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## *Police Use of Force*

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# Police Use of Force

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*Racial disparities in police uses of force persist. Two competing explanations are often given for these disparities. One is that these disparities are justified because police are simply responding to objectively threatening conduct. The other is that these disparities are the result of police racism. While both accounts are accurate some of the time, this chapter illuminates how “racial anxiety” can also enable racial disparities in police uses of force even in the absence of racial animus and even when people of color are acting identically to their white counterparts. The term racial anxiety references how concerns about police racism can influence the behaviors and perceptions of officers and people of color in ways that increase the potential for violence. Consideration of racial anxiety highlights the necessity of transforming policing in order to build community-police trust. Policymakers can aid in this endeavor by supporting programs, initiatives and legislation that will facilitate this transformation.*

## INTRODUCTION

This chapter addresses police uses of force. Given the breadth of the topic, it will focus only on uses of force against people of color since the past few years have once again brought national attention to this issue.<sup>1</sup> While the lack of uniform policies for data collection makes it impossible to know the full extent of the problem,<sup>2</sup> there is significant evidence that people of color bear the brunt of police uses of force.<sup>3</sup> Data reported to the FBI indicate that officers killed Black

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<sup>1</sup> For a description of recent cases involving people of color, see L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2015) and Nancy C. Marcus, *From Edward to Eric Garner and Beyond: The Importance of Constitutional Limitations on Lethal Use of Force in Police Reform*, 12 DUKE J. CONST. L. & PUB. POL'Y 53 (2016).

<sup>2</sup> Kevin Johnson, Meghan Hoyer & Brad Heath, *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/>. Only 750 of the approximately 18,000 law enforcement agencies in the United States participate. *Id.* This is the only national database that collects data on police uses of deadly force. *Id.*

<sup>3</sup> See, e.g., U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 28 (2015) (noting that nearly 90% of uses of excessive force are against African-Americans); U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 15 (2017), <https://www.justice.gov/opa/file/925846/download> (noting that officers use “almost ten times more often against blacks than against whites.”); see also *Contacts Between Police And The Public*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS at 12 (2008), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2229> (noting that

individuals almost twice a week between 2005 and 2012.<sup>4</sup> Another investigation found that “among fifty-four egregious incidents of police shootings between 2005 and 2015 that resulted in charges being brought against the officers (due to the victims being unarmed and fleeing, for instance), all but two of the victims were black.”<sup>5</sup> Racial disparities in police use of force are not limited to deadly force, but also include, among other things, being pushed, punched, choked, threatened by objects such as a baton or flashlight, and restrained by dogs.<sup>6</sup>

Various explanations are given for these racially disparate uses of force, including that the police acted justifiably in response to objectively threatening conduct or that these uses of force are the result of police racism.<sup>7</sup> Certainly, attributing force to the racial animus of officers or the threatening behaviors of victims simplifies the problem—either the individual officer or civilian is at fault. However, in recent years, the recognition that implicit (i.e. unconscious) racial biases can cause racially disparate effects even in the absence of conscious bias is becoming increasingly commonplace in mainstream discussions of police force.<sup>8</sup> Implicit racial biases linking Blacks with criminality can lead even consciously egalitarian officers to incorrectly identify Blacks as criminal suspects<sup>9</sup> and to interpret their ambiguous behaviors with more suspicion than the identical actions of Whites.<sup>10</sup> Thus, consciously negative racial attitudes are not a necessary ingredient for racial disparities in police uses of force. Instead, as a result of implicit racial bias,

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“Blacks were more likely than whites or Hispanics to experience use or threat of force in 2008.”). The Washington Post and the Guardian have collected use of force data that demonstrate racial disparities. *Fatal Force*, WASH. POST(2016), <http://wapo.st/police-shootings-2016> (last accessed January 29, 2017); *The Counted*, GUARDIAN(2016), <https://www.theguardian.com/us-news/series/counted-us-police-killings> (last visited Mar. 19, 2017).

<sup>4</sup> Johnson, Hoyer & Heath, *supra* note 3.

<sup>5</sup> Nancy C. Marcus, *Out of Breath and Down to the Wire: A Call for Constitution-Focused Police Reform*, 59 HOW. L.J. 5, 24 (2015) (internal citation omitted). Racially disparate uses of force are not a new phenomenon. Many of the major urban upheavals of the 1960s, which resulted in President Johnson establishing the National Advisory Commission on Civil Disorders, known as the Kerner Commission, were sparked by the fatal shootings of Black individuals. See also James J. Fyfe, *Police Use of Deadly Force: Research and Reform*, 5 JUST. Q. 162, 167–8 (discussing incidents); Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, 13 PERSP. ON POLICING 11 (1990);

<sup>6</sup> See *supra* note 3, at 30; see also *Shumate v. Cleveland*, 483 F. App'x 112, 114 (6th Cir. 2012) (affirming denial of summary judgment on an excessive-force claim against an officer who punched a handcuffed arrestee in response to being spit on, when the officer could have protected himself from further spitting by putting the arrestee in the back of a patrol car and closing the door); Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275 (1999) (citations omitted). Force has been defined as “any physical strike or instrumental contact with a person; any intentional attempted physical strike or instrumental contact that does not take effect; or any significant physical contact that restricts the movement of a person. The term includes the discharge of firearms; the use of chemical spray, choke holds or hard hands; the taking of a subject to the ground; or the deployment of a canine. The term does not include escorting or handcuffing a person, with no or minimal resistance.” *United States v. City of Detroit*, No. 03-72258 1–2, (E.D. Mich., July 18, 2003) (Consent Judgment: Conditions of Confinement), [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/detroitpd\\_holdingcell\\_613.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/detroitpd_holdingcell_613.pdf) (cited with approval in INT'L ASS'N OF CHIEFS OF POLICE, PROTECTING CIVIL RIGHTS: A LEADERSHIP GUIDE FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT 116 (2006) [hereinafter IACP, Protecting Civil Rights]).

<sup>7</sup> Isabel Wilkerson, *Mike Brown's Shooting and Jim Crow Lynchings Have Too Much in Common. It's Time for American to Own Up*, GUARDIAN (Aug. 24, 2014), <http://www.theguardian.com/commentisfree/2014/aug/25/mike-brown-shooting-jim-crow-lynchings-in-common>.

<sup>8</sup> 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>.

<sup>9</sup> Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 876 (2004).

<sup>10</sup> For an extended discussion, see L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2045 (2011).

Blacks face a greater risk of being the victims of police force even if Black and White individuals are acting identically.

While implicit racial biases have received significant attention and increased our understanding of how problematic racialized consequences can occur in the absence of racial animus, this chapter focuses on another phenomenon that can also enable racial disparities in police uses of force, namely “racial anxiety.” The term racial anxiety references how concerns about police racism, defined here as conscious racial animus toward people of color, can influence both officers and individuals in ways that increase the potential for unnecessary violence. Unnecessary violence occurs when force does not need to be used, even if the law might view its use as reasonable.<sup>11</sup> Stated another way, violence is unnecessary if it would not have been used against a similarly situated White individual.

Focusing on racial anxiety highlights the importance of building trust between officers and communities in order to address troubling racial disparities in uses of force. Thus, while the chapter begins with a discussion of how racial anxiety can influence discrete police-civilian interactions, the primary objective is to highlight how these individual interactions are influenced by the broader context, including the historically fraught relationship between police and communities of color, criminal justice policies, and police department incentives. Each of these things facilitates negative interactions and exacerbates community-police tensions. Addressing these larger issues is essential to reducing unnecessary uses of force against people of color.

## I. RACIAL ANXIETY

Racial anxiety arises out of concerns about police racism.<sup>12</sup> The effects of racial anxiety on both police and the public create interactions fraught with misunderstandings and mistaken judgments, increasing the risk that force will be used. Because racial anxiety is more likely to influence interactions between officers and Black civilians, racial disparities in uses of force are predictable.

### A. RACIAL ANXIETY: THE CONSTRUCT

The focus of this section is on interactions between Black and White individuals since racism against Blacks is considered prototypical and has been studied almost exclusively in the social psychological literature relied upon in this chapter.<sup>13</sup> In general, both Whites and Blacks experience anxiety during interracial interactions. Whites are concerned that they will behave in ways that will be evaluated as racist by Black interaction partners<sup>14</sup> while Blacks are concerned

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<sup>11</sup> See *Scott v. Harris*, 550 U.S. 372 (2007); *Graham v. Connor*, 490 U.S. 386 (1989); see, e.g., Rachel A. Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119 (2008) (arguing that the law of justifications can help create a cohesive and improved use of force doctrine, including a discussion of necessity); see also Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*; 104 GEO. L.J. 1479 (2016).

<sup>12</sup> For an extended discussion of racial anxiety, see Rachel Godsil & L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. \_\_ (forthcoming Spring 2017).

<sup>13</sup> Mary L. Inman & Robert S. Baron, *Influence of Prototypes on Perceptions of Prejudice*, 70 J. PERSONALITY & SOC. PSYCHOL. 727 (1996); Sam Sommers & Michael I. Norton, *Lay Theories about White Racists: What Constitutes Racism (and What Doesn't)*, 9 GROUP PROCESSES & INTERPERSONAL REL. 117, 119 (2006).

<sup>14</sup> Jennifer A. Richeson & J. Nicole Shelton, *Stereotype Threat in Interracial Interactions*, in STEREOTYPE THREAT: THEORY PROCESS, AND APPLICATION 231, 236, 237 (Michael Inzlicht & Toni Schmader, eds., 2012); Sophie Trawalter, Jennifer A. Richeson & J. Nicole Shelton, *Predicting Behavior during Interracial Interactions: A Stress and Coping Approach*, 13 PERSONALITY & SOC. PSYCHOL. REV. 243, 249 (2009).

that they will be treated in a racially discriminatory manner.<sup>15</sup> Thus, both Whites and Blacks feel apprehensive when anticipating and engaging in interracial interactions.<sup>16</sup>

Racial anxiety has predictable cognitive and physiological effects.<sup>17</sup> Individuals who are worried about negative racial evaluations and treatment feel self-conscious and nervous before and during cross-race interactions.<sup>18</sup> The result is heightened vigilance during the interaction,<sup>19</sup> with both parties becoming acutely attuned to and aware of their own behaviors<sup>20</sup> and any threat-relevant cues<sup>21</sup> exhibited by their interaction partner in an attempt to determine whether they are confirming negative stereotypes or being judged on the basis of those stereotypes.<sup>22</sup> This constant monitoring results in cognitive depletion,<sup>23</sup> increasing the risk of mistaken judgments since mental exhaustion makes people more likely to rely on unconscious stereotypes.<sup>24</sup>

Individuals can become so self-conscious during these cross-race interactions that behaviors that would normally occur automatically and unconsciously are affected, leading people to be “more rigid and less warm and friendly than [they] would be in a nonthreatening context.”<sup>25</sup> Additionally, racial anxiety can produce a variety of physiological responses such as sweating,

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<sup>15</sup> R. Mendoza-Denton et. al, *Sensitivity to Status-Based Rejection: Implications for African American Students' College Experience*, 83 J. PERSONALITY & SOC. PSYCHOL. 896 (2002); Jennifer N. Shelton, *Interpersonal Concerns in Social Encounters between Majority and Minority Group Members*, 6 GROUP PROCESSES & INTERGROUP RELATIONS 171 (2003); J. Nicole Shelton & Jennifer N. Richeson, *Interracial Interactions: A Relational Approach*, in 38 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 121 (M. P. Zanna ed., 2006).

<sup>16</sup> Sophie Trawalter et al., *Concerns about Appearing Prejudiced Get under the Skin: Stress Responses to Interracial Contact in the Moment and Across Time*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 282, 249 (2012).

<sup>17</sup> Richeson & Shelton, *supra* note 14, at 236.

<sup>18</sup> D. R. Avery et al., *It Doesn't Have to be Uncomfortable: The Role of Behavioral Scripts in Interracial Interactions*, 94 J. APPLIED PSYCHOL. 1382, 1383 (2009); *see also* E. Ashby Plant & David Butz, *Perceiving Outgroup Members as Unresponsive: Implications for Approach-Related Emotions, Intentions, and Behavior*, 91 J. PERSONALITY & SOC. PSYCHOL. 1066 (2006) (Whites' concerns with being perceived leads to anxiety when anticipating interracial interactions and a desire to avoid these interactions); J. Nicole Shelton, Tessa V. West & Thomas Trail, *Concerns with Appearing Prejudiced: Implications for Anxiety During Interracial Interactions*, 13 GROUP PROCESSES & INTERGROUP REL. 329, 340 (2010) (finding that the more Whites are concerned with appearing racist, the more anxiety they experience during an interaction.); Sophie Trawalter et al., *supra* note 16, at 282; Jacquie D. Vorauer, Kelley J. Main & Gordon B. O'Connell, *How Do Individuals Expect to Be Viewed by Members of Low Status Groups? Content and Implications of Meta-Stereotypes*, 75 J. PERSONALITY & SOC. PSYCHOL. 917 (1998) (finding that Whites' concerns over racism lead them to enjoy interracial interactions less).

<sup>19</sup> Jennifer A. Richeson & J. Nicole Shelton, *Negotiating Interracial Interactions: Costs, Consequences, and Possibilities*, 16 CURRENT DIRECTIONS IN PSYCHOL. SCI. 316 (2007).

<sup>20</sup> Jennifer N. Shelton, *Interpersonal Concerns in Social Encounters between Majority and Minority Group Members*, 6 GROUP PROCESSES & INTERGROUP REL. 171 (2003).

<sup>21</sup> Richeson & Shelton, *supra* note 14, at 233.

<sup>22</sup> Mary C. Murphy & Valeria Jones Taylor, *The Role of Situational Cues in Signaling and Maintaining Stereotype Threat*, in STEREOTYPE THREAT: THEORY PROCESS, AND APPLICATION 17, 18–19, 24 (Michael Inzlicht & Toni Schmader eds., 2012); Richeson & Shelton, *supra* note 14, at 232, 233, 234 (“vigilance and preoccupation with cues pertaining to the potential for negative evaluation.”).

<sup>23</sup> Murphy & Taylor, *supra* note 22, at 34; Jennifer A. Richeson & J. Nicole Shelton, *When Prejudice Does Not Pay: Effects of Interracial Contact on Executive Function*, 14 PSYCHOL. SCI. 287 (2003) (noting that after an interracial interaction, both black and white subjects performed worse on a cognitive challenging task and that fMRI confirms that stereotype threat in interracial interactions utilizes cognitive executive functions); Toni Schmader & Sian Beilock, *An Integration of Processes that Underlie Stereotype Threat*, in STEREOTYPE THREAT: THEORY, PROCESS, AND APPLICATION 34, 37 (Michael Inzlicht & Toni Schmader eds., 2012).

<sup>24</sup> David M. Amodio, *Intergroup Anxiety Effects on the Control of Racial Stereotypes: A Psychoneuroendocrine Analysis*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 60 (2009).

<sup>25</sup> Richeson & Shelton, *supra* note 14, at 237–8.

increased heart rate, facial twitches, fidgeting,<sup>26</sup> and avoiding eye contact,<sup>27</sup> all of which can also result in individuals appearing unfriendly and uncomfortable. Unsurprisingly, these nonverbal behaviors can foster awkward and unpleasant interracial interactions.<sup>28</sup> In the context of policing, the consequences of racial anxiety can be deadly.

## B. RACIAL ANXIETY IN POLICE-PUBLIC INTERACTIONS

Similar to its influence on interactions between White and Black individuals, racial anxiety can also affect police interactions with Black civilians. This is because police officers, regardless of race, are likely to worry about being perceived as racist. These anxieties arise, in part, from the history of police racism and racialized policing practices in the United States, beginning with the genesis of the police in the South from slave patrols,<sup>29</sup> continuing with police participation in anti-civil rights protests in the mid-1960s,<sup>30</sup> and enduring with current controversies, including the high-profile nature of police shootings of unarmed Black men and women. There is also evidence of the persistent existence of conscious police racism.<sup>31</sup> This history helps explain why officers worry about being perceived as racist, why Black individuals are appreciably more likely than Whites to view the police as illegitimate, and why it is unsurprising that many Blacks view the police as racially prejudiced,<sup>32</sup> aggressive, untrustworthy, and dangerous.<sup>33</sup>

From the perspective of officers, racial anxiety refers to the concern that they will be perceived to be racist by the civilians they encounter.<sup>34</sup> This concern can affect both Black and White

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<sup>26</sup> Shelton, *supra* note 20, at 179; *see also* Trawalter, *supra* note 14, at 244.

<sup>27</sup> Jennifer L. Eberhardt, *Imaging Race*, 60 AM. PSYCHOL. 181, 183 (2005); Trawalter et al., *supra* note 16, at 290–91; Trawalter, *supra* note 14, at 245.

<sup>28</sup> Eberhardt, *supra* note 27, at 183; *see generally* Trawalter et al., *supra* note 16.

<sup>29</sup> *See generally* SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* (2003).

<sup>30</sup> David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1241 (2006) (noting that police activism during the late 1960s often took the form of “rabid, knee-jerk opposition to civilian oversight, active participation in far right-wing organizations, vigilante attacks on black activists, [and] organized brutality against political protesters.”).

<sup>31</sup> *See generally* Williams & Murphy, *supra* note 5. The recent, high profile deaths of Black individuals at the hands of the police as well as reports from Department of Justice investigations reveal the racialized culture of many contemporary police departments. *See, e.g.*, S.F. BLUE RIBBON PANEL, *THE BLUE RIBBON PANEL ON TRANSPARENCY, ACCOUNTABILITY, AND FAIRNESS IN LAW ENFORCEMENT* 8, 9, 143–44 (2016), <http://sfblueribbonpanel.com/> (noting that members of the police department had exchanged racist text messages); *see also* Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. CHI. LEGAL F. 125 (2016).

<sup>32</sup> TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND THE COURTS* (2002); SAMUEL WALKER, CASSIA SPOHN & MIRIAM DELONE, *THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA* (2007).

<sup>33</sup> TYLER & HUO, *supra* note 32; WALKER, SPOHN & DELONE, *supra* note 32; Jacinta M. Gau & Rod K. Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men's Perceptions of Police Legitimacy*, 27 JUST. Q. 255, 261 (2010) (noting that “research concerning citizens’ attitudes toward police has consistently found that black adults and adolescents report more dissatisfaction and distrust than their counterparts from other racial groups.”) (citations omitted) Ronald Weitzer & Steven A. Tuch, *Perceptions of Racial Profiling: Race, Class and Personal Experience*, 40 CRIMINOLOGY 435, 436 (2002); ; Jennifer L. Woolard, Samantha Harvell & Sandra Graham, *Anticipatory Injustice among Adolescents: Age and Racial/Ethnic Differences in Perceived Unfairness of the Justice System*, 26 BEHAV. SCI. & LAW 207 (2008).

<sup>34</sup> PHILLIP ATIBA GOFF ET AL., *PROTECTING EQUITY: THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY ON THE SAN JOSE POLICE DEPARTMENT 1* (2012). Officers from the San Jose Police Department agreed with statements such as “I worry that others may stereotype me as prejudiced because I am a police officer” *Id.* at 3–5, and “I worry that, because I know the racial stereotype about police officers and prejudice, my anxiety about confirming that stereotype will negatively influence my interactions.” *Id.* at 17; *see also* *Illinois v. Wardlow*, 528 U.S. 119, 133 n.9

officers,<sup>35</sup> influencing their perceptions and judgments as well as their feelings of safety during an interaction. Racial anxiety is more likely to occur during interactions with Black individuals because the concerns animating it will be more salient.

Officers who worry that Black individuals will evaluate them as racist also likely believe that these individuals do not respect their legitimacy. Research reveals that when officers worry that civilians question their legitimacy, they become anxious and concerned for their safety.<sup>36</sup> Because of the potential safety threat, officers will become hyper-alert for clues that the Black person with whom they are interacting is evaluating them negatively, adversely influencing the officer's interpretation of the individual's ambiguous behaviors. Furthermore, this increased vigilance is likely to lead to mental exhaustion because even without the additional cognitive load of racial anxiety, officers already use significant executive resources to monitor their environment for potential threats.<sup>37</sup> Finally, the experience of racial anxiety is likely heightened when officers are engaged in highly discretionary policing practices such as stop-and-frisks because they know that Black individuals often believe that these practices are carried out in a racially biased fashion.

From the Black civilians' perspective, racial anxiety is experienced as the fear of being victimized by police racism. While interactions with the police can be anxiety-provoking for any civilian, the concern about being the target of racism heightens feelings of anxiety and threat.<sup>38</sup> These feelings can influence their behaviors and judgments as well as the attributions they make about an officer's conduct during an interaction, creating expectations of discriminatory treatment, including the use of lethal force.<sup>39</sup> As a result, Black individuals often approach police interactions with heightened suspicion and anxiety, making them more likely to interpret the officer's tone of voice and behaviors as hostile and threatening, thereby confirming their concerns that the officer is a racist who poses a threat to their safety.<sup>40</sup> These concerns will disproportionately influence Black individuals because White individuals will rarely experience fears of being victimized by police racism.

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(2000) (citing REPORT OF THE INDEPENDENT COMM'N ON THE LOS ANGELES POLICE DEPARTMENT 69 (1991)); see also 5 UNITED STATES COMM'N ON CIVIL RIGHTS, RACIAL AND ETHNIC TENSIONS IN AMERICAN COMMUNITIES: POVERTY, INEQUALITY AND DISCRIMINATION, THE LOS ANGELES REPORT 26 (1999) ("And a recent survey of 650 Los Angeles Police Department officers found that 25% felt that racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community.").

<sup>35</sup> See Gene Demby, *Does Having More Black Officers Reduce Police Violence?*, NPR: CODE SWITCH (Feb. 4 2017), <http://www.npr.org/sections/codeswitch/2017/02/04/513218656/does-having-more-black-officers-reduce-police-violence>; see also Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292 (2008). But see Gau & Brunson, *supra* note 33, at 270 (noting that "respondents did not mention the race of the police officers at all and, when asked, said they believed that officers' race is not a factor in the way they treat citizens. One exception to this trend was black study participants who reported that African American officers were more likely to show concern for their well-being.").

<sup>36</sup> Phillip Atiba Goff et al., *Illegitimacy Is Dangerous: How Authorities Experience and React to Illegitimacy*, 4 PSYCHOL. 340 (2013).

<sup>37</sup> Geoffrey P. Alpert, Roger G. Dunham & John M. MacDonald, *Interactive Police-Citizen Encounters that Result in Force*, 7 POLICE Q. 475, 476 (2004).

<sup>38</sup> Shelton, *supra* note 15; Trawalter, *supra* note 14, at 254 (noting that "[i]nterracial interactions often trigger anxiety, fear, and sometimes even anger for Whites and racial minorities"); *Id.* at 249 ("[R]acial minorities . . . who are concerned about being the target of prejudice . . . are also likely to appraise interracial contact as a threat.").

<sup>39</sup> TYLER & HUO, *supra* note 32.

<sup>40</sup> Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCHOL. 590 (1976); Charles Lord, Lee Ross & Mark Lepper, *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979).

During interactions between officers and Black individuals, their mutual anxieties increase the risk that force will be used unnecessarily. If the civilian displays some of the nonverbal behaviors associated with anxiety such as fidgeting and lack of eye contact, officers may interpret these behaviors as indicative of dangerousness, thereby confirming their concern that the individual poses a threat. Indeed, police are trained to view these behaviors as suspicious and potentially dangerous.<sup>41</sup> Additionally, officers might also exhibit identical nonverbal behaviors, which will likely confirm the civilian's worry that the officer poses a threat to their well-being.

Complicating matters is that officers are trained to respond to potentially dangerous situations by enacting command presence, which requires them to establish dominance and to take immediate control of a situation.<sup>42</sup> The theory is that by doing so, a possibly dangerous individual is more likely to yield to the officer's authority.<sup>43</sup> However, racial anxiety may cause officers to enact command presence when it is unnecessary because the civilian does not actually pose a threat. The officer's actions will likely distress the civilian, who already fears that the officer will use force against him or her.<sup>44</sup>

Furthermore, research demonstrates that an officer's behavior can influence the way individuals behave.<sup>45</sup> Psychologists refer to this as the self-fulfilling prophecy or behavioral confirmation effect. Thus, when officers exhibit signs of racial anxiety or when they enact command presence, civilians may mirror their behaviors. However, since officers are likely unaware of the role that their behaviors played in generating the individual's behaviors, officers may interpret the person's actions as confirmation that the individual poses a threat.

Even Black citizens' attempts to exercise their rights might be taken as a sign of danger by officers under the stress of racial anxiety. Under normal circumstances, officers often interpret civilian questioning of their behaviors as a sign of danger. For instance, merely asking officers about the reasons for a stop, sometimes known as "contempt of cop,"<sup>46</sup> often leads to uses of force. There are a number of reasons for this. First, officers are trained to believe that their safety is dependent upon them maintaining physical and psychological control of a situation.<sup>47</sup> Thus, when a civilian questions their actions, officers often interpret this as a challenge to their authority constituting an immediate threat to their safety. This is highly problematic since contesting the

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<sup>41</sup> Previous research on police interrogations suggests that aggressive police behavior and/or behavior that assumes the guilt of an individual is likely to produce suspect behavior that appears more suspicious. Carole Hill, Amina Memon & Peter McGeorge, *The Role of Confirmation Bias in Suspect Interviews: A Systematic Evaluation*, 13 LEGAL & CRIMINOLOGICAL PSYCHOL. 357 (2008); Saul M. Kassin, Christine C. Goldstein & Kenneth Savitsky, *Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt*, 27 L. & HUM. BEH. 187 (2003); Andrew E. Taslitz, *Wrongly Accused: Is Race a Factor in Convicting the Innocent?* 4 OHIO ST. J. CRIM. L. 121 (2006).

<sup>42</sup> Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 674 (2009); see also Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292 (2008); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2015).

<sup>43</sup> Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support to Policing*, 37 L. & SOC'Y REV. 513, 520 (2003).

<sup>44</sup> This technique might also backfire and create resistance where none would have occurred otherwise. Gau & Brunson, *supra* note 33, at 255–79; Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361, 369 (2001).

<sup>45</sup> Gau & Brunson, *supra* note 33, at 269–70.

<sup>46</sup> REGINA G. LAWRENCE, *THE POLITICS OF FORCE* 48 (2000); CHRISTY E. LOPEZ, *DISORDERLY (MIS)CONDUCT: THE PROBLEM WITH "CONTEMPT OF COP" ARRESTS*, AMERICAN CONSTITUTION SOCIETY OF LAW AND POLICY ISSUE BRIEF (2010).

<sup>47</sup> Alpert, Dunham & MacDonald, *supra* note 37; see also Cooper, *supra* note 42.

police is sometimes the only way to protect one's constitutional rights.<sup>48</sup> As Eric Miller observes, "much of the Court's Fourth Amendment doctrine ... requires civilians to resist the police if they are to assert their rights."<sup>49</sup> Yet, contesting the police even in ways required by legal doctrine can lead to violence. While all of these issues can arise during the course of any police-citizen interaction, the likelihood of violence is exacerbated when officers are already experiencing heightened concern because of racial anxiety.

Racial anxiety might also lead individuals to flee from police out of fear that an officer's racism will lead to force.<sup>50</sup> However, officers often find this behavior suspicious and typically give chase, even when they do not have any reason, besides flight, to believe that the individual is engaged in criminal behavior. Problematically, evidence reveals that officers engaged in foot pursuits are more likely to use force against Black individuals once these individuals are caught.<sup>51</sup>

Thus far, the discussion in this chapter focuses on officers who are neither consciously racist nor attempting to goad civilians into reactions that justify uses of force. It is certainly true that there are officers who purposely bully individuals to provoke them into fleeing or resisting. Furthermore, the intentional use of command presence can incite reactions from civilians that officers can use to justify force.<sup>52</sup> While the existence of bad apples on both sides of an interaction is important to acknowledge, the point of this chapter is that as a result of racial anxiety, Black individuals face heightened risks of being the victims of police force, regardless of whether they actually pose a threat and even when officers are consciously egalitarian. In fact, recent evidence in social psychology suggests that racial anxiety on the part of the police is a better predictor of violence against Black men than either conscious or unconscious racial bias. The next section discusses some implications of racial anxiety for policymakers.

## II. IMPLICATIONS: TRANSFORMING POLICING

The primary point of this chapter is to introduce policymakers to the phenomenon of racial anxiety and to explain how it contributes to troubling racial disparities in police uses of force. This section will highlight a few implications of racial anxiety for policing policy. It is neither meant to be comprehensive nor to replace the many important proposals that have been made to address police uses of force in general.<sup>53</sup> However, unless interventions also contend specifically with

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<sup>48</sup> Eric J. Miller, *Encountering Resistance: Non-Compliance, Non-Cooperation and Procedural Justice*, 2016 U. CHI. LEGAL F. 295 (2016).

<sup>49</sup> Eric J. Miller, *Rendering the Community, and the Constitution, Incomprehensible Through Police Training*, JOTWELL (Nov. 10, 2016), <http://crim.jotwell.com/rendering-the-community-and-the-constitution-incomprehensible-through-police-training/> (reviewing Nancy C. Marcus, *Out of Breath and Down to the Wire: A Call for Constitution-Focused Police Reform*, 59 HOWARD L.J. 5 (2015)).

<sup>50</sup> See generally Tracey L. Meares & Bernard E. Harcourt, *Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 J. CRIM. L. & CRIMINOLOGY 733 (2000).

<sup>51</sup> 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.>; see generally, Marcus, *supra* note 5.

<sup>52</sup> U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 15 (2017), <https://www.justice.gov/opa/file/925846/download>; Cooper, *supra* note 42; Futterman, Hunt & Kalven, *supra* note 31, at 133–34 (describing the practice).

<sup>53</sup> For a description of some of the state and local reforms see Associated Press, *Police Protests, Ferguson Spurred 40 New State Measures; Activists Want More*, WCPO CINCINNATI (Aug. 2, 2015), <http://www.wcpo.com/news/crime/policeprotestsferguson-spurred-40-new-state-measures-activists-want-more>; see also Nancy C. Marcus, *From Edward to Eric Garner and Beyond: The Importance of Constitutional Limitations on Lethal Use of Force in Police Reform*, 12 DUKE J. CONST. L. & PUB. POL'Y 53, 102 (2016); *Analysis*, POLICE USE FORCE PROJECT <http://useofforceproject.org/#analysis> (last visited Mar. 19, 2017); *Limit Use of Force*, CAMPAIGN ZERO, <https://www.joincampaignzero.org/force>; Guiding Principles, at 15–16, 72–73, 118.

racial anxiety, racial disparities in police uses of force will continue, even as officers improve their ability to limit uses of force more generally. Then, these disparities will influence perceptions of police racism, creating a feedback loop that sustains racialized violence.

Consideration of racial anxiety reveals that reducing unwarranted racial disparities in uses of force will require more than simply ridding departments of consciously bigoted officers and exhorting people of color to avoid criminal behavior since racial anxiety influences behaviors and judgments even when officers are consciously egalitarian and civilians do not pose a threat. The most important way to reduce racial anxiety is to increase police-community trust and understanding. Improved police-community relationships will alleviate officer concerns that they will be judged to be racist and community concerns that they will be victimized by officer racism. The question is how can policymakers nurture police-community trust and understanding.

Community policing is often touted as a mechanism for promoting better relationships between communities of color and the police. In its ideal formulation, it shifts the focus of law enforcement from attempting to reduce crime by making arrests as a first impulse to working with members of communities to increase safety while building legitimacy and trust.

The problem is that the concept of community policing has become so vague as to be almost meaningless. Most police departments represent that they are engaged in community policing.<sup>54</sup> However, some use the philosophy to justify the highly discretionary, investigatory and aggressive policing tactics that helped foster community distrust and suspicion of the police in the first place.<sup>55</sup> These tactics include conducting stop-and-frisks, obtaining personal information from individuals in order to complete field-investigation cards, and bringing drug dogs to traffic stops, to name a few. These practices are borne disproportionately by people of color, contribute to beliefs about police racism, and foster negative police-community interactions.

Policymakers, including legislators, foundations, and others interested in police reform, can help facilitate improved police-community relationships by providing financial and other support to programs and initiatives that transform how policing is conducted. However, care is required when evaluating so-called community policing programs in order to ensure that they will actually promote better police-community relationships. Otherwise, simply putting police officers in closer contact with community members can increase negative contacts, surveillance, and control, thereby fostering distrust and racial anxiety.<sup>56</sup>

### **A. EXAMPLES OF TRANSFORMATIVE POLICING**

It is important to be careful and precise when evaluating policing innovations that will increase police and community interactions. Thus, this section gives examples of departments that successfully transformed relationships between the police and communities by building mutual trust and understanding while simultaneously increasing community safety. The first example describes a unit within a large, urban police department, while the second and third examples involve transforming the entire department.

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<sup>54</sup> Wesley G. Skogan, *The Promise of Community Policing*, in POLICE INNOVATION: CONTRASTING PERSPECTIVES 27, 27 (David Weisburd & Anthony A. Braga eds., 2006).

<sup>55</sup> MICHAEL D. REISIG & ROBERT J. KANE, THE OXFORD HANDBOOK OF POLICE AND POLICING 151 (2014); see DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 40–42 (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download>.

<sup>56</sup> James Hawdon et al., *Policing Tactics and Perceptions of Police Legitimacy*, 6 POLICE Q. 469, 471 (2003).

## 1. Los Angeles Police Department: The community safety partnership

One example of transformative policing is the Los Angeles Police Department's Community Safety Partnership unit (CSP). The CSP was created in 2011 in conjunction with the Los Angeles Housing Authority. The unit, consisting of 45 officers, operates in some of the most dangerous housing communities.<sup>57</sup> Its mission is "to foster relationships with the residents ... to start and support community and youth programs, address quality of life issues and develop programs to address and reduce violent crimes."<sup>58</sup>

Unlike the ubiquitous practice of rewarding officers based on the numbers of arrests made, field-investigation cards completed, or summonses written, officers in this unit are "mandated ... to take a problem-solving approach to community safety concerns rather than a suppression-only (e.g. arrests) approach."<sup>59</sup> Incentives are designed "to reward officer behaviors that traditional metrics of enforcement practice do not capture (e.g. diversion of youth offenders, ensuring safe passage for students traveling to school, partnering with community stakeholders to solve safety issues)."<sup>60</sup> The focus is on increasing safety and security through relationship-building rather than through traditional strategies associated with zero-tolerance and broken-windows policing, strategies that have significantly damaged police-community relationships in indigent communities of color.

The CSP has been highly successful. Officers in the unit have earned the trust of many community members by providing social services to residents as well as by participating in neighborhood activities.<sup>61</sup> Their accomplishments include creating an alternative youth program in lieu of arrest and providing referrals to drug and mental-health programs.<sup>62</sup> Because officers are deployed to neighborhoods for five-year terms,<sup>63</sup> community members and police officers have the time to develop relationships of trust and understanding. Residents learn that these officers are "committed to the overall health and well-being of the community, not just the reduction of crime statistics through suppression-only police tactics."<sup>64</sup> For instance, residents in the Watts housing development report that they "feel safer and know and trust police officers who have become a part of the community's day-to-day landscape."<sup>65</sup>

This type of relationship-building reduces the racial anxiety that facilitates racial violence. It has also made the neighborhoods safer. There has been an over 50% reduction in violent crime, decreases in gang membership and activity, and vast reductions in homicide rates in some housing developments.<sup>66</sup> For instance, Jordan Downs, "one of the most violent housing development[s]

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<sup>57</sup> CONSTANCE RICE & SUSAN K. LEE, RELATIONSHIP-BASED POLICING: ACHIEVING SAFETY IN WATTS, A REPORT FOR THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 4 (2015), <http://advancementprojectca.org/wp/wp-content/uploads/2015/09/imce/President's%20Task%20Force%20CSP%20Policy%20Brief%20FINAL%2002-27-15.pdf>; see also Charlie Beck & Connie Rice, *How Community Policing Can Work*, N.Y. TIMES (Aug. 12, 2016), [http://www.nytimes.com/2016/08/12/opinion/how-community-policing-can-work.html?emc=eta1&\\_r=0](http://www.nytimes.com/2016/08/12/opinion/how-community-policing-can-work.html?emc=eta1&_r=0).

<sup>58</sup> LAPD's Community Safety Partnership Program NR15021SF, L.A. POLICE DEP'T (Jan. 22, 2015), [http://www.lapdonline.org/newsroom/news\\_view/57887](http://www.lapdonline.org/newsroom/news_view/57887) [[hereinafter LAPD Partnership Program](#)]; see also Beck & Rice, *supra* note 57.

<sup>59</sup> Beck & Rice, *supra* note 57.

<sup>60</sup> *Id.*

<sup>61</sup> [LAPD Partnership Program](#), *supra* note 58.

<sup>62</sup> *Id.*

<sup>63</sup> RICE & LEE, *supra* note 57, at 5.

<sup>64</sup> *Id.* at 6–7.

<sup>65</sup> *Id.*

<sup>66</sup> *Community Safety Partnership: Collaboration for Safer Neighborhoods*, URB. PEACE INSTITUTE, <http://www.urbanpeaceinstitute.org/new-page-1/> (last visited Mar. 19, 2017).

and the home of the notorious Grape Street Crips has gone three years without a single homicide.”<sup>67</sup> CSP is only one example of the possibilities of transforming relationships between the police and community members while also increasing safety and reducing recidivism. As discussed next, another similar transformation was accomplished by the Richmond, California, police department under the leadership of Chief Chris Magnus.<sup>68</sup>

## **2. Richmond, California, Police Department**

Richmond is a city with a population of approximately 110,000 people, who are predominantly Black and Latino.<sup>69</sup> The city has the reputation of being one of the most violent in the nation, and community members have historically had bad relationships with the police.<sup>70</sup> After joining the department in 2005, Chief Magnus eliminated the “street teams” unit that engaged in aggressive proactive policing practices and, instead, made long-term assignments of officers to neighborhoods where they were asked to walk the streets and engage with community members in positive ways rather than simply stopping and searching people.<sup>71</sup> This long-term engagement allowed officers and individuals to become familiar with each other and to build positive relationships.

The chief also changed the incentives of the department to encourage problem-solving instead of arrests.<sup>72</sup> Officers were evaluated and rewarded based on whether they engaged with community members and built relationships, such as by speaking to students, visiting churches, attending community meetings, and meeting people at local businesses.<sup>73</sup> They were also rewarded when they were able to resolve situations without an arrest.<sup>74</sup> Additionally, when arrests were made, the department “prioritized those that flow from solving violent crime, which tend to require more investigative police work and relationship-building than simply rounding up a bunch of teenagers on low-level drug offenses.”<sup>75</sup> By the time Chief Magnus left the department in 2015, complaints against the police were lower than they had ever been and officers had not killed anyone in more than eight years.<sup>76</sup> Furthermore, “[c]ommunity trust in police had dramatically increased [and] Richmond police had never been more effective. Both violent and property crime were at historic lows. And there were fewer unsolved murders.”<sup>77</sup>

## **3. Stockton, California, Police Department**

Stockton is a community of approximately 300,000 people.<sup>78</sup> Hispanics or Latinos make up approximately 40% of the population, followed by Whites (23%), Asians (21.5%) and Blacks (12%).<sup>79</sup> The Stockton Police Department is one of six departments participating in the U.S.

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<sup>67</sup> RICE & LEE, *supra* note 59, at 5.

<sup>68</sup> Futterman, Hunt & Kalven, *supra* note 31, at 203–06 (2016).

<sup>69</sup> *Id.* at 204.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 204–05 (citations omitted).

<sup>72</sup> *Id.* at 205.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 206.

<sup>77</sup> *Id.* at 206 (citations omitted).

<sup>78</sup> Stockton Strategic Plan, at 10.

<sup>79</sup> *Id.*

Department of Justice’s National Initiative for Building Community Trust and Justice.<sup>80</sup> Police Chief Eric Jones, who took over the department in 2012, recognizes that efforts to build trust and understanding with the community, in conjunction with reducing crime, requires organizational change, something he refers to as Principled Policing.<sup>81</sup> His mission is “organizational transformation” rather than simply engaging in a new policing strategy.<sup>82</sup>

While training is an important component, he believes it is insufficient. Rather, in addition to training, his department is incorporating principles of procedural justice and fair and impartial policing into its “crime fighting tactics and strategies,” its “policies and procedures,” and its “performance management and crime analysis functions.”<sup>83</sup> Furthermore, officers are evaluated on their application of procedural justice principles when engaging with community members. Showing “exceptional progress” in community-building efforts is a prerequisite to obtaining promotions and special assignments.<sup>84</sup> The department also honors those who have engaged in positive community interactions and actions that build trust and bring pride to the badge.<sup>85</sup>

The department is also committed to reconciliation with the community, which involves engaging in conversations with community members in order “to address historical tensions, grievances, and misconceptions with the ultimate goal of resetting relationships.”<sup>86</sup> In a project called “Courageous Conversations,” local schools, churches, and community centers are used to facilitate “candid dialogue” on “issues such as racial prejudice and police community relations.”<sup>87</sup> Additionally, the department does not shy away from “acknowledging and coming to terms with the historical perspectives minority groups and immigrant communities have on policing.”<sup>88</sup> Rather, in addition to holding community meetings, Chief Jones personally takes part in “listening tours” in which he sits in people’s homes, offices, or wherever it is convenient for members of the city’s most vulnerable community members to meet. He listens as they recount their perceptions of racially biased policing as well as other concerns.<sup>89</sup> Afterwards, he finds ways to address their concerns in department policy.<sup>90</sup>

Finally, the department also has a Strategic Community Officer program, which assigns officers to communities that are experiencing high levels of crime.<sup>91</sup> These officers embed themselves in the community and develop relationships in order to help solve community problems.<sup>92</sup> All of these actions have transformed relationships between the community and the department, as well as reduced crime.<sup>93</sup>

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<sup>80</sup> Information available at *Stockton Police Chief: Listening to our Community in a New Way*, NAT’L INITIATIVE FOR BUILDING COMMUNITY TRUST & JUST., <https://trustandjustice.org> (last visited Mar. 19, 2017).

<sup>81</sup> Eric Jones, *Principled Policing*, CAL. POLICE CHIEF 40 (Spring 2016), <https://uploads.trustandjustice.org/misc/ChiefJonesPrincipledArticle.pdf>.

<sup>82</sup> Strategic Plan, at 10.

<sup>83</sup> Jones, *supra* note 81, at 40–41.

<sup>84</sup> Strategic Plan, at 9.

<sup>85</sup> Conversation between the author and Chief Jones on March 8, 2017. See also Strategic Plan, at 9.

<sup>86</sup> Strategic Plan, at 9.

<sup>87</sup> Strategic Plan, at 9.

<sup>88</sup> Eric Jones, *Principled Policing*, CAL. POLICE CHIEF 40 (Spring 2016), <https://uploads.trustandjustice.org/misc/ChiefJonesPrincipledArticle.pdf>.

<sup>89</sup> Eric Jones & Kurt Wilson, *Listening in a New Way*, RECORDNET (Mar. 4, 2017), <http://www.recordnet.com/opinion/20170304/listening-in-new-way>.

<sup>90</sup> *Id.*

<sup>91</sup> Strategic Plan, at 10.

<sup>92</sup> Strategic Plan, at 10.

<sup>93</sup> *Id.*

## RECOMMENDATIONS

Nurturing police-community trust and understanding through relationship-building can help reduce unnecessary uses of force caused by racial anxiety. The three programs discussed in the previous section helped transform relationships between the police and community members while also increasing safety, reducing recidivism, and decreasing uses of force. Next, I identify some of the elements that made these programs successful to help policymakers make decisions about what types of programs, legislation, and initiatives to support through funding and other means.

**1. Long-term engagement.** Racial anxiety is more likely to exist when officers and community members are strangers to each other since this increases the risk that they will treat each other on the basis of stereotypes. Hence, policymakers should support programs that promote long-term engagement of the same officers in neighborhoods. Doing so will give both community members and officers time to become familiar with each other and to develop mutual trust. As this occurs, officers will be less likely to fear that they will be incorrectly perceived as racist, and community members will be less worried about being the victims of police racism.

**2. Incentives.** Another critical component of transformative policing is aligning officer incentives with the goals of increasing trust and positive engagements with the community. If departments continue to reward officers based upon the number of stop-and-frisks conducted, arrests made, field-investigation cards completed,<sup>94</sup> and other practices that increase negative contacts, then officers will continue to engage in them, and it will be difficult to build trust with neighborhood residents. These are the very practices that helped reduce police legitimacy in these neighborhoods in the first place. Even if officers attend to procedural justice concerns during these interactions by treating individuals respectfully, explaining the reasons for their actions, and listening to what civilians have to say,<sup>95</sup> there is evidence that people of color interpret interactions based on highly discretionary proactive policing practices as illegitimate, regardless of how the police treat them.<sup>96</sup> Thus, building trust involves more than attending to procedural justice concerns during an individual interaction.

Changing the metrics for evaluating officer performance to encourage officers to behave in ways that support building trust and understanding can also promote changes in police culture by elevating the importance of empathy and connections to community that are historically lacking in traditional policing.<sup>97</sup> If officers are rewarded for these skills, then individuals not interested in

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<sup>94</sup> Officer success continues to be measured largely by the number of arrests made and how quickly officers respond to calls for service. George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, in COMMUNITY POLICING: CLASSICAL READINGS 105–06 (Willard M. Oliver ed., 2000); GRAHAM A. RAYMAN, THE NYPD TAPES: A SHOCKING STORY OF COPS, COVER-UPS, AND COURAGE 43 (2013) (noting that in 2005, the NYPD patrol union challenged “the department’s obsession with numbers” in a case involving an officer employed by the 75th precinct who received a negative evaluation allegedly based on his failure to meet the unofficial quota); Adeshina Emmanuel, *How Union Contracts Shield Police Departments from DOJ Reforms*, THESE TIMES (June 21, 2016), <http://inthesetimes.com/features/police-killings-union-contracts.html> (noting that the NJ police department union opposed orders from management to meet quotas which pressured officers “to conduct baseless stops and strained relations with community members.”).

<sup>95</sup> TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361 (2001).

<sup>96</sup> CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP (2014).

<sup>97</sup> Susan L. Miller & Emily Bonistall, *Gender and Policing: Critical Issues and Analysis*, in ROUTLEDGE HANDBOOK

engaging in this type of policing will no longer be attracted to the field. In sum, creating evaluative mechanisms to support policing practices that value creativity and innovation over aggression and domination will disrupt stereotypes of police racism and reduce the cycle of aggression that leads to racially disparate and unnecessary uses of force.

In addition to supporting the use of metrics that reinforce behaviors associated with transformative policing, policymakers should also support efforts to develop these metrics and to test their efficacy. For instance, policymakers could fund collaborations between researchers and police departments to create new evaluation methods to determine whether they work to encourage positive community engagement.

**3. Acknowledging the history of racialized policing.** Building trust between the police and communities of color will require educating officers about the racialized history of policing. Officers may be unaware of this history or not understand its continued relevance within communities. Hence, this history can help officers understand why community members resent, distrust and fear them, and why civilians might flee from police even when they are not engaged in criminal activity. As Chief Jones of the Stockton Police Department recognizes, “There was a time where police were ... dispatched to keep lynchings civil. The badge we wear still does carry the burden, and we need to at least understand why those issues are still deep-rooted in a lot of our communities.”<sup>98</sup>

This programming should include particular emphasis on local incidents of racialized policing. For instance, CSP officers learn about “the history of LAPD relationships with L.A.’s communities of color and the historic enmity rooted in decades of LAPD practices that were overtly racist and oppressive. In short, the lesson is about ‘why does the community hate LAPD?’”<sup>99</sup> This education is important because when officers lack awareness of how their own department’s actions have contributed to current perceptions of the police, community members will find it difficult to trust and respect them.

There are a number of ways policymakers can support this type of educational endeavor. First, they could fund groups with the expertise to conduct this training for officers. For instance, the Advancement Project, a multi-racial civil-rights organization, provided training to CSP officers.

Second, policymakers could fund projects such as the Invisible Institute’s Youth-Police Project.<sup>100</sup> The goal of the project is “building conversations with black teens about how their lives are affected by the character of the police presence in their neighborhoods.”<sup>101</sup> The Project, located in the South Side of Chicago, videos high-school students as they express how aggressive over-policing negatively influences their feelings and beliefs not only about the police but also about their own place in society.<sup>102</sup> Creation of more local projects along these lines can help foster police empathy and understanding about how their actions affect community members. Finally, policymakers could support forums during which community members meet with officers in a

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OF CRITICAL CRIMINOLOGY 319 (Walter S. DeKeseredy & Molly Dragiewicz eds., 2012), <http://site.ebrary.com/lib/uiowa/docDetail.action?docID=10535070>.

<sup>98</sup> Tina Rosenberg, *A Strategy to Build Police-Citizen Trust*, N.Y. TIMES (July 26, 2016), <http://mobile.nytimes.com/2016/07/26/opinion/a-strategy-to-build-police-citizen-trust.html?smid=tw-nytopinion&smtyp=cur&referrer=https://t.co/Ah93GElvSS>.

<sup>99</sup> RICE & LEE *supra* note 57, at 6–7.

<sup>100</sup> Futterman, Hunt & Kalven, *supra* note 32; *see also Youth/Police Project*, INVISIBLE INSTITUTE, <https://invisible.institute/yp/> (last visited Mar. 19, 2017) [hereinafter *Youth/Police Project*].

<sup>101</sup> *Youth/Police Project*, *supra* note 100.

<sup>102</sup> See Futterman, Hunt & Kalven, *supra* note 32, and *Youth/Police Project*, *supra* note 100, for sample video clips.

structured environment to share their experiences of negative police contacts and its effects on their views of the police.

Third, departments can involve community members in some of their trainings. The Stockton Police Department routinely does this. Through this contact, Stockton police officers and civilians have developed a greater understanding of and familiarity with each other.

**4. Accountability.** It will not be possible to build police-community trust without some mechanism for discovering and removing problematic officers from the community. This is important because it takes only one officer to ruin community trust in the police, especially when residents continue to see the same problematic officers patrolling neighborhoods with impunity. Much has already been written about the importance of police accountability and transparency, so I will focus on the code of silence and the need for whistleblower protection. As one scholar writes, “the code of silence is not simply a phenomenon of silence. . . . An officer’s failure to adhere to the code can jeopardize her career, safety, and even her family.”<sup>103</sup> When officers observe other officers act inappropriately, they should be encouraged and protected when they report it. Currently, however, officers who break the code are often not protected.<sup>104</sup> Policymakers should craft legislation to protect police whistleblowers.

**5. Training.** Another hallmark of transformative policing is training officers in the skills they will need to build relationships with community members. Just as officers receive mandatory weapons training, they should also receive training on the skills necessary to facilitate positive interactions.<sup>105</sup> The training must be mandatory. Otherwise, it will send the message that these interpersonal skills are not as important as tactical skills. Developing and honing their ability to engage with people under stressful circumstances without resorting to command presence and aggression as a first response can help prevent situations from unnecessarily escalating, thereby reducing danger to both civilians and officers.

**6. Understanding racial anxiety.** Although building police-public trust is important, officers may be reluctant to interact with members of the community in new ways, especially when, because of racial anxiety, they anticipate negative and uncomfortable interactions. However, there is evidence that it is possible to reduce racial anxiety by teaching people about it, acknowledging its potential to negatively influence interactions, and informing people that choosing to engage in these interactions, even when the thought of doing so is anxiety-provoking, can help reduce racial anxiety in future interactions.<sup>106</sup> Thus, if officers understand that feeling anxious when interacting with members of the community is normal and that choosing to engage with one individual will help to decrease their anxiety in future interactions, they might be more open and willing to interact.

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<sup>103</sup> Futterman, Hunt & Kalven, *supra* note 31 at 184.

<sup>104</sup> Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545, 582–84 (2001); Futterman, Hunt & Kalven, *supra* note 31, 184–86.

<sup>105</sup> Rice & Lee, at 6-7 (noting that the CSP program provided training on conflict resolution, communication skills, among other things).

<sup>106</sup> Jennifer R. Schultz et al., *Reframing Anxiety to Encourage Interracial Interactions*, 4 TRANSLATIONAL ISSUES IN PSYCHOL. SCI. 392, 394 (2015). The instruction they provided stated: “Sometimes people feel anxious about interacting with a person from another race. To reduce this anxiety, they might choose to avoid situations in which a cross-race interaction is likely because avoiding that situation reduces your anxiety. However, research suggests that choosing to put yourself in situations in which you interact with a person from another race actually helps to reduce future feelings of anxiety.” *Id.*

Teaching officers about how racial anxiety can influence their own behaviors and those of civilians can help them understand that fidgeting, lack of eye contact, and fleeing from officers may not necessarily indicate that the civilian is engaged in criminal behavior. Rather, the civilian may be mirroring the officer's nonverbal behaviors, or reacting to their own anxiety that the officer will treat them inappropriately. With this knowledge, officers may understand the wisdom of engaging in more careful and deliberate decision-making by taking more time to gather additional facts instead of acting quickly on their gut instincts.

Consideration of racial anxiety provides support for the Police Executive Research Forum's (PERF) recommendations that in order to reduce unnecessary uses of force, officers should "slow[] situations down; using distance and cover to officers' advantage."<sup>107</sup> This is a departure from the training officers have received for decades which encouraged them to "immediately take control of every situation, to never back up or tactically reposition, and to resolve every matter as quickly as possible."<sup>108</sup> While PERF acknowledges that quick action will be required in certain situations, such as those involving an active shooter, they also recognize that in many instances, communication, tactical repositioning, and other de-escalation techniques can avoid the need to use force in the first place.<sup>109</sup>

**7. Scripts.** Research reveals that scripts, which are specific and detailed guidelines about what to say and do during interactions, can reduce racial anxiety.<sup>110</sup> This explicit guidance about what constitutes unprejudiced behavior can help reduce officer concerns about being perceived as racist.<sup>111</sup> These scripts can include how to begin a conversation, respond to a community member's anger, and answer questions without resorting to dominating force as a first response. Thus, providing officers with scripts and having them role-play how to interact with community members in a variety of circumstances will increase their competence, confidence, and resources to cope with their racial anxiety during interactions with civilians.<sup>112</sup>

## CONCLUSION

Consideration of racial anxiety highlights the necessity of transforming policing to build community-police trust. Without this, concerns about police racism will influence both officers and civilians, resulting in racial disparities in uses of force even when officers are consciously egalitarian and civilians are not engaged in criminal behaviors. Policymakers can aid in this endeavor by supporting programs, initiatives and legislation that will facilitate this transformation.

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<sup>107</sup> *Id.* at 29

<sup>108</sup> Guiding Principles, at 5, 21-22.

<sup>109</sup> *Id.*

<sup>110</sup> Trawalter et al., *supra* note 14; D. R. Avery et al., *supra* note 18, at 1389 (2009).

<sup>111</sup> Trawalter et al., *supra* note 15, at 250.

<sup>112</sup> For more information, see WILLIAM A. GELLER & HANS TOCH, UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE, IN POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE (WILLIAM A. GELLER & HANS TOCH EDS., 1996) 311. See also Guiding Principles, 23-24 (noting that the San Diego police department provides training on emotional intelligence in recognition of the fact that "competent police officers must possess and demonstrate exceptional interpersonal skills").