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Through Police Eyes—the Ferguson Effect Scare

Ronald T. Hosko*

The dynamic world of American policing encountered a period of great turbulence during the closing years of Barack Obama's presidency. Some place blame at his feet while others recognize the broader complexities of police and community relations, the impact of serious and deadly use of force incidents, the amplifying effect of the media, expansion of social media, police funding and training challenges, and myriad other factors as contributing to what's now referred to as "the Ferguson effect" where police retreat from traditional proactive policing.

Whether a Ferguson effect is exaggerated, real or imagined, a number of data sources point to trouble—rising rates of violent crime, rising intentional and fatal attacks on police, and increasing ambushes of police, coupled with reports of declining police engagement and shrinking police applicant pools. This should raise concern and perhaps alarm.

Veterans in law enforcement will say they have never experienced anything like the last three years, and police executives are working hard to find a way out of the torrents while fearing for their own futures if a questioned event happens in their town.

In the background, a halting "national conversation" on race and criminal justice is spoken of but has not begun in earnest. It is a hard conversation, one made ever more difficult when incendiary labels like "bigot" and "racist" are casually, and deliberately, tossed like Molotov cocktails when opposing views collide.

Some understanding might come by seeing "Ferguson effect" cause and result through the eyes of law enforcement.

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INTRODUCTION

On August 9, 2014, eighteen-year-old Michael Brown and a friend walked into a convenience store in Ferguson, Missouri where Brown took a fifty dollar package of Swisher Sweets cigars and tried to leave without paying. An employee confronted the much-larger Brown and tried to obstruct his departure, but he was shoved out of the way by Brown.¹ In police terms, that “strong arm robbery” became the first in a string of events leading to Brown’s death minutes later.

Michael Brown encountered Ferguson Police Officer Darren Wilson in the street a few blocks from the convenience store, where Wilson tried to block Brown and his friend, Dorian Johnson, from walking in the street and shoo them onto a sidewalk.² After a verbal exchange, Brown attacked Wilson, who was uniformed and sitting in a marked patrol SUV.³ He briefly struggled with Wilson for the officer’s weapon.⁴ Brown was shot in the hand during the struggle, and he briefly fled, only to turn and charge at the officer, who had exited his vehicle.⁵ When Brown ignored Wilson’s commands and charged at the officer, Wilson fired again, fatally.⁶ Brown’s body later lay on the street for four hours while St. Louis County shooting investigators and the medical examiners encountered investigative and security delays in completing their work.⁷ During those four hours, a growing neighborhood crowd grew agitated and threatening. Their anger was fed by Brown’s friend,

¹ U.S. DEP’T OF JUSTICE, REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON, 6 (2015) [hereinafter FERGUSON REPORT].

² *Id.* at 6.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 6, 7.

⁶ FERGUSON REPORT, *supra* note 1 at 6.

⁷ *Id.* at 9.

Johnson, who had shared his own narrative of the chain of events leading to the fatal shooting.

Dorian Johnson quickly became a media darling. His first-hand recitation of events fed a view that some believe is all too common in police encounters with black men in America—compliance (or surrender) followed by fatal police gunfire. The national media seized on Johnson’s retelling when it arrived in Ferguson and with it, the “Hands up, don’t shoot!” narrative was born. Civil discourse about the fatal encounter, the often plodding formality of a thorough investigation, and the constitutional protections of due process of law and presumption of innocence for the accused police officer were cast aside or trampled by some in an enraged community and media who seemed eager to broadcast the lynching of a rogue, racist cop on live TV. All of the elements, including the rich historical irony, were lined up and ready to go, except one—the truth.

After days of unrest and destruction, some marked by the influx of heavily armed police⁸ and the Missouri National Guard⁹ to help quell the violence, there were calls for calm. Eventually, Missouri State Highway Patrol troopers assumed control of law enforcement in the city.¹⁰ Meanwhile, local and federal investigators set about their work of locating and interviewing eyewitnesses to the fatal shooting and combing through the forensic evidence that would be used to separate fact from falsity and paint a composite mosaic of truth.

Months later, the “Hands up, don’t shoot” mythology of Ferguson began to unravel. The oft-told tale of Dorian Johnson, now Department of Justice’s (DOJ) Witness 101, who commanded so much media airtime in August, shattered on the Ferguson pavement as witness after witness discredited his story. Johnson, whose information can be found starting at page 43 in the DOJ report¹¹ under the heading, “Witnesses Whose Accounts Do Not Support a Prosecution Due to Materially Inconsistent Prior Statements or Inconsistencies With the

⁸ Whitney Curtis, *In Pictures: Heavily Armed Riot Police Face Down Ferguson Citizens*, THE GLOBE & MAIL (Aug. 13, 2014), <https://beta.theglobeandmail.com/news/world/in-pictures-heavily-armed-riot-police-face-down-ferguson-citizens/article20056164/?ref=http://www.theglobeandmail.com&>.

⁹ *National Guard Called Out in Ferguson, Missouri*, CBS NEWS (Aug. 18 2014), <https://www.cbsnews.com/news/national-guard-called-out-in-ferguson-missouri/>.

¹⁰ Michael Pearson, Ana Cabrera and Catherine E. Shoichet, *Missouri State Troopers Take over Security in Ferguson*, CNN (Aug. 15, 2014), <http://www.cnn.com/2014/08/14/us/missouri-teen-shooting/index.html>.

¹¹ FERGUSON REPORT, *supra* note 1 at 43.

Physical and Forensic Evidence” had a misdemeanor conviction for a crime of dishonesty and was discredited by physical and forensic evidence.¹² Though far from alone among those who were blameworthy for the relationship between Ferguson citizens and their police, Johnson was perhaps singly responsible for the ultimate deceit of Ferguson—that a white police officer wantonly gunned down an unarmed and surrendering black teenager. Compounding the problem, Johnson found himself in the embrace of a willing media that invited his retelling of the story with little challenge. The magnifying impact of the media lit a fuse on sympathetic protests across the country, and even liberal pundits took months to acknowledge the truth, let alone condemn the damage done as the lie spread.¹³

Events in Ferguson over three years ago were a fork in the relatively smooth road of citizen and police relations in recent decades. America weathered the crack cocaine epidemic of the nineties, and its related violent crime and incarceration rates, and was pointed in the right direction. Pockets of police misconduct were being identified and rooted out, albeit too slowly for some, but violent crime was in steady decline even as resources were being shifted to manage a concerning terrorism threat in the country.

But, Ferguson changed things. And when Staten Island’s Eric Garner¹⁴ and Baltimore’s Freddie Gray lost their lives after police

¹² FERGUSON REPORT, *supra* note 1 at 47.

¹³ E.g., Landon Jones, *How ‘Hands Up, Don’t Shoot’ Could Start a Real Revolution*, TIME MAG. (Dec. 4, 2014), <http://time.com/3618295/eric-garner-ferguson-hands-up-dont-shoot/>; *Rams Players Use ‘Hands Up, Don’t Shoot’ Pose in Pregame*, SPORTS ILLUSTRATED (Nov. 30, 2014), <https://www.si.com/nfl/video/2014/11/30/st-louis-rams-players-use-hands-up-dont-shoot-pose-pregame>; Leslie Larson, *Four Members of Congress Do ‘Hands Up’ Gesture on House Floor*, DAILY NEWS (Dec. 2, 2014), <http://www.nydailynews.com/news/politics/members-congress-hands-gesture-house-floor-article-1.2030010>; Jackson Connor, *CNN Hosts Under Fire For Putting ‘Hands Up’ On Air, Critics Claim Bias*, HUFFINGTON POST (Dec. 12, 2014), https://www.huffingtonpost.com/2014/12/15/cnn-hands-up-host-under-fire-critics-claim-bias_n_6327546.html; Jonathan Capehart, *‘Hands Up, Don’t Shoot’ Was Built on a Lie*, WASH. POST (Mar. 16, 2015), https://www.washingtonpost.com/blogs/post-partisan/wp/2015/03/16/lesson-learned-from-the-shooting-of-michael-brown/?utm_term=.49b3e9239ee0; Glenn Kessler, *The Biggest Pinocchios of 2015*, WASH. POST (Dec. 14, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/12/14/the-biggest-pinocchios-of-2015/?utm_term=.bb349e3a80ea.

¹⁴ C.J. Sullivan, *Man Dies After Suffering Heart Attack During Arrest*, N.Y. POST (July 18, 2014), <https://nypost.com/2014/07/18/man-dies-after-suffering-heart-attack-during-arrest/>.

encounters, a brushfire that started in the heartland quickly spread across the nation. That brushfire now threatens not just police but all Americans.

I. POLITICIANS AND POLICE

In nature, fire needs fuel to burn; without it, fire dies out. In the post-Ferguson environment, the fire of controversy, protest and deadly violence could be sustained and intensified because politicians provided fuel.

In his first term, President Barack Obama wasted little time in criticizing Cambridge, Massachusetts police following an encounter between officers responding to a call about a suspicious person and an Obama friend, African-American Harvard professor Henry Gates. With little understanding of the facts of the encounter, the President quickly pronounced, “The police acted stupidly.”¹⁵ Worse, President Obama brought the subject of race into his premature judgments on the matter, saying, at a press event shortly after his “acted stupidly” condemnation, that, “I don’t know, not having been there and not seeing all the facts, what role race played in that.”¹⁶ He added:

I think it’s fair to say, number one, any of us would be pretty angry; number two, that the Cambridge police acted stupidly in arresting somebody when there was already proof that they were in their own home; and, number three, what I think we know separate and apart from this incident is that there’s a long history in this country of African-Americans and Latinos being stopped by law enforcement disproportionately. That’s just a fact.¹⁷

When recordings of the encounter ultimately showed Gates as the aggressor and police acting professionally, the President, having been taken to task by police groups for prejudging law enforcement

¹⁵ *Obama: Police who Arrested Professor “Acted Stupidly”*, CNN (July 23, 2009), <http://www.cnn.com/2009/US/07/22/harvard.gates.interview/>.

¹⁶ *Id.*

¹⁷ Huma Khan & Michele McPhee, *Obama Defends Criticism of Cambridge Police in Arrest of Gates*, ABC NEWS (July 23, 2009), <http://abcnews.go.com/Politics/story?id=8153681&page=1>.

actions and motives,¹⁸ engineered the now-infamous “beer summit.”¹⁹ It consisted of a meeting between President Obama, Vice President Joe Biden, Gates, and the arresting officer, Sergeant James Crowley. The men met on the White House lawn in view of a throng of reporters and photographers, and sipped beer and nibbled peanuts. No apologies were reportedly uttered and little of consequence seemed to be accomplished beyond a goodwill gesture between Gates and Crowley and, of course, a photo op of the marquee players sitting down together peaceably.²⁰

Obama learned a bit from his Cambridge misfire, and the reaction to it, toning down his language about the Ferguson encounter but suggesting Ferguson’s Officer Wilson acted out of a sense of misguided fear, driven by race and not by reality, saying, “In too many communities, too many young men of color are left behind and seen only as objects of fear.”²¹ He was hardly alone in commenting publicly on policing encounters before the facts were known. Notably, he was joined by his attorney general, Eric Holder, who spoke of his own youthful encounters with police and suggested that his police stops were race-driven, within days of the Brown/Wilson encounter in Ferguson.²²

The former president and his attorney general were joined by other politicians thumbing the scale against police without regard to the facts of the encounter. New York City’s liberal mayor, Bill de Blasio, saw fit to weigh in, speaking in early December 2014 of having “the talk” about police encounters with his biracial son. His talk centered on the dangers of being a young black man being stopped by police.²³ De Blasio’s comments were quickly condemned by police union officials as

¹⁸ *Id.*

¹⁹ Phillip Sherwell, *President Barack Obama Hosts ‘Beer Summit’ for Prof. Henry Gates and Sgt. James Crowley*, TELEGRAPH (July 31, 2009), <http://www.telegraph.co.uk/news/worldnews/barackobama/5943142/President-Barack-Obama-hosts-beer-summit-for-Prof-Henry-Gates-and-Sgt-James-Crowley.html>.

²⁰ Helene Cooper & Abby Goodnough, *Over Beers, No Apologies but Plans to Have Lunch*, N.Y. TIMES (July 30, 2009), <http://www.nytimes.com/2009/07/31/us/politics/31obama.html>.

²¹ Christi Parsons & Kathleen Hennessy, *President Obama Chooses His Words Carefully on Michael Brown*, L.A. TIMES (Aug. 18, 2014), <http://www.latimes.com/nation/la-na-obama-ferguson-20140819-story.html>.

²² Erin Dooley, *AG Eric Holder in Ferguson Recalls Being ‘Angry’ After Police Encounters*, ABC NEWS (Aug. 20, 14), <http://abcnews.go.com/Politics/ag-eric-holder-ferguson-recalls-angry-police-encounters/story?id=25060969>.

²³ Erin Durkin, *Bill de Blasio Details Talk with Son About Interacting with Police*, N.Y. DAILY NEWS (Dec. 8, 2014), <http://www.nydailynews.com/news/politics/de-blasio-details-talk-son-dealing-cops-article-1.2036870>.

“really hypocritical and moronic.”²⁴

In Baltimore in April 2015, career criminal Freddie Gray spotted a police lieutenant who was watching a drug sale location.²⁵ Gray fled, but two police officers on bicycles caught him quickly. When searched, Gray was found to have a spring-loaded knife and arrested.²⁶ He was transported in a police wagon; after several intermediate stops, he was found with a fatal neck injury. He died in a Baltimore hospital within days. As rioting engulfed Baltimore, the President again spoke in a manner that presumed police abuse: “This has been going on for a long time.” The President added:

This is not new, and we shouldn’t pretend that it’s new. The good news is that perhaps there’s some newfound awareness, because of social media and video cameras and so forth, that there are problems and challenges when it comes to how policing and our laws are applied in certain communities and we have to pay attention to it.²⁷

The “this” the President was referring to was presumed police abuse. Within days of Gray’s death and the rioting, the Baltimore States Attorney, Marilyn Mosby, charged that alleged abuse, specifically “depraved-heart” murder, among other charges, against six officers involved in his arrest and transportation.²⁸

²⁴ *Id.*

²⁵ *Freddie Gray Arrest Record, Criminal History & Rap Sheet*, HEAVY.COM (Apr. 27, 2015) <https://heavy.com/news/2015/04/freddie-gray-arrest-record-criminal-history-rap-sheet-why-was-freddie-gray-arrested/> (detailing Gray’s criminal record—the Maryland Department of Justice records showed eighteen arrests, though not all led to convictions).

²⁶ Eyder Peralta, *Timeline: What We Know About The Freddie Gray Arrest*, NPR (May 1, 2015)

<https://www.npr.org/sections/thetwo-way/2015/05/01/403629104/baltimore-protests-what-we-know-about-the-freddie-gray-arrest> (a timeline of the events of April 12, 2015, detailing Gray’s arrest and subsequent transport by Baltimore police).

²⁷ Tanya Somanader, *President Obama on Freddie Gray’s Death: “This Is Not New and We Shouldn’t Pretend that It’s New”*, OBAMA WHITE HOUSE: THE WHITE HOUSE BLOG, (Apr. 28, 2015), <https://obamawhitehouse.archives.gov/blog/2015/04/28/president-obama-freddie-gray-s-death-not-new-and-we-shouldn-t-pretend-it-s-new>.

²⁸ Richard Pérez-Peña, *Six Baltimore Officers Indicted in Death of Freddie Gray*, N.Y. TIMES, (May 21, 2015), <https://www.nytimes.com/2015/05/22/us/six-baltimore->

A year later, the charges against three of the officers were heard in successive trials before a Baltimore judge who was also a former DOJ Civil Rights Division attorney.²⁹ All three officers were acquitted.³⁰ States Attorney Mosby then dismissed all charges against the remaining three officers when she recognized her office had insufficient evidence to secure convictions and should not proceed.³¹

Since Ferguson, uninformed, prejudicial commentary and acts, particularly by prominent and educated public officials, has contributed to widespread resentment against law enforcement.³² These public figures are too often proven wrong, and their commentary has been too often timed in a manner that could influence grand jurors or trial jurors, in addition to the general public. Premature judgments, misguided comments, and incendiary actions by politicians³³ and other public figures³⁴ on questioned police encounters have been too many to count in our post-Ferguson era and increased the challenges police faced. Despite them, there have been valuable steps forward, at least one directed by President Obama. With the echoes of Ferguson and Eric Garner's death during a police struggle still reverberating across the

officers-indicted-in-death-of-freddie-gray.html.

²⁹ Sean Welsh, *Who is the Judge in the Freddie Gray Hearing?*, BALT. SUN, (June 22, 2016), <http://www.baltimoresun.com/news/maryland/freddie-gray/bal-who-is-the-judge-in-the-freddie-gray-hearing-20150901-story.html>.

³⁰ Elisha Fieldstadt, *Officer Charged in Freddie Gray Case, Edward Nero, Not Guilty on All Counts*, NBC NEWS (May 23, 2016), <https://www.nbcnews.com/storyline/baltimore-unrest/officer-freddie-gray-death-edward-nero-not-guilty-all-counts-n578676>; *Freddie Gray Case: Caesar Goodson Cleared of All Charges*, CBS INTERACTIVE (June 23, 2016), <https://www.cbsnews.com/news/freddie-gray-caesar-goodson-verdict/>; Farida Fawzy & Aaron Cooper, *Brian Rice Trial: Highest-ranking Officer Cleared in Freddie Gray Death*, CNN (July 18, 2016), <https://www.cnn.com/2016/07/18/us/brian-rice-freddie-gray-verdict/index.html>.

³¹ Kevin Rector, *Charges Dropped, Freddie Gray Case Concludes with Zero Convictions Against Officers*, BALT. SUN (July 27, 2016), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-miller-pretrial-motions-20160727-story.html>.

³² See, e.g., Durkin, *supra* note 23; Somanader, *supra* note 27.

³³ See, e.g., Christina Marcos, *Democrat Re-hangs Painting Depicting Cops as Pigs*, THE HILL (Jan. 10, 2017), <http://thehill.com/blogs/floor-action/house/313506-dem-lawmaker-re-hangs-painting-depicting-cops-as-pigs-in-capitol>.

³⁴ See, e.g., Colin Kaepernick: *My Pig Police Socks 'shouldn't distract from the real issues'*, THE GUARDIAN, (Sept. 1, 2016), <https://www.theguardian.com/sport/2016/sep/01/colin-kaepernick-pig-socks-police-protest>.

country in December 2014, the President ordered the empaneling of a policing commission to study current issues and to deliver near-term recommendations.

The resulting Task Force on 21st Century Policing made its final report the following May.³⁵ The contents reflected ongoing challenges in policing, with key topics including building trust and legitimacy, crime reduction, training and education, and officer wellness. Hopefully, the tome is not destined for doorstep status as it contains dozens of valuable recommendations, including: on building trust and legitimacy in law enforcement;³⁶ on developing clear and effective strategies and policies;³⁷ on developing, testing and acquiring technologies;³⁸ and on enhancing training.³⁹ If taken seriously, some recommendations provide important considerations for police departments of all sizes in need of establishing targets for improvement and striving to mitigate existing shortcomings. Other recommendations may be unreachable for all but the most mature and well-funded agencies. Blemishes and limitations aside, the Task Force's report was a step in the right direction and a valuable guide for elected officials and police leaders to ask whether their own department is in the right starting place or mired in risk.

II. RISING CRIME RATES

Violent crime in America began a long steady descent in 1991, when it peaked at 716 violent crimes per 100,000 people.⁴⁰ According to Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR) estimates, that rate had fallen to 365 in 2014, almost half of where it had been a quarter century before.⁴¹ At its 1991 peak, the U.S. murder rate was 9.8 per 100,000 people.⁴² By 2014, that rate was 4.5, cut by half

³⁵ DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING (2015).

³⁶ *Id.* at 85.

³⁷ *Id.* at 87.

³⁸ *Id.* at 90.

³⁹ *Id.* at 94.

⁴⁰ MATTHEW FRIEDMAN, ET AL., BRENNAN CTR. FOR JUSTICE, CRIME TRENDS: 1990-2016 (2017), at 1, <https://www.brennancenter.org/sites/default/files/publications/Crime%20Trends%201990-2016.pdf>.

⁴¹ U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2014, VIOLENT CRIME (2015).

⁴² FRIEDMAN, *supra* note 38.

over a quarter century.⁴³ But something happened on the way to what were expected to be still lower violent crime and murder rates in 2015 and 2016. Exactly what happened, though, is the subject of much concern and debate, including from those who see broad attacks on law and order in America amounting to a “war on cops.”⁴⁴

Reversing the decades-long downward trend, 2015 brought rising violent crime and murder rates. According to the FBI, the violent crime rate rose an estimated 3.1 percent⁴⁵ while the murder rate jumped an estimated 10.8 percent.⁴⁶ Unfortunately for thousands of Americans, the 2015 jump marked the beginning of a deadly increase in crime rates. The FBI’s 2016 estimates on the violent crime rate showed another 4.1 percent jump, while murders climbed another 8.6 percent.⁴⁷

Before the 2017 rates are even tabulated, what is clear is that violent and deadly crime in the country suddenly moved in the wrong direction, at a cost of thousands of human lives and untold financial costs in the urgent care for the dying and seriously injured. Those who dismiss the upticks as limited to just a few cities or neighborhoods or as limited to homicides alone are myopic; the 2016 UCR showed estimated jumps in other violent crime components, such as rape,⁴⁸ robbery,⁴⁹ and aggravated assaults⁵⁰ as well. To be sure, the rising tide of violent crime was far from uniform across the country. However, significant portions

⁴³ FBI, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION UNIFORM CRIME REPORTING 2014 DATA REPORT (2014), available at <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/offenses-known-to-law-enforcement/murder>.

⁴⁴ See generally, HEATHER MACDONALD, THE WAR ON COPS: HOW THE NEW ATTACK ON LAW AND ORDER MAKES EVERYONE LESS SAFE (2016) (arguing that police action and prison rates respond to crime, rather than to race, and that society’s safety is put at risk by blaming police departments for the disproportionate number of minorities in the criminal justice system).

⁴⁵ FBI, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION UNIFORM CRIME REPORTING 2015 DATA REPORT (2015), available at <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/violent-crime>.

⁴⁶ *Id.*

⁴⁷ U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016, MURDER (2017); U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016, VIOLENT CRIME (2017).

⁴⁸ See U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016, RAPE (2017).

⁴⁹ See U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016, ROBBERY (2017).

⁵⁰ See U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, PREFACE TO THE UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016, AGGRAVATED ASSAULT (2017).

of the rise were laid at the feet of several notable cities, including Chicago and Baltimore, where anti-police violence and unthinkable citizen versus citizen assaults were repeatedly on display.

III. DECLINING POLICE ENGAGEMENT

As violent crime ticked upward in 2015 and 2016, one might logically expect a more aggressive law enforcement response, marked by increasing use of “stop and frisk” under the Terry Doctrine as well as increased vehicle stops, based on any articulable reason, for the purpose of generating an opportunity for police to engage the occupant(s).⁵¹ But what has been more commonly reported in that very timeframe has been concern about, and some evidence of, “depolicing” - the phenomenon where police pull back and refrain from engaging in the work thought to be routine, proactive engagement with citizens and neighborhoods.

Among the first to discuss the issue openly was former FBI Director James Comey, in a speech at the University of Chicago Law School in late 2015.⁵² Lamenting the recent rise in violent crime, and struggling with the lack of current data within the FBI’s systems that might lend clarity on cause and effect, Comey offered:

In today’s YouTube world, are officers reluctant to get out of their cars and do the work that controls violent crime? Are officers answering 911 calls but avoiding the informal contact that keeps bad guys from standing around, especially with guns? I spoke to officers privately in one big city precinct who described being surrounded by young people with mobile phone cameras held high, taunting them the moment they get out of their cars. They told me, “We feel like we’re under siege, and we don’t feel much

⁵¹ *Detention Short of Arrest: Stop and Frisk*, JUSTIA, <https://law.justia.com/constitution/us/amendment-04/13-stop-and-frisk.html> (last visited Mar. 3, 2018); *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that a police officer may stop and frisk an individual on the street if he has reasonable suspicion of criminal activity, a standard lower than that of probable cause).

⁵² James Comey, Dir., FBI, *Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice*, Remarks at the University of Chicago Law School (Oct. 23, 2015) (transcript available at <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice>).

like getting out of our cars.”⁵³

Those very fears were demonstrated in August 2015, when a Birmingham, Alabama, detective who stopped a man and instructed him to stay in his car was instead attacked and beaten bloody and unconscious with the detective’s own handgun. When asked why he failed to use appropriate force to stop the assault, the detective reported he feared becoming subject of the next viral video.⁵⁴

The Alabama officer was not alone in his hesitation. By late 2015, record drops in police stops were being noted across the country, including in unexpected locales like Chicago, where murders and shootings continued to skyrocket.⁵⁵ So significant was the Chicago decline that the mayor worried that his police department had gone “fetal.”⁵⁶

Some might argue that correlation does not link to causation. A recent study conducted at the University of Utah College of Law, however, found empirical evidence that the “single most likely causal factor” for the spike in Chicago homicides beginning in December 2015 was the Chicago Police Department’s (CPD’s) “the reduction in stop and frisks.”⁵⁷ According to the authors, the best explanation for the decline in stop and frisks was the police reaction to a consent decree entered into by the American Civil Liberties Union (ACLU) with the CPD in late

⁵³ *Id.*

⁵⁴ Nick Valencia, *Pistol-Whipped Detective Says He Didn’t Shoot Attacker Because of Headlines*, CNN (Aug. 14, 2015), <http://www.cnn.com/2015/08/13/us/alabama-birmingham-police-detective-pistol-whipped/index.html>; Carol Robinson, *Man Charged in Birmingham Detective’s Beating; Outrage Follows Support of Attack on Social Media*, AL.COM (Aug. 8, 2015), http://www.al.com/news/birmingham/index.ssf/2015/08/suspect_with_violent_past_cha.html.

⁵⁵ Rob Arthur & Jeff Asher, *Gun Violence Spiked—and Arrests Declined—in Chicago Right After the Laquan McDonald Video Release*, FIVE THIRTY EIGHTY (Apr. 11, 2016), <https://fivethirtyeight.com/features/gun-violence-spiked-and-arrests-declined-in-chicago-right-after-the-laquan-mcdonald-video-release/>.

⁵⁶ John Byrne, *Emanuel Blames Chicago Crime Uptick on Officers Second-Guessing Themselves*, CHI. TRIB. (Oct. 13, 2015), <http://www.chicagotribune.com/news/local/politics/ct-emanuel-fetal-police-met-20151012-story.html>.

⁵⁷ Paul G. Cassell & Richard Fowles, *What Caused the 2016 Chicago Homicide Spike? An Empirical Examination of the ‘ACLU Effect’ and the Role of Stop and Frisks in Preventing Gun Violence* 14 (U. of Utah C. of L. Research Paper 252) (Apr. 5, 2018), available at <https://ssrn.com/abstract=3145287>.

2015 which required officers to fill out a lengthy form after every investigatory stop or protective pat down.⁵⁸ The forms were to be forwarded to the ACLU and then sent to a retired federal magistrate judge to review the stops for constitutionality.⁵⁹

While criticisms against the ACLU-driven forms were to be expected from police union spokesmen, some blame for the outcomes came from an unexpected source—the police superintendent, Garry McCarthy, who had earlier signed on to the ACLU accord that instituted the forms.⁶⁰ Chicago, though, was no stranger to questionable police conduct or citizen and media outrage when the conduct became public.⁶¹ Those concerns, always demanding reform, emerged yet again in late 2015, the very time when the ACLU forms were being imposed on police.

In October 2014, a CPD officer shot Laquan McDonald in an encounter captured on police dash camera video.⁶² While a shooting investigation was ongoing, the video was withheld from public view.⁶³ A harbinger of trouble came the following April when the Chicago City Council agreed, in a forty-seven to zero vote, to pay a five million dollar settlement to McDonald's survivors.⁶⁴ Not long thereafter, a county

⁵⁸ *Id.* at 68.

⁵⁹ *Id.* at 67.

⁶⁰ Fran Spielman, *CPD Revises Street Stop Form yet Again to Boost Police Activity*, CHI. SUN-TIMES, (Jan. 6, 2017), <https://chicago.suntimes.com/chicago-politics/cpd-revises-street-stop-form-yet-again-to-boost-police-activity/>.

⁶¹ *See, e.g.*, Susan Saulny, *Top Chicago Police Official Resigns Amid Furor*, N.Y. TIMES, (Apr. 3, 2007), <https://www.nytimes.com/2007/04/03/us/03chicago.html> (citing police superintendent resignation in the wake of police misconduct); Spencer Ackerman, *Bad Lieutenant: American Police Brutality, Exported from Chicago to Guantánamo*, THE GUARDIAN, (Feb. 18, 2015), <https://www.theguardian.com/us-news/2015/feb/18/american-police-brutality-chicago-guantanamo> (reporting on interrogation techniques used in Chicago being applied to terror suspects in Guantánamo Bay); Noah Berlatsky, *When Chicago Tortured, The Second City is Still Grappling with a Long History of Police Brutality*, THE ATLANTIC, (Dec. 17, 2014), <https://www.theatlantic.com/national/archive/2014/12/chicago-police-torture-jon-burge/383839/> (reciting history of torture techniques used in Chicago police precincts to elicit confessions from criminal suspects).

⁶² Nausheen Husain, *Data: Laquan McDonald Timeline: The Shooting, the Video, and the Fallout*, CHI. TRIB. (Oct. 20, 2017), <http://www.chicagotribune.com/news/laquanmcdonald/ct-graphics-laquan-mcdonald-officers-fired-timeline-htmlstory.html>.

⁶³ *Id.*

⁶⁴ *Id.*

judge ordered the release of the shooting video by November 24, 2015.⁶⁵ The officer who shot McDonald was charged with murder on the same day as the public release of the video. Protests began immediately and just days later the CPD Superintendent, McCarthy, was fired by Mayor Rahm Emanuel.⁶⁶ The release of the inflammatory video, over a year after the incident consumed the mayor, the state's attorney, and the police superintendent in controversy and was posed as a possible alternative "depolicing" cause in the University of Utah study.⁶⁷ The debate over cause and effect in Chicago after the ACLU "reforms," the almost concurrent release of the Laquan McDonald shooting video, or other factors potentially impacting the subsequent surge in homicides will continue to be debated; however, what seemed beyond dispute was that proactive policing in Chicago dropped precipitously, beginning in early 2016.

The "depolicing" concern was raised in other locations too. After the death of Eric Garner in New York in 2014, many believed NYPD officers were retreating in a widespread way.⁶⁸ Some would suggest that, particularly in New York, where new mayor Bill de Blasio believed it was long past time to end "stop and frisk" tactics, street stops, and arrests *should* be in retreat to match the falling homicide and violent crime rates in that city. However, many in the NYPD had a longstanding disdain toward the mayor, some of it stemming from his campaign criticisms of "stop and frisk" and the perception that his views were critical of police.⁶⁹ When two NYPD officers were gunned down in their patrol car in December 2014, de Blasio's presence at the hospital and memorial services was met by masses of cops with their backs turned. With anti-cop protests in the city and elsewhere, the assassination of two of their own, and a mayor perceived as unsupportive of the profession, it wasn't long before New York saw

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Paul G. Cassell & Richard Fowles, *What Caused the 2016 Chicago Homicide Spike? An Empirical Examination of the 'ACLU Effect' and the Role of Stop and Frisks in Preventing Gun Violence* 14 (U. of Utah C. of L. Research Paper 252) at 39 (Apr. 5, 2018), available at <https://ssrn.com/abstract=3145287>.

⁶⁸ Heather MacDonald, *De-policing New York*, CITY J. (July 23, 2014), <https://www.city-journal.org/html/de-policing-new-york-11406.html>.

⁶⁹ Alex Altman, *Why New York Cops Turned Their Backs on Mayor de Blasio*, TIME MAG., (Dec. 22, 2014),

<http://time.com/3644168/new-york-police-de-blasio-wenjian-liu-rafael-ramos/>.

evidence of work slowdowns by police.⁷⁰

Long-suffering Baltimore took a turn for the worse after Freddie Gray's death in police custody in early 2015. As the smoke cleared from the subsequent riots and police were accused and demonized across the city, the shadow of depolicing appeared.⁷¹ Both the police commissioner and the Fraternal Order of Police president described cops as fearing prosecution for making a mistake or even for “doing their jobs properly.”⁷² The result: steep drops in the Baltimore arrest rate.⁷³ For the “Charm City,” the timing could not have been worse. As in Chicago, while police pulled back, the murder rate in Baltimore soared to new heights, reaching 344 homicides in 2015, a grim record and sixty-three percent jump from the prior year.⁷⁴

In accord with former FBI Director James Comey's lament, there was, of course, a lack of hard data to suggest depolicing was occurring everywhere or to show whether depolicing enabled criminal activity. Despite the data gap, the discussions of depolicing and its first cousin, the “Ferguson effect,” permeate the policing profession and must be examined, particularly as homicide and violent crime rates rose in 2015 and again in 2016. Adding weight to worries about depolicing and a Ferguson effect was an FBI paper, released in early 2017, known as “The Assailant Study.”⁷⁵ Based on investigation into fifty police

⁷⁰ Shawn Cohen & Aaron Short, *Cops Turn Backs on de Blasio at Executed Officer's Funeral*, N.Y. POST (Dec. 27, 2014), <http://nypost.com/2014/12/27/cops-turn-backs-on-de-blasio-as-he-takes-stage-at-funeral/>; Thomas Tracy, *NYPD Work Slowdown Didn't Result in Crime Increase After 2014 Fatal Shootings of Two Police Officers, Report Shows*, N.Y. DAILY NEWS, (Sept. 26, 2017), <http://www.nydailynews.com/news/crime/nypd-work-slowdown-didn-increase-crime-article-1.3523684>; Martin Kaste, *When Morale Dips, Some Cops Walk The Beat—But Do The Minimum*, NPR, (Jan. 8, 2015), <https://www.npr.org/2015/01/08/375914022/when-morale-dips-some-cops-walk-the-beat-but-do-the-minimum>.

⁷¹ Richard Oppel, Jr., *West Baltimore's Police Presence Drops, and Murders Soar*, N.Y. TIMES (June 12, 2015), <https://www.nytimes.com/2015/06/13/us/after-freddie-gray-death-west-baltimores-police-presence-drops-and-murders-soar.html>.

⁷² Jamelle Bouie, *Criminal Neglect; By Refusing to Police the Streets, Baltimore's Cops are Fueling the City's Lawlessness and Violence*, SLATE (June 18, 2015), http://www.slate.com/articles/news_and_politics/politics/2015/06/baltimore_police_are_virtually_on_strike_the_city_deserves_something_better.html.

⁷³ *Id.*

⁷⁴ Jess Bidgood, *The Numbers Behind Baltimore's Record Year in Homicides*, N.Y. TIMES (Jan. 15, 2016), <https://www.nytimes.com/interactive/2016/01/14/us/Baltimore-homicides-record.html>.

⁷⁵ *The Assailant Study – Mindsets And Behaviors*, LAW OFFICER (May 5, 2017)

assailants and dozens of fatal attacks on law enforcement officers in 2016, the results were troubling for police and citizen alike.

The same FBI findings reported that twenty-eight percent of police assailants in the study were inspired by social and/or political reasons and believed that attacking police officers was their way to “get justice” for those who had been, in their view, unjustly killed by law enforcement.⁷⁶ Comey referred to one of the factors contributing to the increasing number of violent attacks on law enforcement as a “chill wind” blowing across the profession since Ferguson.⁷⁷ Law enforcers interviewed for the study strongly believed it had become socially acceptable, in the post-Ferguson environment, to challenge and discredit the actions of law enforcement.⁷⁸ Among the revealing beliefs offered by police, nearly all agreed that “law enforcement not only felt that their national political leaders publically stood against them, but also that the politicians’ words and actions signified that disrespect to law enforcement was acceptable in the aftermath of the [Michael] Brown shooting.”⁷⁹

Depolicing fears intersected with the belief across law enforcement that their work was made harder because of recent high profile deadly force incidents, according to results of a Pew Research survey of eight thousand police officers from departments with more than one hundred officers.⁸⁰ The survey showed that more than nine in ten officers were more concerned about their safety, and three-quarters were more reluctant to use appropriate force or to stop and question suspicious people.⁸¹

IV. ATTACKS ON POLICE

Rhetorical attacks on police began in earnest very quickly after Michael Brown’s death in Ferguson. Anti-police protests spread to

<http://online.wsj.com/public/resources/documents/MindsetReport.pdf>.

⁷⁶ *Id.* at 2.

⁷⁷ *Id.* at 3; James Comey, FBI Dir., Remarks at University of Chicago Law School: Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice (Oct. 23, 2015), <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice>.

⁷⁸ *Assailant Study*, *supra* note 66 at 4.

⁷⁹ *Id.* at 3.

⁸⁰ Renee Stepler, *Key Findings on How Police View Their Jobs amid Protests and Calls for Reform*, PEW RES. CTR. (Jan. 11, 2017) <http://www.pewresearch.org/fact-tank/2017/01/11/police-key-findings/>.

⁸¹ *Id.*

multiple cities. In early December, marchers in New York City chanted, “What do we want? Dead cops! When do we want it? Now!”⁸² Fewer than two weeks later, Ismaaiyl Brinsley, a 28-year-old who had shot his girlfriend earlier in the day, traveled to Brooklyn and gunned down New York Police Department Officers Wenjian Liu and Rafael Ramos as they sat in a parked patrol car.⁸³ Brinsley reportedly posted his murderous intent on social media, claiming to be driven by anger about the Eric Garner and Michael Brown cases.⁸⁴

Months later, Baltimore was in flames in the wake Freddie Gray’s death. As police worked to contain the rioting, the roiling mob injured over one hundred officers.⁸⁵ Baltimore Mayor Stephanie Rawlings-Blake, in the midst of the melee, instructed Baltimore police to give space “to those who wished to destroy.”⁸⁶ Rawlings-Blake was rightfully criticized for the notion, particularly as the destruction included not just millions in property damage but dozens of violent assaults on police.⁸⁷

In 2016, the anti-police violence reached recent records, spurred on by deadly attacks on police in Dallas and Baton Rouge. In Dallas, a gunman intending to kill white people, particularly white police officers, opened fire with a rifle on lawmen escorting a Black Lives Matter march in the city.⁸⁸ Five officers lay dead before the assailant was cornered and

⁸² Bob McManus, *There is Blood on Hands of Those who Demanded ‘Dead Cops’*, N.Y. POST OPINION (Dec. 21, 2014), <http://nypost.com/2014/12/21/there-is-blood-on-hands-of-those-who-demanded-dead-cops/>.

⁸³ Benjamin Mueller & Al Baker, *2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide*, N.Y. TIMES (Dec. 20, 2014), <https://nyti.ms/1AGGA45>.

⁸⁴ M.L. Nestel, *Alleged Cop Killer Ismaaiyl Brinsley Had a Death Wish*, THE DAILY BEAST (Dec. 21, 2014), <https://www.thedailybeast.com/alleged-cop-killer-ismaaiyl-brinsley-had-a-death-wish>.

⁸⁵ Staff Reports, *About 130 Officers Injured During Baltimore Riots Released from Hospital*, BALT. SUN (May 6, 2015), <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-officer-injuries-20150505-story.html>.

⁸⁶ Elizabeth Chuck, *Baltimore Mayor Stephanie Rawlings-Blake Under Fire For ‘Space’ to Destroy Comment*, NBC NEWS (Apr. 28, 2015), <https://www.nbcnews.com/storyline/baltimore-unrest/mayor-stephanie-rawlings-blake-under-fire-giving-space-destroy-baltimore-n349656>.

⁸⁷ Yvonne Wenger, *Unrest Will Cost City \$20 Million, Officials Estimate*, BALT. SUN (May 26, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-unrest-cost-20150526-story.html>.

⁸⁸ Faith Karimi, Catherine E. Shoichet & Ralph Ellis, *Dallas Sniper Attack: 5 Officers Killed, Suspect Identified*, CNN (July 9, 2016), <http://www.cnn.com/2016/07/08/us/philando-castile-alton-sterling-protests/index.html>.

killed by a police explosive charge.⁸⁹ The gunman told police negotiators he was motivated by hatred for police and a desire to avenge recent police shootings of civilians.⁹⁰ Less than two weeks later, another gunman, this time in Baton Rouge, Louisiana, fired on police. Again, the attack was an ambush and the gunman, a 29-year-old black former Marine, was motivated by a belief that police had engaged in injustices against blacks.⁹¹ The attacker killed three officers and injured three more.⁹²

By the end of 2016, authorities reported a spike in fatal attacks on police, with the number of officers intentionally killed rising over fifty percent to sixty-four officers killed by gunfire.⁹³ Also worrying to police and their families, ambush-style attacks on police increased, too.⁹⁴ Some year-end reports suggested the increased ambushes marked a twenty-year high.⁹⁵ Police in 2016 were physically attacked tens of thousands of times, according to law enforcement agencies' self-reported numbers.⁹⁶ But physical and murderous attacks were only part of the story.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Dead Baton Rouge shooter attacked police on his birthday*, CBS/ASSOCIATED PRESS (July 18, 2016), <https://www.cbsnews.com/news/baton-rouge-police-shooting-suspects-information/>.

⁹² *Id.*

⁹³ NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL FUND, 135 Law Enforcement Officer Fatalities Nationwide in 2016 (n.d.), <http://www.nleomf.org/assets/pdfs/reports/Preliminary-2016-EOY-Officer-Fatalities-Report.pdf>; U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT, CRIME IN THE U.S., 2016 Law Enforcement Officers Killed and Assaulted, https://ucr.fbi.gov/leoka/2016/officers-feloniously-killed/feloniously_topic_page_-2016.

⁹⁴ Christopher Ingraham, *Ambush Killings of Police Officers Has Hit a 10-Year High*, WASH. POST (Nov. 21, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/11/21/ambush-killings-of-police-officers-has-hit-a-10-year-high/?utm_term=.33534a3ae647

⁹⁵ Ann Givens, *Ambush Shootings of Police Officers Reach Highest Total in Decades*, THE TRACE (Dec. 6, 2016), <https://www.thetrace.org/2016/12/ambush-shootings-police-officers-reaches-highest-total-decades/>; Andrea Noble, *Blue Lives Under Fire: Deadly Ambushes of Police Officers at Two-Decade High*, WASH. TIMES (Dec. 29, 2016), <http://www.washingtontimes.com/news/2016/dec/29/deadly-police-ambushes-two-decade-high-report/>.

⁹⁶ U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT, CRIME IN THE U.S., Law Enforcement Officers Killed and Assaulted, 2016 (Fall 2017) https://ucr.fbi.gov/leoka/2016/home/officers-assaulted/assaults_topic_page_-2016.

V. MEDIA BIAS

The American mainstream media has evolved from the days of iconic newsmen Walter Cronkite and David Brinkley. Straight-forward journalism, unbiased and fact-based reporting without parasitically attached editorial commentary or political spin, is increasingly elusive in print, online and broadcast media in 2018.⁹⁷ Many believe the mainstream media cannot and should not be trusted, a notion actively propagated by President Donald Trump as well as competing broadband outlets like Fox News and CNN.⁹⁸ Few networks and anchors fail to put political spin on display during a “newscast.” Their reporting is commonly accompanied by individual commentators or panels of pundits, many hired for their own political leanings, ever ready to spin actual news in a manner that supports their network’s politics and their viewers’ pre-existing biases. While some pose as objective, fair-minded centrists, those further toward the political peripheries now clutter cable news.

In our post-Ferguson world, television viewers have come to expect “wall-to-wall” coverage of high-profile policing events, particularly those where law enforcement officers take civilians lives. These events drive ratings, giving networks plenty of incentive to fill time and evidentiary voids with panels of purported experts. That coverage invites uninformed criticism, speculation and guesswork under the false cover of news. Worse, these networks have the unfettered discretion to decide which news to magnify through their coverage and that which will be downplayed or ignored. Because police use of force incidents require more time for official investigations than the rapid

⁹⁷ Noor Tagouri, *Blurred Lines: Journalism or Activism?*, HUFFINGTON POST, (Sept. 2, 2014) https://www.huffingtonpost.com/noor-tagouri/blurred-lines-journalism-or-activism_b_5742944.html; *Blurring Lines Between Opinion and News Content Explains Some Loss of Trust in the Media*, AM. PRESS INST., (May 24, 2017) <https://www.americanpressinstitute.org/publications/reports/survey-research/opinion-news-trust/>.

⁹⁸ Art Swift, *Americans’ Trust in Mass Media Sinks to New Low*, GALLUP (Sept. 14, 2016), <http://news.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx>; *62% Say Trust in Traditional Media has Decreased Due to Fake News*, AXIOS, (Nov. 9, 2016), <https://www.axios.com/62-say-trust-in-traditional-media-has-decreased-due-to-fake-news-1513306793-98c1994a-69fd-483a-b475-4bda2179b919.html>; *Public Trust in the Media Is at an All-Time Low. Results from a Major New Knight-Gallup Report Can Help Us Understand Why*, MEDIUM (n.d.), <https://medium.com/trust-media-and-democracy/10-reasons-why-americans-dont-trust-the-media-d0630c125b9e> [last visited Mar. 17, 2018].

news cycle allows, it can be hard for the public to sort truth from guesswork or spin when watching broadcast coverage. Ferguson was a glaring example of the media's failure to challenge or even meaningfully question a self-identified eyewitness and his version of events. Instead, within hours of Michael Brown's death, the media had found Dorian Johnson, and they were like moths to his flame. His lies were retold and repeated with a singular perspective.⁹⁹ The bell was rung, the die was cast. Weeks later, the truth started to get out of the gate but, as the adage goes, "A lie makes it half way around the Earth before the truth gets its boots on."

"Hands up, don't shoot," both the phrase and the related movement, became one of the enduring legacies of Ferguson. If one were to Google search that apocryphal phrase, almost 5.5 million hits return, which is about 5 million more hits than the phrase "Dorian Johnson lied" returns. Google aside, the same was true in life, where far too many accepted the lie of a surrendering Michael Brown being wantonly shot down by Officer Darren Wilson. Many never bothered to look for the truth at the time or reviewed it in the DOJ report issued eight months later.¹⁰⁰ Worse than simply broadcasting Johnson's story without fact-checking it, the media was complicit in covering, and participating in, the ever-widening histrionics playing out in Congress as politicians vied for camera-time, in sports venues, and even in the CNN studio, as growing numbers of Michael Brown sympathizers assumed their own "hands up" poses for the cameras, reaching millions of viewers.¹⁰¹

A more recent example of the impact of initial reporting before the facts were in and suggesting a fatal shooting by police was driven by skin color rather than the threat posed by a subject, occurred in Charlotte, North Carolina, in late 2016. Keith Lamont Scott, a 43-year-old African-American, was fatally shot on September 20, 2016, by an African-American police officer.¹⁰² Police officers were in the area on

⁹⁹ See *supra*, note 13.

¹⁰⁰ FERGUSON REPORT, *supra* note 1 at 47.

¹⁰¹ See, e.g., Larson, *supra* note 12; Timothy Burke, *Rams Players Enter Field With "Hands Up, Don't Shoot"*, DEADSPIN (Nov. 30, 2014), <https://deadspin.com/rams-players-enter-field-with-hands-up-dont-shoot-1664860731>; Brent Baker, *CNN Panel Mimics Discredited 'Hands Up, Don't Shoot,' Exalt: 'Our Hearts Are . . . with Them'*, NEWS BUSTERS (Dec. 15, 2014), <https://www.newsbusters.org/blogs/brent-baker/2014/12/15/cnn-panel-mimics-discredited-hands-dont-shoot-exalt-our-hearts-arewith>.

¹⁰² Catherine E. Shoichet, *Keith Lamont Scott: What We Know About Man Shot by*

an unrelated matter when they observed Scott exit his vehicle with a handgun. After repeated demands for him to put down the gun, police shot and killed him.¹⁰³ Scott's wife, who witnessed the altercation, disputed the police account and insisted he was unarmed.¹⁰⁴ The incident provided an opportunity for Scott's family¹⁰⁵ and social media posters¹⁰⁶ to damage police-citizen relationships in Charlotte and elsewhere. Their false and misleading commentary preceded two nights of rioting in the city.¹⁰⁷ The media had its feeding frenzy and the opportunity for viewership driven up by the "breaking news" of renewed conflict with police after the fatal shooting of a black man. It was a perfect storm for Charlotte, developed in an environment of police caution while a shooting investigation was underway and against the backdrop of what would turn out to be misstatements of family and supporters¹⁰⁸ that fed the storm clouds.¹⁰⁹ Millions of dollars in property damage and injuries occurred during two nights of protests.¹¹⁰

Two months after the protests over Scott's shooting, the Charlotte District Attorney, whose office committed itself to a thorough and unbiased review of the fatal incident, revealed his results. Scott had indeed been armed, with a weapon he had purchased illegally, and he

Charlotte Police, CNN (Sept. 23, 2016), <https://www.cnn.com/2016/09/22/us/keith-lamont-scott/index.html>.

¹⁰³ *Id.*

¹⁰⁴ Bill Burr & Sam Tyson, *Keith Lamont Scott, Man Killed by Officers in Charlotte, Was a Charleston Native*, ABC4 NEWS (Sept. 21, 2016), <http://abcnews4.com/news/local/keith-lamont-scott-man-killed-by-officers-in-charlotte-was-a-charleston-native>.

¹⁰⁵ *Wife of Man Killed by Charlotte Police Disputes who Pulled the Trigger*, CBS NEWS (Oct. 13, 2016), <https://www.cbsnews.com/news/keith-lamont-scott-charlotte-police-shooting-wife-rakeyia-scott-speaks-out/>.

¹⁰⁶ R. Andrew Murray, Mecklenberg County District Attorney, *Keith Lamont Scott Death Investigation*, (Nov. 30, 2016), http://www.charmeckda.com/news/113016_1.pdf.

¹⁰⁷ Michael Gordon, Mark Washburn, & Fred Clasen-Kelly, *Inside the 48 Hours that Shook Charlotte: As Rocks Flew, Riot Cops Fled for Safety*, CHARLOTTE OBSERVER (Oct. 28, 2016), <http://www.charlotteobserver.com/news/local/crime/article111056262.html>.

¹⁰⁸ *See infra* note 107.

¹⁰⁹ Michael Gordon, et al., *District Attorney Exonerates Officer, Denounces Rumors in Killing of Keith Scott*, CHARLOTTE OBSERVER (Dec. 1, 2016), <http://www.charlotteobserver.com/news/special-reports/charlotte-shooting-protests/article117921218.html>.

¹¹⁰ *Id.*; Steve Harrison, *Keith Lamont Scott Protests Cost Charlotte Taxpayers \$4.6 Million*, CHARLOTTE OBSERVER (Oct. 21, 2016), <http://www.charlotteobserver.com/news/politics-government/article109699922.html>.

ignored repeated and clear police commands to drop the weapon before he was shot.¹¹¹ Moreover, the district attorney dismissed the falsehood that Scott possessed only a book when he was shot, noting that multiple false “witnesses” provided misleading accounts of the event in social media.¹¹² Fortunately, the district attorney’s statement of the truth of the fatal encounter did not generate a repeat of the earlier rioting, as it had in Ferguson two years before.

CONCLUSION

Like the September 11, 2001 terror attacks that changed a nation, many in law enforcement see their world differently since “Ferguson.” There’s “pre-Ferguson” and “post-Ferguson” policing for cops who have been in the job for a decade or more. The profession sees the world around them as having changed, demanding that policing change as well. Surveys, commentary on broadcast television and in social media, the influence of public officials and other figures serve as powerful indicators that something is different in the relationship between police and their communities.¹¹³

The fatal shooting of Michael Brown by Ferguson Police Officer Darren Wilson in August 2014 became a watershed moment in American policing. The Department of Justice investigation of a deadly encounter exposed years of abusive tactics by Ferguson police against its citizens and called out for wholesale, government-wide reform in that small town while serving as a warning to other communities leveraging police against those they are hired to protect and serve.¹¹⁴ As troubling, Brown’s death uncovered simmering distrust of police and laid bare an atmosphere where residents were standing ready to falsely claim having witnessed a police execution of the teenager.

The deaths of American citizens at the hands of police pose far greater challenges when accompanied by misstatements, designed to harm or uttered in ignorance, circulated in the wake of a fatal encounter.

¹¹¹ Edmund DeMarche, *No Charges in Keith Lamont Scott Police Shooting*, *Charlotte DA Says*, FOX NEWS (Nov. 30, 2016), <http://www.foxnews.com/us/2016/11/30/no-charges-in-keith-lamont-scott-police-shooting-charlotte-da-says.html>.

¹¹² Gordon, *supra* note 100.

¹¹³ Rich Morin et al., *Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police*, PEW RESEARCH CTR., (Jan. 11, 2017), <http://www.pewsocialtrends.org/2017/01/11/behind-the-badge/>.

¹¹⁴ See FERGUSON Report, *infra* note 1, at 2–6.

When spread in social media or fanned by the mainstream media, falsehoods, whether willful or negligent, can spawn costly and deadly consequences, as the past three years have witnessed. They help destroy the sometimes fragile relationships between police and the communities they serve.

Distrust of police in Ferguson created a virtual tinderbox waiting for a spark. But events in Ferguson did not occur in isolation. Cops in New York were recorded wrestling Eric Garner to the pavement before he died and others in Baltimore were the last to handle Freddie Gray alive, adding to the notion that even routine police encounters could turn deadly too easily. When former FBI Director James Comey spoke, in late 2015, of “a chill wind” blowing across the profession, police everywhere already knew it was true.¹¹⁵ For many on the front lines of law enforcement, it meant the leading edge of a new threat to the profession, one coming from armchair quarterbacks ready to judge police actions during street encounters captured in viral videos. When homicide and violent crime rates and deadly attacks on police rose in 2015 and again in 2016, police were ready to point to the perceived causes and, in some places, to pull back from the proactive encounters needed to keep citizens safe.

Self-preservation tends not to be the first instinct of America’s police officer. They are the ones who run toward the danger. But, since Ferguson, law enforcement officers know too well that danger is not exclusively posed by armed offenders.

¹¹⁵ Comey, *supra* note 71.