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## Police Racial Violence: Lessons from Social Psychology

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# POLICE RACIAL VIOLENCE: LESSONS FROM SOCIAL PSYCHOLOGY

L. Song Richardson\*

## INTRODUCTION

The recent rash of police killing unarmed black men has brought national attention to the persistent problem of policing and racial violence. These cases include the well-known and highly controversial death of Michael Brown in Ferguson, Missouri,<sup>1</sup> as well as the deaths of twelve-year-old Tamir Rice in Cleveland, Ohio;<sup>2</sup> Eric Garner in Staten Island, New York;<sup>3</sup> John Crawford III in Beavercreek, Ohio;<sup>4</sup> Ezell Ford in Los Angeles, California;<sup>5</sup> Dante Parker in San Bernardino County, California;<sup>6</sup> and Vonderrit D. Myers Jr. in St. Louis, Missouri.<sup>7</sup> Data reported to the FBI indicate that white police officers killed black citizens almost twice a week

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\* Professor, The University of California, Irvine School of Law. J.D., Yale Law School; A.B., Harvard College. I wish to thank Professors Kimani Paul-Emile and Robin Lenhardt for the opportunity to participate in this symposium entitled *Critical Race Theory and Empirical Methods Conference* held at Fordham University School of Law. I am also appreciative of the excellent research assistance provided by Sierra Nelson and Ariela Rutkin-Becker. For an overview of the symposium, see Kimani Paul-Emile, *Foreword: Critical Race Theory and Empirical Methods Conference*, 83 FORDHAM L. REV. 2953 (2015).

1. See, e.g., Jonathan Cohn, *Darren Wilson Walks: No Indictment for Michael Brown's Killer*, NEW REPUBLIC (Nov. 24, 2014), <http://www.newrepublic.com/article/120395/ferguson-grand-jury-makes-issues-no-charges-officer-wilson>.

2. See, e.g., Emma G. Fitzsimmons, *Video Shows Cleveland Officer Shot Boy in 2 Seconds*, N.Y. TIMES, Nov. 27, 2014, at A25, available at <http://www.nytimes.com/2014/11/27/us/video-shows-cleveland-officer-shot-tamir-rice-2-seconds-after-pulling-up-next-to-him.html>.

3. See, e.g., J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, N.Y. TIMES (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>.

4. Catherine E. Shoichet & Nick Valencia, *Cops Killed Man at Walmart, Then Interrogated Girlfriend*, CNN (Dec. 16, 2014, 10:28 PM), <http://www.cnn.com/2014/12/16/justice/walmart-shooting-john-crawford/>.

5. Jennifer Medina, *Man Is Shot and Killed by the Police in California*, N.Y. TIMES, Aug. 14, 2014, at A16.

6. Philip Caulfield, *Father of 5 Dies After Getting Tased by Police During Attempted Burglary Arrest*, N.Y. DAILY NEWS (Aug. 15, 2014), <http://www.nydailynews.com/news/national/father-5-dies-tased-police-arrest-article-1.1904577>.

7. Alan Blinder, *New Outcry Unfolds After St. Louis Officer Kills Black Teenager*, N.Y. TIMES, Oct. 10, 2014, at A18.

between 2005 and 2012.<sup>8</sup> This number is underinclusive because the FBI database is based on self-reports by departments that choose to participate and only includes deaths that the police conclude are justifiable.<sup>9</sup>

Many accounts attempt to explain these instances of racial violence at the hands of the police, ranging from arguments that the police acted justifiably to arguments likening these killings to Jim Crow lynchings.<sup>10</sup> Certainly, it is tempting to blame racial violence on either the racial animus of officers or the purportedly threatening behaviors of victims because it simplifies the problem; either the individual officer or citizen is at fault.

However, reducing the problem of racial violence to the individual police-citizen interaction at issue obscures how current policing practices and culture entrench racial subordination and, thus, racial violence. This is because as a result of our nation's sordid racial history, white supremacy and racial subordination have become embedded not only within social systems and institutions but also within our minds. As a result, unless corrective structural and institutional interventions are made, racial violence is inevitable regardless of whether officers have malicious racial motives or citizens engage in objectively threatening behaviors.

This Essay proceeds in three parts. Part I discusses how unconscious racial biases and implicit white favoritism can result in racial disparities in police violence. Part II moves beyond unconscious biases and focuses instead on how the personal insecurities of police officers in the form of stereotype threat and masculinity threat also can lead to racial violence. Finally, Part III argues that when considered in combination, these psychological processes powerfully demonstrate why racial violence is inevitable and overdetermined given current policing practices and culture, even when conscious racial animus is absent. Part III concludes by discussing the need to implement institutional and structural changes to reduce instances of racial violence.

### I. IMPLICIT RACIAL BIAS AND IMPLICIT WHITE FAVORITISM

Both implicit racial bias and implicit white favoritism are consequential when it comes to racial violence, but in opposite ways. Implicit racial biases typically refer to unconscious anti-black bias in the form of negative stereotypes (beliefs) and attitudes (feelings) that are widely held, can conflict with conscious attitudes, and can predict a subset of real world behaviors. For instance, implicit racial biases can influence whether black

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8. Kevin Johnson et al., *Local Police Involved in 400 Killings Per Year*, USA TODAY (Aug. 15, 2014), <http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357/>.

9. Only 750 of the approximately 17,000 law enforcement agencies in the United States participate. *Id.* Unfortunately, this is the only national database that collects data on police use of deadly force. *Id.* (quoting Geoff Alpert, a criminologist from the University of South Carolina who studies police use of deadly force).

10. Isabel Wilkerson, *Mike Brown's Shooting and Jim Crow Lynchings Have Too Much in Common. It's Time for America to Own Up*, GUARDIAN (Aug. 25, 2014), <http://www.theguardian.com/commentisfree/2014/aug/25/mike-brown-shooting-jim-crow-lynchings-in-common>.

individuals receive callback interviews<sup>11</sup> and life-saving medical procedures,<sup>12</sup> as well as whether individuals exhibit nonverbal discomfort when interacting with non-whites.<sup>13</sup> Decades of research demonstrate that most Americans are unconsciously biased against black individuals.<sup>14</sup>

Two specific types of implicit racial biases are consequential when it comes to racial violence. First is the implicit association between blacks and criminality.<sup>15</sup> This unconscious association has led officers to misidentify blacks with more stereotypically black features such as dark skin, full lips, and wide noses as criminal suspects,<sup>16</sup> to engage in unconscious racial profiling,<sup>17</sup> and to shoot more stereotypical-looking black suspects more quickly than others in computer simulations.<sup>18</sup>

More recently, a second type of unconscious anti-black bias has proven consequential to racial violence. Implicit dehumanization refers to the tendency of individuals to unconsciously associate blacks with apes. Recent studies demonstrate that implicit dehumanization predicts police violence against black juveniles.<sup>19</sup> In one of these studies, subjects who had been subliminally primed with images of apes were more likely to find a vicious beating of a black suspect to be justified.<sup>20</sup> Similar effects did not occur when the victim was white or when individuals were not primed.

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11. See Dan-Olof Rooth, *Implicit Discrimination in Hiring: Real World Evidence* 1, 4–5 (Inst. for the Study of Labor, Discussion Paper No. 2764, 2007), available at <http://d-nb.info/98812002X/34> (discussing the difference in receiving callback job interviews between applicants with Arab or Muslim names and applicants with Swedish names); see also Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 998 (2004) (demonstrating that job applicants with white-sounding names such as Emily or Greg were 50 percent more likely to receive callback job interviews in Boston and 49 percent more likely in Chicago than applicants with black-sounding names like Jamal); Devah Pager et al., *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOC. REV. 777, 788 (2009).

12. See Alexander R. Green et al., *Implicit Bias Among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 J. GEN. INTERNAL MED. 1231 (2007).

13. See generally John E. Dovidio et al., *Why Can't We Just Get Along? Interpersonal Biases and Interracial Distrust*, 8 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 88 (2002).

14. See generally Kristin Lane et al., *Implicit Social Cognition and Law*, 3 ANN. REV. L. & SOC. SCI. 427 (2007).

15. For an in-depth discussion of how this stereotype can influence judgments of criminality, see L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293 (2012).

16. Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 876 (2004).

17. See Sophie Trawalter et al., *Attending to Threat: Race-Based Patterns of Selective Attention*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 1322, 1322 (2008); Eberhardt et al., *supra* note 16, at 890.

18. See Kimberly Barsamian Kahn & Paul G. Davies, *Differentially Dangerous? Phenotypic Racial Stereotypicality Increases Implicit Bias Among Ingroup and Outgroup Members*, 14 GROUP PROCESSES & INTERGROUP REL. 569, 573 (2011).

19. See generally Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292 (2008).

20. See *id.* at 292–97.

Additionally, this study found that implicit dehumanization influences real world behaviors. The researchers discovered that the more closely police officers unconsciously associated black youths with apes, the more likely they were to have used force against black children throughout the course of their careers.<sup>21</sup>

The recognition that implicit racial biases can cause racially disparate effects, even in the absence of conscious bias, is becoming increasingly commonplace in mainstream discussions of police violence.<sup>22</sup> This science demonstrates that even when people are acting in identical ways, implicit racial bias places black citizens more at risk of mistaken judgments of danger and criminality. As a result, they are more likely to be shot, more likely to be dehumanized, and more likely to be seen as deserving of an officer's use of force.<sup>23</sup>

While significant attention has been paid to implicit anti-black racial bias, a sister concept, implicit white favoritism, has received almost no attention in the legal literature. I am only aware of one law review article on the subject.<sup>24</sup> In that article, Professors Robert Smith, Justin Levinson, and Zoë Robinson explain that implicit white favoritism is “the automatic association of positive stereotypes and attitudes with members of a favored group, leading to preferential treatment for persons of that group. In the context of the American criminal justice system, implicit favoritism is white favoritism.”<sup>25</sup> While the concept of implicit white favoritism is new, critical race scholars have long identified white supremacy as a central building block of racial subordination.<sup>26</sup> Now, social psychological evidence provides empirical support for the theory.

Considering implicit white favoritism in tandem with implicit racial bias is important because it illuminates that racial disparities would remain in the context of racial violence even if all implicit anti-black biases were eliminated.<sup>27</sup> As Professor Smith and his colleagues explain, “Removing out-group derogation is not the same as being race-neutral.”<sup>28</sup> For instance, one study found that when subjects were primed with white faces, they were slower to identify weapons than when they had not been primed with

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21. See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 528–29 (2014).

22. See Chris Mooney, *The Science of Why Cops Shoot Young Black Men*, MOTHER JONES (Dec. 1, 2014), <http://www.motherjones.com/politics/2014/11/science-of-racism-prejudice>.

23. For a discussion of a recent study demonstrating this, see L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 OHIO ST. J. CRIM. L. 115, 138–43 (2014).

24. Robert J. Smith et al., *Bias in the Shadows of Criminal Law: The Problem of Implicit White Favoritism*, 66 ALA. L. REV. (forthcoming 2015) (on file with author).

25. *Id.* (manuscript at 4).

26. Critical race scholars have long discussed white supremacy. See, e.g., Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 363–379 (1998); DERRICK BELL, RACE, RACISM AND AMERICAN LAW (6th ed. 2008); DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1989).

27. See Smith et al., *supra* note 24 (manuscript at 4) (noting that “[e]ven if we could eliminate [implicit anti-black bias], . . . racial disparities would persist.”).

28. *Id.* (manuscript at 28).

any faces at all.<sup>29</sup> Thus, while black men are associated with violence and criminality, facilitating racial violence against them, white men “are automatically and cognitively *disassociated* with violence.”<sup>30</sup> In other words, being white protects people against racial violence. It is simply cognitively more taxing to associate whites with criminality.

Both implicit racial bias and implicit white favoritism together highlight why attempting to determine whether officers are bigots or reasonably felt threatened by the actions of victims does little to explain or address the problem of racial violence. These two processes together demonstrate that black men are at greater risk of racial violence at the hands of the police even when the officer confronting them is consciously egalitarian, and even if black men are acting identically to white men in the same situation.

Once implicit biases are activated—and simply thinking about crime is sufficient to activate them<sup>31</sup>—officers’ attention will be drawn to black men more readily than white men, even if they are acting identically and even if officers are not engaged in conscious racial profiling. Once black men are under close police scrutiny, unconscious racial criminality can influence the way an officer interprets their ambiguous behaviors, causing the officer to be more likely to interpret their actions as being consistent with criminality even as identical behaviors engaged in by young white men would not arouse suspicion.<sup>32</sup> In fact, the unconscious association between blacks and criminality can explain why officers are primed to see a weapon or assume that one exists when black men reach into their pockets or the glove compartment of a car. On the other hand, implicit white favoritism illuminates why unarmed white men are significantly less likely to be shot in similar circumstances.

Implicit white favoritism explains why being white helps inoculate white men from this series of events. It is more difficult to view them as criminal. Unlike with black men, thinking about crime draws attention away from whites.<sup>33</sup> As Professor Smith and his colleagues write, “[S]eeing white automatically means seeing positive, law abiding behavior.”<sup>34</sup> In fact, in one study, Professor Levinson found that subjects reading about an aggressive white defendant recalled fewer aggressive facts when relating the story than when the defendant was black.<sup>35</sup> Seeing white also makes it more difficult to identify weapons.<sup>36</sup> Thus, asking whether officers feared for their safety when confronting an individual does not address the fact that white men acting in identical ways would not trigger the same violent reaction. This is why focusing solely on the individual interaction between

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29. *Id.* (manuscript at 32) (citation omitted).

30. *Id.* (emphasis added).

31. See Eberhardt et al., *supra* note 16, at 883.

32. For an extended discussion, see L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2045–48, 2052–53 (2011).

33. See Smith et al., *supra* note 24 (manuscript at 47).

34. *Id.*

35. *Id.* (manuscript at 21–22) (citing Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007)).

36. *Id.* (manuscript at 36, 48).

officers and victims merely entrenches racial disparities in police use of force. Rather, the inquiry must be structural and institutional.

## II. SELF-THREATS

Thus far, this Essay has focused on how police officers' unconscious perceptions can facilitate or inhibit racial violence. This part examines a different question, namely, how do officers' perceptions of themselves influence their use of force? Recent psychological evidence suggests that the self-directed insecurities of officers also can enable racial violence. This part analyzes two self-threats in particular, stereotype threat and masculinity threat.

### A. *Stereotype Threat*

Stereotype threat refers to the anxiety that occurs when a person is concerned about confirming a negative stereotype about his or her social group.<sup>37</sup> I have discussed stereotype threat in depth elsewhere but provide a brief summary here.<sup>38</sup> Stereotype threat affects performance because concerns about being negatively stereotyped redirect cognitive resources away from the task at hand, leading to deficient performances.<sup>39</sup> Importantly, people do not need to believe or endorse the stereotype in order to be influenced by stereotype threat. Rather, it occurs whenever individuals care about their performance on a given task, are aware of the negative stereotype, and are concerned that failure or a deficient performance will confirm the negative stereotype.<sup>40</sup>

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37. See Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOL. 613 (1997); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995).

38. See Richardson & Goff, *supra* note 23, at 124–28.

39. See generally Jennifer K. Bosson et al., *When Saying and Doing Diverge: The Effects of Stereotype Threat on Self-Reported Versus Non-Verbal Anxiety*, 40 J. EXPERIMENTAL SOC. PSYCHOL. 247 (2004); Laurie T. O'Brien & Christian S. Crandall, *Stereotype Threat and Arousal: Effects on Women's Math Performance*, 29 PERSONALITY & SOC. PSYCHOL. BULL. 782 (2003); Sian L. Beilock et al., *On the Causal Mechanisms of Stereotype Threat: Can Skills That Don't Rely Heavily on Working Memory Still Be Threatened?*, 32 PERSONALITY SOC. PSYCHOL. BULL. 1059 (2006); Jim Blascovich et al., *African Americans and High Blood Pressure: The Role of Stereotype Threat*, 12 PSYCHOL. SCI. 225 (2001); Phillip Atiba Goff et al., *The Space Between Us: Stereotype Threat and Distance in Interracial Contexts*, 94 J. PERSONALITY & SOC. PSYCHOL. 91 (2008); Brenda Major & Laurie T. O'Brien, *The Social Psychology of Stigma*, 56 ANN. REV. PSYCHOL. 393 (2005); Wendy Berry Mendes et al., *Challenge and Threat During Social Interactions with White and Black Men*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 939 (2002); Wendy Berry Mendes et al., *How Attributional Ambiguity Shapes Physiological and Emotional Responses to Social Rejection and Acceptance*, 94 J. PERSONALITY & SOC. PSYCHOL. 278 (2008); Toni Schmader & Michael Johns, *Converging Evidence That Stereotype Threat Reduces Working Memory Capacity*, 85 J. PERSONALITY & SOC. PSYCHOL. 440 (2003).

40. See generally Steele & Aronson, *supra* note 37.

In one study demonstrating the influence of stereotype threat, white men who had high SAT math scores were asked to take a difficult math test.<sup>41</sup> In the stereotype threat condition, they were told that the test would evaluate mathematical proficiency.<sup>42</sup> They also were given information suggesting that Asians typically outperformed other students.<sup>43</sup> In the control condition, they were only told that the test evaluated mathematical ability without any mention of Asian student performance.<sup>44</sup> The subjects in the threat condition performed significantly worse than the subjects in the control group.<sup>45</sup> In another experiment, researchers found that when white men believed that an athletic skills task required athletic intelligence rather than natural sports ability, they performed better than when the opposite was true.<sup>46</sup>

Across a number of studies, researchers have discovered that dominant group members' concerns with being negatively stereotyped as racist can work to the detriment of subordinated groups. In one study, researchers had white teachers read and give written feedback on an essay purportedly written by students.<sup>47</sup> The researchers found that when white teachers experienced stereotype threat, their fear of being judged as racist caused them to give falsely positive feedback when they believed the essay was written by black students but not when they believed the essay was written by white students. In a similar study, researchers found that when white subjects feared they would appear racially biased, they were less likely to warn black students that their workload might be unmanageable while not feeling similarly constrained with white students.<sup>48</sup>

Recent work by social psychologist Phillip Atiba Goff and his colleagues suggests that the fear of being evaluated as racist can also result in racial violence. In one study, ninety-nine members of the San Jose Police Department completed measures of their explicit and implicit racial attitudes as well as a measure of how concerned they were with appearing racist.<sup>49</sup> The researchers then obtained a copy of each officer's use of force history from the previous two years to determine whether there was any relationship between the use of force and the officer's psychological

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41. See Joshua Aronson et al., *When White Men Can't Do Math: Necessary and Sufficient Factors in Stereotype Threat*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 29 (1999).

42. *Id.* at 36–37.

43. *Id.*

44. *Id.* at 37.

45. *Id.* at 37–38.

46. See Jeff Stone et al., *Stereotype Threat Effects on Black and White Athletic Performance*, 77 J. PERSONALITY & SOC. PSYCHOL. 1213 (1999).

47. See Kent D. Harber et al., *The Positive Feedback Bias As a Response to Self-Image Threat*, 49 BRIT. J. SOC. PSYCHOL. 207, 209 (2010).

48. See Jennifer Randall Crosby & Benoît Monin, *Failure to Warn: How Student Race Affects Warnings of Potential Academic Difficulty*, 43 J. EXPERIMENTAL SOC. PSYCHOL. 663, 665–66 (2007).

49. See PHILLIP ATIBA GOFF ET AL., PROTECTING EQUITY: THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY ON THE SAN JOSE POLICE DEPARTMENT 3–4 (2012) [hereinafter SAN JOSE REPORT].

profile.<sup>50</sup> Surprisingly, the researchers did not find any relationship between explicit and implicit racial bias and the use of force.<sup>51</sup> However, they did find an association between stereotype threat and the use of force. Higher levels of stereotype threat were associated with the greater use of force against black suspects relative to other racial groups, both in the lab and in the real world.<sup>52</sup> Goff also did not find significant differences between black and white officers in the level of stereotype threat they experienced.<sup>53</sup>

It is tempting to explain this counterintuitive result by suggesting that officers who have high levels of stereotype threat are also aversive racists. Aversive racists are individuals who are consciously egalitarian but unconsciously biased.<sup>54</sup> However, if this were the case, then we would expect to see a relationship between unconscious bias and stereotype threat. Yet, this relationship did not exist.

It is more likely that this response is tied to legitimacy and how officers are trained to respond to safety concerns. In his important work, Tom Tyler has demonstrated that subordinates are more willing to voluntarily defer to authorities and to follow their rules when those authorities are perceived to be trustworthy and legitimate.<sup>55</sup> Thus, legitimacy reduces the need to rely upon coercive force to obtain compliance.<sup>56</sup> While this focus on how subordinate groups judge the legitimacy of authorities is important, new evidence demonstrates that it is equally critical to attend to how dominant groups understand their own legitimacy.

In a recent study, Goff and his team examined whether officers' concerns about legitimacy would influence their sense of safety and anxiety.<sup>57</sup> One hundred fourteen officers from two police departments participated in the study.<sup>58</sup> Officers' legitimacy judgments were assessed along two dimensions: whether they viewed their actions as legitimate and their understanding of how others perceived their legitimacy.<sup>59</sup>

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50. *Id.* at 4.

51. *Id.* at 11.

52. *Id.*

53. *Id.* at 5. As Goff notes, this could be attributed to either the small sample size of non-white officers. *Id.* Fifty-three percent of the officers were white, 28 percent were Hispanic, 6 percent were black and 6 percent were Asian, respectively. *Id.* at 4. It also could be related to concerns white officers may have had with admitting to a fear of being judged to be racist. *Id.* at 5. However, he also observed that non-white officers frequently mentioned occasions when citizens of the same race accused them of racism. *Id.*

54. Leanne S. Son Hing et al., *Exploring the Discrepancy Between Implicit and Explicit Prejudice: A Test of Aversive Racism Theory*, in *SOCIAL MOTIVATION: CONSCIOUS AND UNCONSCIOUS PROCESSES* 274–75 (Joseph P. Forgas et al. eds., 2005).

55. Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361, 386 (2001); see also TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* 49–96 (2002).

56. See Tyler, *supra* note 55, at 386; see also TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 4, 8 (2006).

57. See Phillip Atiba Goff et al., *Illegitimacy Is Dangerous: How Authorities Experience and React to Illegitimacy*, 4 PSYCHOL. 340, 341 (2013).

58. *Id.* at 342.

59. *Id.* at 340.

To examine both of these aspects of legitimacy, the researchers asked officers about a controversial policy that required them to enforce federal immigration laws by sometimes stopping individuals suspected of being undocumented and requesting proof of lawful immigration status.<sup>60</sup> Officers were asked about their own perceptions of the policy.<sup>61</sup> Additionally, because much of the debate surrounding this policy centered on the question of whether officers would disproportionately stop Latino residents, they were asked whether they believed the Latino community would respect them while they enforced the policy.<sup>62</sup> The authors used respect as a proxy for legitimacy.<sup>63</sup> The researchers also examined whether these legitimacy judgments would influence how anxious and how safe officers would feel when approaching either white or Latino suspects on the street to enforce the policy.<sup>64</sup> The results demonstrated that when officers perceived that enforcing the policy would cause Latino individuals to lose respect for them, they not only experienced anxiety but also expressed concern for their safety when imagining future encounters with Latinos.<sup>65</sup>

This study illuminates one reason why stereotype threat can cause officers to more readily use force against black suspects. Officers who believe black citizens will evaluate them as racist also likely suspect that those same citizens do not respect them and do not view them as legitimate. As the Goff study revealed, these anxieties can translate into concerns for their safety when confronting black citizens.<sup>66</sup>

When confronted with potentially threatening situations, Professor Frank Rudy Cooper has observed that officers are trained to perform “command presence” which involves “tak[ing] charge of a situation [and] projecting an aura of confidence and decisiveness. It is justified by the need to control dangerous suspects.”<sup>67</sup> Officers who anticipate a dangerous situation based on their experience of stereotype threat may enact command presence when it is unnecessary. They may interpret the ambiguous behaviors of black suspects as dangerous and threatening given not only implicit racial biases but also their expectations that the situation is potentially dangerous. However, this command and control approach may backfire. As Professor Tom Tyler observes:

[B]y approaching people from a dominance perspective, police officers encourage resistance and defiance, create hostility, and increase the likelihood that confrontations will escalate into struggles over dominance

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60. *Id.* at 342.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 343.

66. *Id.* at 341–42.

67. Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 674 (2009); see also Geoffrey P. Alpert, Roger G. Dunham & John M. MacDonald, *Interactive Police-Citizen Encounters That Result in Force*, 7 POLICE Q. 475, 476 (2004) (explaining the difference between “dominating force” and “accommodating force”).

that are based on force. The police may begin a spiral of conflict that increases the risks of harm for both the police and for the public.<sup>68</sup>

Thus, this series of events can explain why officers are more likely to use force against black citizens as a result of stereotype threat.

Note, however, that the same concerns do not arise in dealings with white citizens. First, there is no worry about stereotype threat, here defined as the fear of being evaluated as racist. Second, because of implicit favoritism, more evidence of danger will be required before their ambiguous actions generate safety concerns. Hence, officers are unlikely to enact command presence too early, thus not triggering the cascade of conflict that leads to the use of force.

### B. Masculinity Threat

Another self-threat that can lead to racial violence is masculinity threat. Masculinity threat refers to the fear of being perceived as insufficiently masculine. I have discussed masculinity threat in depth elsewhere.<sup>69</sup> In summary, what it means to be masculine is socially constructed and thus, how people perform their masculine identity depends upon the social context. For men, maintaining their masculine identity often feels precarious because it is not perceived “as a developmental guarantee, but as a status that must be earned.”<sup>70</sup> Thus, masculinity threat is pervasive among men. Men often respond with action to prove their masculinity when they feel that it is under threat. Sometimes, this gender performance takes the form of violence, especially in hypermasculine environments where exaggerated displays of physical strength and aggression are glorified and rewarded as a means of demonstrating and maintaining one’s masculine identity.<sup>71</sup>

A recent study demonstrated that police officers’ level of masculinity threat predicts their use of force against black men.<sup>72</sup> The researchers found that masculinity threat predicted whether officers had used force against black men, relative to men of other races, in the real world.<sup>73</sup> The use of force against black suspects was not correlated with either explicit or implicit racial bias.<sup>74</sup>

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68. Tyler, *supra* note 55, at 369 (citations omitted).

69. See Richardson & Goff, *supra* note 23, at 128–31.

70. Johnathan R. Weaver et al., *The Proof Is in the Punch: Gender Differences in Perceptions of Action and Aggression As Components of Manhood*, 62 *SEX ROLES* 241, 242 (2010) (citation omitted); see also Joseph A. Vandello et al., *Precarious Manhood*, 95 *J. PERSONALITY & SOC. PSYCHOL.* 1325, 1335 (2008) (finding that “manhood is seen as more of a social accomplishment that can be lost and therefore must be defended with active demonstrations of manliness”).

71. Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777, 785 (2000); Vandello et al., *supra* note 70, at 1327; see Jennifer K. Bosson & Joseph A. Vandello, *Precarious Manhood and Its Links to Action and Aggression*, 20 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 82, 83 (2011).

72. See generally SAN JOSE REPORT, *supra* note 49.

73. *Id.* at 11; see also Phillip Atiba Goff et al., *Voices of Dominance* (unpublished manuscript) (on file with author).

74. SAN JOSE REPORT, *supra* note 49, at 11; Goff et al., *supra* note 73.

What might explain these results? First, despite the fact that police departments have become more gender diverse since the 1950s,<sup>75</sup> hypermasculinity amongst the rank and file is still the norm.<sup>76</sup> This orientation persists because departments remain male-dominated and continue to highlight the importance of physical strength in recruitment materials, reinforce the hypermasculine ideal during academy training, and police it through the harassment of women and gay men.<sup>77</sup> The militarization of the police also strengthens the association between policing and violent masculinity.<sup>78</sup> In hypermasculine environments, it is foreseeable that officers would respond to masculinity threats with aggression and even violence in order to prove their masculine identity. Second, black men likely pose the greatest threat to an officer's masculinity, especially if they are disrespectful or noncompliant, because they are stereotyped, both consciously and unconsciously, as more masculine than other men.<sup>79</sup> Thus, both race and masculinity intersect to facilitate racial violence.

Consider the grand jury testimony of Officer Wilson alleging that Michael Brown called him "too much of . . . a pussy to shoot."<sup>80</sup> No doubt this statement, coupled with Michael Brown's race and physical size, challenged Wilson's masculinity and might explain why the confrontation between Brown and Wilson ended in violence. Even if Officer Wilson is not consciously racist, unconscious biases may have influenced his perceptions of the threat posed by Brown. In fact, his grand jury testimony referring to Brown as "super human" and "a demon" suggests the officer also dehumanized him.<sup>81</sup> Additionally, masculinity threat can explain why Officer Wilson confronted Brown in the first place instead of calling for

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75. David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1210 (2006).

76. JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 178 (1993) (citing Jennifer Hunt, *The Development of Rapport Through the Negotiation of Gender in Field Work Among Police*, 43 HUM. ORG. 283 (1984)); Susan Ehrlich Martin & Nancy C. Jurik, *DOING JUSTICE, DOING GENDER: WOMEN IN LAW AND CRIMINAL JUSTICE OCCUPATIONS* 43 (2d ed. 2006).

77. Richardson & Goff, *supra* note 23, at 131–32.

78. See Peter B. Kraska & Victor E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 SOC. PROBS. 1, 2–3 (1997); U.S. Dep't of Justice, *Technology Transfer from Defense: Concealed Weapon Detection*, 229 NAT'L INST. OF JUST. J. 1, 35 (1995) (the 1981 Military Cooperation with Law Enforcement Act and the 1984 National Defense Authorization Act gave military weapons and technology to departments to aid in the drug war); see also National Defense Authorization Act for Fiscal Year 1997, Pub. L. No. 104-201, 110 Stat. 2422, 2639 (1996), available at [www.nps.gov/legal/laws/104th/104-201.pdf](http://www.nps.gov/legal/laws/104th/104-201.pdf); RADLEY BALKO, *OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA* 27 (2006).

79. For an in-depth discussion, see Richardson & Goff, *supra* note 23, at 120–28.

80. Conor Friedersdorf, *Witnesses Saw Michael Brown Attacking—and Others Saw Him Giving Up*, ATLANTIC (Nov. 25, 2014), <http://www.theatlantic.com/national/archive/2014/11/major-contradictions-in-eyewitness-accounts-of-michael-browns-death/383157/>.

81. Frederica Boswell, *In Darren Wilson's Testimony, Familiar Themes About Black Men*, NPR (Nov. 26, 2014), <http://www.npr.org/blogs/codeswitch/2014/11/26/366788918/in-darren-wilsons-testimony-familiar-themes-about-black-men>.

backup before engaging with him. As one police veteran relates, “[O]fficers who ‘call for help’ are seen as weak, as vulnerable, and as feminine . . . . The subculture dictates that ‘real men’ will never need to call for help; those who do are often subjected to ridicule and scorn after having done so.”<sup>82</sup>

### III. IMPLICATIONS

The influence of implicit racial biases, stereotype threat, and masculinity threat on police behavior explains why racial violence is inevitable and overdetermined even in the absence of conscious racial animus. Thus, while punishing bad racial actors is important,<sup>83</sup> racial violence will continue unabated even if we could discover and remove all consciously racist officers from the department. That is because the major problem is not dispositional, but rather, situational.

The key to reducing racial violence is to transform current policing strategies and cultures that create an “us-versus-them” mentality between officers and the non-white communities they police. This is because positive intergroup contact is a proven method for reducing the influence of implicit racial biases<sup>84</sup> and getting to know people makes it more difficult to dehumanize them.<sup>85</sup> Furthermore, when officers are able to build relationships with non-white citizens, they are less likely to worry about being stereotyped as racist.

However, officers are rarely in situations where they interact in positive ways with non-white citizens. Rather than creating incentives for officers to work together with the community to identify and address the underlying causes of disorder, current policing practices discourage the social work aspects of policing in favor of proactive, aggressive policing strategies that prize arrests over problem-solving. Such practices make it difficult for officers and community members to have positive contacts and to build relationships that are not defined by distrust and suspicion. As a result, officers experience stereotype threat because they know the community believes they are racist. Furthermore, because of their awareness that

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82. Thomas Nolan, *Behind the Blue Wall of Silence*, 12 MEN & MASCULINITIES 250, 255 (2009).

83. Strategies for holding officers liable for their misconduct is woefully inadequate. See Erwin Chemerinsky, Op-Ed., *How the Supreme Court Protects Bad Cops*, N.Y. TIMES, Aug. 27, 2014, at A23 (discussing how U.S. Supreme Court decisions protect officers from liability); see also Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185 (2005) (discussing the impact of police officer bill of rights on police accountability); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 463 (2004); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761 (2012).

84. Calvin K. Lai et al., *Reducing Implicit Racial Preferences: A Comparative Investigation of 17 Interventions*, 143 J. EXPERIMENTAL PSYCHOL. 1765, 1772 (2014); Calvin K. Lai et al., *Reducing Implicit Prejudice*, 7 SOC. & PERSONALITY PSYCHOL. COMPASS 315, 317 (2013).

85. Richardson & Goff, *supra* note 23, at 123.

members of the community view them as illegitimate, they enact command presence, which escalates rather than defuses already tense situations.

Thus, building relationships between officers and the community can reduce racial violence. Of course, doing this is easier said than done. Although community policing is a popular philosophy, most officers remain disengaged from the communities they police and continue to denigrate aspects of the job they associate with “social work.”<sup>86</sup> These attitudes are understandable since success continues to be measured largely by the number of arrests made and how quickly officers respond to calls for service.<sup>87</sup> Why would an officer expend energy on more time-consuming problem-solving activities when these are unlikely to be rewarded?

Police departments are not solely to blame for this reward structure. Some federal grants create incentives for departments to engage in aggressive, proactive policing by tying funds to the number of arrests made.<sup>88</sup> It is no surprise, then, that departments encourage their officers to engage in policing practices such as stops and frisks that result in arrests but which end up alienating communities. Thus, creating incentives for officers to focus more on relationship building and problem-solving rather than on arrests will require interventions at both the institutional and national level. Rewarding the problem-solving and social work aspects of policing will naturally lead to changes in the hypermasculine police culture because those individuals not interested in engaging in this type of policing will no longer be attracted to the field. Furthermore, as these problem-solving and relational skills become more important, departments will have to begin recruiting individuals who excel in these areas, again helping to slowly change the culture.

While this intervention is large-scale and long-term, a more concrete intervention is for departments to begin collecting data to determine whether any of their practices result in racially disparate impacts. Some departments are already doing this. For instance, in 2008, the police chief in Kalamazoo, Michigan, did just that. Responding to community concerns over racial profiling, he put systems in place to gather data and hired a consulting group to conduct a study within his department.<sup>89</sup> When the study revealed racial disparities in the policing of black citizens, he shared the report with the community and implemented changes in policy that required officers to have reasonable suspicion before asking for consent to search.<sup>90</sup>

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86. For an in-depth discussion, see *id.* at 143–47.

87. George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, in *COMMUNITY POLICING: CLASSICAL READINGS* 105–06 (Willard M. Oliver ed., 2000); George L. Kelling & William J. Bratton, *Implementing Community Policing: The Administrative Problem*, in *COMMUNITY POLICING*, *supra*, at 261.

88. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 75–82 (2010).

89. See Lorie Fridell, *Psychological Research Has Changed How We Approach the Issue of Biased Policing*, *SUBJECT TO DEBATE*, May–June 2014.

90. *Id.*

Another fruitful example is exemplified by the work of the Center for Policing Equity (CPE) based at UCLA.<sup>91</sup> CPE has been successful in working closely with police departments to identify some of the causes of racially biased policing and to implement solutions.<sup>92</sup> For instance, when working with the Las Vegas Police Department, the group found that many uses of force by police officers against racial minorities occurred after foot chases in non-white neighborhoods. Acknowledging that it would be difficult for officers engaged in a foot chase to stop and think about whether implicit racial biases were influencing their behaviors, CPE instead helped the department develop new rules to address the problem. Under the new policy, the officer engaged in a pursuit would no longer be allowed to lay hands on the suspect. Rather, another officer would be required to step in if force was necessary. This change resulted in a significant decline in the use of force against people of color.<sup>93</sup>

One challenge is that departments may be reluctant to gather racial data because of concerns that exposing their practices to outside review will subject them to liability. CPE has developed a way to overcome liability concerns. CPE researchers and departments sign a memorandum of understanding that provides legal protection against disclosure of confidential data, guarantees departments that they will be the first to learn of the results, allows departments to elect to remain anonymous when the results are published, and gives them a reasonable time to implement solutions, inform the press, or do nothing.<sup>94</sup>

Admittedly, it can be difficult to speak to police departments about gathering racial data because of the inevitable defensiveness that often accompanies discussions of race. This problem is exacerbated by the fact that many people employ colorblindness as a strategy to reduce racial anxiety.<sup>95</sup> CPE has been successful in overcoming this defensiveness and developing close, working relationships with numerous police departments. Goff relates he has achieved this in part by approaching departments guided by two assumptions. The first is “that everyone involved wants to do the right thing—that is, that the research partners are not bigots.”<sup>96</sup> The second is that “ridding a department of racism is both a worthy goal and a difficult one.”<sup>97</sup> These assumptions help overcome understandable defensiveness

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91. CPE is “a research and action think tank that works with police departments to conduct original research in the interest of improving equity in police organizations and the delivery of police services.” Phillip Atiba Goff et al., *(The Need for) A Model of Translational Mind Science Justice Research*, 1 J. SOC. & POL. PSYCHOL. 385, 391 (2013). Goff is CPE’s cofounder and president.

92. *Id.* at 394.

93. Mooney, *supra* note 22.

94. Goff et al., *supra* note 91, at 392.

95. Evan P. Apfelbaum et al., *Seeing Race and Seeming Racist? Evaluating Strategic Colorblindness in Social Interaction*, 95 J. PERSONALITY & SOC. PSYCHOL. 918, 919 (2008); Phillip Atiba Goff et al., *Anything but Race: Avoiding Racial Discourse to Avoid Hurting You or Me*, 4 PSYCHOL. 335 (2013).

96. Goff et al., *supra* note 91, at 393.

97. *Id.*

that arises when issues of race are discussed as well as when racial disparities, sometimes stark, are discovered.<sup>98</sup>

Moving beyond a focus on conscious racial bias is another way to overcome defensiveness. The Fair and Impartial Policing (FIP) program has been successful in educating departments about the influence of implicit biases. FIP is a comprehensive program that relies on the science of implicit racial bias to help departments move toward unbiased policing practices.<sup>99</sup> It “addresses the ill-intentioned police who produce biased policing and the overwhelming number of well-intentioned police in this country who aspire to fair and impartial policing, but who are human like the rest of us.”<sup>100</sup> The program involves trainings as well as issues related to recruitment and hiring, internal policies and procedures, outreach to the community, and creating accountability mechanisms and measurement tools to track data.<sup>101</sup> This program has been adopted by a number of police departments<sup>102</sup> and several states are considering statewide adoption of the program.<sup>103</sup> The program is being taken seriously by police leadership<sup>104</sup> and is gaining traction.<sup>105</sup> Many officers who have taken part in the program have praised it, making comments like: “It changed my perception,”<sup>106</sup> “I will better recognize bias and be able to address it with officers,”<sup>107</sup> and “could see doing this training in my retirement, would feel proud and honored to be involved in a program like this.”<sup>108</sup>

Not only can this program help departments understand the importance of being race conscious when it comes to policing, but also, if departments begin to implement trainings such as those provided by the FIP program, they also can begin to tie promotions and other job perks to demonstrable

98. *Id.*

99. For information on this program, see Lorie Fridell, *FIP Client*, FAIR & IMPARTIAL POLICING, <http://www.fairimpartialpolicing.com> (last visited Apr. 23, 2015).

100. *Id.*

101. *Id.*

102. Lorie Fridell, *Press*, FAIR & IMPARTIAL POLICING, <http://www.fairimpartialpolicing.com/press/> (last visited Apr. 23, 2015).

103. See Fridell, *supra* note 99.

104. See, e.g., Tracey G. Cove, *Implicit Bias and Law Enforcement*, POLICE CHIEF, Oct. 2011, at 44, available at <http://static.squarespace.com/static/54722818e4b0b3ef26cdc085/t/54790aece4b03c29747eb163/1417218796679/press-thepolicechief.pdf>.

105. See Fridell, *supra* note 99.

106. UNIV. OF CAL. BERKELEY POLICE DEP'T, OFFICERS: RACIAL PROFILING, FAIR AND IMPARTIAL POLICING B, available at <http://static.squarespace.com/static/54722818e4b0b3ef26cdc085/t/5472b283e4b0367870bd3335/1416802947888/rberkb.pdf> (compiling course evaluations).

107. LORIE A. FRIDELL, FAIR AND IMPARTIAL POLICING 5, available at <http://static.squarespace.com/static/54722818e4b0b3ef26cdc085/t/5478bbd4e4b045935f33df73/1417198548003/overview-program.pdf>.

108. UNIV. OF CAL. BERKELEY POLICE DEP'T, OFFICERS: RACIAL PROFILING, FAIR AND IMPARTIAL POLICING A, available at <http://static1.squarespace.com/static/54722818e4b0b3ef26cdc085/t/5472b245e4b081a2addcb9a9/1416802885101/rberka.pdf> (compiling course evaluations); see also Lorie A. Fridell, *Racially Biased Policing: The Law Enforcement Response to the Implicit Black-Crime Association*, in RACIAL DIVIDE: RACIAL AND ETHNIC BIAS IN THE CRIMINAL JUSTICE SYSTEM (Michael J. Lynch, E. Britt Patterson & Kristina K. Childs eds., 2008).

changes in an officer's behaviors in response to what he or she learned. This is not only a way of changing incentives, but it also will help to change department culture as officers who are not motivated and committed to making the necessary adjustments will slowly be weeded out of the department.

#### CONCLUSION

It will not be easy to transform current policing practices and culture in order to address racial violence. Doing so will not only require changes within police departments but also in legal doctrine and legislation. This is a tall order given that the problem of policing and race is a perennial one. However, now is a particularly auspicious time to push for meaningful, groundbreaking changes to police practices and culture. The high-profile cases of police violence, intransigence, and arrogance,<sup>109</sup> coupled with signs of optimism<sup>110</sup> have brought issues of policing to the public consciousness in ways not seen in recent history. Furthermore, the public protests that have sprung up across the country in response to the failure to indict police officers for killing unarmed black men have and will continue to play a critical role in facilitating the debate over the meaning of policing and how it should be reformed. As Professors Lani Guinier and Gerald Torres explained in a recent article, social movements can play a role in facilitating “the cultural shifts that make durable legal change possible.”<sup>111</sup> Perhaps through their activism bringing attention to and contesting current policing practices, these movements can spark changes in how our society views the police in ways that will make changes to policing seem inevitable and appropriate. Until this occurs, we can expect that racial violence against unarmed black men will continue unabated.

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109. Matt Taibbi, *The NYPD's "Work Stoppage" Is Surreal*, ROLLING STONE (Dec. 31, 2014), <http://www.rollingstone.com/politics/news/the-nypds-work-stoppage-is-surreal-20141231>.

110. For instance, the police chief of Richmond, California, recently took part in a protest against police brutality, holding a sign that read “Black Lives Matter.” Robert Rogers, *Richmond Police Chief a Prominent Participant in Protest Against Police Violence*, CONTRA COSTA TIMES (Dec. 9, 2014), [http://www.contracostatimes.com/west-county-times/ci\\_27102218/richmond-police-chief-prominent-participant-local-protest-against](http://www.contracostatimes.com/west-county-times/ci_27102218/richmond-police-chief-prominent-participant-local-protest-against).

Additionally, in December 2014, the Obama Administration created the Task Force on 21st Century Policing. See David Hudson, *President Obama Creates the Task Force on 21st Century Policing*, WHITE HOUSE BLOG (Dec. 18, 2014), <http://www.whitehouse.gov/blog/2014/12/18/president-creates-task-force-21st-century-policing>. The task force “will examine, among other issues, how to strengthen public trust and foster strong relationships between local law enforcement and the communities that they protect, while also promoting effective crime reduction.” Press Release, Office of the Press Sec’y, White House, Fact Sheet: Task Force on 21st Century Policing (Dec. 18, 2014), <http://www.whitehouse.gov/the-press-office/2014/12/18/fact-sheet-task-force-21st-century-policing>.

111. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2743 (2014).