

RACE, MEDIA, AND POLICE PRACTICES: HOW THE MEDIA INFLUENCES POLICE INTERACTIONS WITH BLACK AMERICANS

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Abstract: The spring of 2020 saw mass protests all across the country against the murder of George Floyd by a Minneapolis police officer. They demanded justice and they demanded change. How can there be positive, permanent change to policing, which, since its implementation, has targeted Black communities? This paper will talk about one of those changes: the abolition of all police forces. First, the paper will discuss the media and how it is used to perpetuate negative stereotypes about Black people. It will go over three prominent Black stereotypes; the Mandingo, the Sapphire, and the Savage. After that, it will discuss how to use popular culture to change how Black people are perceived in society. Next, it will go over news media and how that is an avenue for negative Black stereotypes. Then it will go over how to dispel those stereotypes through different journalistic techniques. Second, the paper will talk about stop and frisk, or Terry stops. It will define what stop and frisks are and when the police are allowed to stop and frisk. It will then talk about the issues involved with the practice and then discuss different reforms, such as elimination, that can alleviate the issues involved with stop and frisk. Next, the paper will explain about what a chokehold is. There are two different types of chokeholds, the carotid restraint and a chokehold. Then the paper will go through a case and discuss the implications of having chokeholds in police practices. Next, it will go through all of the different reforms, such as defunding, training, and abolition, to fix the issues brought on by how chokeholds are being implemented today. Next, the paper will discuss the three automobile exceptions: stop and frisk, search incident to an arrest, and the automobile exception. This section will discuss when the police can order someone out of their car, when they can search the car, and why they can search it. The paper will then discuss the implications of allowing police discretion to choose which cars to search and discuss the racial disparities in the stops and searches. Next, the paper will discuss reforms that can be made to alleviate the issues involved with the automobile exceptions. Lastly, what will happen to society if there is no police? The paper will go over the possibilities of funding and programs that can be implemented in the place of the police. It will discuss the debate over what will be done to combat dangerous crime.

Keywords: Race; Police; Media; Social Justice; Stop and Frisk; Car Search; Criminal Justice

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INTRODUCTION

The spring of 2020 saw mass protests all across the country against the murder of George Floyd by a Minneapolis police officer. They demanded justice and they demanded change. How can there be positive, permanent change to policing, which, since its implementation, has targeted Black communities? This paper will talk about one of those changes: the abolition of all police forces.

First, the paper will discuss the media and how it is used to perpetuate negative stereotypes about Black people. It will go over three prominent Black stereotypes; the Mandingo, the Sapphire, and the Savage. After that, it will discuss how to use popular culture to change how Black people are perceived in society. Next, it will go over news media and how that is an avenue for negative Black stereotypes. Then it will go over how to dispel those stereotypes through different journalistic techniques.

Second, the paper will talk about stop and frisk, or *Terry* stops. It will define what stop and frisks are and when the police are allowed to stop and frisk. It will then talk about the issues involved with the practice and then discuss different reforms, such as elimination, that can alleviate the issues involved with stop and frisk.

Next, the paper will explain about what a chokehold is. There are two different types of chokeholds, the carotid restraint and a chokehold. Then the paper will go through a case and discuss the implications of having chokeholds in police practices. Next, it will go through all of the different reforms, such as defunding, training, and abolition, to fix the issues brought on by how chokeholds are being implemented today.

Next, the paper will discuss the three automobile exceptions: stop and frisk, search incident to an arrest, and the automobile exception. This section will discuss when the police can order someone out of their car, when they can search the car, and why they can search it. The paper will then discuss the implications of allowing police discretion to choose which cars to search and discuss the racial disparities in the stops and searches. Next, the paper will discuss reforms that can be made to alleviate the issues involved with the automobile exceptions.

Lastly, what will happen to society if there is no police? The paper will go over the possibilities of funding and programs that can be implemented in the place of the police. It will discuss the debate over what will be done to combat dangerous crime.

I. DOES THE MEDIA INFLUENCE HOW SOCIETY THINK?

A white family is traveling across the country to go on a family vacation at an amusement park. Along the way, they take a wrong turn in St. Louis. Suddenly they are in the “hood.” While they are being distracted by a Black man holding a basketball and another Black man dressed like a “pimp,” their car is robbed. The scene is set to jazz music, which signifies to the viewer that this is a Black neighborhood. The movie is National Lampoon’s *Vacation*, which is often cited as one of the greatest comedy films of all time.¹

This movie is not an anomaly. Countless films and television shows portray Black people using negative racial stereotypes. Many Black stereotypes have evolved over the years,

¹ Staff, *Let's 'Fix' Racism in Movies and T.V.* THE RINGER.COM, (Aug. 31, 2016), www.theringer.com/2016/8/31/16037096/lets-fix-racism-in-movies-and-tv-c5c20ad529f0.

but their effects are the same: they can have a negative, sometimes even deadly, impact on a Black person's life.^{2,3}

Black male stereotypes can harm how they are perceived in society. The idea that Black men are angry and violent to get revenge on white people is the central idea of many Black male stereotypes. The Mandingo stereotype, for example, shows Black men as a "Black brute" who would like to exact revenge on the white man by having sex with white women, often by force.⁴ This racial stereotype is seen in many movies such as "Birth of a Nation."⁵ This stereotype is harmful as it allows for false accusations of Black men in sexual assault cases, such as the five Black and brown boys in New York in the 1990s, known colloquially as the Central Park 5.⁶

The Savage stereotype is equally as damaging. It has evolved over the years, but the meaning is still the same: Black men are violent, inferior, animal-like creatures who do not experience much pain.^{7,8} This stereotype can be seen when Black men are depicted as drug dealers, gangsters, and criminals. This stereotype is deadly, as aggression and fear are often the reasons cited for police using deadly force and Black people are 2.8 times more likely than white people to die at the hands of an officer.⁹

Black women also have the same aggressive stereotypes. The Sapphire stereotype is often seen in popular culture today: the independent Black woman who does not need a man

² There were many racial stereotypes for Black people in the late 19th and early 20th centuries. These stereotypes have died down in recent years but are still prevalent in society today. Laura Green, *Negative Racial Stereotypes and Their Effect on Attitudes Toward African-Americans*, FERRIS STATE UNIVERSITY, (last accessed Nov. 17, 2020), www.ferris.edu/htmls/news/jimcrow/links/essays/vcu.htm

³ From the Trans-Atlantic Slave Trade to mass incarceration, negative stereotypes of Black people were and are currently used to justify Black Americans' mistreatment in the United States. *Popular and Pervasive Stereotypes of African Americans*, NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE, (Jul. 19, 2019), nmaahc.si.edu/blog-post/popular-and-pervasive-stereotypes-african-americans

⁴ *Id*; See also Jesus Gregorio Smith, *Home And Community for Queer Men of Color* 149-71 (Lexington Books, 2019). Smith's book talks about the case of a gay Black man who was over sentenced for second degree murder for giving his sexual partners HIV. The book discusses how it is because of the hypersexuality of Black men and homophobia that lead to this man being sent for thirty years. He eventually only served six of them after a journalist from BuzzFeed News covered his story.

⁵ "Birth of a Nation" depicts a Black man chasing a white woman down and attempting to rape her. The film then puts him to death by lynching. *The Birth of A Nation' Opens, Glorifying the KKK*. HISTORY.COM, (Feb. 9, 2010), www.history.com/this-day-in-history/birth-of-a-nation-opens.

⁶ The "Central Park Five" were five Black and brown innocent teenagers accused and convicted of the beating and rape of a wealthy white woman in Central Park. They were exonerated years later after the real rapist was discovered. History.com Editors. "The Central Park Five." *History.com*, A&E Television Networks, (May 14, 2019), www.history.com/topics/1980s/central-park-five.

⁷ Laura Green, *Negative Racial Stereotypes and Their Effect on Attitudes Toward African-Americans*, FERRIS STATE UNIVERSITY, (last accessed Nov. 17, 2020), www.ferris.edu/htmls/news/jimcrow/links/essays/vcu.htm.

⁸ Black people are often perceived as having higher pain thresholds, leading them not to be treated for pain in the medical field and receiving less correct diagnoses. Kelly M Hoffman, et al. *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs about Biological Differences between Blacks and Whites*, NATIONAL ACADEMY OF SCIENCES, (Apr. 19, 2016), www.ncbi.nlm.nih.gov/pmc/articles/PMC4843483/.

⁹ Even though most victims of police force are white (52%), there is a disproportionate that are Black (32%). Sarah DeGue, et al. *Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009-2012*. U.S. NATIONAL LIBRARY OF MEDICINE, (Nov. 2016), www.ncbi.nlm.nih.gov/pmc/articles/PMC6080222/

and will not listen to anyone.¹⁰ This stereotype also brings about the “Angry Black Woman.” The Angry Black Woman is mad at everybody for apparently no reason; she is bitter at the world.¹¹ This stereotype is deadly in that police use the excuse that the Black woman was angry and argumentative when explaining why they enacted force or escalated a situation.¹² Sandra Bland is an example of this: she was slammed into the ground and arrested because the officers at the scene said that she was “combative.”¹³ She later died in police custody.

So how are negative stereotypes dispelled in the media? One way is through storytelling. Black people have a rich array of experiences, motivations, and value systems that should be told. Stereotypes only represent, if any, a tiny percentage of any given population. Through telling stories about Black people doing everyday things and living through everyday experiences that all races participate in, it humanizes the race. It makes it more likely that Black people will be seen as equal.¹⁴ Through popular culture, society can make the proper changes to begin seeing Black people in a positive light by connecting to people’s emotions in a way that creates empathy in people who otherwise would have never considered or interacted with the Black experience.¹⁵

Popular culture also benefits from being widely spread; whatever is prevalent will be seen, heard, and consumed by large groups.¹⁶ The quick and widespread circulation of popular media makes using popular media a fast, easy way to spread positive messages about the Black community. An example of a positive story is the show “Black*ish.” The show is not perfect (there are issues of colorism in the casting), but the show depicts a wealthy Black family as they navigate life. The show does not shy away from them being Black; it embraces it. However, the characters' situations are not because they are Black; it is because they are people.

Popular media is not the only way that negative Black stereotypes make it out to the public for consumption. News media also uses stereotypes to depict Black people. Studies have shown that Black families are perceived as dysfunctional, and white families are shown to be

¹⁰ Black people are underrepresented in dramas and overrepresented in comedies. Black people are overrepresented in comedies because Black stereotypes are often used as comedic relief. “Amos 'n Andy” was the first broadcasted depiction of Black women that associated them with the term “Sapphire.” The show ran from 1928-1960 on the radio, and in the 1950s, the show was on television. Sapphire's character was very domineering, and she emasculated her husband, who was a poor, racist depiction of a Black man. After that show, many other sitcoms have been released that show Black women as domineering, emasculating, aggressive, and angry. *The Sapphire Caricature*, FERRIS STATE UNIVERSITY, www.ferris.edu/HTMLS/news/jimcrow/antiblack/sapphire.htm.

¹¹ *Id.*

¹² Eternity E. Martis, *The 'Angry Black Woman' Stereotype Is Justifying Police Brutality*, HUFFPOST CANADA, (Aug. 13, 2016), www.huffingtonpost.ca/eternity-e-martis/stereotype-justifying-police-brutality_b_7967558.html.

¹³ *Id.*

¹⁴ Popular media is a great way to dispel racial stereotypes. It is fast, accessible to large amounts of people, and is enjoyable to consume. It is cheap and people of all ages and socioeconomic demographics can participate in it. It is frequently used to negatively show Black people, from T.V. shows that use racial stereotypes to who is cast in specific roles. Popular media can influence how a whole society interacts and sees Black people. Rachel D. Godsil, et al., *#PopJustice: Volume 3 Pop Culture, Perceptions, and Social Change* PERCEPTION.ORG, (Feb. 2016), perception.org/wp-content/uploads/2016/05/PopJustice-Volume-3_Research-Review.pdf.

¹⁵ *Id.*

¹⁶ *Id.*

a place of stability in the news.¹⁷ Negative news stories on Black communities harm Black people as it leads to many more restrictions on them and their communities. Restrictions include jobs with more stringent drug test requirements, welfare restrictions, and reductions of social programs.¹⁸ These cuts are a direct result of the fact that since people see Black families as a lousy source for support, that must be where all of the Black community's problems lie. If Black people would work hard on their family lives and those improved, then all of their problems would go away.

Programs are taken away because they are seen as unnecessary. Many community staples' removal and restriction negatively impact the communities because there is a direct correlation between poverty and crime.¹⁹ If people in poor Black neighborhoods are stripped of programs that help the neighborhood and the jobs are much harder to get, those communities will stay poor, and as a result, be considered a high crime neighborhood. That leads to more policing, more police encounters, and more instances of escalation with the police.

Another way that news media perpetuates stereotypes against Black people is how news stations report on Black people. Black people are overrepresented when it comes to reporting on them committing crimes. New York news stations in 2014 reported “African-Americans as suspects in 68 percent of murder stories, 80 percent of stories about thefts, and 72 percent of stories about assaults” even though they only made up 54 percent of murder cases, 55 percent of theft cases, and 49 percent of assaults that same year.²⁰ This inaccurate portrayal of Black crime leads to viewers believing that Black people commit their crimes at the rates that are being reported instead of what they are. This inaccurate portrayal leads to Black people being reported to police forces at higher percentages and for crimes they did not commit. Some activists call on their elected representatives to mitigate this divide by creating laws that deter white people from calling the police unnecessarily on Black people after a few videos, most famously Amy Cooper, went viral in 2020.²¹

¹⁷ Poverty was not always negatively perceived in the media. In the first half of the 20th century, when white people were benefitting from social programs, they were depicted as needing the programs. White people did not need the programs because they were lazy; they needed them because they were experiencing a hard time. After the Civil Rights movement in the 1950s and 1960s, Black people started to receive the same benefits from those programs. After that, the programs were then seen as only for lazy, non-hard working people, and, even though white people still benefit from these programs, Black people are depicted as being the main benefactors. Tracy Jan, *News Media Offers Consistently Warped Portrayals of Black Families, Study Finds*, THE WASHINGTON POST, (Apr. 29, 2019), www.washingtonpost.com/news/wonk/wp/2017/12/13/news-media-offers-consistently-warped-portrayals-of-black-families-study-finds/.

¹⁸ *Id.*

¹⁹ Erika Harrell and Lynn Langton, *Household Poverty and Nonfatal Violent Victimization, 2008–2012*, BJS.GOV, (Nov. 2014), www.bjs.gov/content/pub/pdf/hpnvv0812.pdf.

²⁰ Elizabeth Sun, *The Dangerous Racialization of Crime in U.S. News Media*, CENTER FOR AMERICAN PROGRESS, (Aug. 29, 2018), www.americanprogress.org/issues/criminaljustice/news/2018/08/29/455313/dangerous-racialization-crime-u-s-news-media/; Azi Paybarah, *Media Matters: New York TV News over-Reports on Crimes with Black Suspects*, POLITICO PRO, (Mar. 23, 2015), www.politico.com/states/new-york/city-hall/story/2015/03/media-matters-new-york-tv-news-over-reports-on-crimes-with-black-suspects-020674.

²¹ Amy Cooper was a white woman who did not have her dog on a leash in Central Park. A Black man told her that she needed to have the dog on a leash, and she then called the police and falsely reported that he was threatening her and her dog. Erika D. Smith, “Column: California Wants to Make It Legal to Sue Karens. Why Aren't We Prosecuting Them?” *Los Angeles Times*, Los Angeles Times, Jul. 11, 2020, www.latimes.com/california/story/2020-07-11/california-prosecute-karen-police-911-race.

News media needs to begin to show Black families as functional and a place where Black people get a strong sense of self and receive support. There needs to be more positive stories on the Black family, especially on conservative news networks. By telling positive stories, it will help Black communities maintain social programs and welfare programs and reduce job restrictions so that there is some financial stability in Black neighborhoods. Showing Black people in a positive light will help those neighborhoods from being deemed "high crime." The news media also has to stop reporting Black crimes at higher rates on their news stations and in the papers more than they occur. The media needs to report the correct amount of crimes, and it needs to show that white people also commit those same crimes.

II. TO TAKE A LONG STEP DOWN THE TOTALITARIAN PATH: HOW POLICE PRACTICES IMPACT THE BLACK COMMUNITY

"He fit the description." "He looked suspicious." "This is a high crime neighborhood." "They looked like they were up to no good." These are phrases spoken so often in the aftermath of a police brutality case that it is impossible to attribute these quotes to one specific story. Black Americans experience violence at the hands of the police. The question is: Is that because of individual "bad apples," or is it because of policies and procedures that either intentionally or unintentionally target Black and brown communities? As stated above, mass media influences how someone in society perceives Black people. Some central police practices that affect many in the Black community are *Terry* stops (more commonly known as stop and frisks), chokeholds, and the automobile warrant exceptions. Can these practices be influenced by perceptions by the specific officers or the police forces of Black people?

A. *Terry* Stops: What Are They and How Do They Impact the Black Community?

The Fourth Amendment of the Constitution states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."²² Police obtaining a warrant is one of the Fourth Amendment's quintessential parts, showing probable cause to search or seize an item or person. *Terry* stops, however, do not have the same standard. The stop and frisk was created as an intermediary level of suspicion to alleviate and control some of the negative interactions people were having with the police forces when there was no arrest and to protect police from armed suspects.²³ There are two parts to the *Terry* doctrine: if there is "reasonable suspicion" that the person is involved in some type of criminal activity, they can be stopped, and with the reason to believe the person is armed, there can be a "frisk" of their person to check for weapons.²⁴

What does reasonable suspicion mean? The Supreme Court has not given any specific guidelines as to what reasonable suspicion is. In *Illinois v. Wardlow*, the Court states that while being in a high crime area on its own is not enough to meet the reasonable suspicion standard, unprovoked flight from that area is deemed to be enough to reach reasonable suspicion.²⁵ However, the dissenters brought up the fact that in many neighborhoods considered "high crime" or that are mostly minority, even innocent people might flee from the police to avoid

²² U.S. Const. Amend. IV

²³ Ric Simmons and Renée McDonald Hutchins, *Learning Criminal Procedure: Investigations 556* (West Academic Publishing, 2nd ed. 2019), citing *Terry v. Ohio*, 392 U.S. 1, 17 (1968)

²⁴ *Terry*, 392 U.S. at 21, 27 (three men were seen acting suspiciously outside of stores known for being hit with armed robberies. The officer stopped and frisked them and discovered weapons on them).

²⁵ *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000) (man ran in the opposite direction after seeing the police in a high crime neighborhood. This was enough to raise reasonable suspicion for a *Terry* stop).

unjustified persecution and violence at the officers' hands.²⁶ This dissent shows that seemingly normal reactions, or reactions that would be deemed reasonable given the circumstances, can be seen as suspicious to an officer and cause the individual to be stopped. Police officers are also given grace when it comes to stopping and frisking innocent people. In the Supreme Court case *Heien v. North Carolina*, the Court found that “[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’”²⁷

An officer can stop and frisk an individual in their car as long as the initial stop is legal, such as a routine traffic stop. They are allowed to maintain the stop as long as it takes them to complete what the officer needs to complete incident to the initial stop. In *Pennsylvania v. Mimms*, the Court determined that officers could always ask for someone to get out of their car because the Court believed that any traffic stop is dangerous to police officers, even if the stop is for a minor traffic violation.²⁸ The law is this way because it is assumed that every vehicular police stop is dangerous and that traffic stops are the most dangerous for the officer.²⁹ However, traffic stops are not as dangerous as they may seem; only about 1 in 6.5 million traffic stops result in killing an officer, 1 in 361,111 resulted in serious injury to an officer, and assaults against an officer only occurred 1 in 6,959 of traffic stops.³⁰ If the officer suspects the person to have a weapon on them, they can frisk their person or the car's area that the person would have had access to. This practice is problematic as Black people are stopped more than white people for traffic violations and searched more.³¹ Societal perceptions of Black people and the images of Black people seen in the media influence whom the officers stop in the first place. If the officer watches the news, for instance, and they see a Black man driving in a nice car in a Black neighborhood, he might assume that the car is stolen because the media over reports when Black people commit thefts. Because of negative perceptions about Black people with murders and assaults, the Black person could be ordered out of their car and frisked. The situation could escalate, leading to either arrest, injury, or death of the Black person.

Media perceptions and implicit biases of officers affect whom they decide to stop and frisk and decide to find as suspicious people. Black people, especially men, are perceived to be dangerous and are often seen as a threat. These thoughts and perceptions can lead to an officer seeing a Black man performing an everyday task or evading questions and instantly fear or assume that he is armed and dangerous. As stated previously, the term "high crime" is often used to describe neighborhoods where mostly Black people live. According to *Terry*, if "high crime" neighborhoods are synonymous with Black and brown neighborhoods, then Black and brown people who live in those areas are already subject to suspicion. Due to the high policing in those areas, Black people, especially men, are often more likely to be stopped and frisked than white people. According to the NYPD Annual Reports, out of all the people stopped and

²⁶ *Id.* at 132

²⁷ Ric Simmons and Renée McDonald Hutchins, *Learning Criminal Procedure: Investigations 575* (West Academic Publishing, 2nd ed. 2019). citing *Heien v. North Carolina*, 135 S.Ct. 530, 536 (2014).

²⁸ *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (the Court ruled that Mimms could be asked out of his car even though the stop was for a minor traffic violation)

²⁹ Traffic stops are considered one of the most dangerous activities a police officer can be a part of. Scoville, Dean. “The Hazards of Traffic Stops.” *POLICE Magazine*, Oct. 19, 2010, www.policemag.com/340410/the-hazards-of-traffic-stops.

³⁰ Jordan B. Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 Mich. L. Rev. 635 (2019).

³¹ This study was completed using almost 100 million traffic stops from 21 state patrol agencies and 29 municipal police departments. The data found that Black people were stopped and searched at higher rates than white people. *The Stanford Open Policing Project* OPENPOLICING.STANFORD.EDU, openpolicing.stanford.edu/findings/.

frisked in New York in 2019, 59% were Black compared to 9% being white.³² Reports show that stops and frisks do not catch criminals. According to the NYPD Annual report, nearly 90% of all stopped and frisked people are innocent.³³

If stop and frisk were allowed to be carried out the way it is now, many more Black people would be subjected to this invasive, humiliating police practice. The vast majority of stopped and frisked people are Black and brown, and the vast majority are innocent people. If no arrest happens, there is no Fourth Amendment remedy that the victim can receive, leading to virtually no oversight of the practice and no justice.

1. What are some reforms that can be implemented to end racial discrimination in *Terry* stops?

There are many different ways to approach stop and frisk abuse: reforming stop and frisk law, ending stop and frisk, or abolishing the police system as we know it to be.

There are many critics of *Terry* stops. Reforming the stop and frisk procedure has been a hot topic ever since the landmark case of *Floyd v. City of New York*.³⁴ Reforming stop and frisk laws, raising the reasonable suspicion standard, ending stop and frisk, defunding the police, and abolishing the police are all ways to reform *Terry* stops.³⁵ Do these reforms stop the discriminatory aspect of *Terry* stops?

Between 2011-2019, there had been a 98% reduction in *Terry* stops in New York City.³⁶ Under Mayor Bloomberg in 2011, nearly 700,000 people were stopped. When Mayor de Blasio took office in 2012, there was extreme public pressure to reduce the number of stops. Between that and transparency through the police, stops were reduced to 11,629 in 2017.³⁷ Crime has also gone down in New York City since there have been fewer stops, disproving the theory that there need to be more stops to reduce crime overall.³⁸ In fact, in 2018, homicide was down to the lowest that it had been in almost 70 years.³⁹

However, while the number of stops has been reduced significantly, racial discrimination has not changed significantly. In 2011, Black men between the ages of 14-24 only made up 4.7% of all people in New York City, but they made up 41.6% of all stops in 2011.⁴⁰ Between the years of 2014-2017, the same demographic only made up 5% of the population but made up 38% of all stops.⁴¹ This data shows that even with transparency, even when the police are on board for change, even when the police stop significantly fewer people, racial discrimination will still show through. Black men, especially, will still be negatively

³² *Stop-and-Frisk Data*, NEW YORK CIVIL LIBERTIES UNION, (Mar. 11, 2020), www.nyclu.org/en/stop-and-frisk-data.

³³ *Id.*

³⁴ 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (the court ruled in a class action that the stop and frisks were unconstitutional and were being carried out in a racially discriminatory way)

³⁵ *Stop-and-Frisk Reforms: What is the Latest?* CENTER FOR CONSTITUTIONAL RIGHTS, Feb.16, 2016, ccrjustice.org/home/blog/2016/02/16/.

³⁶ Michelle Shames and Simon McCormack, *Stop and Frisks Plummeted Under New York Mayor Bill De Blasio, but Racial Disparities Have not Budged* AMERICAN CIVIL LIBERTIES UNION, (Mar. 14, 2019), www.aclu.org/blog/criminal-law-reform/reforming-police/stop-and-frisks-plummeted-under-new-york-mayor-bill-de.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

affected. New York City has acknowledged this and, in the summer of 2020, decided to disband the last unit responsible for making *Terry* stops in their police force.⁴²

Another policy reform is to change the standard of *Terry* from reasonable suspicion to probable cause. Even in *Terry v. Ohio*, there was a debate about whether or not reasonable suspicion was constitutional. Justice Douglas, in his dissent, was afraid that allowing the Court to lay out a lesser standard to probable cause for a *Terry* stop would be a “long step down the totalitarian path.”⁴³ He believed that the people, not unelected judges, should decide by waiting for a constitutional amendment to the Fourth Amendment stating that the standard should be lowered to reasonable suspicion.⁴⁴ By raising the standard to probable cause, fewer people will be stopped and frisked, and it will be more likely that the people who are stopped are armed.

Another policy reform is to end stop and frisk altogether. As previously mentioned, in the summer of 2020, the New York Police Department disbanded their last unit that did stop and frisk. While there has not been enough time to determine that ending stop and frisk completely does not affect whether or not crimes will increase, there is a showing that crime does not increase when there are fewer *Terry* stops.

Another policy reform is to defund the police forces. Defunding means taking the funds given to the police forces, reducing them, and giving social programs the money.⁴⁵ The more accurate way to describe it would be to say that it is reallocating funds from the police forces to communities that need the money.⁴⁶ Defunding can mean anything from fewer officers to fewer weapons the police can use. As mentioned before, even when fewer people are stopped, that does not mean that racial discrimination has stopped. Instead, it has shown the racial discrimination stays around the same. If the police are defunded, that does not address police discrimination in the forces and the officers themselves.

The last reform that activists are discussing is the abolition of the police forces as we know it. If there were no police, there would be no stops. There would be no frisks. There would be no officers who would, either subconsciously or consciously, use race to meet the reasonable suspicion standard. There would be no neighborhoods in poverty because funds would be allocated from the police department to public social programs to fund schools, activities and create jobs for those neighborhoods.⁴⁷ With community-specific after school programs such as art and music, fully funded schools with excellent teacher retention, and schools that emphasize helping students with their problems instead of punishment, young students will be less likely to become involved in gangs and violence as they will be more

⁴² The George Floyd protests of 2020 influenced the NYPD to make reforms to their police departments. Minneapolis and Los Angeles are among other cities that have pledged to make reforms. Tom Winter, et al. *NYPD Is Disbanding a Unit That Is the 'Last Chapter' of Stop-and-Frisk* NBCNEWS.COM, (Jun. 17, 2020), www.nbcnews.com/news/all/nypd-disbanding-unit-last-chapter-stop-frisk-n1231135.

⁴³ *Terry*, 392 U.S. at 39

⁴⁴ *Id.*

⁴⁵ Rashawn Ray, *What Does 'Defund the Police' Mean and Does It Have Merit?* BROOKINGS, (Jun. 19, 2020), www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/.

⁴⁶ *Id.*

⁴⁷ The NYPD spends \$10.9 billion a year, making it the country's highest-spending police force. Many other police departments in major cities spend several hundred million a year. The LAPD spends \$3 billion annually. David Zahniser, et al. *Los Angeles Cuts LAPD Spending, Taking Police Staffing to Its Lowest Level in 12 Years*, LOS ANGELES TIMES, (Jul. 1, 2020), www.latimes.com/california/story/2020-07-01/lapd-budget-cuts-protesters-police-brutality; Adrian Pietrzak, *Seven Facts About the NYPD, Budget* CITIZENS BUDGET COMMISSION OF NEW YORK, Jun. 12, 2020, cbcny.org/research/seven-facts-about-nypd-budget.

likely to go to school and finish.⁴⁸ Black families will spend more time together because there will be better-paying jobs so the parents would not have to work as many hours. The community can create their own programs to respond to specific issues involving community-specific crimes so that they are sure to meet the community's needs.⁴⁹

B. Chokeholds

Stop and frisks are not the only police practice that law enforcement uses to discriminate against Black people. Another practice is restraint. Many Black people have been killed by law enforcement by chokeholds. Eric Garner and George Floyd are only two names of the many harmed due to this practice. What is a chokehold, and why is it so problematic?

There are two types of chokeholds. The carotid restraint is where the officer holds the individual so that there is no blood flow to the brain, causing temporary unconsciousness.⁵⁰ The second is the chokehold, when the officer applies pressure to the windpipe making it so the individual cannot breathe.⁵¹ In Minneapolis, the city where George Floyd was murdered in 2020, the police force has used a chokehold 237 times since the beginning of 2015, and in 44 of those times, the individual in the chokehold went unconscious.⁵²

In St. Louis, Missouri, a man named Nicholas Gilbert was arrested on suspicion of trespassing.⁵³ The police took him into a holding facility and put him in an individual cell to book him.⁵⁴ One of the officers claimed that Gilbert was acting erratically and even yelled that he had tied a piece of clothing around his neck to try and kill himself.⁵⁵ Another officer went into the cell and saw that Gilbert did not have a piece of clothing around his neck.⁵⁶ The officer then tried to cuff Gilbert and Gilbert allegedly began resisting the officer.⁵⁷ Several other officers then entered the cell to try and get Gilbert into a specific position. All in all, six officers, weighing a combined 1300 pounds for fifteen minutes, were on top of Gilbert throughout this encounter.⁵⁸ He died during the altercation.⁵⁹ The Eighth Circuit found that the officers did not use excessive force and were protected by qualified immunity.⁶⁰

If chokeholds are allowed to be used, many more Black people will be subjected to this restraint's adverse effects like Gilbert, or George Floyd, or Eric Garner, either through passing out or through death. It is humiliating and scary to be held so that someone cannot breathe or have blood flow to their head. That can cause lasting trauma to the person that the chokehold

⁴⁸ Gary D. Gottfredson, *What Can Schools Do to Help Prevent Gang-Joining?* NCJRS.GOV, (last accessed Nov. 17, 2020) www.ncjrs.gov/pdffiles1/nij/243471.pdf.

⁴⁹ Derecka Purnell, *How I Became a Police Abolitionist*, THE ATLANTIC, (Jul. 24, 2020), www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/.

⁵⁰ Kaveh Waddell, *Why Many Large Police Departments Tolerate Their Officers Using Neck Holds*, THE ATLANTIC, (Dec. 10, 2014), www.theatlantic.com/politics/archive/2014/12/why-many-large-police-departments-tolerate-their-officers-using-neck-holds/458079/.

⁵¹ *Id.*

⁵² Summer Lin, *What Are Chokeholds and Can Police Use Them? It Depends What Kind and Where You Live*, MIAMI HERALD, (Jun. 3, 2020), www.miamiherald.com/news/nation-world/national/article243230871.html.

⁵³ *Lombardo v. City of St. Louis*, 956 F.3d 1009, 1011 (8th Cir. 2020).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Lombardo v. City of Saint Louis*, 20–391, AMERICAN CIVIL LIBERTIES UNION, (last accessed Oct. 27, 2020), www.aclu.org/cases/lombardo-v-city-saint-louis-20-391.

⁵⁹ *Lombardo*, 956 F.3d at 1012.

⁶⁰ *Id.* at 1014.

is used against.⁶¹ Qualified immunity will continue to protect officers who do chokeholds from facing liability for harming the people they do put into chokeholds, just like in *Lombardo*.

1. What Are Policy Reforms that Can End Racial Discrimination When the Police Perform Chokeholds?

Since the George Floyd incident in the spring of 2020, many people call for reform to police departments to assure that no other Black man will be murdered the way he was. There have been calls to ban chokeholds, hold police that commit misconduct accountable by firing them and to have a national database where all fired officers are submitted to, defunding police forces, and abolishing police forces. People in favor of chokeholds have also called for more training on how to perform the move and only use it if it is a life-threatening situation. Will these reforms minimize the death toll of civilians by police officers?

The first policy reform regarding chokeholds is that the police need more training on the move and should only be trained to use the move in life-threatening situations. Even President Trump, who has made himself out to be the "Law and Order" president, has called for there only to be chokeholds in life-threatening situations.⁶²

What is considered life-threatening? As stated previously, Black people, especially men, are perceived in the media and society as being aggressive, threatening, and dangerous. This perception can cause much fear in an officer who does not realize that he has implicit biases against Black people, and it can cause him to put a Black man into a chokehold because he feared for his life. Black people are more likely to experience police force than white people. In Minneapolis, the city where George Floyd was murdered, even though Black people only make up 20% of the city since 2015, 59% of the force the police use is against a Black person.⁶³ Out of neck restraints, 66% are committed against a Black person.⁶⁴ Simultaneously, 60% of the city was white, and only 24% of police force acts were used against white people.⁶⁵ This data shows a strong bias to use force against Black people, and there is no showing that using the chokehold in only life-threatening situations will close that racial gap.

⁶¹ This study was conducted on 18 to 26-year-old men in New York City. It found that the more police interactions and the more intrusive the encounter, the more anxiety and trauma symptoms were observed in the young men. Amanda Geller, et al. *Aggressive Policing and the Mental Health of Young Urban Men* AMERICAN PUBLIC HEALTH ASSOCIATION, (Dec. 2014), www.ncbi.nlm.nih.gov/pmc/articles/PMC4232139/.

⁶² A Reuters study showed that 82% of Americans support a ban on chokeholds. In the same article, a police officer who trains thousands of officers says that the move should only be used if the officer is facing death. Mark Albert, *'Weapon of Last Resort': Physical Restraint Trainer Says Police Need More Training*, KMBC, (Jun. 16, 2020), www.kmbc.com/article/weapon-of-last-resort-physical-restraint-trainer-says-police-need-more-training/32884552.

⁶³ Richard A. Oppel and Lazaro Gamio, *Minneapolis Police Use Force Against Black People at 7 Times the Rate of Whites* *The New York Times*, THE NEW YORK TIMES, (Jun. 3, 2020), www.nytimes.com/interactive/2020/06/03/us/minneapolis-police-use-of-force.html.

⁶⁴ *Id.*

⁶⁵ *Id.*

Another policy reform that is talked about is a ban on chokeholds. Most people support a ban on chokeholds.⁶⁶ The question is, do these bans work? Police forces have been banning chokeholds for decades. The Los Angeles Police Department banned them in 1983, the New York Police Department banned them in 1993 unless the officer's life is in danger, and other major police departments like Houston, Philadelphia, and Chicago have also banned chokeholds in some capacity.⁶⁷ Have these bans made a difference in these jurisdictions? The hope is that with the banning, the officer will think twice about using a chokehold or will just not use the move at all. The data shows that this is not the case. Many people have died at the hands of police in these jurisdictions and hundreds more have complained about having the technique used against them every year.⁶⁸ A study of these complaints in 2014 completed in New York shows that the use of chokeholds is rising even though the practice has been banned in the city for decades.⁶⁹

Another policy reform is to have a national database of all police officers fired for misconduct while on the job. The idea is that if there is a national registry, then these officers would not be able to be hired at another police force in another state or county. Police officers fired at one police force are sometimes rehired at another and are more likely to be fired again and commit misconduct than officers who were never fired.⁷⁰ This data shows that if an officer commits a chokehold on somebody in a jurisdiction where they are not supposed to or where they inflict harm on someone with one, they can still be hired and be a police officer in a different jurisdiction, and they are more likely to do something of the sort again. Officers being rehired is especially dangerous for Black people because officers rehired after being fired are more likely to be hired in more impoverished and Blacker neighborhoods.⁷¹

Defunding the police has become a popular statement out of the George Floyd protests. Defunding is the previously mentioned movement that talks about reallocating funds from police forces to the public communities that need them. In the instance of chokeholds, it could

⁶⁶ The survey was conducted with 1,113 people and it showed that 83% wanted a ban on racial profiling, 93% wanted federal officers to wear bodycams, 89% wanted the police to identify themselves and state the reason for the stop clearly, and 91% want there to be independent investigations of police forces when they show a pattern of misconduct. 75% of people surveyed said they believe that people should be allowed to sue police departments for damages. Chris Kahn, *Exclusive: Most Americans, Including Republicans, Support Sweeping Democratic Police Reform Proposals - Reuters/Ipsos Poll*, REUTERS, (Jun. 11, 2020), www.reuters.com/article/us-minneapolis-police-poll-exclusive/exclusive-most-americans-including-republicans-support-sweeping-democratic-police-reform-proposals-reuters-ipsos-poll-idUSKBN23I380.

⁶⁷ An NPR review of chokehold bans in major jurisdictions showed that the bans were ineffective and were subjected to "lax" enforcement. Monika Evstatieva and Tim Mak, *How Decades Of Bans On Police Chokeholds Have Fallen Short*, NPR, (Jun. 16, 2020), www.npr.org/2020/06/16/877527974/how-decades-of-bans-on-police-chokeholds-have-fallen-short.

⁶⁸ *Id.*

⁶⁹ Civilian Complaint Board, *A MUTATED RULE: Lack of Enforcement in the Face of Persistent Chokehold Complaints in New York City*, NYC.GOV, (Oct. 7, 2014), www1.nyc.gov/assets/ccrwww1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20141007_chokehold-study.pdf/downloads/pdf/policy_pdf/issue_based/20141007_chokehold-study.pdf.

⁷⁰ Only 44 states have a way to decertify officers. If an officer is decertified, that means he can no longer be an officer in that state. Being decertified does not prevent the officer from receiving employment at a police force in a different state. The new forces they are hired to may not do a thorough background check, or the last force they worked for may try and conceal what they did to be fired. There has also been evidence that police forces allow officers who commit misconduct to resign with a great reference to avoid legal issues. See Ben Grunwald and John Rappaport, *The Wandering Officer*, 129 Yale L.J. 1676, 1694-97 (2020).

⁷¹ *Id.*; Nikita Lalwani and Mitchell Johnston, *Analysis | What Happens When a Police Officer Gets Fired? Very Often Another Police Agency Hires Them*, THE WASHINGTON POST, (Jun. 16, 2020), www.washingtonpost.com/politics/2020/06/16/what-happens-when-police-officer-gets-fired-very-often-another-police-agency-hires-them/.

potentially save lives as one of the ways that defunding happens is by making sure there are fewer officers out in the field at any given time. The fewer officers, the fewer chances a Black person has of being caught in a chokehold. Even with defunding, however, the culture of police forces and the officers that work there is still to discriminate. Without real change towards fixing that, no amount of money will make a substantial change.

The last policy reform is police abolition. If the police are abolished, there would be no chokeholds. There would be no situations in which someone would need not to be able to breathe. There would be no holding a knee to their backs so that they could not breathe or get circulation to their heads. Instead, a crisis prevention team or a de-escalation team with professionals trained at helping specific situations would help the person calm down and get better.

C. The Automobile Exceptions

The Fourth Amendment states that there needs to be probable cause and a warrant to search and seize people in the United States. There are three ways police officers can search someone's car without a warrant when they are in their car. One is the stop and frisk, previously discussed.⁷² If the officer suspects that they may have a weapon on them or in their vicinity, they may search them or the area in their wingspan for weapons only. Second is a search incident to a lawful arrest. When someone is arrested, the police can search their car to look for evidence of the crime committed. The search has to be a part of, or incident to, the arrest that was made. And third, the automobile warrant exception. If the officer has probable cause that there is contraband inside a car, he has the right to search the car areas he believes the contraband might be.

The first automobile warrant exception is the search incident to a lawful arrest. If the arrest is lawful, then the officer can search the person of the seized individual or their car they were driving if they were arrested while driving. The officer can search anywhere that is in the immediate vicinity of the person who was arrested.⁷³ In *New York v. Belton*, the Court ruled that Belton's jacket in the car's back seat was searchable because that area was accessible to him.⁷⁴ The dissenters in the case warned that the use of this rule could make it so that the whole car's interior and all of the containers within could be searched and that they believed that this rule could set a "dangerous precedent."⁷⁵ The dissent's argument has proven to be the case. It essentially created a rule where if someone is arrested in a car, the car's entire interior can be searched. The rule is very loose; the *Belton* rule was even cited in a case where someone was arrested while walking away from their car.⁷⁶ In *Arizona v. Gant*, the Court attempted to amend the vagueness of *Belton*. It ruled that the search of a vehicle, while the individual was arrested ten to twelve feet away, was unconstitutional, stating that "if there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search . . . the rule does not apply."⁷⁷

The next automobile warrant exception is the automobile exception. This exception allows the police to search the entirety of someone's car and the containers within if they have

⁷² Stop and frisk is discussed in detail in section A of this paper.

⁷³ *Chimel v. California*, 395 U.S. 752, 763 (1969) (found that the officers cannot search a whole house, but just the areas in the immediate vicinity of the area they are in).

⁷⁴ *New York v. Belton*, 453 U.S. 454, 460 (1981).

⁷⁵ *Id.* at 466 (Brennan, J., dissenting).

⁷⁶ *Thornton v. United States*, 541 U.S. 615 (2004) (the Court extended *Belton* by allowing officers to search the car of someone that they arrested, even if they were not in the car at the time of the arrest).

⁷⁷ *Arizona v. Gant*, 556 U.S. 332, 339 (2009).

probable cause that there is contraband and the car is inherently mobile. The automobile exception is different from a *Terry* stop and a search incident to a lawful arrest in that the justification for the search is probable cause right after the car is legally seized, such as during a routine traffic stop, and that the entirety of the car, including the trunk and any containers in the car, are allowed to be searched if there is probable cause that there is contraband in them.⁷⁸ The *Carroll* Court found that since ships and vessels could have warrantless searches if there were probable cause for contraband aboard, the same standard should be used for cars.⁷⁹ There must be probable cause; obscure facts that casually relate to a nearby crime are not enough for probable cause.⁸⁰ The police are also not allowed to search a car without a warrant if the car is within the curtilage of someone's home.⁸¹

In 1991, the Court ruled that the officers can search any containers that they find in the car, even ones that are closed, for two reasons: first because they said that someone's expectation of privacy is limited when they get in their car so that should also apply to containers in the car, and second because the police are allowed to hold the item that they find that they suspect is full of contraband until there is a warrant and by not having them search the bag immediately does nothing to aid privacy.⁸² People are not considered containers for the definition of a container in the automobile warrant exception.⁸³

One of the main arguments for having the automobile warrant exception is the fact that cars can move. The idea is that if the officer left to get a warrant, then the person could just drive off or get rid of the evidence. The car does not necessarily need to be mobile to trigger the automobile warrant exception; the Court has found that even when the car cannot move readily, the exception still applies.⁸⁴

If the police are allowed to continue to use the automobile warrant exceptions, Black people will continue to be discriminated against. Black people are more represented in vehicular stops, frisks, searches, and arrests.⁸⁵ If the law stays the same, then nothing will change. That will mean more Black people will be humiliated and have criminal records

⁷⁸ Ric Simmons, and Renée McDonald Hutchins, *Learning Criminal Procedure: Investigations* 407 (West Academic Publishing, 2nd ed. 2019).

⁷⁹ In *Carroll*, undercover officers knew that a man sold illegal alcohol. After pulling him over, they searched his car believing there to be contraband in the car. They found the alcohol, and it was ruled that the search was legal because there was probable cause that there was contraband in the car. *Carroll v. United States*, 267 U.S. 132, 153 (1925).

⁸⁰ Ric Simmons, and Renée McDonald Hutchins, *Learning Criminal Procedure: Investigations* 410 (West Academic Publishing, 2nd ed. 2019) citing *Dyke v. Taylor Implement Mfg. Co.*, 391 U.S. 216, 221-22 (1968).

⁸¹ *Collins v. Virginia*, 138 S.Ct. 1663 (2018) (homeowners have a reasonable expectation of privacy in their homes' curtilage so a warrant is required).

⁸² *California v. Acevedo*, 500 U.S. 565, 573 (1991) (the Court ruled that if there is probable cause to search the car, then the containers in the car can also be searched).

⁸³ *United States v. Di Re*, 332 U.S. 581 (1948).

⁸⁴ *See Chambers v. Maroney*, 399 U.S. 42 (1970). (the exception still applied even though the police had seized the car and had driven it to the police station).

⁸⁵ Black people are less likely to be stopped after sunset under the "veil of darkness." This shows that there is discrimination as Black people are stopped less when their race is not immediately apparent. Black people are also two times more likely to be searched than white people when they are stopped. Emma Pierson, et al. *A Large-Scale Analysis of Racial Disparities in Police Stops across the United States*, (July 2020), 5sharad.com/papers/100M-stops.pdf.

because of the arrests. That will also mean that more Black people are put into situations that can potentially escalate to harmful or deadly.⁸⁶

1. What Are Reforms to End Racial Discrimination with the Automobile Exceptions?

There are many different ways to reform the automobile warrant exceptions. Having no exception and requiring a warrant, defunding the police, and abolishing the police are all talking points among activists to fight racial discrimination by police forces.

The reason behind having an exception to search an automobile is that either there is a weapon in the car that can harm the officer that is performing the traffic stop, there is contraband in the car that the person should not have and should not be able to drive off with, or there is evidence in the car that is from the crime that someone has been arrested for. It makes logical sense in those instances to not want to wait to get a warrant because that could take time, and stops cannot legally last that long. If the person is allowed to go while the officer is waiting for approval on a warrant, they could drive off and get rid of whatever evidence or contraband they had. If the officer is not allowed to search the vehicle when they believe there may be a weapon inside, the officer can be injured or killed. If this is how the warrant exception was being applied, then there would be no issues. Black and white people would be stopped, searched, cited, and arrested at approximately the same percentage per population. This is not how the warrant exceptions are being carried out in practice, however. Black people are stopped, searched, cited, and arrested at higher rates and with less evidence than white people. Receiving a warrant may be inconvenient and potentially dangerous, but it may help combat the racial biases in warrantless searches and seizures.

Many people advocating for police reform believe that if there is more training given to police officers, then there would be fewer incidents of improper police practices, including stopping, frisking, searching, citing, and arresting Black people at higher rates during vehicular stops. Many advocates for police to do more scenario training and know exactly what they would do in split-second decision-making times.⁸⁷ They talk about tactical potential imagery, which is the idea of pre-playing scenarios in the officer's head to be more likely to perform better in an actual traffic stop.⁸⁸ This training has not been proven to work, however. There is no difference in how the officers interact with civilians after the training in many places where there are police training reforms.⁸⁹ Statistics show that there is little to no improvement when there is training.⁹⁰ The training has to change drastically, or this is an avenue of reform that will never work.

⁸⁶ Many police forces are implementing new reforms and training programs to try to emphasize the importance of de-escalation. Phil Rogers, *Police Video Shows How Quickly Simple Traffic Stop Can Escalate to Conflict*, NBC CHICAGO, (Sept. 17, 2017), www.nbcchicago.com/news/local/police-video-illustrates-how-quickly-simple-traffic-stop-can-escalate-to-conflict/20992/.

⁸⁷ Officers are encouraged to work through multiple scenarios to anticipate what may happen in real life. This can help them de-escalate situations and to remain safe while performing traffic stops. Sergeant (Ret.) Robert E. Bemis, *Do not Be a Drag: Considerations When Attempting to Control Subjects inside a Vehicle* POLICE1, (May 31, 2019), www.police1.com/police-training/articles/dont-be-a-drag-considerations-when-attempting-to-control-subjects-inside-a-vehicle-3Rjj5LQFeULve3iu/.

⁸⁸ *Id.*

⁸⁹ CBS News, *How Effective Are Police Training Reforms? 'We are Totally Fooling Ourselves,' Expert Says*, CBS NEWS, (June 3, 2020), www.cbsnews.com/news/police-reform-training-george-floyd-death-effectiveness/.

⁹⁰ *Id.*

The last policy reform is abolition. There would be no arrests with police abolition, there would be no frisks, and there would be no citations. Instead, the money that has been allocated traditionally to the police will be put in organizations that help people fix the taillights on their cars, who help people get their cars registered, and who remind people of the rules of the road. With police abolition, there could be de-escalation organizations whose jobs would help get weapons off the street. As mentioned previously, if funds used for the police were used to invest in communities where there is a lack of funding for schools, jobs, and infrastructure, then violent crime will go down. Fewer people will feel the need to carry around weapons with them.⁹¹ With abolition, the goal of traffic stops will not be punishment, but warning and helpfulness. Abolition would significantly benefit poor communities, whose residents might not be able to keep up financially with the car's maintenance that they need for work or to take their child to school. Instead of punishing people for being poor, abolition instead calls to aid and support people who do not have the funds or education they need to have a properly running car.

III. WHO WILL PROTECT US IF THERE ARE NO POLICE?⁹²

Many people believe that abolishing the police is going too far. They believe that if the police forces can be reformed and all bad actors are removed from the police forces, then the police will operate in a way that is going to protect everyone equally. Since the Black Lives Matter movement's creation and popularity in the early 2010s, many police forces have implemented implicit bias training in their forces to try to combat racist police interactions. Have they worked?

The NYPD did a study to show if their implicit bias training works and helps their officers not use racial biases when interacting with people. The study shows how their officers thought and did after receiving the training. They found that the officers, after the training, did have more conscious thought toward racial police practices.⁹³ That is where the positive data ends. The study found virtually no change in the racial disparities with stops, frisks, summonses, and arrests.⁹⁴ A higher percentage of Black people were stopped, frisked, and arrested than before the officers received training.⁹⁵ This data shows that even when there is a conscious effort to remove bias from the officers in the force, that bias is not going to change, at least in how implicit bias training is set up now.

⁹¹ Violent crime has been steadily going down in the United States for the past two decades. Places where there is the most violent crime is in poor, Black and brown neighborhoods. Those neighborhoods need more funding, jobs, and social support instead of policing. *Neighborhoods and Violent Crime: HUD USER, HUD USER*, (last accessed Nov. 19, 2020), www.huduser.gov/portal/periodicals/em/summer16/highlight2.html.

⁹² See generally Sean Illing, *The 'Abolish the Police' Movement, Explained by 7 Scholars and Activists*, VOX, (Jun. 15, 2020), www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-scantwait-minneapolis.

⁹³ This study was conducted to see the effects of implicit bias training on the officers who received it. Immediately after the training, the survey asked the officers about their reactions to the training. 70% of officers said they had a new understanding of implicit bias, over 66% said that they learned new skills and strategies and they would try to implement them at work, and almost half of the officers said they would use all five of the points that they learned in training on the job. The officers were then asked, anywhere from 2-13 months after the training, if they had tried to use any training. 41% said they had not, 31% said sometimes, and 27% tried frequently. Robert E. Worden, et al., *The Impacts of Implicit Bias Awareness Training in the NYPD*. (July 2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/impacts-of-implicit-bias-awareness-training-in-%20the-nypd.pdf

⁹⁴ *Id.*

⁹⁵ *Id.*

The main argument against police abolition is who will protect the community if there are no police? Abolition of the police does not mean that there are no programs to deal with community issues. Police abolition means different things to different people. Most of the time, it does not mean leaving a void where the police used to be. It means eradicating the need for the police in the first place. As stated before, most crimes are crimes of poverty.⁹⁶ By allocating the billions of dollars allocated to social programs such as universal healthcare, childcare, and schools, people's lives will improve, and they will be more able to move out of poverty.

Next, many scholars and activists state that there would still be someone to call in times of need; it just would not be the police as we know it. Instead, it would be community-based trained individuals in the field. For calls about drug issues, instead of police, someone trained in drug intervention would show up. In the case of suicide, instead of the police, someone trained in mental health would show up. Nine out of ten 9-1-1 calls are about non-violent crimes.⁹⁷ In the case of the 10% that are violent, communities would develop plans on dealing with those issues that are community-specific and community-based staffed with individuals from that community. That way, the needs of the communities are being met by people who know their needs. These programs will be based on rehabilitation instead of punishment, making the person less likely to re-offend and giving them a chance to get better and positively impact society.⁹⁸ All of the answers are not needed immediately; instead, communities can come together and implement plans that will work the best for them.

Many people are not protected by the police when they need police forces' help. Minority communities as well are not protected by police forces. Instead, they are overpoliced.⁹⁹ When they are overpoliced, many innocent people are subjected to being stopped, frisked, and questioned. There are many instances when unarmed, innocent Black people are subjected to police harassment that then turns into escalation, leading to arrest, injury, or death, including when Black people protest when the police use excessive force on Black people.¹⁰⁰

If the police protected, there would be equal amounts of policing in wealthy white neighborhoods and in poor Black neighborhoods. If drugs were considered to be extremely dangerous and needed to be off of the streets, then white people and Black people would be arrested, jailed, and sentenced similarly as studies have proven that both white and Black people use drugs at similar rates instead of 2.7 times more than white people to be arrested and

⁹⁶ Crime and poverty are described as a vicious cycle in this article. Poverty causes “hopelessness and desperation,” which leads to people committing crimes. They often do not have the funds to hire a great lawyer so they end up with a record. Having a record makes it hard to get employment or to get housing, which leads to poverty. John N. Mitchell, *Breaking Poverty: Crime, Poverty Often Linked*, WHYY, (Sept. 18, 2018), whyy.org/articles/breaking-poverty-crime-poverty-often-linked/.

⁹⁷ Jeff Asher, *There is Great Crime Data for Nearly Every City in the U.S. Why Is Nobody Using It?*, SLATE MAGAZINE, (Mar. 15, 2016), slate.com/news-and-politics/2016/03/calls-for-service-data-are-the-best-way-to-analyze-crime-why-dont-cities-make-them-available.html.

⁹⁸ Mariel Alper and Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)*, BJS.ORG, (May 2018), www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf.

⁹⁹ Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TUFTS NOW, (Jun. 17, 2020), now.tufts.edu/articles/how-racial-segregation-and-policing-intersect-america.

¹⁰⁰ Talia Buford and Lucas Waldron, *We Reviewed Police Tactics Seen in Nearly 400 Protest Videos. Here is What We Found*, PROPUBLICA, (July 16, 2020), projects.propublica.org/protest-police-tactics/.

6.5 times more likely to be incarcerated for drug-related crimes.¹⁰¹ Black people are arrested five times more often than white people, even though they do not commit five times as many crimes.¹⁰² In some jurisdictions, that number was increased to 10 times the amount that white people were arrested.¹⁰³ Police forces are not great at solving crimes in the first place: statistics show that “38% of murders, 66% of rapes, 70% of robberies, and 47% of aggravated assaults” go unsolved every year.¹⁰⁴

CONCLUSION

When looking at how to fix the criminal justice system, one must look at how society interacts and feels about Black people. Mass media has a massive influence on how people think, feel, and interact with each other. If the media still perpetuates negative stereotypes about Black people, then society will negatively stereotype Black people. As long as the Mandigo, Savage, and Sapphire stereotypes are shown prominently in the media, people will continue to see Black people as aggressive, inferior, angry, scary, and a threat to white safety. Studies have shown that popular culture is an avenue for social change. Through positive images of Black people and families in the media showcasing a wide variety of stories, many people who would have never been exposed to the Black experience will be able to find empathy for them.

When looking at the media and police practices, it seems nearly impossible to think up a solution to make police officers and the criminal justice system a more equitable place for Black people. Many organizations have tried to implement implicit bias training and other measures to ensure that their employees receive anti-racism training. These fixes, though, have been proven not to work. Officers still stop and frisk Black people who are overwhelmingly innocent. They still restrain Black people in restrictive, deadly chokeholds. They still overwhelmingly search the cars of Black people without a warrant. Research shows that when Black people speak out about racial bias in policing, more than two-thirds of all police officers believe that the protests of police killings of Black men are not due to Black people wanting change and reform to police practices, but the protests are brought about due to anti-police bias.¹⁰⁵ Even when Black people speak up, they will not be listened to or taken seriously by police forces as they are set up right now. In the same study, police officers were asked if they believed that the country had made the correct strides to make it so that Black and white people were equal. 92% of white officers believed that the country had made the right changes and that Black and white people are equal.¹⁰⁶ This data shows that more than 60% of all officers believe there is racial equality in the United States.¹⁰⁷

¹⁰¹ *Rates of Drug Use and Sales, by Race; Rates of Drug Related Criminal Justice Measures, by Race*, THE HAMILTON PROJECT, (Oct. 8, 2020), www.hamiltonproject.org/charts/rates_of_drug_use_and_sales_by_race_rates_of_drug_related_criminal_justice

¹⁰² Anagha Srikanth, *Black People 5 Times More Likely to Be Arrested than Whites, According to New Analysis*, THE HILL, (Jun. 11, 2020), thehill.com/changing-america/respect/equality/502277-black-people-5-times-more-likely-to-be-arrested-than-whites.

¹⁰³ *Id.*

¹⁰⁴ *National Data*, FBI, (Sept. 20, 2018), ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/clearance-browse-by-national-data.

¹⁰⁵ Black people are five times more likely than white people to say that they have been stopped unfairly by the police. More than half of all officers believe that their relations with the community are either excellent or good. Drew DeSilver, et al., *10 Things We Know about Race and Policing in the U.S.*, PEW RESEARCH CENTER, (Aug. 17, 2020), www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

Abolition is the only way to combat racism in policing. It would take generations for the media to right itself in its portrayals of Black people and even more to have a generation of people who have not been inundated with negative stereotypes. It is the only way to ensure that Black people are not unfairly stopped and frisked, die by police chokeholds, and have their cars searched without warrants. If chokeholds are banned, the police still can cause deadly harm in other ways with their weapons or another type of hold. There is also nothing that stops an officer from performing a chokehold variation, which frequently leads to the same result had chokeholds still be permitted. Even if stop and frisks are banned or reformed, that does not stop police officers from seeing Black people as threatening or dangerous, causing them to stop them or escalate situations. Implicit bias training does not stop an officer from seeing a Black person in a vehicle, and feeling like the driver is suspicious.

While many people asking for police reform ask for defunding of the police, that does not go far enough to combat racial profiling in the police forces. The way that the police are set up today is in a way that is discriminatory because the way policing has been is discriminatory. The only way to fix it is to tear it down and then build something different. This does not mean that people will not receive the help they need or the protection they need. It means that the current system is not working, and there needs to be something else in its place. It means that something can be figured out that is better, more community-based, and free from racial discrimination.

Abolition may seem scary. It may seem like abolition leaves a big gaping hole where the police should be. It may seem that there would be no one left to protect everyone. The truth is that the police now do not protect everyone. Most crimes go unsolved. Many people who are stopped and frisked are innocent. The police kill people when they should be de-escalating situations. Many Black people are stopped by officers while driving just because they are Black. Many officers do not live in the communities they serve, so they do not understand the nuances or have an emotional attachment to the people who live and work in the communities they are supposed to be protecting.¹⁰⁸

Since the officers do not live in the communities they serve, this leaves a vast divide between officers and the Black community. It shows itself in the statistics showing that officers stop, frisk, and arrest Black people at much higher rates than they do white people, even when they have had implicit bias training. Instead, communities would be better off if the funding from the police forces were given to them. That way, they can implement programs and services that will fit the needs of their community. Abolition could look like mental health facilities, investing in infrastructure and education, creating good-quality jobs, and creating de-escalation offices with unarmed professionals trained in de-escalating volatile situations. This formula could lead to real change and can lower the amount of crime. It has been shown that having more police does not reduce crime.¹⁰⁹

Why could the abolition of the police not be the answer?

¹⁰⁸ Emily Badger, et al., *Where Minority Communities Still Have Overwhelmingly White Police*, THE WASHINGTON POST, (Aug. 14, 2014), www.washingtonpost.com/news/wonk/wp/2014/08/14/where-minority-communities-still-have-overwhelmingly-white-police/?arc404=true.

¹⁰⁹ The number of police officers per 1,000 people has been declining for two decades, while violent crime has declined. Simone Weichselbaum and Wendi C. Thomas, *More Cops. Is It the Answer to Fighting Crime?*, USA TODAY, (Feb. 13, 2019), www.usatoday.com/story/news/investigations/2019/02/13/marshall-project-more-cops-dont-mean-less-crime-experts-say/2818056002/.