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Reducing the Impact of Racial Discrimination in Policing

*Brittain McClurg**

I. INTRODUCTION

It is difficult to ascertain the actual number of officer-related shootings and use-of-force cases. Newsweek Magazine reported James Comey, then Director of the Federal Bureau of Investigation, acknowledged as much when he stated, “It is unacceptable that *The Washington Post* and *The Guardian* newspaper are becoming the lead source of information about violent encounters between police and civilians.”¹ Both news outlets have reported that U.S. police officers killed more than 900 people in 2015² and 2016.³ In 2015, both databases maintained by *The Guardian*⁴ and *The Washington Post* recorded the deaths of thirty-six unarmed African-American men.⁵ *The Guardian* identified twenty-nine deaths of unarmed black men at the hands of police officers while *The Washington Post* identified sixteen.⁶ As of November 15, *The Washington Post* has recorded the deaths of fifteen unarmed African-American men in 2017.⁷

According to one media report, after July 2014, at least nine different police departments have faced strong accusations of discrimination due to African-American citizens dying in altercations with police officers or while in police custody.⁸ Because of the investigations arising from these instances, departments in Baltimore, Maryland; Ferguson, Missouri; and Cleveland, Ohio; entered into consent decrees.⁹ Consent decrees signed by the United States Department of Justice

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1. Jack Martinez, *FBI Chief: News Media Has Better Data on Police Shootings Than Government*, NEWSWEEK (Oct. 9, 2015), <http://www.newsweek.com/fbi-police-shooting-data-media-381371>.

2. WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings/> (last visited Sept. 21, 2018).

3. *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2016/> (last visited Sept. 21, 2018).

4. *The Counted: People killed by police in the US*, THE GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> (last visited Sept. 21, 2018).

5. *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings/> (last visited Sept. 21, 2018) (Under search the database, select “Male” for gender, “Black” for race, and “Unarmed” for weapon).

6. *Id.*

7. *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings/> (last visited Sept. 21, 2018) (Under search the database, select “Male” for gender, “Black” for race, and “Unarmed” for weapon).

8. Jeremy Hobson, *After 9 High-Profile Police-Involved Deaths of African-Americans, What Happened to the Officers?*, WBUR (July 11, 2016), <http://www.wbur.org/hereandnow/2016/07/11/america-police-shooting-timeline>.

9. *Id.*

(“DOJ”) and the cities of Baltimore and Ferguson require neighborhood mediation,¹⁰ in addition to citizen-officer mediation to resolve some misconduct complaints.¹¹ Both cities have a history of racial discrimination¹², and the consent decrees are an attempt to remedy the climate by increasing confidence that departmental systems are implemented in a way that builds trust and improving public safety by mitigating the impacts of discrimination.¹³

Accordingly, Part II of this comment describes the history of discriminatory policies which have divided the cities of Baltimore, Maryland and Ferguson, Missouri, and how the Department of Justice has entered into consent decrees with these cities to promote reform within their police departments. Part III addresses the policies promulgated by police departments with consent decrees and other approaches taken by departments to remedy the impact of racial bias between officers and citizens. Part IV analyzes the approaches offered by other departments to mitigate the effect of racial bias and make proposals for reform of similarly situated departments. Part V serves as a conclusion.

II. THE PROBLEM OF SYSTEMIC RACIAL DISCRIMINATION

A. Racial Discrimination in the Twentieth Century

The United States has long implemented racially discriminatory practices from the Colonial era and throughout Eighteenth and Nineteenth Centuries.¹⁴ However, because of time restraints, this article will address the discriminatory policies that were implemented in the Twentieth Century in Baltimore, Maryland, and the St. Louis, Missouri Metropolitan Area. These two regions have come under investigation for their respective policing practices, and it is essential to understand the historical reasons these cities are racially disparate today.

i. Discrimination in Baltimore

In 1910, after an African-American lawyer bought a home in a wealthy all-white neighborhood, Baltimore passed an ordinance that established a formal system of housing segregation.¹⁵ Per the ordinance, an African-American person could not reside on a city block where a majority of residents were white, and a white

10. Consent Decree at § III (E)(32), *United States v. City of Ferguson*, E.D. Mo. Apr. 19, 2016 (No. 4:16-cv-00180-CDP, ECF 41) [hereinafter *Ferguson Consent Decree*].

11. Baltimore Consent Decree, *supra* note 10, at § XIV(I); Ferguson Consent Decree, *supra* note 10, at § XIX(C).

12. Justin George & Mark Puente, *Baltimore Leaders Agree: City Has a Race Problem*, BALT. SUN (Mar. 14, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-baltimore-racism-20150314-story.html>; Editorial Board of N.Y. Times, *The Death of Michael Brown*, N.Y. TIMES (Aug. 12, 2014), <https://www.nytimes.com/2014/08/13/opinion/racial-history-behind-the-ferguson-protests.html>; see Emily Badger, *How Flint, Ferguson and Baltimore are All Connected*, WASH. POST (Jan 25, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/01/25/how-flint-ferguson-and-baltimore-are-all-connected/>.

13. Baltimore Consent Decree at § I, *supra* note 10; Ferguson Consent Decree at § I, *supra* note 10.

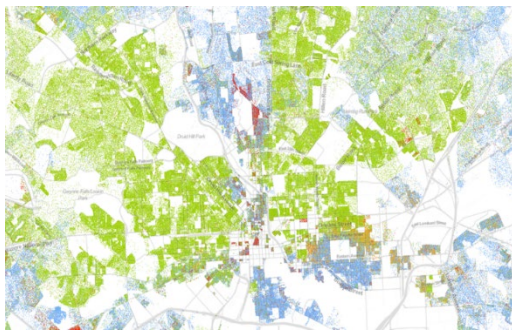
14. See ROBERT J. COTTRILL, *THE LONG, LINGERING SHADOW: SLAVERY, RACE, AND LAW IN THE AMERICAN HEMISPHERE* 1-22 (2013).

15. Editorial Board of the N.Y. Times, *How Racism Doomed Baltimore*, N.Y. TIMES (May 9, 2015), <https://www.nytimes.com/2015/05/10/opinion/sunday/how-racism-doomed-baltimore.html>.

person could not reside on a city block were a majority of residents were African American.¹⁶ Six years later, however, the U.S. Supreme Court unanimously overturned a similar ordinance in Louisville, Kentucky in *Buchanan v. Warley* because such restrictions violated the Fourteenth Amendment's protections for freedom of contract.¹⁷ In response to *Buchanan*, real estate agents and developers began to use restrictive covenants in property deeds to prevent the transfer of property to minorities.¹⁸

Furthermore, the Federal Housing Authority ("FHA"), which was established amidst the Great Depression, used a tactic called "redlining" when it created neighborhood maps depicting majority African-American and majority Jewish neighborhoods as unsafe for development; thus denying members of those communities access to federal mortgages and housing grants.¹⁹ Some neighborhoods, observable in parts even today, have had a white population in excess of 90% for the last fifty years, and alternatively, other neighborhoods have had an African-American population in excess of 90% for the last fifty years.²⁰ Additionally, these neighborhoods were unable to secure funds through FHA secured loans, which drastically reduced their development over time.

There are even disproportionate exposures to health risks. Baltimore triples the national average of lead poisoning among its children; the areas with the highest levels of lead poisoning are Sandtown-Winchester/Harlem Park, Midway/Coldstream, and Edmondson Village, all of which were redlined in the 1930s.²¹



Map of Baltimore, Maryland in 2013²²

16. *Id.*; see U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT (2016) [hereinafter INVESTIGATION OF BPD].

17. *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).

18. Leland Ware, *Racial Segregation and the Baltimore Riots*, HUFFINGTON POST: THE BLOG (May 11, 2015), https://www.huffingtonpost.com/leland-ware/racial-segregation-and-the-baltimore-riots_b_7252760.html

19. Arwa Gunja & Jillian Weinberger, *How Housing and Discrimination Have Long Fueled Baltimore's Anger*, PUB. RADIO INT'L (Apr. 30, 2015), <https://www.pri.org/stories/2015-04-30/how-housing-and-discrimination-have-long-fueled-baltimores-anger>.

20. INVESTIGATION OF BPD, *supra* note 16, at 13.

21. *Id.* at 14. See Gunja & Weinberger, *supra* note 19; Peter Hermann & John Woodrow Cox, *A Freddie Gray Primer: Who Was He, How Did He Die, Why is There so Much Anger?*, WASH. POST (Aug. 28, 2015), <https://www.washingtonpost.com/news/local/wp/2015/04/28/a-freddie-gray-primer-who-was-he-how-did-he-die-why-is-there-so-much-anger/>.

22. Dustin A. Cable, <https://demographics.virginia.edu/DotMap/> (This map depicts the racial concentrations in Baltimore in each neighborhood in 2013. Each dot represents one citizen and each color corresponds to a citizen's racial classification. Green dots are African-American, blue dots are Caucasian, red dots are Asian, and orange dots are Hispanic).

Segregation in Baltimore has left an indelible mark on the city.²³ Presently, Baltimore's approximate population is 621,000; which is 63% African American, 30% white, and 4% Hispanic.²⁴ Despite the racial composition of the city, from 2010-2015, of the 410 individual pedestrians the Baltimore Police Department ("BPD") stopped more than ten times, 95% of those pedestrians were African American.²⁵ During the same period, African-American drivers made up 82% of all traffic stops.²⁶ Additionally, 91% of the 1,800 people charged with "failure to obey" or "trespassing" were African American, as were 89% of the 1,350 charged for making a false statement to a police officer.²⁷ In some instances, police leadership had specifically ordered the officers to target African-American residents for stops and arrests.²⁸

This powder keg of racial tension was further inflamed by the events preceding Freddie Gray's death. Gray was an African-American male in his mid-twenties living in a historically African-American section of Baltimore, which had a high rate of lead poisoning.²⁹ In 2008, Gray participated in a lawsuit against the owner of his childhood home because the walls and windowsills contained enough lead to impact Gray and his sisters' ability to function.³⁰ Court records indicated Gray was arrested and convicted of selling marijuana and heroin on several occasions.³¹

On April 12, 2015, Gray made eye contact with BPD officers and "fled unprovoked upon noticing police presence."³² Shortly thereafter, Gray was arrested when officers found a knife clipped to one of his pockets.³³ While in transport to the Western District Police Station, Gray was placed on the floor of the police van unbuckled with handcuffs and legs shackles.³⁴ The officers made several stops along the way. At one stop, Gray complained he was short of breath and requested medical assistance.³⁵ The police officers refused his request for assistance but moved Gray from the floor to a bench inside the van.³⁶ One hour after Gray's arrest, officers arrived at the police station and found Gray unresponsive.³⁷ A week later, on April 19, 2017, Gray died from a severe spinal injury sustained in the back of the police van.³⁸

In the days that followed, citizens peacefully protested and chanted, "No justice, no peace"; but the peaceful protests soon devolved into riots.³⁹ At least 250

23. *How Racism Doomed Baltimore*, *supra* note 15.

24. UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/baltimorecitymaryland,US/PST045216> (last visited Nov. 15, 2017).

25. Investigation of BPD *supra* note 16, at 7.

26. *Id.*

27. *Id.*

28. *Id.* at 8.

29. Hermann & Cox, *supra* note 21.

30. *Id.*

31. *Id.*

32. Eyder Peralta, *Timeline: What We Know About the Freddie Gray Arrest*, NPR (May 1, 2015), <http://www.npr.org/section/the-two-way/2015/05/01/403629104/baltimore-protests-what-we-know-about-the-freddie-gray-arrest>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Peralta, *supra* note 32.

38. Hermann and Cox, *supra* note 21.

39. *Id.*

businesses sustained damage, 150 vehicles were set on fire, and more than 60 buildings sustained fire damage.⁴⁰ The six officers involved with Gray's arrest and transport were charged with murder and manslaughter.⁴¹ The mayor requested DOJ investigate the BPD practices, and on May 6, 2015, the DOJ accepted, launching an investigation a day later.⁴²

ii. Discrimination in St. Louis and its Impact on Ferguson

Many of the discriminatory housing tactics employed by Baltimore were used by St. Louis with direct effects on the city of Ferguson, a suburb of St. Louis. In 1916, the St. Louis Real Estate Exchange sponsored a ballot referendum that prohibited minorities from moving onto blocks where 75% of existing residents were white and whites from moving onto blocks where 75% of existing residents were minorities.⁴³ Like Baltimore, after *Buchanan*, the real estate industry utilized "restrictive covenants," which prevented African-Americans and other minorities from purchasing property held by whites.⁴⁴ Nearly 300 restrictive covenants were enforced by 1945, and Missouri courts routinely terminated transactions in violation of the covenants' terms.⁴⁵

That same year J.D. Shelley, an African-American man, bought a house in a suburb near Ferguson that was subjected to a restrictive covenant.⁴⁶ The Missouri Supreme Court ordered the trial court to divest title from Mr. Shelley because the covenant did not violate any guarantees by the Constitution.⁴⁷ On appeal, the U.S. Supreme Court concluded the restrictive covenants standing alone did not violate any provision of the Fourteenth Amendment, as they were private agreements.⁴⁸ However, the Court determined that Missouri, through state action, had denied equal protection of the laws guaranteed by the Fourteenth Amendment through court enforcement of the restrictive covenants.⁴⁹

Circumnavigating the ruling, realtors found new ways to perpetuate racial segregation in St. Louis and the surrounding areas.⁵⁰ Members of the St. Louis Real Estate Exchange and the Missouri Real Estate Commission refused to show houses in white neighborhoods to minorities.⁵¹ Indeed, the agencies made it a violation of

40. Yvonne Wenger, *Damage to Businesses from Baltimore Rioting Estimated at about \$9 Million*, WASH. POST (May 13, 2015), https://www.washingtonpost.com/local/damage-to-businesses-from-baltimore-rioting-estimated-at-9-million/2015/05/13/5848c3fe-f9a8-11e4-a13c-193b1241d51a_story.html.

41. Matt Apuzzo & Sheryl Gay Stolberg, *Justice Department Will Investigate Baltimore Police Practices*, N.Y. TIMES, (May 7, 2015), <https://www.nytimes.com/2015/05/08/us/politics/justice-department-will-investigate-baltimore-police-practices-after-freddie-gray-case.html>.

42. *Id.*

43. RICHARD ROTHSTEIN, ECON. POL'Y INST., *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES*, Econ. Pol'y Inst. 7 (2014).

44. *Id.* at 13.

45. *Id.* at 13-14.

46. *Shelley v. Kraemer*, 334 U.S. 1, 5 (1948).

47. *Id.* at 6.

48. *Id.* at 13.

49. *Id.* at 23.

50. Rigel C. Oliveri, *Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis*, 80 MO. L. REV. 1053, 1058 (2015).

51. *Id.*

professional ethics to sell a home in a white neighborhood to African Americans, the penalty for which included license forfeiture.⁵²

To exacerbate racial discrimination further, the “redlining” policies of the FHA impacted St. Louis as well.⁵³ Additionally, developers who made commitments to FHA regarding, “materials used, lot size, setback from street, and location in a properly zoned neighborhood” received financing from the federal government.⁵⁴ The FHA considered subdivisions near African American neighborhoods a risk that could threaten insurability.⁵⁵ Once subdivisions were constructed, African Americans were denied FHA loans.

Subdivisions and suburbs throughout St. Louis County, like Ferguson, expanded in accordance with FHA regulations which resulted in de facto whites-only areas.⁵⁶ One such area was Ferguson.

Ferguson was first incorporated in 1894 at a time when it had an almost exclusively white population; the demographic composition was stable for decades.⁵⁷ Next to Ferguson was the city of Kinloch, which had a majority African-American population. Despite the neighborly positioning, access to Ferguson was restricted for the citizens of Kinloch. The one road connecting the municipalities was blocked off after sunset, which led to Ferguson being called a “Sundown Town.”⁵⁸

The status quo was disrupted after the 1968 *Jones*⁵⁹ decision and passage of the Fair Housing Act.⁶⁰ African-American families began to move into the majority-white suburbs of St. Louis.⁶¹ Further displacement occurred when Lambert International Airport expanded into the city of Kinloch causing many of its citizens to move to Ferguson.⁶²

The transition was both swift and remarkable. In 1970, the population of Ferguson was 99% white, but it was 85% white in 1980.⁶³ By 2010, after the expansion of the airport, the majority of Ferguson’s population was African American at 67%.⁶⁴

52. *Id.* at 1058-59.

53. Ta-Nehisi Coates, *The Racist Housing Policies that Built Ferguson*, THE ATLANTIC (Oct. 17, 2014), <https://www.theatlantic.com/business/archive/2014/10/the-racist-housing-policies-that-built-ferguson/381595/>.

54. ROTHSTEIN, *supra* note 43, at 15-16.

55. *Id.* at 16.

56. Coates, *supra* note 53.

57. Oliveri, *supra* note 50, at 1066.

58. *Id.*

59. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1969).

60. Oliveri, *supra* note 50, at 1066.

61. *Id.*

62. *Id.* at 1067.

63. *Id.*

64. *Id.*



Map of St. Louis Metropolitan Area in 2013 ⁶⁵

The effects of housing discrimination have been exacerbated by the actions of FPD and Ferguson’s Municipal Court, which DOJ identified had a predominate goal of obtaining revenue for the city through its code enforcement.⁶⁶ The city repeatedly sought and received significant increases in revenue through increased code enforcement from 2010-2015.⁶⁷ The city’s Finance Director drafted a report that sought to “increase efficiencies and maximize collection” through code enforcement, and the city took actions at every level to increase revenue.⁶⁸ The city council’s established fines were some of the highest in the county when compared to surrounding municipalities.⁶⁹

To further increase revenues, city leaders pressured the Chief of Police to issue more citations and fines.⁷⁰ In 2010, the Finance Director pressured Police Chief Thomas Jackson to “ramp up” enforcement to overcome a sales tax shortfall expected for the following year.⁷¹ FPD supervisors and officers began to aggressively enforce the city code to meet financial expectations.⁷² Officers routinely issued multiple citations for code violations during a single stop, and it was not uncommon for officers to write “six, eight, or in at least one instance, fourteen citations” to one individual during one stop.⁷³ Officers admitted to DOJ investigators that they competed to see who could issue the most citations during the course of a single interaction.⁷⁴

65. DUSTIN A. CABLE, <https://demographics.virginia.edu/DotMap/> (This map depicts the racial concentrations in the St. Louis Metropolitan Area in 2013. Each dot represents one citizen and each color corresponds to a citizen’s racial classification. Green dots are African-American, blue dots are Caucasian, red dots are Asian, and orange dots are Hispanic).

66. U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 9 (2015) [hereinafter INVESTIGATION OF FPD].

67. *Id.* at 9-10.

68. *Id.* at 10.

69. *Id.*

70. *Id.*

71. INVESTIGATION OF FPD, *supra* note 67, at 10.

72. *Id.* at 11.

73. *Id.*

74. *Id.*

As previously delineated by the statistics, African Americans are more than twice as likely to be stopped, searched, and cited, and more than 2.37 times more likely to be arrested during a stop.⁷⁵ Furthermore, in FPD officers' reports regarding use of force, African Americans accounted for 88% of all documented incidents of use of force reports from 2010-2014.⁷⁶ For discretionary charges like "Manner of Walking," "Failure to Comply," "Resisting Arrest," and "Disturbing the Peace," African Americans accounted for at least 89% of those charged in each category.⁷⁷

Additionally, the city council assesses the municipal court on how much revenue it creates for the city. Ferguson Municipal Judge Brockmeyer has authority to impose fines up to \$1,000 or imprisonment up to three months in the city jail.⁷⁸ Judge Brockmeyer acknowledged he has only sentenced anyone to jail once through the course of his tenure,⁷⁹ but because fines are almost always imposed by Judge Brockmeyer, citizens are regularly arrested when they miss court appearances or when they fail to pay their fines in a timely fashion.⁸⁰

In fiscal year 2009, Ferguson's Municipal Court reported 24,000 traffic cases and 28,000 other cases and by fiscal year 2014; 53,000 traffic cases were reported and 50,000 other cases.⁸¹ Additionally, African-American citizen were 68% less likely to have their cases dismissed in municipal court and accounted for 92% of cases where arrest warrants were issued in 2013.⁸²

It is in this setting that on August 9, 2014, Michael Brown, an African-American teenager was shot and killed by FPD Officer Darren Wilson.⁸³ The details of what exactly happened between Wilson and Brown are still debated, but the federal report released on March 4, 2015, provides insight into the matter.⁸⁴ Wilson had received a report of a theft near the location where Brown and a friend were walking, and the two men matched the description of the suspects.⁸⁵ Evidence presented to DOJ and a grand jury supports the officer's account that Brown and Wilson struggled for Wilson's gun, which resulted in a gunshot to Brown's hand.⁸⁶ Immediately after being shot, Brown retreated a short distance, but then began to charge toward the officer.⁸⁷ While Brown was advancing, Wilson fired numerous shots, which fatally wounded Brown.⁸⁸

In the days and weeks that followed, protestors clashed with heavily armored police in demonstrations across Ferguson.⁸⁹ On August 14, Governor Jay Nixon

75. *Id.* at 62.

76. INVESTIGATION OF FPD, *supra* note 67, at 62.

77. *Id.*

78. *Id.* at 8.

79. *Id.*

80. *Id.* at 9.

81. INVESTIGATION OF FPD, *supra* note 67, at 9.

82. *Id.* at 62.

83. Timothy M. Phelps & Michael Muskal, *Federal Report Largely Backs Darren Wilson in Ferguson Police Shooting Case*, L.A. TIMES (March 4, 2015), <http://www.latimes.com/nation/la-na-darren-wilson-not-charged-20150304-story.html>.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. Phelps & Muskal, *supra* note 84.

89. Colby Itkowitz, *Timeline of Events in Ferguson, Mo.*, WASH. POST (Aug. 16, 2014), https://www.washingtonpost.com/politics/timeline-of-events-in-ferguson-mo/2014/08/16/02f37e8c-2580-11e4-86ca-6f03cbd15c1a_story.html.

gave authority to the Missouri State Highway Patrol to provide security for protests.⁹⁰ Two days later, Nixon declared a state of emergency and established a curfew between midnight and 5 a.m. after a week of looting and fires.⁹¹ The next day, Nixon lifted the curfew and deployed National Guard troops to provide additional security to “end the looting and burning of stores that have punctuated protests” following Brown’s death.⁹² On September 4, 2014, then-Attorney General Eric Holder announced the DOJ would investigate the police practices utilized by the Ferguson Police Department.⁹³

iii. Lingering Effects of Implicit Bias

Professor Powell has asserted that, because of “pervasive, culturally embedded associations,” combined with words and images that strengthen these unconscious associations, African Americans are regularly viewed with suspicion and as criminals.⁹⁴ For each participant in a police-citizen encounter, whether violent or non-violent, the decision-making is informed by past experiences with members of the opposite groups. Those experiences, in combination with countless other influences, eventually construct a framework of knowledge, or schema. Professor Kang defines schema as a “cognitive structure that represents knowledge about a concept or type of stimulus, including its attributes and the relations among those attributes.”⁹⁵ In any interaction, both officers and citizens rely on their schemas to make judgments and react to the opposite party.

Personal schemas are influenced on a colossal scale by societal norms and expectations, which frequently include racial considerations. Societies, through law and culture, have established racial categories, and members of societies assign individuals to these categories.⁹⁶ Professor Jewel asserts, “[W]hen overt racism lost credibility in the 1970s, conservative political operatives began using coded categories to link racial minorities with enduring negative stereotypes.”⁹⁷ The psychological impact of such efforts is apparent when scientifically studied. Once an individual is mentally assigned to a category, the brain automatically triggers implicit and explicit racial meanings on the classified individual through a process called mapping.⁹⁸ Professor Jewel defines mapping as “[t]he process of welding different neural paths into one connected path.”⁹⁹

90. *Id.*

91. *Id.*

92. Ellen Wulforst, *Missouri Governor Lifts Ferguson Curfew as National Guard Called in*, REUTERS (Aug. 17, 2014), <https://www.reuters.com/article/us-usa-missouri-shooting/missouri-governor-lifts-ferguson-curfew-as-national-guard-called-in-idUSKBN0GF0LP20140818>.

93. Shimon Prokupez, Pamela Brown, & Greg Botelho, *Feds Launch Probe of Ferguson Police Department*, CNN (Sept. 4, 2014), <http://www.cnn.com/2014/09/03/justice/ferguson-justice-department-investigation/index.html>.

94. John A. Powell, *On Ferguson: A Deep Divide and Systemic Failure*, BERKELEY J. SOC. (Nov. 25, 2014), <http://berkeleyjournal.org/2014/11/ferguson-response-deep-divide-in-our-society-systemic-failure/>.

95. Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1498 (2005).

96. *Id.* at 1499.

97. Lucy A. Jewel, *Neurorhetoric, Race, and the Law: Toxic Neural Pathways and Healing Alternatives*, 76 MD. L. REV. 663, 664 (2017).

98. Kang, *supra* note 96, at 1499.

99. Jewel, *supra* note 98, at 670.

When used continually, a neural pathway becomes entrenched and provides an efficient, smooth path for messages to reach an individual's consciousness, which makes racially-coded categories quickly and sometimes instantly transmitted.¹⁰⁰ These categories cause stereotypes to become hardwired, and the brain further favors quick conclusions over reasoned deliberation.¹⁰¹ Thoughts become more certain the deeper these pathways become entrenched or "canalized."¹⁰² Canalization is defined as "the deepening of neural pathways in response to repeated exposure to a stimulus."¹⁰³ Once canalization has taken place, thought patterns become cemented and difficult—but not impossible—to modify.¹⁰⁴ Professor Jewel argues canalized neuropathways built on fear of black men with guns "ignite a rapid and unconscious bodily response," resulting in police officers shooting black men whether they are armed or not.¹⁰⁵

Because, historically, laws promulgated by the white majority have hindered gun ownership among African Americans, implicit biases have developed to establish a schema that armed black men are dangerous.¹⁰⁶ Before the Civil War, gun ownership by African-American citizens was expressly banned in many jurisdictions and heavily restricted in others.¹⁰⁷ Upon the ratification of the Fourteenth Amendment, neutral gun laws were enacted to provide rights to African Americans, but these laws were enforced unequally to hinder African-American access to guns.¹⁰⁸ African Americans were thought to be too violent and too untrustworthy to own weapons.¹⁰⁹

Driven by fears of gun violence from Southern and Eastern European immigrants, New York enacted the Sullivan law in 1911, which required a permit to purchase or own a weapon and prohibited carrying concealed weapons.¹¹⁰ California adopted stronger gun control restrictions after the Black Panthers appeared in the state assembly carrying guns in 1967.¹¹¹ In the 1990s, advocates sought new restrictions to prevent gang members from having access to assault rifles, but there was no similar advocacy to prevent hunting rifle purchases.¹¹² Implicitly, these laws were designed to limit access of weapons to minorities while having little or no impact on white gun ownership.¹¹³ These efforts have encouraged the stereotype that black men are dangerous when they possess weapons, but white men and women are not.

Canalization takes place when the stereotypes of dangerous black men are "cemented through relentless repeated exposure on the Internet, social media sites, and television."¹¹⁴ Individuals become desensitized to members of the majority committing acts of violence on the minority, and neuropathways become deeper and

100. *Id.* at 670-71.

101. *Id.*

102. *Id.* at 671.

103. *Id.* at 670.

104. Jewel, *supra* note 98, at 671.

105. *Id.* at 684.

106. *Id.* at 685.

107. *Id.*

108. *Id.*

109. Jewel, *supra* note 98, at 685-86.

110. *Id.*

111. *Id.*

112. *Id.* at 686.

113. *Id.*

114. Jewel, *supra* note 98, at 689.

more ingrained reducing individuals' ability to use logic in given situations and rely more on instinct.¹¹⁵

Citing a study performed by Keith Payne, Professor Kang noted that African American men were more likely to be shot by officers as a result of racial schemas held by officers.¹¹⁶ In the study, participants were shown a black or white face and asked to identify whether the objects shown were tools or guns.¹¹⁷ When shown the black face first, participants were quicker to identify guns correctly, and when shown the white face first, participants were quicker to identify the tools correctly.¹¹⁸ When given time constraints forcing quicker responses, those shown the black face first more frequently mistook the tool for a gun.¹¹⁹

In 2002, Joshua Correll performed a study relying on a simple videogame that placed white or black people in realistic settings holding guns or other small objects like cell phones and wallets.¹²⁰ Participants correctly decided to shoot armed black targets more often than the armed white targets, and participants were more likely shoot unarmed black targets than they were to shoot unarmed white targets.¹²¹

Another measure of implicit bias is the Implicit Association Test ("IAT"), which is a computerized "sorting task that measures time differences between schema-consistent pairings and schema-inconsistent pairings of concepts represented by words or pictures."¹²² During the schema-consistent portion, an assigned key on the keyboard is pressed when a White face appears or when a harmless object appears.¹²³ A second assigned key is pressed when an African American face or a weapon appears on the screen.¹²⁴ During the schema-inconsistent test an assigned key is pressed when the screen displays either a White face or a weapon, and a second assigned key is pressed when an African American face and harmless object is shown.¹²⁵ Participants generally perform the schema-consistent test quickly and the schema-inconsistent test more slowly.¹²⁶

Over two million people have participated in the IAT test, and 80% of white test takers demonstrated bias against African Americans.¹²⁷ The results vary greatly from self-reported biases.¹²⁸ Professors Greenwald and Krieger note that implicit bias measures have more predictive validity in socially sensitive interactions and even greater validity in predicting behaviors like "eye contact, seating distance, and other such actions that communicate social warmth or discomfort."¹²⁹ To diminish the effects of implicit bias and deconstruct canalized thoughts, Professor Jewel recommends departments take steps to make "officers cognizant of the toxic neural

115. *Id.*

116. Kang, *supra* note 96, at 1525.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* See <http://www.csun.edu/~dma/FPST/consent.html>.

121. Kang, *supra* note 96, at 1525.

122. Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1129-30 (2012).

123. *Id.* at 1130.

124. *Id.*

125. *Id.*

126. *Id.*

127. Carol Izumi, *Implicit Bias and the Illusion of Mediator Neutrality*, 34 WASH. U. J. L. & POL'Y 71, 93 (2010).

128. *Id.*

129. Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 954-55 (2006).

pathways that link blacks to fear-based reactive violence” and other implicit biases.¹³⁰

B. Consent Decrees

When the DOJ seeks to curb the impact of discriminatory policing practices, it frequently enters into consent decrees with local police departments. BPD’s consent decree with the DOJ requires the city to provide opportunities for mediation between its citizens and police officers in disputes.¹³¹ FPD’s consent decree requires the city to “affiliate with the Community Mediation Services of St. Louis to conduct neighborhood mediations that promote lasting resolutions of appropriately selected disputes among community members, while reducing the need for involvement of the criminal justice system.”¹³²

The officer-citizen mediation clauses in the consent decrees are nearly identical to one another. Mediation is only available if the complainant and the subject officer agree to mediate.¹³³ Only minor complaint allegations are eligible for the mediation process, as determined by the respective police departments.¹³⁴ The mediator can terminate mediation if he or she believes the officer is not participating in good faith, which causes the formal investigative process to begin anew.¹³⁵

III. APPROACHES TAKEN BY DEPARTMENTS

Whether they have entered into a consent decree or not, cities across the country have implemented various methods of reform in their police departments. While there are numerous examples, this article will focus on the most commonly utilized remedial efforts including mediation programs required by consent decrees, implicit bias training, and community policing.

A. Mediation Programs in Departments with Consent Decrees

Several police departments have entered into Consent Decrees with DOJ, and many of the decrees require departments to implement an officer-citizen mediation program. Baltimore, Maryland; Ferguson, Missouri; and New Orleans, Louisiana entered into consent decrees that require this type of mediation in 2013, 2016, and 2017 respectively. Because Baltimore and Ferguson’s consent decrees were very recently adopted, the cities have not had time to fully implement the required mediation programs. New Orleans has had significant time to fine-tune its policies. Therefore, they are the most comprehensive. This section will elaborate on the policies currently in effect in each of these cities.

130. Jewel, *supra* note 98, at 690.

131. Baltimore Consent Decree, *supra* note 10, at § III(B)(g).

132. Ferguson Consent Decree, *supra* note 10, at § III(32).

133. Baltimore Consent Decree, *supra* note 10, at § XIV(I).

134. *Id.*

135. *Id.*

i. Baltimore, Maryland Consent Decree

Citizens in Baltimore may file complaints against police officers in the Internal Affairs Division of BPD, the Maryland Legal Aid Bureau, the Maryland Commission on Civil Rights, the Baltimore Office of Civil Rights and Wage Enforcement, or any local police station.¹³⁶ Complaints of abusive language, false arrest, false imprisonment, and harassment are eligible for mediation.¹³⁷ Sessions are arranged, scheduled, and facilitated by the Baltimore Community Mediation Center.¹³⁸ Mediations are scheduled for two-hour sessions, but participants are at liberty to request additional sessions.¹³⁹ Baltimore's Center believes conflicts should be resolved in the neighborhoods where the incidents occurred to ensure accessibility to the program and convenience for the participants.¹⁴⁰ In 2016, sixty complaints were referred to mediation by the Civilian Review Board.¹⁴¹

ii. Ferguson, Missouri Consent Decree

Under its consent decree with the DOJ, the City of Ferguson must establish an affiliation with Community Mediation Services of St. Louis to create a mediation program within a year of entering the consent decree.¹⁴² Currently, when a complaint is made against a FPD officer, the department launches an internal affairs investigation in accordance with General Order 301 promulgated on September 7, 2016.¹⁴³ The investigation requires a balancing act between maintaining the integrity of the police force with respecting the privacy concerns of officers when reports are erroneous.¹⁴⁴ Investigations occur when “any allegation of an act or failure to act which, if true, breaches a law, statute, general order or policy of the employing agency; which comes from any source, identified or anonymous.”¹⁴⁵ The department accepts complaints so long as it “contains sufficient factual information to warrant an investigation.”¹⁴⁶

Once allegations have been made, the Chief of Police (“Chief”) reviews the complaint and determines if an investigation is warranted.¹⁴⁷ The seriousness of the allegation determines the rank of the reviewing officers. Minor infractions, including rudeness, tardiness, insubordination, or improper performance of duty are assigned to line supervisors.¹⁴⁸ “[A]llegations of corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct” are assigned to officers over

136. BALT. POLICE DEP'T, <https://www.powerdms.com/public/BALTIMOREMD/documents/319809> (last visited Sept. 21, 2018).

137. *Police Complaint Mediation Program*, BALT. CITY OFF. OF C.R., <https://civilrights.baltimore-city.gov/police-complaint-mediation-program> (last visited Sept. 21, 2018).

138. *Id.*

139. *Id.*

140. Frequently Asked Questions, BALT. CMTY. MEDIATION CTR., <https://www.communitymediation.org/faqs> (last visited Sept. 21, 2018).

141. KEVIN DAVIS, THE BALTIMORE POLICE COMMISSIONER'S 2016 REPORT, 22 (2017).

142. Ferguson Consent Decree, *supra* note 10, at § XIX(D).

143. See General Order 301.00, CITY OF FERGUSON, <http://www.fergusoncity.com/DocumentCenter/View/2608/30100-IA-Investigations> (last visited Sept. 21, 2018).

144. *Id.*

145. *Id.* at § 301.01.

146. *Id.* at § 301.02(A).

147. *Id.* at § 301.02(B).

148. *Id.* at § 301.02(D)(1).

the rank of lieutenant.¹⁴⁹ The Chief has sole responsibility for allegations of physical abuse or criminal violations.¹⁵⁰

Officers accused of misconduct must receive a written statement describing the allegations and notifying the officer of his or her respective rights and responsibilities.¹⁵¹ When the investigation concludes within thirty days, the complainant must receive a copy of the report; if the investigation exceeds thirty days, the complainant must be regularly informed of its progress.¹⁵² The investigators must provide findings citing specific general orders of the FPD Manual and classify each finding as “cleared, exonerated, unsupported, inconclusive, or sustained.”¹⁵³ If allegations are sustained, the Chief will take action depending on the severity of the violation and shall refer criminal violations to the appropriate prosecutor.¹⁵⁴

Once the investigation is concluded, it is subject to review by the Civilian Review Board (“CRB”), and citizens may appeal a decision to the CRB.¹⁵⁵ The purpose of the CRB review is to “ensure transparency” and “uncover problems, either system-wide or with individual investigations.”¹⁵⁶ If a citizen chooses to appeal the decision, the CRB must notify the Police Department of the appeal and determine if the board needs additional assistance.¹⁵⁷ The CRB then reviews the investigation, with assistance as needed provided by the City Council, and notifies the citizen and police department of its findings and recommendations.¹⁵⁸

iii. New Orleans, Louisiana Consent Decree

In contrast, to satisfy the citizen-police mediation conditions of its consent decree, the New Orleans City Council established the Independent Police Monitor (“IPM”), which provides oversight of New Orleans Police Department (“NOPD”) “complaints, internal investigations, discipline, use of force, and in-custody deaths.”¹⁵⁹ NOPD and IPM signed a Memorandum of Understanding to determine how both agencies would interact with one another to monitor the policies and practices of NOPD.¹⁶⁰ The ordinance authorizing IPM also required it to “establish and administer a mediation program for civilian complaints, guided by best practices identified in other jurisdictions with such mediation programs.”¹⁶¹ Mediation is defined by NOPD and IPM as a “voluntary, confidential complaint resolution option. It is an alternative to the investigation, adjudication or disciplinary processes. Mediation is a structured process guided by a neutral, third-party, professionally-trained mediator which enables direct communication between the complainant and

149. General Order 301.00, CITY OF FERGUSON, § 301.02(D)(2), <http://www.fergusoncity.com/DocumentCenter/View/2608/30100-IA-Investigations>.

150. *Id.* at § 301.04.

151. *Id.* at § 301.04(C).

152. *Id.* at § 301.05(A).

153. *Id.* at § 301.06(C).

154. *Id.* at § 301.08(H).

155. *Steps to Complete the Civilian Review Board Complaint Resolution and Appeal Processes*, CITY OF FERGUSON, <https://www.fergusoncity.com/DocumentCenter/View/1845>.

156. *Id.*

157. *Id.*

158. *Id.*

159. NEW ORLEANS, LA., CODE OF ORDINANCES ch. 2, art. XIV, § 1121 (2018).

160. *Memorandum of Understanding Between the NOPD and the IPM*, NEW ORLEANS POLICE, 1 (Nov. 10, 2010), <http://nolaipm.gov/wp-content/uploads/2017/09/MOU-Signed-11-10-10.pdf>.

161. NEW ORLEANS, LA., CODE OF ORDINANCES ch. 2, art. XIV, § 1121(14) (2018).

the department member.”¹⁶² Because mediation is a non-adversarial alternative to the regular investigative procedure utilized by NOPD, there is no concurrent investigation conducted by the Public Integrity Bureau and no disciplinary action is entered.¹⁶³ However, a record of the allegation will be kept but identified as “closed by mediation.”¹⁶⁴

The program further requires the consent of the officer, complainant, and NOPD for the process to begin.¹⁶⁵ Once consent has been obtained, the mediation director reviews the case to assess any potential threats or possibilities of retaliation.¹⁶⁶ Then, the director contacts all relevant parties to schedule an appointment at a neutral location near the complainant’s address.¹⁶⁷ The mediation program has utilized libraries, churches, parks, and recreation centers.¹⁶⁸ At the meeting location, participants must sign a confidentiality agreement before the mediation will begin.¹⁶⁹ The citizen and officer share their perceptions of the event surrounding the complaint, brainstorm other possible ways to approach the situation, and make commitments to each other about how they will interact with others in the future.¹⁷⁰ The two participants will create a framework to follow-up the mediation if necessary.¹⁷¹

To complete the process, the mediators send surveys immediately to gather the opinions of the citizen and officer participants.¹⁷² To protect the confidentiality of the process, mediators destroy any notes taken during the meeting.¹⁷³ The mediators must also certify to the program director that the officer participated in good faith during the mediation.¹⁷⁴ Thirty days after the mediation, the program director sends out a second survey to gather additional data.¹⁷⁵

All three programs require a neutral mediator, which Professor Izumi believes “is universally understood to be a vital attribute of the mediation process.”¹⁷⁶ Neutrality and voluntariness create legitimacy for the process.¹⁷⁷ Neutrality encourages parties to share information honestly and is the foundation of trust in the mediator-participant relationship.¹⁷⁸ Izumi also maintains there are four key elements of neutrality: (1) no conflict of interest, (2) process equality, (3) outcome-neutrality, and (4) lack of bias, prejudice, or favoritism toward any party.¹⁷⁹ In the context of police-citizen mediation, it is easy to satisfy the first three elements of neutrality, but it may be difficult to assess a mediator’s “bias, prejudice, or favoritism toward any

162. *Memorandum of Understanding*, *supra* note 161, at 9.

163. *Id.* at 19.

164. *Id.*

165. *Id.* at 5.

166. SISTER ALISON MCCRARY, NEW ORLEANS COMMUNITY-POLICE MEDIATION PROGRAM 2015 ANNUAL REPORT 15 (2016) <http://nolaipm.gov/wp-content/uploads/2016/12/2015-Mediation-Annual-Report.pdf>.

167. *Id.*

168. *Id.* at 22.

169. *Id.* at 14.

170. *Id.* at 14-15.

171. MCCRARY, *supra* note 169, at 15.

172. *Id.*

173. *Id.*

174. *Id.* at 14.

175. *Id.*

176. Izumi, *supra* note 128, at 74.

177. *Id.* at 75.

178. *Id.* at 76.

179. *Id.* at 79.

party” particularly when race is a predominant factor. The Model Standards of Conduct leave it to the mediator to determine if he or she can conduct the mediation free from favoritism, bias, or prejudice.¹⁸⁰ This requires mediators to be conscious of their assumptions, biases, and judgments concerning the participants to assess their capacity to mediate with neutrality.¹⁸¹

B. Implicit Bias Training

Another trend in the law enforcement community is to institute implicit bias training for its officers. Salt Lake City’s population is only 3.5% African-American, but three African-Americans were fatally shot by police in three years¹⁸² As a result, the Salt Lake City Police Department has enacted a training program explicitly designed to correct the effects of implicit bias.¹⁸³ Similarly, the New York Police Department has mandated its officers attend at least eight hours of implicit bias training over the course of the next two years.¹⁸⁴ New York City Police Commissioner James O’Neill, citing concerns about community mistrust, wrote in a department-wide memo, “The goal of this training is to help us understand our attitudes, and how to best use our judgment, experience, and intelligence to be as effective and safe as possible.”¹⁸⁵ The St. Louis Metropolitan Police Department engaged in implicit bias training with members of senior command in the aftermath of Michael Brown’s shooting.¹⁸⁶ Chief Sam Dotson stated it was “more important than [sic] ever to recognize issues such as implicit bias and work towards solutions.”¹⁸⁷ Additionally, in 2016, DOJ implemented implicit bias training for all of its employees including the Federal Bureau of Investigation, Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, and Firearms.¹⁸⁸

As numerous police departments have adopted implicit bias training around the country, it is essential to assess its effectiveness in accomplishing its goals. Professor Smith argues the immediate goal of implicit bias training is to reduce biased policing, but the ultimate goal is to reduce racially disparate outcomes.¹⁸⁹ These police departments and agencies have identified implicit bias training as a positive method of addressing implicit bias, but researchers have not reached conclusive determinations about the benefit of implicit bias training.

180. MODEL STANDARDS OF CONDUCT FOR MEDIATORS, Standard III(E) (2005), http://abanet.org/dispute/documents/model_standards_conduct_april2007.pdf (stating that “A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias, or prejudice.”).

181. Izumi, *supra* note 128, at 85.

182. Tom James, *Can Cops Unlearn Their Unconscious Biases?*, THE ATLANTIC (Dec. 23, 2017),

183. *Id.*

184. Laura Dimon & Rocco Parascandola, *NYPD to Start ‘Implicit Bias’ Training*, POLICEONE.COM (Feb. 6, 2018), <https://www.policeone.com/patrol-issues/articles/470642006-NYPD-to-start-implicit-bias-training/>.

185. *Id.*

186. Robert J. Smith, *Reducing Racially Disparate Policing Outcomes: Is Implicit Bias Training the Answer?*, 37 U. HAW. L. REV. 295, 301 (2015).

187. *Id.*

188. Press Release, U.S. Dep’t of Just. Off. of Pub. Aff., Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel (June 27, 2016) (<https://www.justice.gov/opa/pr/department-justice-announces-new-department-wide-implicit-bias-training-personnel>).

189. Smith, *supra* note 189, at 296.

Philosophy Professors Darby and Levy argue political remedies must be implemented incrementally to targeted audience and communities.¹⁹⁰ Once the methods have been successful in those communities, the methods can then be taken to a broader audience and implemented on a wider scale.¹⁹¹ Implicit bias training is a remedy which should be implemented in this manner, but they recognize these programs are difficult to implement because the training requires individuals to accept that they are biased.¹⁹² Without this recognition and a desire to address bias, the training may be counterproductive.¹⁹³ The professors believe police departments and policy makers are the appropriate communities to begin this sort of training, and once they have established a successful track record, it can be used to convert skeptics and implemented on a larger scale.¹⁹⁴

There are some skeptics of the benefits of implicit bias training. Professor Peery notes that implicit bias training focuses on raising awareness of non-conscious bias but neglects to examine how those biases relate to explicit biases.¹⁹⁵ Researchers who study implicit bias caution against implicit bias training as a one-size-fits-all approach to address issues of racial bias and diversity.¹⁹⁶ The training is unable to “de-bias” participants because the research has not progressed enough to eradicate biases in the long-term.¹⁹⁷ Peery writes, “While a one-off implicit bias training may help in the rare case, it is not enough to repair community relations and correct for the more problematic institutional biases that plague police departments across the country.”¹⁹⁸

Professor Smith notes that there has not been enough research conducted to determine the overall effectiveness of implicit bias training in achieving long-term reduction in policing disparities.¹⁹⁹ The majority of implicit bias research measures the reduction in bias moments after the intervention.²⁰⁰ Smith argues most of the research indicates that any reductions in bias are “likely to be highly contextual and short lived.”²⁰¹

However, Professor Powell offers several suggestions to “address the pervasiveness of unconscious biases.”²⁰² One suggestion is implicit bias training for officers with requirements for departments to “measure, track, and address implicit bias, enhance officer supervision, and create accountability measures.”²⁰³ Additionally, Professor Cummings argues that implicit bias training should be led by skilled professionals, which would provide officers a better understanding of their

190. Derrick Darby & Richard E. Levy, *Postracial Remedies*, 50 U. MICH. J. L. REFORM 387, 462-63 (2016).

191. *Id.* at 463.

192. *Id.*

193. *Id.*

194. *Id.*

195. Destiny Peery, *Implicit Bias Training for Police May Help, but It's Not Enough*, HUFFINGTON POST: THE BLOG (Mar. 14, 2016, 9:29 PM), https://www.huffingtonpost.com/destiny-peery/implicit-bias-training-fo_b_9464564.html.

196. *Id.*

197. *Id.*

198. *Id.*

199. Smith, *supra* note 189, at 302-09.

200. *Id.* at 302.

201. *Id.* at 302-03 (quoting Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1267, 1268 (2012)).

202. Powell, *supra* note 95.

203. *Id.*

actions and reactions and to “critically analyz[e] whether their actions, inaction, or behaviors were motivated by deeply held bias or by true instinct.”²⁰⁴ Professor Beety suggests that simulation training is effective in mitigating racial biases of officers.²⁰⁵ Simulations train officers to take additional time before pulling the trigger, and “[e]ven a fraction of a second decreases the impact of emotions and implicit bias on whether to shoot.”²⁰⁶ This hesitation allows officers to correctly determine whether a suspect is armed or not, and as a result, officers will be more successful in applying lethal force correctly.²⁰⁷

Fair and Impartial Policing (“FIP”) was an implicit bias training program created by renowned Professor of Criminology Lorie A. Fridell and has been widely implemented across the United States. FIP’s clients include the Department of Justice, twelve state agencies, and thirty-four local departments including Baltimore and St. Louis.²⁰⁸ FIP is designed to address implicit racial bias as well as biases based on “gender, sexual orientation, religion, and socio-economic status.”²⁰⁹

FIP provides five levels of training customized for the officer’s rank and role in the department: (1) academy recruits and patrol officers, (2) first-line supervisors, (3) mid-level managers, (4) command-level officers, and (5) law enforcement trainers.²¹⁰ The six-hour training for recruits and patrol officers is designed to help officers understand that everyone has bias, how that bias impacts decision-making, and provides tools to help officers reduce and manage their own biases.²¹¹ The five-hour training for first-line supervisors is designed to assist these officers to identify and assess their own biases, how to supervise officers with bias, and how to interact with the community and media regarding issues of bias.²¹² The trainings provided for higher ranking management and leadership encompass the first-line supervisors but also adds components to assess the impact of bias on existing and future policy and creates comprehensive implementation plans of the FIP system throughout the department.²¹³

C. Community Policing

In addition to implicit bias training, cities and counties across the United States have adopted community policing policies.²¹⁴ Because each police department establishes its own program, the values and definitions of community policing will

204. André Douglas Pond Cummings, *Lord Forgive Me, But He Tried to Kill Me: Proposing Solutions to the United States’ Most Vexing Racial Challenges*, 23 WASH. & LEE J. C.R. & SOC. JUST. 3, 38 (2016).

205. Valena Elizabeth Beety, *Don’t Shoot: Police and Overcoming Implicit Racial Bias*, 9 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494607

206. *Id.*

207. *Id.* at 9-10.

208. FAIR AND IMPARTIAL POLICING, <http://www.fairimpartialpolicing.com/testimonials/> (last visited Sept. 21, 2018).

209. FAIR AND IMPARTIAL POLICING, 2 (2017), https://static1.squarespace.com/static/54722818e4b0b3ef26cdc085/t/58759865e3df289e72236b94/1484101734777/Extended_About+FIP_2017%24.pdf.

210. *Id.* at 3.

211. *Id.* at 4.

212. *Id.*

213. *Id.* at 5-6.

214. Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make us More Comfortable with the Others?*, 34 GA. L. REV. 1253, 1296 (2000) (stating

vary from jurisdiction to jurisdiction as will the quality of policing.²¹⁵ DOJ defines community policing as a “philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”²¹⁶ Additionally, DOJ recognizes and lauds three key components of community policing: organizational transformation, community partnership, and problem solving.²¹⁷

When police departments implement community policing, officers build relationships with the community by being visible and accessible in neighborhoods.²¹⁸ Officers encourage citizens to report suspicious activity and teach citizens how to avoid being victims of crime.²¹⁹ The focus of community policing is on problem-solving and noticing the concerns and needs of the community.²²⁰ The expectation is that police officers can collaborate with other city departments like sanitation, transportation, and public works to improve services for the neighborhood.²²¹

Professor Simmons asserts there are four general principles of community policing models.²²² The first principle requires decentralizing the police force to allow communication between police and the public.²²³ Second, departments are committed to problem-oriented policing.²²⁴ Third, police change tactics and priorities to respond to the public. Lastly, departments commit to helping neighborhoods solve crime problems on their own through community outreach programs and training.²²⁵ These principles create a legitimacy for the police force and establish ties to members of the community.²²⁶

The community policing approach has the potential to break the canalization process. Police scholar David Thacher noted that “institutional segregation” is reduced when police departments open the doors of communication between citizens and neighborhood groups.²²⁷ The effectiveness of community policing lives or dies by the department empowering the marginalized and disenfranchised members of society or restricting the channels of communication to the politically powerful.²²⁸

that 63% of larger county departments and 61% of municipal departments described themselves as utilizing “community policing” policies).

215. *Id.*

216. U.S. DEP’T OF JUST., COMMUNITY POLICING DEFINED 1 (2014), <https://ric-zai-inc.com/Publications/cops-p157-pub.pdf>.

217. *Id.*

218. Waldeck, *supra* note 217, at 1254.

219. *Id.*

220. *Id.*

221. *Id.*

222. Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 423 (2010).

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1811 (2010).

228. *Id.* at 1811-12

In Houston's community policing program, citizen meetings were usually held in neighborhoods that were predominately single-family homes, but minority residents predominately lived in rental properties in a different neighborhood.²²⁹ Participation rates were lower for the minority residents than for white residents.²³⁰ To thaw the canalization that has taken hold, departments must open the channels of communication to minorities.

In Richmond, Virginia, the police department engages in monthly community walks, featuring the police chief, supervising officers, and neighborhood officers going to a designated neighborhood and knocking on doors to meet with citizens.²³¹ Members of other governmental agencies like the departments of public works, social services, public utilities, and members of the clergy frequently join police officials on these community walks.²³² When residents see twenty-five officers in uniforms walking on the streets and knocking on doors, the residents come outside and interact with the officers.²³³ Richmond Police Chief Norwood states, "[Community walks] provide an opportunity for the officers and commanders to spend time in the community and expose the residents to positive contact with the police."²³⁴

San Diego has implemented community policing in a variety of ways.²³⁵ One of the ways is the Drug Abatement Response Team, which assembles housing inspectors, city attorneys, and the police department to identify properties that have ongoing drug activity.²³⁶ The program sought to induce landlords to improve properties where drug problems existed.²³⁷ Under California law, landlords can be held civilly liable for nuisances (such as drug dealing), which can ultimately result in forfeiture of the property.²³⁸ The department sent letters to landlords offering to assist them in removing drug offenders from their rental properties and forego the legal option of civil forfeiture.²³⁹ Many landlords complied with the request, resulting in the evictions of drug offenders and reduced drug-related criminal activity.²⁴⁰

229. James Jr. Forman, *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 17 (2004).

230. *Id.*

231. Bryan T. Norwood, *Taking it to the Streets—Engaging the Community from the Top-Down*, CALEA, <https://www.calea.org/calea-update-magazine/issue-104/taking-it-streets-engaging-community-top-down> (last visited Sept. 21, 2018).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Community Oriented Policing*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/about/community> (last visited Sept. 21, 2018).

236. *Id.*

237. *Program Profile: San Diego (Calif.) Drug Abatement Response Team (DART)*, NAT'L INST. OF JUST., <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=88> (last visited Sept. 21, 2018).

238. *Id.*

239. *Id.*

240. *Id.*

IV. REFORM PROPOSALS FOR DEPARTMENTS

A. Critique of Proposals

The reforms of mediation, implicit bias training, and community policing adopted by cities have their champions and their critics. The previous section outlined the basic procedures adopted by various departments in those identified realms. This section will analyze feedback from participants as well as the opinions of scholars and experts for each kind of reform.

i. Police-Citizen Mediation

One method to increase police officers' awareness of their implicit bias is through mediated conversations with minority citizens to establish a mutual understanding of each other's perspectives. The City of New Orleans is currently under the jurisdiction of a consent decree with the DOJ, and the city has reported significant success with its police-citizen mediation program. The terms of the consent decree require New Orleans to establish a "community-based restorative justice project . . . to help remedy mistrust between [the New Orleans Police Department] and the broader New Orleans community and create an environment for successful problem-solving partnership."²⁴¹ The mediation program was one of the first of its kind utilized in the South, allowing community members to discuss their conflicts directly with law enforcement through voluntary and confidential mediation.²⁴² The program has become a model for the nation to build mutual understanding and strengthen police and community relationships.²⁴³

In its 2015 annual report, the Independent Police Monitor released a review of NOPD's Community Police Mediation Program, and in it an anonymous NOPD officer stated:

We sat down face to face and talked about our perceptions of each other, how she perceived me as a white officer and how I perceived her as a young, black activist even to the detail of what the symbols on her jewelry make me think of her . . . Although I was uncomfortable at first, *I realized how important it was to her to talk about race and it was eye-opening for me.* I was able to explain policy and why I acted the way I did and she shared how she felt about how I treated her.²⁴⁴

The unidentified officer and citizen participant learned by sharing their differing narratives and perceptions. The officer went on to say, "Please tell anyone in the community or any officer they can contact me if they want to know more about mediation. This is good for our city."²⁴⁵ This suggests some officers may be hesitant to participate in mediation sessions at first, but once officers experience the

241. Consent Decree Regarding The New Orleans Police Dep't at ¶ 439, U.S. v. City of New Orleans 35 F. Supp. 3d 788 (E.D. La. 2013) (No. 2:12-cv-01924-SM-JCW), EFC 159-1.

242. David A. Marcello, *Ethics Reform in New Orleans: Progress—and Problems Ten Years Post-Katrina*, 62 LOY. L. REV. 435, 443-44 (2017); Alison R. McCrary, *Alternative Dispute Resolution*, 62 LA. B. J. 212, 213 (2014).

243. Lou Furman & Alison R. McCrary, *Building Trust in Law Enforcement: Community-Police Mediation in New Orleans*, 63 LA. B. J. 192, 192 (2015).

244. MCCRARY, *supra* note 169, at 5; *see also* MCCRARY, *supra* note 169, at 26.

245. MCCRARY, *supra* note 169, at 5.

process, they will encourage others to participate and increase the reach of the programs.

In that same 2015 report, an unidentified citizen shared her belief that mediation will help her city to survive:

More than anything in the world, I wanted to sit down at a table with this officer and tell him how I felt. This program helped me do that. It felt so different, and I was glad my case was referred to mediation. I was able to confront the officer in a respectful way that helped us *get down to the root of what was going on*. It wasn't just about me and him, but about this city, public safety, and *how what he does can contribute to whether this city will survive*, if local people will continue moving away, or if locally-owned businesses like mine will stay in business.²⁴⁶

It is clear from these encounters that police-citizen mediation can be a powerful experience for both sides. The benefits reaped from police-citizen mediation extend beyond the citizens to the police departments themselves. One officer stated, "After the mediation, I became *more aware of community needs*. I got a better understanding of how people view the police. I would encourage others to take advantage of the opportunity."²⁴⁷

ii. Implicit Bias Training

Professor Smith notes that police officer evaluations of implicit bias training have been generally positive and suggest the training sessions are effective forums for conversations regarding racial disparities.²⁴⁸ The FIP-produced materials indicate that officers found implicit bias training to be beneficial and could lead to long-term reductions in biases.²⁴⁹ One patrolman stated, "I am going to work in a very diverse environment and feel this training has helped me learn how to attempt to be unbiased toward situations I may encounter."²⁵⁰ Another patrolman stated that he learned what implicit bias was, how it impacted the community's perceptions of officers, and how it affected him personally.²⁵¹ Many of the supervisors' statements generally referenced the ability to better recognize bias and how it could be useful in training.²⁵²

One study conducted by a group of psychology professors found that multifaceted implicit bias training promoted significant reductions in implicit bias.²⁵³ The results indicated participants had continuing reductions in implicit bias four weeks after the training and those reductions persisted through eight weeks.²⁵⁴ The group of professors compare reducing implicit bias to overcoming a bad habit.²⁵⁵ Breaking the bad habit requires individuals to recognize they have prejudice, to want to

246. *Id.* (emphasis added).

247. *Id.* at 26.

248. Smith, *supra* note 189, at 312.

249. FAIR AND IMPARTIAL POLICING 4-6 (2017), https://static1.squarespace.com/static/54722818e4b0b3ef26cdc085/t/58759865e3df289e72236b94/1484101734777/Extended_About+FIP_2017%24.pdf.

250. *Id.* at 4.

251. *Id.*

252. *Id.* at 5.

253. Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1267, 1276 (2012).

254. *Id.*

255. *Id.* at 1276-77

reduce their prejudice, identify the times and places where their prejudices are most likely to occur, and lastly, they must understand how to use tools to replace their bias with equitable responses.²⁵⁶ However, this is the only study of its kind, and much more research needs to be conducted to identify the best methods and procedures.

iii. Community Policing

Professor Stoughton has identified numerous pitfalls for police departments implementing community policing like failures to properly define it, to evaluate its implementation, and cultural resistance within law enforcement.²⁵⁷ Stoughton believes the definition of community policing is best when it is a loosely defined philosophy about the practice of policing.²⁵⁸ Frequently community policing is used to describe a specific program, strategy, or tactic instead of a guiding principle for departmental leadership and officers.²⁵⁹

Without a clear definition and set of objectives, it can be difficult to properly implement community policing. When it is not properly defined, officers and leadership do not know who is responsible for community policing and how it applies to each member of the department.²⁶⁰ Departments frequently create special units or designate specific officers as community policemen.²⁶¹ This detracts from the purpose of community policing being a department-wide effort and creates an attitude that the program is just more work.²⁶²

San Diego, California and DOJ use the Scanning, Analysis, Response, and Assessment “SARA” model to evaluate problem solving techniques.²⁶³ The scanning phase requires law enforcement agencies to identify problems in the community.²⁶⁴ During the analysis phase, agencies and community members ask questions to learn as much as possible about any identified issue.²⁶⁵ The police department then responds to the issue by creating a custom-made plan based on careful analysis.²⁶⁶ After the plan has been implemented, the agencies evaluate if the problem was solved or reduced.²⁶⁷

256. Smith, *supra* note 189, at 303; see, Devine et al., *supra* note 256, at 1268.

257. Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 627 (2016).

258. *Id.*

259. *Id.*

260. *Id.* at 628.

261. *Id.*

262. Stoughton, *supra* note 258, at 628.

263. *Problem Oriented Policing*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/about/problem> (last visited Sept. 21, 2018); U.S. DEP’T OF JUST., COMMUNITY POLICING DEFINED 10 (2014), <https://ric-zai-inc.com/Publications/cops-p157-pub.pdf>.

264. *Problem Oriented Policing*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/about/problem> (last visited Sept. 21, 2018).

265. *Id.*

266. *Id.*

267. *Id.*

B. Recommendations for Reform

This section presents my recommendations to police departments enacting reform to address racial discrimination. My recommendations are based on the historical analysis, scientific research, and commentary of police officers, citizens, and scholars regarding the effectiveness of the proposed reforms.

i. Police-Citizen Mediation

When implementing mediation programs for police departments, it is best for departments look to the models of NOPD and BPD, as they have been recognized as some of the most effective models in the nation.²⁶⁸ Mediation is best suited for minor complaints like false arrest, disrespect, harassment, and abusive language in accordance with BPD policies.²⁶⁹ To address these issues, departments should adopt the following features in their mediation programs: multiple locations to file a complaint, convenient mediation sites, confidentiality, and mitigated officer discipline.

Both Baltimore and New Orleans provide several locations for citizens to file grievances against police officers.²⁷⁰ Because it can be intimidating to file a police complaint at a police station, providing numerous reporting locations allows citizens to choose the location where they feel the most comfortable. Citizen convenience is also essential in selecting mediation sites. NOPD mediators establish appointments for mediations to arrange convenient times and host sessions in schools, churches, libraries, etc.²⁷¹ When the sessions are convenient for citizens, the citizens are more likely to participate and more likely to feel valued by the police department. Additionally, citizens who lack personal transportation will be better able to attend sessions in their community or neighborhood.

To incentivize parties to participate, departments should ensure mediator neutrality, confidentiality, and no officer discipline. Neutrality and confidentiality are essential features to ensure the legitimacy of any mediation.²⁷² The freedom for the parties to openly share their views allows for honest, frank discussions about their perspectives. This candid conversation is one way to reverse the canalization process, which will help to reduce biases on both sides. Officers may be reluctant to participate in the process, but departments have been successful in attaining officer participation by limiting disciplinary action for those who participate.²⁷³ Officers will be more willing to honestly discuss the encounter if they know no disciplinary action will occur as a result of the session. Departments should include features from both BPD and NOPD to establish a comprehensive mediation program that will effectively target officer bias and build trust among minority residents in the community.

268. Furman & McCrary, *supra* note 246, at 192

269. BALT. CITY OFF. OF C.R., *supra* note 138.

270. BALT. POLICE DEP'T, *supra* note 137; CITY OF NEW ORLEANS, CITIZEN COMPLAINTS & COMMENDATIONS, <https://www.nola.gov/nopd/citizen-services/complaints/>.

271. MCCRARY, *supra* note 167, at 22.

272. Izumi, *supra* note 128, at 75.

273. *Memorandum of Understanding*, *supra* note 162, at 19.

ii. Implicit Bias Training

The effectiveness of implicit bias training is in doubt, but it remains a popular and inexpensive reform available to police departments.²⁷⁴ Even if the implicit bias training does not significantly reduce implicit bias, the trainings are politically viable forums that can provide meaningful discussions of racial disparities.²⁷⁵ The lack of conclusive research makes it very difficult for departments and professional trainers to select effective and comprehensive training programs, however, the best approach is to align efforts with the research as much as possible.

Trainings should be facilitated by trained professionals. Effective programs should take a multifaceted approach similar to the study conducted by Professor Devine and her colleagues.²⁷⁶ This study recognizes reinforces the necessity that individuals recognize they have bias and pursue meaningful efforts to reduce it.²⁷⁷ Additionally, a comprehensive program should assist officers to identify when and where prejudices are likely to occur and how to use tools to replace bias.²⁷⁸ This can best be accomplished by utilizing Professor Beety's suggestion that implicit bias training utilize simulations for police trainings.²⁷⁹ Simulations will enable police officers and other trainees to identify how their biases will impact specific situations they are likely to encounter, and the simulations will help trainees identify tools to use in those situations to make decisions with less unconscious bias. Additionally, because the effectiveness of implicit bias training is uncertain, departments should measure and track implicit bias as recommended by Professor Powell.²⁸⁰ By selecting an implicit bias training program that contains as many of these components as possible, departments will implement the best training program founded on available research.

iii. Community Policing

It is essential for police departments to have a clear definition of community policing when they are implementing the program. As Professor Stoughton argued, community policing tends to be ineffective if departments fail to define it adequately and evaluate its implementation.²⁸¹ To resolve the conundrum of the definition, departments should use the DOJ definition as a model, but departments should also collaborate with residents, organizations, and officers to craft a definition that is clear and concise for all stakeholders. If the mission is clearly defined and holistically adopted by the department, officers are more likely to accept the philosophy and incorporate community policing into their existing duties.²⁸²

274. Smith, *supra* note 189, at 311.

275. *Id.*

276. See Devine et al., *supra* note 256.

277. *Id.*; Darby & Levy, *supra* note 193, at 463.

278. See Devine et al., *supra* note 256.

279. Beety, *supra* note 208, at 9.

280. Powell, *supra* note 95.

281. Stoughton, *supra* note 260.

282. *Id.*

When developing and measuring the impact of community policing, cities and their police departments should use DOJ's recognized key components of community partnerships, organizational transformation, and problem solving.²⁸³ Community partnerships are collaborative partnerships between law enforcement agencies and other individuals and organizations to solve problems and build relationships.²⁸⁴ To measure this category, cities should track the number of events, the attendance of citizens and officers, and the issues discussed at the meetings. Depending on the nature of the issues discussed, departments should track data on their success in addressing the issue (i.e. the number of speeding tickets in a residential neighborhood if citizens complain about speeding). The second component is organizational transformation, which is the alignment of personnel and management dedicated to supporting partnerships and problem solving.²⁸⁵ Cities can measure success regarding this component by tracking the number of staff and work hours dedicated to proactive problem solving. For example, the department should keep data on the number of officers who participate in neighborhood watch events and community forums. The final component is problem solving, which DOJ defines as the "process of engaging in the proactive and systemic examination of identified problems to develop and evaluate effective responses."²⁸⁶ Police departments should collaborate with citizens and organizations to identify and prioritize problems, gather information about the problem, develop solutions, and evaluate the success of the implemented solutions.²⁸⁷

V. CONCLUSION

Cities across the country face a host of issues, but racial tension is one of the most enduring. Many urban centers have historically enacted discriminatory policies like the ones in St. Louis, Missouri and Baltimore, Maryland. As a direct result of living in physically segregated environments, officers and citizens have developed implicit biases towards the other that are not recognized by the individuals that hold them. Until the cognitive dissonance of these biases and the reality of the situation is overcome, police departments will continue to impose discriminatory practices marshalling ever-worsening resentment from minority citizens.

Minority citizens have little political capital to cause political change. With limited options, minorities frequently seek change through protesting, and in the cases of Ferguson and Baltimore, those protests were successful in launching a DOJ civil rights investigations. It would be far wiser for mayors, city councilors, police chiefs, and other city leaders to learn from Baltimore and Ferguson and become proactive in mitigating discrimination.

One of the best ways to build common ground between officers and citizens is through conversation in a facilitated setting that attenuates the canalization process. Trained mediators can facilitate a powerful dialogue leading to positive impacts on

283. U.S. DEP'T OF JUST., COMMUNITY POLICING DEFINED 1 (2014), <https://ric-zai-inc.com/Publications/cops-p157-pub.pdf>.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.* at 10.

police departments and citizens alike. The ability to explain the actions and reactions of officers and citizens alike allows opportunities for self-reflection and can mitigate the presence of racism in future confrontations.

Another proposal that has been adopted by cities is implicit bias training, which requires little time and money. This training can further diminish the canalization process when officers are given the opportunity to reflect on their own biases and how it affects their daily decision-making. While the benefits of this training are uncertain, it is a relatively inexpensive endeavor for departments. The potential benefits outweigh the costs of implementation and uncertainty. Lastly, community policing can be an effective tool to breakdown the canalization process if minorities are given the opportunity to communicate with officers and if police departments are responsive to their needs. If police departments implement these reforms with fidelity, the canalization process will be interrupted, and the impacts of racial discrimination can be mitigated.