Fall 2015

Ferguson: Footnote or Transformative Event?

S. David Mitchell

Follow this and additional works at: http://scholarship.law.missouri.edu/mlr

Recommended Citation
Available at: http://scholarship.law.missouri.edu/mlr/vol80/iss4/5

This Conference is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized administrator of University of Missouri School of Law Scholarship Repository.
Ferguson: Footnote or Transformative Event?

S. David Mitchell*

Hands to the Heavens, no man, no weapon
Formed against, yes glory is destined
Every day women and men become legends
Sins that go against our skin become blessings
The movement is a rhythm to us
Freedom is like religion to us
Justice is juxtaposition in us
Justice for all just ain’t specific enough
One son died, his spirit is revisitin’ us
Truant livin’ livin’ in us, resistance is us
That’s why Rosa sat on the bus
That’s why we walk through Ferguson with our hands up
When it go down we woman and man up
They say, “Stay down” and we stand up
Shots, we on the ground, the camera panned up
King pointed to the mountain top and we ran up

* S. David Mitchell is the Associate Dean of Academic Affairs and an Associate Professor of Law at the University of Missouri School of Law. He served as the faculty coordinator of the 2015 Missouri Law Review Symposium, “Policing, Protesting, and Perceptions: A Critical Examination of the Events in Ferguson.”

1. JOHN LEGEND, Glory, on SELMA SOUNDTRACK (Columbia Records 2014) (a collaborative track with rapper Common from the soundtrack of the 2014 film SELMA (Paramount Pictures (2014)).
“Ferguson.” No longer does this name simply represent the geographical boundaries of a city in St. Louis County formed initially by white flight from St. Louis City and that has become increasingly African American over time. It has come to represent so much more.

For some, it symbolizes another U.S. jurisdiction in which an unarmed African American, more often than not young and male, but not exclusive-

2. See Rigel C. Oliveri, Assoc. Dean for Research and Faculty Dev., 2009–2015, Univ. of Mo. Sch. of Law, Panel Presentation at the University of Missouri Law Review Symposium: Policing, Protesting, and Perceptions: A Critical Examination of the Events in Ferguson (Feb. 27, 2015) (discussing housing patterns, housing discrimination, and how Ferguson as a suburb of St. Louis came into existence); see also Rigel C. Oliveri, Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis, 80 MO. L. REV. 1053 (2015). See Tanzina Vega & John Eligon, Deep Tensions Rise to Surface After Ferguson Shooting, N.Y. TIMES (Aug. 16, 2014), http://www.nytimes.com/2014/08/17/us/ferguson-mo-complex-racial-history-runs-deep-most-tensions-have-to-do-police-force.html (discussing the underlying racial tensions that erupted with the death of Michael Brown); Bryan Jack, “A Northern City With Southern Characteristics”: Ferguson And The History Of Race Relations In The St. Louis Region, U.S. STUD. ONLINE (Oct. 1, 2014), http://www.baas.ac.uk/usso/the-ferguson-protests-and-the-racial-environment-of-the-st-louis-region/ (“St. Louis has a long history of racial and economic inequality, exhibited through slavery, de jure, and de facto segregation. Ferguson and other communities in the region are products and producers of this history, and the anger expressed by the African American community go beyond the issue of Michael Brown’s death. There are grievances against the deep-seated systemic inequalities present in greater St. Louis, an area acknowledged as one of the most hypersegregated areas of the country since 1980.”).


ly, was killed by a police officer. For some, it has come to symbolize the repression of peaceful protests that seek to call attention to the loss of African-American life at the hands of police officers. For some, it has come to represent a criminal justice system that is flawed in the manner in which it pursues justice for African-American victims that are killed or harmed by police officers. For some, it symbolizes the lack of consistency in the office.

5. See Evette Dionne, Police Kill Black Women All The Time, Too — We Just Don’t Hear About It, BUSTLE (Dec. 8, 2014), http://www.bustle.com/articles/52433-police-kill-black-women-all-the-time-too-we-just-dont-hear-about-it (discussing the fact that African-American girls and women are also victims of police violence, however, their stories are not as well publicized as the deaths of African-American boys and men: “But one of the largest injustices is how little we collectively discuss the many women of color who are also killed by police. Take Aiyana Jones, 7, who was killed by a Detroit police officer as she slept on her father’s couch. Or Rekia Boyd, 22, whose life ended in Chicago when she was killed by a police officer. Or Yvette Smith, 48, who was unarmed when she was killed by a police officer in Texas. Or Pearlie Smith, 93, who was fatally shot in her home. Or Tarika Wilson, 26, whose one-year-old son was also injured when she was killed by a [sic] Ohio police officer. Or Tyisha Miller, 19, who was killed by a police officer in Los Angeles. Or Kathryn Johnson, 92, who was killed by a police officer in Atlanta. Or Gabriella Nevarez, 22, who was killed by a Sacramento police officer. Or Eleanor Bumpurs, 66, who was killed by a police officer in the Bronx. I could go on and on, but you still probably wouldn’t recognize their names.”).


The Ferguson Police Department’s infringement of individuals’ freedom of speech and right to record has been highlighted in recent months in the context of large-scale public protest. . . . [Ferguson Police Department’s] suppression of speech reflects a police culture that relies on the exercise of police power—however unlawful—to stifle unwelcome criticism. Recording police activity and engaging in public protest are fundamentally democratic enterprises because they provide a check on those “who are granted substantial discretion that may be misused to deprive individuals of their liberties.” . . Ideally, officers would not encounter verbal abuse. Communities would encourage mutual respect, and the police would likewise exhibit respect by treating people with dignity. But, particularly where officers engage in unconstitutional policing, they only exacerbate community opposition by quelling speech.

Id. (quoting Glik v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011)).

7. See Yishai Schwartz, Don’t Blame the Grand Jury for Not Indicting Darren Wilson. Blame the Law, NEW REPUBLIC (Nov. 25, 2014), http://www.newrepublic.com/article/120408/ferguson-grand-jury-didnt-indict-darren-wilson-good-legal-reasons (arguing that the lack of an indictment is attributable to the legal system: “[T]he substantive issues raised by this case [State v. Darren Wilson] have been buried under an avalanche of vitriol directed against the grand jury, McCulloch, and Wilson—criticism that misunderstands the criminal justice system, and which obscures the deeper legal and structural injustices that ought to be the focus of our attention. For months, most observers have realized that given the law and evidence, con-
of the prosecuting attorney by failing to recommend charges to the grand jury, and by providing an overwhelming amount of evidence through which the grand jury had to sift through to determine whether the probable cause standard had been satisfied. For some, it represents the poor planning of local officials who elected to announce the no bill on an indictment at night without regard for the potential result of violence, even though citizens had asked that the decision be made during the day. For some, it sparked discussions about the militarization of local law enforcement agencies and about economic policing. From the events in Ferguson, a new language of

victing Wilson would be unlikely. Nevertheless, many expected—and demanded—an indictment as a potent symbol that a black victim’s blood is no less valuable than a white one’s. Monday night’s decision therefore feels like a monumental betrayal.


9. Id.

10. Monica Davey & Julie Bosman, Protests Flare After Ferguson Police Officer Is Not Indicted, N.Y. TIMES (Nov. 24, 2014), http://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html (“[M]any . . . questioned why the authorities would announce the decision in the evening, rather than waiting for daylight hours. Furious, sometimes violent, demonstrations and tense clashes with the police took place late into the night for several weeks in August, and some law enforcement officers had urged a daytime announcement. Over a period of weeks, many leaders here had suggested that a Sunday morning announcement would be best, but the grand jury, which had been meeting on the case since Aug. 20, finished its work on Monday. Asked about the timing, Mr. Nixon said it had been the choice of Mr. McCulloch.”).

11. See Jake Grovum, Can States Slow the Flow of Military Equipment to Police?, PEW CHARITABLE TRUSTS (Mar. 24, 2015), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/3/24/can-states-slow-the-flow-of-military-equipment-to-police (discussing the acquisition of military equipment by police: “[Militarization of police has] been ongoing for more than a decade, but rarely grabbed the nation’s attention until civil unrest erupted in Ferguson, Missouri, last August after the killing of Michael Brown, an unarmed black teenager shot by a white police officer.”).

protest and resistance was born. The events gave voice to a new generation of protesters under the banner of slogans and hashtags such as “Hands Up! Don’t Shoot!” and “#Black Lives Matter.” Ferguson has become a part of the cultural and popular lexicon referenced in popular song. And yet, the reactions of “some” are but one perspective when Ferguson is mentioned. For others, there is a different and altogether contrary response.

For others, Ferguson represents a rush to judgment to convict a police officer who reasonably feared for his life. For others, it was a situation where the use of force by the police officer was not excessive but was justi-

13. See Jonathan Constante, Creator Of ‘Hands Up, Don’t Shoot!’ Slogan Lands Government Job, OPPOSING VIEWS (Dec. 11, 2014), http://www.opposingviews.com/i/society/creator-hands-dont-shoot-slogan-lands-government-job (“When the media asked Johnson for his account of the encounter between Wilson and Brown, he told them that Brown was shot from behind and then shot again while surrendering with his hands up. This is when he coined the popular ‘Hands Up, Don’t Shoot!’ slogan seen in many of the Ferguson demonstrations around the country.”). But see Jonathan Capehart, ‘Hands Up, Don’t Shoot’ Was Built On a Lie, WASH. POST (Mar. 16, 2015), http://www.washingtonpost.com/blogs/post-partisan/wp/2015/03/16/lesson-learned-from-the-shooting-of-michael-brown/ (stating that the slogan was founded upon a lie). And yet, the poignancy of the slogan for the lack of mistrust between African Americans and the police is still relevant.


15. See LEGEND, supra note 1.

fied because of the perceived threat to his safety.\textsuperscript{17} For others, it symbolizes the lawlessness of looters who violated the rule of law, engaging in conduct that endangered lives and resulted in the destruction of property.\textsuperscript{18} For others, it indicates misplaced sympathy and empathy for an alleged criminal who attacked a police officer.\textsuperscript{19} For others, it represents the danger that law enforcement faces when trying to respect the rights of protesters and remain safe in an unsettling and dangerous combination of events.\textsuperscript{20} And still, for others, it has been invoked to distinguish events in other jurisdictions from the actual shooting itself to the response of law enforcement and local authorities to such events.\textsuperscript{21} Because Ferguson represents so much more than a

\begin{footnotes}

\footnote{18. \textit{See} Ron Christie, \textit{It’s Time to Hold Protesters Accountable}, DAILY BEAST (Dec. 4, 2014, 5:58 AM), http://www.thedailybeast.com/articles/2014/12/04/it-s-time-to-hold-protesters-accountable.html (“The eyes of Lady Justice are intentionally covered to provide equal treatment under the law for all. Justice should not be selective to fit a political narrative when the facts and evidence prove otherwise. Those advocating justice should first obey the rule of law themselves. Burning, rioting, and looting are disgraceful—particularly when done by those seeking to aggrieve a racial affront when evidence indicates race had nothing to do with Brown’s tragic death.”).}

\footnote{19. \textit{Compare} Julia Ioffe, \textit{White St. Louis Has Some Awful Things to Say About Ferguson}, NEW REPUBLIC (Aug. 15, 2014), http://www.newrepublic.com/article/119102/what-white-st-louis-thinks-about-ferguson (The statements of several white residents of St. Louis who declined to identify themselves revealed their belief that Michael Brown had a criminal record: “‘The kid wasn’t really innocent,’ chimed in a woman . . . (they all declined to give their names). ‘He was struggling with the cop, and he’s got a rap sheet already, so he’s not that innocent.’ (While the first point is in dispute, the second isn’t: The police have said that Michael Brown had no criminal record.”), with Redditt Hudson, \textit{I’m a Black Ex-cop, and This is the Real Truth About Race and Policing}, VOX (May 28, 2015), http://www.vox.com/2015/5/28/8661977/race-police-officer (discussing policing from the perspective of a former police officer and offering five points for the public to know and understand about police departments). Redditt Hudson was also one of the participants on the Policing panel at the Symposium. Redditt Hudson, NAACP, Panel Presentation at the University of Missouri Law Review Symposium: Policing, Protesting, and Perceptions: A Critical Examination of the Events in Ferguson (Feb. 27, 2015).}

\footnote{20. \textit{See} Sunil Dutta, \textit{Hey Ferguson Protesters: Police Brutality is Not the Problem}, WASH. POST (Dec. 30, 2014), http://www.washingtonpost.com/posteverything/wp/2014/12/30/hey-ferguson-protesters-police-brutality-is-not-the-problem/ (“Officers have a unique and difficult job. Even when cops show perfect judgment, use of force is ugly. In the worst moments, when human lives are taken because officers must shoot, the ugliness is amplified and tragic. Let’s build neighborhoods where cops are needed less. Only then will we cut down on violence engendered during police-community interactions and allegations of police brutality.”).}

FOOTNOTE OR TRANSFORMATIVE EVENT?

geographical location on a map, it was selected as the topic of the 2015 Missouri Law Review Symposium, “Policing, Protesting and Perceptions: A Critical Examination of the Events in Ferguson.”

The purpose and goal of the Symposium was to continue the dialogue of the many issues that surfaced with respect to Ferguson and to take a critical look at the aftermath of the tragic event and the civil unrest that followed. Each panel on February 27, 2015, along with the Works-in-Progress Conference the preceding day and the Student Writing Competition, was designed to consider one of the many aspects of the complex issues surrounding the events in Ferguson. At the end of the Symposium and over a year later, there remains a question to be answered: What will be the impact of Ferguson? Or, simply, will Ferguson be a footnote or a transformative event?

22. See Appendix I, infra p. 959.

II. A Footnote or a Transformative Event?

In considering whether Ferguson is a footnote or a transformative event, it is necessary to begin with the triggering event.

A. The Tragic Event and the Aftermath

On Saturday, August 9, 2014, Michael Brown, an unarmed black teenager, was shot and killed by Darren Wilson, a white police officer, in Ferguson, Missouri, a suburb of St. Louis. The circumstances of Michael Brown’s death were disputed. Earlier reports indicated that Wilson initially approached Brown for jaywalking, and the interaction escalated into an altercation. Ferguson police state that Brown was shot while leaning into Wilson’s car and struggling for the officer’s gun. Some witnesses maintained that Brown’s hands were raised, indicating surrender, when Wilson fired the fatal shots.24

The killing resulted in a series of protests throughout the community, both peaceful and violent.25 In addition to outrage over Brown’s death, local and county police were widely criticized for a forceful and militarized response to the protests, including the use of armored vehicles, smoke canisters, and tear gas to dispel the crowds.26

With the ongoing investigation, Prosecuting Attorney Robert P. McCullough, in what many characterized as an unusual move,27 provided the grand jurors with an unprecedented amount of evidence to sift through during the process. Moreover, the prosecuting attorney did not recommend any

27. David A. Lieb, Ferguson Grand Jury Unusual in Many Ways, YAHOO NEWS (Nov. 22, 2014, 12:45 PM), http://news.yahoo.com/ferguson-grand-jury-unsual-many-ways-170714950.html (“Not much is normal about the Missouri grand jury responsible for deciding whether to charge a suburban St. Louis police officer for fatally shooting Michael Brown. Not the length of deliberations, not the manner in which it has heard evidence, not the way in which its work could be made public, then again, the case itself is unusual.”). But see Monica Davey, St. Louis County Prosecutor Says Actions on Ferguson Were Correct, N.Y. TIMES (Dec. 19, 2014), http://www.nytimes.com/2014/12/20/us/st-louis-county-prosecutor-says-actions-on-ferguson-were-correct.html (McCullough states that his actions regarding the grand jury process in the case were correct).
charges. Furthermore, in another extraordinary turn of events, the defendant, Darren Wilson, elected to testify before the grand jury. Having received a wealth of information and no direct guidance from the prosecuting attorney, the grand jury returned a no bill of indictment for Darren Wilson. The grand jury found that the evidence, as presented by the State, failed to satisfy the probable cause standard to issue an indictment.

Following Michael Brown’s death, and concurrently with the State’s investigation, the Federal Bureau of Investigation and the Civil Rights Division of the U.S. Department of Justice (“DOJ”) launched a criminal investigation into alleged civil rights violations surrounding the shooting. On September 4, 2014, after nearly a month of protests and heightened police responses, U.S. Attorney General Eric Holder announced that he would launch a separate investigation into the conduct of the Ferguson, Missouri, and St. Louis County police departments. The investigation reviewed complaints involving the police and how the department operated. During Attorney General Holder’s press conference, he cited an overwhelming amount of mistrust between the Ferguson community and law enforcement officials, as well as the lack of diversity on the police force. The City of Ferguson, a majority African-American suburb, has only three African-American officers out of fifty-

29. See id.
30. See id.
34. See id.
36. According to the U.S. Census Bureau, the racial breakdown of the residents of the City of Ferguson is as follows: African Americans make up a little more than sixty-seven percent (67.4%); whites are a little more than twenty-nine percent (29.3%); and all other races are less than two percent (2%). See Ferguson (city),
three members of the department. At the conclusion of the investigation, the DOJ issued a scathing report criticizing the Ferguson Police Department and the municipal court system in Ferguson, as well as provided recommendations for reform. The question, however, is whether the report and the responses to the unrest will result in profound changes and lessen the mistrust between citizens and police or will merely be ignored.

B. Ferguson – A Footnote?

From the outset, it is important to state unequivocally that a discussion of whether Ferguson will be relegated to a footnote in history does not trivialize the fact that Michael Brown needlessly lost his life. If Ferguson is relegated to a footnote in history, then it is important to examine the reasons why it would be regarded in that way.

The first reason, and one which has been remarked upon repeatedly since Michael Brown’s death, is the number of African Americans that have either been killed, injured, or subjected to excessive use of force by police. And, as one report has indicated, many of those have been unarmed. Some of these events have garnered similar high-profile attention as that of Michael Brown’s death, such as Eric Garner in Staten Island, Tamir Rice in Cleveland, Ohio, or Samuel DuBose of Cincinnati, Ohio. The reality, however,
is that the death of African-American males by police officers, and the readily overlooked death of African-American females by police officers as well, is neither unique nor uncommon.\textsuperscript{45} Furthermore, the death of African Americans in this way is also not a recent phenomenon. And while the empirical data fails to provide an exact accounting, the stories and the numbers can no longer be discounted as either anecdotal or anomalies. Ferguson is merely the next chapter of an old story.\textsuperscript{46} And so, because it appears that nothing has changed, it leaves the impression that Ferguson too will be forgotten. Once these investigations have concluded and the media has moved on to other topics, Ferguson, as a symbol for so many things, will fade from the public consciousness.\textsuperscript{47} However, there is a belief that Ferguson is the genesis of a new civil rights era or a re-genesis of the civil rights movement as the façade of a post-racial society is dismantled.\textsuperscript{48} And yet, Ferguson may be more than

\textsuperscript{44} See Jacob Koffler, \textit{University of Cincinnati Cop Indicted in Killing of Unarmed Black Man}, \textit{TIME MAG.} (July 29, 2015, 4:24 PM), http://time.com/3976976/samuel-dubose- footage/.

\textsuperscript{45} Compare National Trends, supra note 3, with Valerie Richardson, \textit{Police Kill More Whites than Blacks, but Minority Deaths Generate More Outrage: Analysis Contradicts Widespread Views about Racial Targets}, \textit{WASH. TIMES} (Apr. 21, 2015), http://www.washingtontimes.com/news/2015/apr/21/police-kill-more-whites-than-blacks-but-minority-d/#ixzz3cTxs6dQo (attempting to refute claims that African Americans are killed by police officers at higher rates than whites).

\textsuperscript{46} See U.S. COMM’N ON CIVIL RIGHTS, \textit{WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES} (Gloria Izumi & Bonnie Mathews eds., 1981) (the Commission produced this study in 1981 on police practices suggesting and recommending many of the reforms that have been proposed today); U.S. COMM’N ON CIVIL RIGHTS, \textit{REVISING WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES \\& CIVIL RIGHTS IN AMERICA} (2000), http://www.usccr.gov/pubs/guard/main.htm (discussing police practices following the initial research in 1981, and continuing to make similar suggestions and recommendations on reform).


a mere footnote. It may be a transformative event with a long-lasting and profound impact.49

C. Ferguson – A Transformative Event?

Throughout history, transformative events have had a profound effect on the evolution of the United States and on advancing issues of social justice and equality. A transformative event is defined as an event that “change[s] (something) completely and usually in a good way.”50 This definition is subjective and is dependent on the perspective from which the event is being viewed. Another way to put it is that one’s perceptions will determine whether the event is transformative. For African Americans, and in actuality the nation, there are some readily identifiable transformative events that have resulted in significant and long-term reform; or at least, the event caused the nation a moment of pause to reflect upon the injustice that existed and persisted.51 For example, the death of Emmett Till – another event memorialized in the song of revolution of the time52 – caused the world to take note of white supremacy in the United States and the absurdity of a criminal justice system that tried the defendants before an all-white jury.53 Or, the day that Rosa Parks decided to sit down on a bus in Montgomery, Alabama.54 Or, the deaths of Schwerner, Goodman, and Cheney that catapulted the issue of voting rights into the public’s consciousness.55 These events, mired in tragedy and defiance, resulted in positive change for the African-American communi-

49. See Reuben A. Shelton, Ferguson United, Mo. B. (Feb. 10, 2015), http://www.mobar.org/Media-Center/News-Blog/President-s-Page--Ferguson-United/ (“The importance of Ferguson, Missouri is simple. What happened there in August 2014 is transformative and has the potential to change, in part, our nation’s judicial system forever. What happened in Ferguson has ignited a debate that is born from tragedy and sorrow but could lead to phenomenally positive cooperation and unity – now and for future generations.”).


54. Id.

ty and for the realization by the nation of the words in its founding documents.56

The reality of Ferguson is that the simple geographical designation or municipal label has become quite complex, and it needs to be disentangled to its transformative potential. The first aspect of Ferguson is the death of Michael Brown. With his death, the world became aware of the unofficial rules of engagement that most, if not all, African-American families communicate to their children, especially to their sons.57 For many white parents, there are no cautions or warnings given to their children on how to successfully survive an encounter with a police officer. And, the reality is clear that such discussions can mean the difference between life and death.58 Yet, African-American parents, in the wake of what happened, introduced the world to their fears and the precautions that they take to keep their children safe.59 The hope being that others would soon value the life of their sons as well.60

56. See Jalon, supra note 53.
59. Kimberly Jade Norwood, The Far-Reaching Shadow Cast by Ferguson, 46 WASH. U. J.L. & POL’y 1, 11 (2014) (“This Essay is an expansion of a piece I originally published on CNN.com at the end of August. That earlier essay attempted to explain to the world that walking around in America and simply living one’s daily life has starkly different stresses, worries, and fears, depending on the color of one’s skin. I can relate to the dis-ease, the frustrations, and fears of the residents of Ferguson and other brown people throughout our nation whose skin color regularly draws scorn, hatred, and mistrust. Some say I cannot. I am a professor. I live in an ivory tower. I am so-called privileged and therefore cannot possibly relate. My response? Not true.”).
Another impact of Ferguson as a transformative event is the renewed discussion about the expanded use of body cameras as a means to protect both citizens and police officers. The idea is that there would be greater accountability and transparency. And yet, with the outcome of the Eric Garner case, also a no bill to indict, a renewed sense has begun to emerge from the community that it is simply business as usual. The community has, however, been provided some hope that the criminal justice system does care about the lives of African Americans lost at the hands of law enforcement after the indictment of the officer who killed him.

Third, there has been increased discussion about changing the demographics not only of the Ferguson Police Department, but also other police departments to reflect the communities that are being served. The effort is aimed at changing what has become a siege mentality on the part of residents who feel as though they are being occupied. Fourth, the DOJ reported on the economic policing. The DOJ determined that the municipal authorities had relied heavily on traffic citations as a means to increase the city’s coffers and had demanded that the police engage in more stops. The effect was that police officers disproportionately stopped African Americans. Fifth, Ferguson has forced an examination of the municipal court system. And sixth, the criminal justice system is confronted with having to address race earlier in the process, thereby recognizing how it shapes perceptions. A number of discussions have been had among the United Nations about the violence of Ferguson police and the death of their son, Michael.


65. Patrick C. Brayer, Hidden Racial Bias: Why We Need To Talk With Jurors About Ferguson, 109 NW. U. L. REV. 163 (2015) (“This essay discusses our obligation as judges, academics, and practitioners to understand how unconscious racial bias
cussions have emerged from the events in Ferguson in the hopes that reform of police tactics will occur, as well as a change in the way that communities of color interact with police officers.

III. CONCLUSION

The killing of Michael Brown by Police Officer Darren Wilson touched off a series of events and raised a host of questions about policing, protesting, and the perceptions of police in communities of color, as well as revealed the perception that police also have of those communities.  It highlighted long-held and deep-seated feelings of mistrust between communities of color, especially African-American communities, and police. It raised questions about the militarization of local law enforcement agencies and questioned exists in the hidden belief systems of many, if not all, jurors. . . .  [A]ttorneys must concede hidden bias in themselves before fully comprehending the devastating impacts of racial biases. The events of the last four months in Ferguson, Missouri have exposed potential jurors to experiences dominated by issues of race. The opinions, beliefs, and prejudices of future fact-finders will be greatly shaped by how they perceive these events and interpret the issues."

66. James B. Comey, Dir., FBI, Remarks at Georgetown University: *Hard Truths: Law Enforcement and Race* (Feb. 12, 2015), http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race. Director Comey discussed the cynicism or bias that officers may have and that may develop when dealing with African-American citizens:

[S]omething happens to people in law enforcement. Many of us develop different flavors of cynicism that we work hard to resist because they can be lazy mental shortcuts. For example, criminal suspects routinely lie about their guilt, and nearly everybody we charge is guilty. That makes it easy for some folks in law enforcement to assume that everybody is lying and that no suspect, regardless of their race, could be innocent. Easy, but wrong.

Likewise, police officers on patrol in our nation’s cities often work in environments where a hugely disproportionate percentage of street crime is committed by young men of color. Something happens to people of good will working in that environment. After years of police work, officers often can’t help but be influenced by the cynicism they feel.

A mental shortcut becomes almost irresistible and maybe even rational by some lights. The two young black men on one side of the street look like so many others the officer has locked up. Two white men on the other side of the street—even in the same clothes—do not. The officer does not make the same association about the two white guys, whether that officer is white or black. And that drives different behavior. The officer turns toward one side of the street and not the other. We need to come to grips with the fact that this behavior complicates the relationship between police and the communities they serve.

*Id.*
whether surplus military grade weapons and equipment should be in the hands of local law enforcement. Moreover, it forced the City of Ferguson, St. Louis County, the State of Missouri, and the United States to take a critical look at citizen-police interactions and forced those in positions of power to increase transparency and accountability. But will the changes, the answers to those questions, provide solace to a community that has observed such conduct in the past, or will this time be different? Regardless of whether agreement lies with the perspectives of some or of others, there is one indisputable and sad fact that remains – a young man is dead, and his family continues to mourn. It is hoped that his death will not be in vain and that the events that transpired will serve as an impetus to change the way citizens and police interact.

The Symposium sought to continue the dialogue around the topic of excessive use of force, interactions with law enforcement, and the historical narrative of how African Americans perceive their treatment at the hands of law enforcement. With each panel and presentation, there was an opportunity to engage and ask questions and provided a glimmer of hope that the tragic lesson of that day in August would open up discourse among those who disagree. As I returned to my office, an anonymous author placed the edited Symposium brochure against my office door. This anonymous act was one of cowardice that speaks volumes about the inability for true discourse to occur. Ferguson may simply be footnote that is a lightning rod when referenced, but nothing more because for it to be a transformative event, the conversation must be a public one.

68. Appendix I, infra p. 959.
FOOTNOTE OR TRANSFORMATIVE EVENT?

APPENDIX

On Aug. 9, 2014, Michael Brown, an unarmed black teenager, was shot and killed by Darren Wilson, a white police officer, in Ferguson, Mo., a suburb of St. Louis.

The city was plunged into the public consciousness. Questions arose about the demographics of the city as well as the police, who, some felt, had been profiling and mistreating citizens for years. The community, including its police force, was under scrutiny. The event sparked nationwide protests and questions about the nature of race in America.

The issues are complex and rely on accurate research. The next generation of the current cohort of the nation's leaders has been immersed in the events that served as the backdrop to these events. The current cohort has been hearing about Ferguson since they were children. The current generation's understanding of the event has been formed by the events that have occurred since 2014.