and Social Development of African American Boys*, 26 J. HUM. BEHAV. SOC. ENV’T 390, 393 (2016).

They were able to recount details of the Freddie Gray, Eric Garner, Tamir Rice, and John Crawford cases,<sup>50</sup> and they opined that common stereotypes and negative perceptions of Blacks may have been held by police officers who see Black men as threatening, violent, and sometimes not even human.<sup>51</sup> The boys reported fear of being racially profiled by police and adapting their appearance and behavior to avoid suspicion and reduce the likelihood of negative encounters.<sup>52</sup>

They also recounted being instructed by their parents and other relatives on how to interact with the police.<sup>53</sup> The consistent message reported by participants was to comply with police requests, act respectful, and get home safe.<sup>54</sup> The boys focused on their own behavior and how they might be perceived, and less on the behavior or accountability of the police.<sup>55</sup> They seemed to accept that in a fatal encounter they would automatically be blamed and the police would not be held responsible or punished even if the boys were innocent or unarmed.<sup>56</sup> The constant vigilance and fear of interactions with police causes stress that can lead to poorer mental and physical health.<sup>57</sup>

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50. *Id.* at 393–94.

51. *Id.* at 394 (“According to the participant, ‘they automatically see you as a threat cuz the Mike Brown police in the court hearing said ‘it’ approached me—it’s like an n-word thing.’ The participant emphasized that ‘not seeing Black boys and men as people’ is significant in the context in which the killings occur.”).

52. *Id.* at 395, 397 (“Although the boys spoke extensively about staying away from trouble, being respectful, and hanging with the right crowd, they were concerned about mistaken identity and the need to avoid police altogether out of fear of being profiled and or pursued.”).

53. *Id.* at 395.

54. *Id.* “Across all focus groups, participants shared a knowledge of not inciting police and focused on the need to get home alive. All participants agreed with complying with police. One participant noted, ‘If it comes to police officers, if they ask you a question, just answer them honestly . . . to me do whatever you can to get home.’ Another participant indicated, ‘Whatever [he] tells you . . . do what the cop says—once it’s all over, go to my parents and tell them what happened instead of having [a] conflict with the police.’ . . . One teenager indicated that, ‘for the most part, protect yourself, do right . . . for the most part just don’t be in the situation and if [a cop] does come up to you, be respectful . . . get yourself home . . . be smart. Play it smart.’ One participant focused on avoiding police. He stated, ‘if possible, unless in dire circumstances, [I] stay away from a man in a badge, in general.’” *Id.*

55. *Id.* at 397 (“In doing so, the boys seemed to acknowledge the way in which cases of police brutality, typically, unfold with the blame centered on the victims or the victims’ families often with the first questions raised: ‘what was he doing to deserve being targeted or killed?’ or ‘where were his parents?’”).

56. *Id.* at 397 (“Conversely, police officers are often eradicated from responsibility and unaccountable for their actions even in cases involving the murder of unarmed victims.”).

57. Bryant-Davis et al., *supra* note 10, at 854.

## II. A BRIEF HISTORY OF DEMONIZING AND POLICING BLACKNESS

Understanding the current mutual distrust between Black people and the police requires an understanding of the history of policing in America. In Southern states, the predecessors to modern police were created to protect White wealth and, in particular, to protect their property interest in their slaves.<sup>58</sup> In short, they were created to act for the benefit of wealthy Whites and to the detriment of Blacks.<sup>59</sup> After the end of slavery, they protected Whites *from* Blacks who were portrayed as animalistic, violent, and dangerous.<sup>60</sup> These inaccurate but popular stereotypes were used to justify Black Codes, convict leasing, and abusive treatment of Blacks, including lynching.<sup>61</sup> Although the trauma starts with slavery, the violence continued in various forms to the present day. The stereotype of Black criminality persists and underlies the disproportionate and particularly violent stops, arrests, and incarceration of Blacks.<sup>62</sup>

Historic racism also impacts the current social and economic dynamics in America<sup>63</sup> and, consequently, impacts the health of Black people in America.<sup>64</sup> Within communities and family groups, stories of racial trauma and distrust of government institutions are passed down to younger generations.<sup>65</sup> “Over the centuries the

58. Michael A. Robinson, *Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint from January 1, 2015, Through December 31, 2015*, 48 J. BLACK STUD. 551, 552–53 (2017) (explaining that laws regulating slaves were intended to protect White citizens—particularly wealthy slave owners—from violence and loss of slaves through revolt or escape).

59. *See id.*

60. Terence Finnegan, *Lynching and Political Power in Mississippi and South Carolina*, in UNDER SENTENCE OF DEATH: LYNCHING IN THE SOUTH 189, 189–90 (W. Fitzhugh Brundage ed., 1997) (noting that Whites portrayed Blacks as violent in order to justify harsh treatment and perpetuate negative perception by Whites).

61. *Id.*; MICHELLE ALEXANDER, *THE NEW JIM CROW* 28 (2012).

62. Bor et al., *supra* note 12, at 308 (“Racial disparities in law enforcement and legal treatment have a long history in the USA, and state-sanctioned violence in particular has been used to terrorise, dehumanise, and subjugate black Americans. In this context, police killings of unarmed black Americans are perceived by many as manifestations of structural racism and as implicit signals of the lower value placed on black lives by law enforcement and legal institutions—and by society at large.”).

63. Williams, *supra* note 16; *see also* Nick Petersen & Geoff Ward, *The Transmission of Historical Racial Violence: Lynching, Civil Rights-Era Terror, and Contemporary Interracial Homicide*, 5 RACE & JUST. (SPECIAL ISSUE) 114, 116 (2015) (“One of the more intriguing and troubling discoveries in recent race research is that historic lynching helps to explain contemporary patterns of racial conflict, inequality, and violence.”).

64. *See* Bor et al., *supra* note 12.

65. *See* Bryant-Davis et al., *supra* note 10, at 859 (“Research reveals that the trauma of the elders of a community affect the descendants through the stories that are told, the

Black community has developed a cultural knowledge of these sorts of horrific events, which then primes us for traumatization when we hear about yet another act of violence.”<sup>66</sup>

### A. *Slavery and the Rise of Racialized Policing*

Africans are believed to have been brought to the English colonies in North America for the first time in 1619 as indentured servants.<sup>67</sup> At that time, their status was similar to that of European indentured servants, except that the Africans appeared to be involuntary servants while the Europeans voluntarily entered into servitude for a period of years.<sup>68</sup> Although all races have had some form of slavery—and indeed enslavement of Europeans existed in Europe near the time that Africans were first brought to North America as slaves<sup>69</sup>—use of African slaves in the Americas took on a specifically racial and dehumanizing character.<sup>70</sup>

By the mid-1600s, Black slaves were legally distinct from White servants.<sup>71</sup> In 1661, the Virginia colony passed a law punishing White servants who ran away with Black slaves by adding years onto their term of service.<sup>72</sup> By this time slaves were bound for their lifetime, so no time could be added to their service,<sup>73</sup> but the law discouraged White servants from conspiring with slaves to plan escapes and drove a wedge between the two groups.<sup>74</sup> In 1662,

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warnings that are given, the survivor’s approach to parenting including racial socialization, and the behaviors that are modeled.”).

66. Williams, *supra* note 16.

67. A. LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* 18 (1996).

68. *Id.* at 18–19.

69. William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 *CARDOZO L. REV.* 1711, 1713 (1996) (“Slavery has been coeval with human experience: it existed before recorded history, and has been a part of all types of human societies.”).

70. *Id.* at 1712 (“Whites believed that there should have been a perfect correspondence between slavery and race: all blacks would be slaves, all slaves would be blacks; all whites would be free, all free people would be white.”).

71. Paul Finkelman, *Defining Slavery Under a “Government Instituted for Protection of the Rights of Mankind,”* 35 *HAMLIN L. REV.* 551, 558–59 (2012).

72. *Id.* at 559.

73. *Id.* at 558–59. Court documents indicate that on March 8, 1655, a Virginia court ruled that a Black man, John Casor, was enslaved for life and not merely an indentured servant. *Anthony Johnson Versus John Casor, Northampton County Court Case, 1655*, LIBRARY OF VA., <https://edu.lva.virginia.gov/dbva/items/show/126> [<https://perma.cc/YHA6-3UFK>]; see also *Virginia Colonial Court Declares Black Man Enslaved for Life*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/mar/08?fbclid=IwAR08aKeoAC9l-AcjAS4db2r2kqzofceWYAmn> [<https://perma.cc/W2JV-L8CE>].

74. Finkelman, *supra* note 71, at 559.

Virginia passed a law clarifying the status of children born to slave mothers and free White fathers by declaring that a child's status would be determined by the status of the mother.<sup>75</sup> In other words, any child born to an enslaved mother would also be a slave owned by whoever owned the child's mother, thereby ensuring that all descendants of slaves would be enslaved.<sup>76</sup>

A 1669 law declared that slaveowners could not be punished for killing a slave.<sup>77</sup> In 1680, the immunity from prosecution was extended to non-slaveowners:

“An act for preventing Negroes Insurrections” made it legal to kill any slaves who escaped from their masters and “lye hid and lurking in obscure places.” A decade later the legislature authorized local justices of the peace to order sheriffs to “kill and distroy . . . by gunn or any otherwise whatsoever” any “negroes, mulattoes, and other slaves unlawfully absent[ing] themselves from their masters and mistresses service” who “lie hid and lurk in obscure places.” . . . Slaves were property, except when they might “lie hid and lurk” in which case they were even less than property. In these two statutes Virginia had adopted one of the central aspects of the Roman law of slavery—that it was not a criminal act to kill a slave.<sup>78</sup>

This was the beginning of state-sanctioned killing of people of African descent. Even after the American Revolution and the founding of the United States, slaves had no protection under the new Constitution. Instead, that document implicitly sanctioned slavery.<sup>79</sup> While the terms “slave” or “slavery” do not appear in the text of the original Constitution, they were an integral part of the government created by that document. The number of Representatives “shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”<sup>80</sup> The “other Persons” were slaves.<sup>81</sup> In addition, the Constitution

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75. *Id.* at 561.

76. *See id.*

77. The rationale was that slaves were valuable property, and no owner would deliberately destroy their own property. *Id.* at 563. Laws governing slaves were influenced by similar laws enacted in British colonies to justify slavery and “legalize the planters’ inhumane treatment of their enslaved Africans.” Robinson, *supra* note 58, at 552.

78. Finkelman, *supra* note 71, at 564 (first quoting Act X, 2 LAWS OF VA. 481, 481–82 (Hening 1823) (enacted 1680); second quoting Act XVI, 3 LAWS OF VA. 86, 86 (Hening 1823) (enacted 1691)).

79. *See* U.S. CONST. art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV, § 2 (including slaves in the calculation of the number of representatives for each state).

80. *Id.* art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV, § 2.

81. *Id.* art. I, § 2, cl. 3, *amended by* U.S. CONST. amend. XIV, § 2; Finkelman, *supra* note 71, at 569.

expressly protected slaveowners' right to the return of escaped slaves.<sup>82</sup> Finally, the Constitution prohibited any amendment that would outlaw the slave trade until 1808.<sup>83</sup>

The institution of slavery flourished, particularly in the South where slave labor fueled the economy. The need to protect the slaveowners' interest in their forced, unpaid laborers led to laws called Slave Codes<sup>84</sup> and the establishment of slave patrols tasked with enforcing those laws.<sup>85</sup> Slaves were considered property and had no rights as citizens or even humans.<sup>86</sup> Slave patrols enforced the Codes, "work[ing] only at night, riding from plantation to plantation, stopping Black people, searching their homes, and whipping any [slave] caught traveling without a written pass."<sup>87</sup>

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82. "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." *Id.* art. IV, § 2, cl. 3, *repealed by* U.S. CONST. amend. XIII, § 1. "It is historically well known, that the object of the clause in the constitution of the United States, relating to persons owing service and labor in one state, escaping into other states, was to secure to the citizens of the slave holding states the complete right and title of ownership in their slaves, as property, in every state in the Union, into which they might escape from the state where they were held in servitude." *Prigg v. Pennsylvania*, 41 U.S. 539, 540 (1842).

83. "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person." U.S. CONST. art. I, § 9, cl. 1. Article V states "no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first . . . Clause[] in the Ninth Section of the first Article." *Id.* art. V.

84. See Robinson, *supra* note 58, at 552.

85. Slave patrols policed slaves to protect the property rights of slaveholders and to prevent uprisings. *Id.* at 553 ("The slave patrols helped protect the financial interest of slave owners from attacks by Abolitionists like Nat Turner, slave revolts like the ones led by Gabriel Prosser in Richmond in 1800 and by Denmark Vesey in Charleston in 1822, and the growing concern of runaways.").

86. See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404–05 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV (holding that people of African descent were not "people" or "citizens" as those terms were used in the U.S. Constitution). "On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them." *Id.*; see also Robinson, *supra* note 58, at 552 ("Under these codes, the enslaved Africans had the status of farm animals or chattel and had no human rights.").

87. See Robinson, *supra* note 58, at 553. Policing in Northern cities began in the 1830s and served different but related purposes. They developed in response to urbanization and growing cities. Gary Potter, *The History of Policing in the United States, Part 1*, E. KY. U. ONLINE: POLICE STUD. (June 25, 2013) <https://ekuonline.eku.edu/blog/police-studies/the-history-of-policing-in-the-united-states-part-1/> [<https://perma.cc/CR39-VCFB>]. According to some historians, although the need was characterized as preventing "disorder," that term was defined by the business class "who through taxes and political influence supported the

The slave patrols were charged with protecting the “Southern way of life,” which meant protecting their financial interests by deterring, capturing, and punishing runaway slaves, and preventing slave revolts or insurrections.<sup>88</sup> The slave patrols are considered “the first real advance toward modern-day policing and were charged with controlling enslaved Africans and free Blacks.”<sup>89</sup> They were aided in their efforts by federal Fugitive Slave Laws allowing suspected runaway slaves to be captured and returned to their alleged owners solely based on a sworn affidavit of the alleged owner, without trial or the ability of the captured person to testify on their own behalf.<sup>90</sup> Opponents of these laws characterized them as “legalized kidnapping.”<sup>91</sup>

### B. *Convict Leasing and Expansion of Police Use After the Civil War*

After the end of the Civil War and ratification of the Thirteenth Amendment, former slaves had constitutionally protected freedom, and slave patrols were disbanded.<sup>92</sup> However, citizens of Southern states (and some Northern citizens as well) were not ready to

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development of bureaucratic policing institutions.” *Id.* “More than crime, modern police forces in the United States emerged as a response to ‘disorder.’” *Id.* “These economic interests had a greater interest in social control than crime control.” *Id.* The business class used the police force to quell discontent by the working class under the guise of the “rule of law.” Gary Potter, *The History of Policing in the United States, Part 2*, E. KY. UNIV. ONLINE: POLICE STUDS., (July 2, 2013), <https://ekuonline.eku.edu/blog/police-studies/the-history-of-policing-in-the-united-states-part-2/> [<https://perma.cc/MUR6-4NXW>]. “This isolation of the ‘dangerous classes’ as the embodiment of the crime problem created a focus in crime control that persists to today, the idea that policing should be directed toward ‘bad’ individuals, rather than social and economic conditions that are criminogenic in their social outcomes.” *Id.* Early police departments were often corrupt and beholden to local politicians and their interests. *Id.*

88. See Robinson, *supra* note 58, at 553.

89. *Id.*

90. *Id.* at 553–54. For example, the Fugitive Slave Laws passed by Congress in 1793 and 1850 enforced Article 4, section 2 of the Constitution, which directed fugitive “Person[s] [in] Service or Labour” who escaped before they were “discharged” from that service or labor to be returned to the one to whom they were bound. *Id.* at 554; see U.S. CONST. art. IV, § 2, cl. 3, *repealed by* U.S. CONST. amend. XIII, § 1. The 1850 law “granted enslaved African owners, or anyone with an affidavit stating that he owned an enslaved African, the right to return the individual in question to the holder of the affidavit.” Robinson, *supra* note 58, at 554; see also *Prigg v. Pennsylvania*, 41 U.S. 539, 540–42 (1842) (invalidating a Pennsylvania law that prevented the forcible removal of an alleged fugitive slave from the state and holding that the Constitution prevented states from interfering with a slave owner’s right to seize alleged fugitives and return them to slavery).

91. *Id.*

92. *Id.*



accept Black people as equals.<sup>93</sup> Moreover, Southern landowners desperately needed cheap labor to replace the freed slaves in order to work the land.<sup>94</sup> White Southerners responded by enacting laws designed to restrict the freedom and economic options of the newly freed slaves and tie them to the land they previously worked as slaves.<sup>95</sup> The laws, known as “Black Codes” applied only to Black people and required them to have proof of employment.<sup>96</sup> They also made it a crime to terminate a contract of employment or leave employment to work for another employer.<sup>97</sup> Laws against vagrancy, malicious “mischief,” and use of “insulting gestures” or language made it easy to arrest Black people for crimes.<sup>98</sup>

Police forces in Southern states expanded dramatically and enforced these racist laws.<sup>99</sup> Those accused of crimes were then tried in all-White courts and convicted by all-White juries.<sup>100</sup> After conviction, the prisoners were loaned out to White landowners who paid their fines and then used them as labor on the plantations.<sup>101</sup>

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93. ALLEN W. TRELEASE, *WHITE TERROR: THE KU KLUX KLAN CONSPIRACY AND SOUTHERN RECONSTRUCTION* xvi (1971) (“The newly freed slave was regarded as occupying an intermediate stage between humanity and the lower orders of animal life.”). “Whites of every class united in opposition to what they called social equality—a completely integrated society—as leading inevitably to intermarriage and degeneration of the white race.” *Id.* at xx.

94. See Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 *TEX. L. REV.* 1335, 1348 (1987) (discussing Southern landowners’ need for cheap labor after the end of the civil war). “The North’s victory in the Civil War formally ended the institution of slavery. It did not end the southern plantation owners’ need for a cheap supply of labor or the regime of white supremacy in the South.” *Id.*

95. See MICHELLE ALEXANDER, *THE NEW JIM CROW* 28 (2012) (“Clearly, the purpose of the black codes in general and the vagrancy laws in particular was to establish another system of forced labor.”); *The Slaughter-House Cases*, 83 U.S. 36, 70 (1872) (“They were in some States forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain, and were not permitted to give testimony in the courts in any case where a white man was a party.”); see also Steven F. Miller, Susan E. O’Donovan, John C. Rodrigue & Leslie S. Rowland, *Between Emancipation and Enfranchisement: Law and the Political Mobilization of Black Southerners During Presidential Reconstruction, 1865–1867*, 70 *CHI.-KENT L. REV.* 1059, 1061–62 (1995) (describing laws intended to ensure continued subordination and inequality and noting that White judges and juries discriminated against Black criminal defendants “with impunity”).

96. Teri Dobbins Baxter, *Dying for Equal Protection*, 71 *HASTINGS L.J.* 535, 559–60 (2020).

97. *Id.* at 559.

98. ALEXANDER, *supra* note 95, at 31.

99. Rachel Moran, *In Police We Trust*, 62 *VILLANOVA L. REV.* 953, 960 (2017) (“In the decades after the Civil War, many southern cities responded by dramatically increasing their police forces and sending those forces to police black people.”).

100. ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION 1863 – 1877* 205 (2002).

101. *Id.*

In this way, they were returned to near-slavery status thanks to the loophole in the Thirteenth Amendment allowing involuntary servitude for those convicted of crimes.<sup>102</sup> The expanded police forces not only failed to protect the rights of Black people, they often participated in the violence against them.<sup>103</sup>

These injustices made it clear that the Thirteenth Amendment alone was insufficient to provide protection of basic rights, much less ensure equality.<sup>104</sup> Thanks to the Fourteenth Amendment, Blacks became citizens of the United States and of the states in which they resided.<sup>105</sup> Citizenship—at least in theory—gave them protection against private and state-sponsored discrimination and violence.<sup>106</sup> Black Codes were unconstitutional to the extent that they singled out Black people for punishment for actions that were legal for White citizens.<sup>107</sup> Yet in spite of the express language of the Constitution requiring equal protection of the law, many law enforcement officers showed little interest in protecting Black people, and federal efforts to enforce the Equal Protection clause proved ineffective.<sup>108</sup> Instead, Jim Crow laws—upheld by the Supreme Court of the United States as consistent with the Fourteenth Amendment<sup>109</sup>—replaced the Black Codes and once again

102. U.S. CONST. amend. XIII (abolishing slavery and involuntary servitude “except as a punishment for crime whereof the party shall have been duly convicted”); ALEXANDER, *supra* note 95, at 31 (explaining that convicts “were understood, quite literally, to be slaves of the state”). “Death rates were shockingly high, for the private contractors had no interest in the health and well-being of their laborers. . . . Laborers were subject to almost continual lashing by long horse whips, and those who collapsed due to injuries or exhaustion were often left to die.” *Id.*

103. Moran, *supra* note 99, at 960 (“These police forces in turn not only tolerated, but often participated in, violence against black communities.”).

104. *The Slaughter-House Cases*, 83 U.S. 36, 70 (1872) (noting that the federal government recognized “something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition for the fourteenth amendment.”).

105. U.S. CONST. amend. XIV, § 1, cl. 1.

106. *Id.* amend. XIV (guaranteeing the right to due process and stating that no state may deny any person the equal protection of the law).

107. *Id.* amend. XIV, § 1.

108. ALEXANDER, *supra* note 95, at 31 (noting that after the end of Reconstruction “[t]he federal government no longer made any effort to enforce federal civil rights legislation, and funding for the Freedman’s Bureau was slashed to such a degree that the agency became virtually defunct”).

109. *See Plessy v. Ferguson*, 163 U.S. 537, 543–44 (1896) (“Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.”).

ensured that Black Americans would not be equal legally, socially, or economically.<sup>110</sup>

### C. *Lynching and Racial Violence After the End of Reconstruction*

Despite the Fourteenth Amendment's requirement of equal protection of the law for all people, justice in the post-Reconstruction South was mainly reserved for White citizens. Organizations such as the Ku Klux Klan and local White mobs maintained control over Black communities through intimidation and violence, including lynching.<sup>111</sup> Not only was lynching used to maintain white supremacist social order, but it was also a means of suppressing political participation<sup>112</sup> and casting people of African descent in the role of violent animals who needed to be dealt with as such in order to protect White society.<sup>113</sup> One example of the dehumanization of Black people was the racist trope of Black men as dangerous beasts intent on raping White women.<sup>114</sup> "Black lawyer and newspaper editor Robert C. O. Benjamin insisted that the charge of rape . . . was nothing less than 'an effort to divest the Negro of his friends by giving him a revolting and hateful reputation.'"<sup>115</sup> Not only were Black people lynched for alleged crimes, lynching was also used to

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110. Robinson, *supra* note 58, at 556 ("Jim Crow' laws referred to the highly repressive laws and customs that were designed to restrict Black rights."). It is worth noting that, as population density increased in Northern, urban centers, police were often seen as primarily protecting White wealthy citizens from immigrants. *Id.* at 555. "The public sentiment of the police held by the immigrant community was that police were political pawns controlled by the wealthy. Moreover, the police believed that respect was earned through brute force and brutality." *Id.* (internal citation omitted).

111. EQUAL JUST. INITIATIVE, *LYNCING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 27 (3d ed. 2017), <https://eji.org/wp-content/uploads/2019/10/lynching-in-america-3d-ed-080219.pdf> [<https://perma.cc/9W9N-MMF7>] ("By the end of the nineteenth century, Southern lynching had become a tool of racial control that terrorized and targeted African Americans."). The Equal Justice Initiative documented more than 4,000 lynchings between the end of the Civil War and 1950. *Id.* at 4; *see also* Stephen L. Carter, *Policing and Oppression Have a Long History*, BLOOMBERG (Oct. 29, 2015, 6:19 PM), <https://www.bloomberg.com/opinion/articles/2015-10-29/policing-and-oppression-have-a-long-history> [<https://perma.cc/GY5S-NKXT>].

112. Finnegan, *supra* note 60, at 190 ("Lynching and violence were, in the words of one scholar, 'a sort of final solution' to the problem of black political participation in the South.").

113. *Id.* at 189 (quoting David Augustus Straker, who argued that Whites accused African Americans of rape to "destroy Northern sentiment in favor of the Negro by charging him with committing, as a class, the most heinous offense, next to murder").

114. EQUAL JUST. INITIATIVE, *supra* note 111, at 49 ("Northern academics promoting the field of 'scientific racism' concocted theories to legitimate the claim that black men were dangerous sub-humans predisposed to rape.").

115. Finnegan, *supra* note 60, at 189.

intimidate Black businesspeople who were competing economically with Whites or who challenged the White supremacist culture.<sup>116</sup>

Lynchings during this period were often carried out with the knowledge, and even participation, of law enforcement.<sup>117</sup>

Lynching and racial terror profoundly compromised the criminal justice system. Extrajudicial mob violence operated hand-in-hand with legal execution as a means of exercising lethal social control over the black population. Neither lynching nor “legal executions” required reliable findings of guilt, and complicit law enforcement officers handed over prisoners to the lynch mob.<sup>118</sup>

Even when Black people were afforded trials, they were often hastily conducted with the threat of mob violence prominent in the background.<sup>119</sup>

Lynchings were sometimes public spectacles that featured torture and mutilation of Black bodies in full view of the White and Black residents.<sup>120</sup> The physical torture of a few was designed to psychologically torture entire communities.<sup>121</sup> Even when the perpetrators of these lynchings were well documented and the acts were carried out in full view of a multitude of witnesses, almost no one was convicted for these heinous crimes.<sup>122</sup> The public nature of the murders highlighted the ability of White individuals and mobs

116. EQUAL JUST. INITIATIVE, *supra* note 111, at 29 (“African Americans frequently were lynched for non-criminal violations of social customs or racial expectations, such as speaking to white people with less respect or formality than observers believed was due.”); Petersen & Ward, *supra* note 63, at 115 (explaining that lynching served as “‘terroristic social control,’ . . . aimed to manipulate political behavior and maintain status quo race relations”).

117. EQUAL JUST. INITIATIVE, *supra* note 111, at 29. Edward Johnson was tried by an all-White jury and convicted of raping a White woman. He was sentenced to death, but his attorneys appealed, and the Supreme Court of the United States granted a stay of execution. The sheriff and all of his staff left the jail unattended and allowed a White mob to drag Mr. Johnson from the building, hang him off of a bridge, and shoot him hundreds of times. The lynchings were often announced ahead of time, and sometimes they were reported in the local newspaper beforehand. *Id.* at 34.

118. *Id.* at 60.

119. Larry Griffin, Paula Clark & Joanne C. Sandberg, *Lynching and Historical Sociology*, in UNDER SENTENCE OF DEATH 40 (W. Fitzhugh Brundage ed., 1997) (“Often legal sentencing and execution were conducted in an atmosphere of mob pressure and racial hysteria, rendering the state-sanctioned death little more than a ‘legal lynching.’”).

120. EQUAL JUST. INITIATIVE, *supra* note 111, at 33–35 (describing the torture, dismemberment, and burning of lynching victims while crowds looked on enjoying food in a “picnic-like atmosphere.”).

121. *Id.* at 65.

122. *Id.* at 48 (“Very few white people were convicted of murder for lynching a black person in America during this period, and of all lynchings committed after 1900, only 1 percent resulted in a lyncher being convicted of a criminal offense.”).

to take the lives of Black people in the most brutal fashion with no fear of arrest, conviction, or negative consequence of any kind.<sup>123</sup>

“[L]ynching—and other forms of racial terrorism—inflicted deep traumatic and psychological wounds on survivors, witnesses, family members, and the entire African American community.”<sup>124</sup> Although the number of lynchings diminished in the first half of the twentieth century, they continued into the 1950s.<sup>125</sup> People currently in their seventies are old enough to have some memory of those events, and those in their eighties might remember them clearly. Their memories of specific lynchings and of the precarious position of Black Americans in the South at that time are passed down to their children, grandchildren, and great-grandchildren.

#### D. *Violent Response to the Civil Rights Movement*

Lynchings had greatly diminished by the 1950s when the modern civil rights movement began, but the “campaign of terror” waged by white supremacists did not end.<sup>126</sup> The police and government response to the tactics of civil rights advocates varied widely,<sup>127</sup> but in some places peaceful protests were met with tear gas, fire hoses, dogs, and police batons.<sup>128</sup> “Courageous activists were subjected to threats, mass arrests, beatings, church

123. *Id.*

124. *Id.* at 65; see also Petersen & Ward, *supra* note 63, at 115. “A key latent function of lynching was the maintenance of White societal domination by discouraging or neutralizing Black social, economic, and political status challenges. Any crime against a White person was construed as a Black status offense, and insulting or offensive behavior that fell short of crime would suffice as cause for mob violence.” *Id.* at 118.

125. Emmett Till was murdered in 1955. Katie Nodjimbadem, *Emmett Till’s Open Casket Funeral Reignited the Civil Rights Movement*, SMITHSONIAN MAG. (Sept. 2, 2015), <https://www.smithsonianmag.com/smithsonian-institution/emmett-tills-open-casket-funeral-reignited-the-civil-rights-movement-180956483/> [<https://perma.cc/PL9A-NX4D>].

126. *Violence Against Civil Rights Workers*, EQUAL JUST. INITIATIVE, (Aug. 1, 2013) <https://eji.org/news/history-racial-injustice-violence-against-civil-rights-workers/> [<https://perma.cc/9AP6-QLXT>] [hereinafter *EJI Civil Rights Violence*] (referring to violent efforts to maintain segregation as a “campaign of terror”).

127. *Responses Coming from the Civil Rights Movement*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/eyesontheprize-responses-coming-civil-rights-movement/> [<https://perma.cc/2DTN-UKDB>] (“Official responses to civil rights protests varied from place to place and within city governments.”).

128. *Id.* (“[T]he Alabama towns of Birmingham and Selma brought out trained attack dogs, high pressure water hoses, and billy clubs to subdue activists—and with their violent response, brought national attention to their flawed communities.”); *Bloody Sunday: Civil Rights Activists Brutally Attacked in Selma*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/mar/7> [<https://perma.cc/JW5G-BWQF>] (discussing the violent force used against activists protesting denial of voting rights for African Americans on what became known as “Bloody Sunday”).

bombings, and murder.”<sup>129</sup> Even when law enforcement personnel were not involved in the violence, they often refused to protect the protesters or prosecute those who attacked them.<sup>130</sup> Television coverage of the violent police response to civil rights advocates helped build support for the movement, but the images were devastating to the Black people watching, even though the televised images were only a tiny fraction of the violence and degradation suffered by those involved.<sup>131</sup> The images also reinforced the role of police as adversaries of the Black community.

One researcher documented “the memories of African American women who participated in the civil rights movement who disclose numerous traumatic experiences, psychologically, physically, and sexually, often at the hands of police officers.”<sup>132</sup> Even though their trauma was not publicized, many of those women lived for many years. Those events undoubtedly influenced the views of the men and women who experienced hostility and violence during the protests and those who watched them on television. Those views were then shared with younger generations.

#### E. *Present-Day Violence by Police*

Although complete and reliable data are lacking, the available information indicates that Black people are killed by police more often than people of other races.<sup>133</sup> “Overall, the data suggest that Blacks, consisting of 14% of the U.S. population, were three times more likely to be killed by police than any other racial and ethnic group.”<sup>134</sup> The government engages in over-policing in Black

129. *EJI Civil Rights Violence*, *supra* note 126.

130. *Id.* In fact, federal law enforcement infiltrated their organizations and conducted surveillance of civil rights leaders and their families. *See, e.g., FBI Records: The Vault*, FBI, [https://vault.fbi.gov/civil-rights?b\\_start:int=0](https://vault.fbi.gov/civil-rights?b_start:int=0) [<https://perma.cc/5T8W-Q79V>]. This site contains electronic copies of FBI files from civil rights investigations. It includes files on Reverend Dr. Martin Luther King, Jr., Coretta Scott King, Malcolm X, Betty Shabazz, Bayard Rustin, Benjamin Hooks, Thurgood Marshall, Fannie Lou Hamer, the Nation of Islam, W.E.B. DuBois, Lillie Belle Allen, Fred Hampton, the Freedom Riders, and many others. There are also files on white supremacist organizations.

131. *See* Bryant-Davis et al., *supra* note 10, at 859–60 (citing Allison Berg, *Trauma and Testimony in Black Women’s Civil Rights Memoirs: The Montgomery Bus Boycott and the Women Who Started It, Warriors Don’t Cry, and From the Mississippi Delta*, 21 J. WOMEN’S HIST. 84, 87 (2006)).

132. Bryant-Davis et al., *supra* note 10, at 859 (“Berg notes that the civil rights movement is often summarized as triumphant but little space is given to the severe and repetitive traumas acted against everyday people who sought justice.”).

133. Stagers-Hakim, *supra* note 49, at 391.

134. *Id.*

communities in part because of the false belief that Black people are more violent than people of other races.<sup>135</sup> This results in a disproportionate number of stops, arrests, and incarcerations of Black people.<sup>136</sup> Yet there is also under-policing in these same communities. Law enforcement often fails to fully investigate, discipline, or prosecute crimes against Black people, particularly when the police are accused of misconduct.<sup>137</sup> Further, many Black residents are reluctant to call the police even in a crisis because when the police do respond to calls for help, these encounters too often result in officers harming those who they were called to assist.<sup>138</sup>

For example, in Fort Worth, Texas, Atatiana Jefferson's neighbor called the police and asked them to do a welfare check when he noticed that the lights were on and the doors were open at Atatiana's home in the middle of the night.<sup>139</sup> Atatiana was playing video games with her eight-year-old nephew when the police arrived at her home.<sup>140</sup> The officers crept around the house in the dark with flashlights but did not announce their presence or identify themselves as police officers.<sup>141</sup> One officer shined a flashlight into a window as Atatiana looked out into the yard and yelled, "Put your hands up! Show me your hands!" and shot her an instant later.<sup>142</sup> The neighbor who called the police felt guilty for doing so, although he was just trying to look out for Atatiana and her

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135. See L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2037–40 (2011) (discussing racial biases that lead to African Americans being stopped and searched more often than Whites). "The implicit stereotype consists of the cultural stereotype of blacks, especially young men, as violent, hostile, aggressive, and dangerous. In the policing context, implicit stereotypes can cause an officer who harbors no conscious racial animosity and who rejects using race as a proxy for criminality to unintentionally treat individuals different based solely upon their physical appearance." *Id.* at 2039.

136. *Id.*

137. Bryant-Davis, *supra* note 10, at 854 ("The homicide indictment rate for citizens is 90% but the indictment rate for police officers is 1%."); see also Zoe Samudzi, *Why Police Officers Aren't Held Accountable When They Kill People*, TEEN VOGUE (June 17, 2017), <https://www.teenvogue.com/story/why-police-officers-arent-held-accountable-when-they-kill-people> [<https://perma.cc/5LK3-UX45>] (exploring why police officers who kill are not always held accountable).

138. Moran, *supra* note 99, at 991 (citing David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 314 (1997)) ("Black people at all income levels are more likely to fear encounters with police officers than their white counterparts.").

139. Tara Law, *Fort Worth Officer Who Killed Atatiana Jefferson Charged with Murder. Here's What to Know About the Police Shooting*, TIME (Oct. 15, 2019, 12:18 PM), <https://time.com/5699843/fort-worth-shooting-atatiana-jefferson/> [<https://perma.cc/HZT4-6A9N>].

140. *Id.*

141. *Id.*

142. *Id.*

family.<sup>143</sup> “I’m shaken. I’m mad. I’m upset. And I feel it’s partly my fault,” Smith said. ‘If I had never dialed the police department, she’d still be alive.’ . . . ‘It makes you not want to call the police department,’ he said.”<sup>144</sup> This fear and distrust can also lead to feelings of frustration, isolation, and dehumanization.<sup>145</sup>

The lack of accountability for harm to Black residents stems from many factors, including a credibility gap between police officers, who are assumed to be honorable and credible,<sup>146</sup> and Black people, who are associated with criminality and dishonesty.<sup>147</sup> Those who decide whether to investigate, charge, or punish police officers are likely to believe officers who say they feared for their lives or that the suspect posed an immediate threat to the officer.<sup>148</sup> Black victims lack similar credibility in the eyes of many officers, prosecutors, and judges.<sup>149</sup> There is also a general societal

143. *Atatiana Jefferson’s Family Seeks Answers Following Shooting Death by Fort Worth Officer*, CBS DFW (Oct. 13, 2019, 3:32 PM), <https://dfw.cbslocal.com/2019/10/13/atatiana-jeffersons-family-seeks-answers-following-shooting-death-by-fort-worth-officer/> [<https://perma.cc/4FRT-MFHD>].

144. *Id.*; see also Joe Jurado, *Charges Dropped Against Black Texas Teen Who Was Arrested Simply for Walking Home from Work During Snowstorm*, THE ROOT (Feb. 22, 2021, 8:00 PM), <https://www.theroot.com/charges-dropped-against-black-texas-teen-who-was-arrest-1846329749> [<https://perma.cc/4MS3-WWS3>] (police called to perform a welfare check arrest Black teen walking home from work).

145. Bryant-Davis, *supra* note 10, at 856 (“Mistrust and fear instilled as a consequence of institutionalized police brutality may prevent racially marginalized communities from seeking assistance, which can increase a sense of isolation and dehumanization.”).

146. See Moran, *supra* note 99, at 954–55 (“The archetype of police officers as good-hearted heroes who do no wrong is a common one among members of the American racial majority.”).

147. Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1497 (2016) (“The association of race and crime operates in two directions: Not only does seeing a black person arouse suspicions of criminality, but thinking about criminality brings to mind an image of a black person.” (citing Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 882 (2004)).

148. “As renowned trauma researcher Herman (2015) notes, it is easier to side with the perpetrator of trauma because the only thing perpetrators require is silence. Conversely to support victims requires the observer to bear witness, speak, support, and take action to facilitate safety and recovery.” Bryant-Davis et al., *supra* note 10, at 853. Some police officers may actually fear for their lives in some interactions with African Americans, but that fear may be influenced by widespread but unfounded beliefs that African Americans are more violent than Whites. See Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C.L. L. REV. 159, 168–69 (2016) (citing and discussing research showing that “white Americans associate African-American men with violence and dangerousness” and concluding that “a black man who is providing literally no evidence of threat is nonetheless likely to attract the attention of police officers, so ingrained are the stereotypes linking him with threat”).

149. See Moran, *supra* note 99, at 990–91 (“Police misconduct complaints by white people were 9 times more likely to be sustained than similar complaints by black people.”).



skepticism about the suffering of people of color—particularly Black Americans—with many believing that the police are being unfairly criticized for simply doing their jobs.<sup>150</sup> If the victim is killed and the incident is not recorded, there may not be anyone to contradict the officer's account.<sup>151</sup> Testimony by bystanders can also be dismissed since they are often members of the same discredited community.<sup>152</sup> Finally, the law itself protects officers. The doctrine of qualified immunity protects against all but the most egregious abuses.<sup>153</sup>

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150. “Through 2015, as the names and faces of Laquan McDonald, Tamir Rice, Akai Gurley, Walter Scott, and Samuel DuBose—all black men or children gunned down by police officers—became rallying cries for communities of color, many white scholars and citizens alike continued to insist that the police were being unfairly maligned.” *Id.* at 953–54.

151. For example, former officer Michael Slager shot and killed unarmed Walter Scott as Mr. Scott ran away from Slager after a traffic stop. Not realizing that a bystander had filmed the shooting, Slager lied and said that he shot Scott in self-defense after Scott wrestled Slager's taser away from him. The video showed that Slager shot Scott in the back five times while Scott was fifteen feet away. Slager was charged with murder and he accepted a plea deal that resulted in a twenty-year sentence for second degree murder. Without the video, Slager's version of events likely would have been accepted without question. Associated Press, *Judge Upholds Ex-Cop's 20-Year Sentence for Killing Black Man*, HUFFPOST (Apr. 20, 2021, 8:44 AM), [https://www.huffpost.com/entry/michael-slager-loses-sentence-appeal-in-walter-scott-shooting\\_n\\_607ec6f3e4b0df3610c065b3](https://www.huffpost.com/entry/michael-slager-loses-sentence-appeal-in-walter-scott-shooting_n_607ec6f3e4b0df3610c065b3) [<https://perma.cc/S8VY-MJMK>].

152. See Moran, *supra* note 99, at 990–91 (noting that police are less likely to investigate complaints of police misconduct if complainant is Black); Chet K. W. Pagar, *Blind Justice, Colored Truths and the Veil of Ignorance*, 41 WILLAMETTE L. REV. 373, 395 (2005) (discussing the long history of White people not crediting the testimony of Black people, including laws prohibiting Blacks from testifying against Whites and recent research showing racial bias in assessment of credibility).

153. See Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018) (discussing the history and contours of the doctrine of qualified immunity and arguing that it should be abandoned). “Qualified immunity shields executive branch officials from damages liability, even when they have violated the Constitution, if they have not violated ‘clearly established law.’” *Id.* at 1801 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). If a police officer has violated a person's constitutional rights, they can only be civilly liable for damages if the plaintiff can show that the “officer's conduct was objectively unreasonable [by] find[ing] binding precedent or a consensus of cases so factually similar that every officer would know that their conduct was unlawful.” *Id.* at 1802. Efforts to abolish the doctrine have gained traction and have resulted in a ban on qualified immunity for police and government employees in New Mexico. Nick Sibilla, *New Mexico Bans Qualified Immunity for All Government Workers, Including Police*, FORBES (Apr. 7, 2021 4:00 PM), <https://www.forbes.com/sites/nicksibilla/2021/04/07/new-mexico-prohibits-qualified-immunity-for-all-government-workers-including-police/?sh=192c393d79ad> [<https://perma.cc/4ZRG-MVET>]. However, the ban is not as comprehensive as originally envisioned and similar efforts have failed in multiple states. Kimberly Kindy, *Dozens of States Have Tried to End Qualified Immunity. Police Officers and Unions Helped Beat Nearly Every Bill*, WASH. POST (Oct. 7, 2021, 6:00 PM), [https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a\\_story.html](https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a_story.html) [<https://perma.cc/58GX-3E9A>] (noting that only Colorado has passed a law completely banning the use of qualified immunity for police officers).

The result is that many residents of Black communities do not trust the police, and the distrust prevents good officers from effectively protecting those who live and work in those communities.<sup>154</sup> It is against this background that many pushed for body cameras for officers that would record every civilian encounter with police.<sup>155</sup> Advocates argue that the cameras would deter police misconduct, document it when it happens, and support the actions of police whose conduct is fair and honorable.<sup>156</sup> All of those actions would build trust between the community and the police, making it less dangerous for police and for the communities they serve and make publication of troubling police interactions with the Black community unnecessary.<sup>157</sup>

### III. PRIVATE CITIZENS AS WITNESSES AND JOURNALISTS

The use of visual images to highlight injustice is not new.<sup>158</sup> Before video recording was available to ordinary citizens, images in print and television media outlets of violence against Black people were used to shine a light on racial injustice.<sup>159</sup> Pictures of the beaten, disfigured, and decomposing body fourteen-year-old Emmett Till in his casket were published in *Jet* magazine in 1955.<sup>160</sup> The heartbreaking and horrifying pictures were viewed around the

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154. See Andrew E. Taslitz, *Racial Profiling, Terrorism, and Time*, 109 PENN ST. L. REV. 1181, 1190 (2005) (citing research and anecdotal evidence that African Americans fear and distrust police). When Blacks are stopped by the police, they are more likely to believe that the stop was racially motivated, and those interactions result in “psychic pain, decreased respect for the legal system, and a decreased willingness to obey the law, or at least a lessened willingness to aid law enforcement. Those outcomes can, however, further reinforce stereotyping by the police, resulting in an ugly cycle of mutual distrust and insult.” *Id.* at 1193.

155. See Kami Chavis Simmons, *Body-mounted Police Cameras: A Primer on Police Accountability vs. Privacy*, 58 HOW. L.J. 881, 883 (2015) (noting reform proposals calling for police officers to wear body-mounted cameras).

156. See *id.* at 884–87 (discussing potential benefits of body-mounted cameras and research indicating the effectiveness of the cameras).

157. *Id.*

158. Corinthia A. Carter, Note, *Police Brutality, the Law & Today’s Social Justice Movement: How the Lack of Police Accountability Has Fueled #hashtag Activism*, 20 CUNY L. REV. 521, 546–47 (2017) (“While social media is a new tool, today’s movement is merely a continuation of the rebellions of the past 70 years, all similarly calling for police accountability and reform in policing tactics.”). “Social media has and continues to have a profound impact on today’s reaction to police brutality because it allows citizens to essentially become journalists and disseminate information to people in a matter of seconds.” *Id.* at 547.

159. See, e.g., *id.* at 544.

160. Nodjimbadem, *supra* note 125.

world and helped galvanize support for the civil rights movement.<sup>161</sup>

In 1991, the videotape of police officers beating unarmed Black motorist Rodney King was played on the news.<sup>162</sup> The graphic footage of Mr. King being beaten more than fifty times by police with their batons shocked and appalled the nation.<sup>163</sup> The four officers involved were tried in state court; three were acquitted, and the jury could not agree on a conviction for the fourth.<sup>164</sup> The failure to convict sparked protests and civil unrest in Los Angeles and amplified accusations of police brutality in the Los Angeles Police Department.<sup>165</sup>

What has changed dramatically in the last thirty years is the ubiquity of cell phones that can livestream or record events and post video to social media within seconds afterward.<sup>166</sup> Videos recorded by bystanders can be posted (often with narration and commentary) and viewed by thousands long before the police make an official statement giving their version of events.<sup>167</sup> Although videos

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161. *Id.*

162. Mr. King was arrested for driving while intoxicated and leading police on a high-speed chase. After he got out of the car, four officers beat Mr. King with their batons more than fifty times. The officers claimed that Mr. King was resisting arrest and attempted to attack them. Mr. King suffered a leg fracture and numerous facial fractures, bruises, and cuts, but the officers' report stated that he suffered only minor injuries. Unknown to the officers, a witness videotaped the interaction from his nearby balcony and sold the video to a local news station, which aired the footage before selling it to CNN, which broadcast it to a national audience. *Rodney King Video*, *supra* note 1.

163. David Lindblom, Sonya Bayona, Dmitri Seals & Brenda F. Seals, *Creating Social Activism Against Police Brutality: Adopt-a-Spot*, 6 SOC. MKTG. Q. 104, 104 (2000) ("Many eyes watching these TV images [of Rodney King being beaten] may have turned away in shock, but something else happened too: People who had never experienced or witnessed anything like this before said to themselves, 'This is horrible and wrong. I never really knew. This has to be stopped!' Their hearts opened. And the hearts of people like Rodney King who regularly experience harassment from police opened too, revealing to the world their daily suffering.").

164. *Rodney King Video*, *supra* note 1.

165. *Id.* The lack of convictions sparked days of protests that resulted in widespread property damage and some violence against individuals. *Id.*

166. In 1991, the gentleman who recorded Mr. King's beating sold the video to a local news station, which aired the footage before selling it to CNN which broadcast it to a national audience. *Id.* Today, a witness with a cell phone video could choose to send it to a news outlet or simply post it on her or his own social media site. *See Carter*, *supra* note 158 ("While social media is a new tool, today's movement is merely a continuation of the rebellions of the past 70 years, all similarly calling for police accountability and reform in policing tactics.").

167. *See* David Uberti, *How Smartphone Video Changes Coverage of Police Abuse*, COLUM. JOURNALISM REV. (Apr. 9, 2015), [https://www.cjr.org/analysis/smartphone\\_video\\_changes\\_coverage.php](https://www.cjr.org/analysis/smartphone_video_changes_coverage.php) [<https://perma.cc/H5MB-C9KS>] (noting that smartphone videos can "[give] news outlets and their audiences a visceral, real-time depiction of what happened"

taken by news organizations are also useful in documenting interactions between police and the public during planned protests or after an incident has occurred, the media cannot be present during every violent encounter.<sup>168</sup> Bystanders can capture these interactions and distribute them immediately on their personal social media accounts and share them with the mainstream media.<sup>169</sup> They can also provide news outlets with information that would not otherwise be available and reduce reliance on official police narratives.<sup>170</sup> Some cities have equipped their police officers with body cameras to capture interactions with civilians and provide more evidence in the event of violent or fatal encounters,<sup>171</sup> but that video may not be released for days or weeks after the incident. Concerns that the videos may be edited or that the cameras did not capture the entire encounter make them a partial solution at best.<sup>172</sup> Moreover, videos from body-mounted cameras do not always provide sufficient information to resolve questions about the propriety of the officer's actions or result in officers being held accountable to the satisfaction of all community members.<sup>173</sup> Bystander videos can provide additional information and context for the officer's actions.

The attention from bystander videos and the evidence recorded and shared on social media can motivate the government to implement reforms.<sup>174</sup> Even when there has been no official reprimand

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and reduce dependence on police or eyewitness accounts).

168. *Id.*

169. *Id.* For example, when Officer Michael Slager shot and killed unarmed Walter Scott, the officer's account was initially thought to be the only available evidence of what transpired before he pulled the trigger. News outlets reported that version of events without question. When a bystander's video was released showing Slager shooting Mr. Scott in the back and then dropping a weapon near his body, the media narrative changed dramatically and it became a national story. Slager was later charged with murder. *Id.*

170. *Id.*

171. *Id.*; see also Simmons, *supra* note 155, at 883 (noting that some police departments have had body cameras for many years, their use is increasing and agencies were "racing to develop sound policies for their use").

172. See Simmons, *supra* note 155, at 888 (noting that "body-mounted cameras, unless they are set to run 100 percent of the time, tend to rely on an officer's discretion with respect to when a scenario is filmed" and noting that "if adequate internal regulations are not in place, valuable footage could be altered or destroyed").

173. *Id.* at 884 (citing skeptics of body-mounted cameras who were surprised that the video of Eric Garner's death did not lead to an indictment of the officer who held him in the chokehold that killed him). Many have also raised concerns about the privacy interests of those who interact with the police: "Even though we, as a society, are increasingly subject to surveillance, these cameras pose intrusions, and thus privacy is a consideration that policymakers must address." *Id.*

174. Ivan Pereira, *Cities Across US Announce Police Reform Following Mass Protests*

or legal consequence, the widespread awareness from these incidents has resulted in social and political consequences for individuals and for government institutions. For example, many longtime prosecutors and district attorneys have been successfully challenged by people promising accountability and reform.<sup>175</sup> Equally important, powerful social movements such as Black Lives Matter have grown out of social media campaigns to publicize and criticize those who are alleged to have abused their power.<sup>176</sup> There is even evidence that the number of Black men killed by police has declined in cities that have hosted Black Lives Matter protests.<sup>177</sup>

Perhaps the most powerful example of this phenomenon of bystander video serving as a catalyst for change while also traumatizing viewers is the death of George Floyd. Mr. Floyd was an unarmed Black man suspected of passing a counterfeit \$20 bill.<sup>178</sup> He was killed by Derek Chauvin, who was then a Minneapolis police officer.<sup>179</sup> A bystander videotaped the interaction between Mr.

*Against Brutality*, ABC NEWS, (June 12, 2020, 3:02 PM) <https://abcnews.go.com/US/cities-us-announce-police-reform-mass-protests-brutality/story?id=71130499> [<https://perma.cc/ZE88-H9GZ>] (describing reforms proposed in Congress, Louisville, New York, Minneapolis, Washington, D.C., Seattle, Sacramento, and New Jersey following protests after George Floyd's death).

175. Allison Young, *The Facts on Progressive Prosecutors*, CTR. FOR AM. PROGRESS (Mar. 19, 2020) <https://www.americanprogress.org/issues/criminal-justice/reports/2020/03/19/481939/progressive-prosecutors-reforming-criminal-justice/> [<https://perma.cc/PP74-26KU>]. “Across the country, reform-minded prosecutors have set a new precedent of winning elections on platforms committed to both public safety and reducing mass incarceration.” *Id.*

176. See Monica Anderson, Skye Toor, Lee Rainie & Aaron Smith, *Activism in the Social Media Age*, PEW RSCH. CTR. (July 11, 2018), <https://www.pewresearch.org/internet/2018/07/11/activism-in-the-social-media-age/> [<https://perma.cc/8CSU-9GW5>] (marking the fifth anniversary of the #BlackLivesMatter hashtag and noting that “#BlackLivesMatter has become an archetypal example of modern protests and political engagement on social media: A new Pew Research Center analysis of public tweets finds the hashtag has been used nearly 30 million times on Twitter—an average of 17,002 times per day—as of May 1, 2018”); see also Bonilla & Rosa, *supra* note 3 (discussing “how and why social media platforms have become powerful sites for documenting and challenging episodes of police brutality and the misrepresentation of racialized bodies in mainstream media”).

177. Jim Daley, *Killings by Police Declined After Black Lives Matter Protests*, SCI. AM. (Mar. 1, 2021) [https://www.scientificamerican.com/article/killings-by-police-declined-after-black-lives-matter-protests1/?fbclid=IwAR1zIelBldaD3IPHCHBF\\_2Fqlj05J6dJCciPZS-W\\_Z0etpMJRIVGLZpkt6g](https://www.scientificamerican.com/article/killings-by-police-declined-after-black-lives-matter-protests1/?fbclid=IwAR1zIelBldaD3IPHCHBF_2Fqlj05J6dJCciPZS-W_Z0etpMJRIVGLZpkt6g) [<https://perma.cc/6EB3-8U3N>] (citing a new study showing “police homicides have significantly decreased in most cities where [Black Lives Matter] protests occurred”).

178. Jorge Fitz-Gibbon, *Here's Everything We Know About the Death of George Floyd*, N.Y. POST (May 28, 2020, 9:03 PM), <https://nypost.com/2020/05/28/everything-we-know-about-the-death-of-george-floyd> [<https://perma.cc/M653-6UEJ>].

179. Meredith Deliso, *Timeline: The Impact of George Floyd's Death in Minneapolis and Beyond*, ABC NEWS (Apr. 21, 2021, 3:35 PM) <https://abcnews.go.com/US/timeline-impact-george-floyds-death-minneapolis/story?id=70999322> [<https://perma.cc/EW2J-XS72>].

Floyd and police, which culminated in Chauvin kneeling on Mr. Floyd's neck until he died. During that time Mr. Floyd said that he could not breathe multiple times, begged the officer to let him stand, called out to his "Momma," and asked witnesses to tell his children that he loved them.<sup>180</sup> He seemed to know that he was dying, saying "I'm dead."<sup>181</sup> For most of the last two minutes that Chauvin had his knee on Mr. Floyd's neck, Mr. Floyd was unresponsive and appeared to stop breathing.<sup>182</sup> Several other officers were present and did nothing to stop Chauvin. Instead, they stood by and watched and prevented other bystanders from interfering. The inaction of other officers makes clear that if the killing had not been witnessed and videotaped by civilian bystanders, it is unlikely (or at least uncertain) that there would have been any negative consequences for Chauvin or the other officers. In fact, the police initially claimed that "[Mr. Floyd] 'suffered a medical episode while struggling with officers.'"<sup>183</sup>

Video taken by seventeen-year-old bystander Darnella Frazier went viral shortly after Mr. Floyd's death.<sup>184</sup> Additional footage from nearby surveillance cameras and the body cameras of several officers were later made public. The video footage and audio led to widespread protests and what may have been the biggest surge in support for police reform in recent decades.<sup>185</sup> Many who doubted

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180. Maanvi Singh, *George Floyd Told Officers 'I Can't Breathe' More Than 20 Times, Transcripts Show*, GUARDIAN (July 9, 2020) <https://www.theguardian.com/us-news/2020/jul/08/george-floyd-police-killing-transcript-i-cant-breathe>. [<https://perma.cc/8AVN-7Y6S>].

181. *Id.*

182. Associated Press, *Prosecutors Say Officer Had Knee on George Floyd's Neck for 7:46 Rather than 8:46*, L.A. TIMES (June 18, 2020, 3:03 PM), <https://www.latimes.com/world-nation/story/2020-06-18/derek-chauvin-had-knee-george-floyd-neck-746-rather-than-846> [<https://perma.cc/JXE6-BZXX>].

183. Fitz-Gibbon, *supra* note 178. Ms. Frazier's video offered clear evidence to the contrary and led to swift action; all four officers involved were immediately fired. *Id.* Without the video, history and statistics lead to the conclusion that the officers would have been believed, eyewitness testimony ignored or discredited, and no one would have been held accountable. Moreover, the lie that black men are violent and pose a danger to police officers would have been perpetuated.

184. *Id.*

185. Nolan D. McCaskill, *Police Reforms Stall Around the Country, Despite New Wave of Activism*, POLITICO (Sept. 23, 2020, 8:35 PM), <https://www.politico.com/news/2020/09/23/breonna-taylor-police-reforms-420799> [<https://perma.cc/35FV-X7KN>] ("Indeed, a majority of Americans told a Gallup Poll in July [after the protests following George Floyd's death] that 'major changes' to policing were needed, including 88 percent of Black Americans and 51 percent of white Americans."); David Leonhardt, *Can Policing Change?*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/briefing/walter-mondale-vice-president-rwanda-genocide.html> [<https://perma.cc/4GL3-LTB5>] ("Since George Floyd's death last May, dozens of states and local governments have changed their laws about police behavior.").

the need for reform or who believed that instances of police brutality are isolated were forced to confront the reality not only of Chauvin's actions, but the inaction of the other officers who watched Chauvin kill Mr. Floyd without intervening.<sup>186</sup> Nearly a year later, a jury found Chauvin guilty of murder,<sup>187</sup> and the judge sentenced him to twenty-two and one-half years in prison.<sup>188</sup>

While the video led to a rare murder conviction of a former police officer, the widely viewed video also led to a spike in depression and anxiety among Black people, many of whom felt traumatized by the video.<sup>189</sup> The trauma from the killing was compounded by the COVID-19 pandemic which was disproportionately infecting and killing Black Americans.<sup>190</sup> People in Black communities were put in the position of feeling the need to protest and advocate for justice as part of a mass public movement during a time when congregating in large groups posed a threat to their physical health.<sup>191</sup> The protesters understood that they were risking their health and lives,<sup>192</sup> but the protests and the unprecedented (at least in recent decades) support from people of all races and at all levels of government presented an opportunity for change that might have

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186. Leonhardt, *supra* note 185.

187. Janelle Griffith, *Derek Chauvin Sentenced to 22.5 Years for the Murder of George Floyd*, NBC NEWS (June 25, 2021, 10:04 AM), <https://www.nbcnews.com/news/us-news/derek-chauvin-be-sentenced-murder-death-george-floyd-n1272332> [<https://perma.cc/9LN2-JWYS>].

188. *Id.*

189. Alyssa Fowers & William Wan, *Depression and Anxiety Spiked Among Black Americans After George Floyd's Death*, WASH. POST (June 12, 2020), <https://www.washingtonpost.com/health/2020/06/12/mental-health-george-floyd-census> [<https://perma.cc/PND6-N2A5>] (reporting on Census Bureau data showing that “[w]ithin a week [of George Floyd’s death] ‘anxiety and depression among African Americans shot to higher rates than experienced by any other racial or ethnic group, with 41 percent screening positive for at least one of those symptoms’”); Dastagir, *supra* note 16 (“People of color are witnessing these brutal deaths amid a global pandemic that is hitting African American and Latino communities especially hard.”).

190. Gaines, *supra* note 16. Howard University Professor of Psychology Jules Harrell noted that “Blacks must contend with COVID-19—and the disparate effects the virus has had on the Black community—while also dealing with the trauma of witnessing a string of brutal killings of Black people.” *Id.*; *see also* Dastagir, *supra* note 16.

191. Grace B., *What Needs to Be Understood When Talking About COVID-19 Risks at Protests*, SHAPE (July 9, 2020), <https://www.shape.com/lifestyle/mind-and-body/coronavirus-risk-black-lives-matter-protests> [<https://perma.cc/5MB3-GBAG>] (“It’s true that there are very real, very valid risks to protesting amid the COVID-19 pandemic. But the other inescapable truth is that the health consequences of racism are arguably just as dire, and have been for quite some time, as Sandra Shullman, Ph.D., President of the American Psychological Association (APA), noted in a recent statement.”).

192. *See id.* (“Protesters are literally risking their lives to demand that American leaders take meaningful action to dismantle systemic racism in this country.”).

been forfeit without the sustained pressure and publicity from the protests.<sup>193</sup> Black people were forced to sacrifice their safety in order to push for changes that might lead to more just treatment by the criminal justice system.<sup>194</sup>

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193. See, e.g., Jeanine Santucci & Deborah Barfield Berry, *For Second Time, House to Take Up Police Reform Legislation Named for George Floyd*, USA TODAY (Feb. 24, 2021, 4:57 PM), <https://www.usatoday.com/story/news/politics/2021/02/24/george-floyd-justice-in-policing-act-legislation-reintroduced-house/6804467002/> [<https://perma.cc/96JN-E9VP>] (discussing the George Floyd Justice in Policing Act that would ban chokeholds and no-knock warrants, among other provisions); Ray Sanchez, *Police Reforms Quickly Take Hold Across America. It's Only Just Getting Started*, CNN (June 14, 2020, 7:06 PM), <https://www.cnn.com/2020/06/14/us/george-floyd-national-police-reforms/index.html> [<https://perma.cc/4VJV-9Y49>] (describing police reform legislation proposed in New York, Florida, and California in the months following the protests after George Floyd's death). Other changes include removing the Confederate battle flag from the Mississippi state flag and removing or moving Confederate monuments from places of honor in public spaces across the country. Giacomo Bologna & Luke Ramseth, *Historic Day in Mississippi: The Key Moments that Paved the Way for State Flag to Change*, CLARION LEDGER (June 27, 2020, 9:04 PM), <https://www.clarionledger.com/story/news/politics/2020/06/27/mississippi-flag-live-updates-capitol/3256729001/> [<https://perma.cc/9YWV-JDWF>]; Neil Vigdor & Daniel Victor, *Over 160 Confederate Symbols Were Removed in 2020, Group Says*, N.Y. TIMES (Feb. 23, 2021), <https://www.nytimes.com/2021/02/23/us/confederate-monuments-george-floyd-protests.html> [<https://perma.cc/AJN6-Q82T>]; see also David Hessekiel, *Companies Taking a Public Stand in the Wake of George Floyd's Death*, FORBES (June 4, 2020, 11:24 AM), <https://www.forbes.com/sites/davidhessekiel/2020/06/04/companies-taking-a-public-stand-in-the-wake-of-george-floyds-death> [<https://perma.cc/RG6A-54BH>] (“Numerous companies have made public statements against racism and injustice and announced donations and other displays of support since the death of George Floyd unleashed protests across the United States starting on May 26th.”). Not all of the promises of change have been kept, but the public statements advocating for change were welcomed and provided hope. Hessekiel, *supra*; see also *Comparing Police Responses to Pro-Trump Mob, Racial Justice Protests*, NPR (Jan. 7, 2021, 5:05 AM), <https://www.npr.org/2021/01/07/954324564/comparing-police-responses-to-pro-trump-mob-racial-justice-protests> [<https://perma.cc/8BC3-NQUU>].

194. The trial of Derek Chauvin in April 2021 brought the videos back into the public eye and the hearts and minds of African Americans. The trauma was compounded by video of police shooting and killing Duante Wright, an unarmed Black twenty-year-old man in a Minnesota suburb of Minneapolis where Derek Chauvin was being tried. Jessica Glenza, *Minnesota Police Shooting of Daunte Wright: What We Know So Far*, GUARDIAN (Apr. 12, 2021, 10:35 AM), <https://www.theguardian.com/us-news/2021/apr/12/minnesota-police-shooting-daunte-wright> [<https://perma.cc/GQ6T-6XZY>]. A few days later, as the Chauvin trial wound down, video of the fatal police shooting of thirteen-year-old Adam Toledo was released. David K. Li, *Video of Fatal Chicago Police Shooting of 13-Year-Old Adam Toledo Released*, NBC NEWS (Apr. 15, 2021, 11:09 PM), <https://www.nbcnews.com/news/us-news/video-fatal-chicago-police-shooting-13-year-old-adam-toledo-n1264172> [<https://perma.cc/9KAA-V8ZR>]. The steady stream of images of violent deaths caused more anger and strife and led to protests in Minneapolis and Chicago. Julie Bosman & Neil MacFarquhar, *Video Is Released of Chicago Police Fatally Shooting 13-Year-Old*, N.Y. TIMES (Apr. 15, 2021), <https://www.nytimes.com/2021/04/15/us/adam-toledo-chicago-shooting-video.html> [<https://perma.cc/NJ3Y-XDUQ>].



#### IV. HEALING BLACK COMMUNITIES REQUIRES TRANSFORMATION

As vital and effective as video evidence and social media have been for highlighting racial disparities in treatment by police, their necessity is a disgrace. If the Fourteenth Amendment was effective in ensuring that all citizens were treated equally under the law, and if trust between Black people and the police existed to the same extent it does for Whites, violent interactions between Blacks and police would be rare, perpetrators would be held accountable, and there would be mutual trust and respect between Black communities and the officers assigned to protect them. But that is not the reality. The current law enforcement model is built on a foundation of suspicion, fear, and bias against Black people.<sup>195</sup> As police have always existed to protect Whites citizens (particularly White property and business owners), it is no surprise that Whites have a generally positive view of police. Because Blacks were historically treated as the evil against whom Whites needed protection, it is unsurprising that Blacks have a more negative view.

Efforts at reform have been met with limited success, and progress tends to be slow and incremental.<sup>196</sup> “Since George Floyd’s death last May, dozens of state and local governments have changed their laws about police behavior. And yet police officers continue to kill about three Americans each day on average, nearly identical to the rate of police killings for as long as statistics exist.”<sup>197</sup> Even the current momentum has begun to wane.<sup>198</sup> Successful reforms require eliminating biases of the actors in the system that have been reinforced for centuries, because changing laws and policies only helps if those involved in interpreting and enforcing those laws and policies do so without explicit or implicit racial bias. Diversity and inclusion programs have not proved adequate to that task.

Other options, including the abolitionist movement, merit the attention that their proposals are beginning to receive. Activists whose calls for abolition of the criminal justice system had been ignored or mocked are increasingly front and center in

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195. See discussion *supra* Part II.

196. Bryant-Davis et al., *supra* note 10, at 862 (“Although there has been advancement in police practices, minority communities continue to be targeted in various forms.”).

197. Leonhardt, *supra* note 185.

198. McCaskill, *supra* note 185 (noting that support for reform declined months after the initial protests following George Floyd’s death).

conversations about next steps.<sup>199</sup> Abolition offers a transformative view of justice that is a particularly attractive solution to the problem of racism in the criminal justice system and brokenness in Black communities.<sup>200</sup> While there are multiple visions or blueprints for abolition, abolitionists generally favor reducing the budget for police until it is zero or nearly zero, investing resources in meeting the needs of the community, including investment in healthcare infrastructure (physical and mental health resources), safe and affordable housing, universal childcare, free public transportation, closing jails and ending pretrial detentions and civil commitments.<sup>201</sup> These changes would eliminate the trauma caused by a punitive and racially biased criminal justice system and provide resources to address the trauma that has already caused severe damage. Both are necessary to build and support healthy communities and eliminate the need for recording, distributing, and viewing acts of violence against Black people in order to bring attention to injustice.

In the meantime, since censoring or limiting access to the videos would eliminate an effective tool for achieving racial justice, efforts to mitigate the harm are essential. Activists and community leaders need to be educated about the harm inflicted by videos depicting violence against members of their own race. Creating and utilizing family- and community-based support strategies can also help community members heal from the trauma.<sup>202</sup> Warnings

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199. See, e.g., Noah Berlatsky, *Abolishing the Police and Prisons Is a Lot More Practical than Critics Claim*, NBC NEWS (Feb. 23, 2021, 6:43 PM), <https://www.nbcnews.com/think/opinion/abolishing-police-prisons-lot-more-practical-critics-claim-ncna1258659> [<https://perma.cc/65S5-UXFZ>] (“Abolition, at least until recently in the public conversation, has generally been treated as a movement for utopian fantasists, rather than for serious policy wonks concerned with hammering out the gritty iron realities of justice.”); Leila Rave, Mon Mohapatra & Rachel Kuo, *8 to Abolition Is Advocating to Abolish Police to Keep Us All Safe*, TEEN VOGUE (June 25, 2020), <https://www.teenvogue.com/story/8-to-abolition-abolish-police-keep-us-safe-op-ed> [<https://perma.cc/5NB2-ZSW7>] (“In the midst of a pandemic and mass uprisings in defense of Black lives, we have an opportunity to drastically transform the way we live, work, and relate to one another. This moment has created a break in life as we knew it, and in this opening, we offer the 8 to Abolition platform.”).

200. See, e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1782 (2020) (arguing that a structural critique of police violence demands that we take seriously an abolitionist horizon for reform projects); 8 TO ABOLITION, *supra* note 24; MPD150, <https://www.mpd150.com/about/> [<https://perma.cc/257V-UEYN>].

201. The eight steps include: defunding the police; demilitarizing communities; removing police from schools; freeing people from prisons and jails; repealing laws that criminalize survival; investing in community self-governance; providing safe, accessible housing for everyone; and fully investing in care, not cops. 8 TO ABOLITION, *supra* note 24.

202. Bryant-Davis et al., *supra* note 10, at 863 (noting that a strong case can be made for family- and community-based support strategies, although shame may necessitate

about the violent content and the negative effects of repeated viewings before people view the videos should be encouraged. Equally important, increasing access to mental health services must be a priority of the public health systems serving Black communities,<sup>203</sup> while reducing the stigma associated with mental illness<sup>204</sup> and seeking help for emotional trauma should be a priority for leaders and activists in those communities.<sup>205</sup>

### CONCLUSION

Whether and how abolition can work remains to be seen, and, even if possible, if it is a long-term solution. But the seemingly radical proposals move beyond the status quo and refuse to accept incremental changes to a fundamentally flawed system as the end goal. Instead of increasing the police presence and fueling distrust and animosity, it shifts focus to supporting and healing the community. It advocates for laws designed to strengthen families and communities, provide resources for those in need, and reduce contact with the criminal justice system.<sup>206</sup> This healing is crucial to lowering the stress caused by racism and allowing Black people in American to live fuller, healthier lives. If not abolition, then something similarly community-focused is necessary to relieve Black communities of the burden of traumatizing ourselves in order to protect ourselves.

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individual treatment).

203. MENTAL HEALTH DISPARITIES, *supra* note 31, at 3 (noting disparities in access to culturally competent mental health care for African Americans).

204. Hafeez Baoku, *Challenging Mental Health Stigma in the Black Community*, NAT'L ALL. ON MENTAL ILLNESS (July 28, 2018), <https://www.nami.org/Blogs/NAMI-Blog/July-2018/Challenging-Mental-Health-Stigma-in-the-Black-Comm> [<https://perma.cc/72NB-YJ59>] ("In the black community, there is a negative stigma surrounding mental health. Instead of seeking professional help for conditions such as depression and anxiety, many in the community resort to self-medication (drugs, opioids, alcohol, etc.) or isolation in an attempt to solve their problems on their own.").

205. Bryant-Davis, *supra* note 10, at 863–64 (discussing the types of individual and group therapies that may benefit communities of color traumatized by police violence).

206. 8 TO ABOLITION, *supra* note 24.