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Ayesha B. Hardaway

Case Western University School of Law, Ayesha.Hardaway@case.edu

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The Rise of Police Unions on the Back of the Black Freedom Movement

Ayesha Bell Hardaway*

Police unions have garnered the attention of the media and some scholars in recent years. That attention has often focused on exploring the seemingly inexplicable power of police unions to shield problem officers from accountability as a matter of routine. This paper aims to explain that police union power did not surreptitiously arrive on the doorsteps of American cities. Instead, collective bargaining rights for law enforcement began to gain firm footing during the 1960s when the majority of white Americans were firmly committed to the preservation of their place in the nation's racial hierarchy as it related to housing, jobs, education and entertainment. Existing legal scholarship has successfully highlighted the depth and breadth of modern-day union contracts and the undemocratic manner by which problematic provisions within those contracts have been negotiated. This article adds to that research by explaining how the social and political interests of both the electors and the elected merged with the demands of officers sworn to protect their specific interests. Law enforcement served as the first line of attack against efforts to free Black communities from police abuses during the 1960s. Police organizations amassed political power during their fight against Black liberation that netted them collective bargaining rights and secured mayoral seats for "law and order" candidates during the 1960s demonstrated America's deep commitment to unchecked police violence. In short, police unions have effectively accomplished their aim. As such, the solution to the centuries-old problem of police brutality resides with those who have been historically served and relatively unharmed by the violence.

* Associate Professor of Law, Social Justice Law Center, Director, Social Justice Institute, Co-Director. My sincere gratitude to my colleagues Jonathan Adler, Jessica Berg, Avidan Cover, Jessie Hill, Dale Nance, Andrew Pollis and Cassandra Robertson for their feedback. Special thanks to SaraJean Petite and Andrew Dorchak for their research assistance.

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“And the police are simply the hired enemies of this [large Negro population. They are present to keep the Negro in his place and to protect white business interest, and they have no other function.”¹

James Baldwin

“...the Negro in America can scarcely yet be considered – for example – as a part of labor unions – and he is certainly not so considered by the majority of these unions – and that, therefore, he lacks that protection and that incentive.”²

James Baldwin

¹ James Baldwin, *A Report from Occupied Territory*, THE NATION (July 11, 1966), <https://www.thenation.com/article/culture/report-occupied-territory>, (“This article originally appeared in July 11, 1966, issue of The Nation”). [<https://perma.cc/26NT-HNTH>].

² *Id.*

INTRODUCTION

Extrajudicial killings by American law enforcement prompted unprecedented public demonstrations and outrage across the globe during the summer of 2020. The highly publicized murders of George Floyd and Breonna Taylor caught the attention of even those who later admitted to never being aware of the brutal disregard law enforcement can have for Black life. Lifelong organizers, elected officials, community sages, scholars, journalists, along with the previously willfully and otherwise unaware all seemed to be in conversations about how to prevent “another George Floyd.” Others more pointedly discussed how to prevent individuals like Derek Chauvin, with numerous allegations of excessive force, from remaining employed as officers.³

As some looked for solutions to the longstanding problem of excessive police violence, public discourse queried how the role of the local police unions factor into the analysis. In what ways do police unions⁴ make it difficult to hold officers accountable for serious instances

³ Dakin Andone, Hollie Silverman & Melissa Alonso, *The Minneapolis Police Officer Who Knelt on George Floyd’s Neck had 18 Previous Complaints against Him*, Police Department Says, CNN (May 29, 2020) <https://www.cnn.com/2020/05/28/us/minneapolis-officer-complaints-george-floyd/index.html> [https://perma.cc/2UP6-XJVK]; Kim Barker & Serge F. Kovalski, *In Minneapolis, A Rigid Officer Many Disliked*, N.Y. TIMES, July 19, 2020, at 1, <https://global.factiva.com/redir/default.aspx?P=sa&an=NYTF000020200719eg7j0005g&cat=a&ep=ASE> (subscription required) NOTE TO EDITOR: The online version was published the previous day with a different title at this URL: <https://www.nytimes.com/2020/07/18/us/derek-chauvin-george-floyd.html>; Jamiles Lartey & Abbie VanSickle, *Floyd Case Fit Pattern of Roughness by Officer Accused in Killing*, N.Y. TIMES, Feb. 3, 2021, at 1, <https://global.factiva.com/redir/default.aspx?P=sa&an=NYTF000020210203eh230003p&cat=a&ep=ASE> (subscription required). NOTE TO EDITOR: The online version was published the previous day with a different title at this URL: <https://www.nytimes.com/2021/02/02/us/derek-chauvin-george-floyd-past-cases.html>

⁴ Throughout this article I use the phrases police unions, police associations, and police organizations interchangeably. While a main focus of the article involves the presence or absence of official collective bargaining rights, I alternate use of these three phrases to refer to those sworn individuals who participate in organized lobbying and/or engage in litigation on behalf of police officers, regardless of

misconduct? And in what ways do police unions dictate the unwritten, but often well-recognized, culture of a department? Derek Chauvin appeared eerily familiar and smugly comfortable with using his knee on Mr. Floyd's neck for at least 9 minutes and 29 seconds – with blatant disregard for his body's essential need for air. The aggressive show of force, often referred to as the “warrior”⁵ approach to policing, was undeniable. Journalists soon began to report that the Police Officers Federation of Minneapolis sponsored annual training on “killology” at no cost to the city.⁶ The union, in defiance of the mayor's managerial prerogative to no longer have officers receive “warrior-style” police training, denounced the decision as “illegal.” After initial promises to fight the City, the union simply made the training available to Minneapolis officers still interested in receiving it.⁷

The power wielded by the union in Minneapolis is not unique nor is it new. However, some aspects of when and how that power is used are unknown. Policing expert Samuel Walker called attention to the dearth of research on police unions in 2008.⁸ Since that time, scholars⁹

precisely when they secured collective bargaining rights during the 1960s. The following definition of police unions is sufficient for the purposes of this article: “an employee organization which deals with police agency management in a systematic way with respect to questions of wages, hours, and conditions of work.” Hervey A. Juris, *The Implications of Police Unionism*, 6 LAW & SOC'Y REV. 231, 234 (1971).

⁵ Bryan Schatz, “Are You Prepared to Kill Somebody?” *A Day with One of America's Most Popular Police Trainers*, MOTHER JONES (Mar./Apr. 2017), <https://www.motherjones.com/politics/2017/02/dave-grossman-training-police-militarization/> [https://perma.cc/JTM6-LW96].

⁶ Inae Oh, *Minneapolis Banned Warrior-Style Police Training. Its Police Union Kept Offering It Anyway*, MOTHER JONES (May 28, 2020), <https://www.motherjones.com/crime-justice/2020/05/bob-kroll-minneapolis-warrior-police-training/> [https://perma.cc/D2FW-C3YY]; Melissa Segura, *There's One Big Reason Why Police Brutality is So Common in The U.S. and That's the Police Unions*, BUZZFEEDNEWS (June 1, 2020 7:05 p.m.), <https://www.buzzfeednews.com/article/melissasegura/police-unions-history-minneapolis-reform-george-floyd> [https://perma.cc/U2JC-85UW].

⁷ Danny Spewak, *Minneapolis police officers now banned from 'warrior-style' training*, KARE11 (Apr. 19, 2019) <https://www.kare11.com/article/news/mpd-officers-now-banned-from-warrior-style-training/89-240421f4-7d10-4034-853b-cfcbc410c0c5> [https://perma.cc/3FP8-LW4B]

⁸ Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRAC. & RES. 95 (2008).

⁹ Stephen Rushin & Allison Garnett, *State Labor Law and Federal Police Reform*, 51

have explored how union contracts impede officer accountability.¹⁰ It is well-known that conflict between law enforcement and Black communities across the county boiled over throughout the 1960s.¹¹ What has been less explored is how white America's fight against Black liberation during the 1960s bestowed to police unions their often-unmatched power to dictate the policy and culture of municipal policing. Understanding the origins of the rise of police unions is essential as many decision makers seek to address the problem of unions, their influence on the culture of police brutality, and the number of ways that unions have handcuffed departments from holding officers accountable.

Journalists and historians have long framed Black liberation leaders and organizations as "militant."¹² This characterization was used not just for organizations that promoted principles of self-

GA. L. REV. 1209 (2017).

¹⁰ The word accountability is used often in policing scholarship and throughout this Article. See, Samuel Walker, *POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT*, 7 (2001) (providing a definitional framework for two distinct functions of police accountability in a democratic society where police are theoretically accountable to the people and to the law: 1) creation of processes and mechanisms by which the elected and appointed officials and 2) ensure that police officers conform with due process and equal protection requirements of the law.)

Several scholars have specifically focused on police unions and the various ways they serve as roadblocks to reform efforts. See, e.g., Catherine Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712 (2017) (exploring how labor law can impact organizational change in police unions); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 799 (2012) (identifying collective bargaining agreements as deterrents to the prevention of unconstitutional police practices); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017) (analyzing 178 police union contracts to illustrate how they impede accountability efforts); Seth Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179, 2211 (2014) (arguing collective bargaining agreement provisions related to disciplinary grievances impeded the discipline of officers). Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS PUB. L. REV. 57, 72 (2013) (discussing how unions use political leverage to elect mayors who are more inclined to appoint police chiefs who are not committed to leading organizations that insist on accountability).

¹¹ WALKER, *POLICE ACCOUNTABILITY*, *supra* note 10, at 25 (stating that there was a "police-community relations crisis" in the 1960s).

¹² Timothy J. Lombardo, *Civil Rights and the Rise of Frank Rizzo in 1960s Philadelphia*, PA. LEGACIES, Fall 2018, at 14, <https://www.jstor.org/stable/10.5215/pennlega.18.2.0014> [<https://perma.cc/KL57-8EBL>].

defense in response to white violence. It was also used to describe the struggle of Black liberation leaders using non-violent demonstrations and written publications to inform their communities and others about the unequal, unjust and uniformly violent response they were experiencing in the employment, educational, and law enforcement sectors. Militant is used to describe those who sought to enjoy the freedom of their equal rights as articulated by the United States Supreme Court and Congress. Recent scholarship makes the dangerous error of equating local NAACP leader Cecil B. Moore's non-violent, direct action demonstrations with that of gun-toting, bill club wielding of Frank Rizzo and the Philadelphia Police Department.¹³

There are still attempts to frame the American backlash following civil rights progress as the rise of conservatism in response to Black "militants." Yet, considering the ever-present racial and subjugation, it is hard to imagine that anything less had previously been in place.¹⁴ Perhaps these accounts simply strive to point out that at a time when the federal high court and some local and federal officials had begun to institute laws and practices aimed at addressing racial oppression, the white electorate showed that they were not in support of those advancements. Instead, white community members publicly sided with the police who were protecting their interests. This evolved into more than the traditional election of political candidates in favor of preserving America's racial hierarchy. It expanded to vocal support of a personified police force as its own distinct cause. This is demonstrated not only by the election of police leaders to the highest seat in municipal government, but also to the passage of several state collective bargaining statutes that coincided with police violence and uprisings in American cities during the 1960s.

Many current conversations about the problem of American policing include some discussion of the role and impact of police unions. Recently, it seems that inquiries on how to hold police accountable surface with each high-profile officer-involved killing or instance of police misconduct. And for good reason. Examples of

¹³ *Id.* at 4 ("Moore's aggressive campaign and Rizzo's equally aggressive policing...").

¹⁴ Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992).

repeated instances of prior misconduct and/or abuse by officers involved in recent police killings have led some to question how problem officers were allowed to remain employed as law enforcement officials.

Deputy Michael Jason Meade, known to improperly use his faith to justify using force, shot and killed Casey Goodson.¹⁵ Officer Jason Van Dyke, the subject of twenty citizen complaints, shot and killed Laquan McDonald.¹⁶ Officer Daniel Pantaleo, had four sustained complaints out the twenty-one alleged against him, killed Eric Garner by using a chokehold.¹⁷ Officer Timothy Loehmann, known to be unfit to for law enforcement duty, shot and killed Tamir Rice.¹⁸ Officer

¹⁵ Danae King, *Ohio Deputy Who Killed Casey Goodson Has Used Faith to Justify Use of Force Before*, U.S.A. Today (Dec. 29, 2020), <https://www.usatoday.com/story/news/nation/2020/12/29/who-jason-meade-deputy-who-killed-casey-goodson-columbus-ohio/4070790001/> [https://perma.cc/HC5Q-EN62].

¹⁶ Johanna Wald, *Chicago Cop Jason Van Dyke's Record Was a Warning Sign*, THE MARSHALL PROJECT (Oct. 28, 2018), <https://www.themarshallproject.org/2018/10/28/warning-signs-were-clear-before-laquan-mcdonald-s-murder> [https://perma.cc/R5YD-YJX9].

¹⁷ Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold Is Finally Released*, CNN (June 23, 2020), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html> [https://perma.cc/3QST-57PM]; Carimah Townes & Jack Jenkins, *EXCLUSIVE DOCUMENTS: The disturbing secret history of the NYPD officer who killed Eric Garner*, ThinkProgress (Mar. 21, 2017), <https://archive.thinkprogress.org/daniel-pantaleo-records-75833e6168f3/> [https://perma.cc/7ZXH-VPCP]; See generally Daniel Pantaleo, THE MARSHALL PROJECT, <https://www.themarshallproject.org/records/4290-daniel-pantaleo> [https://perma.cc/Q3K6-SS5R] (updated June 19, 2021).

¹⁸ Joshua Barajas, *Cleveland Police Officer Who Shot Tamir Rice Was Unfit For Duty Years Ago, Records Show*, PBS (Dec. 3, 2014), <https://www.pbs.org/newshour/nation/cleveland-police-office-shot-tamir-rice-unfit-duty-years-ago-police-reports-show> [https://perma.cc/7SLX-9S96] (Deputy Chief Jim Polak “did not believe Loehmann was mature enough to work at [Independence Police Department], due to a ‘dangerous loss of composure during live range training and his inability to manage this personal stress.’”); Adam Ferrise, *Cleveland Officer Who Shot Tamir Rice Had 'Dismal' Handgun Performance for Independence Police*, Cleveland.com (Jan. 12, 2019), https://www.cleveland.com/metro/2014/12/cleveland-police-officer-who_s.html [https://perma.cc/86NN-EU9V] (Loehmann “had issues with handling guns during his brief tenure with [the Independence, Ohio] police department.”); Matthew Haag, *Cleveland Officer Who Killed 12-Year-Old Is Hired for an Ohio*

Adam Coy, with ninety civilian complaints against him, shot and killed Andre Hill.¹⁹ Sergeant Percy Dupra shot and killed Michelle Cusseaux.²⁰ Patrolmen Scott Aldridge and Bryan Myers tasered Tanisha Anderson and slammed her to the ground. She died. Aldridge was known to have previously violated use of force policies and lied about the prior incident.²¹ Police also killed Lajuana Phillips, Crystal Danielle Ragland, Latasha Nicole Walton, and April Webster, but media coverage of Black women killed by police is often lacking.²²

Police constitute a significant part of America's democracy. Communities throughout the United States continue to confront elected and appointed officials with demands for police accountability. As enforcers of the law, it is expected that they adhere

Force, N.Y. Times, Oct 9, 2018, at A18, <https://www.proquest.com/historical-newspapers/cleveland-officer-who-killed-12-year-old-is-hired/docview/2611709080/se-2?accountid=9920> (subscription required) NOTE TO EDITOR: This was published online the previous day at: <https://www.nytimes.com/2018/10/08/us/timothy-loehmann-tamir-rice-shooting.html> (The police department in Bellaire, Ohio hired Timothy Loehmann).

¹⁹ Joe Castle & Chandler Boese, *What to know about Adam Coy, ex-Columbus officer charged with murder in Andre Hill's death*, USA TODAY (Feb. 4, 2021), <https://www.usatoday.com/story/news/local/2021/02/04/andre-hill-shooting-columbus-officer-coys-history-discipline-firing/4386008001/> [<https://perma.cc/W7DX-MCCP>].

²⁰ Sergeant Percy Dupra shot and killed Michelle Cusseaux. Miriam Wasser, *Phoenix Cop Who Killed Michelle Cusseaux Violated Department Policy, PPD Board Rules*, PHOENIX NEW TIMES (Sept. 18, 2015), <https://www.phoenixnewtimes.com/news/phoenix-cop-who-killed-michelle-cusseaux-violated-department-policy-ppd-board-rules-7670775> [<https://perma.cc/2T36-V5RV>].

²¹ Brandon Blackwell, *Cleveland cop involved in Tanisha Anderson death lied about past use-of-force case*, CLEVELAND.COM (Jan. 12, 2019), https://www.cleveland.com/metro/2015/01/cleveland_cop_involved_in_tani.html [<https://perma.cc/2VUW-RP55>]; Brandon Blackwell, *Cleveland woman with mental illness died after police used takedown move, brother says*, CLEVELAND.COM (Nov. 14, 2014), https://www.cleveland.com/metro/2014/11/cleveland_woman_with_mental_il_1.html [<https://perma.cc/M58L-6VWN>] (updated Jan. 12, 2019).

²² Alex Samuels, Dhrumil Mehta & Anna Wiederkehr, *Why Black Women Are Often Missing from Conversations About Police Violence*, FIVETHIRTYEIGHT (May 6, 2021), <https://fivethirtyeight.com/features/why-black-women-are-often-missing-from-conversations-about-police-violence/> [<https://perma.cc/WVW3-EAQ6>].

to the rule of law.²³ Yet, with extrajudicial authority to use deadly force and no consistent accountability measures to control the same, American police have effectively been excluded from that basic control mechanism. Recent civil unrest and uprisings in American cities have left many with questions regarding the intractable nature of disproportionate police brutality in Black communities.

Journalists²⁴, scholars²⁵, and organizations²⁶ have examined how police unions impede officer accountability. Some politicians and police reform experts point to the unchecked power of police unions. Scholars have gone one step further by identifying collective bargaining contracts as the source of that unchecked power. No one has yet explored the alignment of anti-Black socio-political interests that prompted governments to grant police officers the right to collectively bargain in the first place or the current political advantages gained by politicians whose strong support for law enforcement has played a role in contract negotiations.

²³ Jerome H. Skolnick, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY*, 5-6 (1966) (discussing the expectation of some that police “adhere strictly to the rules governing the legal system...[and] ultimately be accountable.”) Richard J. Terrill, *Police Accountability in Philadelphia: Retrospects and Prospects*, 7 AM. J. POLICE 79, 79 (1988).

²⁴ Naom Scheiber, Farah Stockman and J. David Goodman, *How Police Unions Became Such Powerful Opponents to Reform*, N.Y. TIMES (June 6, 2020) <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html> [<https://perma.cc/MH6N-8B6K>]; Michael H. Keller and Kim Barker, *Police Unions Won Power Using His Playbook. Now He’s Negotiating the Backlash*, N.Y. TIMES (Mar. 10, 2021) <https://www.nytimes.com/2021/03/10/us/police-unions.html> [<https://perma.cc/HD6X-HUG8>]; Daniel DiSalvo, *The Trouble with Police Union National Affairs* (Fall 2020) <https://www.nationalaffairs.com/publications/detail/the-trouble-with-police-unions> [<https://perma.cc/WJS3-AVQW>]; Dylan Matthews, *How police unions became so powerful - and how they can be tamed*, VOX (Jun. 24, 2020) found at <https://www.vox.com/policy-and-politics/21290981/police-union-contracts-minneapolis-reform> [<https://perma.cc/U2RT-5766>].

²⁵ Paul F. Clark, *Why police unions are not part of the American labor movement*, THE CONVERSATION (Aug. 25, 2020) <https://theconversation.com/why-police-unions-are-not-part-of-the-american-labor-movement-142538>; [<https://perma.cc/747F-V994>]; *supra* note 10.

²⁶ *Bargained Away*, ACLU OF CONNECTICUT, https://www.acluct.org/sites/default/files/field_documents/bargained_away_2020.pdf [<https://perma.cc/734J-U664>]; Fair Police Contracts, *Campaign Zero* <https://campaignzero.org/contracts.html> [<https://perma.cc/RZS4-BKM6>].

Contractual provisions for officers in jurisdictions with law enforcement collective bargaining rights have been singled out as contributing to a national police culture that overlooks dastardly policing and protects the employment rights of officers. It cannot be overstated how critically important it is for elected and appointed officials to understand the extent of their managerial authority in public employee negotiations to remove contractual provisions that impede reform efforts. Yet, we must not underestimate the pro-law and order, anti-Black culture that has existed in America long before the rise of police unions. This article aims to discuss how the explosion of state collective bargaining rights for police officers across the northern and western parts of the country was, in some measure, a reward for their enforcement of racial segregation and subordination during the Black Freedom Movement.

This project seeks to counter beliefs that police unions are unchecked, self-empowering entities. Instead, they are largely the product of America's anti-Black socio-political climate. This article details a portion of the origins of police unions during the 1960s. It connects the rise of police unions and individual leaders to the continued brutal treatment of Black community members. To be sure, this lone article does not aim to cover the multi-faceted labyrinth that gave rise to widespread police unionization from 1965 to present. Instead, it describes some of the ways that police union interests and activities served to quell progress of the Black liberation movement.²⁷ Doing so preserved white local interests and power. In short, this Article aims to demonstrate that the history of police associations securing collective bargaining rights was the result of converging interests of government leaders seeking to quiet Black liberation uprisings during the 1960s and the longstanding efforts of law

²⁷ The term Black liberation used throughout this article is aligned with Hasan Jeffries articulation of Black freedom as the struggle of Black people to secure both civil rights and human rights stretching back to the moment the first enslaved Africans were brought to what became the colony of Virginia in 1619 and extending beyond the Black Power movement of the 1960s and 1970s. See, Hasan Kwame Jeffries, *Freedom Rights Reconsidering the Movement's Goals and Objectives in UNDERSTANDING AND TEACHING THE CIVIL RIGHTS MOVEMENT*, 74-75 (Hasan Kwame Jeffries ed., 2019)(describing civil rights as the liberty achieved through the passage of laws and human rights as the entitlement to basic rights by virtue of birth).

enforcement organizations to unionize.

This article is the first in a series that explores the political rise of police unions and its accompanying contractual legal landscape over the last five decades. It proceeds in three parts. Part I provides a historical overview of the Black liberation movement from the late 1950s through the early 1960s. It also briefly discusses the history of police unionization efforts from the early 1900s until 1960. Part II details how police associations in selected cities successfully used local courts and public support for “law and order” policing to harness power and limit municipal authority to address police brutality predominately Black communities. Part III explores how police unions successfully personified their professional roles in law enforcement as *de facto* protected class and galvanized political support largely from the white electorate in selected cities. This section highlights details of the notorious political rise of officers to elected office as a strong show of public support for “law and order” policing, along with its concomitant racism at the time, contrary to survey results published by the Academy of Art and Sciences concluding that “white Americans do not want a racist government and that they will not follow racist leaders.”²⁸ The article concludes – using the historical rise of police unions as the backdrop – with a proposal of how Americans who are now questioning the ways they have contributed to the sustainment of discriminatory policing can engage in a form of deliberative constitutionalism²⁹ to avoid prioritizing self-interest over society’s common good.

I. BLACK LIBERATION AND POLICE UNIONIZATION

As the decade began in 1960, so did efforts to test the institutional commitment to the American rule of law. The Supreme Court had handed down landmark decisions³⁰ during the prior decade that upended racial segregation in law and in deed. Direct actions by non-violent demonstrators served as the litmus tests for white America’s

²⁸ Paul B. Sheatsley, *White Attitudes Toward the Negro*, ACADEMY OF ARTS AND SCIENCE, 237 (1966).

²⁹ John J. Worley, *Deliberative Constitutionalism*, 2009 BYU L. REV. 431 (2009)

³⁰ See *Brown v. Board of Education*, 347 U.S. 483 (1954); *Gayle v. Browder*, 352 U.S. 903 (1956)

Boynton v. Virginia, 364 U.S. 454 (1960).

willingness to abide by the rule of law. The nation's failure was undeniably vicious. Black and white people (men, women, and children) participating in sit-ins, Freedom Rides, and marches were arrested, beat, attacked by dogs, firebombed, shot, and hanged.³¹

Policing scholars and other researchers have generally described the relationship between police and the Black community during the 1960s as a "crisis"³² and "increased public hostility."³³ Important scholarship during that time, and since, has explored in great depths either the progression of "police militancy" as the vehicle to union political power³⁴ or recounted the violent clashes between "black militants"³⁵ and law and order police tactics.³⁶ City officials commended officers for their conduct during "race riots" in Rochester, York, PA, New York City, Minneapolis, and Philadelphia. They praised officers despite widespread reports of officer abuse and misconduct. In some instances, officer abuse and excessive force were the precipitating factor that led to uprisings across the country. Others reported that officers failed to provide service to Black community members harmed by white gang members or vigilantes. And still yet, there were reports of police acting in concert with white gangs to commit acts of racial violence and intimidation. The following

³¹ Rhonda Y. Williams, *CONCRETE DEMANDS – THE SEARCH FOR BLACK POWER IN THE 20TH CENTURY*, 70, 89 (2015) (on the "untold number of people who had suffered tremendously in the struggle for freedom by August 1963).

³² Walker, *POLICE ACCOUNTABILITY*, *supra* note 10 at 25.

³³ Hervey A. Juris and Peter Feuille, *POLICE UNIONISM: POWER AND IMPACT IN PUBLIC-SECTOR BARGAINING*, 19 (1973).

³⁴ William J. Bopp, *THE POLICE REBELLION: A QUEST FOR BLUE POWER*, 40-41 (1971); Hervey A. Juris and Peter Feuille, *supra*, 3.

³⁵ It is curious that the behavior of Black liberation activists was described as militant. History shows that violence is more prevalent by groups looking to maintain America's status quo of inequality in the name of law and order. Black liberation activists and other proponents of racial progress are routinely labeled as "militant." As defined, however, that label more aptly fits those who act violently under the guise of law and order to maintain racial hierarchy of white domination and Black subjugation.) (Insert footnote definition of militant describes "combative and aggressive in support of a political or social cause, and typically favoring extreme, violent, or confrontational methods." From the Oxford Languages.

Merriam-Webster defines militant as "engaged in warfare or combat; fighting.

³⁶ Jerome H. Skolnick, *THE POLITICS OF PROTESTS*, 127 (1969); Peter B. Levy, *THE GREAT UPRISING RACE RIOTS IN URBAN AMERICA DURING THE 1960S* (2018).

subsection explores the abrupt increase in police collective bargaining rights after years of rejection.

A. *The Black Liberation Movement – Beyond Civil Rights*

This section provides a brief background of the liberation struggle during that decade. It is neither possible nor essential to include a comprehensive historical account in a single-law review article.³⁷ However, some background is necessary to provide the goals of the movement and how law enforcement served as an institutional enforcer of violence to thwart those goals.

Black liberation in the United States was the comprised of collective parts of the “civil rights militancy, nationalism, and anti-colonialism” in the early 1960s.³⁸ In *Concrete Demands*, historian Rhonda Y. Williams succinctly described Black power as the outgrowth of “white illiberality and oppression.”³⁹ She goes on to explain that it is that reality from which Black people develop a political framework that “placed less faith in white goodwill and paid more attention to the structures of power.”⁴⁰ By the mid-to-late 1960s policing was certainly one of the power structures in America that captured the attention of Black liberation leaders. But the struggle for liberation did not start there.

Individual students, activists and organizers, both nationally and internationally, coalesced around the central topic of Black liberation during the very early 1960s.⁴¹ Though the groundwork for the liberation struggle was laid prior to the sixties,⁴² the beginning of that

³⁷ A number of activists and organizers have provided first-hand accounts of the philosophy, aims, and strategy behind their Black liberation efforts. Likewise, a number of historians have endeavored to document the details of the quest for Black freedom in America. In addition to the works cited here, please also see, Angela Davis, *AUTOBIOGRAPHY OF ANGELA DAVIS* (1974); Elaine Brown, *A TASTE OF POWER – A BLACK WOMAN’S STORY* (1992); Jeffrey Haas, *THE ASSASSINATION OF FRED HAMPTON – HOW THE FBI AND THE CHICAGO MURDERED A BLACK PANTHER* (2010); Amy Jacques Garvey, *BLACK POWER IN AMERICA* (1968).

³⁸ Rhonda Y. Williams, *supra* note 31, at 70 (2015).

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 70.

⁴² *Id.* at 71 (discussing CORE’s sit-ins and freedom rides during the 1940s and 1950s).

decade featured increased white violence against peaceful, non-violent demonstrators. This included widely disseminated news coverage of the February 1960 attack on North Carolina A&T students' sit-in at the Woolworth's counter in Greensboro, NC.⁴³ The Student Nonviolent Coordinating Committee (SNCC) was formed two months after the attack on those students.⁴⁴ By the end of 1960, SNCC engaged a national network and organized sit-ins across the country in more than 200 cities.⁴⁵

White violence viciously met these non-violent, aspiring liberators early and often. It is relatively well known that the Freedom Riders were met with unrelenting violence in the South from a staggering number of white people, including police officers, during the interracial demonstration to test the strength of the U.S. Supreme Court's decision in *Boynton v. Virginia*⁴⁶ one year earlier. What is less discussed is the amount of violence suffered by Black people at the hands of white people, both sworn and civilians, outside of the south. Elected officials expended little energy to stop police and white vigilantes from using violence to subvert Black liberation demonstrations.⁴⁷ In short, the federal government refused to enforce the hard-fought protections thought to be conferred to Black people by the U.S. Constitution and subsequent congressional acts while hiding behind concepts of states' rights and local rule.

Black liberation leaders articulated the objectives and guiding principles of their work early on. Years before the Black Panther Party developed their "Ten Point Program," those organizing to establish a life free from oppression and subjugation developed plans such as the "Declaration of Rights," "Wants and Beliefs," "Ten Principles," and an earlier "Ten-Point Program."⁴⁸ That earlier program, written in 1961, was also referred to as the "Monroe Program."⁴⁹ It contained ten points that provided concrete steps local government should take to meet the employment, health, and educational needs of Black people

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 72.

⁴⁶ 364 U.S. 454 (1960).

⁴⁷ Rhonda Y. Williams, *supra* note 31, at 76.

⁴⁸ *Id.* at 78.

⁴⁹ Robert F. Williams, *NEGROES WITH GUNS*, 39 (1962).

in Monroe, North Carolina.⁵⁰ The Monroe Program purposely addressed the discrimination experienced by Black people in that locality.

The Black Panther Party's Ten Point Program, perhaps the most widely known version of these plans was developed five year later in 1966. It retained threads related to economic, educational and health relief. But as the obstinacy to liberation evolved nationally, so did the threads in the Panther's plan.⁵¹ Black unification and self-determination, free from the harmful actions of American subjugation, crystallized as essential to the Black liberation movement. The continued reign of white terroristic violence by both sworn and non-sworn individuals was identified as a direct threat to that Black freedom. Those seeking to upend racist laws and practices were also met at times with "violent white power in the form of armed white cops that enforced those laws with guns and nightsticks."⁵² It is

⁵⁰ *Id.*

⁵¹

http://www.blacklivesmattersyllabus.com/wpcontent/uploads/2016/07/BPP_Ten_Point_Program.pdf

1. "We want freedom. We want power to determine the destiny of our Black community.
2. We want full employment for our people.
3. We want an end to the robbery by the White man of our Black community.
4. We want decent housing, fit for shelter [of] human beings.
5. We want education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our role in the present day society.
6. We want all Black men to be exempt from military service.
7. We want an immediate end to police brutality and murder of Black people.
8. We want freedom for all Black men held in federal, state, county, and city prisons and jails.
9. We want all Black people when brought to trial to be tried in court by a jury of their peer group or people from their Black communities. As defined by the constitution of the United States.
10. We want land, bread, housing, education, clothing, justice and peace."

⁵² Stokely Carmichael, TOWARD BLACK LIBERATION 644 (on the racial segregation and subjugation that oppressed Black people in American cities across the country

in this context that activists and organizers replaced their prior philosophy of non-violence with one of self-defense.⁵³

Self-defense did not exclusively mean bearing arms. Black organizers in the Watts neighborhood of Los Angeles instituted the Community Action Patrol in 1965 to protect its community members from brazen police violence and harassment.⁵⁴ The organization used citizens-band (“CB”) radios, notepads and other technology to monitor police conduct in that neighborhood. Some community members displayed banners “To Protect and Observe” banners on their cars.⁵⁵

Community patrols in Watts were a precursor to the formation of Black Panther Party and its armed patrols of Oakland in 1966.⁵⁶ It did not take long for the California legislature, in May 1967, to criminalize the open carrying of firearms in that state. It was a direct response to the Panther’s armed patrols.⁵⁷ As discussed in greater detail below⁵⁸, police union and appointed officials’ actions during the 1960s sent a strong message that self-determination and self-defense, core American values, were not to be exercised by Black people in America

and left them without any control over their communities or the police who patrol them. Carmichael argues that the lack of power renders Black people unable to change these oppressive conditions).

⁵³ Rhonda Y. Williams, *supra* note 31, at 76.

⁵⁴ Skolnick, *supra* note 36, at 152.

⁵⁵ See *To Protect and Observe* UNITED STATES OF ANXIETY Podcast Episode 50 (describing the 25-30 Community Action Patrol members efforts during the mid-1960s to protect the Black community from police violence and recounting how an LAPD officer brutally shot Leonard Deadwyler during a traffic stop in May 1966 as Mr. Deadwyler drove his pregnant wife to the hospital as she was in active labor.) Found at <https://www.wnycstudios.org/podcasts/anxiety/Radio%20Episodes/4>; See also WE HAVE TO GET THE POLICE OFF OUR BACKS THE STORY BEHIND TALO AND THE COMMUNITY ALERT PATROLS IN WATTS THE MOVEMENT 5 (Sept. 1966) (interview with Chester Wright on how the killing of Leonard Deadwyler and treatment of his wife by police led to the creation of the Temporary Alliance of Local Organizations and their Community Alert Patrols in Watts).

⁵⁶ Skolnick, *supra* note 36, at 152; also find a direct source for BPP patrols.

⁵⁷ *Id.* at 152; Cynthia Deitle Leonardatos, *California's Attempts to Disarm the Black Panthers*, 36 SAN DIEGO L. REV. 947, 948 (1999) (“While many journal articles have been written on the topic of race and guns, none have examined the history and motivations behind the California Legislature's decision to enact a gun control statute in 1967 for the purpose of disarming the members of the Black Panther Party.”)

⁵⁸ *Infra*, Part III.

without forcible resistance from authorities. Part II describes the early pushback from police unions against civilian oversight and other efforts to improve law enforcement legitimacy.

B. Police Associations – The Progress toward Unionization

Others have provided detailed historical accounts of police associations as social clubs seeking to join the labor movement as official unions. Though much of that background is not germane to this particular article, a brief history here is necessary to illustrate the significance of the rapid acceleration of collective bargaining rights and to contextualize its timing.

Police associations were formed largely in the American northeast during the late nineteenth and early twentieth centuries. Historical accounts of the early beginnings of police organizations recount their role of providing general support and social gatherings for officers. But some of the earliest organizations made significant strides in advocating for better work conditions. The Patrolmen's Benevolent Association in New York City began in 1892 and was known as a professional police organization by 1898.⁵⁹ One of its earliest lobbying successes netted eight-hour work days for officers.⁶⁰ Early police associations were formed in two additional cities in the state of New York. Buffalo officers formed the Erie Club in 1894 just two years after the Patrolmen's Benevolent Association.⁶¹ And officers in Rochester officially formed the Locust Club, a reference to the type of wood their nightstick was made of, in 1907.⁶² The three organizations in New York State were followed by the Milwaukee Policemen's Protective Association in 1908, an unnamed association in the District of Columbia in 1908 and Pittsburgh's Fraternal Order of Police Lodge #1 in 1915.⁶³ The Boston Police Strike of 1919 rounds out the early

⁵⁹ Juris and Feuille, *POLICE UNIONISM*, 15 (1973); Leonard Ruchelman, *POLICE POLITICS: A COMPARATIVE STUDY OF THREE CITIES* 15 (1974) (on the historical development of the NYPD PBA and identifying the date it began as a professional organization.)

⁶⁰ Mark Jones and Peter Johnstone, *HISTORY OF CRIMINAL JUSTICE*, 329 (2011).

⁶¹ Juris and Feuille, *supra* note 59, at 15.

⁶² Juris and Feuille, *supra* note 59, 15.

⁶³ *Id.*

twentieth century and is often characterized as historically significant for drastically hindering momentum for police unionism.⁶⁴

Details regarding the origin of Rochester Police Department's Locust Club and the Boston Police Strike of 1919 cover the compensation and lengthy shifts of officers within those departments. They also contain significant information regarding the organizational structure, important dates, and even details regarding name origin.⁶⁵ Another discusses the contentious battles between the New York Police Department, PBA, the Sergeant's Benevolent Association, and city officials from 1940 - 1960s regarding representation authority, rights to the grievance process, and the political calculations of all involved.⁶⁶ It is widely recognized that police associations gained lightning speed success in securing collective bargaining rights during the 1960s. Juris and Feuille apportion some of that success to the tight labor market of the 1950s, the collective bargaining success of teachers in New York City, and the national conversation spurred by President Kennedy's 1962 Executive Order 109888.⁶⁷

The 1960s represents a period of time when police organizations were able to accomplish in in one decade what they had failed to in the previous fifty-plus years; the right to collectively bargain over wages and other employment benefits. Juris and Feuille's seminal work, *Police Unionism: Power and Impact in Public-Sector Bargaining*, provides a timely and extensive account of the evolution of police unions. Their research involved a field study of what they authors

⁶⁴ *Id.* at 17.

⁶⁵ Charles Clottin, THE EVOLUTION OF THE ROCHESTER LOCUST CLUB, 3 found at https://locustclub.org/sites/default/files/locustclub_history.pdf [<https://perma.cc/CX4T-QXZA>].

⁶⁶ Margaret Anne Levi, *Conflict and Collusion: Police Collective Bargaining*, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, 42-44 (Sept. 1974), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/conflict-and-collusion-police-collective-bargaining-police> [<https://perma.cc/TFZ9-Z3AK>].

⁶⁷ Juris and Feuille, *supra* note 59, at 15. *See also*, Levi, *supra* note 66, at 42-44 (detailing how the Patrolmen's Benevolent Association in New York City hired large firm lawyers to utilize the court system to pursue access to the grievance processes detailed in the Little Wagner Act (not collective bargaining rights) after efforts to use political, public, and labor affiliation power with the Teamsters failed).

identify as “twenty-two urban areas.”⁶⁸ Framed in some ways as a retort to Skolnick’s *Politics of Protest*, the work is specifically positioned as an attempt to address the authors’ concerns that police unions were being painted in a negative light by “misinformation and fear of the unknown.”⁶⁹ It sought to provide insight into police unions that were identified as strong economic and political institutions that were “largely unobserved and virtually unstudied.”⁷⁰

The significant impact of the socio-political climate of 1960s on police organizations’ efforts to secure collective bargaining rights is aptly recognized. Yet, the authors present a sanitized rationale for increased law enforcement militancy that they describe as “a logical outcome of increased police dissatisfaction.” Four factors are identified as the source of officer dissatisfaction: “increased public hostility, law-and-order demands on the police, low pay, and poor personnel practices.”⁷¹ They also listed three factors that led to police willingness to use “confrontation tactics”: “the demonstration effect of other public-employee success, the influx of young policemen, and group cohesion.” None of these factors consider the history of racial violence and subjugation enforced by and within law enforcement. The reference to law and order demands being placed upon the police signals that the culture within departments was something other than law and order. There is frankly no support for that premise.⁷² Police unions and their members largely supported aggressive tactics against Black liberation activists and other protesters.⁷³ But the support extended beyond the union halls and police headquarters. The successful political careers of Charles Stenvig in Minneapolis and Frank Rizzo in Philadelphia (among others) are strong indications of a more symbiotic relationship between policer union interests and the

⁶⁸ Juris and Feuille, *supra* note 59, at 4.

⁶⁹ *Id.* at 1.

⁷⁰ *Id.* at 3.

⁷¹ *Id.* at 19-22.

⁷² To the contrary, even prior to the 1960s, concerns of corruption connected to organized crime groups, illegal gambling, and other criminal activity were well documented.

⁷³ *Id.* at 18-19 (describing how those who targeted and denounced the Black Panther Party, Students for a Democratic Society, and others garnered the “loudest ovations” at police association gatherings).

larger community. This relationship was based on the alignment of common interests focused on suppressing racial equality.

Police associations failed to make any substantial headway in the quest to secure collective bargaining rights from 1919 until the 1960s. Though police associations were widespread by 1960, the vast majority of those entities were not recognized as official bargaining units.⁷⁴ Public employee efforts to unionize, particularly among the ranks of police and fire, to unionize were viewed as anti-American challenges to the sovereign authority of elected officials. These efforts were also perceived as counter to the duty assumed by public servants. During this time, police associations unsuccessfully sought to establish connections with national labor organizations to advance their goal of securing collective bargaining rights. Even the national Fraternal Order of Police took an anti-union stance; its leader preferred instead to promote professionalism akin to academics, lawyers, and doctors.⁷⁵ Nevertheless, more than forty years passed in the United States without any meaningful presence from police associations and related organizations.⁷⁶

Police unionization efforts netted significant gains during the 1960s. On a national level, the Fraternal Order of Police had 80, 000 members and was connected to 733 local lodges by 1969.⁷⁷ Though FOP membership did not confer local collective bargaining rights, significant progress was in that realm was also made during the sixties. Law enforcement associations were not without any means of advocating for their members despite not having the statutory right to negotiate with public employers. As discussed above, association leaders lobbied public officials to secure pension and health insurance benefits.⁷⁸ But prior to 1960, law enforcement had statutory collective bargaining rights only in Wisconsin.⁷⁹ By the beginning of the next decade, that number had increased to thirteen. The table below

⁷⁴ *Id.* at 15.

⁷⁵ William J. Bopp, *supra* note 34, at 16.

⁷⁶ John Burpo, *THE POLICE LABOR MOVEMENT: PROBLEMS AND PERSPECTIVES* 6 (1971).

⁷⁷ Juris and Feuille, *supra* note 59, at 28.

⁷⁸ Burpo, *supra* note 76, at 81.

⁷⁹ Juris and Feuille, *supra* note 59, at 12.

identifies the states that enacted mandatory collective bargaining statutes during the 1960s. It does not include those local or state jurisdictions that allowed officers to join police associations but did not require the employer to negotiate contract terms with them.

Table - States with Collective Bargaining Rights Including Police from 1960 - 1969

STATE	YEAR	AUTHORITY
CALIFORNIA	1969	CALIFORNIA STATUTES: 3508
CONNECTICUT	1965	CONN. GEN. STATS., TITLE 5, § 5-271
DELAWARE	1965	DEL. CODE ANN. TITLE 19, §1601
MASSACHUSETTS	1966	GENERAL LAWS OF MASS: TITLE XXI, 150E-6
MICHIGAN	1965	MICHIGAN COMPILED LAWS: 423.215(1)
MINNESOTA	1965	MINNESOTA STATUTES: 179A.06, SUBD. 5
NEW JERSEY	1968	NEW JERSEY STATUTES: 34:13A-5.3
NEW YORK ⁸⁰	1967	N.Y. CIV. SERV. LAW § 204(2)

⁸⁰ There are some who contend that police officers in New York City gained the right to collectively bargain with municipal government in 1958 under what is commonly referred to as The Little Wagner Act. Mayor Robert F. Wagner signed Executive Order 49 on March 31, 1958 also known as "The Little Wagner Act." See, Anthony C. Russo, *Management's View of the New York City Experience*, Proceedings of the Academy of Political Science, 82 (1970). But that appears to be inaccurate based on statements made by Mayor Wagner and those familiar with his administration regarding the intent of the legislation and the political calculus made regarding excluding law enforcement from the Little Wagner Act, specifically as it related to police officers. See, Levi, *supra* note 66, at 25-27. The PBA became what Levi referred to as a de facto union on March 29, 1963 when Mayor Wagner signed an "Executive Order on the Conduct of Labor Relations Between the City of New York and Members of the Police Force of the Police Department." It gave NYC officers collective bargaining rights. Levi, *supra* note 66, at 54.

OREGON	1965	OR. REV. STAT. ANN. § 243.650(4)
PENNSYLVANIA	1968	PA. STAT. ANN 43 § 217.1.10
RHODE ISLAND	1963	R.I. GEN. LAWS ANN. § 28-9.2-4
VERMONT	1967	VT. STAT. ANN. TITLE 21, Ch. 22, §1721
WASHINGTON	1967	WASH. REV. CODE ANN. § 41.56.040

Thirteen states passed legislation requiring government employers to negotiate employment terms with law enforcement. Twelve of the thirteen statutes were passed during the latter half of the decade, from 1965 – 1969. Police associations developed both a national and local network that included tens of thousands of officers. At least 65, 250 officers were members of organizations in states with collective bargaining statutes for police that negotiated or lobbied contract terms with their employer by 1970.⁸¹ There was at least another 6, 400 officers associated with police organizations who continued to lobby for contract terms despite not having collective bargaining rights.⁸² Significantly, law enforcement salaries increased by 38% in just a five-year period – from 1964-1969 – as collective bargaining rights expanded across the country.⁸³

By the mid-to-late 1960s the official collective bargaining rights of that network multiplied at a never-before-seen rate. The previous section detailed the timing of that progress. The following section describes the Black Freedom Movement and America’s general

⁸¹ Juris and Feuille, *supra* note 59, at 34-36 on the number of officers associated with police unions in the jurisdictions surveyed. This number also includes officers in Dayton and Cincinnati, Ohio who reportedly engaged management from a bargaining status but did not have collective bargaining rights conferred via state law.

⁸² *Id.*

⁸³ Burpo, *supra* note 76, at 11. Pay for officers in New York City began to increase in the mid-1950s. After experiencing increases of 16.8% from 1953-1957 and of 14.3% from 1957-1961, New York City officers received a 32.3% increase in the salary compensation from 1961-1965. *See, Levi, supra* note, at 66.

recalcitrance to racial equality in order to contextualize the how police unions were instrumental in maintaining racial subjugation. In exchange, the larger public aligned with police union rejection of accountability.

II. Unions' Legal Fights for Power Gain Political Steam

For more than fifty years, police unions were considered to be antithetical to government sovereignty. That changed drastically in demonstrable ways in the course of a few years. Police associations across most of the country transitioned from social clubs to recognized organizations with significant interface with management. That interface involved either lobbying or negotiating with government officials on issues related to wages, hours, and other work conditions.⁸⁴ Elected and appointed officials in many states, as detailed above, became required to confer with union representatives regarding the needs, interests, and demands of officers. It quickly became apparent that the new power dynamic was not one of equal standing. The following section identifies key instances when police unions in New York City, Rochester, New York and Philadelphia Pennsylvania attacked modest attempts by local governments to increase police accountability to the Black communities. As detailed below, the unions were able to destroy any prospect of ending police brutality in those cities.

A. *Early Wins against External Oversight Gave Unions a "taste of blood"*⁸⁵

Law enforcement officials have generally rejected efforts to grant community members investigative authority into allegations of police

⁸⁴ Judicial opinions have long interpreted this to not mean all topics related to employment. The concept of managerial prerogative originated in private sector labor law disputes. It remains relevant in public sector labor law with many statutes specifically excluding managerial decision making from collective bargaining between public employees and employers. Policy determinations around use of force and discipline have been designated as solely within the managerial prerogative of local governments.

⁸⁵ Skolnick, *supra* note 36, at 281.

misconduct. A panoply of objections has been made to non-sworn community members investigating officers. The objections ranged from assertions that police brutality is not a systemic issue that requires external oversight to denigrating oversight supporters as communists or outside agitators to assertions that only police officers are competent to evaluate the conduct of other officers.⁸⁶ At least eight police unions in American cities levied efforts to defeat community oversight processes during the 1960s.⁸⁷ Such processes, though clearly aligned with current standards of police accountability, were roundly rejected by police unions as radically dangerous for officers.⁸⁸ The following subsections detail three aggressive judicial and public campaigns against community oversight in racially diverse cities during the 1960s by police unions.

1. Philadelphia's Fraternal Order of Police

Philadelphia became home to an influx of Black migrants during the first half of the twentieth century. Black Americans moved to Philadelphia, as they did to Chicago, Detroit, and New York in search of better employment opportunities and refuge from the terrors of the south.⁸⁹ The city reached its highest population numbers in 1950 when it was reportedly the third largest city in the United States.⁹⁰ By 1960, Philadelphia was, by far, home to more Black residents than anywhere else in the state.⁹¹ The arrival of Black Americans in northern cities during the first half of the 1900s brought with it racial tension that was

⁸⁶ Walker, POLICE ACCOUNTABILITY *supra* note 10, at 28.

⁸⁷ Juris and Feuille, *supra* note 59, at 155-156 (identifying New York City, Philadelphia, Rochester, Boston, Buffalo, Pittsburgh, Detroit and Seattle as cities where police unions sought to defeat civilian review entities. This does not include a 1970 challenge in Baltimore.)

⁸⁸ Walker, POLICE ACCOUNTABILITY, *supra* note 10, at 6.

⁸⁹ The largest growth occurred during the Great Migration beginning as early as 1910.

⁹⁰ <https://www.biggestuscities.com/city/philadelphia-pennsylvania> [<https://perma.cc/B5AK-MY99>].

⁹¹ George A. Schnell, *The Changing Distribution of Pennsylvania's Black Population From 1960 to 1970*, PROCEEDINGS OF THE PENNSYLVANIA ACADEMY OF SCIENCE, 35 (1973) (finding 62% of Black residents in the Commonwealth of Pennsylvania lived in Philadelphia in 1960).

not entirely unlike the Jim Crow south they had fled.⁹²

The struggle for Black equality was firmly rooted in Philadelphia. In the early 1940s, organizers there worked to bring attention to blatant segregation that left Black people to live the dilapidated and subpar housing stock.⁹³ Black Philadelphians were forced to send their children to segregated public schools. White Philadelphians, foreshadowing the 1960s, stopped attempts to desegregate the schools by blocking the doors and marking the school property as Ku Klux Klan territory.⁹⁴ Black movement leaders organized “selective patronage” boycotts in 1960 to convince employers who discriminated against Black applicants to provide equal employment opportunities.⁹⁵ This strategy was designed to promptly impact employers who discriminated against Black workers through targeted economic boycotts. Unlike the city’s Commission on Human Relations, from whom the NAACP had requested intervention on this issue more than three years earlier⁹⁶, the targeted boycotts needed on six months to successfully negotiate settlements with at least five major employers.⁹⁷ Black leaders made similar demands on city government regarding the absence of Black workers involved in construction projects.⁹⁸

The virtually all-white police department was widely described by

⁹² Stephen A. Berrey, *Obstacles to Freedom Life in Jim Crow America* in UNDERSTANDING AND TEACHING THE CIVIL RIGHTS MOVEMENT, 67 (Hasan Kwame Jeffries ed., 2019)

⁹³ James Wolfinger, *We Are in the Front Lines in the Battle for Democracy”: Carolyn Moore and Black Activism in World War II Philadelphia*, AFRICAN AMERICANS IN PENNSYLVANIA HISTORY 3 (2005).

⁹⁴ *Id.*

⁹⁵ Matthew J. Countryman, *UP SOUTH – CIVIL RIGHTS AND BLACK POWER IN PHILADELPHIA*, 101-103 (2006) (on the activities of the organization, 400 Ministers, to leverage Black economic power as done in other norther cities during the 1930s and 1940s).

⁹⁶ *Id.* at 102.

⁹⁷ *Id.* at 104-106 (detailing how and when 400 Ministers successfully negotiated plans to resolve discriminatory employment practices at General Baking, Tastykake, Pepsi-Cola, Seven Up, and Coca-Cola.)

⁹⁸ *Id.* 132-148 (describing the ebb and flow of progress in securing employment opportunities for Black skilled workers on public construction projects).

Black community members as “brutal.”⁹⁹ This description is supported by research conducted during the early 1950s that found “police believe that certain groups of persons [Black and Puerto Rican] will respond only to fear and rough treatment.”¹⁰⁰ Reports surfaced of non-white Philadelphians on the receiving end of such racist police practices. Officers reportedly used brutal and discriminatory practices leading to improper arrests.¹⁰¹ Community leaders, though aware of numerous civilian complaints against officers, were unaware of any officer ever being disciplined as a result of those complaints.¹⁰² It was in the face of that stark reality that civil rights leaders advocated for civilian oversight of the Philadelphia Police Department.¹⁰³

⁹⁹ Wolfinger, *supra* note 93, at 3.

¹⁰⁰ William A. Westley, *Violence and the Police*, AMERICAN JOURNAL OF SOCIOLOGY 40 (1953).

¹⁰¹ Joseph D. Lohman and Gordon E. Misner, POLICE AND THE COMMUNITY: THE DYNAMICS OF THEIR RELATIONSHIP IN A CHANGING SOCIETY 213 (1966) (detailing what precipitated to the formation of the Philadelphia Police Review Board in 1958).

¹⁰² *Id.* (detailing what precipitated to the formation of the Philadelphia Police Review Board in 1958). Walker, POLICE ACCOUNTABILITY, *supra* note 10, at 23 (recounting the assertion by the Greater Philadelphia Branch of the ACLU that in the sixteen years prior to the Police Advisory Board creation no officer was disciplined involving a civilian complaint).

¹⁰³ James R. Hudson, *The Civilian Review Board Issues as Illuminated by the Philadelphia Experience*, CRIMINOLOGICA 16, 18 (1968) (discussing testimony offered by the American Civil Liberties Union and National Association for the Advancement of Colored People before Philadelphia City Council’s Committee on Law and Government); Terrill, *supra* note 23, at 79-82 (identifying the ACLU as the organization advocating for the creation of the Police Review Board in Philadelphia in. Also identifying the NAACP and a segment of the Black community as proponents for the Board). Lohman and Misner, *supra* note 101, at 214 (on how the ACLU became convinced that other approaches to addressing civilian complaints against officers for misconduct were unsuccessful).

It is important to note that NAACP support for the Philadelphia’s civilian oversight mechanism diminished greatly over the years. The organization reportedly joined the ACLU during the 1950s in getting elected city officials to consider the implementation of a civilian review board. That support dissipated as changes to the board’s authority and its outcomes revealed the limited impact it had on the ongoing problem of police brutality experienced in Black communities. *See*, Lohman and Misner, *supra* note 101 at, 253-254 (Table 19 detailing complainants’ race and gender demographics for all complaints received by the Police Advisory Board). Instead, the process was viewed as a failed attempt to placate the Black community that continued to bear unjust and harsh treatment at the hands of police. This position earned the NAACP and others decrying the ineffectiveness of the

The Philadelphia Police Review Board was created by executive order on October 1, 1958.¹⁰⁴ Mayor J. Richardson Dilworth had been unable to gain support among city council for external police oversight.¹⁰⁵ The Police Review Board was authorized to evaluate external complaints of police brutality, false arrest, and discrimination.¹⁰⁶ The Board faced challenges from the start. The first challenges were internal. Mayor Dilworth appointed 5 community members to the board but failed to give them operating guidelines, a budget, office space, or staff support.¹⁰⁷ Many community members were reportedly unaware of its existence, much less its role during the Board's early years.¹⁰⁸ Of those that were aware, white Philadelphians largely subscribed to law and order rhetoric and did not want to see their police department "handcuff[ed]."¹⁰⁹

Philadelphia's Fraternal Order of Police levied three court challenges against the creation of the Police Review Board. The first case, filed in 1959, ended with an out-of-court settlement that resulted in clearer articulations of the Board's processes and a name change.¹¹⁰ The newly operationalized Police Advisory Board received community member complaints about their interactions with Philadelphia police. The Board received 499 complaints from 1960

Board as "militant civil rights organizations" in search of "radical reforms" that the Board was not responsible to deliver. *Id.*

¹⁰⁴ Hudson, *supra* note 103, at 18; Terrill, *supra* note 23, at 82 (1988); Ruchelman, *supra* note 59, at 44.

¹⁰⁵ Terrill, *supra* note 23, at 82 (1988).

Corruption was also widely known to be a problem within the Philadelphia Police Department. Details of police acting in their official capacity at the request of local political leaders and openly taking bribes led new city leaders to attempt to reform government practices. *See*, James Hudson, *Police Review Boards and Police Accountability*, LAW AND CONTEMPORARY PROBLEMS at 525 (1971).

Richardson Dilworth served as District Attorney prior to becoming mayor and had received complaints from community members that at least one officer in the department, Frank Rizzo, had ties to the mob in South Philadelphia. *See*, S.A. Paolantonio, FRANK RIZZO: THE LAST BIG MAN IN BIG CITY AMERICA, 55.

¹⁰⁶ Terrill, *supra* note 23, at 82.

¹⁰⁷ Terrill, *supra* note 23, at 83; Hudson, *supra* note 103, at 18.

¹⁰⁸ Terrill, *supra* note 23, 82.

¹⁰⁹ *Id.*

¹¹⁰ Hudson, *supra* note 103, at 19.

through 1965.¹¹¹ Sixty-three percent of the complaints from 1960 to 1966 were filed by those data collectors categorized as non-white.¹¹² People identified as non-white filed more than twice the number complaints categorized as brutality allegations than white complainants.¹¹³ The highest number of complaints, 114, was filed with the Police Advisory Board in 1964.¹¹⁴ This was the same year as the 1964 uprising in Philadelphia. The cover story of the local newspaper included comments from J. Edgar Hoover, Director of the Federal Bureau of Investigation, which decried the Board's existence with claims that the Board "emboldened" people to defy police orders and that the police were paralyzed.¹¹⁵

The FOP filed two additional lawsuits challenging the legality of the board over the next two years. The first came in September of 1965.¹¹⁶ It resulted in a temporary restraining order that suspended the board's activity for five months.¹¹⁷ The union filed a third lawsuit against the city seeking to abolish external community oversight in Philadelphia. A trial court judge found merit in their claims in March 1967.¹¹⁸ Judge Weinrott agreed with the union. The court found that the board improperly served as a judicial tribunal, served to harass officers, and produced anxiety that "must inevitably lessen the effectiveness of police performance." City administration changed in 1962 and brought with it a new mayor who, as discussed in greater detail below, recognized over time the political expediency of being

¹¹¹ *Id.* 23 (Table 4 detailing the number of complaints received by the Police Advisory Board during its years of operation. The table includes the categories of case types, raw number of complaints, and percentage of case type in comparison to the overall number of cases.)

¹¹² Lohman and Misner, *supra* note 101, at 250 (Table 19 detailing complainants' race and gender demographics for all complaints received by the Police Advisory Board).

¹¹³ Hudson, *supra* note 103, at 24 (Table 5 identifying the racial categories of complainants as "white," "non-white," and "unknown." White complainants filed sixty-two complaints that police were brutal during their interaction with police while "non-white" complainants filed 129 of the same type of complaints.)

¹¹⁴ *Id.* at 23.

¹¹⁵ PHILADELPHIA INQUIRER (Sept. 29, 1964).

¹¹⁶ Ruchleman, *supra* note 37, at 45.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

aligned with Police Commissioner Frank Rizzo. Mayor James Tate's administration waited nineteen months to pursue relief from Weinrott's decision.¹¹⁹ Pennsylvania police personnel gained the right to collectively bargain under state law on June 24, 1968.¹²⁰

Though the FOP had the political support of local election officials, courts in Rochester and New York City had approved the legality of external community oversight during the time that passed since the Philadelphia FOP filed its last two challenges. In June 1969, the Pennsylvania Supreme Court eventually upheld the creation of the board by executive order.¹²¹ It also found that its recommendations to the police commissioner were advisory in nature and, therefore, not an illegal judicial proceeding.¹²² Citing judicial opinions regarding external oversight in Rochester and New York City, the Court placed significant weight on the fact that the Board made recommendations that the police commissioner was free to accept or disregard.

2. NYPD Police Benevolent Association

Police officers in New York City were subject to internal investigation beginning in 1955.¹²³ The entity known as the Police Review Board included three sworn officers. Those officers reviewed allegations of misconduct against their colleagues.¹²⁴ John Lindsay was elected mayor of New York City in 1965.¹²⁵ The new mayor also appointed Howard Leary, the former Philadelphia Police Commissioner and a champion of civilian review boards, as NYPD's new commissioner.¹²⁶ Together, they kept one of the mayor's campaign promise and expanded NYPD's internal investigation board of three sworn officers to include four civilians.¹²⁷ The Congress

¹¹⁹ *Id.* 45.

¹²⁰ PA. STAT. ANN 43 § 217.1.10

¹²¹ *Harrington v. Tate*, 435 Pa. 176 (1969).

¹²² *Id.* at 179.

¹²³ Walker, POLICE ACCOUNTABILITY *supra* note 10, at 29.

¹²⁴ Bopp, *supra* note 34, at 10.

¹²⁵ Ruchelman, *supra* note 37, at 39.

¹²⁶ *Id.* at 40.

¹²⁷ *Cassese v. Lindsay*, 272 N.Y.S.2d 325 at 329 (stating that the Police Commissioner enacted General Order No. 14 on May 2, 1966); Ruchleman, *supra* note 37, at 39.

on Racial Equality and others voiced demands for civilian oversight of NYPD officers after Thomas Gilligan, an off-duty Lieutenant, was exonerated by the three deputy commissioners after he shot and killed 15-year-old James Powell in 1964.¹²⁸ Mayor Lindsay also unequivocally announced that it was his responsibility, as a democratically elected leader, to ensure that the “Police Department [was not] a law unto itself.¹²⁹ The board had limited power to only recommend whether the police department should proceed with its own hearings and adjudication processes. Despite the limited purview of the board, the police union was vexed by the erosion of its unchecked and insulated autonomy. The addition of community members to the board was wholly unacceptable to union leadership. Lobbying efforts with state legislatures failed to The New York Police Patrolmen’s Benevolent Association launched an aggressive and expensive campaign – \$500, 000 – to return the board to its original form.¹³⁰ The campaign took the form of a voter referendum promoted through a fear-inducing public campaign¹³¹ and a series of judicial challenges.¹³²

President of the Patrolmen’s Benevolent Association, John Cassese, was the lead plaintiff in a class action lawsuit against Mayor Lindsay and Police Commissioner Howard Leary. The court stressed that the police commissioner had sole authority to enact General Order No. 14 and that he was solely responsible for the disciplinary decisions. The court, though it acknowledged the purpose of increasing community faith in policing, gave legitimacy to police union assertions that only sworn personnel should have the authority

¹²⁸ Martin Arnold, *Police Board Absolves Gilligan in Slaying of Negro Teen-Ager*, N.Y. TIMES (Nov. 7, 1964).

¹²⁹ *Id.* at 40.

¹³⁰ Juris and Feuille, *supra* note 59, at 49; *see also* Ed Cray, *The Politics of Blue Power in THE POLICE REBELLION: A QUEST FOR BLUE POWER* 53, 56 (William J. Bopp ed., 1971) (on expensive nature of campaign “PBA poured great sums of money into the campaign against the board.”)

¹³¹ Ruchelman, *supra* note 59, at 85 (describing advertisements used by PBA to scare community members about the rise violent crime that would occur and the safety of young girls if the CPRB was allowed to exist).

¹³² William J. Bopp, *The New York City Referendum on Civilian Review in THE POLICE REBELLION: A QUEST FOR BLUE POWER*, 124-129 (William J. Bopp, ed. 1971).

to make policy and procedure decisions.¹³³ The court goes on to distinguish the civilian review process in New York City from the one in Rochester previously halted by judicial action. The distinguishing factor was that board in Rochester was created by an act of city council and not the Commissioner of Public Safety.¹³⁴ An appellate court refused to consider a subsequent appeal by the PBA.¹³⁵

The PBA was not deterred. It turned its attention to swaying the popular vote and filed more than 50,000 signatures seeking a ballot measure on the issue within two weeks of the court's decision.¹³⁶ The city defended the mayor's managerial and executive authority to create the board in judicial courthouses and the court of public opinion. The mayor utilized a press conference as one avenue of reaching the public.¹³⁷ He was joined by members of the local bar association in a public address to impress upon voters the extreme scope of the referendum. City officials attempted to expand the issue beyond the issue of racially motivated police brutality. Mayor Lindsay argued that the city and the people of New York should understand the need to investigate potential corruption within the department that created a culture where officers do such things as buy promotions.¹³⁸ A vote in favor of the referendum would insulate NYC police officers from investigation by any individual, body or department under the direction of the Mayor. In short, the person elected by the people, to represent the people would not have any authority to manage the city's police force. The voting public demonstrated strong support for keeping potential police misconduct insulated from external reviews. New York City voters approved the referendum by a 2:1 margin.¹³⁹

¹³³ Cassese v. Lindsay, 272 N.Y.S.2d at 334.

¹³⁴ *Id.* at 335.

¹³⁵ *P.B.A. Bid to Block New Review Board Rejected by Court*, N.Y. TIMES (Jun. 28, 1966)

¹³⁶ Ruchleman, *supra* note 37, at 41.

¹³⁷ Police Corruption and the Civilian Review Board, Annotations the NEH Preservation Project found at www.wnyc.org/story/john-lindsay-civilian-review-board/

¹³⁸ Cite NYC article Police Corruption and the Civilian Review Board, Annotations the NEH Preservation Project found at www.wnyc.org/story/john-lindsay-civilian-review-board/

¹³⁹ Police Corruption and the Civilian Review Board, Annotations the NEH

New York City's Patrolmen's Benevolent Association opposition to civilian oversight in New York during the 1960s was not unique.

3. Rochester and the Locust Club

Insulating law enforcement from external oversight was an early priority for the Locust Club in Rochester. In 1963 it launched what evolved into a three-pronged, multi-year attack against community oversight. The Locust Club employed lobbying local elected officials as the first prong. The union presented a letter to City Council detailing its opposition to the board.¹⁴⁰ The letter enumerated several reasons the union opposed community oversight, including the inability of "laymen" to understand the "problems of policemen," the negative impact on officer morale, and that the board would undermine public confidence in Rochester police.¹⁴¹

The second prong involved garnering public support. The union gained the support individuals and associations outside of its members as a part of its lobbying effort.¹⁴² A circulated petition reportedly netted 40,000 signatures against Board creation. The signatures represented those "oppos[ed] to the creation of the Police Advisory Board."¹⁴³ It is unclear if all of the signatories were Rochester residents.¹⁴⁴ The Locust Club boasted the support of those outside of the city. News reports during that time told of the union's ability to garner support from the 50,000-member Police Conference of New York and a "nation-wide federation of law enforcement

Preservation Project found at www.wnyc.org/story/john-lindsaya-civilian-review-board/

¹⁴⁰ Letter from Daniel J. Murphy to City of Rochester City Council dated March 11, 1963.

¹⁴¹ *Id.*

¹⁴² Letter from Raymond J. Martin of Rochester Firemen's Benevolent Association to City Council dated March 6, 1963; Letter from E. James Geater, The Conservative Party of Monroe County to City Council dated March 26, 1963. (all letters on file)

¹⁴³ Vince Spezzano, *Police Petitions Against Board Get 40,000 Names* TIMES-UNION (Mar. 12, 1963).

¹⁴⁴ Letters in support of the Police Advisory Board were also sent to the mayor and city council. (on file)

officers” in its efforts to abolish the Police Advisory Board.¹⁴⁵

City Council passed legislation creating the board on March 26, 1963.¹⁴⁶ The Board formalized its internal structures, investigated and made recommendations regarding allegations of excessive force to the Chief of Police.¹⁴⁷ The newly enacted city charter also authorized the board to report any disagreement between their findings and the chief to Rochester’s Commissioner of Public Safety and City Manager.¹⁴⁸

Support for the police union’s anti-accountability stance was not limited to law enforcement. Community members in Rochester supported the Locust Club’s efforts and formed the Citizens for Abolition of the Police Advisory Board in March 1965.¹⁴⁹ The initial group had 20 members. It was led by local steel labor leaders and a noted “Conservative” political candidate and included a reverend, physician, and a college professor on its executive board.¹⁵⁰ The Coalition openly espoused J. Edgar Hoover’s position “that police review boards are detrimental to law and order.”¹⁵¹

The Locust Club escalated its opposition to the board with its final prong of the attack via litigation filed in April 1965.¹⁵² The Complaint sought injunctive relief and declaratory judgment against the City of Rochester for creating a community-based external oversight

¹⁴⁵ *Lawmen Pledge Funds to Fight Advisory Board*, DEMOCRAT & CHRONICLE (May 18, 1965).

¹⁴⁶ *Locust Club of Rochester v. City of Rochester*, *Judicial Statement*, 1968 WL 112483 at *7. The timing of the legislation is important and speaks to both the responsiveness of Rochester City Council and the strong opposition from the union and conservatives. Malcolm X and 500 demonstrators protested the Rochester Police Department’s treatment of Nation of Islam members one month prior to the legislation that enacted the Police Advisory Board. Rhonda Y. Williams, *supra* note 31, at 89.

¹⁴⁷ *Group Will Fight Advisory Board*, DEMOCRAT & CHRONICLE (March 27, 1965)

¹⁴⁸ *Locust Club of Rochester v. City of Rochester*, 48 Misc.2d 763, 265 N.Y.S.2d 744 at 765 (1965).

¹⁴⁹ *Group Will Fight Advisory Board*, DEMOCRAT & CHRONICLE (March 27, 1965)

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Locust Club of Rochester v. City of Rochester*, *Judicial Statement*, 1968 WL 112483 at *9.

board.¹⁵³ A series of legal challenges against the Police Advisory Board began on April 14, 1965. The work of the PAB came to an abrupt halt the next day. On April 15, 1965, a trial court judge granted a temporary restraining order that “require[d] the removal of [the PAB’s] power” to conduct any investigation, hold hearings, or perform any other official acts.¹⁵⁴ The trial court opinion included three points. First, it presumed that only the police Commissioner had the requisite experience to evaluate the appropriate amount of force necessary under exigent circumstances.¹⁵⁵ It also found that the rights of subject officers were violated by allowing the Board involvement to “intertwine” with the Department of Public Safety.¹⁵⁶ Finally, it found that any public criticism of police officers by the Board would constitute an improper public reprimand.¹⁵⁷

More than two years passed before an appellate court unanimously reversed the trial court’s decision.¹⁵⁸ The opinion articulated an appreciation for the legislative intent of the ordinance that sought “to strike a balance between the rights of the police officer and the rights of the citizen.”¹⁵⁹ Citing *New York Times v. Sullivan*,¹⁶⁰ the court was also not persuaded that the principles of democracy permitted police officers to be shielded from public criticism.¹⁶¹ Judicial vindication was of no practical consequence. A new mayor was elected the year after the appellate court’s decision and the local press praised the “new Republican administration” for “commendably abolishing” the Police Advisory Board.¹⁶²

¹⁵³ *Locust Club of Rochester, et al. v. City of Rochester, et al.*, 265 N.Y.S.2d 744 (1965).

¹⁵⁴ *Police Suit Fights Advisory Board*, TIMES UNION (Apr. 16, 1965).

¹⁵⁵ *Locust Club of Rochester v. City of Rochester*, 265 N.Y.S.2d 744 at 748 (1965).

¹⁵⁶ *Locust Club* at 749 (1965).

¹⁵⁷ *Locust Club of Rochester v. City of Rochester*, 265 N.Y.S.2d 744 at 749 (1965).

¹⁵⁸ *Locust Club of Rochester v. City of Rochester*, 29 A.D.2d 134 (1968)

¹⁵⁹ *Locust Club* at 138 (1968).

¹⁶⁰ 376 U.S. 254, 299 (1964).

¹⁶¹ *Locust Club* at 139 (1968).

¹⁶² *Police Advisory Board Abolished*, TIMES UNION (May 15, 1970).

*B. Police Unions Continue to Flex Political Muscle with Wins
outside the Courtroom*

Police unions recognized that political favor was most likely to be found outside of the courtroom. The battle against civilian review boards brought mixed results. Where local trial courts were willing to temporarily enjoin external oversight, the end results generally did not include permanent judicial relief for the unions. But judicial relief was simply a battle. Ultimate victory rested in the ability of police unions to exact political power in at least three ways. Unions employed a strategy during the 1960s that involved pressuring elected and appointed officials to meet union demands, garnering the support of the public through large demonstrations and political campaigns, and ultimately using their political power to secure the election of mayors aligned with the agenda of police unions. This subsection highlights key union successes employing those three tactics to restrict accountability.

1. Pressure on Local Elected and Appointed Officials

Proponent of police accountability have identified a number of ways in which police policies and practices impede efforts to create police departments that are accountable to all segments of a community. Properly displaying the names of officers on uniforms is one such practice. The Boston Police Patrolmen's Association, one of the nation's earliest police associations, pressured elected officials on city council to circumvent the accountability measures mandated by the mayor and police commissioner. The ability of the union to wield such power is remarkable after having been regarded as the primary exhibit against police unionization after the Boston Police Strike of 1919.¹⁶³ The union successfully used political power plays after it gained collective bargain bargaining rights in 1966 to impeded accountability when those impacted by police misconduct demanded

¹⁶³ Juris and Feuille, *supra* note 59, at 17. See also Samuel Walker, *A CRITICAL HISTORY OF POLICE REFORM* at 112-118 (1977) (discussing the build-up for police unionism starting in 1917 including support from the American Federation of Labor (AFL) in June 1919 and ending after the Boston Strike in September 1919).

more.¹⁶⁴ The Association immediately began to challenge various attempts by the mayor to address the concerns of the Black community and other civil liberty proponents.¹⁶⁵

Student demonstrators at Harvard University reported that Boston officers removed their name tags to hide their identity while violently attacking the demonstrators.¹⁶⁶ The mayor and police sought to resolve officer assertions that the badge pins posed a danger to their safety by arranging for name tags to be sewn on the uniforms. The union, still dissatisfied, picketed the police headquarters and successfully prevented the union tailor from crossing the picket line to sew the nametags.¹⁶⁷ It then employed two lines of attack: the first involved filing a grievance and the second was legislation. Boston City Council adopted a measure that allowed for officers to have numbers issued on their uniforms instead of names.¹⁶⁸ The arbitrator's eventual finding on behalf of the police commissioner was of no consequence.¹⁶⁹ Elected officials on city council delivered a victory to the union.

The PBA in New York City used political influence to circumvent another initiative to enhance accountability. Black communities in New York City and elsewhere voiced desires to be policed by Black officers. Police Commissioner Leary believed that a more diverse police department could be instrumental in improving its relationship

¹⁶⁴ Rory Judd Albert, *A Time for Reform: A Case Study of Interaction Between the Commissioner of the Boston Police Department and the Boston Police Patrolmen's Association*, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS 43 (1975) found at <https://www.ojp.gov/pdffiles1/Digitization/25606NCIRS.pdf> [<https://perma.cc/MSP8-6TXQ>]

¹⁶⁵ *Id.* at 43-44 (discussing efforts by Mayor White to make good on campaign promises to Black voters by adopting the Model Cities Program and the powerful union's ability to insert itself between the mayor and city council with the council sending the mayor's proposal directly to the union for their input. The council then passed the substantially revised plan propounded by the Boston Police Patrolmen's Association).

¹⁶⁶ *Id.* at 44.

¹⁶⁷ *Id.* at 44.

¹⁶⁸ *Id.* at 44; Hervey A. Juris, *The Implications of Police Unionism*, LAW & SOC'Y REV. at 238 (1971) (on the Boston Police unions successful thwarting the use of nametags on police uniforms).

¹⁶⁹ Juris, *supra* note 167.

with marginalized communities. His strategy was responsive to concerns from civil rights leaders at the time that the white racial homogeneity of police departments was a key factor in the disproportionate brutality and racism endured by diverse community members.¹⁷⁰ There was no question that the NYPD was racially homogenous in the 1960s. A federal study in 1963 revealed that only 5% of NYPD officers were Black; far less than the approximate 33%, 25%, and 20% of Black officers in Baltimore, Chicago, and Philadelphia respectively.¹⁷¹ NYPD PBA expressed strong opposition to efforts designed to expand recruitment to Black and Puerto Rican youth. The initial opposition inferred a level of unfairness to white youth.¹⁷² It morphed to concerns that efforts to remove minor criminal convictions as a bar to consideration for employment as a police officer would negatively impact efforts to professionalize law enforcement.¹⁷³ The threat of “vigorous[] oppos[ition]” from the PBA prompted the Civil Service Commission to quietly table its support for the mayor and commissioner’s planned program.¹⁷⁴

The BPPA in Boston also used its political power to destroy a mayoral initiative designed with the hopes of diversifying the police force.¹⁷⁵ Mayor White sought to expand the existing cadet program by hiring 100 cadets to direct traffic in 1968.¹⁷⁶ The expansion would have allowed him to make good on a campaign promise to increase the number of Black officers in Boston.¹⁷⁷ Racial animus couched in arguments of competency and a desire to hold on to the coveted traffic-directing role were cited as the two reasons for BPPA opposition to expanding the cadet program. The union successfully lobbied city council to reject an ordinance presented by White that

¹⁷⁰ Ruchelman, *supra* note 59, at 70.

¹⁷¹ *Id.*

¹⁷² NY Times article with quote from Cassese

¹⁷³ Ruchelman, *supra* note 59, at 71.

¹⁷⁴ *Id.* at 71.

¹⁷⁵ Albert, *supra* note 164, at 41-42.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 41. White was a popular with Boston’s Black voters. He garnered 80% of the Black vote in the 1967 election. *See also* Martha Wagner Weinberg, *Boston’s Kevin White: A Mayor Who Survives*, POLITICAL SCIENCE QUARTERLY at 92 (1981).

would have expanded the program.¹⁷⁸ Union power also led the state legislature to rebuff White's attempt to garner support with that body for his initiative.¹⁷⁹

2. Racism Promoted by Police Associations Was Part of the Internal Culture

Union leaders and their members were known to position themselves as strident opponents to civil rights and the Black Freedom movement. It would be misguided to attribute that opposition to benign concerns about who possessed the requisite technical skill to criticize the police and provide input on policing practices. A six-week study of officers in Boston, Chicago, and D.C. in 1966 revealed that 72% of officers voluntarily shared racist viewpoints that conveyed an "intense and bitter hatred towards" Blacks.¹⁸⁰ A white journalist wrote about candid conversations he had with NYPD officers in 1968 in which they shared details of their murderous fantasies about Black people.¹⁸¹

Such intense hatred cannot be cabined off so as to not affect judgments on the street and inside the workplace. The racial animus in policing practices that contributed greatly to discord between Black community members and law enforcement were not just limited to the street. Officers, emboldened and unchecked, violently displayed their racism at a Brooklyn courthouse in 1968. There members of the Law Enforcement Group and the White Tigers, groups of NYPD officers also connected with the PBA, attacked a group of Black Panthers appearing on charges at a Brooklyn courthouse.¹⁸² One hundred and fifty off-duty officers violently attacked a "handful" of Black Panther members and supporters from the Students for a Democratic Society present for preliminary hearings for three Black Panthers accused of previously assaulting police. The group of white police officers who attacked the attackers carried guns on their hips

¹⁷⁸ Albert, *supra* note 164, at 42.

¹⁷⁹ *Id.*

¹⁸⁰ Skolnick, *supra* note 36, at 244.

¹⁸¹ *Id.* at 275 (citations omitted).

¹⁸² David Burnham, OFF DUTY POLICE HERE JOIN IN BEATING BLACK PANTHERS, N.Y. TIMES (Sept. 5, 1968)

and were readily recognized as law enforcement. Some were personally recognized by news reporters, others were overheard discussing arrests they'd made, and an unidentified police officer acknowledged the presence of his colleagues.¹⁸³ In addition to nightstick blows and kicks that left the Black Panthers and their supporters bloody, the gang of white officers reportedly shouted "White Power" and "White Tigers eat Black Panthers."¹⁸⁴

The group cohesion identified by police scholars as a leading factor in the popularity of police associations generally fails to acknowledge how that cohesion was based on racial identity and not professional employment. Racial and ethnic intolerance pervaded inside station houses. Some Black officers understood the depth of racism within their own police departments during the 1960s. Affinity groups for Black officers organized in order to protect themselves and Black community members from racist police practices. By 1969, Black police officer associations were formed in at least 8 big cities including New York, Philadelphia, and Boston.¹⁸⁵ The organizations expressed concern about "white policemen beating black prisoners...the use of police dogs in civil disturbances..., and alleged prejudicial recruiting practices by police departments."¹⁸⁶ The Guardians of New York, made up of 1,360 members, did not approve of the PBA's full-scale attack against civilian oversight and sought to prevent them from using their dues in the seven-figure campaign.¹⁸⁷ John Cassese, head of the PBA, accused the Guardians of putting their skin-color before their oath of office. His comment confers the extent to which white policemen in the 1960s equated policing with anti-Blackness.

¹⁸³ *Id.*

¹⁸⁴ NY Times and Gotham Center for New York City History; *See also* Ruchelman, *supra* note 59, at 72-74 (discussing NYPD's LEG and its connections to the John Birch Society); Skolnick, *supra* note 36, at 277 (discussing LEG's involvement in the attack on Black Panthers at the Brooklyn courthouse.)

¹⁸⁵ Burpo, *supra* note 76, at 10.

¹⁸⁶ *Id.*

¹⁸⁷ Juris and Feuille, *supra* note 33, at 168; Thomas A. Johnson, *Negro Policemen Split with P.B.A. Over Review*, N.Y. TIMES (Oct. 4, 1966)

3. Public Pressure as a Signal of Strong Union Support

White people, on the whole, consistently disavowed support for Black liberation efforts during the 1960s. They largely condemned all demonstrations for Black equality. And expressly rejected efforts to secure political, economic, and social liberation efforts for Black people throughout the 1960s.¹⁸⁸ For every two white people who opposed the sit-ins, voter drives, Freedom Rides, and even the March on Washington, only one white person expressed support.¹⁸⁹ The police unions were reflective of the militant mindset found in northern ethnic neighborhoods.¹⁹⁰ Public animosity against racial progress demands in New York City and Philadelphia was closely aligned union efforts to ignore and discredit the same. Large crowds of white people attacked 16 members of the Congress on Racial Equality as they protested outside a New York City police precinct in the wake of 15-year-old James Powell's killing by an off-duty police officer.¹⁹¹ Before the NYPD PBA expressed strong opposition to the inclusion of community members to the police review board in that city.

Public allegiance to law and order in the north was a natural component of support for police union demands.¹⁹² White community members and the president of the Fraternal Order of Police in Philadelphia voiced strong support for the heavy-handed, anti-Black police practices against Black liberation efforts in that city. Philadelphia police, under the direction of Frank Rizzo, used violent police tactics in response to Black demonstrators engaged in constitutionally protected protests regarding two different instances of education discrimination.

The first involved police clubbing and arresting those protesting an all-white boarding school in the heart of Black North Philadelphia in 1965.¹⁹³ The sight of Frank Rizzo's bloody hand after the police

¹⁸⁸ Skolnick, *supra* note 36, at 187.

¹⁸⁹ *Id.* at 186.

¹⁹⁰ *Id.* at 225.

¹⁹¹ *Teenagers Throw Eggs at CORE Unit Picketing Police*, N.Y. TIMES (Jul. 22, 1964).

¹⁹² Burpo, *supra* note 76, at 12.

¹⁹³ See, Countryman, *supra* note 95, at 170-171; 178-179 (describing the daily

clubbing prompted praise from John Harrington, President of the FOP. He declared that Rizzo was “an outstanding example of one of our best policemen” and encouraged the mayor to reward Rizzo with a commendation.¹⁹⁴ The second occurred in 1967 when a large group of high school students led a demonstration outside of the local school board as an effort to gain more Black teachers, the addition of an African American history course, and the ability to host culturally-relevant celebrations.¹⁹⁵ Rizzo escalated the demonstration and ordered his officers to “Get their black asses!”¹⁹⁶ instead of allowing the school board president, former Mayor Dilworth, to negotiate a resolution with student leaders. The school superintendent described the beatings as a “police riot” and a diverse coalition of groups decried Rizzo’s violent treatment of the students.¹⁹⁷ The FOP joined other groups in defending the attack by police. People from Philadelphia’s white working-class communities voiced strong support of Rizzo’s aggressive and violent policing and denigrated Dilworth as a “fool” and thanked God for Rizzo in letters to the school board.¹⁹⁸ The strong public support is identified as one of the main factors in Rizzo being permanently named as Police Commissioner the following month.

III. LATE 1960S BRINGS CONTINUED LACK OF ACCOUNTABILITY

Law enforcement was generally not held accountable for the harmful brutality it waged against Black people.¹⁹⁹ Changing that was

picket lines outside of Girard College from May 1 – December 18, 1965 in response to the city’s obfuscation of its role as a public entity administering the estate of the founder, a segregationist, by later turning over the board to a private group of alumni in an effort to frustrate the spirit of *Brown v. Board*); See also, Lombardo *supra* note 12, at 16-17 (on the Girard College demonstrations and police union support of Rizzo’s physically violent police practices).

¹⁹⁴ Lombardo, *supra* note 12, at 17.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 17, 19. See also Ruchelman, *supra* note 59, at 36 (describing those who disapproved of Police Commissioner Rizzo’s attack on the students. Also detailing how the mayor and others tasked with evaluating claims of police brutality against the Black students failed to investigate).

¹⁹⁸ Lombardo, *supra* note 12.

¹⁹⁹ E.g. Silvan Niedermeier, *THE COLOR OF THE THIRD DEGREE RACISM, POLICE TORTURE, AND CIVIL RIGHTS IN THE AMERICAN SOUTH, 1930 – 1955* (2019).

a key objective of the Black liberation movement during the 1950s and 1960s. Efforts by Black leaders and community members to protect their community from police violence had largely been defeated by police unions during the first half of the 1960s. It is clear by the mid-1960s that aggressive police practices were popular with the majority of voters in northern cities. Police unions used that popularity and political power to fortify their strength in the form of collective bargaining rights. In just four years, from 1965-1969, police unions gain collective bargaining rights in twelve states. This section details some instances of how unions used this surge of political power as a direct response to the Black Power movement.

A. *Blue Power Levied as the Antidote to Black Power*

Today is it not uncommon to see and hear the declaration of “Blue Lives Matter.”²⁰⁰ The phrase entered America’s public and political discourse as a pro-police response to the Black Lives Matter movement.²⁰¹ The framing of police officers as the oppositional juxtaposition to that of a racial group – specifically Black people – through an ill-fitting misnomer is simply a current day echo of the 1960s “Blue Power” response to the pronouncement of “Black Power” during the Black liberation movement.

Historical accounts and statements from police association leadership during the sixties indicate that officers saw the job they carried out as a class of people and not a role they chose to fulfill through voluntary employment.²⁰² This is somewhat akin to what social scientists surmised in the 1960s about the group cohesion of

²⁰⁰ Embedded in the assertion to the existence and value of a Blue life is the notion that being a police officer is right and identity that deserves protected class status. This raises questions of the current day relevance of Justice Holmes’s statement that an individual “has no constitutional right to be a policeman.” See *McAuliffe v. City of New Bedford*, 29 N.E. at 517 (1892).

²⁰¹ See, <https://blacklivesmatter.com/herstory/> [<https://perma.cc/BS3J-2R9P>] (herstory details on the origins and purpose of Black Lives Matter. The phrase was coined by Patrisse Coullers, Alicia Garza, and Opal Tometi started the hashtag and organized to spur a political movement in 2013 after George Zimmerman followed, attacked, shot and killed 17-year-old Trayvon Martin in his family’s housing development in Sanford, Florida.)

²⁰² Bopp, *supra* note 34, at 41.

police officers.²⁰³ Yet for distinctly different purposes. David Slansky recounts that researchers deemed the tendency of police officers to cleave and protect one another as creating the need for external oversight and accountability.²⁰⁴ Officers, determined to mimic what they considered to be a successful civil rights strategy, declared that their professional occupation rendered them “oppressed” minorities.²⁰⁵ Blurring the lines between identity demographics and job duties allowed police associations to garner public support through an us versus them narrative where Black people (and those supporting them) were deemed the enemy.

Police union officials quickly co-opted the organizing strategies of Black liberation leaders during the 1960s. This was true despite the unashamed racial animus long connected with the profession. Law enforcement had long operated under anti-Black sentiment and with open racial animus. Interviews published in the 1950s and 1960s reveal that officers openly conveyed hostility against Black people.²⁰⁶ These viewpoints are reflected in assorted commission reports dating back to 1935.²⁰⁷ Racism aside, police unions openly adopted the language of the Black liberation movement. They also sought to analogize its conduct with that of the movement. Police union demonstrations took the form of strikes, work-slow downs, department wide sick-outs (commonly referred to as the blue flu), and public intimidation of elected officials.²⁰⁸ John Cassese, president of the Patrolmen’s Benevolent Association in New York City, was

²⁰³ Juris and Feuille, *supra* note 59, at 25-26 (1973).

²⁰⁴ David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1735 (2005).

²⁰⁵ Burpo, *supra* note 76, at 83; Skolnick, *supra* note 36, at 278 (describing how union organizing included a component of police viewing themselves as “an independent, militant minority.”)

²⁰⁶ Skolnick, *supra* note 36 at, 242-243.

²⁰⁷ *Id.*

²⁰⁸ Bopp, *supra* note 34, at 5 (discussing tactics used by police unions to secure demands); Skolnick, *supra* note 36 at 284-285 (discussing how the right-wing faction within NYPD’s union sat in the courtrooms of disfavored judges to intimidate them.); Burpo, *supra* note 76, at 81 (the Fraternal Order of Police placed an advertisement in *The Plain Dealer* openly questioning Mayor Stokes directives; Skolnick, *supra* note 36, at 244 (union officials posted Mayor Stokes photo in precincts throughout the city accompanied by messages that threatened his life.)

known for ordering his officers to directly defy directives from the police commissioner and mayor in that city.²⁰⁹ To be clear, there was a period of time *before* the mid-to-late 1960s when the majority of officers had legitimate grievances about the low-pay and extended work shifts.²¹⁰

As discussed earlier, those conditions changed rapidly through lobbying and the passage of collective bargaining statutes. Police unions were buoyed by those successes and added public campaigns and lawsuits to further its agenda that extended far beyond compensation and benefits. Unlike the *progressive* purpose of sit-ins, freedom rides, and protests outside of schools and government buildings, police union efforts were aimed at *restricting* the freedom and rights of Black people. While the first half of the decade brought police union attacks against elected officials' efforts to protect civil rights of Black community members, the second half brought police officials directly attacking Black liberation leaders.

Critics of police practices were used as a target by union leaders. Those demanding Black freedom from police abuses were labelled threats to the American way of life. Stokely Carmichael's articulation of "Black Power" in 1966 created a common enemy for already established police associations. That threat being not just Carmichael the individual, though he was certainly identified as such by the media and law enforcement officials, but most importantly the organizations connected to those articulations of Black liberation and equality.²¹¹ The Student Non-violent Coordinating Committee, led by Carmichael in the mid-1960s, served as a primary target.²¹²

²⁰⁹ Skolnick, *supra* note 36, at 273, 277-276.

²¹⁰ See *supra* section regarding low pay.

²¹¹ Journalists fed into the enemy combatant narrative. See (transcript of US Attorney General press conference where several questions were posed regarding the violence and troublemaking of Black people who were named or referenced Stokely Carmichael, H. Rap Brown and King (depending upon context)) found at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/01-20-1968.pdf> [<https://perma.cc/U2GA-E6P7>].

²¹² Philadelphia was not alone in its targeting of SNCC during 1966. See Carmichael v. Allen, 267 F. Supp. 985 (N.D. Ga. 1967) (the court's recitation of events during Atlanta, Georgia protest in September 1966 following the shooting

Frank Rizzo marshalled the full force of the Philadelphia Police Department against SNCC in 1966. In doing so, he also capitalized on the anti-Black liberation sentiment in that city to garner popular support. Rizzo openly committed to eradicating the Black Power movement shortly after Carmichael's June 1966 speech. While serving as Acting Police Commissioner during the vacation of the permanent Commissioner during August of that year and with the support of Mayor Tate, Rizzo executed a raid on 4 different North Philadelphia residences one early morning. He claimed the local SNCC organizers had enough dynamite in their possession to blow up Liberty Hall. At least 180 officers were called in to conduct the raids. The strong display of police power netted 2 sticks of dynamite at a location later determined to not be connected to SNCC or its members. The charges were dropped.²¹³ There is no indication of any inquiry into Rizzo's basis for the raids.²¹⁴

B. Popularity of Law and Order Officers and Mayors Demonstrates the Public Is Not Interested in Police Accountability

America's system of government relies on the election of local officials such as mayors, prosecutors, and judges. It is the responsibility those local elected officials to ensure its law enforcement department complies with the law and is held

of Harold Louis Prather as he ran away from officers seeking to arrest him on a theft warrant.); See also Wilson A. Grady-Willis, *Black power in the South : Urban Protest and neighborhood Activism in Atlanta, Georgia, 1966-1969*, PRESENCE AFRICAINE EDITIONS, 331 (2000) (summarizing interviews of witnesses to the Prather shooting who recounted that Prather was unarmed and running towards his mother's home who stood on the porch pleading with officers to not shoot).

²¹³ Skolnick, *supra* note 36, at; SNCC September 1 newsletter; Lombardo. Stokely Carmichael's subsequent visit to Philadelphia was tracked and surveilled by the FBI. <https://vault.fbi.gov/Stokely%20Carmichael/Stokely%20Carmichael%20Part%205%20of%205> [https://perma.cc/A7ZT-GKDP]

²¹⁴ Raids on the headquarters and residences of other Black liberation organizations became common during the late 1960s. The headquarters of the St. Louis Liberators was damaged under a barrage of police gunfire in September 1969. More widely covered was assassination of Fred Hampton and by Chicago Police in December 1969.

accountable for any breaches.²¹⁵ Prior to police unionizations, law enforcement officials had long used politics to further their interest of self-policing and preferential governance. These leaders negotiated the ability to exercise unilateral decision-making in exchange for accepting appointed positions.²¹⁶ During the early part of the twentieth century, proponents of professionalism deemed it essential to remove political influence from law enforcement in order to improve the ranks.²¹⁷ The push to be free of political corruption evolved into a level of unsustainable undemocratic autonomy. Law enforcement officials rejected any and all civilian input or direction. This rejection has occurred in ways that were quiet and unknown, such as sworn officials co-opting elected and appointed civilians.²¹⁸ And it has taken the form of aggressive public campaigns against elected officials interested in more democratic police oversight. In some cities, police union rejection of certain initiatives and political candidates during 1960s contained an unmistakable racial animus.

Police unions now exercise political power to influence law enforcement policies in ways previously deemed disadvantageous to corrupt-free government. As the political influence and power of police unions grew, union officials and department heads used that power to mold city leadership. In some instances, as described above, police unions and associations flexed their political strength to destroy the policies created to balance the needs of marginalized, Black community members and those of law enforcement. In others, as described in this section, union leaders and police head executives used their political popularity to become elected and high-ranking police officials. Police power reached a highpoint in 1968 with the year being billed as “The Year of the Cop.”²¹⁹

Carl Stokes was elected the first Black mayor of a major U.S. city

²¹⁵ William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. at 1982 (2008).

²¹⁶ Cray, *supra* note 130, at 54.

²¹⁷ *Id.*

²¹⁸ An example of this can be seen in the tenures of New York City Police Department’s civilian Police Commissioners prior to the 1960s. Ed Cray identified Francis Adams, Stephen Kennedy, Michael Murphy, and Vincent Broderick as four civilian commissioners in that city who were co-opted by sworn personnel in that department and served as “figureheads for police administrators.” *Id.* at p. 55.

²¹⁹ *Id.* at 53.

in November 1967.²²⁰ Stokes drew strong ire from the local police associations with his response to an exchange of gunfire in July 1968 between white police officers and Fred Evans, a Black Army veteran.²²¹ The shots led to the deaths of three police officers, three community members, and began what became known as the Glenville uprising.²²² Stokes de-escalated the conflict by removing white officers from the streets during the conflict and called on Black liberation leaders to restore peace.²²³ Peace was restored in the community but racism within the police department was unleashed. Officers were heard making racist remarks about the mayor on patrol radios.²²⁴ They also defied his orders to patrol the east side of Cleveland in integrated, Black and white, two-man cars.²²⁵ Officers not in uniform openly displayed weapons while challenging Black voters at the polls during Stokes' 1969 re-election.²²⁶

Police union power and popularity proved important to Minneapolis elections in 1969. Charles Stenvig was 41-year-old detective in the Minneapolis Police Department who was also serving as the local police federation's president when he decided to run as an independent for mayor.²²⁷ He won 63 % of the vote in the 1969 race after vowing to "take the handcuffs off the police" and "to crack down on racial militants" and others.²²⁸ His mayoral record indicates that squashing efforts to address police abuse was all he did.²²⁹ Stenvig

²²⁰ Rhonda Y. Williams, *supra* note 31, at 136.

²²¹ *Id.* at 174-175.

²²² *Id.* at 175.

²²³ *Id.* at 176.

²²⁴ Skolnick, *supra* note 36, at 244.

²²⁵ *Id.*

²²⁶ Dan Folster, *What Happened in Cleveland*, THE HARVARD CRIMSON (Nov. 23, 1971) <https://www.thecrimson.com/article/1971/11/23/what-happened-in-cleveland-pbthe-author/> [<https://perma.cc/VD9L-S3N5>] ("During the 1969 election non-uniformed policemen with guns dangling openly at their sides served as challengers at the polls in black wards in an obvious attempt to intimidate black voters.")

²²⁷ Jeffrey T. Manuel and Andrew Urban, "You Can't Legislate the Heart": *Minneapolis Mayor Charles Stenvig and the Politics of Law and Order*, AMERICAN STUDIES, 195 (2008).

²²⁸ *Id.*

²²⁹ *Id.* at 205 (discussing observations by other local elected officials and a reporter that Mayor Stenvig developed no initiatives or leadership during his first two years in office).

pledged to subvert City Council efforts to create a civilian review board.²³⁰ In response to a critic's position that government should provide programs to address social ills, Stenvig provided an ironic retort that "you can't legislate the heart."²³¹ This is ironic because American laws are generally based on moral expectations and standards. Stenvig, in fact, did attempt to control the hearts and minds of people as he sought to have certain material banned from the library.²³²

Frank Rizzo's violent disregard for Black Philadelphians made him very popular with white community members.²³³ Rizzo rose through the ranks of the Philadelphia Police Department despite his suspected connections to the Italian mob and strife with other ethnicities.²³⁴ Mayor Tate first appointed

Rizzo to serve as Deputy Commissioner and tasked him with preventing more white flight as a part of Tate's re-election strategy.²³⁵

²³⁰ *Id.* at 204.

²³¹ *Id.* at 203.

²³² *Id.* at 204. ("During his first administration, Stenvig put public pressure on the Minneapolis public library to remove the publications Rolling Stone, Black Panther, and New Left Notes, since they advocated drug use, disrespect for authority figures, and violence against the police.")

²³³ Jeffrey T. Manuel and Andrew Urban, *supra* note 227, at 196 (describing how Frank Rizzo was able to make the move from police commissioner to Mayor even though he was known for using extreme violence and demoralizing tactics against Black community members. The authors attribute his political success, and others like him, during the late 1960s and early 1970s to during the late 1960s and 1970s to the continued politicization of crime in local elections.)

Rizzo used his badge to violate the rights of the patrons and owners of gay coffeehouses in 1959. His use of police raids on gay coffeehouses in 1959 became another opportunity for the white community (religious leaders, wealthy Center City residents, and the local press) to express strong support. This was true despite the fact that he raided the establishments simply because they were frequented by homosexuals. There were no allegations of gambling, prostitution, drinking or any lewd behavior.

When the owner of one of the coffeehouses sued Rizzo in federal court, the city attorney and a lawyer hired by the FOP defended him. S.A. Paolantonio, *supra* note 105, at 66-67.

²³⁴ S.A. Paolantonio, *supra* note 152, at 55.

²³⁵ *Id.* at 74. Countryman, *supra* note 95, at 164 ("Mayor Tate had appointed Rizzo, a twenty-year veteran of the police force, deputy commissioner shortly before the 1963 election in an effort to counter his Republican opponent's law-and-order campaign.")

Tate rewarded Rizzo's brute force response to those protesting educational discrimination and demanding Black liberation by naming him Police Commissioner in May 1967.²³⁶ The mayor and his new police commissioner agreed that Rizzo would have free reign over the city's policing decisions without any input or interference from the mayor.²³⁷ Tate used images of Rizzo "rounding up a group of Blacks" on the street, in riot-like gear breaking through a group of Black protestors picketing a white business, and leading a pack of officers "breaking into the headquarters of the Revolutionary Action Movement."²³⁸ Rizzo was credited with handing Tate a narrow victory over his opponent. His anti-Black policing led him to the position of "Top Cop." It would next deliver him the mayor's seat.

CONCLUSION

Black people in America continue to be stopped and killed by police at disproportionate rates. Collective bargaining contracts have been identified as an impediment to ensuring that problematic officers are disciplined in a manner that prevents them from repeatedly inflicting harm or simply terminated. As shown in prior research, those contracts contain disciplinary provisions that insulate officers from effective investigations on allegations of serious misconduct. The contracts also contain provisions regarding personnel file record keeping and limitations on how long prior misconduct can be considered in current disciplinary decisions. Current collective bargaining contract provisions impede the ability to remove unsuitable employees from the sole profession in a democratic society that is authorized to take the life or liberty of another without due process. This reality allows the absence of trust and legitimacy within communities impacted by police violence and misconduct to continue.

But collective bargaining agreements are not the root of the problem. Instead, they have become a symptom of it. As detailed above, police brutality has been a longstanding issue in America, especially in Black communities. Police abuse was a key issue clearly

²³⁶ Countryman, *supra* note 95, at 231.

²³⁷ Lombardo, *supra* note 12, at 17.

²³⁸ Ruchelman, *supra* note 59, at 91.

articulated by the Black liberation movement. This was before the advent of police union collective bargaining agreements. Unmistakably, early contracts certainly did nothing to address the problem.

A study of collective bargaining agreements by the United States Department of Labor provides no indication that early union contracts did anything to address problems of racism and brutality within police departments.²³⁹ The report detailed provisions of 392 collective bargaining agreements from 1972 - 1973 that were specific to police and sheriff departments. Of the 392, approximately 33% of the contracts contained disciplinary provisions.²⁴⁰ Less than 4% of them contained provisions regarding review boards. Of those few agreements, they were mostly comprised of police department members with one provision explicitly excluding the public. Others provided for participation from the mayor or city manager. Community participation or membership was not mentioned in any of the contracts surveyed. One contract contained a provision concerning public complaints and hearing processes.²⁴¹ The disciplinary provisions reportedly covered misconduct related to dishonesty, drunkenness, recklessness, and endangering others. Two contracts were noted for highlighting the need for officers to maintain public trust, with one specifically stating that officers must "be above reproach on or off duty."²⁴²

Racism remains the root cause of disparate outcomes in America. Indeed, local governments across the country have declared it a public health crisis. This article illustrated how American police unions promoted racist policing and targeted Black liberation efforts. The impact of police union contracts cannot be fully understood without recognizing that police departments across the country were rewarded with collective bargaining rights during the historical moment when racist policing was widely known and supported. It was supported by voters who rejected efforts hold officers accountable for harassment and abuse of Black community members. It was also supported by elected and appointed officials who

²³⁹ *Id.*

²⁴⁰ *Id.* at 7.

²⁴¹ *Id.* at 85.

²⁴² *Id.*

negotiated contracts with police unions and failed to include provisions that protected the interests of marginalized and disproportionately impacted communities.

I propose a two-part solution. First, local governments committed to developing trust and legitimacy in their police services must make sustained allegations of racism a presumptively terminable offense. This should also include sustained evidence of racially disparate improper use of force. The FBI finally acknowledged in 2006²⁴³ that white supremacist groups have infiltrated American law enforcement agencies. There is no evidence that those agencies have developed strategies to address the problem. But those who consciously subscribe to beliefs that Black people and other people of color are racially inferior are not sole source of the problem. Officers who demonstrate a pattern of opting to disproportionately use force against Black people and other people of color should also be deemed unsuitable to work in law enforcement. In order for the classification of racism and racially disparate misconduct as presumptively terminable offenses to be effective, departments will have to ensure that allegations of misconduct are investigated by skilled investigators in a timely and thorough manner. It will also require that departments use sound data collection practices to track, review, and investigate the appropriateness of officer use of force.

Second, voters in American cities must demonstrate that their outrage in 2020 following the murder of George Floyd was more than a temporary reaction. And that they are willing to act on their expressed desires to be allies in ending racially disproportionate police violence. Elected and appointed officials are not the only powerful decision makers in American society. The political power amassed by police unions during the 1960s to subvert accountability and literally strike down Black liberation was given to them by the voters, in some instances despite the efforts of elected and appointed officials. American voters committed to addressing disproportionate police violence must resist reflexive inclinations to shield problematic

²⁴³ Federal Bureau of Investigations Intelligence Assessment, (U) *White Supremacist Infiltration of Law Enforcement* (Oct. 2006), <https://www.justsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf> [<https://perma.cc/A2CH-FP9J>].

officers from accountability. That goes beyond demanding justice for those disproportionately harmed and killed by police violence. It requires voters to support proposed local legislation aimed at including impacted communities in investigations and discipline decisions. It also requires voters to demand revisions to collective bargaining agreements. The revisions should include the removal of provisions from local collective bargaining agreements that impede accountability. They should also include the addition of racial animus and patterns of racially based improper policing as presumptively terminable offenses. The identification of these offenses could be made in either the collective bargaining agreement, disciplinary matrixes, or both.