

Poor, Black and “Wanted”: Criminal Justice in Ferguson and Baltimore

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ABSTRACT

Ferguson, Missouri is everywhere. This has been an enduring and sad lesson in the year since Michael Brown was killed. The national spotlight has moved throughout cities and towns across the United States, as unarmed Black men, women and children have been killed by police officers at an exhausting pace. Mr. Brown’s death has caused stakeholders to grasp and examine the similarities between the wide range of issues impacting Ferguson’s Black communities and their respective communities. Thus, the events in Ferguson have been the source of reflection, examination and action. In that spirit, this essay looks at some similarities between Ferguson and Baltimore, which have grown despairingly closer in light of Freddie Gray’s death in April, 2015. Specifically, the essay explores the vast capacities of the criminal justice systems in these two cities to police and prosecute communities of color, particularly for low-level crimes that flood the criminal court dockets in both jurisdictions. It then focuses on ways in which poor, Black residents in Ferguson and Baltimore remain stuck in the criminal justice system because of court-issued warrants.

INTRODUCTION

The killing of Michael Brown and the aftermath of this tragedy in Ferguson continue to resonate throughout the United States and even internationally, particularly as police killings of unarmed men, women, and children of color have continued with frightening regularity in the short time since his death. Within the U.S., many have described and examined parallels between Ferguson and their own small towns, cities and neighborhoods that are majority Black and Latino. The relationships in these communities between law enforcement officers and the residents they have sworn to serve and protect are often intense, disconnected and antagonistic. These are communities that, as many have articulated, have dire need and demand for law enforcement, but not the type of law enforcement that stereotypes, generalizes, disrespects, interferes with without reason, harms and kills.¹ The string of killings that followed Michael Brown in cities such as Staten Island, Cleveland, Brooklyn, North Charleston, and Baltimore and their after-effects have brought national focus to police-citizen encounters and have also raised desperate, crushingly sad concerns about the value of Black lives.

Thus, Ferguson lit a fuse that has ignited conversations, debates, passions, demonstrations, marches, advocacy, investigations, lawsuits and some reforms related to law enforcement, public safety and criminal justice. Many local, state and national stakeholders have taken lessons from Ferguson and beyond to call for measures to enhance law enforcement transparency, accountability and public trust. Such measures include proposals for officers to wear body cameras, receive training on unconscious biases and reside in the cities and neighborhoods they patrol.²

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¹ See Charles Blow, *A Kaffeklatsch on Race*, N.Y. TIMES, Feb. 16, 2015, at A17 (“Minority communities want policing the same as any other, but they want it to be appropriate and proportional.”).

² For instance, the San Francisco Public Defender Office formed a Racial Justice Committee to make recommendations regarding policing in communities of color. The committee’s ten recommendations include that officers receive at least twenty-four hours of training on implicit bias, annual performance evaluations that look at, inter alia, “documented history of racial bias excessive force, [and] unlawful search and seizure and false reports,

Some proposals are much broader. In December, 2014, President Obama signed an executive order that established the President’s Task Force on 21st Century Policing.³ He created the Task Force to “strengthen community policing and trust among law enforcement officers and the communities they serve—especially in light of recent events around the country that have underscored the need for and importance of lasting collaborative relationships between local police and the public.”⁴ He charged the Task Force with proposing a set of recommendations for best law enforcement practices.

To meet the President’s charge, the Task Force hosted listening sessions across the United States on issues related to policing and the criminal justice system. The Task Force then provided President Obama an expansive set of recommendations and action items for law enforcement and criminal justice reform.⁵ These recommendations and action items include, among many others, “review and evaluate all components of the criminal justice system”;⁶ “establish a culture of transparency and accountability [among law enforcement agencies] in order to build trust and legitimacy”;⁷ “initiat[e] positive nonenforcement activities to engage communities . . . [with] high rates of investigative and enforcement involvement with government agencies”;⁸ consider and review policies regarding law enforcement techniques against “vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others”;⁹ diversify police officer ranks (“including race, gender, language, life experience, and cultural background”);¹⁰ build relationships with immigrant communities;¹¹ collaborate with communities to develop crime-reduction and trust-enhancing strategies in communities and neighborhoods “disproportionately affected by crime”;¹² develop publicly available use of force policies that include “training, investigations, prosecutions, data collection and information sharing”;¹³ use of force training that “emphasize[s] de-escalation and alternatives to arrest or summons in situations where appropriate”;¹⁴ develop best practices that eliminate bias from eyewitness identification procedures;¹⁵ “collect, maintain and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests) . . . disaggregated by school and non-school contacts”;¹⁶ establish “some form of civilian oversight” of law enforcement, with input from every community;¹⁷ “refrain from practices requiring officers to issue a predetermined number of tickets, citations, arrests, or summonses”;¹⁸ adopt policies that prohibit “profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation,

providing financial incentives for officers to live in the communities they patrol, appointing a youth representative to the San Francisco Police Commission and “not detain, search or arrest children at school in the absence of an imminent threat of danger.” SAN FRANCISCO PUBLIC DEFENDER, RACIAL JUSTICE COMMITTEE PLAN FOR POLICE REFORM (2015), <http://sfpublicdefender.org/wp-content/uploads/sites/2/2015/03/Police-Reform-Plan.pdf>.

³ Executive Order, Establishment of the President’s Task Force on 21st Century Policing, December 18, 2014, <https://www.whitehouse.gov/the-press-office/2014/12/18/executive-order-establishment-presidents-task-force-21st-century-policin>.

⁴ FINAL REP’T OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, at iii (May 2015)

http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf [hereinafter 21ST CENTURY POLICING REP’T].

⁵ See generally *id.*

⁶ 0.1 Overarching Recommendation, *id.* at 7.

⁷ 1.3 Recommendation, *id.* at 12.

⁸ 1.5. Recommendation, *id.* at 14.

⁹ 1.5.4 Action Item, *id.* at 15-16.

¹⁰ 1.8 Recommendation, *id.* at 16.

¹¹ 1.9 Recommendation, *id.* at 18.

¹² 2.1 Recommendation, *id.* at 20.

¹³ 2.2 Recommendation, *id.*

¹⁴ 2.2.1 Action Item, *id.*

¹⁵ 2.4 Recommendation, *id.* at 23.

¹⁶ 2.6 Recommendation, *id.* at 24.

¹⁷ 2.8 Recommendation, *id.* at 26.

¹⁸ 2.9 Recommendation, *id.*

immigration status, disability, housing status, occupation, or language fluency”;¹⁹ “infuse [community policing] . . . throughout the culture and organizational structure of law enforcement agencies”;²⁰ work with public schools “to encourage the creation of alternatives to student suspensions and expulsion”;²¹ “affirm and recognize the voices of youth in community decision making”;²² “implement ongoing, top-down training for all officers in cultural diversity”;²³ and “study mental health issues unique to officers.”²⁴

While these recommendations are thorough and desperately needed, they of course do not address all of the issues that impact cities such as Ferguson. The events that occurred there are not solely about the killing of Michael Brown, law enforcement practices and police-citizen relations. The encounter between Officer Darren Wilson and Mr. Brown was not an isolated circumstance devoid of context. The tragedy and the anger, hurt and desperation that followed took place in a segregated town, where the seats of power are disconnected from the majority of residents in every way imaginable and where the criminal justice system wears on Black, poor residents with unbearable weight and singular fury.

The Civil Rights Division of the United States Department of Justice (DOJ) has detailed the myriad ways in which the entirety of Ferguson’s criminal justice system marginalizes, trivializes and criminalizes Black lives.²⁵ The DOJ opened an investigation into Ferguson’s Police Department and municipal court system because of the events surrounding and following Mr. Brown’s death. The investigation revealed countless accounts of and insights into the ways in which Black residents were abused by law enforcement officers, arrested for trivial offenses or even no offenses at all, prosecuted en masse in municipal court and then remained embedded in the criminal justice system because of their inability to pay the wild array of fines and court fees that attached to their offenses as well as to their participation in the court process.²⁶ The DOJ concluded that at each stage of the criminal justice system, Black residents suffered unbearably and unconstitutionally.²⁷ Specifically, it found that Ferguson’s Police Department engaged in patterns of Fourth Amendment violations stemming from unconstitutional stops, arrests and excessive force,²⁸ as well as First Amendment violations stemming from arresting and punishing individuals for engaging in “a variety of protected conduct: people are punished for talking back to officers, recording public police activities and lawfully protesting perceived injustices.”²⁹ It also found Ferguson’s municipal court to be disorganized and non-transparent; that it imposes “substantial and unnecessary barriers” to challenge or resolve municipal code violations, is overly punitive and places undue hardships on individuals charged with code violations.³⁰ The DOJ concluded that Ferguson’s law enforcement practices disproportionately harm Ferguson’s Black residents and are partly the product of racial bias.³¹ It also concluded that the unlawful police and court practices it detailed have eroded community trust in law enforcement and the criminal justice system and, thus, undermine public safety.³²

¹⁹ 2.13 Recommendation, *id.* at 28.

²⁰ 4.2 Recommendation, *id.* at 43.

²¹ 4.6.2 Action Item, *id.* at 48.

²² 4.7 Recommendation, *id.* at 49.

²³ 5.9.1 Action item, *id.* at 58.

²⁴ 6.1.2 Action item, *id.* at 63.

²⁵ *See generally* U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEP’T (2014) [hereinafter DOJ INVESTIGATION].

²⁶ *Id.*

²⁷ *Id.* at 78.

²⁸ *Id.* at 16–24, 28–41.

²⁹ *Id.* at 24; *see id.* 24–28 (discussing the First Amendment violations).

³⁰ *Id.* at 42–62.

³¹ *Id.* at 62–78.

³² *Id.* at 79–89.

Ferguson’s law enforcement practices and court system are abhorrent and in shambles. There is much work to do in Ferguson. But there is much work to do everywhere. Ferguson is by no means alone in the ways in which Black lives are marginalized on the streets and in the courts. I have worked on criminal justice issues in Baltimore for the past thirteen years. As it has with many others across the country, the events in Ferguson have caused me to examine ways in which some underlying issues in Ferguson align with issues and undercurrents in Baltimore. This essay will draw some of these similarities.

The first part of this essay focuses on the ways in which poor, Black residents are entrenched in Ferguson’s and Baltimore’s criminal justice systems, in large measure because of the relatively minor offenses that flood lower courts. The second part looks at some ways in which these residents remain stuck in the criminal justice system through warrants that courts issue when they do not appear in court for docket calls. To use an often repeated phrase, out of tragedy comes hope. In that spirit, the third part briefly discusses some reform measures or ideas that have stemmed from Michael Brown’s death. The essay draws some potential lessons from these reforms.

I. THE TELLING OF TWO CITIES—DEMOGRAPHICS AND CRIMINAL JUSTICE

Aside from their sizes, Ferguson and Baltimore are remarkably similar demographically. Ferguson is a city-suburb that is part of the Greater St. Louis metropolitan area. It is home to approximately 21,000 residents, sixty-seven percent of whom are Black and nearly twenty-nine percent of whom are White.³³ It is a hardscrabble town, as 24.9% of Ferguson’s residents live below the poverty line³⁴ and approximately sixty-eight percent of the schoolchildren qualify for free or reduced lunch.³⁵ These demographics, however, are not represented in Ferguson’s seats of authority and power. Pathetically, only four out of fifty-four police officers in Ferguson are Black.³⁶ Ferguson’s mayor is White, as are six of the school board’s seven members.³⁷ At the time of Michael Brown’s death five of Ferguson’s six city council members were White.³⁸

Baltimore, by contrast, is a major city. It is the largest in Maryland, home to approximately 620,000 residents, sixty-three percent of whom are black and 31.6% of whom are white.³⁹ Grinding poverty and all that it brings is not hard to miss in many parts of the city, which has been studied, serviced and chronicled by researchers, agencies, service providers, journalists, filmmakers and television writers.

³³ U.S. CENSUS BUREAU, FERGUSON (CITY), MISSOURI, <http://quickfacts.census.gov/qfd/states/29/2923986.html>.

³⁴ *Id.*

³⁵ See Jessica Bock, *Ferguson-Florissant, Riverview Gardens, Among Schools Offering Free Lunches to All Students*, ST. LOUIS POST-DISPATCH, July 18, 2014, http://www.stltoday.com/news/local/education/ferguson-florissant-riverview-gardens-among-schools-offering-free-lunches-to/article_c92d264b-4c18-5e8a-9ab7-1564e77c21f2.html (approximately sixty-eight percent of children in Ferguson-Florissant school district received free or reduced lunch in the 2013–2014 school year).

³⁶ DOJ INVESTIGATION, *supra* note 25, at 7. At the time of Michael Brown’s death Ferguson’s Police Department had fifty-three officers, three of whom were Black. Paulina Firozi, *5 Things to Know About Ferguson’s Police Department*, USA TODAY, Aug. 19, 2014, <http://www.usatoday.com/story/news/nation-now/2014/08/14/ferguson-police-department-details/14064451/>.

³⁷ German Lopez, *Why Ferguson’s Government is So White*, VOX, Aug. 14, 2014, <http://www.vox.com/2014/8/14/6003793/why-is-fergusons-local-government-so-white/in/5757650>.

³⁸ *Id.* Ferguson’s City Council is now fifty percent Black, the result of city council elections in April, 2015, that brought two Black councilmembers into office. Stephen Deere, *High Vote Turnout in Ferguson Adds Two Black Council Members, for Three Total*, ST. LOUIS POST-DISPATCH, Apr. 8, 2015, http://www.stltoday.com/news/local/govt-and-politics/high-voter-turnout-in-ferguson-adds-two-black-council-members/article_422cb33f-c172-53de-a0c8-29386630ec72.html.

³⁹ U.S. CENSUS BUREAU, *supra* note 33.

Approximately one quarter of Baltimore's population lives below the poverty line⁴⁰ and the overwhelming majority of schoolchildren—eighty-four percent—in Baltimore's public schools are enrolled in a free or reduced lunch program.⁴¹ Unlike in Ferguson, Baltimore's elected officials and police force are representative of Baltimore's racial demographics.

As is true in towns and cities across the United States, entry into the criminal justice system is extraordinarily easy for Ferguson's poor, Black residents. If they do not find the criminal justice system, often the criminal justice system finds them. Zero tolerance policies and a particular focus on driving offenses have flooded Ferguson's traffic and criminal courts. As in other jurisdictions, these policies have allowed Ferguson's police officers to stop, question, arrest and detain Black residents in large numbers.⁴² Symptomatic of Ferguson's reflexive use of its criminal justice system was the wholesale arrest approach on display during the protests that followed Mr. Brown's killing. Many individuals who were speaking, videotaping, or standing in silence, including news reporters and photographers, were arrested and then released without being charged and without any paperwork—a practice known there as “catch and release.”⁴³

These law enforcement practices in Ferguson infiltrate its municipal court system, where Black residents are prosecuted in extraordinarily disproportionate numbers and, literally, en masse.⁴⁴ From 2012 to 2014, Blacks constituted ninety-three percent of the arrests and ninety percent of the citations issued in Ferguson.⁴⁵ Given these percentages, it is not surprising that Blacks constituted the overwhelming majority of individuals charged with particular crimes. Nonetheless, the numbers are jarring. During this same two year time period, Blacks totaled ninety-five percent of individuals charged with “manner of walking,” ninety-four percent of individuals charged with failure to comply, ninety-two percent of individuals charged with resisting arrest, ninety-two percent of individuals charged with peace disturbance and eighty-nine percent of individuals charged with failure to obey.⁴⁶ In addition, Blacks were substantially more likely to leave municipal court with a conviction record, as they were sixty-eight percent less likely to have their charges dismissed.⁴⁷

As in Ferguson, relationships between Baltimore's police force and its Black residents have been disconnected, strained and, at times, violent. Unlike in Ferguson, Baltimore's police force is

⁴⁰ *Id.* (23.8% of persons in Baltimore lived below the poverty line from 2009 to 2013).

⁴¹ MARYLAND STATE DEP'T OF EDUCATION, SCHOOL AND COMMUNITY NUTRITION PROGRAMS, SCHOOL YEAR 2014–2015 (STATEWIDE SUMMARY) (2014).

⁴² For instance, Ferguson's Police Department conducted 5,384 traffic stops in 2013—4,632 of which were of Black drivers. CHRIS KOSTER, VEHICLE STOPS REPORT (2013), <http://ago.mo.gov/divisions/litigation/vehicle-stops-report?lea=161>. During these stops Black drivers were twice as likely as Whites to be searched, given a citation or arrested even though they were “26% less likely to have contraband found on them during the search.” DOJ INVESTIGATION, *supra* note 25 at 4, 62, 65.

⁴³ See Wesley Lowery, *In Ferguson, Washington Post Reporter Wesley Lowery Gives Account of His Arrest*, WASH. POST (Aug. 14, 2014), http://www.washingtonpost.com/politics/in-ferguson-washington-post-reporter-wesley-lowery-gives-account-of-his-arrest/2014/08/13/0fe25c0e-2359-11e4-86ca-6f03cbd15c1a_story.html.

⁴⁴ Ferguson's municipal court holds “three or four sessions per month, and each session lasts no more than three hours.” DOJ INVESTIGATION, *supra* note 25, at 9. Moreover:

It is not uncommon for as many as 500 people to appear before the court in a single session, exceeding the court's physical capacity and leading individuals to line up outside of court waiting to be heard. Many people have multiple offenses pending; accordingly, the court typically considers 1,200-1,500 offenses in a single session and has in the past considered over 2,000 offenses during one session.

Id.

⁴⁵ *Id.* at 62.

⁴⁶ *Id.*

⁴⁷ *Id.*

representative of the city’s racial demographics, although, as of 2013, more than seventy percent of Baltimore’s officers lived outside of the city.⁴⁸ In Ferguson’s wake came the disclosure by the *Baltimore Sun* that from 2011 until the *Sun*’s investigative report in October of 2014, Baltimore had paid \$5.7 million in court judgments and settlements of over 100 police brutality and false arrest lawsuits.⁴⁹ Some settlements involved the same police officers, who remained on the force despite multiple instances of substantiated abuse.⁵⁰ In almost all of the criminal cases that followed the violent arrests, “prosecutors or judges dismissed the charges against the victims—if charges were filed at all.”⁵¹ Overall, from 2011 to the present—which includes the several months since October, 2014—Baltimore has paid approximately \$6.3 million to resolve these lawsuits.⁵²

Also as in Ferguson, Baltimore’s criminal justice system bears down disproportionately on its Black residents, particularly for low-level criminal offenses. Baltimore officially adopted zero tolerance policing in 2000.⁵³ By 2005, the number of arrests jumped to over 100,000, approximately 76,500 of which were warrantless.⁵⁴ The Office of the State’s Attorney took issue with these mass arrests for minor crimes and did not file charges in approximately one-third of the cases that originated with warrantless arrests.⁵⁵ This process of bringing individuals into the criminal justice system is similar to Ferguson’s “catch and release” system that it utilized during the protests. However, in Baltimore this law enforcement approach has long been pervasive, so much so that it is referred to formally as an “arrest without charge” and known colloquially as a “walkthrough.” Through this mechanism, police officers arrest individuals, put them through the booking process, detain them in cramped, dirty cells and

⁴⁸ Mark Puente, *Some Baltimore Police Officers Face Repeated Misconduct Lawsuits*, BALT. SUN, Oct. 4, 2014, <http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-police-repeaters-20141004-story.html#page=1>. This disconnection in Baltimore and elsewhere breeds misunderstanding and mistrust between departments and communities, as it does in other cities where most officers live outside of the communities they patrol. This issue did not go unnoticed by the President’s Task Force on 21st Century Policing. The Task Force recommended that “[l]aw enforcement agencies . . . institute residency incentive programs such as Resident Officer Programs,” so that officers live in the neighborhoods they patrol and protect. 21st CENTURY POLICING REP’T, Action Item 1.5.2, *supra* note 4, at at 15.

⁴⁹ Mark Puente, *Undue Force*, BALT. SUN, Sept. 28, 2014, <http://data.baltimoresun.com/news/police-settlements/>. Issues involving violent encounters between law enforcement and Maryland’s Black residents is not confined to Baltimore, just as issues uncovered in Ferguson are not confined to that town but rather are symptomatic of larger issues in St. Louis County. *E.g.*, Ryan J. Reilly & Mariah Stewart, *Fleece Force: How Police and Courts Around Ferguson Bully Residents and Collect Millions*, HUFFINGTON POST (Mar. 26, 2015), http://www.huffingtonpost.com/2015/03/26/st-louis-county-municipal-courts_n_6896550.html (describing ways that several municipalities in St. Louis County impose fines, collect revenue and criminalize residents). The ACLU of Maryland estimates that between 2010 and 2014, “at least” 109 individuals in Maryland died in police custody. Seventy five of the individuals who died were Black, thirty-six of whom were unarmed. ACLU OF MARYLAND, BRIEFING PAPER ON DEATHS IN POLICE ENCOUNTERS IN MARYLAND, 2010-2014, at 2 (2015), http://www.aclu-md.org/uploaded_files/0000/0623/md_deaths_police_encounters.pdf.

⁵⁰ Puente, *supra* note 48.

⁵¹ Puente, *supra* note 49.

⁵² Mark Puente & Doug Donovan, *Brutality Lawsuits Continue in Baltimore, Site of Freddie Gray Death*, BALT. SUN, Apr. 22, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-police-lawsuits-20150422-story.html#page=1>.

⁵³ ANTHONY W. BATTS, POLICE COMMISSIONER, BALTIMORE POLICE DEPARTMENT, “PREVENTING HARM”: CONDUCT IN THE COMMUNITY, Oct. 14, 2014.

⁵⁴ Amended Complaint, *Maryland State Conference of NAACP Branches, et al., v. Baltimore City Police Department, et al.*, Case No. 06-1863(CCB) 46–47, ¶ 264, <http://www.aclu-md.org/uploaded-files/0000/0205/amendedcomplaint.pdf> [hereinafter Amended Complaint].

⁵⁵ See Reed Collins, Note, *Strolling While Poor: How Broken-Windows Policing Created a New Crime in Baltimore*, 14 GEO. J. POVERTY L. & POL’Y 419, 420 (2007); Justin Fenton, *With Fewer Arrests in Baltimore, Fewer Cases that Don’t Stick*, BALT. SUN (July 5, 2011), http://articles.baltimoresun.com/2011-07-03/news/bs-md-ci-released-without-charges-20110703_1_fewer-arrests-drug-dealers-fewer-cases.

eventually release them from central booking. They are not formally charged and do not see a judge. This practice has been centralized in Baltimore City, to the relative exclusion of the rest of Maryland, and used overwhelmingly against Black residents, young and old. In 2007, the Maryland State Conference of NAACP Branches, the Baltimore City Branch of the NAACP and several individuals filed suit against the Baltimore City Police Department and other municipal defendants based on the large numbers of arrests without probable cause.⁵⁶ The parties settled. As a result of the settlement, the department essentially ended zero tolerance policing.⁵⁷

Regardless of the label attached to law enforcement methods—whether or not certain practices are defined as “zero tolerance policing”—Baltimore’s black residents are introduced and reintroduced to the criminal justice system in great numbers and remain cemented in it. In 2014, Blacks constituted slightly over eighty percent of total arrests in Baltimore, while nearly seventeen percent of arrests were of Whites.⁵⁸ As these percentages dictate, Blacks also comprised the majority of arrests for specific crimes. For instance, Blacks made up ninety-two percent of arrests for loitering, seventy-nine percent of arrests for carrying an open container and nearly eighty-two percent of arrests for driving without a license, in contrast to White residents, who made up nearly eight percent of arrests for loitering and carrying an open container, and eleven percent of arrests for driving without a license.⁵⁹ The racial disparities for marijuana offenses have been particularly dramatic. According to an American Civil Liberties Union study, in 2010, Blacks constituted ninety-two percent of those arrested in Baltimore for marijuana possession.⁶⁰ During this same year, the arrest rate in Baltimore for marijuana possession was 1,136 per 100,000 residents, compared with Maryland overall, which had an arrest rate of 409 per 100,000 for this same charge.⁶¹

Thus, in both Ferguson and Baltimore, large numbers of Black residents have close, intimate, long-lasting, harmful and dangerous relationships with law enforcement. These relationships extend to the rest of the criminal justice system, as Black residents overwhelmingly fill the dockets that flood the courts in both jurisdictions.

I. Stuck in the System: Warrants in Ferguson and Baltimore

As easy as it is for Ferguson’s residents to enter the criminal justice system, it is even more difficult for them to exit and leave it behind. They remain stuck in it. This is especially the case with driving-related offenses, as Ferguson’s Black residents are arrested and convicted disproportionately—

⁵⁶ Amended Complaint, *supra* note 54.

⁵⁷ Stipulation of Settlement, *Maryland State Conference of NAACP Branches, et al., v. Baltimore City Police Department, et al.*, Civil Action No. 06-1863 (CCB) at 8 (“Within 30 days of the Effective Date of this Agreement, the Department shall issue a policy stating that the Department does not support a policy of Zero Tolerance Policing.”). In addition, prior to 2007, the walkthroughs were listed on criminal records maintained by law enforcement and it was incumbent upon individuals to file applications with the police department to remove the incidents from their records. In 2007, in large part because of the particular and disproportionate impact of walkthroughs on residents of Baltimore City, Maryland’s legislature enacted an automatic expungement provision, requiring that law enforcement commence the process necessary to expunge walkthroughs that occurred on or after October 1, 2007, within sixty days after release. MD. CODE ANN., CRIM. PROC. § 10-103.1(b). However, individuals must still request expungement for walkthroughs that occurred prior to October 1, 2007. They have eight years to make the request. *Id.* at § 10-103(b).

⁵⁸ OpenBaltimore, <https://data.baltimorecity.gov> (last visited May 11, 2015) (containing statistical information about residents, businesses, and police activity in Baltimore, Maryland).

⁵⁹ *Id.*

⁶⁰ AM. CIVIL LIBERTIES UNION, THE WAR ON MARIJUANA IN BLACK AND WHITE: BILLIONS OF DOLLARS WASTED ON RACIALLY BIASED ARRESTS 20 (2013), <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf>.

⁶¹ *Id.* at 14–15.

and overwhelming—of these offenses.⁶² For many, these cases do not go away. They plead guilty to the offenses but cannot afford to pay the fines and related municipal court fees. The municipality has relied upon these court fees, fines and other costs as a substantial and lucrative funding stream, bringing in approximately \$10 million dollars over the last five years.⁶³ In 2013, these fees and fines constituted a staggering twenty percent of the municipality’s revenues.⁶⁴ In Ferguson’s 2013–2014 budget, the projected revenues from “fines and public safety” exceeded the projected revenues from property taxes by nearly \$500,000.⁶⁵ The City Manager lauded the forty-four percent increase in municipal court revenues from FY 2010–2011, which was “[d]ue to a more concentrated focus on traffic enforcement.”⁶⁶

The financial burdens imposed by Ferguson’s criminal justice system and borne by defendants are akin to the broad swath of court and punishment-related fees that have resulted in “offender-funded justice.”⁶⁷ These fees are used to help fund various municipal services, such as law enforcement and court functions, as well as to help support state budgets.⁶⁸ However, these fees and costs, imposed on the poorest of the poor, result in debts that, in some jurisdictions, have been outsourced to private companies.⁶⁹ In Ferguson, individuals have not appeared in court because they could not afford to pay the fines. They were scared of the legal consequences of their poverty.⁷⁰ The courts then issued warrants for

⁶² For example, Ferguson’s police department has charged Blacks with speeding “at disproportionately high rates overall,” and the “disparate impact of [these] enforcement practices on [Blacks] is 48% larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer’s own visual assessment.” DOJ INVESTIGATION, *supra* note 25, at 4–5. These issues are not specific to Ferguson, but rather reach municipalities throughout St. Louis County. See generally Rodney Balko, *How Municipalities in St. Louis County, Mo., Profit from Poverty*, WASH. POST, Sept. 3, 2014, <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty> (exploring, in-depth, these driving-related offenses, the fines and fees related to these offenses that individuals cannot afford to pay, the extent to which municipalities rely on these fines and fees as revenue sources and the impact of the warrants).

⁶³ Complaint at 34, *Fant v. City of Ferguson*, No. 4:15-cv-00253 (E.D. Mo. Feb. 8, 2015).

⁶⁴ CITY OF FERGUSON, MO., ANNUAL OPERATING BUDGET, FISCAL YEAR 2014–15, at 50 (2014) (listing total revenues were \$12,761,614 while “Fines and Public Safety” revenues amounted to \$2,571,191), <http://fergusoncity.com/documentcenter/view/1701>.

⁶⁵ CITY OF FERGUSON, MO., ANNUAL OPERATING BUDGET, FISCAL YEAR 2013–14, at 11 (2013), <http://www.fergusoncity.com/DocumentCenter/View/1609>.

⁶⁶ *Id.* at vi.

⁶⁷ *E.g.*, RAM SUBRAMANIAN ET AL., INCARCERATION’S FRONT DOOR: THE MISUSE OF JAILS IN AMERICA 15 (2015), <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf> (“Many jails, courts and other criminal justice agencies charge for the services they provide, including jails that charge for clothing and laundry, room and board, medical care, rehabilitative programming, and even core functions such as booking.”). For descriptions of the various fees that are imposed through each phase of the criminal justice system, see generally Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175.

⁶⁸ *E.g.*, ALICIA BANNON ET AL., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 4 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> (“Cash-strapped states have increasingly turned to user fees to fund their criminal justice systems, as well as to provide general budgetary support.”); REBECCA VALLAS & SHARON DIETRICH, PROGRESS, ONE STRIKE AND YOU’RE OUT: HOW WE CAN ELIMINATE BARRIERS TO ECONOMIC SECURITY AND MOBILITY FOR PEOPLE WITH CRIMINAL RECORDS 29 (2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf> (“These criminal justice debts act to compound the collateral consequences of a criminal record and transform punishment from a temporary experience into a long-term, even lifelong status.”).

⁶⁹ See Sarah Stillman, *Get Out of Jail, Inc.: Does the Alternatives-to-Incarceration Industry Profit From Injustice?*, THE NEW YORKER, June 23, 2014 3, <http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc>.

⁷⁰ *E.g.*, DOJ INVESTIGATION, *supra* note 25, at 48 (discussing that “Ferguson court staff members told [DOJ investigators] that they believe the high number of missed court appearance in their court is attributable, in part, to [the] popular belief” that “if they cannot immediately pay the fines they owe, they will be arrested and sent to jail”); Julia Lurie & Katie Rose Quandt, *How Many Ways Can the City of Ferguson Slap You with Court Fees? We Counted*, MOTHER JONES, Sept. 12, 2014, <http://www.motherjones.com/politics/2014/09/ferguson-might-have->

their failures to appear. The DOJ found that almost every warrant issued by Ferguson’s municipal court stemmed from “a person miss[ing] consecutive court appearances, or . . . a person miss[ing] a single required fine payment as part of a payment plan.”⁷¹ These warrants, as well as the unpaid fines and court fees, have kept the residents wedded to the criminal justice system in extraordinarily large numbers. In fiscal year 2013, Ferguson’s municipal court issued warrants to slightly more than 9,000 individuals for over 32,000 offenses.⁷² Thus, the number of warrants constituted nearly one-half of Ferguson’s population, including children and babies. During this same year, ninety-two percent of the arrest warrants were issued for Black defendants.⁷³ As a result, many individuals and households in Ferguson, overwhelmingly Black, live in the shadows of the criminal justice system.

These warrants extend relationships with the criminal justice system indefinitely. The DOJ found that “the primary role of warrants [in Ferguson] is not to protect public safety but rather to facilitate fine collection.”⁷⁴ Thus, these warrants are not a law enforcement priority. They are simply a way to “coerce payment.”⁷⁵ According to the DOJ, “[c]ourt staff report that they typically take weeks, if not months, to enter warrants into the system that enables patrol officers to determine if a person they encounter has an outstanding warrant.”⁷⁶ Thus, the individuals—their bodies—are not “wanted” by law enforcement or the court; their money is. At times, however, when they do not have the money their bodies will do.⁷⁷

Similarly, the relationships between Baltimore’s residents and the courts are often long-lasting. This is in part because court-issued warrants also keep thousands of residents connected to the criminal justice system, in varying degrees. These warrants stem from failures to appear in court. In 2014, Blacks constituted nearly seventy-eight percent of the 5,709 arrests for failing to appear in court, with Whites making up nearly twenty percent of these arrests.⁷⁸

In addition, Baltimore’s poorest residents also live under the stress of various punishment-related fees, particularly parole fees. In 2009, the Brennan Center for Justice reported that the overwhelming majority of Baltimore’s formerly incarcerated individuals could not afford the then-\$40 monthly parole

break-its-habit-hitting-poor-people-big-fines (“It’s a common misconception among Ferguson residents—especially those without attorneys—that if you show up without money to pay your fine, you’ll go to jail.”).

⁷¹ DOJ INVESTIGATION, *supra* note 25, at 55. Relevant to missing court appearances, the DOJ found that defendants in Ferguson often have very little information about the offense charged, the fine amount “or whether a court appearance is required or some alternative method of payment is available.” *Id.* at 45. The DOJ “also found evidence that in issuing citations, [Ferguson police] officers frequently provide people with incorrect information about the date and time of their assigned court session.” *Id.* at 46. Moreover, an arrest warrant is issued “[i]f an individual misses a second court date, . . . without any confirmation that the individual received notice of that second court date.” *Id.* at 47.

⁷² *Id.* at 55.

⁷³ *Id.* at 62.

⁷⁴ *Id.* at 56.

⁷⁵ *Id.*

⁷⁶ *Id.* This is not meant to suggest that individuals are not arrested in Ferguson on these warrants. Indeed, they are “with considerable frequency.” *Id.* Traffic stop data from the Ferguson Police Department reveal that from October 2012 to October 2014, 460 individuals were arrested in Ferguson solely because of an arrest warrant, ninety-six percent of whom were Black. *Id.* at 57.

⁷⁷ Here, the DOJ concludes that “Ferguson’s practice of automatically treating a missed payment as a failure to appear—thus triggering an arrest and possible incarceration—is directly at odds with well-established law that prohibits ‘punishing a person for his poverty.’” *Id.* (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)). Indeed, the Supreme Court has made clear the unconstitutionality of incarcerating an individual simply because of his or her poverty. *Bearden*, 461 U.S. at 671. In *Bearden*, the Court held that a person cannot be incarcerated solely because of the inability to pay a probation-required fine and restitution. *Id.* at 672–73. *See also* *Tate v. Short*, 401 U.S. 395, 398 (1971) (holding that a person cannot be incarcerated solely because of inability to pay fines).

⁷⁸ BPD ARRESTS, <https://data.baltimorecity.gov/Public-Safety/BPD-Arrests/3i3v-ibrt> (last visited Apr. 1, 2015).

fee, particularly in light of other fees connected to parole, such as participation in various programs.⁷⁹ Debts that exceeded \$30 at the end of parole term were “routinely” referred to the Central Collection Unit (CCU) of Maryland’s Department of Budget and management.⁸⁰ The CCU, in turn, added collection costs to the outstanding debt.⁸¹ Ultimately, if the debt and subsequent costs were not collected, one of two things could or did happen: If the debt was less than \$750, the CCU arranged to have state income tax refunds intercepted until it was paid.⁸² If the debt exceeded \$750, Maryland’s Attorney General could file a civil action to secure a civil judgment, which could be enforced through wage garnishment and property liens, as well as end up on credit reports.⁸³

The Brennan Center’s Report brought significant attention to the negative impact of these debts on parolees and helped lead to legislative changes in Maryland. While there were, and still are, possible exemptions from the parole fee,⁸⁴ individuals leaving prison were not informed.⁸⁵ As a result of the legislative changes, individuals exiting detention must be given oral and written notice that sets forth the criteria that the Parole Commission may use in determining whether to exempt the fee.⁸⁶ The exemption application process must also be explained to them.⁸⁷ Despite these changes, individuals are wallowing in supervision-related debt. The “typical debts” that the CCU is responsible for collecting include those related to parole and probation “restitution,” supervisory fees and court costs accounts.⁸⁸ In 2011, the parole and probation supervision fees were increased to \$50 per month.⁸⁹

While the parole and related fees in Baltimore are very different than the vast network of fees and fines that capture so many Ferguson residents, the results are often the same. People are scared, stressed, funneled through different systems and remain heavily indebted to those systems. Thus, they remain connected to the criminal justice system. They are stuck.

For the last five years, I have teamed with Sharon Cole, a long-serving, dedicated, client-centered and community-focused attorney with the Maryland Office of the Public Defender, to conduct a presentation at Health Care for the Homeless, Inc. This is an organization headquartered in Baltimore that provides a wide range of services to underserved children and adults in several Maryland jurisdictions, including medical, mental health and housing-related services.⁹⁰ Our presentation focuses on the interconnections between warrants and criminal record expungement. Approximately forty to fifty individuals attend each presentation, very much interested in and engaged with the issues that impact them, their families or their friends. Ms. Cole provides information about warrants including how a person can find out if he or she has a warrant, the steps to be taken to deal with the warrant and the urgency of taking those steps. At each presentation she asks the audience how warrants interfere with their lives. Some of the most common answers are: *Nobody will hire or rent an apartment to someone*

⁷⁹ REBEKAH DILLER ET AL., BRENNAN CTR. FOR JUSTICE, MARYLAND’S PAROLE SUPERVISION FEE: A BARRIER TO REENTRY 1 (2009), <http://brennancenter.org/sites/default/files/legacy/publications/MD.Fees.Fines.pdf>.

⁸⁰ *Id.* at 19.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 20.

⁸⁴ See MD. CODE ANN., CORR. SERVS. § 7-702 (d)(1)-(5) (West 2015) (lack of employment despite diligent attempts, school or vocational training enrollment, disability, support of dependents, or “other extenuating circumstances” could result in exemption, either in whole or in part).

⁸⁵ See DILLER ET AL., *supra* note 79, at 1, 24-25.

⁸⁶ MD. CODE ANN., CORR. SERVS. § 7-702(j)(1).

⁸⁷ *Id.* at (j)(2).

⁸⁸ STATE OF MD., DEP’T. OF BUDGET & MGMT., STATEWIDE DEBT COLLECTION SERVICES, REQUEST FOR PROPOSALS (RFP) 27, SOLICITATION NO. F10B5400006 (Oct. 8, 2014), <http://www.dbm.maryland.gov/proc-contracts/Documents/ProcurementsinProgress/DebtCollection2015Amend2.pdf>.

⁸⁹ MD. CODE ANN., CORR. SERVS. § 7-702(b).

⁹⁰ HEALTH CARE FOR THE HOMELESS, INC., <http://hchmd.org/> (last visited Mar. 28, 2015).

with a warrant. It is always attached to me. I can be arrested at any time. I have to always watch my back. It is stressful. It is paralyzing. Ms. Cole explains that these feelings and worries are common throughout the city because on any given day there are approximately 40,000 open warrants in Baltimore.⁹¹

Many warrants stretch back several years. Some individuals know about their warrants and live their lives on edge, not driving cars out of fear that a moving violation—one rolling stop—will result in arrest or constantly struggling because of the ways in which the warrants have interfered with housing, employment, mobility, freedom and peace of mind. Others, however, have absolutely no clue that a warrant is attached to their names. They have received no notice of the warrant and years, sometimes several, have passed with no contact from the court or police officers. They have no idea that they are still attached to the criminal justice system.

II. POTENTIAL REFORMS—LESSONS FROM FERGUSON

While the issues in Ferguson are vast and deeply rooted, the extent to which poor and working-class Black men and women have financed the municipality through fines and court fees has received particular attention. Ferguson’s reliance on these fees and fines as funding mechanisms and its use of warrants as a gateway to incarcerate poverty—turning its jail into a “modern debtors prison”⁹²—has sparked anger, shock, sadness and outrage among residents, concerned citizens near and far, stakeholders, and the bar. In response to some concerns, Ferguson’s lawmakers and municipal court put in place a number of measures specific to warrants and the fees. The court set a warrant recall period from September 15, 2014, to October 14, 2014, which allowed individuals to speak with a court clerk about having their warrants recalled.⁹³ More than 600 hundred individuals reported to the court during this thirty-day period.⁹⁴ Due to its success, the program has been extended indefinitely.⁹⁵ The court also established a special docket for defendants struggling to make their monthly payments on fines.⁹⁶ Also, lawmakers abolished the \$50 warrant recall fee, eliminated the court fees previously imposed when defendants requested continuances, repealed the offense of failure to appear, and amended Ferguson’s fiscal year 2014–2015 budget to cap fines and fees derived from municipal ordinance violations at fifteen percent of the city’s revenue.⁹⁷ Missouri’s legislature subsequently passed a bill to cap revenue from “fines, bond forfeitures and court costs for minor traffic violations” at 12.5% of general revenue of the municipalities that comprise St. Louis County (which includes Ferguson) and twenty percent for the

⁹¹ *E.g.*, MD. DEP’T OF LEGIS. SERVS., MD. GEN. ASSEMB., S.B. 266 FISCAL AND POLICY NOTE 2 (2014), http://mgaleg.maryland.gov/2014rs/fnotes/bil_0006/sb0266.pdf (“Baltimore City advises that the city currently has 42,000 warrants.”).

⁹² Complaint at 3, *Fant v. City of Ferguson*, No. 4:15-cv-00253 (E.D. Mo. Feb. 8, 2015).

⁹³ Aja J. Williams, *Ferguson Warrant Recall Program Begins*, KDSK.COM (Sept. 16, 2014, 5:03 AM), <http://www.ksdk.com/story/news/local/2014/09/15/ferguson-warrant-recall-program/15690419/>.

⁹⁴ Brett Blume, *Ferguson Warrant-Recall Program Extended Indefinitely*, CBS ST. LOUIS (Oct. 13, 2014), <http://stlouis.cbslocal.com/2014/10/13/ferguson-warrant-recall-program-extended-indefinitely/>.

⁹⁵ *Id.*

⁹⁶ City of Ferguson, *Monday Sept. 8 Statement: Ferguson City Council Announces New Programs to Reduce Community Concerns* (Sept. 8, 2014), <http://www.fergusoncity.com/DocumentCenter/View/1735>.

⁹⁷ See FERGUSON CITY COUNCIL, BILL NO. 7060, ORD. NO. 2014-3564 (2014) (enacted), <http://mo-ferguson2.civicplus.com/DocumentCenter/View/1723> (eliminating warrant fee and court continuances fees); FERGUSON CITY COUNCIL, BILL NO. 7062, ORD. NO. 2014-3566 (2014) (enacted), <http://mo-ferguson2.civicplus.com/DocumentCenter/View/1725> (repealing the offense of failure to appear in Municipal Court); FERGUSON CITY COUNCIL, BILL NO. 7061, ORD. NO. 2014-3565 (2014) (enacted), <http://mo-ferguson2.civicplus.com/DocumentCenter/View/1724>.

remaining parts of Missouri.⁹⁸ However, more substantial reforms may be forthcoming through investigation, litigation and oversight, the results of the DOJ’s findings as well as a class action lawsuit filed by individuals who have languished and suffered in Ferguson’s jails solely because of their inability to pay these fines and court related fees.⁹⁹

There are lessons to be drawn from Ferguson with regard to warrants. The ideas related to designated warrant recall periods and dedicated warrant court parts are sound. The recall periods are similar to the federal “fugitive safe surrender” program, which is overseen by the U.S. Marshal’s Service.¹⁰⁰ Through the program, jurisdictions around the country establish venues for individuals to return themselves on warrants for non-violent or misdemeanor offenses.¹⁰¹ Jurisdictions designate a time period, usually four days, during which individuals with warrants can return themselves to a designated neutral setting, such as a church. The surrender locations are staffed with judges, prosecutors, defense attorneys, probation personnel, various service providers and, in some instances, clergy members.¹⁰² Defendants have their matters heard at these locations. They have the opportunity to explain their circumstances and deal with the warrant and the underlying charge. Their voluntary return is deemed favorably and the vast majority of individuals who have surrendered in these fora were not arrested or sent to jail. A study of twenty-two safe surrender sites over a five year period found that slightly over two percent of the individuals who surrendered with an open warrant were arrested.¹⁰³

While the surrender programs have yielded positive results they are confined to designated time periods that span a few days. They are also episodic. As a possible solution, all prosecutor offices should designate an attorney or team of attorneys to assume responsibility for the outstanding warrants in their particular jurisdiction. They would be tasked with taking steps to reduce the warrants by trying to resolve the underlying offenses. For instance, they would sift through the underlying cases to determine whether prosecution should continue or whether cases should be dismissed. They might decide that charges belonging to defendants who have had no subsequent interaction with the criminal justice system should be dismissed or they might determine that some charges can no longer be prosecuted given evidentiary weaknesses. Sorting the cases in these ways would allow prosecutors to separate strong cases from weak, to prioritize based on these assessments, and to get cases out of the system that no longer belong.

The Baltimore State’s Attorney took steps in this regard. A few years ago, the office designated an assistant state’s attorney to assume responsibility for the misdemeanor warrants cases. The assigned state’s attorney had a significant role in Baltimore’s Safe Surrender Program, weeding out cases prior to

⁹⁸ S.B. 5, 98th Gen. Ass., Reg. Sess. 8 (Mo. 2015), <http://www.senate.mo.gov/15info/pdf-bill/tat/SB5.pdf>.

⁹⁹ See Complaint at 1, *Fant v. City of Ferguson*, No. 4:15-cv-253 (E.D. Mo. Feb. 8, 2015). A similar class action has also been filed against the City of Jennings, which neighbors Ferguson. See Complaint at 1, *Jenkins v. City of Jennings*, No. 4:15-cv-00252 (E.D. Mo. Feb. 8, 2015).

¹⁰⁰ 42 U.S.C. § 16989 (2012).

¹⁰¹ Offices of the United States Attorneys, *Fugitive Safe Surrender*, U.S. DEP’T OF JUSTICE, www.justice.gov/usao/priority-areas/violent-crime-prevention/fugitive-safe-surrender (last visited Mar. 24, 2015).

¹⁰² E.g., *N.J. Offers ‘Fugitive Safe Surrender’ Program to Those with Outstanding Warrants: Program Doesn’t Offer Amnesty, But Fugitive Will Get Favorable Consideration*, CBS N.Y. (Nov. 6, 2013 10:00 PM), <http://newyork.cbslocal.com/2013/11/06/n-j-offering-fugitive-safe-surrender-program-to-those-with-outstanding-warrants/>.

¹⁰³ DANIEL J. FLANNERY, *WANTED ON WARRANTS: THE FUGITIVE SAFE SURRENDER PROGRAM* 31–32 (2013). Mae Quinn, a Professor of Law at Washington University, formerly taught at the University of Tennessee College of Law. She represented clients in Knoxville who reported to amnesty events, which were focused on serving homeless individuals. She states that her clients frequently had their court-related debts forgiven at these events. E-mail from Mae Quinn, Professor of Law & Director, Juvenile Law & Justice Clinic (Mar. 4, 2015) (on file with author).

the surrender period that could no longer be prosecuted.¹⁰⁴ However, the state’s attorney’s role extended past the program to the day-to-day responsibility of trying to resolve these cases. On several occasions students in the Reentry Clinic that I teach contacted the state’s attorney to advocate on behalf of clients whose warrants reached back several years. The goal was to resolve the underlying charge. The students conveyed our clients’ stories to the state’s attorney—why they desperately needed and deserved to move past the circumstances—and the cases were resolved in ways that allowed both the state’s attorney to shrink the pile of cases, albeit ever so slightly, and the clients to move forward with their lives.

In addition to the steps that Ferguson’s municipal court and City Council have taken with regard to warrant-related issues, the DOJ has recommended to the City of Ferguson several additional warrant-specific reforms. It recommends that Ferguson “[c]ease practice of automatically issuing a warrant when a person on a payment plan misses a payment, and adopt procedures that provide for appropriate warnings following a missed payment.”¹⁰⁵ It also recommends that the municipal court only jail individuals who failed to appear or failed to pay the penalty for a municipal code violation if a series of steps have been followed, among which are enforcing the fines through alternative means (such as community service and modifying payment plans) and providing attorneys to individuals *prior* to the warrant being issued.¹⁰⁶ Last, it recommends that the municipal court make permanent its temporary (albeit indefinitely extended) warrant recall program.¹⁰⁷

The DOJ’s recommendations are necessary steps for Ferguson to take and for other jurisdictions to follow. Providing defense counsel to individuals as part of the warrant process (both prior to judges issuing the warrants and after they have done so) is critical to addressing and balancing the needs and concerns of courts, defendants, and communities. The sheer numbers of warrants in cities such as Ferguson and Baltimore prove them to be ineffective and overly punitive. Counsel is necessary to individualize their clients—their situations and circumstances—so that courts can make informed decisions about whether a warrant is necessary in a particular instance and, after the warrant has been issued, whether it should be recalled. Indeed, “under longstanding practice [in Ferguson] once an attorney makes an appearance in a case, the court automatically discharges any pending warrants.”¹⁰⁸ This fact alone signifies the importance, and good fortune, of being represented by counsel in warrant-related matters.

However, more can be done. Defender offices, members of the private bar and law school clinics can develop workshops and related materials that educate communities about warrants. They can also work together to organize workshops for individuals seeking legal advice related to their warrants. The attorneys and clinic students can instruct attendees on the steps necessary to resolve the warrant and provide legal representation to those who are interested. These workshops would be similar to others that defender offices, affiliated attorneys, and service providers hold on legal issues that directly impact individuals who have been through the criminal justice system, such as expungement workshops.

As in Ferguson, jurisdictions should repeal the offense of failure to appear. This offense and the related warrant are pasted on criminal records, which are easily accessible by employers, landlords and the general public. To employers and landlords, this charge connotes dishonesty, irresponsibility and evasion, labels that make it extraordinarily difficult to secure employment or housing. These labels and assumed character traits often run counter to the underlying narratives that lead to entry into the criminal

¹⁰⁴ Jessica Anderson, *Hundreds Take Advantage of Safe Surrender Program: Residents with Nonviolent Crimes had 4 Days to Surrender*, BALT. SUN (June 19, 2010), http://articles.baltimoresun.com/2010-06-19/news/bs-md-safe-surrender-20100619_1_deros-warrants-surrender.

¹⁰⁵ DOJ Investigation, *supra* note 25, at 99.

¹⁰⁶ *Id.* at 100.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 56.

justice system as well as the subsequent warrants. They tell stories that, in many circumstances, are simply not true. For many employers and landlords, the story begins and ends with the charge. The narrative and circumstances behind the charge are irrelevant. Thus, the charge should not be on the record. At the very least, it should come off the record once the warrant is resolved. Again, in many circumstances the warrants involve long-ago minor crimes. The long-lasting harms caused by failure to appear charges on criminal records far outlive the impact of the underlying charges.

Judges also have a significant role to play in reforming warrant-related practices. One of the searing impressions of Ferguson is the extent to which poor individuals are absolutely terrified of going to court because of their inability to pay fines and court-related fees. They are scared that their poverty will lead to their incarceration; in essence, that their inability to pay these costs is a crime unto itself. Frightened at the prospect of going to jail, they do not show up to court and the municipal judge issues the warrants. In addition to the DOJ’s recommendations regarding the information that needs to be conveyed to individuals regarding fines, fees and warrants, judges need to explain to *all* individuals, orally and in writing, that their inability to pay fines and court-related fees *cannot and will not* be the basis of a subsequent arrest or incarceration.

Last, key stakeholders—judges, prosecutors, law enforcement personnel, elected officials, and advocates—need to hear directly from the scores of individuals whose warrants keep them in the shadows of the criminal justice system. The DOJ did just that and its report is filled with stories of individuals who have suffered at each stage of Ferguson’s criminal justice system, including those burdened with warrants. Any attempts at instituting warrant-related reforms would be lacking without listening to, considering and incorporating the stories and experiences of individuals who have been through the criminal justice system, including the the circumstances that led to their warrants and the impact the warrants have had on their lives. Their stories and experiences are primary sources for stakeholders to understand and consider. Their input and ideas are integral to the warrant-related reforms that are necessary to balance the needs of law enforcement, courts, defendants, families and communities.

EPILOGUE

I wrote this essay in early 2015, with the goal of drawing some similarities between the criminal justice systems of Ferguson, Missouri and Baltimore, Maryland. My aims were to illustrate that relatively minor crimes drive these respective systems and to explain the ways that court warrants keep individuals, overwhelmingly poor and Black, attached to these systems.

However, deep into the editing process, Freddie Gray died. A twenty-five year old lifelong resident of Baltimore, Mr. Gray died one week after police officers encountered him “alive and walking,”¹⁰⁹ chased, detained, searched, arrested, dragged and bound him, put him in a police van and drove him without safety belts through parts of Baltimore City, making multiple stops along the way to the Western Police District. According to the States Attorney of Baltimore City—who criminally charged the six officers involved in this incident—Mr. Gray requested and begged for medical attention, first when the arresting officers placed him in handcuffs and then throughout this ride, as he stated multiple times that he could not breathe.¹¹⁰ At one stop, the State’s Attorney alleges, Mr. Gray was unresponsive.¹¹¹ When the officers arrived at the Western Police District, “Mr. Gray was no longer breathing at all.”¹¹² Paramedics subsequently arrived, determined that Mr. Gray was in cardiac arrest¹¹³

¹⁰⁹ Paul Butler, *The Police Officers’ Bill of Rights Creates a Double Standard*, NY TIMES, Apr. 29, 2015.

¹¹⁰ Application for Statement of Charges, Edward Michael Nero, Defendant, District Court of Maryland for Baltimore City, May 1, 2015 (Officer Nero is one of the six officers charged).

¹¹¹ *Id.*

¹¹² *Id.*

and transported him to University of Maryland Shock Trauma, where he underwent two spinal surgeries, remained comatose and died one week later, with a nearly severed spine and a broken voice box.

The arresting officers claimed that they chased Mr. Gray because he “fled unprovoked” upon “noticing police presence.”¹¹⁴ Nothing else.¹¹⁵ They alleged that upon apprehending Mr. Gray one of the officers “noticed a knife clipped to the inside of his front pants pocket.”¹¹⁶ They stated that they “arrested him without force or incident,”¹¹⁷ although video recordings show a screaming Freddie Gray being dragged in the street and into the back of a police van, his legs seemingly not functioning. He was charged with possessing a switch blade, a non-violent misdemeanor offense.¹¹⁸ His death precluded him from challenging the initial encounter with the officers, the chase, the seizure, the search, the arrest and, indeed, the lawfulness of the knife.

Mr. Gray’s tragic death made the similarities between Ferguson and Baltimore even more stark and distressing. As with Michael Brown’s death in Ferguson, Mr. Gray’s death angered and saddened Baltimore’s residents, particularly those who live in the city’s Black communities, where poverty is concentrated and generations of residents have relationships with Baltimore’s Police Department and its criminal justice system that are marked by abuse, frustration, fear, disgust, anger, routine, and familiarity. In the aftermath of Mr. Gray’s death, the United States Department of Justice opened a pattern or practice investigation into Baltimore’s Police Department that “will seek to determine whether there are systemic violations of the Constitution or federal law by officers of BPD.”¹¹⁹ Specifically, “[t]he investigation will focus on BPD’s use of force, including deadly force, and its stops, searches and arrests, as well as whether there is a pattern or practice of discriminatory policing.”¹²⁰

¹¹³ *Id.*

¹¹⁴ Application for Statement of Charges, Freddie Carlos Grey [sic] Jr., Defendant, District Court of Maryland for Baltimore City, Apr. 12, 2015.

¹¹⁵ Many commentators have asserted that the chase preceding Mr. Gray’s arrest was lawful, relying on the United States Supreme Court’s holding in *Illinois v. Wardlow* that unprovoked flight in a drug-prone neighborhood gives rise to reasonable suspicion. *Illinois v. Wardlow*. 528 U.S. 119, 124-25 (2000). Justice Rehnquist, writing for the Court, stated that a person’s “unprovoked” flight from police officers in a “high crime” area, while “not necessarily indicative of wrongdoing, . . . is certainly suggestive of such.” *Id.* at 124. However, Justice Stevens, who concurred and dissented in part from Justice Rehnquist’s opinion, explained that “[a]mong some citizens, particularly minorities and those residing in high crime areas, there is . . . the possibility that the fleeing person is entirely innocent, but with or without justification, believes that contact with the police itself can be dangerous. . . .” *Id.* at 132. He continued, “these concerns and fears are known to the police officers themselves, and are validated by law enforcement investigations into their own practices.” *Id.* at 133. Following *Wardlow*, Maryland’s Court of Special Appeals also held that flight in a drug-prone neighborhood “justified the police chase and . . . subsequent detention.” *Wise v. State*, 751 A.2d 24, 27 (Md. App. 2000). However, of particular note, in both *Wardlow* and *Wise* the officers alleged that they saw something else other than “unprovoked” flight. In *Wardlow*, the officers asserted that Mr. Wardlow was “standing next to [a] building holding an opaque bag” in a drug-prone location. *Illinois v. Wardlow* at 121-22. He then ran upon seeing the officers. In *Wise*, the officer alleged that he saw Mr. Wise “walk into an alley in a neighborhood known for its drug dealing.” *Wise v. State*, at 132. He then saw Mr. Wise “balling up a brown paper bag and placing it under a telephone book in a grassy area in the alley.” *Id.* Mr. Wise then made eye contact with the officer and ran. *Id.* In stark contrast, the officers who chased and arrested Mr. Gray did not allege that they saw him do anything or hold anything before or at the time they made eye contact. He simply ran.

¹¹⁶ Application for Statement of Charges, *supra* note 114.

¹¹⁷ *Id.*

¹¹⁸ Statement of Charges, *State of Maryland v. Freddie Carlos Grey [sic] Jr.*, Case No. 6B02294074, Apr. 12, 2015.

¹¹⁹ UNITED STATES DEP’T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, JUSTICE DEPARTMENT OPENS PATTERN OR PRACTICE INVESTIGATION INTO THE BALTIMORE POLICE DEPARTMENT (May 8, 2015), <http://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-baltimore-police-department>.

¹²⁰ *Id.*

Poor, Black and “Wanted”

The events that transpired in Ferguson and Baltimore immediately after these tragedies put both cities on national and international display. The world has learned, through these tragic deaths, of the conditions and circumstances that have deteriorated police-community relations in communities of color, of criminal justice systems that capture, stigmatize, and paralyze Black men, women and children, and of episodes of police violence that capstoned decades of indignity, frustration, marginalization, criminalization, and force. The world—including communities in other parts of the cities, counties, and states where these incidents have occurred—has also been exposed to the array of other issues and conditions that plague poor communities of color and connect both to police-community relationships and contact with the criminal justice system: concentrated poverty, joblessness, economic inequality, inadequate education, lack of meaningful opportunities, inadequate healthcare, food deserts, redlining, subprime mortgages, vacant homes, and lower life expectancy, among other issues. Also, through these tragedies, the calls for law enforcement transparency and accountability have become louder, with ideas such as body cameras, placing officers on foot patrol and in other ways integrating officers into the communities they patrol becoming part of the national discourse.

This essay, in the context of these issues, is quite narrow. Indeed, the range of issues that has surfaced recently in response to the unarmed Black men, women and children who have been killed by police officers or died in police custody is vast and deep. In particular, the deaths of Michael Brown and Freddie Gray have exposed to the world the circumstances and conditions—historical, decades-long and current—that have impacted all aspects of life for individuals, families, and communities within Ferguson and Baltimore. These issues are as present today as ever. While the criminal justice system is a focal point in both cities, the issues are much broader. Thus, holistic reform—reform that addresses the broad swath of circumstances and conditions that lead to over-involvement with the criminal justice system—must be the overarching goal.

Hopefully, this essay offers a couple of ways to move forward and contributes to the efforts currently undertaken by communities, individuals, and families who have been impacted by police violence and the criminal justice system, clergy, activists, advocates, law enforcement leaders, scholars and lawmakers. As always, these are urgent times.