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White Caller Crime: Racialized Police Communication and Existing While Black

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WHITE CALLER CRIME:*
RACIALIZED POLICE COMMUNICATION
AND EXISTING WHILE BLACK

Chan Tov McNamara**

Over the past year, reports to the police about Black persons engaged in innocuous behaviors have bombarded the American consciousness. What do we make of them? And, equally important, what are the consequences of such reports?

This Article is the first to argue that the recent spike in calls to the police against Black persons who are simply existing must be understood as a systematic phenomenon which it dubs racialized police communication. The label captures two related practices. First, racially motivated police reporting—calls, complaints, or reports made when Black persons are engaged in behavior that would not have been read as suspicious, or otherwise worthy of police involvement had they been White. Second, racially weaponized police reporting—calls, complaints, or reports made against Blacks in an effort to capitalize on law enforcement mistreatment of Black persons, or harm the victim because of their race.

* I have borrowed the title from work by Michael Harriot. See Michael Harriot, 'White Caller Crime': The Worst Wypipo Police Calls of All Time, ROOT (May 15, 2018), <https://www.theroot.com/white-caller-crime-the-worst-wypipo-police-calls-of-1826023382>. I do not mean to suggest that this Author shares Mr. Harriot's views, nor he, mine. Beyond Harriot's article, and likely testament to the prevalence of the practice, the phrase "white caller crime" went on to be nominated for the American Dialect Society's 2018 Word of the Year, ultimately winning the title of Most Creative. Press Release, Julie Roberts, Am. Dialect Soc. 2018 Word of the Year is Tender-Age Shelter as Voted by American Dialect Society (Jan. 4, 2019), <https://www.americandialect.org/wp-content/uploads/2018-Word-of-the-Year-PRESS-RELEASE.pdf> (defining the phrase as the "phenomenon of [W]hite people calling police on [B]lack people doing mundane things"). See also Michael Andor Brodeur, *Our Memes, Ourselves: The Year in Things*, BOSTON GLOBE, Dec. 23, 2018, at N3 (arguing that the phenomenon was a defining moment of 2018, and using the phrase in reference to "panicked [W]hite people calling the police on people of color for doing perfectly legal things like grilling in a park, selling bottled water, swimming in a pool, moving into an apartment, sleeping on a common-room couch, and [insert any normal verb associated with human activity here] . . .").

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Both of these practices have severe ill-effects on their victims. As this Article documents, racialized police communication serves to segregate communities, expose innocent Black persons to physical, psychic, and psychological injuries, undermines governmental crime fighting efforts, and ultimately fortifies the second-class citizenship of Blacks. Because of these harms, the Article ends by considering how the law might serve to deter or punish those who use law enforcement in racially oppressive ways.

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INTRODUCTION

The summer of 2018 saw a legion of White persons calling the police on Black persons engaged in mundane activities.¹ Black people had the authorities summoned for sitting in Starbucks;² playing golf;³ eating at

1. For the reasons first illustrated in Professor Kimberlé Crenshaw's pathbreaking scholarship on race, I will collectively refer to persons of African descent with the capitalized term "Black," and its derivatives ("Black persons," "Blackfolk," etc.) As Professor Crenshaw has pointed out, the term "Black" refers to a collective cultural identity that has historically been denied, whilst white can be further divided into a variety of ethnic and national identities. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). See also Lori L. Tharps, *The Case for Black With a Capital B*, N.Y. TIMES (Nov. 18, 2014), <https://www.nytimes.com/2014/11/19/opinion/the-case-for-black-with-a-capital-b.html> (making the point Black with a capital B refers to people of the African diaspora; lowercase black is simply a color).

2. Elizabeth Dias, John Eligon & Richard A. Opper, Jr., *Philadelphia Starbucks Arrests, Outrageous to Some, are Everyday Life for Others*, N.Y. TIMES (Apr. 17, 2018), <https://www.nytimes.com/2018/04/17/us/starbucks-arrest-philadelphia.html>.

3. Christina Caron, *5 Black Women Were Told to Golf Faster. Then the Club Called the Police*, N.Y. TIMES (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/us/black-women-golfers-york.html>. When asked whether the women were armed the caller responds: "Other than her mouth, there's not any weapons." Ed Mahon & Candy Woodall, *Grandview Golf Club: Listen to 911 Calls of Police Being Called on 5 Black Women in PA.*, YORK DAILY RECORD (May 31, 2018) <https://www.ydr.com/story/news/2018/05/30/grandview-golf-club-listen-911-calls-cops-called-black-women/653205002/>. These comments thinly veil the "Angry Black Woman" stereotype, by which Black women are portrayed as "Loud. Erratic. Uncontrollable. Full of attitude." Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2044 (2017). See also Sonja C. Tonnesen, Note, *"Hit It and Quit It": Responses to Black Girls' Victimization in School*, 28 BERKELEY J. GENDER L. & JUST. 1, 18 (2013) (collecting stereotypes of Black girls and women as emasculating, loud, animated, evil, bitchy, stubborn and hateful).

Waffle House;⁴ sleeping in university common rooms;⁵ eating in university class rooms;⁶ making purchases;⁷ returning purchases;⁸ smoking cigarettes;⁹ moving into apartments;¹⁰ leaving apartments;¹¹ going for walks;¹²

4. During the summer months the fast-food chain had several incidents where the police were called on Black customers. On April 24, 2018 the Alabama Police Department defended three White police officers throwing a Black patron to the floor, threatening to break her arm, and exposing her breasts. The police were called over a dispute that started when the woman asked for plastic cutlery. Matthew Haag, *Black Woman's Violent Arrest at Alabama Waffle House Was Justified, Police Say*, N.Y. TIMES (Apr. 24, 2018), <https://www.nytimes.com/2018/04/24/us/black-woman-arrest-waffle-house.html>. Later, on May 4, a police officer was caught on tape choking a teenaged boy. The police were called after Waffle House employees used homophobic slurs towards the gentleman and he retaliated. Erik Ortiz, *Black Man Choked by Police Outside Waffle House was Subject to Gay Slurs, Lawyers Claim*, NBC NEWS (May 14, 2018), <https://www.nbcnews.com/news/nbcblk/black-man-choked-police-officer-outside-waffle-house-was-subject-n873971>. Finally, on June 14, Fort Walton Beach police defended the actions of their officers who had handcuffed a Black couple after they disputed the cost of their meal. Mihir Zaveri, *Waffle House Apologizes for Handcuffing Black Customers in Bill Dispute*, N.Y. TIMES (June 14, 2018), <https://www.nytimes.com/2018/06/14/us/waffle-house-black-couple-handcuffs.html>.

5. Christina Caron, *A Black Yale Student was Napping, and a White Student Called the Police*, N.Y. TIMES (May 9, 2018), <https://www.nytimes.com/2018/05/09/nyregion/yale-black-student-nap.html>.

6. Daniel Victor, *'All I Did Was Be Black': Police Are Called on College Student Eating Lunch*, N.Y. TIMES (Aug. 2, 2018), <https://www.nytimes.com/2018/08/02/us/black-smith-college-student-oumou-kanoute.html>.

7. Matthew Haag, *Nordstrom Rack Apologizes to Black Teenagers Falsely Accused of Stealing*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/business/nordstrom-black-men-profiling-shopping.html>; *Black Man Nearly Shot and Killed After T-Mobile Employees Call the Police*, NEWSONE (June 30, 2018), <https://newsone.com/3814868/t-mobile-sacramento-police/>; Jacob Sweet, *Two Black Women Go to Walgreens to Stock up. Their Trip Ends with Cops Searching Them.*, FRESNO BEE (June 21, 2018), <https://www.fresnobee.com/news/nation-world/national/article213590719.html>.

8. Bill Hutchinson, *Hobby Lobby Employees Called Cops on Black Customer Who Apparently Looked Like a Crime Suspect*, ABC NEWS (May 17, 2018), <https://abcnews.go.com/US/hobby-lobby-employees-called-cops-customer-apparently-looked/story?id=55230358>.

9. Monique Judge, *#NewportNancy Wants Black Neighbor Evicted For Smoking Cigarettes in the Parking Lot*, THE ROOT (July 3, 2018), <https://www.theroot.com/newportnancy-wants-black-neighbor-evicted-for-smoking-1827320227>.

10. Eli Rosenberg, *A Black Former White House Staffer Was Moving into a New Apartment. Someone Reported a Burglary*, WASH. POST (May 1, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/05/01/a-black-former-white-house-staffer-was-moving-into-a-new-apartment-someone-reported-a-burglary/?utm_term=.2823dc07c572.

11. Daniel Victor, *A Woman Said She Saw Burglars. They Were Just Black Airbnb Guests.*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/us/airbnb-black-women-police.html>.

doing their jobs;¹³ eating in restaurants;¹⁴ barbecuing;¹⁵ going to the gym;¹⁶ attending funerals;¹⁷ using too many or the wrong coupons;¹⁸ swimming in pools;¹⁹ playing basketball;²⁰ canvassing for political reelec-

12. Angela Helm, *White Woman Calls Security on ‘Suspicious Man with a Baby’ at Park in Washington, DC*, THE ROOT (May 16, 2018), <https://www.theroot.com/black-father-stopped-by-security-after-white-woman-call-1826082634>.

13. Joshua Rhett Miller, *Cops Shut Down White Woman Who Called 911 on Black Real Estate Investor*, N.Y. POST (May 16, 2018), <https://nypost.com/2018/05/16/cops-shut-down-white-woman-who-called-911-on-black-real-estate-investor/>; Anne Branigin, *#SummerJobWhileBlack: Child Gets Cops Called on Him for Delivering Newspapers*, THE ROOT (July 11, 2018), <https://www.theroot.com/summerjobwhileblack-child-gets-cops-called-on-him-for-1827508152>; Matthew Haag, *Oakland Residents Reported a Black Firefighter for Doing His Job*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/oakland-black-firefighter-bias.html>.

14. Rikki Klaus, *Family Says Subway Employee Called Police on Them Because of Race*, WSBTV-2 (July 3, 2018), <https://www.wsbtv.com/news/local/family-says-subway-employee-called-police-on-them-because-of-race/782480259>.

15. Dianne de Guzman, *Video Shows Woman Calling Police Over Barbecue at Lake Merritt*, SF GATE (May 10, 2018), <https://www.sfgate.com/bayarea/article/Oakland-barbecue-Lake-Merritt-Sunday-confrontation-12902520.php>. See also Gianluca Mezzofiore, *A White Woman Called Police on Black People Barbecuing. This is How the Community Responded*, CNN (May 22, 2018), <https://www.cnn.com/2018/05/22/us/white-woman-black-people-oakland-bbq-trnd/index.html>.

16. R. Darren Price, *Uproar After NJ Gym Calls Police on Black Member, Guest*, NBC 4 (Apr. 18, 2018), <https://www.nbcnewyork.com/news/local/LA-Fitness-Uproar-New-Jersey-NJ-Racial-Profilng-480194453.html>.

17. Anjali Hemphill, *Archdiocese of Washington Apologizes After Maryland Family Kicked Out of Funeral*, FOX 5 (June 29, 2018), https://www.fox5dc.com/news/local-news/archdiocese-of-washington-apologizes-after-maryland-family-kicked-out-of-funeral#.

18. Matt Stevens, *CVS Fires 2 for Calling Police on Black Woman over Coupon*, N.Y. TIMES (July 16, 2018), <https://www.nytimes.com/2018/07/16/business/cvs-coupon-manager-black-woman-police.html>; Kia Morgan-Smith, *Dollar Store Manager Calls Police on Black Woman for Using Too Many Coupons*, THE GRIO (July 25, 2018), <https://thegrio.com/2018/07/25/dollar-store-manager-calls-police-on-black-woman-for-using-too-many-coupons/>.

19. The summer of 2018 saw several such instances. See, e.g., Chris Perez, *White Man Calls Police on Black Family at Neighborhood Pool*, N.Y. POST (July 5, 2018), https://nypost.com/2018/07/05/white-man-calls-police-on-black-family-at-neighborhood-pool/?utm_campaign=SocialFlow&utm_source=NYPTwitter&utm_medium=SocialFlow; *Police Called on Man for Wearing Socks in Pool in Tennessee*, ABC 7 (July 7, 2018), <https://abc7news.com/society/cops-called-on-man-for-wearing-socks-in-pool-3722480/>; Erin B. Logan, *A Black Man Was Sitting Near His Apartment Complex’s Pool. He Said He Was Told to Leave.*, WASH. POST (July 12, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/07/12/a-black-man-was-sitting-near-his-apartment-complex-pool-he-said-he-was-told-to-leave/>; Cleve R. Wootson, Jr., *Police Say Woman Screamed Racial Slurs and Smacked a Black Teen at a Pool. She Lost Her Job.*, WASH. POST (July 2, 2018), <https://www.washingtonpost.com/>

tion;²¹ doing community service;²² mowing the lawn;²³ sheltering from the rain;²⁴ getting into their cars;²⁵ sitting in their cars;²⁶ not listening to a neighbor's problems;²⁷ walking their dogs;²⁸ wearing costumes;²⁹ wearing

news/post-nation/wp/2018/07/02/police-say-woman-screamed-racial-slurs-and-smacked-a-black-teen-at-a-pool-she-lost-her-job/.

20. Stephen A. Crockett Jr., *#FlagrantFreddy: White Man Calls Police After Hard Foul in Pickup Basketball Game*, THE ROOT (July 17, 2018) <https://www.theroot.com/flagrantfreddy-white-man-calls-police-after-hard-foul-1827664760>.

21. Janelle Bynum, *#LetsBeBetterNeighbors*, FACEBOOK (July 3, 2018), <https://www.facebook.com/janelle.bynum/posts/1039775169513225>. See Everton Biley, Jr., *Black Oregon Legislator Says Campaigning in Own District Triggered 911 Call*, OREGON LIVE (July 4, 2018), https://www.oregonlive.com/clackamascounty/index.ssf/2018/07/black_oregon_state_rep_says_he.html. The caller reported that the Black woman, an Oregon State Representative for District 51, was “walking from house to house ‘for no apparent reason.’” Not a month later, in Madison, Wisconsin another Black candidate, Shelia Stubbs, had the police called on her while canvassing in a predominantly White neighborhood. In the police report, the caller stated that he thought Stubbs was “waiting for drugs at the local drug house.” Melissa Gomez, *Black Candidate Wants to Know Who Called 911 as She Talked to Voters*, N.Y. TIMES (Sept. 21, 2018), <https://www.nytimes.com/2018/09/21/us/politics/shelia-stubbs-wisconsin-police.html>.

22. Cleve R. Wootson, Jr., *Add ‘Performing Community Service While Black’ to the List of Things that Make You Suspicious*, WASH. POST (May 15, 2018), https://www.washingtonpost.com/news/grade-point/wp/2018/05/15/add-performing-community-service-while-black-to-the-list-of-things-that-make-you-suspicious/?utm_term=.03cef1a07985.

23. Jeffery C. Mays, *Neighbor Calls the Police on a 12-Year-Old Boy Mowing the Grass*, N.Y. TIMES (July 1, 2018), <https://www.nytimes.com/2018/07/01/us/lawn-mowing-boy-police-ohio.html>.

24. Sarah Jasmine Montgomery, *White Woman Calls Cops on Black Woman Waiting for an Uber During a Rainstorm*, COMPLEX (Aug. 2, 2018), <https://www.complex.com/life/2018/08/white-woman-calls-cops-black-woam>. In a Facebook post, the woman later clarified that she identifies as “White Hispanic.” Tamar Lapin, *Woman Called Cops on Me for Standing in Doorway During Rain*, NEW YORK POST (Aug. 2, 2018), <https://nypost.com/2018/08/02/white-woman-called-cops-on-me-for-standing-in-doorway-during-rain/>. That most news sources identified her as Black, however, makes it equally likely that the perpetrator also misidentified her race.

25. Lainey Seyler, *A Woman Called Police on a Man Who Was Getting into His Own Car in Milwaukee*, J. SENTINEL (Aug. 17, 2018), <https://www.jsonline.com/story/news/local/milwaukee/2018/08/17/woman-called-police-man-who-getting-into-his-own-car-milwaukee/1021846002/>; Scott Anderson, *Man Says ‘Officers Could’ve Responded with Weapons Drawn,’* OAK CREEK PATCH (Aug. 20, 2018), <https://patch.com/wisconsin/oakcreek/white-woman-calls-police-black-man-trying-enter-own-car>.

26. Latifah Muhammad, *White California Woman Calls Cops on Black Man Sitting in His Car Waiting for Yoga Class to Start*, VIBE (July 13, 2018), <https://www.vibe.com/2018/07/white-california-woman-calls-911-black-man-sitting-in-car/>.

27. Michael Harriot, *Depressed Debbie Calls Police on Black Neighbors Because They Were Happy and She Was Sad*, THE ROOT (June 6, 2018), <https://www.theroot.com/depressed-debbie-calls-police-on-black-neighbors-becaus-1826602734>.

a bandana;³⁰ and selling bottled water on a hot summer's day.³¹ The number of such reports has only grown since then.³²

Like the innocuous behaviors triggering these reports to law enforcement, the consequences of these calls vary widely. Some conclude constructively, such as one made by a Starbucks employee and which ended in implicit bias training for the company's employees nationwide,³³ or another call a few years earlier, reporting a Black man entering his own home—which ended in neighborhood programming.³⁴ Other reports end fatally, as the dyadic deaths of Tamir Rice and Johnathan Crawford III—both killed as the result of calls to the police—demonstrate.³⁵ What

28. Pam Kragen, *Black Man Walks His Dogs Down His Block, Ends up Pictured in Hunt for Burglary Suspects*, L.A. TIMES (June 5, 2018), <http://www.latimes.com/local/lanow/la-me-black-man-sheriff-photo-20180605-story.html>.

29. See Brother Tyrone X (@tyrone345345), TWITTER (June 4, 2018, 12:29PM), <https://twitter.com/tyrone345345/status/1003720349836627968>.

30. Elise Solé, *Arrested Teen Says His Teacher Called the Police on Him for Wearing a Bandana to School*, YAHOO (Aug. 15, 2018), <https://www.yahoo.com/lifestyle/arrested-teen-says-teacher-called-police-wearing-bandana-school-233457491.html>.

31. Christopher Carbone, *Outrage After Woman Reportedly Called Cops on Black Girl Selling Water*, N.Y. POST (June 24, 2018), <https://nypost.com/2018/06/24/outrage-after-woman-reportedly-called-cops-on-black-girl-selling-water/>; Kalhan Rosenblatt, *White Woman Dubbed 'Permit Patty' for Calling Police on Black Girl Denies it was Racial*, NBC NEWS (June 25, 2018), <https://www.nbcnews.com/news/us-news/white-woman-dubbed-permit-patty-calling-police-black-girl-denies-n886226>.

32. See *infra* Appendix, notes 302–392, for a list of 92 such reports in 2018 [hereinafter Appendix to *White Caller Crime*].

33. Terrence Cullen, *Starbucks Manager Called the Cops on Black Men Two Minutes After They Arrived for Business Meeting*, N.Y. DAILY NEWS (Apr. 20, 2018), <http://www.nydailynews.com/news/national/starbucks-manager-called-cops-minutes-black-men-arrive-article-1.3942931>.

34. Farnoush Amiri, *Actor Ving Rhames Said Neighbor Called 911 to Report Him as 'a Large Black Man' Breaking in*, NBC NEWS (July 29, 2018), <https://www.nbcnews.com/news/us-news/actor-ving-rhames-said-neighbor-called-911-report-him-large-n89561> (The man, actor Ving Rhames, described the incident as disquieting: “I get up, I open the door, there’s a red dot pointed at my face from a 9 millimeter. And they say, ‘Put up your hands.’”); in a July 28 press release the Santa Monica Police Department acknowledged the interaction was triggered by several calls reporting “a [B]lack male . . . seen entering a residence and did not live there.” Responding to social media and public relations backlash the Department also launched a “Meet Your Neighbors” initiative “to avoid similar situations.” Santa Monica Police Department, *Statement on 2016 Incident Involving Mr. Ving Rhames*, FACEBOOK (July 28, 2018), <https://www.facebook.com/santamonicapd/photos/a.170795289608229.32951.163150267039398/1909114612442946/?type=3>.

35. See Andres Jauregui, *Cops Who Killed John Crawford III at Walmart Shot Him 'On Sight': Attorney*, HUFFPOST (Aug. 27, 2014), https://www.huffingtonpost.com/2014/08/27/john-crawford-killed-walm_n_5721676.html (John Crawford III was a Black man shot and killed in Walmart by police responding to a report of an armed man “violently” waving a rifle and pointing it at children. The rifle was a BB gun Crawford

remains constant, however, is that those who make such reports rarely, if ever, face legal consequences for their actions.³⁶ And, despite the increasing urgency and awareness of such reports, they have received little attention in legal scholarship.³⁷ This Article attempts to fill that gap.

The goals of this Article are threefold. First, I aim to describe, contextualize, and theorize the social phenomenon that this Article labels *racialized police communication*.³⁸ As used in this Article, this term collectively refers to the practice of police reporting against Black persons who are not engaged in criminal behavior.³⁹ Racialized police communication may involve calls, complaints, or reports to law enforcement against Blacks, made out of implicit or unconscious bias, or reports made out of the specific desire to leverage law enforcement mistreatment of Blacks in an effort to harm the victim. The label also extends to reports made by both private individuals and corporate actors.

had picked up from a shelf.); *see also* Emma G. Fitzsimmons, *Video Shows Cleveland Officer Shot Boy in 2 Seconds*, N.Y. TIMES (Nov. 26, 2014), <https://www.nytimes.com/2014/11/27/us/video-shows-cleveland-officer-shot-tamir-rice-2-seconds-after-pulling-up-next-to-him.html> (Tamir Rice was a 12 year old Black child who was shot and killed by Cleveland police two seconds after they arrived.).

36. At the time of this writing LexisNexis and WestLaw searches have no results for persons criminally prosecuted for false or exaggerated reports to the police against Black Americans. As I flesh out more comprehensively in a companion project, the absence of legal solutions to the harm faced by the socially ostracized and underprivileged (i.e. people of color, women, and LGBTQ+ persons) has led to the use of social media virality as a tool for inflicting real-life punishment. *See also infra* Part III.B.

37. Outside of legal scholarship, Professor Barbara Harris Combs has introduced her theory of “Bodies out of Place” (BOP). *See* Barbara Harris Combs, *Everyday Racism is Still Racism: The Role of Place in Theorizing Continuing Racism in Modern US Society*, 55 *PHYLON* 38, 39 (2018). The theory contends that geographic locations are controlled in a racialized manner, and that Whites “(re) assert their ability and absolute right to control [B]lack bodies by brazenly stating dictates about what [B]lack bodies can and cannot do and where they can and cannot be.” *Id.* at 39. To illustrate this practice and support her thesis, Combs’ work employs examples of racialized police communication. However, her article neither theorizes the practice as a standalone phenomenon, nor examines its harms or potential solutions.

38. Here, the term “communication” as opposed to “reporting” is used because I believe it more comprehensively captures the interactions with the police under consideration here. “Communication” describes not only the conveying of the report (whether via telephone call, in-person complaint, or through a number of law enforcement reporting apps), but also the reporter’s nonverbal cues and tones (such as appearing fearful or anxious) as well.

39. It is true that the acts involved in the phenomenon of racialized police communication are not limited solely to White reporters and Black victims. As I discuss in this Article, however, because of the uniquely antagonistic history between Blacks and the police, the distinctively dichotomous views of law enforcements amongst Blacks and Whites, as well as the dearth of examples involving non-White callers or White victims, I have chosen to focus on only the White-reporter/Black-victim binary here.

Second, this Article identifies the harms of racialized police communication. Consulting shared experiences and recent social science on racialized trauma and posttraumatic stress disorder, I demonstrate that even threatened contact with the police causes Black persons physical, psychological, and intangible harms, as well as emotional distress.

Third, I propose potential solutions to the demeaning and dangerous practice of racialized police communication. To do this, I offer a high-level consideration of how the law and social movements could be used to deter and punish those who inflict harm on Black persons via the police.

Embarking on the first two of the goals outlined above, Part I describes and theorizes the phenomenon of racialized police communication. It demonstrates that the practice results in de facto segregation and exposes innocent Black people to physical, psychological, and physiological harms. In doing so, it will comprehensively detail why the practice is harmful and worthy of legal and societal censure.

Part II considers solutions. First, using the law as a vehicle, it considers various prisms of criminal and tort law that might be marshaled to punish those who mobilize the police on Blacks for frivolous or malicious reasons. It then closes with an extra-legal initiative which might deter racialized police communication, should legal efforts prove inadequate or slow-moving.

I. RACIALIZED POLICE COMMUNICATION: CONTEXT, MOTIVATIONS, & HARMS

As the First Circuit recognized in 1987, calling the police on innocent Black persons can have devastating consequences.⁴⁰ In *Hall v. Ochs*, the court considered the events that unfolded after a Black father, Bancroft Hall, ventured into the predominantly White suburb of Milton, Massachusetts to pick up his daughter Sandra from a friend's home.⁴¹ When Hall arrived at the house, Sandra was still not ready to go and he returned to the car to read the Sunday paper while waiting.⁴² A neighbor, believing Hall to be "out of place," called the Milton police to "report a suspicious man parked in an old car in the Sullivans' driveway."⁴³ The police dispatcher sent out a call that "suspicious car at 167 Dudley Lane with a [B]lack male behind the wheel and *a possible breaking and entering in progress*."⁴⁴

40. See generally *Hall v. Ochs*, 817 F.2d 920 (1st Cir. 1987).

41. *Id.* at 921.

42. *Id.*

43. *Id.*

44. *Id.* at 921–22 (emphasis added).

Within minutes, a White police officer responded to the call, arrived at the home, pointed his gun at Hall and demanded his driver's license.⁴⁵ While Hall protested his accost and asserted he had done nothing wrong, another White police officer arrived on the scene. When Sandra returned to the car and objected to her father's treatment, she was struck in the face by one of the officers and thrown to the ground, while the other officer forcibly removed her father from the car.⁴⁶ Hall was thrown to the ground, handcuffed, and arrested for disorderly conduct and failure to produce his license when requested.⁴⁷

The *Hall* case exemplifies what can result from a mistaken and wanton imputation of criminality against a Black person who is simply existing. As the First Circuit rightly found, the physical and emotional harms of the police's brutality on Hall were extensive.⁴⁸ While *Hall* may seem like an outlier, instances of police disrespect, abuse, and discrimination against Blacks are frighteningly common, and they leave profound, long-lasting impacts on their victims and communities.⁴⁹

Racialized police calls function to expose innocent Black individuals to increased interaction with law enforcement and the associated emotional, psychological, and physiological ill-effects. Particularly pernicious harms also arise when persons weaponize the police in order to target an-

45. *Id.* at 922.

46. *Hall*, 817 F.2d at 928.

47. *Id.* at 922.

48. *See id.* at 927 (“[T]he memory of this experience, in which the color of his skin triggered a chain of events that left him handcuffed, face down on the ground, will remain with him . . . [T]hat such an incident of racial discrimination could happen to him . . . while sitting in his car reading the paper and waiting for his daughter, has to have had a *profound and lasting effect* . . .”) (emphasis added).

49. *See* HARVARD T.H. CHAN SCH. PUB. HEALTH, DISCRIMINATION IN AMERICA (2017), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/21/2017/10/NPR-RWJF-HSPH-Discrimination-African-Americans-Final-Report.pdf> [*hereinafter* *Discrimination in America*] (Recent statistics indicate 60 percent of Blacks have personally or had an immediate family member stopped or treated unfairly by the police because of their race.). A further 24 percent of Black youth report having been personally harassed by the police, and 53 percent know someone who has been harassed. And, some 50 percent of Black Americans say that they have personally faced discrimination when interacting with the police. Jesse J. Holland & Emily Swanson, *GenForward Poll: Young Black Adults Less Trusting of Police*, NORC (Aug. 31, 2016), <http://apnorc.org/news-media/Pages/News+Media/GenForward-Poll-Young-black-adults-less-trusting-of-police.aspx>; *see also* ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, BUREAU OF JUSTICE STATISTICS, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, at 1, 4 (2018) (finding Blacks overrepresented amongst traffic and street stops, and more likely to experience threatened or actual police use of force).

other because of their race.⁵⁰ This Part seeks first to define the systemic phenomenon of racialized police communication, and then traces the contours of the practice's effects and harms. As I argue below, racially motivated and weaponized police contact works to segregate spaces, exposes Blacks to the possibility of physical violence and emotional trauma, inflicts a multifarious group of intangible injuries,⁵¹ and ultimately undermines the legitimacy of the police and crime fighting efforts.

A. Racialized Police Communication: Context & Definition

While the practice of summoning the police on Black persons engaged in everyday activities has gained recent notoriety, it is by no means new.⁵² Legal anecdotes suggest the practice of using racialized police communication to enforce private biases is longstanding. For instance, the events ultimately culminating in the *Sit-in Cases*⁵³ were triggered by calls to the police.⁵⁴ The seminal case striking down anti-miscegenation laws, *Loving v. Virginia*, was instigated when a White neighbor called the police to anonymously report their neighbors' interracial relationship.⁵⁵ In the same vein, *Lawrence v. Texas* was triggered by a White caller's report to the police.⁵⁶ There, angered that his partner John Geddes Lawrence was cheating on him with a Black man, Lawrence's partner called the police and falsely reported that "a [B]lack man [was] going crazy with a

50. In the Fourth Amendment context, Professor Sherry Colb describes this concept as a "targeting harm." See Sherry F. Colb, *Innocence, Privacy, and Targeting in Fourth Amendment Jurisprudence*, 96 COLUM. L. REV. 1456, 1493 (1996).

51. See, e.g., *id.* at 1458 n.7 (noting "[t]he concept of harm, is . . . quite complex").

52. E.g., Leonard Pitts, Jr., *Whites Call the Cops on Us for Breathing, for Existing, for Being Black*, MIAMI HERALD (July 11, 2018), <https://www.miamiherald.com/opinion/opn-columns-blogs/leonard-pitts-jr/article214671100.html> (suggesting the practice is "older than the republic itself").

53. See Thomas P. Lewis, *The Sit-In Cases: Great Expectations*, 1963 SUP. CT. REV. 101, 101 n.1 (1963) (collecting cases).

54. See, e.g., *Garner v. Louisiana*, 368 U.S. 157, 171 (1961) (reviewing testimony of a manager at a segregated lunch counter that "he called the police because he 'feared that some disturbance might occur'"); *Peterson v. Greenville*, 373 U.S. 244, 245 (1963) (relating testimony of a store owner who "had one of [his] . . . employees call the Police Department," when Black youth sat at a segregated counter).

55. See Robert A. Pratt, Essay, *Crossing the Color Line: A Historical Assessment and Personal Narrative of Loving v. Virginia*, 41 HOWARD L.J. 229, 236 (1998). It is worth noting as well, that *Loving's* "predecessor," *McLaughlin v. Florida*—finding a Florida law prohibiting unmarried interracial cohabitation unconstitutional—was also sparked by a White person reporting the interracial couple to the police. See Brief for Appellants at 5, *McLaughlin v. Florida*, 379 U.S. 184 (1964).

56. Dale Carpenter, *The Unknown Past of Lawrence v. Texas*, 102 MICH. L. REV. 1464, 1478–79 (2004).

gun” at their apartment.⁵⁷ Responding to the call, law enforcement barged in on the men, and after failing to find a gun, ultimately arrested them both under Texas’s sodomy law. Thus, a racialized police call paved the way for the legal challenge to sodomy laws nationwide.⁵⁸

Similar accounts exist outside of the law. Of course, Jim Crow era reflections of the police being summoned on Blacks who refused to acquiesce to the indignities of segregation are well known.⁵⁹ And more contemporarily, recall the charged national conversation sparked when a White neighbor’s report of “two [B]lack men” forcibly entering a home led to the 2009 arrest of Dr. Henry Louis Gates, Jr.⁶⁰

Only recently, however, has there been increased and constant media attention on the practice of reporting Black people to the police for innocent activities. Between April and October 2018, there were thirty-nine media-covered instances of White persons calling the police on Black people who were simply existing.⁶¹ And by my count, in 2018 there were ninety-two such reports that were covered by the media or went viral on social media.⁶² The exposure of the practice and increased media coverage suggests either that the practice has proliferated, or that the increased use of cell phones has exposed a previously existing yet critically underacknowledged form of racial discrimination.

Empirical studies confirm that reports to the police are used in a racialized manner. A 2003 study examining racial profiling in retail environments and subsequent false arrests found that in 17 percent of cases, police officers were summoned by store clerks who had racially profiled

57. *Id.* at 1479; *Id.* at 1483 (“Eubanks [the partner] confessed to the deputies that he had invented the story about an armed intruder in order to retaliate against Lawrence and Garner.”).

58. See *Lawrence v. Texas*, 539 U.S. 558, 584–85 (2003).

59. *E.g.*, Raymond O. Arsenault, Symposium, *You Don’t Have to Ride Jim Crow*, 34 STETSON L. REV. 343, 387–405 (2005) (documenting that White riders or bus drivers calling the police was actually a predicted and integral part of Black bus desegregation efforts); Lecture, *Bus Ride to Justice: A Conversation with Fred Gray*, 64 CASE W. RES. L. REV. 733, 740–742 (2014) (reprinting an interview with Fred Gray, civil rights attorney, in which he recounted bus drivers summoning the police on Black riders).

60. See Helene Cooper, *Obama Criticizes Arrest of a Harvard Professor*, N.Y. TIMES, July 22, 2009, at A20 (recounting the Gates, Jr. arrest); Helene Cooper & Abby Goodnough, *In a Reunion Over Beers, No Apologies, but Cordial Plans to Have Lunch Sometimes*, N.Y. TIMES, July 30, 2009, at A10 (recounting the aftermath).

61. Opinion, *To the Next ‘BBQ Becky’: Don’t Call 911. Call 1-844-WYT-FEAR*, N.Y. TIMES (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/opinion/calling-police-racism-wyt-fear.html> (collecting the instances). As the Appendix to this Article shows, however, this number is vastly underestimated.

62. See *infra* Appendix.

customers.⁶³ A 2017 study of the private neighborhood message board of a predominantly White community in Austin, Texas found similarly.⁶⁴ Investigating posts involving claims of “suspicious persons” in the area, the authors found that residents contacted the police in 60 percent of the instances where reports involved Black strangers, but only in 10 percent of the instances when they involved strangers who were White.⁶⁵ More directly, in an October 2018 poll, 28 percent of Blacks reported previously having had the police called on them because of their race or ethnicity, compared to 4 percent of White respondents.⁶⁶ In another question, 28 percent of Blacks indicated that they had been previously reported to the police when they were doing nothing wrong.⁶⁷

While these sketches and statistics demonstrate the existence of racialized police calls, the actual prevalence of the practice is unknowable. The urgency of addressing the use of the police as a weapon of racial oppression is rooted not so much in its popularity, but rather, in the practice’s larger social context. America is presently witnessing a watershed in police violence against Black citizens. For the first time, empirical evidence has confirmed what the Black community long knew to be true. The past five years has exposed that police kill Blacks at disproportionate rates, and that police are more likely to use force when interacting with Black persons.⁶⁸ Concurrently, the American consciousness has been

63. Shaun L. Gabbidon, *Racial Profiling Store Clerks and Security Personnel in Retail Establishments: An Exploration of “Shopping While Black”*, 19 J. CONTEMP. CRIM. JUST. 345, 356 (2003).

64. Maria R. Lowe et al., *Who Looks Suspicious? Racialized Surveillance in a Predominantly White Neighborhood*, 4 SOC. CURRENTS 34 (2017).

65. *Id.* at 43. The study also found that residents were significantly more likely to view Black strangers as “suspicious” or “criminal” and use language alluding to criminality, such as “scoping” or “casing” than when strangers were White or Latino. *Id.* at 41–43. See also Rahim Kurwa, *Building the Digitally Gated Community: The Case of Nextdoor*, 17 SURVEILLANCE & SOC’Y 111, 111–15 (2019) (documenting how the social networking site Nextdoor is used by White residents, in tandem with calls to the police, to profile, surveil, and exclude Black persons from their communities).

66. *HuffPost: Racial Experience*, HUFFPOST & YOUNG (Oct. 10–11 2018), <https://big.assets.huffingtonpost.com/athena/files/2018/10/17/5bc7791fe4b0a8f17ee8bf59.pdf> [hereinafter *HuffPost: Racial Experience*].

67. *Id.* at 5.

68. See, e.g., Charles E. Menifield et al., *Do White Law Enforcement Officers Target Minority Suspects?*, 79 PUB. ADMIN. REV. 56, 60 (2019) (examining all instances of deadly police force in the United States between 2014 and 2015, and finding “African Americans are killed by police more than twice as often . . . [as] their share of the general population”); Stefan Newton, *The Excessive Use of Force Against Blacks in the United States of America*, 22 INT’L J. HUM. RTS. 1067, 1068 (2018) (reporting amongst persons killed by police in 2017, 25 percent were Black; making “[B]lack persons . . . three times more likely to be killed by the police”); CIVIL RIGHTS DIV., U.S. DEP’T JUST., INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT 15 (2017) (finding the Chicago Police Department ten

bombarded by an endless stream of citizen-recorded police abuse, has awoken to the realities of racially biased policing, and has been forced to grapple with the lack of accountability for police violence against unarmed citizens.⁶⁹ Within this context, racialized police communication serves to expose innocent Blacks to potential police violence and mistreatment. As a result, what may have been ignored historically, or previously viewed as condonable, can no longer be overlooked.

1. *Theorizing Racialized Police Communication.* — Conceptually, racialized police communication sits at the intersection of two previously acknowledged discriminatory practices: racial hoaxes and racial profiling. Racial hoaxes occur “when (1) someone fabricates a crime then blames it on, for example, a Black person; or (2) an actual crime has been committed and someone falsely blames it on, for example, a Black person.”⁷⁰ Racial profiling refers to law enforcement’s use of racial or ethnic identity as a proxy for criminality and reason for suspicion.⁷¹

Racialized police communication is, simultaneously, both narrower and broader than both racial hoaxes and racial profiling. It is broader in that those engaged in racial profiling are private citizens (as opposed to police officers). But it is also narrower, in that the victims identified are

times more likely to use force against Black persons, than White); CIVIL RIGHTS DIV., U.S. DEP’T JUST., INVESTIGATION OF THE BALTIMORE POLICE DEPARTMENT 47 (2016) (finding almost 90 percent of the Baltimore Police Force’s excessive force incidents to involve Blacks); CIVIL RIGHTS DIV., U.S. DEP’T JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 62 (2015) (finding Blacks accounted for 88 percent of excessive use of force cases between 2010 and August 2014).

69. Law enforcement killed 1129 persons across the United States in 2017. And yet, they were charged with a crime in only 13 instances; less than one percent. MAPPING POLICE VIOLENCE, POLICE VIOLENCE REPORT 2017, <https://policeviolencereport.org/>. Between 2005 and 2017 only 82 officers were charged with murder or manslaughter for an on-duty shooting, and of those, a mere 29 resulted in conviction. Philip M. Stinson, *Charging a Police Officer in Fatal Shooting Case is Rare, and a Conviction is Even Rarer*, N.Y. DAILY NEWS (May 31, 2017), <https://www.nydailynews.com/new-york/convicting-fatal-shooting-case-rare-event-article-1.3210936>. Even in instances where body cameras or citizen recording appears to capture blatant police misconduct, punishment is scarce. A survey of 13 police-involved killings of Blacks captured on viral video between 2014 and 2016 finds only seven led to charges. See Haeyoun Park & Jasmine C. Lee, *Looking for Accountability in Police-Involved Death of Blacks*, N.Y. TIMES (May 3, 2017), <https://www.nytimes.com/interactive/2016/07/12/us/looking-for-accountability-in-police-involved-deaths-of-blacks.html?action=click&contentCollection=U.S.®ion=Footer&module=WhatsNext&version=WhatsNext&contentID=WhatsNext&moduleDetail=undefined&pgtype=Multimedia>.

70. Katheryn K. Russell, *Racial Hoax as Crime: The Law as Affirmation*, 71 IND. L.J. 593, 595 n.14 (1996).

71. See *Racial Profiling: Definition*, AMERICAN CIVIL LIBERTIES UNION (ACLU) <https://www.aclu.org/other/racial-profiling-definition> (defining “racial profiling” as “the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual’s race, ethnicity, religion or national origin”).

not fictional Black people or Blacks as a generalized collective, but specific Black individuals. Because of these unique features, the phenomenon must be understood and addressed independently. Efforts to deter police racial profiling, for example, are ineffective against the practice. Simultaneously, solutions to racial hoaxes may fail to address the harms racialized police communication inflicts on individual victims.

Racialized police communication appears to exist in two forms: reporting that is racially motivated and reporting that is racially weaponized. The first, racially motivated police reporting, involves calls, reports, or complaints to law enforcement made against Black individuals engaged in activities that would not be read as aggressive, suspicious, or otherwise worthy of police involvement, had the actor been White. This description mostly captures reports that are made based on implicit or unconscious biases which cause the reporter to view the victim's innocuous actions as worthy of scrutiny.

By contrast, the second form, racially weaponized police reporting, describes instances where persons consciously capitalize on the police's inclination to mistreat Black persons or Blacks' fear of the police, and deliberately involve the authorities because of a desire to harm the victim. Thus, while the latter phenomenon involves a focus on the caller's motives, the former does not; the divide focuses on conscious racial animosity as opposed to implicit or unconscious racial bias. The following vignettes clarify this point:

- Chad is a White man. One day, while at a bar, Chad gets into an altercation with Darren, who is Black. Seething, Chad sulks out of the bar and calls the police. He tells the dispatcher "there's a big Black man with a gun who is threatening to shoot patrons." In this scenario, Chad *knew* he could wield the police to implement physical harm, and did so for this reason. This police report was *racially weaponized*.
- Mary is a White woman. One day, when she is sitting at home, she sees Tanya, who is Black, moving from house to house and knocking to check if anyone is there. Mary considers this suspicious. And yet, as it is election campaign season, she has seen several White candidates behave similarly but has never read their behavior as suspicious. Mary calls the police and tells them that there is "a suspicious Black woman who might be trying to break into homes." In this scenario, Mary read Tanya's actions as threatening or criminal because she was Black, but did not seek to deliberately harm Tanya because of conscious racial animosity. It is unlikely that Mary views herself as a racist (at least overtly); however, because of

her implicit bias she could not view Tanya's actions as innocent. This is a *racially motivated* police report.

The distinction between racially motivated and weaponized reporting is largely theoretical. In practice, as will be shown, both forms of reporting overlap in the harms they impose on their victims.

An important offshoot related to the phenomenon of racialized police communication, is the concept of “Existing While Black.” The phrase, popularized in 2018 due to the close proximity of the reports, media attention, and social media virality of police reports against Blacks, has become a reference point for the Black community to share personal experiences of law enforcement called on them on account of their race. The use of this and parallel expressions, as well as their hashtag equivalents: *#ExistingWhileBlack*, *#BreathingWhileBlack*, and *#LivingWhileBlack*, bourgeoned tremendously over the course of 2018.⁷²

Rhetorically, the expression “Existing While Black” is clearly a play on its earlier corollaries—Driving While Black,⁷³ Shopping While Black,⁷⁴ and Walking While Black⁷⁵—each referring to (typically) police scrutiny of Black persons during the named activities. Beyond this however, the expression is also extremely insightful. Not only does it evoke the hardships associated with navigating American life as a Black person,⁷⁶ it also captures the heart of the problem of racialized police communication.

72. For instance, the phrases “Existing While Black,” “Living While Black,” and “Breathing While Black,” as well as their hashtag equivalents were used several thousands of times on social media platforms during 2018. See Social Media Analytics Reports (on file with author), <https://perma.cc/3BQQ-E94L>. The hashtag *#ExistingWhileBlack* itself has a social media reach of over 6 million persons. *Id.*

73. See generally David Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 MINN. L. REV. 265 (2000) (collecting examples); Kathryn K. Russell, “Driving While Black”: Corollary Phenomena and Collateral Consequences, 40 B.C. L. REV. 717 (1999) (defining and describing the term).

74. As defined in *Hester v. Wal-Mart Stores*, the term refers to instances where store “security . . . places an individual under surveillance based entirely on that individual’s ‘color rather than conduct.’” 2005 U.S. Dist. LEXIS 17888, at *15 n.6 (D. Kan. 2005). See also Anne-Marie G. Harris, *Shopping While Black: Applying 42 U.S.C. § 1981 to Cases of Consumer Racial Profiling*, 23 B.C. THIRD WORLD L.J. 1 (2003) (providing examples of racial profiling in retail environments).

75. The term refers to police using race as an indicator of criminality—and thus the decision to stop and interrogate Black persons who are walking. See Paul Butler, *Walking While Black: Encounters with the Police on My Street*, LEGAL TIMES, Nov. 10, 1997, at 23 (documenting the professor’s experience with being profiled while walking in his own neighborhood).

76. The term ‘exist’ is defined as both “to have real being,” and “to live at an inferior level or under adverse circumstances.” *Exist*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2004) (emphasis added).

Fundamentally, the phrase articulates the evils that arise when racial profiling shifts from the police and is appropriated by private citizens. With the method of racial profiling privatized, official law enforcement no longer has to be present for Blacks to face unwarranted scrutiny.⁷⁷ Instead, because of the ease with which White citizens can communicate with and summon the police, Blacks now face suspicion everywhere. They are now perpetually hyper-visible, subject to potentially unending surveillance, and trapped in a permanent panopticon.⁷⁸ For Black persons, through racialized police communication, racial profiling becomes ubiquitous, constant, and ultimately, inescapable. One no longer has to drive, shop, or walk, to be exposed to the harms of profiling—one simply has to *exist*.

2. *Identifying Racialized Police Communication.* — The crux of ascertaining whether a report is motivated by the victim's race is through comparative analysis. The inquiry asks: *would the police have been contacted had the actor been White?* Alternatively, *is the actor engaged in behavior for which the average White person would not be reported to the police?* Ordinarily, this exercise is simplest when White actors are concomitantly engaged in the same behaviors. Where the police are called on Blacks, notwithstanding Whites engaging in identical conduct, race can be assumed to be a factor in the choice to summon the police.⁷⁹

A harder inquiry arises when the facts objectively support a race-neutral finding of suspicion.⁸⁰ Undeniably, there are instances where it

77. See I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1289 (2017) (remarking, “Those of us who are [B]lack or [B]rown continue to be subjected to private surveillance . . .”) [hereinafter Capers, *Race, Policing, and Technology*].

78. See George Yancy, Opinion, *Walking While Black in the ‘White Gaze’*, N.Y. TIMES (Sept. 1, 2013), <https://opinionator.blogs.nytimes.com/2013/09/01/walking-while-black-in-the-white-gaze/> (describing the paradoxical invisibility and hypervisibility that Blacks experience when surveilled in White spaces); John Fiske, *Surveilling the City: Whiteness, the Black Man and Democratic Totalitarianism*, 15 THEORY, CULTURE & SOC’Y. 67, 72–74 (1998) (demonstrating how public surveillance erodes Black freedoms). See generally George Yancy, *Black Bodies, White Gazes: The Continuing Significance of Race* (2008) (theorizing the violence the “White Gaze” inflicts on Black bodies).

79. E.g., *Heyward v. 24 Hour Fitness*, 2015 U.S. Dist. LEXIS 170407, at *2–*3 (N.D. Cal. 2016) (detailing a case where a White pool manager called 911 on a Black patron for speaking loudly, despite White patrons speaking equally loudly and not being subjected to similar treatment); *Coward v. Town and Vill. of Harrison*, 665 F. Supp. 2d 281, 303–04 (S.D.N.Y. 2009) (finding the decision to call the police motivated by race where a White man called the police on a Black man for shouting comments at children playing baseball despite the fact that “it was not uncommon for [W]hite parents to shout out similar comments in similar situations without incident”).

80. This may occur when an actor's conduct appears to resemble a crime or preparation of a crime. See Sheri Lynn Johnson, *Race and the Decision to Detain a Suspect*, 93 YALE L.J. 214, 218–19 (1983) (considering factors that objectively suggest the commission of a crime).

seems that despite the victim's race, law enforcement would have been summoned.⁸¹ There, it is harder to isolate the role of race in the reporter's decision to contact the authorities.

In these more difficult instances, the following indicia can be used to decipher racial motivation and weaponization: Indicating the victim's race without being asked⁸² and falsely suggesting the presence of weapons, aggression, or threats on the part of the victim suggest race played a role in the decision to contact law enforcement.⁸³ "Dog-whistle terms" and racial allusions also suggest the influence of race.⁸⁴ More explicitly,

81. To illustrate, consider the facts of *Henry v. Bank of America Corporation*. No. C 09-628 CRB, 2010 U.S. Dist. LEXIS 14561 at *20-21 (N.D. Cal. Feb. 2, 2010). There, a bank manager suspected a Black account holder of attempting to deposit a fraudulent check and called the police. *Id.* at *3-4. Prior to contacting the authorities, the manager called who she believed was the check issuer, and confirmed that no such check had been written. *Id.* The manager, however, mistakenly contacted another customer of the same name. *Id.* Bracketing the question of whether banks typically verify the authenticity of White customers' checks by contacting the issuers, arguably, based on these facts the decision to contact the authorities seems reasonable.

82. My point here is that there can be no greater indication that race was salient in the reporter's decision to contact the police, than their own preemptive statement of the victim's race. A reporter's own suggestion of racial profiling is also redolent. For example, the woman who reported a suspected carjacking in October 2015 when a Black man was making repairs to his vehicle, told the dispatcher "I don't know if I'm, like, racial profiling." Indeed she likely was, and her call resulted in Crosby being thrown to the ground and punched repeatedly by police. See Lawrence Crosby, *Police Tackled Me for Stealing a Car. It Was My Own.*, CHI. TRIB. (July 3, 2018), <https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-police-evanston-racial-profiling-black-man-0704-story.html>.

83. The police call at issue in *Whelehan v. Chicago*, is one such example. 2013 IL App (1st) 122680-U (Ill. App., June 28, 2013). There a White man—William Whelehan—called the police and claimed to be assaulted by a Black man who "approached him in a threatening manner telling him that he was going to shoot him, and . . . reach[ing] down toward his ankle as if reaching for a gun." *Id.* at ¶ 6. Upon further investigation several witnesses testified that this was untrue. Instead, Whelehan had threatened the Black victim, called him racial slurs, and at no point did the victim reach towards his ankles. *Id.* at ¶¶ 7-17. The falsities in the report preceding *Lawrence v. Texas*, of a "Black man going crazy with a gun" would also qualify. Carpenter, *supra* note 56, at 1478-79.

84. The court in *Johnson v. York Simpson Undenwood*, for example, used a White caller's actions and description of three black men as being dressed in "gang-like" clothing to infer racial bias. 2005 U.S. Dist. LEXIS 46213 (M.D.N.C. June 9, 2005). There, a White woman blocked several Black men from viewing an open house, and called the police to report "three young [B]lack males dressed in gang-like clothing seeking entrance to an open house held by a realtor." *Id.* at *5. When the agent called to inquire why they were refused entry, she responded "Those were your clients? . . . They don't look like your typical buyers." *Id.* at *6. At trial, the court held these comments and actions were sufficient to infer racial discrimination under 42 U.S.C. §§ 1981 and 1982. See also *Agnew v. Bd. of Educ. Chi.*, 1998 U.S. Dist. LEXIS 10195, at *14 (N.D. Ill. July 7, 1998) (using the description of Black students as "gang members" who would "cause trouble" to infer racial motivation).

the use of racial slurs or racially disparaging language during the encounter leading up to the complaint or call suggests racial motivations.⁸⁵ Finally, White actors' irrational fear or suspicion of the victim also denotes that race played a role in the decision to call the police.⁸⁶

Considering these indicia, the following sections detail the negative consequences of racialized police communication. As it will show, the practice serves to segregate public spaces, reanimate negative stereotypes about Black persons, inflict trauma on its victims, and further rupture the relationship between the Black community and the police.

B. Segregative Effects

During *de jure* segregation, law enforcement operated to enforce segregation laws through threats of arrest and brute force.⁸⁷ With the de-

85. See *Jones v. Robinson Prop. Group*, 427 F.3d 987, 993 (5th Cir. 2005) (noting that the use of "racial epithets undoubtedly demonstrate[s] racial animus"). *But see* *Schultz v. Wilson*, No. 1:04-CV-1823, 2007 U.S. Dist. LEXIS 88994 at *19 (M.D. Pa. Dec. 4, 2007) (finding insufficient evidence to conclude the police were called out of racial malice where a White man demanded a party turn off loud "nigger music" before calling the police).

86. Here, the reasoning of *Kelly v. Bank Midwest* is instructive. 177 F. Supp. 2d 1190 (D. Kan. 2001). There, Willie Kelly and his brother had the police called on them while seeking to get a bank loan. A teller wrongfully assumed that Kelly's license was fraudulent, and called the police "for the security of the customers" and out of a fear that "something could erupt." *Id.* at 1197. At trial, the court pointed out that the Kelly brothers displayed no "threatening or unusual behavior." *Id.* The absence of a rational basis to believe customers were at risk, reasoned the court, indicated a racial motivation. *Id.* at 1197-98 ("The court cannot understand from the facts in the record why Mr. Grabbe would believe 'something could erupt' based solely on an unusual license. Thus, the court finds that something else—namely, race—factored into Mr. Grabbe's thinking on that day.").

87. JOE R. FEAGIN, *RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS* 162 (2014) (reporting "Jim Crow segregation was enforced with private and police violence"); STEPHEN A. BERREY, *THE JIM CROW ROUTINE: EVERYDAY PERFORMANCES OF RACE, CIVIL RIGHTS, AND SEGREGATION IN MISSISSIPPI* 140-42 (2015) (collecting instances of police response to the Black fight for integration); Susan E. Howell et al., *Black Cities/White Cities: Evaluating the Police*, 26 *POL. BEHAV.* 45, 45-46 (2004) ("For more than half of the twentieth century, the police enforced Jim Crow laws in the South, and they did so in ways that ranged from being simply disrespectful of [B]lack to being brutally oppressive."). To further illustrate, consider the following anecdote: In 1951, policemen prevented Harvey Clark, Jr., a Black veteran, from moving into an apartment within the largely White community of Cicero, Chicago. William Gremley, *Social Control in Cicero*, 3 *BRITISH J. SOC.* 322, 322 n.47 (1952). When Clark arrived, local policemen—including the Cicero police chief himself—blocked his entrance, declaring "that he could not move in without a 'permit.'" *Id.* When Clark's attorney assured him that no permit was required, the police resorted to brute force, "bluntly order[ing] him . . . away, [and] threatening him with arrest if he failed to comply

cline of laws mandating legal separation of the races, the role of law enforcement in maintaining racial apartheid has evolved.⁸⁸ One of the principal effects of racially weaponized police communication is the continuation of *de facto* segregation. There are both causal and temporal elements to this. Segregation may happen indirectly, through Black persons removing themselves out of fear of potential police harassment or violence.⁸⁹ Alternatively, it may occur directly, when through police instruction to leave or physical removal,⁹⁰ the presence of Black bodies in space is controlled and limited. It may also occur immediately, such as the instantaneous removal of Black individuals, or over an extended peri-

with their demand. Clark then left, after being man-handled and struck.” *Id.* The Cicero example must be juxtaposed to officers’ simultaneous refusal to arrest White citizens guilty of racial violence. See Elliot M. Rudwick, *Police Work and the Negro*, 50 J. CRIM. L. CRIMINOLOGY & POL. SCI. 586, 598 (1960); Note, *Grade School Segregation: The Latest Attack on Racial Discrimination*, 61 YALE L.J. 730, 740 n.47 (1952) (remarking local police protection for Black students during the process of school integration was “conspicuously absent”).

88. For example, during the era of legalized segregation, vagrancy ordinances were used to regulate the presence of Blacks. See Gary Stewart, Note, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249, 2258 (1998) (detailing the historical use of vagrancy laws to control the movement of Blacks in society); Dan M. Kahan & Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO L.J. 1153, 1156 (1998) (documenting law enforcement’s use of vagrancy laws to harass Blacks during the 1960s). Following the decline of vagrancy statutes, law enforcement has moved to controlling Black presence through stop-and-frisk policies and mass criminalization. See Tracey Meares, *This Land is My Land?*, 130 HARV. L. REV. 1877, 1892 (2017) (contending that stop-and-frisk tactics emerged following the decline in vagrancy ordinances, but serve the same essential function); Christopher Lowen Agee, *From the Vagrancy Law Regime to the Carceral State*, 43 L. & SOC. INQUIRY 1658, 1664–67 (2018) (suggesting discretionary policing followed the decline of vagrancy laws).

89. See, e.g., Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2099 (2017) (offering an example of how one Black woman “stopped going to the mall to avoid interacting with the officers there”). Cf. David A. Harris, *Particularized Suspicion, Categorical Judgments: Supreme Court Rhetoric Versus Lower Court Reality Under Terry v. Ohio*, 72 ST. JOHN’S L. REV. 975, 886 (1998) (“[S]ome people, especially members of minority groups . . . have perfectly legitimate reasons to avoid police, as they may have been subjected to unjustified detentions and searches, harassment, or even physical abuse in the past.”); Amy D. Ronner, *Fleeing While Black: The Fourth Amendment Apartheid*, 32 COLUM. HUM. RTS. L. REV. 383, 396–7 (2000) (“Because minorities and residents of high crime areas are popular targets of police abuse, they are also the ones most prone to run at the mere sight of the police Such efforts to evade the police are not evidence of guilt, but rather are reasonable (and perhaps reflex) reactions by a culture with a history of being victimized by the law enforcement regime.”).

90. *Smith v. O’Hare*, 2009 U.S. Dist. LEXIS 1000636 at *2–5 (N.D. Ill. Oct. 27, 2009) (documenting a case in which the Hilton Chicago O’Hare business center used the police to forcibly remove an Black man, despite White patrons not being removed and the business center being open to the public).

od of time, when Blacks collectively avoid areas where they know they will face removal or aggressive policing.

This subsection considers three archetypical methods of using racialized weaponized calls to segregate: when law enforcement are used as removal services to immediately eliminate Black presences, when they are used to keep Black people ‘in their place’—away from locations considered “White spaces,” and when law enforcement is used as a tool to further gentrification.

1. *Law Enforcement as ‘Removal Services’*. — Primarily, racialized police communication is used as a means to instantaneously limit or remove the presence of unwanted Blacks.⁹¹ For example, on April 12, 2018, at 4:35 p.m. two Black men entered a Starbucks location in Philadelphia, Pennsylvania.⁹² One man asked to use the restroom and when the manager informed him that the facilities were for paying customers only, he went to sit with his colleague.⁹³ Minutes later at 4:37 p.m., the manager called the police and the following exchange transpired: “Hi, I have two gentlemen at my café that are refusing to make a purchase or leave.”⁹⁴

Seven officers arrived at the scene at 4:41 p.m. and the two men were arrested for trespassing and creating a disturbance, despite offering that they were waiting for a friend.⁹⁵ The brief call by the Starbucks manager exemplifies the use of the police as removal services called to force or intimidate Black individuals into leaving the area. That a fifteen-second-long conversation could result in men who were innocently waiting in Starbucks—an exceedingly common practice—being physically removed and held for over eight hours demonstrates the potency of ra-

91. There are, of course, many genuine reasons for contacting the police. To be clear, persons of *all races* can equally present a disturbance or pose a threat, warranting law enforcement intervention. It is often the case, however, that White reporters contact the police in instances where Blacks are considered argumentative or not sufficiently acquiescent. In this way, racialized police communication serves as a ‘trump card’ to force Black obedience by threatening Black persons with immediate removal. Professor Harris Combs has labeled this demanding of Black compliance, and interpretation of dissent, disobedience, or disagreement as worthy of law enforcement involvement, as the “Massa Has Spoken” frame. See Harris Combs, *supra* note 37, at 45 (describing the frame as White actors issuing commands and expecting “orders will be complied with in a way that meets the letter, spirit, and manner described”).

92. Rachel Siegel, ‘*They Can’t be Here for Us’: Black Men Arrested at Starbucks Tell Their Story for the First Time*, WASH. POST (Apr. 19, 2018), https://www.washingtonpost.com/news/business/wp/2018/04/19/they-cant-be-here-for-us-black-men-arrested-at-starbucks-tell-their-story-for-the-first-time/?utm_term=.84f8c40ad70e.

93. *Id.*

94. PhiladelphiaPolice, *4-12-18 Starbucks 911 Call, Dispatches and Officer Transmissions*, YOUTUBE (Apr. 17, 2018), <https://www.youtube.com/watch?v=pFRP7QwIIH0&feature=youtu.be>.

95. Siegel, *supra* note 922.

cially weaponized police calls. Within ten minutes of arriving, the men were forcibly removed in handcuffs. The ability to use the police in this manner has allowed some to wield the authorities as “their own personal People of Color Removal Service.”⁹⁶

An important site of focus is the implication of criminality alluded to in the Starbucks manager’s exchange. She stated that the men “refused to make a purchase or leave.”⁹⁷ That was categorically untrue. However, by implying that the men were being combative, the manager was able to support her apparent need for police intervention. This practice is not uncommon.⁹⁸ In other instances of racialized police communication, White callers either imply—or explicitly lie—that their need for law enforcement is urgent, using this as a tactic for intensifying the response. Such a practice primes the responding officers to believe the situation is potentially dangerous, and ultimately may exacerbate the use of force.

Lying to encourage police response is further demonstrated in a series of 2017 calls placed by three White women seeking to prevent Marc Peeples from establishing a community garden in their neighborhood in Detroit, Michigan.⁹⁹ Over the course of a year and a half, the women

96. Jessica Sutherland, *White Woman Calls Police on Racist White Man (Yes, Really!) and Stops Imminent School Shooting*, DAILY KOS (Oct. 23, 2018), <https://www.dailykos.com/stories/2018/10/23/1806682/-White-woman-calls-police-on-racist-white-man-yes-really-and-stops-imminent-school-shooting>; see also Dorothy Roberts (@DorothyERoberts), TWITTER (Oct. 29, 2018, 6:12 AM) <https://twitter.com/DorothyERoberts/status/1056896501824348160> [<https://perma.cc/9MRQ-E2NR>] (calling the practice “a personal service to keep black people ‘in their place’”).

97. Siegel, *supra* note 92.

98. To illustrate, in a May 2018 incident in Plano, Texas, a restaurant manager threatened to call the police when a Black couple refused to give up a table they were sitting at to make room for a regular. When they refused, the manager is captured on cell-phone video escalating the situation: “I tell you to leave right now or I will call the police and they’ll ask you to leave.” Rebecca Lopez, *Motivational Speaker Says He Was Kicked Out of Sambuca Because He’s Black*, WFAA8 (Apr. 30, 2018), <https://www.wfaa.com/article/news/motivational-speaker-says-he-was-kicked-out-of-sambuca-because-hes-black/287-547421482>. When the manager ultimately does call, he falsely suggests the situation is urgent and dishonestly describes the couple as aggressive. All of this is contradicted by video of the interaction showing the couple responding calmly to the visibly irate manager. Rebecca Lopez, *Sambuca Suspends Manager After Claims of Racism*, WFAA8 (May 3, 2018), <https://www.wfaa.com/article/news/local/collin-county/sambuca-suspends-manager-after-claims-of-racism/287-548624342>.

99. See Tom Perkins, *Detroit Judge Tosses ‘Gardening While Black’ Case Brought by Three White Women*, DETROIT METRO TIMES (Oct. 18, 2018), <https://www.metrotimes.com/table-and-bar/archives/2018/10/18/detroit-judge-tosses-gardening-while-black-case-brought-by-three-white-women>; *Attorney: White Women Repeatedly Called Police on Client for ‘Gardening While Black’ in Detroit*, WXYZ DETROIT (Oct. 19, 2018), <https://www.wxyz.com/news/attorney-white-women-repeatedly-called-police-on-client-for-gardening-while-black-in-detroit>.

called the police dozens of times, first accusing Peeples of trespassing, and later accusing him of stalking them.¹⁰⁰ When these accusations failed to get the police to remove him, the women began fabricating increasingly serious charges.¹⁰¹ Their reports escalated in March 2018, when one of the women called the police alleging that Peeples had a gun and threatened her.¹⁰²

On that occasion, three police cars and six officers swarmed the garden and immediately handcuffed Peeples who can be seen on bodycam footage raking leaves and visibly shocked by the police presence.¹⁰³ The police rigorously search Peeples for a gun, and when none was found police bodycam footage records one officer stating: “The guy didn’t have anything on him and wasn’t wanted for anything . . . They went to the end of the deal with this B.S.”¹⁰⁴ Another is heard calling the report fake and saying “Ain’t no law against raking leaves.”¹⁰⁵

The women’s accusations resulted in Peeples being charged with three counts of stalking.¹⁰⁶ In court, Judge E. Lynise Bryant dismissed the charges, characterizing the reports as “targeted and constant harassment of the young man.”¹⁰⁷ In a follow up interview the judge expressed: “From the bottom of my heart, I believe race was a motivating factor and an injustice has been done to this man.”¹⁰⁸ Peeples’s attorney characterized the case as an “inseparable mix of race and power . . . [where the women] knew they could use the police as their own personal henchman to get him removed from the area just based on their allegations.”¹⁰⁹ Peeples has since sued the women.¹¹⁰

100. See Perkins, *supra* note 99.

101. *Id.*

102. Ariel Zilber, *Furious Detroit Judge Throws out Case Against Black Urban Farmer After Three White Women Falsely Accuse Him of Pedophilia and Gun Violence When He Turned Vacant Playground into a Garden*, DAILY MAIL (Oct. 26, 2018), <https://www.dailymail.co.uk/news/article-6322697/Urban-farmer-falsely-accused-pedophilia-gun-violence-three-white-women.html>

103. *Attorney: White Women Repeatedly Called Police on Client for ‘Gardening While Black’ in Detroit*, *supra* note 99 (article describing Peeples as “shocked” and embedded video showing the body-camera footage).

104. Perkins, *supra* note 99.

105. *Id.*

106. *Id.*

107. Audra D. S. Burch, *How ‘Gardening While Black’ Almost Landed This Detroit Man in Jail*, N.Y. TIMES (Oct. 26, 2018), <https://www.nytimes.com/2018/10/26/us/white-women-calling-police-black-men.html>.

108. *Id.*

109. *Id.*

110. See Tom Perkins, *Detroit Man Sues Three White Woman Who Called Police on Him for ‘Gardening While Black’*, DETROIT METRO TIMES (Mar. 4, 2019),

2. *Police as Keeping Black People in Their Place.* — Racialized police communication can also be used “to police racialized boundaries and bodies” in an effort to exclude Black bodies “from [W]hite-identified enclaves.”¹¹¹ This furthers what Professor Angela Onwuachi-Willig dubs “spacism,” a trend in which Whites use the authorities to maintain racial separation by restricting Black bodies from “the [W]hite space.”¹¹² These overwhelmingly White locations are valued by the racial majority for their lack of diversity.¹¹³ The entrance of Blacks—and indeed, of any minorities—therefore, represents a potential threat to these psychic qualities, and accordingly, mobilizing law enforcement serves to prevent decline in property value.¹¹⁴

The use of racialized police communication to maintain community segregation is typically employed against Black new-comers in racially homogenous neighborhoods.¹¹⁵ For instance, when the mainly White city

<https://www.metrotimes.com/table-and-bar/archives/2019/03/04/detroit-man-sues-three-white-women-who-called-police-on-him-for-gardening-while-black>.

111. Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540, 1543 (2012). For further support documenting the racialized characteristics of geographic locations, see generally Elise C. Boddie, *Racial Territoriality*, 58 UCLA L. REV. 401, 401 (2010) (conceptualizing a comprehensive definition of “racial geography”—the racial identity of spaces).

112. Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being ‘Out of Place’ from Emmet Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1156 (2017). Her use of term “white space” originates from Professor Elijah Anderson’s pathbreaking article in which he uses the term to refer to overwhelmingly White locations “in which [B]lack people are typically absent, not expected, or marginalized when present.” Elijah Anderson, “*The White Space*”, 1 SOC. RACE & ETHNICITY 10, 10 (2015).

113. Onwuachi-Willig, *supra* note 112, at 1155–57. See also Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-first Century*, 30 SCANDINAVIAN POL. STUD. 137, 155 (2007) (finding racial homogeneity associated with increased levels of community social capital and happiness); Maria Krysan et al., *Does Race Matter in Neighborhood Preferences? Results From a Video Experiment*, 115 AM. J. SOC. 527, 548–50 (2009) (finding Whites view all-White neighborhoods as the most desirable, and “[t]he presence of African-Americans in a neighborhood resulted in a downgrading of its desirability”).

114. In this way, “spacism” appears to invoke long held stereotypes that Blacks decrease the value of property. See Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1975–88 (2015) (finding that one of the dominant reasons behind residential segregation was the notion that Blacks decreased the value of property).

115. See, e.g., *Hidden Vill. v. City of Lakewood*, 734 F.3d 519, 525–27 (6th Cir. 2013) (reporting a case where city officials and the police sought to drive Black residents out through a campaign of targeted harassment and arrests); *Fitzpatrick v. City of Hobart*, 2006 U.S. Dist. LEXIS 68997 at *11–*13 (N.D. Ind. Sept. 25, 2006) (documenting an example where the police and majority White neighbors worked in tandem to surveil incoming Black families); *People Helpers Found. v. Richmond*, 789 F. Supp. 725, 729–31 (E.D. Va. 1992) (reporting a case where White neighbors used the police to harass disabled Black tenants into leaving their communities); *Thompson v. Vill. of Monee*, 2013

of Antioch, California saw a rapid increase in federally subsidized low-income renters, White neighbors “invoked state authority in the form of policing as a mechanism to maintain racial boundaries.”¹¹⁶ Through citizen complaints, neighbors repeatedly reported newly-arrived Black families for noncriminal acts.¹¹⁷ Responding to these calls, law enforcement consistently surveilled and intimidated these families.¹¹⁸ Simultaneously, when Black families called the police for help they were subjected to harassment and dismissal.¹¹⁹ Hence, as Blacks avoided calling the authorities, their White neighbors used them as an instrument to harass the in-comers into leaving.¹²⁰

3. *Police as Tools of Gentrification.* — The final iteration explored here is the use of racialized police reports as a tool of gentrification.¹²¹

U.S. Dist. LEXIS 92428 (N.D. Ill. July 1, 2013) (dismissing a conspiracy claim where White neighbors initiated a scheme to evict a Black family by repeatedly making false police reports against them); *James v. Vill. of Willowbrook*, 2012 U.S. Dist. LEXIS 102191 at *4 (N.D. Ill. July 19, 2012) (detailing a conspiracy between White neighbors and police to drive a Black family out of the community); *Joyce v. City of Sea Isle City*, 2008 U.S. Dist. LEXIS 25880 at *5–*7 (D.N.J. Mar. 31, 2008) (documenting a case where White neighbors used police complaints to harass a Black family and responding officers called the family racial slurs, and on one occasion an officer told the family “when you look a [W]hite person in the face, you put your head down and show some respect”); Marcelino Benito, *Homeowner Has a Neighbor Who Keeps Calling 911*, KHOU 11 (Apr. 25, 2017), <https://www.khou.com/article/news/local/homeowner-has-a-neighbor-who-keeps-calling-911/434158747> (detailing a case in which a White neighbor called the police over 20 times to lodge false noise complaints against a Black neighbor in an apparent effort to force him out of the community).

Using racialized police communication in this way appears to extend to commercial contexts as well. *See Bank Realty v. Practical Mgmt. Tech.*, 1990 U.S. Dist. LEXIS 7480 (D. Md. June 15, 1990) (recording a case where a shopping center mobilized the police to drive a Black-owned business out); *Tower Props. v. Vill. of Highland Falls*, 2015 U.S. Dist. LEXIS 88457 at *2 (S.D.N.Y. July 7, 2015) (detailing a case in which a village mayor used the police to harass a business based on the race of their clientele).

116. *Ocen*, *supra* note 111, at 1568.

117. *Id.* at 1575.

118. *See id.* at 1575–79.

119. *Id.* at 1578 (reporting that on one occasion the police used a Black woman’s call as an opportunity to unconstitutionally search her home in order to accuse her of Section 8 violation—in an effort to have her evicted). *See also Suber-Aponte v. Pottstown*, 2016 U.S. Dist. LEXIS 130197 at *2–*4 (E.D. Pa. Sept. 23, 2016) (a case where an officer, called by a Black resident, refused to arrest a White trespasser, threatened the caller with arrest, and called her racial slurs when she protested his lack of action).

120. *See Ocen*, *supra* note 111, at 1578.

121. Devon Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1495 (2016) (Through gentrification “[t]he private can mobilize broken windows policing on demand, and the government can proactively supply it at will. This public/private mobilization of broken windows policing makes [B]lacks out of place in, and facilitates their displacement from, areas on route to becoming new [W]hite communities.”).

Gentrification is typically racialized in that “[c]ommonly, higher-income [W]hite households replace lower-income minority ones”¹²² To illustrate, the Black population in gentrifying New York City communities decreased almost 8 percent between 1990 and 2010, and halved in gentrifying neighborhoods in San Francisco between 2000 and 2010.¹²³ The newly arriving White inhabitants bring with them increased public services, including an increased police presence.¹²⁴ As a report released in January 2019 confirmed, in New York City, the highest rate of quality-of-life police reports occurred in communities of color with the largest influx of White residents.¹²⁵ Further, such reports were significantly more likely to end in the issuance of a summons or an arrest in communities of color that experienced the highest influx of White new arrivals.¹²⁶ Another study found the relationship between gentrification and “stop and frisks” were “strong and positive,” suggesting the increased police presence results in more police interaction with long-standing minority community members.¹²⁷ Indeed, the deaths of Alex Nieto in San Francisco¹²⁸ and Saheed Vassell in Harlem,¹²⁹ both resulting from police reports in rapidly gentrifying neighborhoods, suggests that changes accompany-

122. John A. Powell & Marguerite L. Spencer, *Giving Them the Old ‘One-Two’: Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOWARD L.J. 433, 436 (2002).

123. Zachary C. Freund, Note, *Perpetuating Segregation or Turning Discrimination on its Head? Affordable Housing Residency Preferences as Anti-Displacement Measures*, 118 COLUM. L. REV. 833, 855 (2018).

124. See Donald C. Bryant, Jr. & Henry W. McGee, Jr., *Gentrification and the Law: Combatting Urban Displacement*, 25 WASH. U. J. URB. & CONTEMP. L. 43, 70 n.103 (1983); see also Adam Hudson, *How Punitive and Racist Policing Enforces Gentrification in San Francisco*, TRUTHOUT (Apr. 24, 2015), <https://truthout.org/articles/how-punitive-and-racist-policing-enforces-gentrification-in-san-francisco/> (San Francisco public defender Peter Santina stating, “We see many instances of professionals in gentrifying neighborhoods . . . calling the police when they suspect (sometimes incorrectly) that a petty crime is occurring. The professionals often demand police attention and often receive it; I would be surprised if gentrification did not result in increased policing.”).

125. *New Neighbors and the Over-Policing of Communities of Color*, COMMUNITY SERV. SOC’Y (Jan. 6, 2019), <http://www.cssny.org/news/entry/New-Neighbors>.

126. *Id.*

127. Ayobami Laniyonu, *Coffee Shops and Street Stops: Policing Practices in Gentrifying Neighborhoods*, 54 URB. AFF. REV. 898, 920 (2017).

128. See Rebecca Solnit, *Death by Gentrification: The Killing That Shamed San Francisco*, THE GUARDIAN (Mar. 21, 2016), <https://www.theguardian.com/us-news/2016/mar/21/death-by-gentrification-the-killing-that-shamed-san-francisco>.

129. Adam Gabbatt, *Saheed Vassell Killing Puts Policing and Gentrification in the Spotlight*, THE GUARDIAN (Apr. 7, 2018), <https://www.theguardian.com/us-news/2018/apr/07/saheed-vassell-policing-gentrification-brooklyn-nypd>; Ginia Bellafante, *A Fear Born of Brooklyn Gentrification*, N.Y. TIMES (Apr. 9, 2018), <https://www.nytimes.com/2018/04/09/nyregion/brooklyn-gentrification-fear-police-shooting.html>.

ing gentrification can have detrimental effects on minority community members.¹³⁰

The use of racialized police communication to gentrify neighborhoods appears to be rooted in the rise of newcomers with different willingness to call the police, plus a resistance to accommodate the existing norms of the pre-existing diverse community members.¹³¹ Longstanding community practices such as kids playing basketball on the corner, neighbors sitting on their front stoops, or friends hanging out in the street are seen as suspicious and worthy of law-enforcement intervention by the newcomers. Similarly, newly arriving White persons may come to well-established communities with new and different norms, and demand diverse community members adhere to them. As African drum-circle shut-downs in Washington, D.C., Harlem, New York, and Oakland, California exhibit, incoming White persons may use law enforcement as a tool to force preexisting community members to change.¹³²

130. Bethany Li has previously pointed out that gentrification has had detrimental effects on New York's Asian communities. See Bethany Y. Li, *Now is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 *FORDHAM L. REV.* 1189, 1199 (2016) (documenting an instance where in response to newcoming residents' "noise complaints, the police beat, bloodied, and arrested an elderly musician participating in a weekly open-air Chinese opera performance").

131. Abdallah Fayyad, *The Criminalization of Gentrifying Neighborhoods*, *THE ATLANTIC* (Dec. 20, 2017), <https://www.theatlantic.com/politics/archive/2017/12/the-criminalization-of-gentrifying-neighborhoods/548837/> ("The theory goes that as demographics shift, activity that was previously considered normal becomes suspicious, and newcomers—many of whom are [W]hite—are more inclined to get law enforcement involved. Loitering, people hanging out in the street, and noise violations often get reported . . ."). In this respect, one study examining gentrification in St. Louis found that although crime had decreased, police reporting in gentrifying areas continued to increase—suggesting a rise in 'quality of life' calls associated with changing demographics. See CTR. URBAN & REGULATORY AFFAIRS (CURA), *BENEATH THE SURFACE: A SNAPSHOT OF CURA'S GENTRIFICATION INTERVIEW DATA—HAMLINE-MIDWAY 4–8* (Feb. 23, 2018), <http://gentrification.umn.edu/sites/g/files/pua4816/f/general/hamline-midway-2-23-18.pdf>

132. In the 1990s White in-comers to the Meridian Hill community in Washington, D.C. called to the police repeatedly on a drum circle which dated back to 1965, ultimately having the circle shut down; in 2008, newly arrived White residents in Harlem, New York, repeatedly called the police on a drum circle that had been meeting since 1969; and in Oakland, California, new-coming White neighbors have similarly called the police on drum circles and a Black church that has been worshipping there for the past sixty years. See Sylvia Moreno, *By the Beat Divided*, *WASH. POST* (Sept. 17, 2000), https://www.washingtonpost.com/archive/local/2000/09/17/by-the-beat-divided/27aaabf7-b18b-46a6-8076-e40f82c8acc1/?utm_term=.77de1ffa3717; Timothy Williams, *An Old Sound in Harlem Draws New Neighbors' Ire*, *N.Y. TIMES* (July 6, 2018), <https://www.nytimes.com/2008/07/06/nyregion/06drummers.html>; Sam Levin, *'We're Being Pushed Out': The Displacement of Black Oakland*, *THE GUARDIAN* (June 1, 2018), <https://www.theguardian.com/us-news/2018/jun/01/from-black-panthers-to-bbq-becky-the-displacement-of-black-oakland>.

Resorting to the police could also be the result of newcomers being frightened of speaking directly with their diverse neighbors. Racial diversity has been found to be amongst the strongest factors in “predicting the degree to which Whites view neighbor relations as disharmonious,” regardless of whether actual conflict exists.¹³³ In this regard, a study examining 4.7 million 311 calls in New York City between 2010 and 2014, found a strong positive relationship between neighborhood diversity and complaints about neighbors.¹³⁴ Because of newcomers’ fears, the police become a mouth-piece for grievances that might easily be solved with a knock on the door or a neighborly conversation.¹³⁵

4. *The Injuries of Racialized Police Communication’s Segregative Effects.* — The thrust of the detriment in mobilizing law enforcement to marshal Black persons in White spaces, is diminishing what commentators have referred to as the right to “freedom of movement,” “the right of locomotion,”¹³⁶ and “the right to be left alone.”¹³⁷ This long-valued privilege¹³⁸ is

133. Onwuachi-Willig, *supra* note 112, at 1170. See also Lincoln Quillian & Devah Pager, *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, 107 AM. J. SOC. 717, 744–46 (2001) (finding Whites perception of neighborhood crime increases as population of adolescent Black men in a community does, even controlling for actual crime rates).

134. Joscha Legewie & Merlin Schaeffer, *Contested Boundaries: Explaining Where Ethnoracial Diversity Provokes Neighborhood Conflict*, 122 AM. J. SOC. 125, 140–144 (2016).

135. In 2016 for instance, a Black man living in the increasingly gentrified Harlem, New York found a note taped to his door threatening to involve the authorities because he was speaking too loudly in his apartment. Neighborly courtesy could easily have avoided such escalation. See Cleve R. Wootson, Jr., *‘Learn Your Manners,’ a White Man Wrote to His Black Neighbor. This Was the Response.*, WASH. POST. (Oct. 10, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/10/10/mind-your-manners-a-white-man-wrote-to-his-black-neighbor-this-was-the-response-2/?utm_term=.61d5267c725a. In 2017, a pregnant Black woman was accosted by an armed officer when her White neighbors reported a “disturbance.” She was playing Biggie at 3pm on a Saturday. Again, a knock could have rendered the police visit, and the associated trauma, unnecessary. See Mary Branch, *I’m a Black Doctor. My Neighbor Called the Cops on Me for Listening to Biggie.*, WASH. POST. (May 28, 2018), https://www.washingtonpost.com/opinions/my-white-neighbors-called-the-cops-on-me-for-listening-to-hip-hop/2018/05/28/54930d04-4f8e-11e8-af46-b1d6dc0d9bfe_story.html?utm_term=.e48850760fc9. See also David Williams, *Neighbor Calls Police on a 12-Year-Old Boy for Mowing the Wrong Lawn*, CNN (July 1, 2018), <https://www.cnn.com/2018/07/01/us/police-called-lawn-mowing-boy-trnd/index.html> (A White neighbor who called the police on a Black child mowing the wrong lawn stated, “If we feel it’s going to be more of an issue to go over to talk to somebody, for our safety, we just call the police.”).

136. E.g., Tracey Maclin, *The Decline of the Right of Locomotion: The Fourth Amendment on the Streets*, 75 CORNELL L. REV. 1258, 1259 (1990).

137. E.g., John H. Burkoff, *Non-Investigatory Police Encounters*, 13 HARV. C.R.–C.L. L. REV. 681, 681 (1978); Daniel P. Sheehan, *Sources of Pedestrian Civil Liberty*, 4 HARV. C.L.–

the freedom citizens have to exist, move about, and remain unmoved without arbitrary government intrusion or the need to “account for [their] presence.”¹³⁹

Racialized police communication undermines the ability of Black persons to exist in ways equivalent to their White counterparts, because it can result in Blacks modifying the places where they travel, visit, and live. Likewise, where the police are summoned to remove Black persons, that too undermines their right to locomotion.¹⁴⁰ Hence, the Black men at Starbucks discussed earlier were unable to behave just as White men would have been able to—they could not sit in the store without making a purchase. At the same time, because they were waiting for a business meeting, their arrest demonstrably interrupted their right to engage in legitimate activities.

C. Physical Effects

Racialized police communication exposes Black persons to police violence. To be clear, Blacks are particularly subject to law enforcement violence and mistreatment.¹⁴¹ Unarmed Blacks are 3.5 times more likely than Whites to be shot by the police; Blacks are more often subject to police force than Whites; and though Blacks are no more likely to be found with contraband, Blacks are significantly overrepresented amongst police stops.¹⁴² Further, a 2017 study analyzing body-camera footage from

C.R. L. REV. 235, 237 (1969) (describing it as the “right to be let alone”) (citing *Olmstead v. United States*, 277 U.S. 438, 478 (1928)).

138. Compare *Ex parte Garland*, 71 U.S. 333, 351 (1867) (describing the right to locomotion as “given to us by the Creator”) with *Williams v. Fears*, 179 U.S. 270, 274 (1900) (“[T]he right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty . . . secured by the Fourteenth Amendment and by other provisions of the Constitution.”), and *Pinkerton v. Verberg*, 78 Mich. 573, 584 (1889) (“Personal liberty, which is guaranteed to every citizen under our Constitution and laws, consists of the right of locomotion,—to go where one pleases, and when, and to do that which may lead to one’s business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens.”).

139. Maclin, *supra* note 136, at 1259.

140. Note, *Orders to Move On and the Prevention of Crime*, 87 YALE L.J. 603, 622 (1978) (“A person subjected to an order to move on . . . is deprived of his freedom to go where he wishes, and he may have to abandon some legitimate activity he has planned.”).

141. See *infra* note 142 and accompanying text.

142. See, e.g., Cody T. Ross, *A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014*, 10 PLOS ONE 1, 4 (2015) (finding that the probability of unarmed Blacks being shot by the police are 3.49 times that of an unarmed White person); Roland G. Freyer, Jr., *An Empirical Analysis of Racial Difference in Police Use of Force*, J. POL. ECON (forthcoming 2019) (manuscript at 6) https://scholar.harvard.edu/files/freyer/files/empirical_analysis_tables_figures.pdf (finding Blacks are more than 50 percent more likely to experience use of force when interacting

981 police stops found officers' language is significantly less respectful and more combative when interacting with Black drivers, despite controlling for officer race, location, and severity of the infraction.¹⁴³

Given these statistics, it is clear that the possibility of the Black victim of a racialized police report being brutalized by the responding officers is real. Indeed, this was the case in 2015 when White neighbors' complaints about noisy teenagers at a pool led to a police officer pointing his gun at unarmed Black teenagers and body-slammings 15-year-old Dajerria Becton, dressed only in a swimsuit, to the ground.¹⁴⁴ Despite the viral video and overwhelming outrage at the use of force, the officer was largely able to escape consequences for his behavior.¹⁴⁵

Black persons are particularly exposed to police violence in instances where those reporting them misstate or embellish the potential danger of the victim. In 2014, Johnathan Crawford III, a twenty-two-year-old Black man, was killed while looking at an air rifle in Walmart, when a White bystander called the police alleging he "was waving [the rifle] around."¹⁴⁶ Ronald Ritchie, the bystander, accused Crawford of "trying to load" the weapon, and pointing the gun at two children.¹⁴⁷ When the police arrived to what they were told was an "active threat," Crawford

with the police compared to their White counterparts); Radley Balko, *There's Overwhelming Evidence that the Criminal-Justice System is Racist. Here's the Proof.*, WASH. POST (Sept. 18, 2018), https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?utm_term=.bd7c44b32c6a (collecting reports detailing that Black drivers were more likely to be stopped by the police).

143. See Rob Voigt et al., *Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect*, 114 PNAS 6521, 6524 (2017).

144. German Lopez, *Police Officer Who Slammed Black Girl to the Ground at McKinney, Texas, Pool Party Resigns*, VOX (June 9, 2015), <https://www.vox.com/2015/6/7/8744011/mckinney-texas-police-officer> (detailing that the police call came after White neighbors called Black teenagers racial slurs, told them to go back to "Section 8 housing" and physically assaulted the teenagers).

145. Though protestors called for Casebolt to be fired, he was allowed to resign—keeping his pension and benefits. Further, a grand jury declined to charge him for his involvement in the incident. See Molly Hennessy-Fiske, *Grand Jury Doesn't Charge Texas Police Officer in Pool Party Incident*, L.A. TIMES (June 23, 2016), <https://www.latimes.com/nation/la-na-texas-police-pool-party-20160623-snap-story.html>. Following a settlement from the city of McKinney, all claims by Becton and her family were dismissed. Tom Uhler, *Settlement Reached in Viral Video Case of McKinney Police Breaking Up Pool Party*, FORT WORTH STAR-TELEGRAM (May 29, 2018), <https://www.star-telegram.com/news/state/texas/article212150864.html>.

146. Jon Swaine, *Doubts Cast on Witness's Account of Black Man Killed by Police in Walmart*, THE GUARDIAN (Sept. 7, 2014), <https://www.theguardian.com/world/2014/sep/07/ohio-black-man-killed-by-police-walmart-doubts-cast-witness-account>.

147. *Id.*

was shot on sight.¹⁴⁸ One month later, Ronald Ritchie recanted what he told the dispatcher, stating that “at no point did he [see Crawford] shoulder the rifle and point it at somebody.”¹⁴⁹ To date, no charges have been brought against Ritchie.¹⁵⁰

Another example of the physical effects racially weaponized police reports can have on victims is illustrated in *Humphrey v. Comoletti*, a case involving a White man weaponizing a police complaint in a fraud dispute with two Black men.¹⁵¹ There, the plaintiff Fred Humphrey and a colleague, Christopher Stephens, were defrauded by Jeffrey Comoletti when they sold him a go-kart in exchange for cash and an electronic tablet.¹⁵² The men realized the tablet was worth less than Comoletti represented, and when the men confronted him, he threatened them, stating “members of [his] family were in the Fall River Police Department.”¹⁵³ Comoletti thereafter contacted the police, alleging that the men were “selling AK-47s and marijuana out of [their] apartment”¹⁵⁴

Executing a search warrant, law enforcement stormed the Black men’s apartment.¹⁵⁵ During this process, one of the men was repeatedly kicked in the head to the point of losing consciousness.¹⁵⁶ No guns or drugs were found in their home.¹⁵⁷ The civil action against Comoletti and the police officers were eventually dismissed, with none of the parties facing punishment or liability.¹⁵⁸ Unsurprisingly, neither Comoletti nor the officers faced criminal charges.

148. *Id.*

149. See Jon Swaine, ‘It Was a Crank Call’: Family Seeks Action Against 911 Caller in Walmart Shooting, THE GUARDIAN (Sept. 26, 2014), <https://www.theguardian.com/world/2014/sep/26/walmart-ohio-shooting-charges-911-caller-john-crawford>.

150. Nick Wing, 911 Caller Will Not Be Charged for Giving Cops Bad Info Before Fatal Police Shooting, HUFFPOST (Apr. 18, 2016), https://www.huffingtonpost.com/entry/ronald-ritchie-john-crawford_us_57065a21e4b0b90ac2714e86.

151. 2016 U.S. Dist. LEXIS 101753, at *3 (D. Mass. Aug. 3, 2016).

152. *Id.* at *2.

153. *Id.* at *2-3.

154. *Id.* at *3.

155. *See id.*

156. *Id.* at *3-4.

157. *Humphrey*, 2016 U.S. Dist. LEXIS 101753, at *4.

158. *See Humphrey v. Comoletti*, 2018 U.S. Dist. LEXIS 94000, at *2 (D. Mass. June 5, 2018) (dismissing the case for Plaintiff’s failure to prosecute).

D. Psychological Effects & Trauma

Over the past decade, mental health professionals have begun to unearth the detrimental effects of police violence on the Black psyche.¹⁵⁹ Researchers have found that amongst Blacks, even seeing the police increases anxiety and stress,¹⁶⁰ and increased interaction with the police is associated with trauma, distress, anxiety, and depression.¹⁶¹ Blacks who experience police mistreatment are at increased risk of a range of negative psychological effects, including higher levels of suicidal ideation, paranoia, anxiety disorders, and posttraumatic stress,¹⁶² as well as negative

159. See Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662, 662 (2017) (arguing police brutality “is a social determinant of health” resulting in physical, psychological, economic, and systematic injuries to the Black community). See also Naa Oyo A. Kwate & Shatema Threadcraft, *Dying Fast and Dying Slow in Black Space: Stop and Frisk’s Public Health Threat and a Comprehensive Necropolitics*, 14 DU BOIS REV. 535, 359 (2017) (arguing police brutality against Blacks and a lack of accountability thereafter, debilitates Blacks who witness it, as “[l]iving under the constant threat of violent death transforms [Blacks] who are not slain into the as-yet slain, but unmistakably closer to death—the constantly harassed, stressed, and unduly constrained slain-in-waiting”).

160. Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, 84 AM. SOC. REV. 220, 224 (2019), (reporting Blacks face “general anxiety and fear simply based on seeing police officers . . .”). See also David R. Williams & Ruth Williams-Morris, *Racism and Mental Health: The African American Experience*, 5 ETHNICITY & HEALTH 243, 259 (2000) (arguing that simply being surveilled by the police may be a source of psychological stress in Blacks).

161. E.g., Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. URB. HEALTH 542, 548–52 (2016) (finding a strong association between police encounters and poor health indicators, particularly amongst Blacks); Abigail A. Sewell et al., *Living Under Surveillance: Gender, Psychological Distress, and Stop-Question-and-Frisk Policing in New York City*, 159 SOC. SCI. & MED. 1, 9 (2016) (finding that amongst Blacks, living in a neighborhood with an increased density of Terry stops is associated with higher levels of psychological distress).

162. E.g., Hans Oh et al., *Effect of Police Training and Accountability on the Mental Health of African American Adults*, 107 AM. J. PUB. HEALTH 1588, 1589 (2017) (using nationally representative data to find that police mistreatment or abuse is associated to greater odds of lifetime suicide attempts, posttraumatic stress disorder, and anxiety); Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2324 (2014) (finding increased police contact in the form of stop-and-frisks compromised the mental health of young Black and Hispanic men); Jordan E. DeVlyder et al., *Association of Exposure to Police Violence with Prevalence of Mental Health Symptoms Among Urban Residents in the United States*, 7 JAMA 1, 5–9 (2018) (finding that exposure to police violence with a weapon resulted in a seven-fold increase in suicide attempts amongst victims); Hyun-Jin Jun et al., *Paranoid Beliefs and Realistic Expectations of Victimization: Data from the Survey of Police-Public Encounters*, 199 SCHIZOPHRENIA RES. 326, 329–30 (2018) (reporting that previous experiences with police violence is positively associated with paranoia tied to threat of future police victimization); Jordan E. DeVlyder et al., *Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA*, 94 J. URB.

physiological effects including premature aging and cardiovascular disease.¹⁶³ Strikingly, even *thinking* about the possibility of police mistreatment is associated with psychological distress and depression amongst Black persons.¹⁶⁴ Equally important, researchers find that exposure to media coverage of the police killing unarmed Black people has severe mental health effects on Black adults, while having no effect on Whites.¹⁶⁵

In total, these findings show that calling or even threatening to call the police on Black individuals exposes them to significant risk for a range of serious, negative psychological effects.

The trauma that results from racialized reports to the police may be particularly devastating when Black children are involved, since these in-

HEALTH 629, 629 (2017) (finding police victimization to be associated with increased suicide attempts amongst victims); Tara E. Galovski et al., *Exposure to Violence During Ferguson Protests: Mental Health Effects for Law Enforcement and Community Members*, 29 J. TRAUMATIC STRESS 283, 287–89 (2016) (finding an increase in posttraumatic stress and depression amongst Blacks in Ferguson, Missouri in the immediate aftermath of the fatal 2014 shooting of Michael Brown).

163. E.g., Michael J. McFarland et al., *Perceived Unfair Treatment by Police, Race, and Telomere Length: A Nashville Community Based Sample of Black and White Men*, 59 J. HEALTH & SOC. BEHAV. 585, 595–96 (2018) (using telomere length—an indication of cellular aging—as a sign of exposure to psychological stressors and finding Black men who personally or vicariously experienced unfair treatment by the police to have shorter telomeres). See also David H. Chae et al., *Discrimination, Racial Bias, and Telomere Length in African-American Men*, 46 AM. J. PREV. MED. 103, 106 (2014) (finding racial discrimination, most commonly represented in the form of police mistreatment, to be associated with shorter telomere length in Black men); David H. Chae et al., *Do Experiences of Racial Discrimination Predict Cardiovascular Disease Among African American Men? The Moderating Role of Internalized Negative Racial Group Attitudes*, 71 SOC. SCI. & MED. 1182, 1184–85 (2010) (finding racial discrimination—stressors including police abuse to be associated with worse cardiovascular health outcomes in Black men).

164. Rhea W. Boyd, *Police Violence and the Built Harm of Structural Racism*, 392 LANCET 258, 258 (2018) (“In the absence of direct injury, the *possibility* of police violence can also cause harm. That unpredictable but persistent possibility is a debilitating burden unfairly and disproportionately borne by [B]lack men, women, children, and families.”) (emphasis added); accord Alang et al., *supra* note 159, at 663. See also Amber J. Landers et al., *Police Contacts and Stress Among African American College Students*, 81 AM. J. ORTHOPSYCHIATRY 72, 79 (2011) (reporting the possibility of police contact evokes “measurable stress” amongst Black youth); Fleda Mask Jackson et al., *Anticipated Negative Police-Youth Encounters and Depressive Symptoms Among Pregnant African American Women: A Brief Report*, 94 J. URB. HEALTH 259, 262–63 (2017) (finding that amongst pregnant Black mothers, thinking about their unborn children’s interactions with police was a predictor of antenatal depressive symptoms). See also *Johnson v. McDonald’s Corp.*, where a Black man claimed to experience nightmares and anxiety after a McDonald’s employee *pretended* to call the police on him. 2004 WL 847096 at *3 (Cal. Ct. App. Apr. 21, 2004).

165. Jacob Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study*, 392 LANCET 302, 307 (2018) (documenting that media coverage of police brutality had no effect on the mental health of White respondents).

cidents often have life-long effects, changing the way the children view both police and themselves.¹⁶⁶ On October 12, 2018, Teresa Klein, a White woman, accused nine-year-old Jeremiah Harvey of “sexual assault” when she claimed the child “grabbed her butt” in a Brooklyn deli.¹⁶⁷ On the now-viral video, Klein is seen calling the police, stating “I was just sexually assaulted by a child,” and demanding “the cops [get] here right now!” Harvey can be heard crying in the background of the video.¹⁶⁸

Security footage later showed that Harvey’s school bag accidentally grazed Klein as he walked behind her.¹⁶⁹ In a later interview, Harvey’s mother testified that her son has suffered from ongoing flashbacks and nightmares.¹⁷⁰ Moreover, she worried the ordeal would “affect him for life,” since Harvey now suffers from anxiety when he sees the police.¹⁷¹

E. *Intangible Effects: The Mosaic Harms of Racialized Police Communication*

This section considers various theories of intangible harms, as well as narratives of those who have experienced racially weaponized police communication in order to conceptualize its psychic injuries. To fully

166. See Ashley N. Hurst et al., *The Psychological Impact of Policing on African American Students*, in LAW ENFORCEMENT IN THE AGE OF BLACK LIVES MATTER: POLICING BLACK AND BROWN BODIES 57-58 (2018) (arguing police violence is particularly traumatic to Black children). This is bolstered by studies finding increased police interaction has negative outcomes in the lives and wellbeing of Black children. See Legewie & Fagan, *supra* note 160, at 23–24 (finding that the implementation of police saturation programs and the increased exposure to policing led to significantly reduced academic performance amongst Black boys aged 13–15).

167. Jeffrey C. Mays & Sean Piccoli, *A White Woman, Teresa Klein, Called the Police on a Black Child She Falsely Said Groped Her*, N.Y. TIMES (Oct. 12, 2018), <https://www.nytimes.com/2018/10/12/nyregion/woman-calls-police-black-boy-brooklyn.html>.

168. *Id.*

169. Enjoli Francis & Bill Hutchinson, *‘I Don’t Forgive This Woman, and She Needs Help’: Black Child Wrongly Accused of Grabbing ‘Cornerstore Caroline’*, ABC NEWS (Oct. 16, 2018), <https://abcnews.go.com/US/white-woman-apologizes-alleging-black-child-assaulted-york/story?id=58505763>.

170. Karma Allen, *‘I Felt Humiliated’: 9-year-old Boy in ‘Cornerstore Caroline’ Video Speaks out*, GOOD MORNING AM. (Oct. 19, 2018), <https://www.goodmorningamerica.com/news/story/black-child-falsely-accused-viral-cornerstore-caroline-video-58606508> (“Jeremiah Harvey, who is [B]lack, said he was traumatized and forced to look at race in a new way after a [W]hite woman claimed he groped her at a convenience store. ‘It’s still hard because lately on my mind, like, I can’t think [of] nothing but this . . . I felt humiliated because of the way she was acting. I started to tear- to tear up.’”).

171. Tamar Lapin, *Mom: ‘Cornerstore Caroline’ Placed Fear in my Son’s Heart*, N.Y. POST (Oct. 16, 2018), <https://nypost.com/2018/10/16/mom-cornerstore-caroline-placed-fear-in-my-sons-heart/> (“That day fear was placed in my child’s heart.”).

capture the ordeal of racialized police communication, consider the following narrative relayed by Gil Perkins, then a Master's of Public Health student at Harvard:

Some evening, I parked my car in front of the house like I always do. I was having a conversation inside the car. So I turned the car off, get outside, and just continue the conversation. So I'm leaning against the car, just having a conversation, and a woman comes to the door, and was like, "Hey you, you need to leave, you're talking too loud." And I'm like, "You know who I am. I live right here." And she was just dismissive like, "I don't know, I don't care, you need to leave, you're talking too loud." I was like, "Lady, A, I'm not talking loud, and I'm leaning on my car. And I live right here, I'm about to walk into my house. Like, we're neighbors, I'm not a stranger." She's like, "I'm calling the cops." And I'm like, "Calling the cops for what? I'm not doing anything." And the line that stuck with me the most. . . "I'm calling the cops right now. *And you know what that means for you.*" That's the line that sticks in my mind.

It was like she had an awareness of what that would mean. It was so real, because I had to acknowledge that as much as I was really, really was frustrated and angry with this person for just completely messing up my night and invading my space, the reality was what it was. In that situation, if the police arrive, it's gonna be all bad for me. *And we both knew that.* And it was like she weaponized that against me. And so I just made a calculated decision like, look, I don't need this static. Yes, all I planned on doing was going into my car, grabbing my things, going upstairs, but now I have to leave. So I got back in my car, and I just drove away. And I didn't come back for like a couple hours.

She knew, effectively, that I was powerless. Like when the cops came, they're not gonna hear me out, and she knew that. So it was her weapon, and I didn't have any other weapons. So I had to leave, I was gonna lose that battle.¹⁷²

Perkins's experience exposes the complex matrix of intangible harms that follows a threatened or unwarranted report to the police. All at once, Perkins's neighbor's threat to call the authorities caused him fear, ren-

172. Gil Perkins, *Talking While Black*, HUFFPOST: EXISTING WHILE BLACK (2018), <https://www.huffingtonpost.com/interactives/existing-while-black> (emphasis added).

dered him powerless, and altered his behavior. This mosaic injury encompasses elements that have previously been identified as expressive harms, targeting harms, stigmatic injuries, and citizenship harms. Individual analysis of each theory and its application to the context of racialized police communication follows.

1. *Expressive Harms.* — The concept of “expressive harm” refers to intangible injuries inflicted by the messages ingrained in the social meaning of discriminatory acts.¹⁷³ That is, the context in which an action takes place creates “the *message*—often a message of racial, gender, or religious inferiority—expressed.”¹⁷⁴ It is, for instance, these expressive harms that made segregation harmful, rather than inferior material resources.¹⁷⁵

To understand the expressive harms of racially weaponized police communication one must examine the social context and social reality in which the actions takes place.¹⁷⁶ The primary question is what is expressed when—against the backdrop of police brutality against Black persons, and law enforcement’s historical role in racial antagonism—a White person threatens to call the police? In my view, there are a few central messages articulated:

(a) *An Expressive Harm of the Threat to Call the Police.* — Primarily, the threat of summoning the police is racial intimidation, engendering terror in the Black victim. Given the historical and present police brutality and use of force against Black persons, the message the victim receives is one of impending racial violence. The victim, because of their experience and knowledge of the racialized realities of policing in America, is confronted with the very real possibility of humiliation, physical harm, or even death. They are faced with the sobering reality that, like many other Black persons before them, they too could become a viral hashtag. They are confronted with the disconcerting possibility that even while innocent, and even with video recording of the police interaction, if they are brutalized or killed, their death will be rationalized and defended, with few consequences to follow.

By way of analogy, a threat to involve the police affects the Black victim in a manner similar to being exposed to a burning cross: both have

173. See Note, *Expressive Harms and Standing*, 112 HARV. L. REV. 1313, 1314 (1999).

174. *Id.*

175. Both Professor Charles Black, Jr. and Justice Marshall Harlan have prominently made this point. See Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions*, 69 YALE L.J. 421, 427 (1960) (“[T]he social meaning of segregation is the putting of the Negro in a position of walled-off inferiority . . .”); *Plessy v. Ferguson*, 163 U.S. 537, 562 (1896) (Harlan, J., dissenting).

176. As Justice Thurgood Marshall has pointed out, it is this social context that makes clear the message of the action. See *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 468–69 (1985) (Marshall, J., dissenting) (“A sign that says ‘men only’ looks very different on a bathroom door than a courthouse door.”).

socio-historical meanings distinct to the Black community; both stimulate fear in Blacks, and as the Supreme Court remarked in *Virginia v. Black*, “the history of violence associated with the Klan shows that the possibility of injury or death is not just a hypothetical,”¹⁷⁷—so too does the American police force’s history of racial antagonism and the ever-growing list of unarmed Black people killed by the police forcefully indicate that if law enforcement arrives, the threat of violence is far from imaginary.¹⁷⁸

(b) *An Expressive Harm Related to the Exploitation of Diminished Black Credibility.* — The Black victim’s ability to be believed, respected, and heard is also diminished when police respond to racially weaponized reports. This may happen in several ways. First, it is often the case that police credit the words of persons who are White over those who are Black.¹⁷⁹ In some instances, upon arrival, the police first speak to White individuals, even when summoned by those who are Black.¹⁸⁰ In the context of racialized police communication, this practice gives the appearance of giving the White party the benefit of the doubt. The appearance of being on the side of the White actor is sufficient to inflict an injury.¹⁸¹

177. *Virginia v. Black*, 538 U.S. 343, 357 (2003).

178. Steve Bramucci, *It’s Time for a Legal Fine for Racially-Motivated 911 Calls*, UPROXX (May 17, 2018), <https://uproxx.com/news/race-motivated-911-call/> (“The history of police violence against [B]lack and native citizens has turned even the simplest interaction into a fear-inducing moment for the people being questioned.”).

179. See, e.g., Denise Hollinshed, *Two St. Louis Brothers Credit Mother, Surveillance Video for Exonerating them in Robbery Attempt*, ST. LOUIS POST-DISPATCH (Feb. 8, 2018) https://www.stltoday.com/news/local/crime-and-courts/two-st-louis-brothers-credit-mother-surveillance-video-for-exonerating/article_053e1c93-5fa7-526a-88d7-d2376a7428c1.html (detailing a 2017 case where a White man attempted to rob two Black brothers, and, when they fended him off, lied to the police that they attacked him. The victims were jailed and faced charges until surveillance footage was released six months later).

180. See, e.g., *Webb v. Swensen*, 663 F. App’x 609, 611 (10th Cir. 2016) (detailing a case where a Black man called the police about threats from White men, and the police first spoke with the latter); *Hardy v. Emery*, 241 F. Supp. 2d 38, 41 (D. Me. 2003) (documenting a case where Black residents called the police to report being harassed by White neighbors, but the officer wrongfully assumed the White neighbor was the complainant and took his statement first).

181. Cf. DAVID H. BAYLEY & HAROLD MENDELSON, *MINORITIES AND THE POLICE* 121 (1969) (revealing that in a 1969 survey, 13 percent of Blacks defined the term “police brutality” as, in addition to physical abuse, “not listening to the other side of the story, taking situations into their hands without consideration for the people involved, unfair use of authority and misuse of law”); Paul Butler, *The Policing of Black Americans is Racial Harassment Funded by the State*, THE GUARDIAN (June 6, 2018), <https://www.theguardian.com/us-news/2018/jun/06/america-police-called-on-black-people-everyday-racism> (“Black people are forced, by armed officers of the government, to justify their presence. They have the burden of proof; the person who called the police is assumed to be correct.”).

When the police arrive and immediately accept the White reporter's testament, while simultaneously dismissing the account of the Black victim, there is another harm. Viewed from a distance, the act of being dismissed, or having one's credibility questioned is a traumatic experience.¹⁸² Beyond this, the significance of not being believed also holds a special resonance in the hearts and minds of Black folk. As Professor Sheri Lynn Johnson has established previously, skepticism of Black credibility is a part of a larger, historically created space in which those who are deemed rational, reliable, and worthy of belief are White and male.¹⁸³

The notion of decreased Black credibility is deep-rooted. Laws that forbade Black persons from testifying in court or serving on juries, premised on their mendacity, fueled the stereotype that compared to Whites, Blacks are less veracious.¹⁸⁴ Mirroring the development of this stereotype are its material evils. History is replete with examples such as those of Ed Johnson,¹⁸⁵ Emmet Till,¹⁸⁶ George Stinney,¹⁸⁷ the Groveland Four,¹⁸⁸ the

182. Cf. SERI IRAZOLA ET AL., NAT'L CRIM. JUST. REFERENCE SERV., STUDY OF VICTIM EXPERIENCES OF WRONGFUL CONVICTION, <https://www.ncjrs.gov/pdffiles1/nij/grants/244084.pdf> (documenting the trauma associated with being wrongfully convicted); Courtney E. Ahrens, *Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape*, 38 AM. J. COMMUNITY PSYCH. 263 (2006) (documenting the trauma of having experience with sexual violence dismissed); Kathryn M. Yorkston et al., *Communicating About the Experience of Pain and Fatigue in Disability*, 19 QUAL. LIFE. RES. 243, 243 (2010) (describing the trauma of having their pain dismissed as the most harmful experience disabled persons without physically visible disabilities face).

183. See generally Sheri Lynn Johnson, *The Color of Truth: Race and the Assessment of Credibility*, 1 MICH. J. RACE & L. 261 (1996) (documenting the use of race in credibility assessments throughout history). See also Amanda Carlin, Comment, *The Courtroom as White Space: Racial Performance as Noncredibility*, 63 UCLA L. REV. 450, 455 (2016) (arguing that the modern dismissal of Black credibility is a product of the historical practice of excluding slaves from testifying against Whites, and consequently "[W]hite bec[oming] the only wholly credible witnesses.").

184. See, e.g., Carlin, *supra* note 183, at 454–58 (describing testimonial bars against Blacks premised on their untrustworthiness); *Jordan v. Smith*, 14 Ohio 1999, 201 (1846) ("No matter how pure the character, yet if the color is not right, the man cannot testify. The truth shall not be received from a [B]lack man, to settle a controversy where a [W]hite man is a party."); THOMAS READ ROOTES COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA 233 (Applewood Books 2009) (1858) ("That the negro, as a general rule, is mendacious, is a fact too well established to require the production of proof . . .").

185. In 1906, Ed Johnson, a Black man was falsely accused and ultimately lynched for the rape of a White woman, Nevada Taylor. Despite *seventeen* witnesses attesting to where Johnson was at the time Taylor was raped, and Taylor's own inability to positively identify Johnson, he was convicted. On the night that the Supreme Court granted his stay of execution, the county sheriff handed him over to a mob that thereafter murdered Johnson. See George C. Thomas III, *Bigotry, Jury Failures, and the Supreme Court's Feeble Response*, 55 BUFF. L. REV. 947, 948–52 (2007).

Scottsboro boys,¹⁸⁹ the Trenton Six,¹⁹⁰ and Ronald Cotton¹⁹¹—all whose ardent declarations of innocence were easily eclipsed by the weight given to the White word. These and other stories have created an ongoing fear amongst Blacks that against White testament, their statements are devalued.¹⁹²

186. Emmett Till was a 14-year-old Black boy who was murdered in 1955. According to a White woman, Carolyn Bryant, Till whistled at her while making lewd comments. In 2017, Bryant admitted to lying. See Ronald Turner, *Remembering Emmett Till*, 38 HOWARD L.J. 411, 412–18 (1995) (documenting the case); Richard Perez-Pena, *Woman Linked to 1955 Emmett Till Murder Tells Historian Her Claims Were False*, N.Y. TIMES (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html>.

187. George Stinney was a 14-year-old Black boy falsely accused and wrongly convicted for the murder of two White girls in 1944. He was convicted by an all-White jury in in less than 10 minutes and executed by the electric chair. His conviction was posthumously vacated in 2014. See Mark L. Earley, Sr., *A Pink Cadillac, An IQ of 63, and a Fourteen-Year-Old from South Carolina: Why I Can No Longer Support the Death Penalty*, 49 U. RICH. L. REV. 811, 821–23 (2015).

188. Charles Greenlee, Ernest Thomas, Walter Irvin and Samuel Shepherd, known as the Groveland Four, were falsely accused by a White woman and her husband of gang rape. One of the men was fatally shot more than 400 times. The others were brutally beaten and sentenced to death or life in prison. See generally GARY CORSAIR, *THE GROVELAND FOUR: THE SAD SAGA OF A LEGAL LYNCHING* (2004); see also Jacey Fortin, *Florida Apologizes for ‘Gross Injustices’ to Four Black Men, Decades Later*, N.Y. TIMES (Apr. 27, 2017), <https://www.nytimes.com/2017/04/27/us/groveland-four-apology-florida.html>.

189. The Scottsboro boys were nine Black youths accused by two White women of rape in 1931. Despite their insistence that they were innocent, and one of the women’s decision to recant and testify for the defense, the men were convicted. See generally Michael J. Klarman, *Scottsboro*, 93 MARQ. L. REV. 379 (2009) (detailing the facts of the case and its impact on the criminal appeals process); Stephan Landsman, *History’s Stories*, 93 MICH. L. REV. 1739 (1995) (reviewing James Goodman’s *Stories of Scottsboro* and detailing the facts of the case).

190. The Trenton Six were six dark-skinned Black men arrested in the wake of a White witness’s report that three light-skinned Blacks robbed a store. Despite strong evidence pointing to their innocence, the men were sentenced to death in 1948. See Sharon K. Hom & Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747, 1769 n.221 (2000).

191. Ronald Cotton is a Black man who was misidentified, falsely accused, and convicted of rape of a White woman, Jennifer Thompson, in 1984. He was proven innocent seven years later by DNA evidence. See Carla Stenzel, *Eyewitness Misidentification: A Mistake that Blinds Investigations, Sways Juries, and Locks Innocent People Behind Bars*, 50 CREIGHTON L. REV. 515, 517–518 (2017).

192. It would be remiss not to note that this belief has particularly dire consequences for Black women who face being dismissed because their credibility is questioned because of both their race and gender. See, e.g., *Dickershaid v. Paramo*, 2017 U.S. Dist. LEXIS 220082 at *4 (C.D. Cal. Dec. 6, 2017) (relaying the details of a sexual assault case where a Black woman resisted reporting her assault by her White male chiropractor to the police, “because [she] felt that no one would believe a [B]lack young woman over a professional

Further calcifying this fear are modern instances of police officers openly disregarding the testimony of Blacks in favor of assertions from persons who are White. Consider, for instance, how police pejoratively dismissed the calls and testimony of two Black women about a drunk, naked, heavily bleeding Laotian teenager on May 27, 1991.¹⁹³ Responding to their call, the police rebuffed the women's insistence that the boy was in danger.¹⁹⁴ Instead, believing the White man—from whose apartment the boy had fled—who stated the boy ran away after “a lover's spat,” the officers forcibly returned the boy to his “lover.”¹⁹⁵ When the women vigorously maintained that the White man was lying, the police threatened to arrest them if they continued to seek help.¹⁹⁶ The White man was serial killer Jeffrey L. Dahmer, and the 14-year-old teenager, Konerak Sinthasomphone, became his thirteenth victim thirty minutes later.¹⁹⁷

Against this backdrop, when White persons capitalize on the society-wide diminution of Black credibility,¹⁹⁸ the expressive violence of ra-

[W]hite man.”) (first alteration in original). See also Jennifer Wriggins, Note, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 121–23 (1983) (concluding that the rape of Black women is dismissed because of a historical diminishing of their credibility).

Another high-profile example is that of Daniel Holtzclaw, an officer convicted for the rape of 13 women, all of whom were Black, poor, and often addicted to drugs. The women all testified that they did not initially report their rapes and sexual assault out of a fear they would not be believed. As one victim stated explicitly “I didn't think anyone would believe me; I'm a [B]lack female.” Jayson Johnson, *The Holtzclaw Trial: When Rape Culture Meets #BlackLivesMatter*, NBC NEWS (Nov. 13, 2015), <https://www.nbcnews.com/news/nbcblk/holtzclaw-trial-when-rape-culture-meets-blacklivesmatter-n458741>.

193. See Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1257–1263 (1997); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 575–83 (1997).

194. Kwan, *supra* note 193, at 1257–58.

195. *Id.* at 1261 n.9.

196. Colin McMahon, *Race Kept Cry for Help From Being Heard, Some in Milwaukee Say*, CHI. TRIB. (July 28, 1991), <https://www.chicagotribune.com/news/ct-xpm-1991-07-28-9103230622-story.html> (quoting one of the women who stated the police told them to “get lost,” and when “asked why the police didn't listen to her story, [responding]. . . I think it was prejudice, because Jeff and they were [W]hite, the boy was Asian, and we were [B]lack.”).

197. *Estate of Sinthasomphone v. City of Milwaukee*, 878 F. Supp. 147, 149 (E.D. Wis. 1995).

198. I acknowledge here that capitalizing on diminished credibility is a practice that extends to racial minorities other than Black folk as well. See, e.g., *State v. Pies*, 1999 Ohio App. LEXIS 6031 at *11 (discussing an instance where when a Vietnamese woman responded to threats by calling the police, the White aggressor responded: “Call the police, go ahead and call the police, and they will not believe you, a yellow ugly monkey, against an American white lady.”); Monique Judge, *2 White Women Attack Their Latinx Neighbors, Call the Police on Them, and End Up Going to Jail Themselves*, THE ROOT (July 12, 2018),

cialized police communication is intensified. In perhaps the most overt example, after vandalizing his own car in an effort to falsely accuse his Black neighbor, one man cautioned: “all he had to do was to tell the police” that the Black neighbor was aggressive and “that he would be arrested.”¹⁹⁹ The man continued, “Nobody will believe you over me. I’m [W]hite and educated, and nobody will believe you. The police will not believe you.”²⁰⁰ In so doing, the man not only sought to exploit stereotypes of diminished Black credibility, his threat doubly harmed the victim by reanimating long-standing Black anxieties.

2. *Dignitary Harms.* — While the concept of dignity is itself complex, it still provides a useful perspective from which to analyze racialized police communication.²⁰¹ To circumvent some of the complexity, this subpart will use three archetypes of dignity: inherent value and individualism, freedom from humiliation, and the right to reputation.

(a) *Dignity as Inherent Value & Individualism.* — Dignity can be viewed as related to the immutable value in each human being, and thus framed, racial stereotyping is considered to infringe on an person’s dignity by diminishing their ability to be viewed as an individual.²⁰² When White individuals summon law enforcement on Blacks based on their race instead of objectively suspicious behavior, they rely on stereotypes that associate Blackness with criminality. This assumption diminishes the victim’s ability to exist as an individual, and instead reduces them to a racial representative. In effect, because of their race, the victims are “assumed to be potential criminals first and individuals second.”²⁰³

For example, Shelia Stubbs, a Black politician wearing a plainly visible campaign tag had the police called on her while she was campaigning in Wisconsin in August 2018.²⁰⁴ As she was handing out flyers in a pre-

<https://www.theroot.com/2-white-women-attack-their-latinx-neighbors-call-the-p-1827559735> (detailing a case where when a Latinx family threatened to call the police on White attackers, the latter responded “Who do you think they are going to believe? . . . Look at yourself compared to me.”).

199. *Jones v. Hirschberger*, 2002 WL 853858, at *2 (Cal. App. May 6, 2002).

200. *Id.*

201. See, e.g., Neomi Rao, *Three Concepts of Dignity in Constitutional Law*, 86 NOTRE DAME L. REV. 183, 186 (2011) (noting competing interpretations of the term in legal literature); Rachel Bayefsky, Note, *Dignity as a Value in Agency Cost-Benefit Analysis*, 123 YALE L.J. 1732, 1765 (2014) (characterizing dignity as “complex and malleable”).

202. As Justice Kennedy remarked in *Parents Involved*, “[t]o be forced to live under a . . . racial label is inconsistent with the dignity of individuals in our society. And it is a label that the individual is powerless to change.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797 (2007) (Kennedy, J., concurring).

203. *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000). See also *State v. Lee*, 886 A.2d 1066, 1075 (N.J. Super. Ct. App. Div. 2005) (“At the heart of racial profiling is the assumption that a person’s race is a per se indication of criminality.”).

204. Gomez, *supra* note 21.

dominantly White community, an unidentified man called 911 and reported that a suspected drug deal was taking place and he “would like them moved along.”²⁰⁵ Likewise, Janelle Bynum, a Black Oregon state lawmaker, had the police called on her in July 2018 as she canvassed in a majority White neighborhood.²⁰⁶ As she canvassed home to home, a caller reported someone “casing the neighborhood for houses that were unoccupied [so that] they [could] come back later and rob them.”²⁰⁷ Taken together, the assumptions that women were a drug dealer or a thief, are arguably rooted in the victims’ race, and therefore diminished their status as individuals and ultimately their dignity.

(b) *Dignity as Freedom from Humiliation.* — Another conception of dignity centers around freedom from humiliation.²⁰⁸ If humiliation is an affront to dignity, then racialized communication must inflict dignitary harms. Certainly, as most victims of such reports have testified, having the police called on you for no reason is, by itself, humiliating.²⁰⁹ And

205. *Id.*

206. Mihir Zaveri, *A Black Oregon Lawmaker Was Knocking on Doors. Someone Called the Police.*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/us/janelle-bynum-police-portland.html?module=inline>.

207. *Id.*

208. Most famously, this conception is advocated by Professor Bruce Ackerman in his treatise on the civil rights movement. See generally BRUCE ACKERMAN, WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION 128 (2014) (positing that the central harm of racism is “institutionalized humiliation”). Beyond this, the Supreme Court has also noted the connection between dignity and humiliation in *Indiana v. Edwards* and *Heart of Atlanta Motel v. United States*. Despite the usual importance of the right to self-representation to a defendant’s dignity, the majority in *Edwards* argued the “right of self-representation at trial will not ‘affirm the dignity’ of a defendant who lacks the mental capacity . . . [Since] the spectacle that could result from his self-representation at trial is at least as likely to prove humiliating as ennobling.” 554 U.S. 164, 173 (2008). In a similar vein, in his *Heart of Atlanta* concurrence, Justice Goldberg reasoned the Civil Rights Act sought to ameliorate “‘the deprivation of personal dignity that surely accompanies denials of equal access to public establishments. . . . [T]he humiliation, frustration, and embarrassment that a person must surely feel’ ” when discriminated against because of their race. 379 U.S. 241, 291–92 (1964) (Goldberg, J., concurring).

209. For instance, Reginald Andrade, a Black man who had the police called on him for walking across campus looking “agitated,” stated he felt “humiliated.” Reginald Andrade, *I Was Reported to Police as an ‘Agitated Black Male’—for Simply Walking to Work*, ACLU (Oct. 10, 2018), <https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/i-was-reported-police-agitated-black-male-simply>. Darren Martin, who had six officers arrive when a neighbor reported “a burglary in progress,” described the ordeal as “embarrassing.” PIX11 News, *Cops Called to Apartment for ‘Burglary in Progress’ find Black Tenant Moving into Unit*, YOUTUBE (Apr. 30, 2018), <https://www.youtube.com/watch?v=mLXh85Nc1Bk>. In the same vein, in *Morris v. Office Max*, the Seventh Circuit described a store frivolously calling the police on two innocent Black shoppers as “unfortunate and undoubtedly disconcerting and humiliating.” 89 F.3d 411, 415 (7th Cir. 1996).

where the racialized police report ends in public arrest, the Black victim is further exposed to the indignity of having bystanders watch.²¹⁰ The victim must acquiesce to the police, all while onlookers observe, wondering what they did—or worse, having their preconceived beliefs about the criminality of Blacks confirmed.²¹¹ Too, as they are wont to do, the police may speak to or treat the Black victim disrespectfully, subjecting them to even further humiliation.²¹²

(c) *Dignity as Reputation.* — A related view of dignity is rooted in an individual's right to their reputation. As Justice Stewart commented half a century ago, “[t]he right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being”²¹³ Many racialized police reports involve false accusations of criminal conduct. Where this is the case, the false allegations of criminality undoubtedly harm the Black victim's reputation. Imagine, for example, how nine-year-old Jeremiah Harvey's reputation could have been permanently damaged by the accusation of sexual assault, had the security footage not proven his innocence.²¹⁴

3. *Citizenship Harms.* — Racialized police communication may also inflict what others have labeled, “citizenship harms”—intangible injuries that deprive individuals the right of full participation in society.²¹⁵ Professor Robin Lenhardt, for instance, asserts that the central harm of racial

210. Rachid Maiga and Tshyrad Oates, two Black men who had the police called on them when a gym manager falsely accused the pair of not being members, described the experience as “embarrass[ing]” and “humiliating We're sitting there and everyone in the gym is looking at us like, ‘What's going on?’ ” Sarah Wallace & Michelle J. Kim, *Black Men Kicked out of Gym Detail ‘Humiliating’ Encounter Caught in Viral Video*, NBC SAN DIEGO (Apr. 26, 2018), <https://www.nbcsandiego.com/news/national-international/LA-Fitness-Black-Men-Police-Video-480830041.html>.

211. See Tracy Meares, *Broken Windows, Neighborhoods, and the Legitimacy of Law Enforcement or Why I Fell in and out of Love with Zimbardo*, 52 J. RES. CRIME & DELINQUENCY 609, 621 (2015) (describing how public police stops of citizens of color serve to brand them as criminals).

212. An encyclopedic selection of cases involving police disrespecting Black citizens is impossibly beyond the scope of a single footnote. Instead, I offer Charles A. Reich, *Police Questioning of Law Abiding Citizens*, 75 YALE L. J. 1161, 1163–4 (1966) (commenting on the humiliation that police disrespect can cause Blacks).

213. *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring).

214. Recall that nine-year-old Jeremiah Harvey was accused of sexual assault when his backpack accidentally grazed a White woman in October 2018. See text accompanying *supra* notes 167–171.

215. See, e.g., Robin A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 836 (2004) (defining the term); I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 19–22 (2011) (describing the citizenship harms of racial profiling) [hereinafter Capers, *Rethinking the Fourth Amendment*].

discrimination is that “it deprives stigmatized individuals of the acceptance and the other tools they need to participate as whole, functioning members of society.”²¹⁶ Put differently, the stigmatized individuals’ citizenship is impaired because they are forced to exist outside of the community.

Racialized police communication serves to inflict citizenship harms because it limits Blacks’ ability to fully participate in society in multiple ways. First, recall that racialized police communication functions as a segregative mechanism: directly and indirectly removing Black bodies from locations, and signaling where Blacks are and are not welcome. By limiting their movement, the citizenship of Black Americans is reduced, since their freedom to walk through society is materially and symbolically constrained. As Professor Dorothy Roberts has pointed out while examining the role of vagrancy statutes in the domination of Blacks, “[r]estricting people’s freedom of movement can be a form of political subjugation.”²¹⁷

Moreover, by mobilizing in response to obvious private biases, the police perpetuate the longstanding impression that they are the enforcers of White supremacy, rather than neutral arbiters of the law. If the police are, as they profess to be, the protectors and servants of the community, then by responding to trivial complaints—those about Black people *simply living*—they communicate who is considered a part of the “community” that law enforcement protects and serves. In particular, when the police mobilize based on a report that does not include any suspicious activity, it de-citizenizes the Black victim by implying that his race alone is sufficient cause for police response.²¹⁸ The victim is caused to feel as if he is “not the citizen of a democracy but the subject of a carceral state.”²¹⁹

The harm of the interaction is exacerbated by the victim’s own knowledge that they themselves could not or would not call the authorities even in dire situations.²²⁰ There are several reasons for this,²²¹ though

216. Lenhardt, *supra* note 214, at 845.

217. Dorothy E. Roberts, Foreword, *Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775, 788 (1999).

218. Cf. CHARLES R. EPP ET AL., PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 17 (2014) (discussing how traffic stops based on racial profiling—rather than suspicious activity—diminish the citizenship and status of Blacks).

219. *Utah v. Strieff*, 136 S. Ct. 2056, 2070–71 (2016).

220. In the context of police racial profiling, Professor I. Bennett Capers has described this situation as a “double devaluation”—being simultaneously over- and under-policed. See Capers, *Rethinking the Fourth Amendment*, *supra* note 2215, at 24.

221. One other such reason, peripheral to the focus of this Article, is nuisance ordinances. These laws brand property a nuisance if “it is the site of a certain number of police responses,” and impose steep fines on landlords, who in turn either evict tenants or prohibit them from calling the police. See NYCLU, MORE THAN A NUISANCE: THE

the most prominent is the belief that many Black persons hold—that they cannot call the police out of fear of discrimination or being brutalized. Some 31 percent of Blacks report that a “fear of discrimination” has previously prevented them from calling the police when they needed to.²²² And where police conduct more *Terry* stops, searches, and use more force, calls to police are also suppressed, suggesting an unwillingness to be re-exposed to discrimination.²²³ This fear of police cruelty is justified. There is also no shortage of examples of police calls from Blacks that escalate to violence. Police responses to calls placed by Black persons have left callers or their loved ones paralyzed,²²⁴ disabled,²²⁵ wrestled to the ground,²²⁶ tased,²²⁷ and killed.²²⁸

OUTSIZED CONSEQUENCES OF NEW YORK’S NUISANCE ORDINANCES 6 (2018), https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf.

As investigations in Missouri, Wisconsin, Illinois, and New York have found, these laws are purposefully enforced in a racially discriminatory manner, disproportionately affecting Black residents who seek help from the police. See Complaint at 7–11, *Metro. St. Louis Equal Hous. & Opportunity Council v. City of Maplewood*, 4:17-cv-00866-PLC (E.D. Mo. Mar. 13, 2017) (indicating that though Blacks comprised only 17 percent of the city’s population, they represented 55 percent of nuisance ordinance enforcements); Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences for Inner-City Women*, 78 AM. SOC. REV. 117, 125–32 (2012) (finding that of properties that could receive nuisance citations in Milwaukee, Wisconsin, 1 in 41 properties in White neighborhoods did, compared to 1 in 6 properties in majority Black neighborhoods); Complaint, *Hope Fair Hous. Ctr. v. City of Peoria* at 11–12, 1:17-cv-01360-JBM-JEH (C.D. Ill. Aug. 10, 2017) (finding that of the 148 nuisance citations in Peoria, Illinois, 71.6 percent were located in majority Black neighborhoods, despite Blacks constituting only 27 percent of the total population).

222. *Discrimination in America*, *supra* note 49, at 1.

223. Amy E. Lerman & Vesla M. Weaver, *Staying Out of Sight? Concentrated Policing and Local Political Action*, 651 ANNALS AM. POL. & SOC. SCI. 202, 215–17 (2014).

224. E.g., Jon Schuppe, *South Carolina Cop Shoots Homeowner Who Called for Help*, NBC NEWS (May 8, 2015), <https://www.nbcnews.com/news/us-news/south-carolina-cop-shoots-homeowner-who-called-help-n356146>.

225. E.g., Ryan Martin, *An Indianapolis Man Was Mistakenly Shot in His Garage. Now He’s Suing IMPD*, INDYSTAR (Aug. 21, 2018), <https://www.indystar.com/story/news/crime/2018/08/21/indianapolis-metropolitan-police-target-lawsuit-man-who-mistakenly-shot/1050329002/>.

226. E.g., Mazin Sidahmed, *Mother Aggressively Arrested on Tape After Reporting Her Son Was Assaulted*, THE GUARDIAN (Dec. 22, 2016), <https://www.theguardian.com/us-news/2016/dec/22/texas-mother-daughter-arrest-fort-worth-jacqueline-craig>.

227. See *Woman Arrested by Fort Worth PD Regrets 911 Call for Help*, FOX4 NEWS (Dec. 20, 2017), <http://www.fox4news.com/news/woman-arrested-by-fort-worth-pd-regrets-911-call-for-help>.

228. On Christmas day 2015 Antonio LeGrier’s son and a bystander were shot and killed by the police when LeGrier called the police for help as his son experienced a mental illness episode. *COPA: Chicago Cop ‘Not Justified’ in Fatal Shooting of Quintonio LeGrier*, NBC CHI. (Dec. 28, 2017), <https://www.nbcchicago.com/news/local/copa-rules->

Even if they did contact law enforcement, the victim might be aware that the police would likely not respond with urgency or exert much of an effort. Studies dating back to the 1980s indicate that on average police not only take more than twice as long to respond to calls from persons in predominantly minority communities as they did to respond to calls from predominantly White communities,²²⁹ but also exert significantly more effort solving crimes involving White victims.²³⁰ When asked whether they would be willing to call the police if their home was burglarized, only 35 percent of Blacks expect to be taken seriously.²³¹ As Professor Tracey Maclin has rightly pointed out, “the Black American finds that the most prominent reminder of his second-class citizenship are the police.”²³²

From this perspective, if the ability to call the police for help is one of the most basic exemplars of civic engagement, the perceived inability to summon the police is a companion citizenship harm. When police re-

chicago-cop-not-justified-in-fatal-shooting-of-quintonio-legrier-467054063.html. Two decades earlier in 1994, Delores Sanders’ son was killed when she called the police to break up a fight between her son and his cousin. See Jon Nordheimer, *Racial Stress Divides Town After Death of Black Youth*, N.Y. TIMES (May 9, 1994) <https://www.nytimes.com/1994/05/09/nyregion/racial-stress-divides-town-after-death-of-black-youth.html>.

229. See, e.g., TONY PATE ET AL., POLICE RESPONSE TIME: ITS DETERMINANTS AND EFFECTS, POLICE FOUNDATION 38 (1976) (finding White respondents were more satisfied with the response time of the police than nonwhites, where satisfaction was defined as whether the “officer arrived earlier than they had expected”); Press Release, ACLU-Illinois, Newly-Released Data Shows City Continues to Deny Equitable Police Services to South and West Side Neighborhoods (Mar. 31, 2014), <https://www.aclu-il.org/en/press-releases/newly-released-data-shows-city-continues-deny-equitable-police-services-south-and>; Steve Vogel, *Poor Areas Wait Longer for Hard-Pressed D.C. Police*, WASH. POST (June 2, 1996), <https://www.washingtonpost.com/. . . police/5fb98451-594a-4fc2-80bf-42c3cf3d7965/>. For an African American’s perspective and contemporary support, consider lyrics from Public Enemy’s 1990 single, *911 is a Joke*: “Now I dialed 911 a long time ago; Don’t you see how late they’re reacting; They only come and they come when they wanna.” PUBLIC ENEMY, *911 is a Joke*, on FEAR OF A BLACK PLANET (CBS Records 1990).

230. Amanda Howerton, *Police Response to Crime: Differences in the Application of Law by Race*, 4 J. ETHNICITY CRIM. JUST. 51, 57 (2006) (finding that “overall, police utilized more effort with [W]hite victims—they arrived faster at the scene of the crime, and demonstrated more follow-up effort after the crime has taken place”); Ronet Bachman, *Victim’s Perceptions of Initial Police Responses to Robbery and Aggravated Assault: Does Race Matter?*, 12 J. QUANTITATIVE CRIMINOLOGY 363, 381 (1996) (finding police more likely to exert additional effort at the scene of a robbery if the victim did not know the attacker and the attacker was “perceived to be [B]lack”).

231. Lawrence Bobo & Victor Thompson, *Unfair by Design: The War on Drugs, Race and the Legitimacy of the Criminal Justice System*, 73 SOC. RES. 445, 463 (2006).

232. Tracey Maclin, “*Black and Blue Encounters*”—*Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?*, 26 VAL. U. L. REV. 243, 243 (1991).

spond to racialized police communication, they further amplify Blacks' reluctance to call the police. As a result, Black people are excluded from critical right of citizenship, in a way that ultimately serves to demean their collective personhood.²³³

This combined, two-part harm ultimately cuts Blacks off from society, and relegates them to a second-class citizenship. To be sure, White Americans do not typically have the police called on them for everyday behaviors, nor do they suffer the similar harm of feeling that the police are not on their side, or feeling as if they could not call the police themselves.²³⁴ Law enforcement's response to the frivolous accusations of a White caller in conjunction with the fact that the police do not respond equally to Black individual's legitimate complaints, results in a visceral insult from state actors to the Black community. Viewed thus, racialized police communication alienates the Black victim from the rights of state citizenship by robbing them of the respect due to all citizens.

4. *Targeting Harms.* — An additional facet of intangible harm occurs when individuals are targeted for scrutiny “absent adequate justification.”²³⁵ Professor Sherry Colb introduces this concept, stating an “[a]ctor's motives . . . transform the nature of the conduct that they motivate. Being searched *because* one is ‘different’ and being fired *because* one is elderly are experiences that are qualitatively different from being searched because of wrongdoing and being fired because of misconduct or incompetence.”²³⁶ The targeting harm then, may be understood as the injury of being unjustifiably singled out.

Though Colb's analysis is in the venue of Fourth Amendment jurisprudence, conceptually, her conclusions on targeting harms apply to racialized police communication. Having the police called on you *because* you are Black, is significantly different from having the police called *because* you are engaged in objectively suspicious or criminal activity. Re-

233. Cf. CONNIE M. RAZZA, SOCIAL EXCLUSION: THE DECISIONS AND DYNAMICS THAT DRIVE RACISM 1–2 (2018) (offering the theory of *social exclusion* to account for the harms that arises when Black persons are deprived of social capital via racial discrimination, including through the use of racialized police communication).

234. See OFFICE OF JUST. PROGRAMS, U.S. DEP'T. JUST. REQUESTS FOR POLICE ASSISTANCE, 2011, at 2 (2013), <https://www.bjs.gov/content/pub/pdf/rpa11.pdf> (finding White persons more likely to request help from the police).

235. Colb, *supra* note 50, at 1487.

236. *Id.* at 1492–93. In the shadow of Colb's introduction, social psychology has confirmed the central truths of the theory of targeting harms. See Lu-in Wang, “Suitable Targets”? Parallels and Connections Between “Hate” Crimes and “Driving While Black,” 6 MICH. J. RACE & L. 209, 228–29 (2001) (providing the psychological reasoning for why targeting actions are particularly harmful); Robert J. Boeckmann & Carolyn Turpin-Petrosino, *Understanding the Harm of Hate Crime*, 58 J. SOC. ISSUES 207, 208–09 (2002) (explaining the psychological basis for victims' amplified reactions to being targeted for hate crimes, as opposed to other violent crimes).

ports impose targeting harms where the victim's race was part of the reason that her actions were read as suspicious or worthy of police intervention.

Where the actor is knowledgeable of police brutality and discrimination against Blacks, the targeting becomes more sinister. There is something particularly invidious about knowing that a call to the police could result in assault, bodily injury, or death, and choosing to call the police *for* that reason. This appears to be the case in one malicious police report by a White couple against a group of four Black teenagers in Minneapolis in July 2018.²³⁷ There, as the teens were playing in the park, the unprovoked couple began shouting racial slurs at the boys and threatening them with a knife.²³⁸ When the couple left, they called the police falsely alleging that the teenagers had a gun and were assaulting bystanders.²³⁹ Moments later, the police arrived, guns drawn, and they handcuffed and forcibly searched the boys.²⁴⁰ The couple's previous use of racial slurs and lying about the presence of a gun suggests that they intended to weaponize the police *because* of the boys' race,²⁴¹ thereby inflicting targeting injuries.

5. *The Harms of Restricted Freedoms, Behavior Modification, & Diminished Liberty.* — There is a harm that arises when Black persons must change or alter their own behavior for survival within White-dominated society.²⁴² It manifests in a number of ways: Professor Mari Matsuda finds

237. Ryan W. Miller, *A Police Officer Pointed His Gun at 4 Unarmed, Black Teens. Now Police Are Investigating*, USA TODAY (July 12, 2018), <https://www.usatoday.com/story/news/nation-now/2018/07/12/minneapolis-police-pointed-gun-4-unarmed-black-teens-after-911-call/780392002/>.

238. *Id.*

239. *Id.*

240. *Id.* See also Chao Xiong, *No Charges in Minnehaha Park 911 Call that Led to Arrest of Four Teens*, STAR TRIB. (July 25, 2018), <http://www.startribune.com/no-charges-in-minnehaha-park-911-call-that-led-to-arrest-of-four-teens/489181161/> (noting that the White couple has not been charged due to a lack of identifying evidence).

241. Recall that the use of racial slurs and false imputations of criminality strongly implies that the decision to contact the police was based on the victim's race. See *supra* note 85 and accompanying text.

242. Many professors of color have documented this injury in a galaxy of contexts. Professor Nancy Leong has discussed such a harm in her documentation of "performance demands"—the pressures nonwhite people face to "both perform their nonwhiteness and to perform it in a way palatable to the [W]hite majority." Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2207 (2013). Similarly, Professors Devon Carbado and Mitu Gulati describe this injury as the "performative work" in which minority employees engage to counter negative stereotypes about their identity groups. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1279 (2000). Professor Paul Butler's description of the harm as terrorism—"the kind of fear that *controls* the activities of the terrorized," echoes the same harm described here. Paul Butler, *Stop and Frisk and Torture-Lite: Police Terror of Minority Communities*, 12 OHIO ST. J. CRIM. L. 57, 65 (2014).

this harm in how victims of racism curtail their freedoms to avoid messages of racial hate,²⁴³ while Professor Regina Austin observes it in the lengths to which Black customers will go in order not to be viewed as suspect while shopping.²⁴⁴ It is the unnamed harm that occurs when Black mothers instruct their children not to wear hoodies and to take their hands out of their pockets lest they appear criminal.²⁴⁵ This hurt is found in the experiences of the 52 percent of Black persons who admit that they “make an effort to avoid acting in ways others might find suspicious” when out in public.²⁴⁶ It is the injury recently alluded to by Justice Sonia Sotomayor’s comments on “the talk”: the cultural staple in which Black parents train their children to survive encounters with law enforcement.²⁴⁷ Similarly, the harm of restricted freedom is what Professor

Professor I. Bennett Capers’s work on police racial profiling describes the same injury as *scripting harms*. These, he maintains, are the consequence of the damaging negotiation minorities traverse in order not to conform to negative stereotypes of their social group. Capers, *Rethinking the Fourth Amendment*, *supra* note 2215, at 19–22. Finally, Professor Derrick Bell’s provides a cogent account of the injury when he notes “[a]cts of discrimination can not only cause severe momentary distress and humiliation, they can also *limit an individual’s freedom of action and diminish his or her self-perception as an autonomous human being and a secure and equal member of society.*” DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 405 (4th ed. 2000) (emphasis added).

243. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2337 (1989).

244. Regina Austin, ‘A Nation of Thieves’: *Securing Black People’s Right to Shop and to Sell in White America*, 1994 UTAH L. REV. 147, 154 (1994) (observing that to combat stereotypes that associate them with criminality, “[m]ost [B]lacks compensate by proving themselves to be worthy shoppers, i.e., they sell themselves in order to be sold to”).

245. E.g., Angela Hill, *Hoodies: Why Parents of Teens of Color Have the ‘Survival’ Talk*, MERCURY NEWS (Mar. 28, 2012), <https://www.mercurynews.com/2012/03/28/hoodies-why-parents-of-teens-of-color-have-the-survival-talk/>; Julia Craven, *The Burden of Being Black In a White Space*, HUFFPOST (Apr. 24, 2018), https://www.huffingtonpost.com/entry/starbucks-arrest-shopping-while-black_us_5ade8e29e4b0df502a4ec117 (“[My grandmother] explained that my blackness had consequences beyond my control, and that there was a certain way I needed to conduct myself in public for my own good. I didn’t have the privilege of running around in a store and innocently comparing products with my hands, she said. I couldn’t put my hands in my pockets.”).

246. See HuffPost: *Racial Experience*, *supra* note 66, at 7. See also Rashawn Ray, *Black People Don’t Exercise in My Neighborhood: Perceived Racial Composition and Leisure-Time Physical Activity Among Middle Class Blacks and Whites*, 66 SOC. SCI. RES. 42, 54 (2017) (finding that Black male residents in predominantly White communities are less likely to engage in outdoor physical activity in an effort to avoid being wrongfully perceived as a threat by White persons). Amongst Black men who do, Ray report they employ precautionary signaling such as “always carrying a driver’s license or other form of identification, wearing an alumnus shirt of a notable university, walking along busy or well-lit streets, running during daylight hours, and smiling and waving at neighbors,” all in an effort to appear nonthreatening. *Id.*

247. *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting) (“For generations, [B]lack and [B]rown parents have given their children “the talk”—

Paul Butler has described as the “labor intensive” performance Black persons must put on when “navigat[ing] [W]hite spaces[;] You conspicuously display your work ID. You look down on the elevator. You whistle Vivaldi.”²⁴⁸ What is more, it is the injury that Professor Jody Armour—who himself was recently racially profiled²⁴⁹—described as the ways in which Black persons modify their participation in the community to avoid racial profiling.²⁵⁰ Finally, it is the injury found in what Professor Bennett Capers calls “‘citizenship work’—[the] being extra deferential, acquiescing to demands, relinquishing citizenship rights,” that Blacks must do in order to survive encounters with law enforcement.²⁵¹

The injury then, might be understood as the robbery of one’s freedom, a limitation on the range of choices a Black person has, or perhaps

instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with an gun will react to them.”); see also Tracy R. Whitaker & Cadore L. Shell, *Parenting While Powerless: Consequences of “The Talk”*, 26 J. HUMAN BEHAV. SOC. ENV’T 303, 304 (2016) (describing “the talk” as a racial socialization technique in which Black parents instruct their children how to survive experiences with the police). Relatedly, Professor Jerome McCristal Culp, Jr. has suggested that “the talk” is not so much a single occasion, but a broader training that Black children, especially males, receive about surviving encounters with White authorities through their parents’ conscious and subconscious behaviors. See Jerome McCristal Culp, Jr., *Notes from California: Rodney King and the Race Question*, 70 DENV. U. L. REV. 199, 200 (1993) (“Every [B]lack male above the age of five is taught directly or indirectly the rule of engagement of [B]lack malehood. As a [B]lack male, I learned these rules early from the concern in my mother’s eyes and my father’s impatience.”).

248. Butler, *supra* note 1811. Professor Butler is right to note that the performance is labor intensive and taxing, and many have similarly attested. *E.g.*, TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 90 (2015) (describing it as “[t]his need to be always on guard was an unmeasured expenditure of energy, the slow siphoning of the essence”); Capers, *Rethinking the Fourth Amendment*, *supra* note 242, at 22 (describing the performances Black must give in public and concluding “[a]ll of this is work”).

249. On November 1, 2018 on his way to work, Professor Armour, who is African American, was pulled over by “multiple police cruisers, a phalanx of cops, and a . . . HELICOPTER” because of the assumption that his German imported car was stolen. See Jody David Armour (@NiggaTheory), TWITTER (Nov. 1, 2018, 3:24 PM), <https://twitter.com/NiggaTheory/status/1058122757836222464> [<https://perma.cc/5YSH-UZ5R>]. When the police realized the car was not stolen, Professor Armour was told he was pulled over, and had a helicopter dispatched, for “doing 40 where the speed limit was 35mph” See Jody David Armour (@NiggaTheory), TWITTER (Nov. 3, 2018, 8:13 AM), <https://twitter.com/NiggaTheory/status/1058739041732984832> [<https://perma.cc/N3YC-L3HM>].

250. See Jody D. Armour, *Toward a Tort-based Theory of Civil Rights, Civil Liberties, and Racial Justice*, 38 LOY. L.A. L. REV. 1469, 1476–77 (2005) (describing the harm as a “‘chilling effect’ on Black participation in core community activities”).

251. I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653, 696–699 (using the term to characterize the ways in which Black and Brown persons “must stoically endure state-sanctioned microaggressions”).

even a demanded performance out of the necessity of making (White) others comfortable—and by extension, themselves safe.

In the context of racialized police communication, Black behavior alteration operates to stifle the emotions that Black victims experience and are entitled to have. The harm arrives because once there is the threat of the police being summoned, the victim must now manage their behavior and reaction in a way that is palatable for the White audience. If the police have, or are threatened to become involved, one must immediately diminish the Angry Black Person stereotype, lest the situation, and the likelihood of your harm, further escalate.²⁵²

The harm might also be understood as the inability to express anger, incredulity, or protest the false charge imputed against you. The victim has been wronged, but because of the dynamics of the situation, must accept their fate silently.²⁵³ In the aftermath of the Starbucks incident, one of the two Black men arrested asked poignantly: “When you know that you did nothing wrong, how do you really react to it?”²⁵⁴ For Black persons, the answer is that survival demands non-reaction; they must remain calm to remain alive.²⁵⁵

252. In writing this, I must acknowledge that even where the victim complies, this in itself may not save them from police violence; Philando Castile’s death serves as tragic and powerful testament.

253. See Reggie Shuford, *Waiting While Black in Philadelphia Can Get You Arrested*, ACLU (Apr. 17, 2018), <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/waiting-while-black-philadelphia-can-get-you> (“Black people, men in particular, are not allowed the full range of emotional expression in public spaces. Even when an emotion other than being calm is warranted, we have been taught and have learned to police our emotions. No matter how badly we are being treated or how much our dignity is being assailed, we have to be the ones maintaining control and being responsible for de-escalating these situations. We are not allowed to be angry. Or loud. Or boisterous. Or too happy or too celebratory. In other words, we’re not allowed to be human. We police ourselves because we know that others are already policing us. That, too, takes a toll.”); William A. Smith et al., “*Assume the Position. . . You Fit the Description*”: *The Psychosocial Experiences and Racial Battle Fatigue Among African American Male College Students*, 51 AM. BEHAV. SCIENTIST 551, 566 (2007) (suggesting Black men avoid expressing emotion during such racial slights in order to avoid reinforcing widely held stereotypes that paint African American men as inherently more animalistic and violent).

254. Errin Haines Whack, *2 Black Men Arrested at Starbucks Get an Apology*, AP NEWS (Apr. 20, 2018), <https://www.apnews.com/45547c3ae5324b679e982c4847ee1378>.

255. Maria Perez, *Motivational Speaker Says He Was Kicked out of a Texas Restaurant for Being Black*, NEWSWEEK (May 1, 2018), <https://www.newsweek.com/racism-johnny-wimbrey-texas-907476> (quoting a victim of racialized police communication as stating, “you have to remain calm under these circumstances to get out alive . . .”). See also Harris, *supra* note 73, at 273 (“Even though you haven’t done anything wrong, the worst thing you can do in a situation like that is to become emotionally engaged when they do that to you . . . They have the power and they can do whatever they want to do to you for that period of time.”).

F. Crime Fighting Harms

Utilizing law enforcement in a racialized manner also harms society as a whole by undermining the crime fighting capabilities of the authorities. As an initial point, racialized police communication directs police resources away from places where they are legitimately needed. Beyond this, citizen crime reporting relies on citizen confidence in law enforcement.²⁵⁶ When White persons frivolously or maliciously mobilize the authorities, it further deteriorates the already strained relationship between law enforcement and the Black community, thereby further inhibiting the police's legitimacy in the eyes of Black persons. Moreover, when the police respond and mistreat the victims, this may further solidify resistance to helping law enforcement.²⁵⁷ As one such victim of a racialized police report asserted, the experience firmly established that calling the police "is anything but for [B]lack people."²⁵⁸

Racialized police communication may also indirectly undermine crime fighting efforts. Research finds that in the aftermath of high-profile episodes of police brutality, calls to the police decrease within minority communities.²⁵⁹ Examining the ripple effects of police violence, a 2016 study found that in the aftermath of viral media coverage of the 2004 police beating of Frank Jude, local 911 calls for service declined significant-

256. See ROBERT E. WORDEN & SARAH J. MCLEAN, *MIRAGE OF POLICE REFORM: PROCEDURAL JUSTICE AND POLICE LEGITIMACY* 42 (2017) ("Police legitimacy—that is, public trust in and a felt obligation to obey the police—forms the fulcrum of the procedural justice model of policing . . . [Legitimacy leads] to other valued outcomes: compliance with the law, providing information to police, working with them on community problems, and accepting police directions and decisions in police-citizen encounters.").

257. Kristin Henning, *Boys to Men: The Role of Policing in the Socialization of Black Boys*, in *POLICING THE BLACK MAN: ARREST, PROSECUTION, AND IMPRISONMENT* 57, 72–74 (2017) (arguing that negative experiences with the police leads to a reluctance to contact law enforcement among Black boys); Lee Ann Slocum, *The Effect of Prior Police Contact on Victimization Reporting: Results From the Police-Public Contact and National Crime Victimization Surveys*, 34 J. QUANTITATIVE CRIMINOLOGY 535, 563–64 (2018) (finding increased unwillingness to seek help from the police after African Americans have experienced police stops within the prior year); Meares, *supra* note 211, at 13 ("Acts perceived as unjust have the potential to incite radicalization, resistance, and solidarity as well as anger, insecurity, and despair."). In a larger frame, Professor Lenese Herbert has even suggested that police mistreatment of African Americans serves to make America less safe from external attack. See Lenese C. Herbert, *Bete Noire: How Race-Based Policing Threatens National Security*, 9 MICH. J. RACE & L. 149, 199–214 (2003).

258. Errin Haines Whack, *What's Your Emergency? 911 a Different Call for Black, White*, AP NEWS (Apr. 26, 2018), <https://www.usnews.com/news/best-states/pennsylvania/articles/2018-04-26/whats-your-emergency-911-a-different-call-for-black-white>.

259. See Matthew Desmond et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 865 (2016) (finding police reporting decreased amongst Blacks following high-profile instances of police brutality).

ly.²⁶⁰ In particular, Black neighborhoods drastically altered their crime-reporting behavior, with calls to the police remaining dampened for over a year after news coverage of the incident, and resulting in a loss of approximately 22,200 911 calls.²⁶¹ Examining nationwide stories of police brutality against unarmed Black persons, the study found additional evidence that police brutality does not need to be particularly severe or even local to reduce crime reporting within the Black community. This, the authors conclude, indicates that “in predominantly [B]lack neighborhoods, publicized cases of police violence can have a *community-wide impact* on crime reporting that transcends individual encounters.”²⁶² If this conclusion holds, insofar as racialized police reports expose Black citizens to the possibility police violence, should the call or report end in police violence against the victim, we should expect to see decreased crime reporting amongst the minority population.

II. PROSPECTIVE SITES OF SOLUTION

Having described the harms attributable to frivolous and malicious complaints to the police against Blacks, the need for solutions should be apparent. First, in broad outline, this section examines various criminal and civil law prisms to offer preliminary considerations of how the law can be used to temper practice of racialized police communication. In so doing, it joins a chorus of legal scholars demanding the law “recognize and punish ongoing racial discrimination.”²⁶³ Following this, the latter subsection considers one potentially potent extra-legal source of solution: the use of social media to inflict real-world consequences.

A. *Legal Solutions to the Weaponized Use of Law Enforcement*

1. *Potential Criminal Law Approaches.* — A first approach to deterring racialized police communication is through the use of criminal law. Such an approach might be most desirable, given the expressive qualities inherent in criminal law. To the extent that criminalizing conduct expresses condemnation and rebuke, criminal sanctions would convey that racialized police reports are unacceptable in modern society, and arguably more importantly, demonstrate a commitment to the equality of all citizens.

260. *Id.*

261. *Id.* at 867–68.

262. *Id.* at 870.

263. Russell, *supra* note 70, at 595. See also *infra* note 292.

Given the range of harms that racialized police communication inflicts, there are many possible ways in which the criminal law might be applied. In the most extreme situations, approaches such as murder might be used to address racialized police communication that ends in the victim's loss of life.²⁶⁴ One can anticipate difficulty, however, in proving the existence of criminal intent—that is, the “conscious desire to cause harm or a belief that one's conduct is practically certain to result in harm”—necessary to establish a murder charge under common law.²⁶⁵ Because it is a rare case in which someone will admit that they summoned the police because of the race of the victim, or out of an intention to cause the victim's death, a depraved heart murder (or the Model Penal Code's equivalent reckless murder) approach may serve as an alternative. Both circumvent the criminal intent requirement typical of murder statutes,²⁶⁶ punishing death caused under callous or reckless circumstances.²⁶⁷ A victim's death resulting from racialized police communication appears to qualify as either.²⁶⁸ Criminal law's accomplice liability doctrine also provides interesting considerations in using homicide jurisprudence to punish those whose racialized reports result in death.²⁶⁹

Theoretically, legal methods for addressing the practice of “swatting” could also be a viable vehicle for addressing the physical harms of racialized police communication. Swatting, the act of calling a SWAT team on another person as a prank,²⁷⁰ has gained recent notoriety due to

264. The tragic conclusion of the call placed against Johnathan Crawford III., is one such example. See text accompanying *supra* notes 146–149.

265. Michael Serota, *Mens Rea, Criminal Responsibility, and the Death of Freddie Gray*, 114 MICH. L. REV. FIRST IMPRESSIONS 31, 33–34 (2015).

266. *Id.* (thereby “holding . . . actor[s] criminally responsible for causing the death of another notwithstanding the absence of an intent to kill . . .”).

267. Depraved heart allows murder charges to stand where someone is killed by actions “manifest[ing] a wanton or reckless disregard for human life.” *Id.* at 36. Under Model Penal Code (MPC) § 2.02 (2), an unintentional killing may constitute murder when “it is committed under circumstances manifesting extreme indifference to the value of human life.” MODEL PENAL CODE § 210.2(1)(b) (AM. LAW INST. 2018).

268. The act that triggered the arrival of the police, and ultimately the death of the victim, appears to fall within the “callous disregard” or “extreme indifference” terminology. See, e.g., *State v. Bolsinger*, 699 P.2d 1214, 1220 (Utah Ct. App. 1985) (describing depraved heart murder as “a knowing doing of an un-called for act in callous disregard of its likely harmful effect on a victim, which is so heinous as to be equivalent to a ‘specific intent’ to kill”). A person who calls the police on another for no reason, a frivolous one, or out of a desire to harm a victim because of their race, has arguably demonstrated extreme indifference to the life of the person upon whom they called.

269. I must thank Professor Stephen P. Garvey for making this point. In our conversations he has suggested that holding the reporter liable as an accomplice for the police officer's actions may be one way to target those who use racialized police communication.

270. E.g., Nellie Veronika Binder, Note, *From the Message Board to the Front Door: Addressing the Offline Consequences of Race- and Gender-Based Doxxing and Swatting*, 51

resulting deaths. As a result, several laws punishing the practice have been introduced, and a few enacted.²⁷¹ In instances where those who mobilize the police lie about the presence of weapons, swatting approaches could be applicable.²⁷²

For reports that do not end in death, the laws of battery (or as defined in the Model Penal Code, assault) or reckless endangerment might be applicable. Assault and battery law punishes those who purposefully or knowingly cause bodily injury, and might apply to racially weaponized police reports.²⁷³ Reckless endangerment laws that penalize those who “engage[] in conduct which places or may place another person in danger of death or serious bodily injury”²⁷⁴ could apply for the same reasons.

Several states criminalize false police reports as a misdemeanor.²⁷⁵ False reporting laws typically have two elements: (1) the complaint; and (2) knowledge that the report was false.²⁷⁶ Though these laws could apply to racialized police communication, the latter element functions as a proxy for intent.²⁷⁷ Because of this, in all but the most clear cases, report-

SUFFOLK U. L. REV. 55, 55 (2018) (defining ‘swatting’ as “an aggressive form of online abuse in which perpetrators falsely lure police into dispatching heavily armed tactical units to victims’ homes”); Emma Marshak, Note, *Online Harassment: A Legislative Solution*, 54 HARV. J. LEGIS. 503, 512 (2017) (defining ‘swatting’ as “the act of calling SWAT teams to respond to a fake emergency at the victim’s home . . . [causing] the victim [to] suffer the surprise and fear of having heavily armed officers raid their home . . .”).

271. See Katie Johnston, *How Wichita’s Deadly ‘Swatting’ Call Affected National Laws 1 Year Later*, KWCH12 (Dec. 28, 2018), <https://www.kwch.com/content/news/Push-for-stricter-swatting-punishment-continues-on-year-anniversary-of-Andrew-Finchs-death.html>.

272. Though swatting typically involves lying about the presence of weapons, tangentially, African Americans’ skin is often seen as a ‘weapon’ itself—serving to amplify law enforcement’s perception of danger in the same way a false report of firearms might. See Daily Blast LIVE, *Black Skin is Viewed as a Weapon*, FACEBOOK (July 6, 2018), <https://www.facebook.com/DailyBlastLive/videos/2173674402916322/>.

273. MODEL PENAL CODE § 211.1 (AM. LAW INST. 2018).

274. MODEL PENAL CODE § 211.2 (AM. LAW INST. 2018).

275. CAL. PENAL CODE § 148.5(a) (West 2017) (“Every person who reports to any peace officer . . . that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor.”); accord N.Y. PENAL LAW § 240.50 (McKinney 2013) (“A person is guilty of falsely reporting an incident in the third degree when, knowing the information reported, conveyed or circulated to be false or baseless . . .”); accord TEX. PENAL CODE ANN. § 37.08(a) (West 2011) (“A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation . . .”).

276. See CAL. PENAL CODE § 148.5(a); N.Y. PENAL LAW § 240.50; TEX. PENAL CODE ANN. § 37.08(a).

277. The requirement that the reporter *know* the report is false creates the issues that arise in specific intent hate crime laws. As a more general point, legal tools focusing on the subjective intention of the actor are largely toothless in combatting racial violence and

ers will be able to escape sanction.²⁷⁸ Moreover, the fact that these laws were never employed against the string of highly publicized racialized calls earlier last summer implies this approach may not be fruitful.

2. *Potential Tort Law Responses.* — Tort law similarly presents several possibilities for addressing racialized police communication, particularly through the torts of intentional and negligent infliction of emotional distress and defamation.

Infliction of emotional distress doctrine provides relief where an actor (1) engages in extreme and outrageous conduct; that is (2) intentional or reckless; (3) caused the victim distress; and (4) the distress is sufficiently severe.²⁷⁹ As others have argued, racism and racial discrimination both constitute sufficiently extreme conduct—behavior “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”²⁸⁰ As such, infliction of emotional distress may be amicable to addressing the intangible harms of racialized police communication.²⁸¹ And in fact, several victims of the practice have already filed lawsuits alleging IIED.²⁸²

discrimination. See Russell, *supra* note 70, at 619 (asserting that because of “the insidious amoeba-like qualities of racism,” specific intent requirements render solutions innocuous).

278. In particular, *racially-motivated police reports*—those based on implicit bias—could easily escape punishment. A caller simply has to state that they *genuinely* believed that the victim was suspicious or committing a crime, and would escape punishment. Because implicit bias research has demonstrated the ability for unconscious prejudice to alter the perception of real-life events, the knowledge requirement renders the majority of false reporting statutes inadequate to address racialized police communication.

279. RESTATEMENT (SECOND) OF TORTS § 46 (AM. LAW INST. 1965).

280. *Id.* at cmt. d.

281. See *Gilman v. Gilman*, 736 A.2d 199 (Conn. Super. Ct. 1999) (denying a motion for summary judgment on an IIED claim where a woman called the police claiming her ex-husband was smoking marijuana, and he experienced stress and depression from the police interrogation). *But see* *Henry v. Bank of Am. Corp.*, No. C 09-628 CRB, 2010 U.S. Dist. LEXIS 14561 at *20–21 (N.D. Cal. Feb. 2, 2010) (denying a Black woman’s IIED claim based on a bank manager’s police call, reasoning “[i]t is not ‘extreme and outrageous’ to call the authorities when an individual has reason to believe a crime is being committed”).

282. For example, Barbara Carroll had the police called on her in November 2017 while trying to cash a paycheck in a Fort Lauderdale branch of Wells Fargo. See Brittany Shammass, *Elderly Black Woman Says Fort Lauderdale Wells Fargo Refused to Cash Her Check, Called Cops*, MIAMI NEW TIMES (July 25, 2018), <https://www.miaminewtimes.com/news/fort-lauderdale-wells-fargo-refused-to-cash-black-womans-check-called-cops-lawsuit-says-10559428>. In July 2018, she filed a lawsuit alleging racial discrimination in violation of 42 U.S.C. § 1981 and Intentional Infliction of Emotional Distress. See *Complaint & Demand for Jury Trial, Carroll v. Wells Fargo Bank*, No. 18-cv-61646-WPD (S.D. Fla. July 18, 2018). On February 25, 2019, Marc Peeples, of the ‘Gardening While Black’ episode discussed earlier filed a lawsuit alleging malicious prosecution, abuse of process, intentional infliction of emotional distress, defamation, and civil conspiracy. See

Still, emotional distress claims made by Blacks who suffer racial discrimination have been overwhelmingly unsuccessful.²⁸³ *Goolsby v. D.C.*, a case which begun with a White woman calling the police on Black men innocently waiting in a bank because they made her “uneasy,”²⁸⁴ and ended with the men being violently detained and slammed to the ground,²⁸⁵ illustrates this point. In an earlier opinion, Judge Christopher Cooper began by expressing disappointment at the underlying facts of the case: “[i]t is a sad reality of American life that a [W]hite citizen of Washington, D.C. would feel a need to report an African American teenager and his friends to the police for simply congregating in a public establishment.”²⁸⁶ Yet for all this, the plaintiff’s intentional infliction of emotional distress claim against the dispatchers and police were ultimately dismissed for failing to meet the requisite “‘outrageous’ standard.”²⁸⁷ In Judge Cooper’s view, “the relaying of false information under the circumstances . . . even if done intentionally—does not rise to the level of outrageousness required to state a claim for IIED.”²⁸⁸

There are several explanations for the unfruitfulness of IIED claims for racialized harms. It could be that the majority-White judiciary fails to understand the debilitating impact of racial discrimination on victims.²⁸⁹

Complaint & Jury Demand, *Peeples v. Nash*, No. 19-002642-CZ (Wayne Cir. Cty. Ct. Feb. 25, 2019). *See also* Complaint, *Lang v. SPM Prop. Mgmt.*, No. 1:19-cv-00919 at 9 (S.D. Ala. Apr. 14, 2019) (alleging IIED related to a police call they inferred was “because of Plaintiffs’ race (African American)”).

283. Though the indignities have ranged from the trivial to the outrageous, the unsuccessfulness is constant. *See, e.g.*, *Dawson v. Zayre Dep’t Stores*, 499 A.2d 648 (Pa. Super. Ct. 1985) (denying IIED claim made by a Black woman called a Nigger by a White sales clerk); *Robinson v. Town of Colonie*, 878 F. Supp. 387 (N.D.N.Y. 1995) (denying IIED claim where Black shoppers were threatened with arrest based solely on the fact that other, unrelated shoplifters were also Black); *Perry v. Command Performance*, No. 89-2284, 1991 WL 46475, at *1 (E.D. Pa. Mar. 27, 1991) (denying IIED claim where a White hairdresser turned away a Black customer stating “I don’t do Black hair”).

284. *Goolsby v. District of Columbia*, 354 F.Supp 3d 69, 72–73 (D.D.C. Jan. 11, 2019) (relaying that after entering the bank vestibule the woman, “Caucasian, apparently felt uneasy in the presence of Goolsby and his two friends, all African-American. So she told her husband that she forgot something in the car, immediately left the vestibule, and called the police.”).

285. *Id.* at 73.

286. *Goolsby v. District of Columbia*, 317 F. Supp. 3d 582, 586 (D.D.C. July 13, 2018). Cooper also wrote it was “lamentable (but thankfully not tragic in this instance) that the young man, having committed no crime, would feel the urge to run when the police arrived to investigate.” *Id.*

287. *Goolsby*, 354 F. Supp. 3d, at 83 (quoting *Garay v. Liriano*, 839 F. Supp. 2d 138, 143 (D.D.C. 2012)).

288. *Id.* at 83–84.

289. *See* Pat K. Chew & Robert E. Kelley, *Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases*, 86 WASH. U. L. REV. 1117, 1134 (2009) (finding in racial discrimination cases African Americans are more than twice as likely to lose than

Alternatively, courts might be generally unwilling to entertain emotional distress claims because of the potential immeasurability of psychic injuries.²⁹⁰ To the latter, since as established earlier, racialized police communication inflicts measurable negative psychological effects, perhaps recent public health research documenting the effect of police contact on Blacks can bolster IIED claims in the future.

The tort of defamation provides another avenue through which victims of racialized police communication may be made whole. Defamation creates liability where one makes statements which “tend . . . to harm the reputation of another”²⁹¹ Where White reporters falsely accuse victims of a crime, and harm to their reputation results, defamation might apply.

3. *A Statute or Ordinance Specifically Addressing Racialized Police Communication.* — In other contexts, scholars have proposed enacting specific laws to deter, and allow recovery from, racial discrimination, harassment, and intimidation.²⁹² A similar approach could be used in the present case, and others have come to this same conclusion. In response to the numerous racialized police calls against Black persons during 2018, Michigan State Rep. LaTanya Garrett introduced legislation aimed at making frivolous calls to the police against minorities a felony.²⁹³ City leaders in Grand

their White counterparts if the judge is White); Pat K. Chew & Robert E. Kelley, *The Realism of Race in Judicial Decision Making: An Empirical Analysis of Plaintiffs' Race and Judges' Race*, 28 HARV. J. RACIAL & ETHNIC JUST. 91, 110–13 (2012) (finding that in racial harassment suits the alignment of plaintiff race and race of the judge is the strongest predictor of success, with White judges being most likely to hold for White plaintiffs, and the same relationship for judges who are Black). See also Christina L. Boyd, *Representation on the Courts? The Effects of Trial Judges' Sex and Race*, 69 POL. RES. Q. 788, 793–4 (2016) (finding that Black judges are significantly more likely than White judges to rule in favor of plaintiffs in race and sex discrimination suits).

290. Cf. Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy*, 73 CALIF. L. REV. 772, 778 (1985) (stating that intangible “injuries cannot be readily quantified” and “have no measurable dimensions, mathematical or financial”); Randy J. Cox & Cynthia H. Shott, *Boldly into the Fog: Limiting Rights of Recovery for Infliction of Emotional Distress*, 53 MONT. L. REV. 197, 198 (1992) (suggesting courts are resistant to emotional distress claims because of “the difficulty of proving emotional distress, the potential for fraudulent claims, the imposition of ‘incalculable and potentially unlimited damages’ and a concern that allowing recovery for mere fright or emotional distress would result in a flood of litigation”).

291. RESTATEMENT (SECOND) OF TORTS § 559 (AM. LAW INST. 1977).

292. Most notably, tort law has served as a fertile site of inquiry. See, e.g., Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.–C.L. L. REV. 133, 179 (1982); Sam Conner et al., *The Model Communicative Torts Act*, 47 WASH. & LEE L. REV. 1, 36–40 (1990). Unlike the former scholarship, however, it appears that a statute targeting racialized police communication would not be subject to a potential free speech challenge.

293. See Rochelle Riley, *New Michigan Bill Would Stop 911 Calls for Breathing While Black*, DETROIT FREE PRESS (Sept. 5, 2018), <https://www.freep.com/story/news/>

Rapids, Michigan have also proposed an ordinance that would make it a criminal misdemeanor to “knowingly or recklessly” report members of a protected class without “reasonable suspicion of criminal activity.”²⁹⁴

Other states may consider the same in the future.

B. *Extra-Legal Solutions to Racialized Police Communication.*

Over the past decade the legal arena has not been especially amenable to remedies for the injustices faced by the Black community. The Supreme Court has increasingly endorsed “colorblindness,”²⁹⁵ and has weakened its constitutional protections for subordinated groups.²⁹⁶ At the same time, police brutality against Black Americans has led to few legal

columnists/rochelle-riley/2018/09/05/michigan-bill-falsely-report-crime-based-race/1207129002/?utm_source=dlvr.it&utm_medium=twitter. The introduced bill makes it a felony to “intentionally cause[] a false report of the commission of a crime to be made based solely upon the race or ethnicity of the alleged perpetrator and not on actual suspicion that a crime has been committed or might be committed” See H.R. 6318, 99th Leg., Reg. Sess. (Mich. 2018), <http://www.legislature.mi.gov/documents/2017-2018/billintroduced/House/pdf/2018-HIB-6318.pdf>.

Her proposal is racially open ended, meaning that in principle it would apply to ‘reverse discrimination’ cases. Given the African American community’s general reluctance to voluntarily interact with law enforcement, however, in practice such cases may be rare.

294. See Proposed Ordinance No. 2019 § 9.942 <https://www.grandrapidsmi.gov/files/assets/public/departments/diversity-and-inclusion/files/community-relations-commission/human-rights-ordinance-040919.pdf>; see also Heather Walker, *Dozens Urge GR to OK New Human Rights Ordinance*, WOOD8 (Apr. 23, 2019), <https://www.woodtv.com/news/grand-rapids/dozens-urge-gr-to-ok-new-human-rights-ordinance/1948728726>.

295. See, e.g., *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”); see also Kimani Paul-Emile, *Blackness as Disability?*, 106 GEO. L.J. 293, 317–18 (2018) (“Since the 1970s, the Supreme Court’s remedial race jurisprudence has increasingly become characterized by a norm of colorblindness, which has significantly constrained state uses of race to address race discrimination.”); *The Supreme Court 2014 Term: Leading Cases—Fair Housing Act—Disparate Impact and Racial Equality—Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 129 HARV. L. REV. 321, 330 (2015) (stating “colorblindness doctrine . . . has come to represent the view of the Court’s majority over the past several decades”); *The Supreme Court 2016 Term: Leading Cases—Sixth Amendment—Ineffective Assistance of Counsel—Race and Sentencing—Buck v. Davis*, 131 HARV. L. REV. 263, 267–68 (2017) (characterizing Chief Justice Robert’s approach to racial discrimination as “colorblind”).

296. See Darren Lenard Hutchinson, *Undignified: The Supreme Court, Racial Justice, and Dignity Claims*, 69 FLA. L. REV. 1, 3 (2017) (“The Equal Protection Clause ‘no longer protects’ persons of color from racial inequality. The U.S. Supreme Court’s formalistic equality doctrine legitimized policies that impose heavy burdens on disadvantaged groups and, by contrast, evaluates racial egalitarian measures with a high degree of skepticism.”).

consequences in lower courts.²⁹⁷ If this history instructs, the probable site of solutions to the emotional, physical, and psychic injuries inflicted by racialized police communication will not be the legal system. With this in mind, this section considers one extra-legal amelioration: the use of social media.

1. *Using Social Media to Inflict Real-World Consequences.* — The use of social media as a site of socio-political protest has blossomed immensely. The origins of the Arab Spring, the Black Lives Matter movement, and the #MeToo movement were all digital platforms. Since its creation in 2012, the hashtag #BlackLivesMatter, has been used over 30 million times on Twitter alone. With a majority of Americans agreeing that “social media . . . give a voice to underrepresented groups,”²⁹⁸ undoubtedly websites such as Twitter, Facebook, and YouTube represent new opportunities for social justice activism.²⁹⁹ Social media has shifted in recent

297. E.g., Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castile*, N.Y. TIMES (June 16, 2017), <https://www.nytimes.com/2017/06/16/us/police-shooting-trial-philando-castile.html> (detailing the acquittal of the officer who fatally shot Philando Castile); Tim O’Neil & Mitch Smith, *Former St. Louis Officer, Jason Stockley, Acquitted in Shooting of Black Driver*, N.Y. TIMES (Sept. 15, 2017), <https://www.nytimes.com/2017/09/15/us/jason-stockley-anthony-lamar-smith-st-louis-officer.html>; Lucia Walinchus & Richard Pérez-Peña, *White Tulsa Officer is Acquitted in Fatal Shooting of Black Driver*, N.Y. TIMES (May 17, 2017), <https://www.nytimes.com/2017/05/17/us/white-tulsa-officer-is-acquitted-in-fatal-shooting-of-black-driver.html?module=inline> (detailing the acquittal of the officer who fatally shot Terence Crutcher); Andy Newman, *Jury Deadlocks in Trial of Ex-Officer in Killing of Unarmed Black Driver in Cincinnati*, N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/us/ray-tensing-samuel-dubose-trial-deadlock.html?module=inline> (detailing the jury deadlock in the trial of the officer who fatally shot Samuel DuBose).

The previous examples assume the officers involved are prosecuted. More often than not this is not the case. See Richard Fausset, *Officer Faces No Charges in Fatal Shooting in an Alabama Mall*, N.Y. TIMES (Feb. 5, 2019), <https://www.nytimes.com/2019/02/05/us/alabama-mall-shooting-death.html> (detailing the lack of charges in the police-involved shooting of Emantic F. Bradford); Jose A. Del Real, *No Charges in Sacramento Police Shooting of Stephon Clark*, N.Y. TIMES (Mar. 2, 2019) (detailing the lack of charges in the police-involved shooting of Stephon Clark). See also Asit S. Panwala, *The Failure of Local and Federal Prosecutors to Curb Police Brutality*, 30 FORDHAM URB. L.J. 639, 641–43 (2003) (collecting examples of prosecutors’ reluctance to charge police officers in brutality cases); Note, *The Paradox of “Progressive Prosecution”*, 132 HARV. L. REV. 748, 754 (2018) (stating prosecutors typically “abandon their zealous investigation and prosecution tendencies when the perpetrator of a crime is a police officer”).

298. Monica Anderson et al., *Activism in the Social Media Age*, PEW RES. CTR. (July 11, 2018), <http://www.pewinternet.org/2018/07/11/activism-in-the-social-media-age/>.

299. See Munmun De Choudhury et al., *Social Media Participation in an Activist Movement for Racial Equality*, PROC. TENTH INT’L AAI CONF. EB & SOC. MEDIA 92, 92 (2016), <https://www.aaai.org/ocs/index.php/ICWSM/ICWSM16/paper/download/13168/12728> (commenting that “[s]ocial media, especially Twitter, due to its pervasiveness and adoption, has provided the fundamental infrastructure” for modern racial justice movements); Yarimar Bonilla & Jonathan Rosa, *#Ferguson: Digital Protest, Hashtag Ethnography*,

years from merely a platform for protest—where persons share their experiences with, or thoughts on, injustices—to a mechanism for demanding accountability and imposing penalties.³⁰⁰

In the context of racialized police communication, social media has already formed an integral part of the conversation. Much of the media attention given to examples of racially motivated and racially weaponized police reports was the result of victim videos uploaded to Facebook and Twitter. As important is the use of hashtags, which have also served as a mechanism for recording and retaliating against the use of racialized police communication. During 2018, social media users created hashtags which confronted and ridiculed those who mobilized the authorities against undeserving victims. Examples such as *#BBQBecky*,³⁰¹ *#CornerstoreCaroline*,³⁰² and *#PermitPatty*³⁰³ led not only to public backlash, but to White reporters apologizing, losing their jobs, being forced out of their neighborhoods, and being arrested.³⁰⁴ It would seem that in the wake of

and the Racial Politics of Social Media in the United States, 42 AM. ETHNOLOGIST 4, 12 (2015) (“[S]ocial media participation [has become] a key site from which to contest mainstream media silences and the long history of state-sanctioned violence against racialized populations.”); see also Dhiraj Murthy, *Introduction to Social Media, Activism, and Organizations*, 4 SOC. MEDIA & SOC’Y 1, 2 (2018) (“Ultimately, social media often create rippling effects which touch many different aspects of the movement process from resource mobilization to actual interventions.”).

300. See Melissa Murray, *Consequential Sex: #MeToo, Masterpiece Cakeshop, and Private Sexual Regulation*, 113 NW. L. REV. 825, 868–70 (2019) (documenting the use of social media by some #MeToo movement activists to create online offender registries); Catharine A. MacKinnon, *#MeToo Has Done What the Law Could Not*, N.Y. TIMES (Feb. 4, 2018), <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html> (arguing that the #MeToo movement fundamentally changed conversations on sexual harassment in ways the law was unable to); Corinthia A. Carter, *Police Brutality, The Law & Today’s Social Justice Movement: How the Lack of Police Accountability has Fueled #Hashtag Activism*, 20 CUNY L. REV. 521, 522–23 (2016) (arguing that social media activism serves as an alternative site of highlighting Black victimization, when the legal system fails to hold law enforcement accountable for violence against African Americans).

301. See Laura M. Holson, *Hundreds in Oakland Turn out to BBQ While Black*, N.Y. TIMES (May 21, 2018), <https://www.nytimes.com/2018/05/21/us/oakland-bbq-while-black.html?module=inline>.

302. See Gina Martinez, *Woman Dubbed ‘Cornerstore Caroline’ Faces Backlash After Falsely Accusing a 9-Year-Old Boy of Sexual Assault*, TIME (Oct. 16, 2018), <http://time.com/5426067/cornerstore-caroline-backlash-sexual-assault-boy/>.

303. Niraj Chokshi, *White Woman Nicknamed ‘Permit Patty’ Regrets Confrontation over Black Girl Selling Water*, N.Y. TIMES (June 25, 2018), <https://www.nytimes.com/2018/06/25/us/permit-patty-black-girl-water.html?module=inline> (documenting an example where a White caller faced financial backlash, where her purchasers cut ties after social media virality).

304. See, e.g., Alex Horton & Keith McMillan, *#IDAdam, the White Man Who Called Police on a Woman at Their Neighborhood Pool, Loses His Job*, WASH. POST (July 8, 2018), <https://www.washingtonpost.com/news/post-nation/wp/2018/07/06/idadam-the->

inadequate reaction from the legal system, social media users have already begun harness these platforms to combat racialized police communication.

There are, of course, negative aspects of leveraging social media to implement real-world punishments. First, there are privacy concerns. On previous occasions, social media users have been able to find others' private contact information, leading to a barrage of vitriol and threats.³⁰⁵ Second, there are due process concerns, and worries that the use of social media pressure might unfairly be used to target those who are misidentified or undeserving.³⁰⁶ The possibilities of innocent victims losing jobs, being forced out of their homes, or unfairly facing physical and cyber violence are very real.

Ideally, the ability of social media virality to impose real-world shaming punishments will remain only a temporary solution, pending legal intervention. Should the legal system remain blind to the harms imposed by racialized police communication, however, virality will undoubtedly remain the best solution to combatting racialized police reports.

white-man-who-called-police-on-a-woman-at-their-neighborhood-pool-loses-his-job/; Stevens, *supra* note 18 (reporting that a white CVS employee, dubbed 'Coupon Carl' for calling the police on a Black shopper who attempted to use coupons, lost his job); Joshua R. Hett Miller, *White Woman Loses Job After Racist Rant Toward Black Neighbor*, N.Y. POST (Oct. 29, 2018), https://nypost.com/2018/10/29/white-executive-loses-job-after-racist-rant-toward-black-neighbor/?utm_source=NYPTwitter&utm_medium=SocialFlow&utm_campaign=SocialFlow.

305. See also Julia M. MacAllister, *The Doxing Dilemma: Seeking a Remedy for the Malicious Publication of Personal Information*, 85 *FORDHAM L. REV.* 2451, 2455–66 (2017) (describing the harms that arise from the online release of personal information, also known as “doxing”); Joey L. Blanch & Wesley L. Hsu, *An Introduction to Violent Crime on the Internet*, 64 *U.S. ATTORNEY'S BULLETIN* 2, 5 (2016) (“[Doxing] can expose the victim to an anonymous mob of countless harassers, calling their phones, sending them email, and even appearing at the victim’s home.”); see also Chokshi, *supra* note 295 (reporting that Alison Ettel, who the internet dubbed #PermitPatty for calling the police on a Black child “illegally selling water without a permit,” received “numerous threats, including some on her life . . .”).

306. See, e.g., Daniel Victor, *Amateur Sleuths Aim to Identify Charlottesville Marchers, but Sometimes Misfire*, N.Y. TIMES (Aug. 14, 2017), <https://www.nytimes.com/2017/08/14/us/charlottesville-doxing.html> (detailing one example where social media users misidentified an innocent man, leading to a barrage of threats). Cf. CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA 2–3 (2017) (arguing that social media can create a distorted view of events, leading to misunderstandings and mistakes).

CONCLUSION

A problem which is not named cannot be solved. Violence which is neither acknowledged nor understood cannot be prevented. Hidden pain and undiagnosed injuries cannot be healed. This Article's primary task is to shine light on the experiences of Blacks who are frivolously or maliciously reported to the police. To that effect, I have taken the initial steps of documenting the social phenomenon of *racialized police communication*.

In comprehensively theorizing and detailing the experience of racialized police communication, this Article has shown that the practice exposes Black persons to a battery of tangible and intangible harms. As revealed, the practice of mobilizing the police on innocent Black individuals serves to maintain racial segregation, inflicts a number of intangible injuries, and exposes Blacks to physical and psychological harm. Racialized police communication is also a poison that (further) ruptures the relationship between the police and the Black community, undermining crime fighting efforts. Additionally, and perhaps most detrimentally, the practice ruptures the relationship between Black people and the state by solidifying the second-class citizenship of Blacks.

Solutions exist. Both legal and extra-legal actions present prospective routes through which the practice can be stymied. Various prisms of criminal and tort law might be marshaled to punish those who mobilize the police on Blacks for frivolous or malicious reasons. Should legal interventions prove inadequate or slow-moving, extra-legal initiatives might deter racialized police communication.

It is both reprehensible and incomprehensible that a population of citizens lives in fear that bystanders might summon the police as they *simply live* their lives. Black persons have had the police called on them for simply cashing a check,³⁰⁷ cheering their children on at sports games,³⁰⁸ for babysitting,³⁰⁹ and for *existing*—everyday activities the racial majority takes for granted. This cannot be right.

307. See Michael Brice-Saddler, *A Black Man Tried to Cash His Paycheck. The Bank Called the Cops.*, WASH. POST (Dec. 18, 2018), https://www.washingtonpost.com/nation/2018/12/18/black-man-tried-cash-his-paycheck-bank-called-cops/?utm_term=.16a5d2db392a (detailing a December 1, 2018, incident where Paul McCowns had the police called on him when he tried to deposit his pay check); see also *supra* note 282 (describing the 2017 instance where Barbara Carroll, a seventy-eight-year-old grandmother of eight had the police called on her when she attempted to cash a \$140 check).

308. See Tamar Lapin, *'Golfcart Gail' Calls Cops on Black Dad at His Kid's Soccer Game*, N.Y. POST (Oct. 17, 2018), <https://nypost.com/2018/10/17/golfcart-gail-calls-cops-on-black-dad-at-his-kids-soccer-game/>.

309. Melissa Gomez, *Babysitting While Black: Georgia Man Was Stalked by Woman as He Cared for 2 White Children*, N.Y. TIMES (Oct. 9, 2018), <https://www.nytimes.com/2018/10/09/us/black-man-babysitting.html>.

Though I have outlined a few ways in which society may address this phenomenon, they surely are not the only ones. My foremost goal here was to lay a foundation by demonstrating how reports to law enforcement are used in racially oppressive ways. My hope now is that society is able to punish those who inflict harm on Black persons via improper reports to the police, ultimately ending racially motivated and weaponized police communication.

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APPENDIX

2018: A Year of Racialized Police Communication

Below is a list of **92** media-reported or social media viral instances of racialized police communication which took place during 2018.

JANUARY

January 3, 2018 — Brooklyn, New York man Ben Faulding is confronted by two gun-wielding police officers when a store clerk calls the police, falsely believing he is shoplifting.³¹⁰

FEBRUARY

February 1, 2018 — St. Louis woman Alexis Brison has the police called on her when she is falsely accused of leaving a restaurant without paying a bill the night before. Employees mistake Brison for another Black woman.³¹¹

February 24, 2018 — Yale student Reneson Jean-Louis has the police called on him when he asks a fellow student for directions. The student reports Jean-Louis as a “suspicious character.”³¹²

MARCH

March 9, 2018 — Ohio Councilman Kevin Conwell is stopped by Case Western Reserve University police when a student reports him for walking across campus.³¹³

310. Ben Faulding, *Cops Doing Things ‘By the Book’ Could Have Gotten Me Killed*, WASH. POST. (Jan. 17, 2018), https://www.washingtonpost.com/news/posteverything/wp/2018/01/17/cops-doing-things-by-the-book-could-have-gotten-me-killed/?utm_term=.c103359fe1c7; Blacula Panther (@TheHipsterRebbe), TWITTER (Jan. 3, 2018, 10:59 AM) <https://twitter.com/TheHipsterRebbe/status/948629792290729985> (The tweet is now protected, the cached version is available at <https://webcache.googleusercontent.com/search?q=cache:3b6EY6FP1voJ:https://twitter.com/TheHipsterRebbe/status/948629827816435712+&cd=1&hl=en&ct=clnk&gl=us>).

311. Joe Robertson & Ian Cummings, *Black Women Say Independence Applebee’s Racially Profiled Them*, KANSAS CITY STAR (Feb. 11, 2018), <https://www.kansascity.com/news/local/article199607759.html>; Marwa Eltagouri, *Applebee’s Apologizes to Customers Who Said They Were Racially Profiled*, WASH. POST (Feb. 13, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/02/13/applebees-admits-customers-were-racially-profiled/?utm_term=.9a17870f7f4d.

312. Dakin Andone & AnneClaire Stapleton, *This Allegedly Wasn’t the First Time This White Yale Student Called the Cops on a Person of Color*, CNN (May 12, 2018) <https://www.cnn.com/2018/05/11/us/yale-second-black-student-sarah-braasch/index.html>.

APRIL

April 2018 — Texas woman Q Moses has the police called on her while shopping at a Shenandoah, Texas OshKosh store when employees falsely believe that she is shoplifting. One of the responding officers tells Moses, “Ma’am, because you’re a Black woman with a large bag, that’s probably the reason for the premature call.”³¹⁴

April 12, 2018 — Philadelphia men Donte Robinson and Rashon Nelson are arrested in a Philadelphia Starbucks when waiting for a colleague.³¹⁵

April 12, 2018 — York, Pennsylvania women have the police called on them for not golfing fast enough. The situation is christened ‘Golfing While Black’ on social media.³¹⁶

April 12, 2018 — New Jersey men have the police called on them at an L.A. Fitness when employees wrongfully believe they are not paying members.³¹⁷

April 22, 2018 — Saraland, Alabama woman Chikesia Clemons is arrested inside a Waffle House when the police are called because she requests plastic cutlery. During her arrest, police throw Clemons to the ground, leading to public outrage.³¹⁸

April 26, 2018 — Amber Phillips has the police called on her and is removed from an American Airlines flight when her arm touches that of a White passenger seated next to her. The passenger falsely tells an attendant that Phillips assaulted her and law enforcement is summoned. Phillip’s tweets “The cops were called on me for flying while fat & Black.”³¹⁹

313. Sophia Yakumithis, *Councilman Stopped by Police, Asked for Identification*, OBSERVER (March 23, 2018), <http://observer.case.edu/councilman-stopped-by-police-asked-for-identification/>; Robert Higgs, *Cleveland Councilman Kevin Conwell Decries ‘Walking While Black’ and Calls for Closer Scrutiny of Case Western Reserve Police*, CLEVELAND (March 26, 2018), https://www.cleveland.com/metro/index.ssf/2018/03/cleveland_councilman_kevin_con.html.

314. Marcelino Benito, *Woman Claims Shenandoah OshKosh Employees Accused Her of Shoplifting*, KHOU11 (Apr. 11, 2018), <https://www.khou.com/article/news/local/woman-claims-shenandoah-oshkosh-employees-accused-her-of-shoplifting/285-537446718>.

315. Eligon & Oppel, Jr., *supra* note 2.

316. Caron, *supra* note 3; Mahon & Woodall, *supra* note 3.

317. Price, *supra* note 16.

318. Haag, *supra* note 4.

319. Allison Klein, *American Airlines Passenger: ‘The Cops Were Called on Me for Flying While Fat & Black’*, WASH. POST (Apr. 30, 2018), https://www.washingtonpost.com/news/dr-gridlock/wp/2018/04/30/american-airlines-passenger-the-cops-were-called-on-me-for-flying-while-fat-black/?utm_term=.6b54794bcaea; Jackie Sala, *American Airlines Passenger: Cops Were Called on Me For Flying ‘Fat and Black’*, N.Y. POST (Apr. 30,

April 27, 2018 — Former Obama White House official Darren Martin has the police called on him as he is moving into his apartment in Manhattan.³²⁰

April 29, 2018 — A California family have the police called on them as they are barbecuing at Lake Merritt. The caller demands the family not use coal in the public barbeque grills. The scenario is labelled ‘Barbecuing While Black.’³²¹

April 30, 2018 — A group of Black individuals are detained when leaving an Airbnb in Rialto, California when a neighbor calls the police on them. Apparently, the neighbor believed they were burglars. The situation is dubbed ‘Airbnb While Black.’³²²

MAY

May 2, 2018 — Yale student Lolade Siyonbola has the police called on her for napping in a common room. The situation is christened ‘Napping While Black.’³²³

May 2, 2018 — Florida couple have guns pointed at them when Waffle House employees call the police over a disputed bill.³²⁴

May 2, 2018 — Memphis real estate investor Michael Hayes has the police called on him as he visits one of his own properties.³²⁵

May 2, 2018 — D.C. lawyer Donald Sherman has Kingman Island ‘Special Police’ called on him as he is walking with his infant son. The reporter described him as a “suspicious man with a baby.”³²⁶

May 3, 2018 — St. Louis teenagers have the police called on them when Nordstrom employees falsely accuse them of shoplifting.³²⁷

May 4, 2018 — New York attorney Nancy Bedford and her daughter are falsely accused of shoplifting in a Brooklyn vintage consignment store. When the women protest the accusation, an employee calls the police declaring she “feared for her safety.”³²⁸

2018), <https://nypost.com/2018/04/30/american-airlines-passenger-cops-were-called-since-i-was-flying-fat-and-black/>.

320. Rosenberg, *supra* note 10.

321. *See supra* note 15.

322. Victor, *supra* note 11.

323. Caron, *supra* note 5.

324. Zaveri, *supra* note 4.

325. Miller, *supra* note 13.

326. Helm, *supra* note 12.

327. Haag, *supra* note 7.

328. AJ Ross, *Mother, Daughter Believe They Were ‘Targeted’ for Shoplifting at Brooklyn Vintage Store*, ABC 7 NY (May 12, 2018), <https://abc7ny.com/society/mother-daughter-believe-they-were-targeted-for-shoplifting/3462919/>; Ellen Moynihan & Janon Fisher, *Black Mom and Daughter Call Brooklyn Boutique Clerks Racist After Being Accused of Shoplift-*

May 5, 2018 — North Carolina man Anthony Wall has the police called on him when he gets into a disagreement with Waffle House employees.³²⁹

May 7, 2018 — St. Louis couple Kellen Hill and his girlfriend have the police called on them when they are denied a money order at a local supermarket. A clerk reported told the couple he refused to give them a money order “because people like you are doing fraud.” The employee calls the police to have the couple removed when they protest his comments.³³⁰

May 14, 2018 — Members of the historically Black sorority Sigma Gamma Rho are confronted by the police while doing community service on Interstate 83. Facts differ: the sorority members allege that the police claims to have been called on them, but in a follow-up statement the police claim to not have been. The situation is dubbed ‘Community Service While Black.’³³¹

May 15, 2018 — California man Ike Iloputaife is reported to the police as he walks the dogs in his neighborhood. The woman who reports him sends his photographs to the police and Iloputaife is falsely accused of burglary.³³²

May 15, 2018 — Alabama man Brian Spurlock has the police called on him when Hobby Lobby employees believe he resembles an unrelated Black shoplifter.³³³

May 20, 2018 — California firefighter Kevin Moore is reported to the police as he conducts fire inspections in the mostly White Montclair neighborhood.³³⁴

ing, N.Y. DAILY NEWS (May 12, 2018), <https://www.nydailynews.com/new-york/brooklyn/black-mom-kin-slam-nyc-store-clerk-racism-theft-claims-article-1.3985284>.

329. Ortiz, *supra* note 4.

330. Andy Banker & Kevin S. Held, *Schnucks Employee Fired After Couple Claims Racial Bias over Money Order Denial*, FOX2 NOW ST. LOUIS (May 8, 2018), <https://fox2now.com/2018/05/08/schnucks-employee-fired-after-couple-claims-racial-bias-over-money-order-denial/>; Mo Barnes, *Racist Employee Fired After Denying Black Couple Money Order in St. Louis*, ROLLING OUT (May 9, 2018), <https://rollingout.com/2018/05/09/racist-employee-fired-after-denying-black-couple-money-order-in-st-louis/>.

331. Wootson, Jr., *supra* note 22; Ayana Jones, *Black Sorority Members Questioned by Police While Cleaning Highway*, PHIL. TRIB. (May 15, 2018), https://www.phillytrib.com/news/black-sorority-members-questioned-by-police-while-cleaning-highway/article_e94ff579-32df-5ffb-87f2-b08228e90383.html.

332. See *supra* note 28; see also Hannah Moore, ‘I Became A Person of Interest Because of My Skin Color’: Black San Diego Man is Wrongly Identified as Being Involved in a Burglary After Neighbor Sent His Picture to Police, DAILY MAIL (June 6, 2018), <https://www.dailymail.co.uk/news/article-5814311/Fury-photo-black-man-walking-dogs-makes-burglary-suspect.html>.

333. Hutchinson, *supra* note 8.

May 23, 2018 — Maryland couple Barbara and Bahri Wallace have the police called on them as they are shopping at Costco. The manager calls the police to report a “robbery in progress,” after falsely believing the Wallaces are shoplifting. On November 2, 2018 the Wallaces file a civil suit alleging racial discrimination and false imprisonment.³³⁵

May 30, 2018 — Long Beach, California man Ezekiel Phillips has the police called as he is listening to a bikram yoga CD in his car. A woman sees Phillips, tells him he should not be in the neighborhood and demands he leave. When he does not, she calls the police and falsely tells them that she witnessed Phillip attack someone.³³⁶

JUNE

June 2, 2018 — South Carolina woman Javetta Campbell is falsely accused of shoplifting in a Mount Pleasant Ulta Beauty store. The store sends her photograph to law enforcement, who issue a ‘shoplifting suspects’ release with her photo.³³⁷

June 4, 2018 — Oklahoma City woman Ja’Maya Burlison has the police called on her when she refuses to listen to her White neighbor’s problems. The caller is labelled ‘Depressed Debbie’ on social media.³³⁸

June 4, 2018 — Tennessee woman Jovita Jones Cage is handcuffed in a Victoria’s Secret branch in Collierville when an employee falsely accuses her of shoplifting. Cage, who was returning a purchase, described the event as “mortifying.”³³⁹

June 4, 2018 — A Black man is threatened with police intervention while eating ice cream in his car. A social media post about the interaction was viewed over 1 million times, and shared over 33,000 times.³⁴⁰

June 12, 2018 — Two Miramar Florida women have the police summoned on them when shopping in Walgreens. Employees falsely ac-

334. Haag, *supra* note 13.

335. See Complaint at 2–6, *Wallace v. Costco Wholesale Corp.*, 1:18-cv-02539 (D.D.C. Nov. 2, 2018); see also Jayne Miller, *Couple Stopped by Police Files \$4M Lawsuit Against Costco*, WBALTV11 (Nov. 8, 2018), <https://www.wbalv.com/article/couple-stopped-by-police-files-dollar4m-lawsuit-against-costco/24845419>.

336. Muhammad, *supra* note 26.

337. See Raphael James, *Couple: False Shoplifting Accusations by Police and Local Business Hurt*, LIVE 5 NEWS (June 9, 2018), <http://www.live5news.com/story/38385416/couple-false-shoplifting-accusations-by-police-and-local-business-hurt/>.

338. Harriot, *supra* note 27.

339. Bridget Chapman, *Woman Says She Was Racially Profiled at Victoria’s Secret in Collierville*, WREG (June 7, 2018), <https://wreg.com/2018/06/07/woman-says-she-was-racially-profiled-at-victorias-secret-in-collierville/>.

340. Atlanta Black Star, *White Woman All Up in this Black Guys Personal Space*, FACEBOOK (June 14, 2018), <https://www.facebook.com/ATLBlackStar/videos/1347222515412518/?permPage=1>.

cused them of shoplifting, and the women have their bags searched by the officers.³⁴¹

June 18, 2018 — Atlanta physician Dr. Nnenna Aguocha has the police called on her as she tries to enter her own gated community. Believing the doctor does not live there, another property owner calls the police on her for trespassing.³⁴²

June 19, 2018 — Members of the historically African American sorority Delta Sigma Theta have the police called on them at a restaurant in Cleveland, Ohio when employees falsely believe they will not pay their bill.³⁴³

June 21, 2018 — Middletown, New York woman Idella Browning is falsely accused of shoplifting, and a Walgreens loss-prevention officer publicly searches her bag and accuses her of stealing. When no merchandise is found, Browning protests her treatment and humiliation. At that point, the assistant manager calls the police for Browning's disturbance.³⁴⁴

June 22, 2018 — A Philadelphia family has the police called on them when they try to get a refund on their movie tickets. The parents leave the theater to speak to a manager, who refunds their money. When they attempt to return to the theater to retrieve their children, theater staff blocks their entry and calls the police.³⁴⁵

June 23, 2018 — An Ohio child has the police called on him when he accidentally mows the wrong lawn.³⁴⁶

June 23, 2018 — A San Francisco child has the police called on her while she is selling bottled water. The caller reports the child for “illegal-

341. Neki Mohan, *Women Consider Suing Walgreens After They Claim They Were Racially Profiled*, LOCAL 10 NEWS (June 20, 2018), <https://www.local10.com/news/florida/miramar/women-consider-suing-walgreens-after-they-claim-they-were-racially-profiled>.

342. Donesha Aldridge & Natisha Lance, *'Racial Profiling at Its Finest' | Black Doctor Says Man Used SUV to Keep Her out of Her Community*, 11 ALIVE (June 20, 2018), <https://www.11alive.com/article/news/local/racial-profiling-at-its-finest-black-doctor-says-man-used-suv-to-keep-her-out-of-her-community/85-566091272>.

343. Mark Naymik, *Bahama Breeze in Orange Village Calls Police on Black Sorority over Bill Dispute*, CLEVELAND (June 20, 2018), https://www.cleveland.com/naymik/index.ssf/2018/06/bahama_breeze_in_orange_villag.html.

344. Lana Bellamy, *Shopper, Police Don't See Eye to Eye over Pharmacy Incident*, RECORD ONLINE (June 22, 2018), <https://www.recordonline.com/news/20180622/shopper-police-dont-see-eye-to-eye-over-pharmacy-incident>; Lana Bellamy, *Case Dismissed Against Middletown Woman Arrested at Rite Aid*, RECORD ONLINE (Sept. 26, 2018), <https://www.recordonline.com/news/20180926/case-dismissed-against-middletown-woman-arrested-at-rite-aid>.

345. *Philly Movie Theater Calls Police, Separates Parents from Kids: Couple Says*, NBC PHIL. (June 29, 2018), <https://www.nbcphiladelphia.com/news/local/Police-Called-on-Black-Couple-At-Movie-Theater-Separated-From-Kids-486935471.html>.

346. Mays, *supra* note 23.

ly selling water without a permit.” The caller is dubbed ‘Permit Patty’ on social media.³⁴⁷

June 24, 2018 — Morehouse College student Eli Sabur has the police called on him as he is canvassing in Gwinnett County, Georgia. The situation is christened ‘Campaigning While Black.’³⁴⁸

June 25, 2018 — Fresno men Dorian Johnson and his uncle are forced to lie on the ground at gun point when the police are called about a “robbery in progress.” The men were in the process of lawfully purchasing a cell phone.³⁴⁹

June 26, 2018 — Pastor Michael Briese abruptly stops a funeral at Saint Mary’s Catholic Church in Charlotte Hall, Maryland. When an attendee accidentally knocks over the church’s chalice, the pastor calls the police and orders the mainly-African American attendees out of the church. The situation is labelled ‘Mourning While Black’ on social media.³⁵⁰

JULY

July 1, 2018 — A Buckhead, Atlanta woman has the police called on her for smoking outside in a parking lot. A White neighbor demands she stop smoking, and when she refuses, law enforcement is contacted. The neighbor is dubbed ‘Newport Nancy’ on social media.³⁵¹

July 2, 2018 — A Black family has the police called on them at a Subway in South Georgia. An employee reports them for “going back and forth to the bathrooms” and “possibly putting soda in water cups.” The officer apologizes to the family, explaining that the employee was been suspicious because she had been robbed before.³⁵²

July 3, 2018 — Former Teen Vogue editor-in-chief Elaine Welteroth has the police called on her when her Uber driver refuses to take her

347. See *supra* note 31.

348. Faith Abubey & Hope Ford, 2 *Morehouse Students Surrounded by Police While Campaigning for Korean American Candidate*, 11 ALIVE (July 15, 2018), <https://www.11alive.com/article/news/politics/2-morehouse-students-surrounded-by-police-while-campaigning-for-korean-american-candidate/85-574086438>.

349. Mackenzie Mays, *Black Men Shopping at T-Mobile Held at Gunpoint by Police After False Burglary Report*, FRESNO BEE (June 29, 2018), <https://www.fresnobee.com/news/local/article214080189.html>.

350. Hemphill, *supra* note 17.

351. Elise Solé, ‘Newport Nancy’ Calls Police on Black Woman Smoking in a Parking Garage, Sparking ‘Smoking While Black,’ YAHOO LIFESTYLE (July 3, 2018), <https://www.yahoo.com/lifestyle/newport-nancy-calls-police-black-woman-smoking-parking-garage-sparking-smoking-black-211338690.html>.

352. Rikki Klaus, *Family Says Subway Employee Called Police on Them Because of Race*, WSB-TV (July 3, 2018), <https://www.wsbtv.com/news/local/family-says-subway-employee-called-police-on-them-because-of-race/782480259>.

to her drop-off location. When she complains, the Uber driver calls the police and falsely states Welteroth physically attacked him.³⁵³

July 3, 2018 — Racine, Wisconsin food truck owner Yogi Edwards has the police called on her twice when bystanders complain that her truck is too loud. Twice law enforcement arrives, check her permits, and leave.³⁵⁴

July 4, 2018 — North Carolina woman has the police called on her and her family as they visit a community pool. The pool manager demands the woman show proof of residency, and then calls law enforcement. The pool manager is given the moniker ‘ID Adam’ on social media.³⁵⁵

July 4, 2018 — Memphis, Tennessee woman Camry Porter and her boyfriend have the police called on them by the pool manager for Porter’s boyfriend wearing socks in the community pool.³⁵⁶

July 6, 2018 — An Ohio child has the police called on him as he delivers newspapers. It was the first day of his paper route in an Upper Arlington community, and a resident reports him as “suspicious.” The situation is labelled ‘Summer Jobbing While Black’ on social media.³⁵⁷

July 6, 2018 — Manager of an Indianapolis apartment complex calls an off-duty police officer after asking Shayne Holland, a Black resident to leave the pool area. The manager is christened ‘Swimming Sheriff Susie’ on social media.³⁵⁸

July 8, 2018 — Mountain View, California woman Erika Martin has the police called on her while she is giving food to a homeless man

353. Carly Stern, ‘*This Happens Too Often, Especially to Black Women*’: Ex-Teen Vogue Editor Posts a Shocking Video of Uber Driver Calling 911 on Her and LYING that She ‘Hit Him’ After He Ordered Her to Get out Blocks Away from Her Destination, DAILY MAIL (July 4, 2018), <https://www.dailymail.co.uk/femail/article-5918069/Uber-driver-calls-911-Elaine-Welteroth-LIES-former-Teen-Vogue-editor-hitting-him.html>.

354. Scott Anderson, *Food Truck Owner Says She Was Harassed by White Residents: Report*, PATCH (July 6, 2018), <https://patch.com/wisconsin/mountpleasant/food-truck-owner-says-she-was-harassed-white-residents-report>.

355. Perez, *supra* note 19; Sarah Newell & John Hinton, *Man Accused of Racism No Longer Employed by Sonoco After Incident at Community Pool in Winston-Salem*, WINSTON-SALEM J. (July 6, 2018), https://www.journalnow.com/news/local/racism-alleged-at-community-pool-after-white-man-asks-black/article_081feb9a-4f15-53be-a4ae-dd91b4e43e26.html.

356. Nina Harrelson, *Mud Island Woman Says She and Boyfriend Racially Profiled at Apartment Pool*, WREG 3NEWS (JULY 5, 2018), <https://wreg.com/2018/07/05/mud-island-woman-says-she-and-her-boyfriend-were-racially-profiled-at-apartment-pool/>.

357. Maria Perez, *Neighbors Called Police on 11-Year-Old Black Boy Delivering Newspapers, Mother Claims*, NEWSWEEK (July 11, 2018), <https://www.newsweek.com/police-called-black-boy-delivering-newspapers-mother-claims-1019401>.

358. Mihir Zaveri, *A Manager Asked a Black Man to Leave the Pool at His Own Apartment Complex*, N.Y. TIMES (July 12, 2018), <https://www.nytimes.com/2018/07/12/us/black-man-asked-pool-incident.html>.

outside of a Safeway. Employees falsely believe that she stole from the store.³⁵⁹

July 11, 2018 — Bay Area woman Zhalisa Clarke has the police called on her when a Raley's grocery store employee falsely believes she is shoplifting. Police arrive and check Clarke's bags and car for stolen goods. None are found.³⁶⁰

July 13, 2018 — Chicago woman Camilla Hudson has the police called on her as she tries to use a coupon at a CVS pharmacy. The employees mistakenly believe that the coupon is fraudulent. The employee is labeled 'Coupon Carl' on social media.³⁶¹

July 16, 2018 — Police are called to a pickup basketball game in Sterling, Virginia when a Black player is accused of fouling another player too hard.³⁶²

July 17, 2018 — San Francisco business owner Viktor Stevenson, has the police called on him when a bystander accuses him of breaking into his own business. Stevenson was checking the store's alarm system when he is reported as an attempted burglar. Even after showing his store key, the four responding officers do not leave until he shows them his ID.³⁶³

July 18, 2018 — New York woman Madonna Wilburn has the police called on her as she tries to use multiple coupons at a Dollar General store. When Wilburn attempts to use the coupons, a White manager accuses her of "trying to take advantage of the system." The situation is dubbed 'Couponing While Black' on social media.³⁶⁴

359. David Williams, *Woman Says Supermarket Called Police on Her While She Was Helping a Homeless Man*, CNN (Aug. 2, 2018), <https://www.cnn.com/2018/08/01/us/police-called-on-good-samaritan-trnd/index.html>.

360. Zhalisa Clarke, *Grocery Shopping While Black*, MEDIUM (July 12, 2018), <https://medium.com/@zhalisaclarke/grocery-shopping-while-black-655689c9fb2e>; *Raley's Shopper Claims She Was Racially Profiled in Citrus Heights Store*, CBS SACRAMENTO (Aug. 28, 2018), <https://sacramento.cbslocal.com/2018/08/28/raleys-racial-profiling-citrus-heights-store/>.

361. Rachel Siegel, *'He Talked to Me Like I Was a Rabid Dog': CVS Employees Call 911 on Black Woman Trying to Use a Coupon*, WASH. POST (July 16, 2018), https://www.washingtonpost.com/business/2018/07/16/he-talked-me-like-i-was-rabid-dog-cvs-employees-call-black-woman-trying-use-coupon/?utm_term=.5fa172743092; Angela Helm, *'Coupon Carl' Calls Cops on Black Woman at CVS for Allegedly Using a Forged Coupon, But Was Busted Himself for Forgery Less Than 2 Years Ago*, THE ROOT (July 15, 2018), <https://www.theroot.com/coupon-carl-calls-cops-on-black-woman-at-cvs-for-allegedly-using-a-forged-coupon-but-was-busted-himself-for-forgery-less-than-2-years-ago>.

362. Crockett, Jr., *supra* note 20.

363. Anser Hassan, *'Just Another Day in America': Police Called on Black Owner of High-End San Francisco Lemonade Stand*, NBC BAY AREA (July 21, 2018), <https://www.nbcbayarea.com/news/local/Police-Called-on-Business-Owner-in-San-Francisco-488824341.html>.

364. *See supra* note 18.

July 18, 2018 — Smith College student Omumou Kanoute has police called on her as she eats lunch in an empty classroom.³⁶⁵

AUGUST

August 7, 2018 — Wisconsin county supervisor Shelia Stubbs has police called on her when she is campaigning. The caller wrongfully accuses Stubbs of being a drug dealer.³⁶⁶

August 9, 2018 — New York state senator Jesse Hamilton has the police called on him while he passes out campaign fliers on a public subway stop. The caller, apparently angered by Hamilton's politics, demands that he stop campaigning. When he refuses, she calls the police.³⁶⁷

August 9, 2018 — North Carolina woman Sherell Bates has police called on her in a Staples store while she is shopping for school supplies for her children. Bates, who was eight-months pregnant at the time, is falsely accused of shoplifting by employees. Bates is forced to expose her stomach to prove she is not stealing.³⁶⁸

August 9, 2018 — Seattle man Reymon Leavell is the victim of a 'swatting' call, as he listens to music in a public library. Leavell, who is developmentally delayed, is handcuffed when a caller fraudulently claims to be suicidal. Police arrive, assume Leavell is the caller, and handcuff him. It is not clear whether the caller intended Leavell to be a victim.³⁶⁹

August 9, 2018 — A Black Delta Airlines passenger named Arlene (who declined to give her last name) has the police called on her when she attempts to file a claim for her damaged luggage at Delta's Boston Logan International Airport baggage service office. When the customer requests the manager and the employee refuses, the employee calls the police claiming the customer "won't leave the office." The employee is dubbed 'Baggage-claim Becky' on social media.³⁷⁰

365. Victor, *supra* note 6.

366. Gomez, *supra* note 21.

367. Erin B. Logan, *A Democrat Was Passing out Fliers on a City Sidewalk. A Trump Supporter Called Police*, WASH. POST (Aug. 10, 2018), https://www.washingtonpost.com/news/powerpost/wp/2018/08/10/a-democrat-was-passing-out-fliers-on-a-city-sidewalk-a-trump-supporter-called-police/?utm_term=.4ea45ae64314.

368. Natalie O'Neill, *Cop Humiliates Pregnant Woman, Accuses Her of Shoplifting*, N.Y. POST (Aug. 13, 2018), <https://nypost.com/2018/08/13/cop-humiliates-pregnant-woman-accuses-her-of-shoplifting/>.

369. Elisa Hahn, *Seattle Police Blame 'Swatting' for Handcuffing of Wrong Man at Library*, K5 NEWS (Aug. 10, 2018), <https://www.king5.com/article/news/local/seattle-police-blame-swatting-for-handcuffing-of-wrong-man-at-library/281-582514861>.

370. Alexandra Deabler, *Delta Apologizes for Calling Police on Black Customer for Trying to File a Claim over Damaged Luggage*, FOX NEWS (Sept. 20, 2018), <https://www.foxnews.com/travel/delta-apologizes-for-calling-police-on-black-customer-for-trying-to-file-a-claim-over-damaged-luggage>; Elise Solé, *'Baggage Claim Becky': Delta Apologizes for*

August 10, 2018 — An Arizona teenager has the police called on him for wearing a bandana to school.³⁷¹

August 14, 2018 — Milwaukee, Wisconsin man Corvontae Davis, has the police called on him while trying to get change for a parking meter from his car. A bystander believes he is breaking into the car and tells the police a suspicious person was “rummaging through a vehicle.”³⁷²

August 24, 2018 — 20-year-old Jermayne Smith is held at gun point while a civilian calls the police. Smith was crossing the street when the civilian mistakenly believes he is breaking into his car. He demands Smith get on the ground and threatens him with a firearm until the police arrive. When they do, they handcuff Smith but subsequently let him go claiming there was a “misunderstanding.” Despite demands for information, the police department has yet to follow up on the ordeal.³⁷³

SEPTEMBER

September 15, 2018 — University of Massachusetts employee Reginald Andrade has the police summoned on him for walking to work when someone reports an “agitated Black male” walking across campus.³⁷⁴

September 19, 2018 — An unnamed Black teenager has the police called on him when a White couple bumped into him and he confronts them in Bay Area, California. They refuse to apologize, assaulted the youth, and thereafter summon the police.³⁷⁵

Calling the Police on Black Woman with Damaged Luggage, YAHOO LIFESTYLE (Sept. 19, 2018), <https://www.yahoo.com/lifestyle/baggage-claim-becky-delta-apologizes-calling-police-black-woman-damaged-luggage-214734984.html>.

371. Solé, *supra* note 30.

372. See *supra* note 25.

373. *Policing Questions Remain After Bridgeport Man Pulls Gun on Civilian*, CBS CHI. (Aug. 31, 2018), <https://chicago.cbslocal.com/2018/08/31/policing-questions-remain-after-bridgeport-man-pulls-gun-on-civilian/>; Roseanne Tellez, *Police, Fire Departments Not Investigating After White Firefighter Pulls Gun on Black Man; ‘They Think This Is a Game,’* CBS CHI. (Oct. 26, 2018), <https://chicago.cbslocal.com/2018/10/26/white-firefighter-pulls-gun-on-black-man-jermayne-smith-no-investigations-fire-police-department/>.

374. Hayley Johnson, *Anonymous Tip Sent to UMPD About Claims of an ‘Agitated Black Male;’ University Employee was Walking to Work*, DAILY COLLEGIAN (Sept. 15, 2018), <https://dailycollegian.com/2018/09/anonymous-tip-sent-to-umpd-about-claims-of-an-agitated-black-male-university-employee-was-walking-to-work/>.

375. Laura Waxmann, *Rapper, ‘Frisco Five’ Protester Equipto Arrested in Mission District Confrontation with Police*, S.F. EXAMINER (Sept. 19, 2018), <http://www.sfexaminer.com/rapper-frisco-five-equipto-arrested-mission-district-confrontation-police/>; Julian Mark, *Activists Gather at Mission Police Station to Protest Two Arrests on Valencia Street*, MISSION LOCAL (Sept. 19, 2018), <https://missionlocal.org/2018/09/protesters-gather-at-mission-station-to-protest-two-arrests-on-valencia-street/>.

OCTOBER

October 7, 2018 — Marietta, Georgia man Corey Lewis has the police called on him while he is babysitting two White children, when a bystander believes him to have kidnapped them. The responding officer speaks to the children, and contacts their parents who are stunned by the situation. Lewis' Facebook Live broadcasts of the situation quickly goes viral and is dubbed 'Babysitting While Black.'³⁷⁶

October 10, 2018 — Washington, D.C. man Juan-Pablo Gonzalez, a Black student at the Catholic University of America, has the police called on him as he tries to gain entrance to the university's law library. Seven officers respond and escort Gonzalez from the library. The situation is labeled 'Studying While Black' online.³⁷⁷

October 12, 2018 — Brooklyn, New York child Jeremiah Harvey has the police called on him by Teresa Klein, who falsely accuses him of sexual assault. Klein is dubbed 'Cornerstore Caroline' on social media.³⁷⁸

October 12, 2018 — St. Louis man D'Arreion Toles has the police called on him by a building manager who does not believe he lives in the condominium complex. The manager demands to see Toles' key fob and then blocks his entrance into the building. She follows Toles to his apartment and calls the police. She is labeled 'Key-fob Kelly,' and a Facebook video of the interaction is watched over 4 million times.³⁷⁹

October 14, 2018 — An unnamed Florida father has the police called on him when he cheers on his son at a soccer game. A bystander reprimands the father for harassing the referee, when in actuality he is speaking to his son. The father offers to leave the game, but the bystander calls the police claiming she "fear[s] for herself and the children's safety," and "she didn't know what the father was capable of." The incident goes viral when another parent recording the situation, posts it on Facebook and labels it 'Soccer While Black.'³⁸⁰

376. Kate Redding & Saphora Smith, *Georgia Woman Calls Police on Black Man Babysitting 2 White Kids*, NBC NEWS (Oct. 10, 2018), <https://www.nbcnews.com/news/us-news/georgia-woman-calls-police-black-man-babysitting-2-white-kids-n918476>; Gomez, *supra* note 301.

377. Michael Harriot, *Video: Librarian Calls Cops on Student for Brazen Attempt at #StudyingWhileBlack*, THE ROOT (Oct. 23, 2018), <https://www.theroot.com/video-librarian-calls-cops-on-student-for-brazen-attem-1829940301>.

378. See *supra* notes 141-45 and accompanying text.

379. Melissa Gomez, *White Woman Who Blocked Black Neighbor from Building is Fired*, N.Y. TIMES (Oct. 15, 2018), <https://www.nytimes.com/2018/10/15/us/hilary-brooke-apartment-patty-st-louis.html>; see also D'Arreion Nuriyah Toles, *Untitled Video*, FACEBOOK (Oct. 12, 2018), <https://www.facebook.com/SuccesfulToles/videos/pcb.1837387046315833/1837381202983084/?type=3&theater>.

380. Destiny Johnson, *New Video Shows Ponte Vedra's 'Golfcart Gail' Calling Police on Soccer Dad During Child's Game*, FIRST COAST NEWS (Oct. 16, 2018),

October 14, 2018 — North Carolina anti-violence marchers have the police called when they stop at a gas station. As the group stops at the station to get drinks, the store manager calls the police, telling dispatchers “it’s like a riot out here.” She further claims the group is “destroying the outside of the store.” Based on video footage the group was simply waiting outside the station. They leave before police arrive. The caller is dubbed ‘Gas Station Gail’ on social media.³⁸¹

October 15, 2018 — Portland, Maine student activist Hamdia Ahmed has the police called on her when she and her family are in a Dunkin’ Donuts drive-thru. When employees hear the family speaking Somali, they demand the would-be patrons leave, and then threaten to call the police. When Ahmed enters the store to demand an apology, the employees summon the police who thereafter issue the family a no-trespass notice.³⁸²

October 25, 2018 — Richmond, Virginia VCU Arts professor Caitlin Cherry has campus police called on her by another professor while she eats breakfast in a classroom. When authorities arrive they demand to see her identification.³⁸³

October 28, 2018 — Black canvasser Dr. Amanda Kemp has the police called on her as she is campaigning in Lancaster, Pennsylvania. A resident of the community demands Kemp leave, and when she does not, the resident contacts the police.³⁸⁴

<https://www.firstcoastnews.com/article/news/local/new-video-shows-ponte-vedras-golfcart-gail-calling-police-on-soccer-dad-during-childs-game/77-604841652>; Lapin, *supra* note 300.

381. Elise Solé, ‘Gas Station Gail’: Store Manager Calls the Police on Parents and Children Buying Drinks: ‘It’s Like a Riot out Here,’ YAHOO LIFESTYLE (Oct. 17, 2018), <https://www.yahoo.com/lifestyle/gas-station-gail-store-manager-calls-police-parents-children-buying-drinks-like-riot-201315580.html>.

³⁸² Elisha Fieldstadt, *Dunkin’ Employee Calls Police on Student Speaking SOMali With Her Family*, NBCNEWS (Oct. 19, 2018), <https://www.nbcnews.com/news/us-news/dunkin-employee-calls-police-student-speaking-somali-her-family-n922046>; Mahita Gajanan, *Somali Refugee Says Dunkin’ Employee Called Police Because She Talked in Her Native Language*, TIME (Oct. 19, 2018), <http://time.com/5429508/dunkin-somali-family/>.

383. Kelly Avellino, *Black VCU Professor Says Fellow Professor Called Security on Her While She Ate in Classroom*, NBC 12 (Nov. 28, 2018), <https://www.nbc12.com/2018/11/28/black-vcu-professor-says-fellow-professor-called-security-her-while-she-ate-her-classroom/>.

384. Marie Cusick, *White Woman Calls Police on African American Political Canvasser in Gated Midstate Community*, WITF (Oct. 30, 2018), <https://www.witf.org/news/2018/10/white-woman-calls-police-on-african-american-political-canvasser-in-gated-midstate-community.php>.

October 28, 2018 — Black couple Rashsaan Muhammad and Mattie Khan have the police called on them when they are accused of parking on a cross walk. The caller is dubbed ‘Crosswalk Cathy.’³⁸⁵

October 29, 2018 — Black canvasser Keilon Hill is arrested while he is handing out flyers in West Des Moines, Iowa. A caller reports Hill as a “suspicious person,” and Hill is arrested on a charge of harassment of a public official when he refuses to identify himself to the responding officer.³⁸⁶

NOVEMBER

November 7, 2018 — Fairfax, Virginia woman Tirza Wilbon White is kicked out of a Dunkin’ Donuts and has the police called on her by a Dunkin’ Donuts employee for using the store’s wireless internet without making a purchase.³⁸⁷

November 9, 2018 — Tennessee man Davon Eddington has the police called on him by a neighbor for suspected domestic violence when he states: “I got 99 problems, but a bitch ain’t one”—lyrics from Rapper Jay-Z’s ‘99 Problems.’ The situation is dubbed ‘Rapping While Black.’³⁸⁸

November 9, 2018 — Houston Texas graduate student Ashly Horace has the police called on her when she tries to visit West University library children’s story time as a part of her studies.³⁸⁹

November 12, 2018 — A Black student at University of Texas at San Antonio has the police called on her for propping her feet up during class.³⁹⁰

385. Alex Zielinski, *Woman Calls Cops on Portland Man’s Parking Job. She’s White. He’s Black.*, PORTLAND MERCURY (Oct. 30, 2018), <https://www.portlandmercury.com/blogtown/2018/10/30/24136789/white-woman-calls-cops-on-black-mans-parking-job>; Maria Perez, ‘Crosswalk Cathy’: White Woman Allegedly Calls Cops on Black Couple For Parking Job, NEWSWEEK (Oct. 31, 2018), <https://www.newsweek.com/crosswalk-cathy-white-woman-cops-black-couple-parking-job-1195704>.

386. Jason Clayworth, *Police Video of Black GOP Campaigner’s Arrest in Iowa is Made Public*, DES MOINES REGISTER (Nov. 14, 2018), <https://www.desmoinesregister.com/story/news/crime-and-courts/2018/11/14/officer-body-camera-footage-video-black-campaigner-arrested-west-des-moines-police-profiling-iowa/2006552002/>.

387. Mark Segreaves, ‘I Felt Racially Profiled’: Woman Kicked out of Virginia Dunkin’ Donuts, NBC4 WASH. (Nov. 15, 2018), <https://www.nbcwashington.com/news/local/Woman-Kicked-Out-of-Virginia-Dunkin-Donuts-500653011.html>.

388. *Jay-Z’s ‘99 Problems’ Triggers Police Response for Domestic Violence Call*, TMZ (Nov. 19, 2018), <https://www.tMZ.com/2018/11/19/jay-z-99-problems-police-response-domestic-violence/>; <https://images.tMZ.com/2018/11/16/1116-jay-z-911-report-3.jpg> (the police report).

389. Erica Simon, *Woman Says She Was Unfairly Targeted, Kicked out of West University Library*, ABC7 NEWS (Nov. 15, 2018), <https://abc7news.com/society/police-called-on-black-grad-student-at-west-u-library/4696501/>.

November 14, 2018 — A Los Angeles woman has the police called on her when she accidentally exits a parking lot using the wrong lane.³⁹¹

November 15, 2018 — Washington man Byron Tyrone Ragland has the police called on him while he supervises a custody visit in a frozen-yogurt shop. Store employees feel uncomfortable that Ragland is waiting in the store, and call the store owner to report him. The owner then calls the police. Later reports reveal the owner is not White, but Asian-American. The race of the reporting employees is unknown.³⁹²

November 17, 2018 — A Warwick, Rhode Island man has the police called on him for sitting in his car waiting on a public street. When he refuses to identify himself to a neighbor, the neighbor calls the police to report a suspicious “colored person” sitting in front of his home. The call and police response are broadcast nationally on the program LivePD.³⁹³

November 24, 2018 — Frisco man Ro Lockett is confronted by police when a Finish Line employee falsely accuses him of shoplifting. Lockett is handcuffed and searched in front of his children and other mall shoppers.³⁹⁴

November 26, 2018 — Concord woman Dari Flowers is delivering packages for Amazon, when a White woman accuses her of stealing and calls the police. A Facebook post about the incident is viewed more than 16,000 times.³⁹⁵

390. *Video shows UTSA Student Allegedly Escorted out of Class for Having Feet Propped Up*, NEWS4 SAN ANTONIO (Nov. 12, 2018), <https://news4sanantonio.com/news/local/video-shows-utsa-student-allegedly-escorted-out-of-class-for-having-feet-propped-up>.

391. Tanasia Kenney, *White Woman Angered by a Black Woman’s Driving Makes Herself the Victim on 911 Call: ‘I’m Getting Attacked by Two Black Women,’* ATLANTA BLACK STAR (Nov. 17, 2018), <https://atlantablackstar.com/2018/11/17/white-woman-angered-by-a-black-womans-driving-makes-herself-the-victim-on-911-call-im-getting-attacked-by-two-black-women/>.

392. Danny Westneat, “Unwanted Subject”: *What Led a Kirkland Yogurt Shop to Call Police on a Black Man*, SEATTLE TIMES (Nov. 16, 2018), <https://www.seattletimes.com/seattle-news/unwanted-subject-what-led-a-kirkland-yogurt-shop-to-call-police-on-a-black-man/>; KIRKLAND POLICE DEPARTMENT, FIELD INVESTIGATION DETAIL REPORT, <https://www.documentcloud.org/documents/5142027-Kirkland-Menchie-Police-Report>.

393. *Live PD: November 17, 2018* (A&E television broadcast Nov. 17, 2018) (at 51:00 minute mark).

394. Loyd Brumfield, *‘Being Black, I’m Presumed Guilty’: Dallas Shopper Posts Handcuffing Video After Being Accused of Stealing at Stone Briar*, DALLAS NEWS (Nov. 24, 2018), <https://www.dallasnews.com/news/frisco/2018/11/24/dallas-shopper-irate-after-handcuffed-wrongly-accused-stealing-friscos-stonebriar-centre>.

395. Dari Flowers, FACEBOOK (Nov. 27, 2018), <https://www.facebook.com/9465008123/posts/10156422453593124/> [<https://perma.cc/U9NB-22MM>].

DECEMBER

December 5, 2018 — Tennessee home-care nurse Stephanie Martin has the police called on her when someone reports a suspicious person going door-to-door. Martin, who was visiting a patient for the first time, got lost and knocked on the wrong door before finding her client's home.³⁹⁶

December 7, 2018 — New York woman Jazmine Headley is thrown to the ground and has her toddler son pulled from her arms in a SNAP benefits office. Headley was sitting on the floor because there were no more free seats, and refused to stand when instructed to by a security guard. Police were subsequently called.³⁹⁷

December 15, 2018 — Farmington, Illinois man Mitchell Dutz tells police that James T. Jackson and two other Black men kidnapped his child. In response, police launch a manhunt and issue an Amber Alert. Dutz's claim was fictional, and he fabricated the story when Jackson allegedly robbed him during a drug deal.³⁹⁸

December 17, 2018 — Paul McCowns has the police called on him while trying to cash a check at a Huntington Bank branch in Cleveland, Ohio. The bank falsely accuses McCowns of attempting to cash a fraudulent check. The situation is dubbed 'Banking While Black.'³⁹⁹

December 22, 2018 — Three Black boys between the ages of nine and twelve are detained, searched, and interrogated by seven police officers in Southeast DC, when a man falsely accuses them of threatening him with a knife. The police arrive and pat down the children, but find no weapons.⁴⁰⁰

396. See Williamson County Sheriff's Office Internal Affairs Investigative Case File (Dec. 17, 2018), <https://bloximages.newyork1.vip.townnews.com/wsmv.com/content/ncms/assets/v3/editorial/f/d0/fd086e3e-04db-11e9-9fd6-934e83975da0/5c1c7184ac523.pdf.pdf>; Elise Solé, *Police Investigation Clears Officer of Racially Profiling Nurse: 'I Honestly Don't Feel Like You Deserve a Badge'*, YAHOO LIFESTYLE (Dec. 26, 2018), <https://www.yahoo.com/lifestyle/police-investigation-clears-officer-racially-profiling-nurse-honestly-dont-feel-like-deserve-badge-233528784.html>.

397. *Officers Pry 1-year-old from Brooklyn Mom's Arms During Arrest; Police Investigating*, ABC7 NEW YORK (Dec. 10, 2018), <https://abc7ny.com/society/officers-pry-1-year-old-from-moms-arms-during-arrest/4868592/>.

398. *Bad Drug Deal Leads to Arrest After Amber Alert Hoax*, WGIL (Dec. 16, 2018), <http://www.wgil.com/2018/12/16/bad-drug-deal-leads-to-arrest-after-amber-alert-hoax/>.

399. Shannon Houser, *Cleveland Man Alleges Racial Profiling After Bank Refuses to Cash Check, Calls 911*, CLEVELAND 19NEWS (Dec. 17, 2018), <https://www.cleveland19.com/2018/12/18/cleveland-man-alleges-racial-profiling-after-bank-refuses-cash-check-calls/>.

400. Ariel Glory, FACEBOOK (Dec. 22, 2018), https://www.facebook.com/ariel.gory/posts/2271107109566331?_tn_=K-R; Michael Quander, *DC Officers Stop and Frisk 3 Young, Black Children*, WUSA9 (Dec. 24, 2018), <https://www.wusa9.com/>

December 23, 2018 — Jermaine Massey, a guest at a Portland, Oregon hotel has the police called on him as he is sitting in the lobby making a call to his mother. A security guard who does not believe he is a guest approaches Massey and asked if he was a guest and what his room number was. Despite showing the guard his room key, security summons the police. The security guard is dubbed ‘Hotel Earl’ on social media, and the situation is labeled ‘Calling Your Mother While Black.’⁴⁰¹

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article/news/local/dc/dc-officers-stop-and-frisk-3-young-black-children/65-4aaa3aee-9296-4cd5-802a-74221580a945.

401. Aaron Feis, ‘Hotel Earl’ Calls Cops on Black Man for Making Phone Call in Lobby, N.Y. POST (Dec. 26, 2018), <https://nypost.com/2018/12/26/hotel-earl-calls-cops-on-black-man-for-making-phone-call-in-lobby/>; Mihir Zaveri, *Doubletree in Portland Fires 2 Employees After Kicking out Black Man Who Made Call from Lobby*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/2018/12/28/us/black-man-kicked-out-hotel-portland.html>.

