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Symposium Introduction - Black and Blue: The Intractable Presence of Race in American Policing

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— Introduction —

BLACK AND BLUE:
THE INTRACTABLE PRESENCE OF
RACE IN AMERICAN POLICING

Ayesha Bell Hardaway[†]

The Racial Reckoning of 2020 ignited a national conversation about the myriad structural flaws in our policing systems. This was not the first time. Modern America has experienced several waves of national discussions about policing. The first sustained wave began during the 1950s and ran through the 1960s, with Black activists and their allies calling attention to the abuses experienced by Black people in cities across the country from police departments called upon to enforce racial segregation.¹ The brutal beating of Rodney King by several Los Angeles police officers on an LA highway in 1991 served as the prime example of continued police brutality during what I refer to as the second wave.²

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1. JOSEPH D. LOHMAN & GORDON E. MISNER, *THE POLICE AND THE COMMUNITY: THE DYNAMICS OF THEIR RELATIONSHIP IN A CHANGING SOCIETY* 213 (1966) (detailing what precipitated the formation of the Philadelphia Police Review Board in 1958); James Wolfinger, “*We Are in the Front Lines in the Battle for Democracy*”: *Carolyn Moore and Black Activism in World War II Philadelphia*, 72 PA. HIST. 1, 1, 3, 6, 16 (2005); SAMUEL WALKER, *POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT* 23 (2001) (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 in proceedings involving a civilian complaint); LAURA WARREN HILL, *STRIKE THE HAMMER: THE BLACK FREEDOM STRUGGLE IN ROCHESTER, NEW YORK, 1940–1970*, at 37 (2021) (describing the police tactics, including intimidation and brutality, used against Black people in Rochester to enforce racial segregation); see SILVAN NIEDERMEIER, *THE COLOR OF THE THIRD DEGREE: RACISM, POLICE TORTURE, AND CIVIL RIGHTS IN THE AMERICAN SOUTH, 1930–1955* (Paul Cohen trans., 2019); (1966) *The Black Panther Party Ten-Point Program*, BLACKPAST, <https://www.blackpast.org/african-american-history/primary-documents-african-american-history/black-panther-party-ten-point-program-1966/> [https://perma.cc/GCK3-KYV7] (last visited Oct. 16, 2022).
2. H.R. REP. NO. 102-242(I), at 135–36 (1991) (recounting Congressional hearings on the Police Accountability Act and examining police misconduct after the brutal beating of Rodney King). The legislative history details officer conduct in New York City, Boston, Los Angeles (city and county sheriff), Newark, the District of Columbia, and

The third wave began in 2012 with the killing of Trayvon Martin by a racist neighborhood watch coordinator and continued with the killings of Mike Brown, Tamir Rice, Eric Garner, Philando Castile, Sandra Bland, Tanisha Anderson, and so many others from 2015–present. The mass, sustained social uprisings of 2020 in response to the killings of George Floyd, Breonna Taylor, and many others featured several examples of officers of color in enforcement roles.

The 1968 National Advisory Commission on Civil Disorders, commonly known as the Kerner Commission, recommended hiring more Black people to work in local police departments in traditional positions and also in the newly devised “community service officer” role. The recruits were usually Black youth aged seventeen to twenty-one and worked as quasi-law enforcement in Black communities.³ Since and before the Kerner Commission, many have posited that increasing the number of Black officers on police forces could be an important tool to improve relations between police departments and communities of color.

In addition, the continued advocacy around reform of policing systems revealed the persistent instances of racial discrimination endured by Black and Brown police officers inside and outside of their departments. To be sure, intra-department discrimination has long been a feature of police departments.⁴ While affinity law enforcement associations began their effort to support and empower officers from underrepresented racial groups in the mid-1900s, those groups today still lack collective bargaining rights or power by which to support the interests of their members or implement structural reforms.⁵

In April 2022, Case Western Law Review and the Social Justice Law Center hosted a symposium that convened a range of scholars, activists, and former police officers to discuss the many issues American

Reynoldsburg, Ohio; *see also* 34 U.S.C. § 12601; U.S. DEP’T. OF JUST. CIV. RTS. DIV., THE CIVIL RIGHTS DIVISION’S PATTERN AND PRACTICE POLICE REFORM WORK: 1994–PRESENT (2017).

3. NAT’L ADVISORY COMM’N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 166 (1968).
4. JEROME H. SKOLNICK, THE POLITICS OF PROTEST 243–44 (1969) (citing 1966 multi-week study of Boston, Chicago, and D.C. officers revealing that 72 percent of officers voluntarily expressed “intense and bitter hatred toward” Black people); *see* John Darnton, *Color Line a Key Police Problem*, N.Y. TIMES, Sept. 28, 1969, at 1, <https://timesmachine.nytimes.com/timesmachine/1969/09/28/89379875.pdf> [<https://perma.cc/9NQF-BSS5>] (describing the racial division and animosity between police officers). Black officers were incensed by the brutality they witnessed white officers inflict on Black people. White officers were outraged by the influx of young Black officers who spoke out against racism. *Id.*
5. JOHN H. BURPO, THE POLICE LABOR MOVEMENT: PROBLEMS AND PERSPECTIVES 11–12 (1971).

racism presents for Black officers. The symposium took place before attention turned to the ways in which Black officers perpetuate police violence against Black men earlier this year when a video was released of at least five Memphis police officers beating Tyre Nichols to death. The fact that Mr. Nichols's killers included Black officers crystallizes yet another layer of inquiry around the brutal culture of American policing and ways in which it is and is not impacted by race.

Symposium contributors provided thought-provoking presentations on the myriad ways policing impacts marginalized populations, including immigrants, Indigenous Tribes, Black women, Black officers, and more.

The first article, *Whiteness as Ideology*, discusses how the January 6, 2021 attack on the U.S. Capitol and the officers charged with protecting U.S. legislators was a function of racist and xenophobic sentiments that paradoxically prompted those historically aligned with calls for “law and order” and pro-police sentiments to lead an unprecedented attack on American law enforcement.⁶ Professor Parks argues, ultimately, that whiteness as an ideology among Trump supporters resulted in officer injury and death and an uncharacteristic silence from the Republican Party about the harms inflicted on police. Next, Professor Kekek Jason Stark details how tribal communities should not be excluded from current police reform efforts. *Indian Policing: Agents of Assimilation* explores attempts to re-indigenize Indian Country in the fifty years since the passage of the Indian Civil Rights Act.⁷ It also details the origins of Indian policing and its focus on using the tribal justice system to restore the Tribe to its original state, explores the way assimilation was incorporated into policing and judicial systems, and describes the effects of how those assimilation practices eroded tribal justice practices. Professor Stark concludes by stating that federal appropriations designed to restore traditional tribal laws and systems would provide healing to Indian Tribes.

Professor Richard Delgado and Allen Slater turned our attention to immigration law and policing. In their article, *Interest Convergence in Immigration Law and Theory*, Professor Delgado and Mr. Slater argue that existing immigration laws and judicial outcomes that are unjust and racist are unlikely to change unless it can be shown that reforms benefit “influential majoritarian groups.”⁸ They use critical race theory—founder Derrick Bell’s interest convergence framework to demonstrate how current immigration policies negatively impact six distinct groups, including retirees, the government, and others. Delgado and Slater

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6. Gregory S. Parks, *Whiteness as Ideology*, 73 CASE W. RSRV. L. REV. 613 (2023).
 7. Kekek Jason Stark, *Indian Policing: Agents of Assimilation*, 73 CASE W. RSRV. L. REV. 683 (2023).
 8. Richard Delgado & Allen Slater, *Interest Convergence in Immigration Law and Theory*, 73 CASE W. RSRV. L. REV. 771, 777 (2023).

conclude that the benefits gained by the distinct constituents make it likely they will align their efforts.

The symposium discussion was greatly enriched with a discussion with Professor Lisa Avalos about her research on crimes against Black women. In her article, *The Under-Policing of Crimes Against Black Women*, Professor Avalos contends that police reform must include remedial measures for the ways in which discriminatory and unaccountable policing often intersects with the under-policing of crimes reported by Black women and other marginalized women of color.⁹ Her article provides both historical and modern examples of the ways Black women have always been denied equal protection under the law in statutory, neglectful, and retaliatory ways. Professor Avalos concludes by highlighting a state statutory solution based on the Illinois Sexual Assault Incident Procedure Act and the federal constitutional Equality Amendment proposed by Kimberlé Crenshaw and Catharine MacKinnon.

Professor Todd J. Clark, Caleb Gregory Conrad, Dean andré douglas pond cummings, and Judge Amy Dunn Johnson explored the science of trauma, its impact on the brain, and its effect on police in their article, *Trauma Informed Policing: The Impact of Adult and Childhood Trauma on Law Enforcement Officers*.¹⁰ Their article explores the duality experienced by Black police officers, discusses “adverse childhood experiences,” identifies gaps in data that could be helpful in devising evidence-based approaches to decreasing the number of dangerous incidents, and employs the narrative to demonstrate the impact that trauma has had on officers interacting with communities of color.

Dr. Christopher Bellas’s article entitled *Factors that Influence Jury Verdicts in Police Use of Force Cases* rounded out the scholarly presentations. His research defines and quantifies current use of force data.¹¹ Dr. Bellas also examines the impact of qualified immunity on excessive use of force claims under Section 1983 and makes the important contribution of examining what elements contribute to jury decision making in the relatively few excessive force cases that reach trial. Dr. Bellas argues that community attitudes about police lead them to use a host of internal and external factors such as empathy, diffusing responsibility, and minimizing consequences in their decision making.

9. Lisa Avalos, *The Under-Policing of Crimes Against Black Women*, 73 CASE W. RSRV. L. REV. 795 (2023).

10. Todd J. Clark, Caleb Gregory Conrad, andré douglas pond cummings & Amy Dunn Johnson, *Trauma Informed Policing: The Impact of Adult and Childhood Trauma on Law Enforcement Officers*, 73 CASE W. RSRV. L. REV. 843 (2023).

11. Christopher M. Bellas, *Factors that Influence Jury Verdicts in Police Use of Force Cases*, 73 CASE W. RSRV. L. REV. 895 (2023).

In addition to the scholarly presentations, the symposium was greatly enriched by a keynote address from Cariol Horne. Ms. Horne shared with attendees how she was fired from her position as an officer with the Buffalo Police Department after nearly twenty years on the force. The department disciplined and fired her after she intervened and prevented a white colleague from choking a Black man while he was handcuffed. Ms. Horne shared that it took more than fourteen years after her firing for the City of Buffalo to pass “Cariol’s Law,” legislation that now requires Buffalo police officers to intervene when they witness fellow officers using excessive force and protects those who do so.¹² Symposium attendees also heard about the efforts to increase community oversight of police from retired Cleveland Division of Police Sergeants Charmin Leon and Richard Jackson. The program is available online.¹³

I owe a debt of gratitude to a number of individuals who, without their encouragement and support, this symposium would not have been possible. First, many thanks to Deans Jessica W. Berg and Michael P. Scharf for their generous support. And to Associate Dean Bryan Adamson for being a thought-partner and champion of the effort.

Two editors of the Law Review worked tirelessly in developing and organizing this effort. Current Editor-in-Chief Meritt Salathe and former Editor-in-Chief Andrew Rumschlag. Thank you for your dedication.

Finally, none of this would have been possible without Eric Siler, who made sure the entire program flowed effortlessly. He is invaluable to a host of events held at the law school and his facilitation of our programs is always superb.

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12. Mike Desmond, Thomas O’Neil-White & Marian Hetherly, *A Month After Passage, Mayor Brown Signs Cariol’s Law*, WBFO (Oct. 28, 2020, 11:10 PM), <https://www.wbfo.org/local/2020-10-28/a-month-after-passage-mayor-brown-signs-cariols-law> [<https://perma.cc/86AB-2P46>].
 13. Case Western Reserve University School of Law, *Black and Blue Symposium: Keynote Speaker—Ms. Cariol Horne*, YOUTUBE (Mar. 18, 2022), <https://www.youtube.com/watch?v=UMK43suB5fc> [<https://perma.cc/G748-W93E>].