

**BLUE LIVES MATTER VERSUS BLACK LIVES MATTER:
BENEFICIAL SOCIAL POLICIES AS THE PATH AWAY
FROM PUNITIVE RHETORIC AND HARM**

Christopher E. Smith*

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INTRODUCTION

The original website of the organization Blue Lives Matter explicitly described its founding as a reaction to the Black Lives Matter movement.¹ According to the website, the fatal shooting of unarmed African-American teenager Michael Brown by Officer Darren Wilson in Ferguson, Missouri, in 2014 led “agitators [to] spread outright lies and distortions of the truth about Officer Wilson and all police officers.”² Like Black Lives Matter,³ Blue Lives Matter is a specific organization, as well as a slogan used by people unconnected to the organization who share the organization’s worldview about whom American society unfairly targets and victimizes.⁴ Both slogans

* Professor of Criminal Justice, Michigan State University; Ph.D. 1988, University of Connecticut; J.D. 1984, University of Tennessee; M.Sc. 1981, University of Bristol (U.K.); A.B. 1980, Harvard University.

1. *Blue Lives Matter Mission Statement*, BLUE LIVES MATTER, <http://archive.bluelivesmatter.blue/organization/#history> (last visited Apr. 19, 2020) [hereinafter BLUE LIVES MATTER].

2. *Id.*

3. BLACK LIVES MATTER, <https://blacklivesmatter.com/> (last visited Apr. 10, 2020).

4. Compare Dara Lind, *How “Blue Lives Matter” Went from a Reactive Slogan to White House Policy*, VOX (Feb. 9, 2017), <https://www.vox.com/policy-and-politics/2017/2/9/14562560/trump-police-black-lives> (explaining that Republicans, particularly supporters of President Donald Trump, use “Blue Lives Matter” as a slogan to show their support of police), with John Eligon, *One Slogan, Many Methods: Black Lives Matter Enters Politics*, N.Y. TIMES (Nov. 18, 2015), <https://www.nytimes.com/2015/11/19/us/one-slogan-many-methods-black-lives-matter-enters-politics.html> (“[Black Lives Matter] is as much a mantra as a particular organization . . .”).

are used as calls to action that seek to motivate supporters' efforts to shape public opinion, law, and policy.⁵ For those who trumpet the phrase "Blue Lives Matter," "[s]upport for law enforcement has become a form of identity politics allyship for many white and conservative Americans."⁶

There is reason to wonder whether Blue Lives Matter advocates have an excessively myopic focus on physical attacks against police officers⁷ that they claim are facilitated by false narratives from Black Lives Matter adherents and their sympathizers in government and the news media.⁸ Thus, one should ask: What if there was a genuine commitment to "making blue lives matter," rather than just using the slogan and corresponding actions to counterattack the statements and protests by Black Lives Matter advocates? This Article examines this question and thereby challenges the viewpoints, proposals, and consequences of current Blue Lives Matter rhetoric and action.

I. COUNTERREACTION: ORIGINS AND OUTCOMES

A. *The Origins of Two Organizations*

Three friends created and spread the hashtag #BlackLivesMatter in 2013 as part of their outraged reaction to the acquittal of George Zimmerman, the neighborhood watch volunteer who shot and killed Trayvon Martin, an unarmed African-American teenager walking home in Sanford, Florida.⁹ One year later, the hashtag was a prominent slogan for protesters and civil rights advocates on the streets of Ferguson, Missouri, after a grand jury declined to indict Officer Wilson for killing Michael Brown.¹⁰ The hashtag's originators

5. See, e.g., Lind, *supra* note 4 ("Speakers . . . led Republican National Convention attendees in "Blue Lives Matter" chants. Blue Lives Matter bills that would make it a hate crime to target a police officer have already been passed . . ."); Eligon, *supra* note 4 ("Black Lives Matter began as a hashtag and grew into a protest slogan . . . and became an Internet-driven civil rights movement.").

6. Lind, *supra* note 4.

7. See, e.g., BLUE LIVES MATTER, *supra* note 1.

[T]he founders decided that we could be doing more to help the officers who are getting attacked in the streets. The Blue Lives Membership was created so that citizens who aren't afraid to support law enforcement could become actively involved in providing law enforcement officers with life-saving equipment and training, and providing financial support for the families of heroes killed in the line of duty.

Id.

8. See *id.* ("[Two New York City police officers] were ambushed and murdered by a fanatic who believed the lies of Black Lives Matter, the media, and politicians.").

9. Elizabeth Day, #BlackLivesMatter: *The Birth of a New Civil Rights Movement*, GUARDIAN (July 19, 2015), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement>.

10. *Id.*

used social media to organize several hundred protesters to travel to Ferguson,¹¹ in order to participate in the controversial multi-night protests that included looting and arson by some of those present.¹² Photographs of burning buildings and police officers wearing military gear to confront unarmed protesters brought additional attention to the protests¹³—and to the slogan “Black Lives Matter.”¹⁴ Very quickly, parallel protests erupted in more than 100 cities across the country.¹⁵ The slogan’s impact was enhanced through its visibility at street protests around the country concerning the deaths of other African-Americans at the hands of police or while in police custody during 2014 and thereafter.¹⁶ As one observer described: “Black Lives Matter serves as a banner under which multiple groups, individuals and protests aim to address police brutality.”¹⁷

Black Lives Matter became a formal organization with dozens of chapters in cities around the country.¹⁸ Yet, the chapters are local and autonomous, and people unconnected to the formal organization take action while using the slogan.¹⁹ As an observer described: “The new movement is powerful yet diffuse, linked not by physical closeness or even necessarily by political consensus, but by the mobili[z]ing force of social media.”²⁰ As a

11. *Id.*

12. *The Damage in Ferguson*, N.Y. TIMES (Nov. 25, 2014), <https://www.nytimes.com/interactive/2014/11/25/us/ferguson-photos.html>.

13. See, e.g., Julia Craven, Mariah Stewart & Ryan Reilly, *The Ferguson Protests Worked*, HUFFINGTON POST (last updated Feb. 18, 2016), https://www.huffingtonpost.com/entry/ferguson-protests-municipal-court-reform_us_55a90e4be4b0c5f0322d0cf1 (including a picture of police officers in riot gear); *Black Lives Matter: A Movement in Photos*, ABC NEWS, <https://abcnews.go.com/US/photos/black-lives-matter-movement-photos-44402442/image-44402849> (last visited Apr. 10, 2020) (including a picture of an unarmed African-American in a contentious confrontation with a police officer).

14. Nishat Kurwa, “Black Lives Matter” Slogan Becomes a Bigger Movement, NPR (Dec. 4, 2014), <https://www.npr.org/2014/12/04/368408247/black-lives-matter-slogan-becomes-a-bigger-movement>.

15. Steve Almasy & Holly Yan, *Protesters Fill Streets Across Country as Ferguson Protests Spread Coast to Coast*, CNN (Nov. 26, 2014), www.cnn.com/2014/11/25/us/national-ferguson-protests/index.html.

16. See, e.g., Carolyn Sung & Catherine E. Shoichet, *Freddie Gray Case: Charges Dropped Against Remaining Officers*, CNN (July 27, 2016), <https://www.cnn.com/2016/07/27/us/freddie-gray-verdict-baltimore-officers/index.html> (“Gray’s death became a symbol of the black community’s mistrust of police and triggered days of protests and riots in Baltimore. The city became a focal point of the Black Lives Matter movement . . .”); Wesley Lowry, *Black Lives Matter: Birth of a Movement*, GUARDIAN (Jan. 17, 2017), <https://www.theguardian.com/us-news/2017/jan/17/black-lives-matter-birth-of-a-movement> (“The social justice movement spawned from Mike Brown’s blood would force city after city to grapple with its own fraught histories of race and policing. . . . [P]rotests propelled by tweets and hashtags spread under the banner of Black Lives Matter . . .”).

17. Josh Hafner, *How Michael Brown’s Death, Two Years Ago, Pushed #BlackLivesMatter into a Movement*, USA TODAY (Aug. 8, 2016), <https://www.usatoday.com/story/news/nation-now/2016/08/08/how-michael-browns-death-two-years-ago-pushed-blacklivesmatter-into-movement/88424366/>.

18. Day, *supra* note 9.

19. *Id.*

20. *Id.*

result, chapter leaders seek to avoid identification with, and responsibility for, violence and property damage by unaffiliated people at protests in which the Black Lives Matter slogan is displayed.²¹ When police officers were injured at a protest in St. Paul, Minnesota, for example, a local Black Lives Matter leader said: “There were people [from] outside of the community that I didn’t recognize . . . They were doing stupid stuff, and it’s something we don’t tolerate.”²² The organization faces potential blame for everything that occurs at events at which anyone uses or displays the slogan, as evidenced by a Louisiana police officer’s unsuccessful attempt to sue the organization when he was seriously injured at a protest.²³ While the organization can likely avoid legal liability for harms that occur under the slogan,²⁴ the prominence of the slogan and movement make it a tempting target for opposition and blame by critics.²⁵

The Blue Lives Matter organization identifies its founding moment as the murder of two police officers in New York City that it blames on Black Lives Matter: “On December 20, 2014, NYPD Officer Rafael Ramos and Officer Wenjian Liu were ambushed and murdered by a fanatic who believed the lies of Black Lives Matter, the media, and politicians.”²⁶ In the years that followed, the organization found reinforcement for this motivation and explanation of events in subsequent injurious attacks on police associated with protests under the Black Lives Matter banner.²⁷ In particular, two horrific events provided notable opportunities to reinforce this perspective: the killing of five police officers by a lone gunman at an otherwise peaceful protest in Dallas in July 2016²⁸ and the ambush killing of three officers in

21. See, e.g., Josh Sanburn, *Black Lives Matter Leader Condemns Violence at St. Paul Protest*, TIME (July 10, 2016), <https://time.com/4400330/st-paul-protests-philando-castile-black-lives-matter/> (reporting on a Black Lives Matter leader in St. Paul, Minnesota, who denounced violent acts by outsiders against police).

22. *Id.*

23. Joe Gyan, *Wounded Baton Rouge Deputy’s Lawsuit Against Black Lives Matter Rightly Dismissed, Appeals Court Says*, BATON ROUGE ADVOC. (Aug. 16, 2018), https://www.theadvocate.com/baton_rouge/news/courts/article_11cdb1da-a168-11e8-a51a-53e06e434a73.html.

24. *Id.*

25. See, e.g., *infra* notes 26–35.

26. BLUE LIVES MATTER, *supra* note 1.

27. The Blue Lives Matter website contains an entire section of articles about Black Lives Matter that seem intended to generate outrage and present Black Lives Matter as threatening to society. See, e.g., Officer Blue, *Black Lives Matter Assault Police During Arrest at Charlotte Airport Immigration Protest*, BLUE LIVES MATTER (Jan. 30, 2017), <http://archive.bluelivesmatter.blue/black-lives-matter-assault-police-arrest-charlotte-airport-immigration-protest/> (portraying Black Lives Matter’s participation in a protest over President Trump’s first travel ban as an attempt to “hijack” an unrelated protest, spread false information about a police shooting of a black man, and assault police).

28. *Sniper Ambush Kills Five Officers, Injures 7 in Dallas Following Peaceful Protest*, NBCDFW (July 7, 2016), <https://www.nbcdfw.com/news/local/Protests-in-Dallas-Over-Alton-Sterling-Death-385784431.html> [hereinafter *Sniper Ambush*].

Baton Rouge a few days later,²⁹ with both gunmen apparently angered by highly publicized killings of African-American men by police. Neither shooter claimed formal membership or affiliation with the Black Lives Matter organization,³⁰ but both tragic events occurred either in conjunction with (Dallas)³¹ or soon after (Baton Rouge)³² Black Lives Matter-related protests. In both cases, Black Lives Matter organizational leaders condemned the shootings³³ and argued that “[t]o assign the actions of one person to an entire movement is dangerous and irresponsible.”³⁴ Yet, the Blue Lives Matter organization does indeed blame Black Lives Matter for encouraging individuals to inflict harm on police officers.³⁵

B. The Policy Response: Punitive Laws

The policy-making responses to the Blue Lives Matter initiative have had one predominant focus: increasing sentences for those convicted of offenses against police officers.³⁶ This is not the exclusive approach, as evidenced by the first congressional response to the ambush murders of New York Officers Ramos and Liu—a bill signed into law by President Obama in

29. Steve Visser, *Baton Rouge Shooting: 3 Officers Dead; Shooter Was Missouri Man*, *Sources Say*, CNN (July 18, 2016), <https://www.cnn.com/2016/07/17/us/baton-route-police-shooting/index.html>.

30. See *Sniper Ambush*, *supra* note 28 (reporting that, during negotiations with the police, the barricaded shooter said, “he was not affiliated with any group, [and] carried out the act alone”); Visser, *supra* note 29 (quoting a statement the shooter posted in advance on YouTube: “I just wanted to let y’ all know, don’t affiliate me with nothing . . . I thought my own stuff; I made my own decisions . . .”).

31. *Sniper Ambush*, *supra* note 28.

32. The Baton Rouge shooting occurred less than two weeks after several days of protest in response to a bystander-recorded video capturing the shooting death of Alton Sterling, an African-American man. Compare Visser, *supra* note 29 (reporting that a man killed three police officers in Baton Rouge on Sunday, July 17, 2016), with Steph Solis, *Protests Break out After Baton Rouge Police Fatally Shoot Man*, CNN (July 5, 2016), <https://www.usatoday.com/story/news/nation/2016/07/05/baton-rouge-alton-sterling-police-shooting/86738368/> (stating that the incident which left Sterling dead occurred on Tuesday, July 5, 2016). The video showed that police shot Sterling as he was resisting being handcuffed while held on the ground by two police officers. *Id.*

33. See Joshua Berlinger, *The Baton Rouge Photograph that Everyone Is Talking About*, CNN (July 11, 2016), <https://www.cnn.com/2016/07/11/us/baton-rouge-protester-photograph/index.html> (“Black Lives Matter protesters condemned the Dallas killings . . . ‘Black activists have raised the call for an end to violence, not an escalation of it . . . [The] attack was the result of the actions of a lone gunman.’”); see also Gyan, *supra* note 23 (“[A Black Lives Matter leader] condemned [the Baton Rouge shooter’s] attack within hours of it occurring and said the Black Lives Matter movement began as a call to end violence and remains so.”).

34. Berlinger, *supra* note 33.

35. See BLUE LIVES MATTER, *supra* note 1 (“The media catered to movements such as Black Lives Matter, whose goal was the vilification of law enforcement . . . Personal responsibility for one’s actions went away, replaced by accusations of racism and an unjust government.”).

36. Julia Craven, *32 Blue Lives Matter Bills Have Been Introduced Across 14 States This Year*, HUFFINGTON POST (Dec. 11, 2017), https://www.huffingtonpost.com/entry/blue-black-lives-matter-police-bills-states_us_58b61488e4b0780bac2e31b8 [hereinafter Craven, *Blue Lives Matter Bills*].

2015 to create a national alert system to disseminate threats against the police.³⁷ Beginning with Louisiana's 2016 law, however, the predominant approach reflected in new statutes and proposed laws has emphasized enhancing punishments by including assaults on police as a covered category in *hate-crimes* statutes.³⁸ A similar, parallel approach was simply to legislatively authorize more severe punishments for attacks on police officers.³⁹ The U.S. House of Representatives passed a proposed "Protect and Serve Act" in 2018 to treat assaults on police officers as federal crimes and increase penalties for such crimes.⁴⁰ The proposed bill in the U.S. Senate took a different approach by including attacks on police in federal hate-crimes laws.⁴¹

Both liberal⁴² and conservative⁴³ publications have criticized the punitive legal approach to advancing the Blue Lives Matter initiative. Liberal critics see such laws as unnecessary, because attacks against police officers are already subject to strong punishments without any hate-crimes requirements of proving motivated targeting.⁴⁴ Moreover, police officers do not fit the rationale of hate-crimes legislation, which is directed to protect historically persecuted groups who have been subject to systemic discrimination.⁴⁵ In addition, there are concerns that prosecutors will stretch

37. See Gregory Korte, *Obama Signed "Blue Alert" Law to Protect Police*, USA TODAY (May 19, 2015), <https://www.usatoday.com/story/news/politics/2015/05/19/obama-blue-alert-law-bill-signing/27578911/> (describing the Rafael Ramos and Wenjian Liu National Blue Alert Act of 2015, Pub. L. No. 114-12, 129 Stat. 192).

38. Craven, *Blue Lives Matter Bills*, *supra* note 36.

39. Loren Thomas, *Bill Could Increase Penalties for Crimes Against Police*, WLTX19 (Feb. 8, 2017), <https://www.wltx.com/article/news/local/bill-could-increase-penalties-for-crimes-against-police/101-405204115>.

40. Deborah Barfield Berry, *House Passes Tough Penalties for Those Who Attack, Ambush Law Enforcement Officers*, USA TODAY (May 17, 2018), <https://www.usatoday.com/story/news/politics/2018/05/16/law-enforcement-house-passes-tough-penalties-attacks-officers/617154002/>.

41. *Id.*

42. See, e.g., Collier Meyerson, *The Case Against "Blue Lives Matter" Bills*, NATION (May 23, 2017), <https://www.thenation.com/article/case-blue-lives-matter-bills/> (arguing that a New York bill that would make an offense against a police officer a hate crime would increase the punishment an offender faced, but would not deter the offense).

43. See, e.g., John-Michael Seibler, *Our Police Deserve to Be Protected, but Congress Proposes Wrong Idea*, HERITAGE FOUND. (Aug. 13, 2018), <https://www.heritage.org/the-constitution/commentary/our-police-deserve-be-protected-congress-proposes-wrong-idea> (characterizing Blue Lives Matter sentencing enhancements as contrary to federalism principles and failing to address actual problems in a meaningful way).

44. See, e.g., Rebecca Beitsch, *Is Killing a Police Officer a Hate Crime?*, PBS (Aug. 3, 2016), <https://www.pbs.org/newshour/nation/killing-police-officer-hate-crime> (explaining why critics find no need to include police in hate-crimes laws).

45. See *id.* (explaining that critics believe amending hate-crimes laws to further protect police officers would "dilute [the laws'] original intent: ratcheting up the punishment for acts designed to intimidate whole communities"); Kanya Bennett, *Congress Wants More Protections for Cops While*

these laws to bring hate-crimes charges against uncooperative people who are deemed to be resisting arrest, but who are not physically attacking an officer.⁴⁶ With respect to federal proposals, conservative critics raised concerns about congressional interference with matters that should be left under state authority.⁴⁷ Moreover, these laws may be overly broad, potentially authorizing federal charges against someone who takes a swing at an officer but fails to strike any blow.⁴⁸ In an especially harsh assessment of the punitive legal approach to Blue Lives Matter laws, one observer remarked that such laws “protect and serve cops who hassle innocent people or use excessive force [by] giving them a new legal threat to use against their victims.”⁴⁹

The fundamental questions about these laws ought to be: (1) What is the exact problem these laws seek to address? and (2) Do these laws address the actual problems facing law enforcement officers? Highly publicized ambush attacks against police officers triggered the creation of these laws,⁵⁰ including the attacks in New York City and Dallas⁵¹ that some Blue Lives Matter advocates blame on Black Lives Matter activists.⁵² Despite the claim that this “type of violence . . . is growing at exponential rates,”⁵³ FBI data indicate that felonious assaults and fatal killings of police officers have gone up and down in individual years over the past decade, but there is no significant increase, or even upward trend, in victimizations.⁵⁴ The laws are clearly

Ignoring Police Reform, ACLU (May 17, 2018), <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/congress-wants-more-protections-cops-while> (arguing that it is inappropriate to characterize an offense against a police officer as a hate crime, because hate crimes are acts perpetrated against groups that have been historically and systematically discriminated against—police officers have not suffered historical or systematic persecution).

46. Julia Craven, *Louisiana Police Chief Shows Why the State’s Blue Lives Matter Law Is So Dangerous*, HUFFINGTON POST (Jan. 23, 2017), https://www.huffingtonpost.com/entry/blue-lives-matter-law-louisiana_us_588653dde4b0e3a7356ae3ae.

47. Seibler, *supra* note 43.

48. Jacob Sullum, *Congress Stands with the Blue, Against the Constitution*, REASON (May 23, 2018), <https://reason.com/archives/2018/05/23/congress-stands-with-the-blue-against-th>.

49. *Id.*

50. Craven, *Blue Lives Matter Bills*, *supra* note 36.

51. *Id.*

52. *Id.*

53. *Id.*

54. CRIMINAL JUSTICE INFO. SERVS. DIV., FED. BUREAU OF INVESTIGATION, LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED, tbls.1, 82 (2017), <https://ucr.fbi.gov/leoka/2017/resource-pages/tables-by-title-2017> (reporting felonious assaults and fatal killings of police officers by year); see also Edward R. Maguire, Justin Nix & Bradley A. Campbell, *A War on Cops? The Effects of Ferguson on the Number of U.S. Police Officers Murdered in the Line of Duty*, JUST. Q., Sept. 29, 2016, at 12–13 (deploying data to refute claims that fatal attacks on police have increased since the events in Ferguson, Missouri, that gave prominence to the Black Lives Matter organization and movement).

retributive in nature,⁵⁵ yet “[n]early all states already have laws enhancing the punishments for certain violent crimes against law [enforcement] officers.”⁵⁶ Some advocates claim that the increased punishments will have a deterrent effect that will reduce attacks on police.⁵⁷ There is no evidence, however, that such laws will actually deter people who harbor a specific motivation to harm police officers,⁵⁸ especially because crimes against police officers are already addressed with significant punishments.⁵⁹ Thus, rather than actually increasing any benefit to police officers who work in an environment of risk, observers see these laws as merely symbolic statements by politicians who want to claim that they are doing something about crimes against public servants.⁶⁰

II. BENEFICIAL POLICIES: GETTING SERIOUS ABOUT PROTECTING AND SUPPORTING POLICE OFFICERS

On its original website, the Blue Lives Matter organization noted that subsequent to its founding it sought to broaden its efforts to benefit officers by becoming a membership organization that would include regular citizens:

[T]he founders decided that we could be doing more to help the officers who are getting attacked in the streets . . . Membership was created so that citizens . . . could become actively involved in providing law enforcement officers with life-saving equipment

55. See New “Blue Lives Matter” Laws Raise Concerns, DETROIT NEWS (May 26, 2017), <https://www.detroitnews.com/story/news/nation/2017/05/26/blue-lives-matter/102196678/> [hereinafter *Laws Raise Concerns*] (quoting one governor who pledged to enact “the toughest penalties possible for anyone who attacks a law enforcement officer”).

56. *Id.*

57. See, e.g., Thomas, *supra* note 39 (quoting one state legislator who described a proposed bill as “creating a special class of victims and giving them additional protections [to] hopefully . . . serve[] as a deterrent if someone were inclined to attack a police officer, this would hopefully give them pause”); William Douglas & Eleanor Mueller, “Blue Lives Matter”: Push to Raise Penalties for Violence Against Cops, MCCLATCHY DC (May 26, 2016), <https://www.mcclatchydc.com/news/politics-government/congress/article80058187.html> (reporting that law enforcement organizations argue punitive Blue Lives Matter laws “will send a message and make suspects think twice before targeting officers”).

58. Deterrence effects in criminal justice are extremely difficult to prove because researchers, in effect, are attempting to document the rates of events that did not occur. GEORGE F. COLE, CHRISTOPHER E. SMITH & CHRISTINA DEJONG, *THE AMERICAN SYSTEM OF CRIMINAL JUSTICE* 515 (16th ed. 2019).

59. See Craven, *Blue Lives Matter Bills*, *supra* note 36 (explaining that, prior to the enactment of Blue Lives Matter laws, “[a]ll 50 states . . . [already had] statutes that automatically increase the penalties for violent attacks on police”).

60. See, e.g., *Laws Raise Concerns*, *supra* note 55 (“[A] criminal law expert at Cornell University Law School . . . said the new laws ‘reek of political pressure to do something symbolic as a way of expressing solidarity with police officers.’”).

and training, and providing financial support for the families of heroes killed in the line of duty.⁶¹

Although the website's language focuses on attacks against police officers, the organization's efforts can be broader at specific moments, such as raising money for an officer's infant son who needed a heart transplant.⁶² If Blue Lives Matter could fully adopt this broader focus—moving beyond a reactive posture toward Black Lives Matter and a preoccupation with officers' victimization—what might that mean for the advocacy of beneficial policies? One conservative commentator who was critical of the enactment of punitive Blue Lives Matter laws argued in favor of a broader approach by saying we should “support police with equipment, grants, research and training programs.”⁶³ Yet, even this broader view of the support that police officers actually need does not fully capture the breadth of policies that would improve officers' well-being and law enforcement effectiveness.⁶⁴

A. Resources

Policing is a profession that includes risks of violent victimization,⁶⁵ as well as significant levels of health-harming stress,⁶⁶ with attendant risks of suicide.⁶⁷ A broader view of harms experienced by police reveals that policies should account for psychological risks and harms to officers and their families, and should ask whether counselors and psychologists have sufficient understanding of police culture to provide effective help.⁶⁸

With respect to the Blue Lives Matter preoccupation with lethal attacks on police, there is certainly a need to ensure that officers throughout the

61. BLUE LIVES MATTER, *supra* note 1.

62. Gabrielle Fonrouge & Katherine Lavacca, *Blue Lives Matter Raises Money for Cop's Newborn with Rare Disease*, N.Y. POST (Jan. 18, 2019), <https://nypost.com/2019/01/18/blue-lives-matter-raises-money-for-cops-newborn-with-rare-disease/>.

63. Seibler, *supra* note 43.

64. *See infra* Part II.B (discussing the physical and mental challenges police face on the job and the ways to best remedy them).

65. David M. Bierie, Paul J. Detar & Sarah W. Craun, *Firearm Violence Directed at Police*, 62 CRIME & DELINQ. 501, 501–02 (2013).

66. Lily Chi-Fang Tsai, Claire Angelique R.I. Nolasco & Michael S. Vaughn, *Modeling Job Stress Among Police Officers: Interplay of Work Environment, Counseling Support, and Family Discussion with Co-Workers*, 19 POLICE PRAC. & RES. 253, 255 (2018); Ronald J. Burke, *Stress in Policing: An Overview*, in STRESS IN POLICING 3 (Ronald J. Burke ed., 2017).

67. *See generally* John M. Violanti et al., *Correlates of Hopelessness in the High Suicide Risk Police Occupation*, 17 POLICE PRAC. & RES. 408, 408 (2016).

68. *See* ELLEN KIRSCHMAN, MARK KAMENA & JOEL FAY, COUNSELING COPS: WHAT CLINICIANS NEED TO KNOW 1 (2014) (“[Police] overcame their natural resistance to asking for help, only to be turned off by well-meaning, and occasionally not so well-meaning, clinicians who didn’t understand the law enforcement culture . . .”).

country have access to protective gear, communications systems, and video equipment. These tools impede physical attacks,⁶⁹ accelerate calls for backup,⁷⁰ and generate evidence about what happened during encounters, respectively.⁷¹ Recent reports suggest that not every police department currently requires officers to wear protective vests.⁷² Some departments make exceptions for police administrators, even for those administrators who may arrive at a warrant-execution or crime-in-progress event to supervise officers.⁷³ In addition, there are questions about sufficient availability of the highest-strength body armor to reduce instances in which officers wearing weaker vests are killed by assailants using high-powered rifles.⁷⁴ Thinking more broadly about protective vests, equipping all police dogs with bullet-proof vests, making them less easily incapacitated by gunfire during encounters with armed assailants, might further reduce risks to officers.⁷⁵

Blue Lives Matter advocates primarily focus on a purported “war on cops,”⁷⁶ with an attendant prescriptive emphasis on both delegitimizing Black Lives Matter claims and promoting punitive sentencing laws.⁷⁷ They

69. See, e.g., Noelle Phillips, *Two Colorado Deputies Were Killed While Wearing Body Armor. Do Cops Need Better Protection?*, DENVER POST (Feb. 5, 2018), <https://www.denverpost.com/2018/02/05/do-colorado-police-need-better-protection/> (reporting that many police officers wear protective vests that are ineffective against certain high-powered weapons available to the public).

70. See, e.g., Jeremy G. Carter, Eric L. Piza & Eric Grommon, *Leveraging Wireless Broadband to Improve Police Land Mobile Radio Programming: Estimating the Resource Impact*, 42 J. CRIME & JUST. 60, 60–61 (2019) (identifying benefits to policing of wireless broadband radio programming that police departments do not yet widely utilize).

71. See, e.g., Kimberly Kindy, *Some U.S. Police Departments Dump Body-Camera Programs Amid High Costs*, WASH. POST (Jan. 21, 2019), https://www.washingtonpost.com/national/some-us-police-departments-dump-body-camera-programs-amid-high-costs/2019/01/21/991f0e66-03ad-11e9-b6a9-0aa5c2fc9e4_story.html?utm_term=.3b59373bflba (explaining that the costs of body cameras and data retention make such devices too costly for small police departments).

72. See, e.g., Rob Low, *Not All Police Departments Mandate Body Armor for Officers*, FOX31 DENVER (May 9, 2018), <https://kdvr.com/2018/05/09/not-all-police-departments-mandate-body-armor-for-officers/> (finding that, of 23 police departments studied, 4 did not require officers to wear protective vests); Sydney Smith, *Body Armor Mandatory for Most Area Officers*, TIMES HERALD (Aug. 25, 2016), <https://www.thetimesherald.com/story/news/local/2016/08/25/body-armor-mandatory-most-area-officers/89331722/> (reporting that, in the Port Huron, Michigan, area, body armor was mandatory for officers in the field but not always mandatory at the police station).

73. Amy R. Connolly, *Georgia Police Officer Killed While Serving Warrant, Not Wearing Vest*, UNITED PRESS INT’L (Feb. 12, 2016), https://www.upi.com/Top_News/US/2016/02/12/Georgia-police-officer-killed-while-serving-warrant-not-wearing-vest/2451455273003/.

74. Phillips, *supra* note 69.

75. Cf. Aileen Wingblad, *Ready for Action: Protective Vests Donated to Police Canines*, OAKLAND PRESS (Apr. 27, 2018), https://www.theoaklandpress.com/news/nation-world-news/ready-for-action-protective-vests-donated-to-police-canines/article_5f3a4d05-5f70-5882-a0ab-0dc0b207aaf4.html (noting incidents where police dogs were killed in confrontations because they were not wearing protective vests).

76. Douglas & Mueller, *supra* note 57.

77. *Id.*

also recognize that broadening law enforcement resources is a desirable means to improve safety for police and the public.⁷⁸ Yet, while the Blue Lives Matter organization explicitly says, “[we] will continue to support law enforcement in any way when there is a need,”⁷⁹ their protect-the-police rhetoric does not address the psychological burdens and harms suffered by police.⁸⁰ A true commitment to protecting and supporting police officers should presumably encompass concern for and advocacy about harmful psychological problems affecting police officers, including suicide risk,⁸¹ post-traumatic stress disorder (PTSD),⁸² mental illness,⁸³ and injury risk associated with chronic fatigue.⁸⁴ These and related issues⁸⁵ deserve additional attention and resources, because they impact officers’ well-being and effectiveness.⁸⁶ As these examples indicate, a genuine commitment to protecting and supporting police officers requires a broader awareness of the risks and harms police officers experience and an abandonment of the myopic preoccupation with reacting against the Black Lives Matter social movement.⁸⁷ Indeed, a comprehensive effort to protect and support police

78. See BLUE LIVES MATTER, *supra* note 1 (“We will work to provide law enforcement with life-saving equipment and training . . .”); Josh Koehn, *Blue Lives Matter, Police Union Miss Key Moment for Change by Attacking Black Lives Matter*, SAN JOSE INSIDE (July 25, 2016), <http://www.sanjoseinside.com/2016/07/25/blue-lives-matter-sj-police-union-miss-key-moment-for-change-by-attacking-black-lives-matter/> (reporting on a press release issued by the San Jose Police Officers Association, an organization overtly critical of Black Lives Matter that echoes Blue Lives Matter claims and arguments, saying: “It is past time for our political leaders to step up and support law enforcement with the necessary staffing and equipment . . .”).

79. BLUE LIVES MATTER, *supra* note 1.

80. *Id.*

81. See, e.g., Ian Stanley, Melanie Horn & Thomas Joiner, *A Systematic Review of Suicidal Thoughts and Behaviors Among Police Officers, Firefighters, EMTs, and Paramedics*, 44 CLINICAL PSYCH. REV. 25, 41 (2016) (finding, based on a review of empirical data, that police officers may be more susceptible to suicidal thoughts).

82. See Brian Chopko, Patrick Palmieri & Richard Adams, *Critical Incident History Questionnaire Replication: Frequency and Severity of Trauma Exposure Among Officers from Small and Midsize Police Departments*, 28 J. TRAUMATIC STRESS 157, 159 (2015) (examining the contribution of traumatic events to police officers’ experiences of PTSD).

83. See generally Sean Bell & Yarin Eski, “Break a Leg—It’s All in the Mind”: *Police Officers’ Attitudes Toward Colleagues with Mental Health Issues*, 10 POLICING 95 (2016) (identifying challenges with police organizational culture for those officers with mental illness issues).

84. See, e.g., Desta Fekedulegn et al., *Fatigue and On-Duty Injury Among Police Officers*, 60 J. SAFETY RES. 43, 50 (2017) (providing evidence of association between fatigue and on-duty injuries for police officers).

85. See, e.g., Kerry Karaffa et al., *Perceived Impact of Police Work on Marital Relationships*, 23 FAM. J. 120, 121 (2015) (examining occupational factors that can affect police officers’ marital relationships).

86. See generally John Violanti et al., *Police Stressors and Health: A State-of-the-Art Review*, 40 POLICING 642 (2017) (showing psychological and physiological effects of stress on police).

87. Koehn, *supra* note 78.

officers actually requires consideration of larger social and political issues that affect the work—and everyday risks—of policing.⁸⁸

B. Public Policy

The foregoing discussion of the police need for protective *armor*—both physical and psychological—focused narrowly on supporting officers directly, without considering the social forces and contexts that increase the risks and threats faced by officers.⁸⁹ Yet, these contexts are obviously important to protecting and supporting police officers, because the frequency and probability of harm police officers experience varies in different situations.⁹⁰ Thus, a comprehensive effort to value and protect officers must consider a broad array of policy initiatives, including those not typically associated with enhanced safety for the police and public.⁹¹

For example, officers face the risk of needle-stick injuries and attendant possibilities for harm from bloodborne pathogens, especially when conducting frisk searches.⁹² While improved equipment and training can diminish risk and reduce harm,⁹³ it is possible to think more broadly about drugs and drug-related enforcement matters that may also affect the frequency of these risk exposures.⁹⁴ For example, needle-exchange programs may reduce the number of shared and contaminated needles in circulation on the streets.⁹⁵ Moreover, organizations in Canada and other countries offer intravenous drug users supervised-injection sites, primarily to facilitate immediate response to potentially fatal overdoses and also to reduce risks of bloodborne illnesses by providing clean needles.⁹⁶ Supervised-injection centers could also reduce the number of people carrying injection needles,

88. *Id.*

89. *See supra* Part II.A.

90. *See, e.g.*, Jennifer C. Gibbs, Jonathan Lee, Joseph Moloney & Steven Olson, *Exploring the Neighbourhood Context of Serious Assaults on Police*, 28 POLICING & SOC'Y 898, 904 (2018) (describing the correlation of areas of concentrated disadvantage and high rates of emergency calls with assaults on police in Baltimore).

91. *See infra* notes 92–130.

92. Merie De Perio, Kerton Victory & Matthew Groenewold, Poster Abstract, *Needlestick Injuries and Other Potential Exposures to Bloodborne Pathogens Among Police Officers in a City Police Department, 2011-2016*, 5 OPEN F. INFECTIOUS DISEASES S348 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6253865/pdf/ofy210.991.pdf>.

93. *Id.*

94. *See, e.g.*, ALEX S. VITALE, THE END OF POLICING 150–51 (2017) (discussing needle exchange programs and supervised-injection sites).

95. *Id.*

96. Elana Gordon, *What's the Evidence That Supervised Injection Sites Save Lives?*, NPR (Sept. 7, 2018), <https://www.npr.org/sections/health-shots/2018/09/07/645609248/whats-the-evidence-that-supervised-drug-injection-sites-save-lives>.

which would reduce the risks of exposure to HIV and Hepatitis C for officers conducting frisk searches.⁹⁷ Obviously, considering and introducing any policy changes requires careful examination of costs, benefits, and outcomes.⁹⁸ Yet, the fundamental point is that a genuine commitment to protecting and supporting police officers should include a willingness to think broadly about the sources of risk and harm for police officers, as well as the wide array of policy initiatives that may have a positive impact in countering specific threats.⁹⁹

Potentially dramatic changes in American drug policy, such as providing injection sites, risk colliding with political impediments from ingrained assumptions and beliefs about crime held by politicians, the public, and the police themselves—even when research supports these changes.¹⁰⁰ Such impediments may loom even larger with respect to policy proposals that advance beyond the boundaries of criminal justice or that trigger issues of ideological identity and demarcation in our politically polarized society.¹⁰¹ Yet, one must consider these broader issues in any genuine examination of how to protect and support police officers. As illustrated pointedly, for example, in the words of columnist Josh Koehn: “The Blue Lives Matter movement has a nation ready and willing to support police officers, so why doesn’t it do something about the number of guns on our streets? Why doesn’t it actually address the dangers of deteriorating mental health when people possess these guns?”¹⁰² The Blue Lives Matter organization and its supporters obviously do not control gun policy¹⁰³ or resources devoted to mental health treatment.¹⁰⁴ Instead, Koehn’s questions challenge the

97. Because the availability of supervised injection sites is “associated with less outdoor drug use,” presumably there could be a corresponding reduction in drug users carrying needles as injection sites provide “a safe space [and] clean injection supplies.” *Id.*

98. See Daniel Mears, *Towards Rational and Evidence-Based Crime Policy*, 35 J. CRIM. JUST. 667, 678–79 (2007) (describing the desirability of and impediments to the development of evidence-based crime policy).

99. Koehn, *supra* note 78.

100. See generally Arie Freiberg & W.G. Carson, *The Limits of Evidence-Based Policy: Evidence, Emotion, and Criminal Justice*, 69 AUSTL. J. PUB. ADMIN. 152 (2010) (explaining that law-and-order policies often resonate with the public and the public’s psychological needs).

101. See, e.g., Frank Newport & Andrew Dugan, *Partisan Differences Growing on a Number of Issues*, GALLUP (Aug. 3, 2017), <https://news.gallup.com/opinion/polling-matters/215210/partisan-differences-growing-number-issues.aspx> (reporting on the dramatic growth in the gap between Republicans’ and Democrats’ views on gun control, health care, police conduct, and other issues since the turn of the century).

102. Koehn, *supra* note 78.

103. See Gretchen Frazee, *Why States, Not Congress, Are Passing More Gun Laws*, PBS (Mar. 23, 2018), <https://www.pbs.org/newshour/nation/why-states-not-congress-are-passing-more-gun-laws> (stating that state legislatures and Congress control gun laws and policies).

104. See Norm Ornstein, *How to Fix a Broken Mental-Health System*, ATLANTIC (June 8, 2016), <https://www.theatlantic.com/politics/archive/2016/06/getting-mental-health-on-the-docket/485996/>

organization and its supporters to become advocates for a wider array of policies in order to advance their purported goals.¹⁰⁵

A major challenge for police officers in many jurisdictions is handling encounters with people whose mental illness issues have placed them in a moment of behavioral crisis, whether threatening or harming others, harming themselves, or alarming the public with unusual behavior.¹⁰⁶ This is not to say that people suffering from mental illnesses typically pose a lethal threat to police,¹⁰⁷ although such events have occurred.¹⁰⁸ Officers face injury risks in any circumstance when people resist arrest, especially young men under the influence of alcohol, whether suffering from mental illnesses or not.¹⁰⁹ Yet, special concerns exist if police overestimate the dangers posed by encounters with people suffering from mental illnesses.¹¹⁰ There are risks of highly publicized, tragic police-use-of-force events produced by such overreactions,¹¹¹ which generate conflict between police and the public¹¹²

[hereinafter Ornstein, *Mental-Health System*] (stating that mental health laws and policy are defined by legislatures).

105. Koehn, *supra* note 78.

106. See generally Jennifer D. Wood & Amy C. Watson, *Improving Police Interventions During Mental Health-Related Encounters: Past, Present and Future*, 27 POLICING & SOC'Y 289 (2017) (providing an overview of issues concerning police officers' encounters with people suffering from mental illnesses).

107. See, e.g., Jeffrey W. Swanson et al., *Gun Violence, Mental Illness, and Laws That Prohibit Gun Possession: Evidence from Two Florida Counties*, 35 HEALTH AFF. 1067, 1072 (2016) ("Epidemiological studies have shown that a diagnosis of mental illness alone contributes very little to the overall risk of interpersonal violence"); see also Xueyi Xing, *The Impact of Deinstitutionalization on Murders of Law Enforcement Officers*, at iv (2016) (unpublished Ph.D. dissertation, University of South Carolina), <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=4853&context=etd> (finding that the deinstitutionalization movement's effect of moving people suffering from mental illness out of institutions and into community settings did not lead to an increase in fatal attacks on police).

108. See, e.g., Rachel Polansky, *Man Accused of Shooting Police Officer Has History of Mental Illness*, NBC2 NEWS (July 23, 2018), <https://www.nbc-2.com/story/38709794/man-accused-of-shooting-police-officer-has-history-of-mental-illness> (reporting that a man previously found incompetent to stand trial and confined to a state mental hospital was accused of shooting a police officer in Florida).

109. See generally David M. Bierie, *Assault of Police*, 63 CRIME & DELINQ. 899 (2017) (reviewing data and literature on assaults against police officers).

110. See Melissa Schaefer Morabito & Kelly M. Socia, *Is Dangerousness a Myth? Injuries and Police Encounters with People with Mental Illnesses*, 14 CRIMINOLOGY & PUB. POL'Y 253, 254 (2015) (comparing police officers' perceptions about the risks of encounters with people suffering from mental illnesses to the data on police encounters with the mentally ill).

111. See VITALE, *supra* note 94, at 94-95 (describing seemingly needless police shootings of people in New Mexico and California suffering from mental illnesses and erroneously perceived as threatening to the officers).

112. See, e.g., Bill Chappell, *Albuquerque Protest of Fatal Police Shootings Turns into Chaos*, NPR (Mar. 31, 2014), <https://www.npr.org/sections/thetwo-way/2014/03/31/297163938/albuquerque-protest-of-fatal-police-shootings-turns-into-chaos> (reporting on public protests after police shot a homeless man who lived on a hillside and suffered from mental illness).

and pose psychological harms for officers who struggle with the burden, including possible PTSD, of causing injuries and deaths.¹¹³ Many cities now train officers for such situations or gain intervention assistance from social workers, indicating progress.¹¹⁴ However, these interventions affecting specific individuals do not address mental health needs to the same extent as would broader policies, such as universal health care to provide medication and treatment options for everyone, mental health courts, and in-patient psychiatric treatment for anyone who needs such help.¹¹⁵ In addition, the police—and society—would benefit from investments in parallel initiatives to address homelessness and to coordinate mental health assessments and referrals between the criminal justice system and mental health treatment providers.¹¹⁶ These issues may not seem directly related to protecting and supporting police officers, and they certainly are not the focus of advocacy by the Blue Lives Matter organization and its supporters.¹¹⁷ Yet, such efforts can reduce harms to officers, including PTSD from injuring others¹¹⁸ and risks from incidents that deteriorate police-community relations.¹¹⁹

Gun control policy is clearly relevant to officer safety.¹²⁰ Yet, it constitutes a broadly controversial policy issue that is not the focus of the Blue Lives Matter organization and its advocates.¹²¹ Indeed, quite the opposite, as the co-founder of Blue Lives Matter and Editor-in-Chief of its

113. See Irina Komarovskaya et al., *The Impact of Killing and Injuring Others on Mental Health Symptoms Among Police Officers*, 45 J. PSYCHIATRIC RES. 1332, 1334 (2011) (reporting results of a survey showing that 10% of officers report seriously injuring or killing someone in the first three years of a career, with attendant increases in risks of PTSD for officers).

114. See generally, e.g., Stephanie Frantz & Randy Borum, *Crisis Intervention Teams May Prevent Arrests of People with Mental Illnesses*, 12 POLICE PRAC. & RES. 265 (2011) (offering Crisis Intervention Teams as one example of increased co-training and coordination between police and mental health professionals).

115. Norman J. Ornstein, *How a Bad Law and a Big Mistake Drove My Mentally-Ill Son Away*, N.Y. TIMES (Mar. 6, 2018), <https://www.nytimes.com/2018/03/06/opinion/guns-mental-health-baker-act.html> (recounting a father's loss of his mentally ill son and addressing the need for stricter gun-control laws and adequate health care); Ornstein, *Mental-Health System*, *supra* note 104 (discussing the need for legislative action to address mental illness).

116. See Laurence Roy et al., *Profiles of Criminal Justice Involvement of Mentally Ill Homeless Adults*, 45 INT'L J.L. & PSYCH. 75, 79–80 (2016) (providing recommendations for integrated services based on a study of homeless, mentally ill adults).

117. See *supra* text accompanying note 36 (explaining that Blue Lives Matter has focused its policy advocacy on securing even harsher punishments for crimes against police).

118. Komarovskaya et al., *supra* note 113, at 1334.

119. See *infra* notes 152–54 and accompanying text.

120. Koehn, *supra* note 78; Phillips, *supra* note 69.

121. SnarkyCop, *It's Time for Anti-Gun Crowd to Stop Pretending Gun Control Is Pro-Cop*, BLUE LIVES MATTER (Dec. 31, 2017), https://defensemaven.io/bluelivesmatter/news/it-s-time-for-anti-gun-crowd-to-stop-pretending-gun-control-is-pro-cop-nzGWBK_-XkCMd1ZCpY1mYw/ (bashing, under the pseudonym “SnarkyCop,” gun-control groups for arguing that gun-control would improve police safety).

website actually published an opinion column with the title, *It's Time for Anti-Gun Crowd to Stop Pretending Gun Control Is Pro-Cop*.¹²²

Police officers unquestionably face special risks,¹²³ for example, when responding to active-shooter events involving the criminal use of military-style weapons with high-capacity magazines.¹²⁴ Police officers also put their lives on the line when acting as first responders who intervene when armed people are enraged,¹²⁵ desperate,¹²⁶ mentally disturbed,¹²⁷ or otherwise behaving in a threatening manner.¹²⁸ And, of course, police officers are sometimes specifically targeted by people with guns.¹²⁹ Moreover, in their roles as first responders who must render first aid and comfort to victims, police officers' exposure to people injured or killed by firearms—whether

122. *Id.*; Christopher Berg, *About Me*, BLUE LIVES MATTER, <https://defensemaven.io/bluelivesmatter/user/@SnarkyCop/> (last visited Apr. 20, 2020) (stating that “SnarkyCop” is the Twitter handle of Blue Lives Matter co-founder, Christopher Berg).

123. *See, e.g.*, Jeffrey Collins, *South Carolina Police Ambush Suspect Had Estimated 129 Guns in the Home*, CHI. SUN-TIMES (Oct. 16, 2018), <https://chicago.suntimes.com/news/terrence-carraway-frederick-hopkins-129-guns-south-carolina-police-ambush-suspect/> (reporting that the man who shot seven police officers in South Carolina used military-style rifles and had a large arsenal of weapons in his home).

124. For example, the Aurora, Colorado, movie theater mass-shooting that killed 12 and wounded 58 involved the perpetrator's use of an AR-15 military-style rifle with a 100-round magazine that could fire 60 rounds in a minute. Matt Pearce, *Gun's Magazine Shaped the Pace of Colorado Theater Massacre*, L.A. TIMES (July 22, 2012), <http://articles.latimes.com/2012/jul/22/nation/la-na-nn-theater-shooting-magazine-20120722>.

125. *See, e.g.*, Frank Main, *Officer Jimenez Was on Routine Mail Run When He Rushed to Mercy Hospital*, CHI. SUN-TIMES (Nov. 21, 2018), <https://chicago.suntimes.com/news/officer-samuel-jimenez-routine-mail-run-mercy-hospital-shooting-juan-lopez/> (reporting that the shooting that resulted in the death of a police officer and two other victims began with an angry confrontation between the shooter and his ex-fiancée).

126. *See, e.g.*, Nichole Manna, “*We Don't Have Peace Here Anymore,*” *Neighbor Says of Robbers Who Shot Ft. Worth Cop*, FT. WORTH STAR-TELEGRAM (Sept. 14, 2018), <https://www.star-telegram.com/news/local/crime/article218397960.html> (explaining that a police officer was shot as desperate robbery suspects sought to escape).

127. *See, e.g.*, Gus Burns, *Mental Illness Played a Role in These 13 Michigan Cop Killings*, MLIVE (Jan. 9, 2019), <https://www.mlive.com/expo/news/g661-2019/01/b5ef4daec4964/mental-illness-played-a-role-i.html> (asserting that a number of police deaths are attributable to shooters who show evidence of suffering from mental illnesses that affect their behavior).

128. *See, e.g.*, Amanda Garrett, *Barberton Officer Shot, New Franklin Man Killed After an 8-Hour Standoff*, AKRON BEACON J. (Feb. 8, 2019), <https://www.ohio.com/news/20190208/barberton-officer-shot-new-franklin-man-killed-after-8-hour-standoff-ends-in-gunfire> (reporting that a man with a gun barricaded himself inside an apartment and fired a shot through the door when officers arrived in response to a domestic violence call).

129. *See Sniper Ambush*, *supra* note 28 (reporting that a lone gunman killed five police officers in Dallas); Visser, *supra* note 29 (reporting that an individual used a semi-automatic rifle to kill three police officers).

suicides, accidents, or intentional acts—can contribute to physical and psychological symptoms of PTSD during routine policing work.¹³⁰

In light of the threats posed to police by the ubiquity and ease of acquiring firearms in the United States,¹³¹ one might expect Blue Lives Matter and other law enforcement organizations to unify at the forefront of efforts to regulate and limit the carrying of firearms.¹³² There are divisions in perspectives and advocacy on this issue, however, most notably with big-city police chiefs advocating for gun control and elected sheriffs in small jurisdictions often opposed to such restrictions.¹³³ The divergence of police chiefs' perspectives from that of many officers was particularly striking when an online publication for rank-and-file law enforcement officers conducted a survey of its registered members and received responses from 15,000 verified current and former officers about gun-control policies.¹³⁴ The survey did not utilize a true scientific sample, because it was limited to registered members of a specific online publication.¹³⁵ Moreover, the phrasing of its questions has been challenged as biased due to the questions' focus on whether proposals would stop mass shootings or reduce violent crime, rather than examining the broader issue of public safety.¹³⁶ Yet, given the large number of respondents to the survey and the near-consensus in responses, the results presumably say something about views in the law enforcement community.¹³⁷ For example, 91% believed a ban on military-style assault

130. See generally Shira Maguen et al., *Routine Work Environment Stress and PTSD Symptoms in Police Officers*, 197 J. NERVOUS & MENTAL DISEASE 754 (2009) (finding clear evidence that officers who experience incidents of critical stress, especially life-threatening incidents, are more likely to develop PTSD).

131. *America's Gun Culture in Charts*, BBC (Oct. 27, 2018), <https://www.bbc.com/news/world-us-canada-41488081> (highlighting the number of guns and high rates of killings involving firearms in the United States compared to other countries).

132. Martin Kaste, *Gun Debate Divides Nation's Police Officers, Too*, NPR (Oct. 9, 2015), <https://www.npr.org/2015/10/09/446866939/gun-debate-divides-nations-police-officers-too> (explaining that gun-control legislation enjoyed broad support from law enforcement in the past, but the issue has grown more contentious).

133. Jessica Glenza & Lois Beckett, *Gun Control Still "Not the Issue" for Law Enforcement Despite Police Attacks*, GUARDIAN (July 19, 2016), <https://www.theguardian.com/us-news/2016/jul/19/gun-control-police-open-carry-law>.

134. *PoliceOne.com Releases Survey of 15,000 Law Enforcement Professionals About Gun Control Policies*, POLICEONE.COM (Apr. 8, 2013), <https://www.policeone.com/police-products/press-releases/6188461-PoliceOne-com-Releases-Survey-of-15-000-Law-Enforcement-Professionals-about-U-S-Gun-Control-Policies/> [hereinafter *PoliceOne.com Survey*].

135. MICHAEL G. MAXFIELD & EARL BABBIE, RESEARCH METHODS FOR CRIMINAL JUSTICE AND CRIMINOLOGY 218–21 (3d ed. 2001) (explaining that when researchers use population samples to conduct a study there are inherent risks which may limit the researchers' ability to obtain an accurate representation of the population).

136. See Lori Robertson, *NRA Misrepresents Police Survey, Legislation*, FACTCHECK (Apr. 18, 2013), <https://www.factcheck.org/2013/04/nra-misrepresents-police-survey-legislation/>.

137. *PoliceOne.com Survey*, *supra* note 134.

weapons would have no impact on violent crime, and 81% favored arming teachers and school administrators who had received weapons training.¹³⁸ Even more striking, 71% supported decisions by local law enforcement leaders to refuse to enforce restrictive gun laws in their jurisdictions.¹³⁹ If those active in Blue Lives Matter share the viewpoints of these survey respondents, it is no surprise that the organization and its supporters do not address gun control as part of their advocacy for officer health and safety.¹⁴⁰ Thus, it is common to see police organizations endorse political candidates who actively oppose gun control measures, such as candidates who receive “A” grades and campaign contributions from the National Rifle Association.¹⁴¹

C. Respecting Black Lives Matter

Paradoxically, in light of the origins of Blue Lives Matter,¹⁴² a genuine commitment to the health and safety of police officers would require police departments to be self-critical and listen to the claims of the Black Lives Matter organization and like-minded community residents.¹⁴³ In the aftermath of George Zimmerman’s 2013 acquittal for stalking and killing Trayvon Martin, an unarmed teenager, Black Lives Matter arose from concerns about racial discrimination in a justice system that did not merely

138. Ron Avery, *Police Gun Control Survey: Are Legally-Armed Citizens the Best Solution to Gun Violence?*, POLICEONE.COM (Apr. 8, 2013), <https://www.policeone.com/gun-legislation-law-enforcement/articles/6186552-Police-Gun-Control-Survey-Are-legally-armed-citizens-the-best-solution-to-gun-violence/>.

139. *PoliceOne.com Survey*, *supra* note 134.

140. See SnarkyCop, *supra* note 121 (providing an example of a Blue Lives Matter voice who ardently believes gun control puts officers at risk).

141. For example, in the Florida gubernatorial race in 2018, the Florida Police Benevolent Association endorsed the Republican candidate who had an “A” rating from the NRA and who has accepted campaign contributions from the NRA during his political career. See Anthony Man, *Police Union Endorses Republican Ron DeSantis for Governor—Four Years After Endorsing Democrat*, S. FLA. SUN SENTINEL (Oct. 3, 2018), <https://www.sun-sentinel.com/news/politics/fl-ne-ron-desantis-police-endorsement-20181003-story.html> (reporting that a major police union endorsed Ron DeSantis for governor of Florida); Skyler Swisher, *NRA’s Grades for Florida Candidates Are out. Who Got an A+?*, S. FLA. SUN SENTINEL (July 17, 2018), <https://www.sun-sentinel.com/news/politics/fl-reg-florida-nra-grades-20180717-story.html> (reporting that the NRA gave Ron DeSantis an “A” grade); Emmanuella Grinberg & Kate Grise, *These Florida Lawmakers Accepted Money from the National Rifle Association*, CNN (Feb. 21, 2018), <https://www.cnn.com/2018/02/19/politics/nra-pvf-contributions-florida-politicians/index.html> (reporting that then-Rep. Ron DeSantis received a \$1,000 contribution from the NRA during the 2016 election).

142. See *supra* text accompanying note 26 (showing that Blue Lives Matter has defined itself in defiant opposition to Black Lives Matter from its very beginning).

143. See, e.g., *infra* text accompanying notes 152–55 (discussing what *should* be a point of common ground between Black Lives Matter and Blue Lives Matter—i.e., improving trust between police and the communities they serve).

disadvantage communities of color, but also undervalued their lives and endangered them.¹⁴⁴ Racial discrimination in the American justice system is well-documented in both research findings¹⁴⁵ and narrative reports of individuals' observations and experiences.¹⁴⁶ Participation in protests and prominence of the organization's slogan grew nationwide in the aftermath of Officer Darren Wilson's shooting of Michael Brown in Ferguson, Missouri, and Wilson's subsequent avoidance of any criminal charges in 2014.¹⁴⁷ This expansion of Black Lives Matter as an organization and a social movement included a significant focus on the need for increased police accountability.¹⁴⁸ The reactive founding of Blue Lives Matter was based on an explicit rejection of Black Lives Matter and its claims about police misconduct,¹⁴⁹ and thereby raises questions about whether the participating officers and their supporters are opponents of constructive criticism of police¹⁵⁰ as well as police reform.¹⁵¹

Police departments' relationships with people in the communities that they serve can affect citizens' interactions with individual officers¹⁵² and can

144. Day, *supra* note 9.

145. See, e.g., Traci Burch, *Skin Color and the Criminal Justice System: Beyond Black-White Disparities in Sentencing*, 12 J. EMPIRICAL LEGAL STUD. 395, 397 (2015) (demonstrating that more severe sentences are given to minority group members, with greater severity for those with darker skin tones); William Y. Chin, *Racial Cumulative Disadvantage: The Cumulative Effects of Racial Bias at Multiple Decision Points in the Criminal Justice System*, 6 WAKE FOREST J.L. & POL'Y 441, 441 (2016) (reviewing studies documenting the existence of racial discrimination and disparities through the stages of the American criminal justice process).

146. See, e.g., Victor M. Rios, Nikita Carney & Jasmine Kelekay, *Ethnographies of Race, Crime, and Justice: Toward Sociological Double-Consciousness*, 43 ANN. REV. SOC. 493, 499 (2017) (reviewing qualitative research and providing narratives about racial discrimination and inequality in the criminal justice system); Christopher E. Smith, *What I Learned About Stop-and-Frisk From Watching My Black Son*, ATLANTIC (Apr. 1, 2014), <https://www.theatlantic.com/national/archive/2014/04/what-i-learned-about-stop-and-frisk-from-watching-my-black-son/359962/> [hereinafter Smith, *What I Learned About Stop-and-Frisk*] (describing police practices targeting African-Americans without adhering to constitutional rules).

147. Hafner, *supra* note 17.

148. *Id.*

149. BLUE LIVES MATTER, *supra* note 1.

150. Cf. Seth Stoughton, Geoffrey Alpert & Jeff Noble, *Why Police Need Constructive Criticism*, ATLANTIC (Dec. 23, 2015), <https://www.theatlantic.com/politics/archive/2015/12/officer-porter-mistrial-police-culture/421656/> (discussing police resistance to constructive criticism, even when such criticism comes from fellow officers).

151. See Ed Krayewski, *Four Police Brutality Reforms to Focus on: A Libertarian Take*, REASON (Sept. 2, 2014), <https://reason.com/archives/2014/09/02/four-issue-to-focus-on-in-police-brutali/> (describing police resistance to police accountability reforms).

152. See, e.g., Mengyan Dai, James Frank & Ivan Sun, *Procedural Justice During Police-Citizen Encounters: The Effects of Process-Based Policing on Citizen Compliance and Demeanor*, 39 J. CRIM. JUST. 159, 164 (2011) (finding that police officers' demeanor and willingness to listen to citizens during encounters can reduce disrespect and noncompliance experienced by officers in those encounters).

reduce citizens' willingness to provide information about crimes.¹⁵³ As summarized by one justice research organization:

[D]amaged police-community relations make it more difficult for police to execute their most critical responsibility: to respond to violent crime and protect public safety. In those communities where distrust in police is high, people are less likely to report a crime or offer witness testimony, which impedes effective policing.¹⁵⁴

Clearly, many police executives recognize the importance of good police-community relations, as reflected in their departments' participation in organizations such as Advocates and Leaders for Police and Community Trust (ALPACT).¹⁵⁵ Despite the potential benefits to police from listening to community members,¹⁵⁶ the Blue Lives Matter organization manifests what can be termed *occupational umbrage*,¹⁵⁷ namely a reflexive defensiveness about criticism directed at police officers.¹⁵⁸ Reflexive defensiveness can exist in other professions, too,¹⁵⁹ but it is especially damaging for the profession of policing, which needs to listen to and understand community concerns in order to be effective.¹⁶⁰ The Blue Lives Matter organization's explicit mischaracterization of Black Lives Matter as a "movement[]"—not just an organization—"whose goal [is] the vilification of law enforcement"¹⁶¹ reveals an unwillingness to listen, understand, and seriously consider the legitimate concerns that motivate many people who speak and act under the

153. See, e.g., Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 859 (2016) (finding that high-profile cases of police violence can reduce citizens' willingness to cooperate in providing information about crimes).

154. Jim Parsons, *Policing*, VERA INST. JUST., <https://www.vera.org/centers/policing> (last visited Apr. 11, 2020).

155. Jonathan Oosting, *Michigan Police Shootings Have Prompted Anger, Not Violence, As Leaders Build Relationships*, MLIVE (May 8, 2015), https://www.mlive.com/lansing-news/index.ssf/2015/05/michigan_alpact_terrance_kello.html (explaining that ALPACT originated from concerns about racial profiling by police—its goal is to improve relations between the police and the community).

156. Dai, Frank & Sun, *supra* note 152, at 164–68.

157. This is a descriptive term coined by the Author.

158. *Id.*

159. See, e.g., Pamela Oliver, *Taking Criticism While Privileged*, INSIDE HIGHER ED. (July 18, 2018), <https://www.insidehighered.com/advice/2018/07/18/advice-dealing-criticism-person-privilege-academe-opinion> ("Many professors . . . [are] outraged if anyone expects them to take criticism about the way they give criticism to others.").

160. See *supra* notes 152–55 and accompanying text (noting the importance of a positive relationship between police and the communities they serve).

161. BLUE LIVES MATTER, *supra* note 1.

Black Lives Matter slogan.¹⁶² In fact, the Black Lives Matter organization suggested policy goals,¹⁶³ which, whether or not one agrees with each one, reflect genuine debates about how best to organize and practice policing in American society.¹⁶⁴

The list set forward by Black Lives Matter includes the following goals:

Ending “broken windows” policing, which aggressively polices minor crimes[;]

[U]sing community oversight for misconduct rather than [permitting] police to decide what consequences officers face[;]

[M]aking standards for reporting police use of deadly force[;]

[I]ndependently investigating and prosecuting police misconduct[;]

[H]aving the racial makeup of police departments reflect [the diversity of] the communities they serve[;]

[R]equiring officers to wear body cameras[;]

[P]roviding more training for police officers[;]

[E]nding for-profit policing practices[;]

[E]nding the police use of military equipment[;]

[I]mplementing police union contracts that hold officers accountable for misconduct[.]¹⁶⁵

162. Black Lives Matter leaders have advocated reforms related to police accountability and police strategies that are excessively enforcement-oriented in certain communities. *Black Lives Matter Activists Outline Policy Goals*, BBC NEWS (Aug. 21, 2015), <https://www.bbc.com/news/world-us-canada-34023751> [hereinafter *Black Lives Matter Activists*].

163. *Id.*

164. For example, many issues related to the goals of Black Lives Matter were examined and discussed in the report of the presidential task force on improving policing. *See* PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT 9–10 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (stating the report’s goal was to build trust between the police and community, particularly minority communities, thus reducing biases in policing).

165. *Black Lives Matter Activists*, *supra* note 162.

Even if there are individuals who commit acts of property damage and violence during a Black Lives Matter event,¹⁶⁶ or leaders of autonomously operated local Black Lives Matter chapters who make unwise statements,¹⁶⁷ those improprieties are not a valid excuse for reflexively dismissing Black Lives Matter's underlying policy concerns.¹⁶⁸ In fact, by dismissing Black Lives Matter, Blue Lives Matter invites the conclusion that *it* is actually the entity pursuing the kind of objective—"vilification" of an organization and movement¹⁶⁹—that it inaccurately describes as the heart of Black Lives Matter's purpose.¹⁷⁰

Blue Lives Matter supporters need to step back from the defensive myopia of occupational umbrage in order to consider what Black Lives Matter advocates observe.¹⁷¹ If Blue Lives Matter supporters are willing to do so, they might recognize both the legitimacy of Black Lives Matter's concerns¹⁷² and the ways in which individual incidents harm the positive relationships that police departments need with the communities they serve.¹⁷³ One might look, for example, at two different cases—one in North Charleston, South Carolina,¹⁷⁴ and the other in Chicago¹⁷⁵—in which police

166. See *Minnesota Protesters Throw Fireworks, Rocks at Police in I-94 Shutdown*, USA TODAY (July 10, 2016), <https://www.usatoday.com/story/news/nation-now/2016/07/10/officers-injured-minnesota-i-94-shutdown/86915122/>.

167. See Cameron Knight, *Should Protesters Arm Themselves? Black Lives Matter Group Sees Need for Self-Defense*, CINCINNATI ENQUIRER (Nov. 28, 2017), <https://www.cincinnati.com/story/news/politics/2017/11/28/cincinnati-black-lives-matter-brings-old-question-new-protesters-should-we-protestors-arm-themselve/739145001/> (second alteration in original) (quoting a local Black Lives Matter organizer: "We are not pacifists . . . We do everything to minimize violence . . . but we will defend ourselves if attacked to the degree necessary to free ourselves from harm.").

168. See *supra* text accompanying notes 163–65 (laying out Black Lives Matter's policy objectives).

169. BLUE LIVES MATTER, *supra* note 1.

170. Compare *id.* (describing Black Lives Matter as seeking "the vilification of law enforcement"), with *Black Lives Matter Activists*, *supra* note 162 (summarizing Black Lives Matter's core goals as reducing violence, improving police-community relations, and achieving accountability).

171. It can be difficult for members of one group to have an empathetic understanding of those whose lives are different from their own. Walter G. Stephan & Krystina Fry, *The Role of Empathy in Improving Intergroup Relations*, 55 J. SOC. ISSUES 729, 729 (1999).

172. See *supra* text accompanying notes 163–65 (outlining Black Lives Matter's policy objectives).

173. See *supra* notes 152–54 and accompanying text (describing some of the consequences of distrust between communities and the police that serve them).

174. Alan Blinder, *Michael Slager, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. TIMES (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slager-sentence-walter-scott.html> (reporting that the officer received a 20-year sentence after shooting an African-American motorist in the back as the motorist ran away).

175. Amer Madhani, *Chicago Cop Jason Van Dyke Sentenced to More Than 6 Years for Murder of Laquan McDonald*, USA TODAY (last updated Jan. 18, 2019), <https://www.usatoday.com/story/news/2019/01/18/laquan-mcdonald-jason-van-dyke-sentencing/2602213002/> (reporting that the officer received a sentence of over 6 years after shooting Laquan McDonald, an African-American teenager).

officers were actually held criminally responsible for unjustified killings of African-American men.¹⁷⁶ One troubling aspect of both cases is the reality that neither officer would have been criminally charged for firing multiple bullets into the backs of people posing no lethal threat if not for the unexpected emergence of video evidence of what the officers had actually done.¹⁷⁷ In the North Charleston case, the officer shot and killed an unarmed, alleged traffic-code violator who ran away from the officer on foot.¹⁷⁸ Advocates of racial justice and police accountability expressed concern about the North Charleston police department's quick decision to publicize the officer's version of events, namely the false claim that the victim had taken the officer's TASER and attempted to use the weapon against the officer.¹⁷⁹

In the Chicago case, police responded to a report of someone breaking into vehicles.¹⁸⁰ As the knife-carrying suspect ignored an officer's command to stop, he retreated from officers and damaged a police vehicle with the knife.¹⁸¹ The officers followed him slowly for several minutes while waiting for an officer with a TASER to arrive.¹⁸² Instead, another officer arrived and immediately fired more than a dozen rounds, killing the teenager.¹⁸³ The initial news reports carried a police union leader's description and justification of the event: the shooting was justified because the officers legitimately feared for their lives when the armed suspect approached them.¹⁸⁴ Chicago officials withheld the police dashboard video until a judge ordered its release more than a year after the event due to pressure from the

176. *Id.*

177. See Marcos Breton, *Video or No Video, Here's Why Cops Can Kill and Not Be Prosecuted*, SACRAMENTO BEE (Jan. 29, 2017), <https://www.sacbee.com/news/local/news-columns-blogs/marcos-breton/article129377699.html> ("The video [in the North Charleston case], captured by a bystander, contradicted what the officer initially had told his supervisors about the shooting."); P.R. Lockhart, *Did Chicago Police Cover Up the Laquan McDonald Shooting? A Judge Is About to Decide*, VOX (Jan. 17, 2019), <https://www.vox.com/2019/1/17/18184158/chicago-police-conspiracy-trial-verdict-mcdonald-van-dyke> ("The Laquan McDonald shooting rocked Chicago, in part because Van Dyke shot the teenager some 16 times, and later claimed that [the victim] 'lunged' at him while holding a knife. But this account was not backed up by video of the shooting released a year later.")

178. Blinder, *supra* note 174.

179. Melissa Boughton, *Family of Man Shot by North Charleston Officer: "All We Want Is the Truth"*, CHARLESTON POST & COURIER (Apr. 4, 2015), https://www.postandcourier.com/archives/family-of-man-shot-by-north-charleston-officer-all-we/article_cfe86187-d60c-5614-95d6-fc5a8ad95f85.html.

180. Kory Rumore & Chad Yoder, *Minute by Minute: How Jason Van Dyke Shot Laquan McDonald*, CHI. TRIBUNE (Jan. 18, 2019), <https://www.chicagotribune.com/news/laquanmcdonald/ct-jason-vandyke-laquan-mcdonald-timeline-htmlstory.html>.

181. *Id.*

182. *Id.*

183. *Id.*

184. Marissa Bailey, *Police Shoot, Kill Knife-Wielding Teen on South Side*, CBS2 CHI. (Oct. 21, 2014), <https://chicago.cbslocal.com/2014/10/21/police-shoot-kill-knife-wielding-teen-on-south-side/>.

news media.¹⁸⁵ Just before the video's release, the district attorney suddenly charged the officer, and the public learned that the deceased victim had 16 bullet wounds, including 9 in his back.¹⁸⁶ The timing of events gave the appearance of a cover-up and raised questions about whether the officer would have been charged at all if not for the media pressure that led to the release of the video.¹⁸⁷ In both instances, prominent spokespersons for police organizations publicly justified the lethal actions prior to any investigation of the events.¹⁸⁸ For those concerned about police accountability and the valuing of African-Americans' lives, these incidents convey the impression that police automatically protect their own, and they raise doubts that investigations will be unbiased.¹⁸⁹ The Chicago case, in particular, illuminated such concerns, as witnesses in the vicinity of the shooting were told to leave the area without being interviewed by police.¹⁹⁰ Witnesses were not even asked for their names so that they could be contacted for a later investigation.¹⁹¹

There is a well-documented problem with some officers and departments concerning a police code of silence that enables abusive officers to act with little fear that their colleagues will report them.¹⁹² Moreover, self-interested prosecutors can turn a blind eye to evidence of police misconduct that emerges as cases move through the courts.¹⁹³ Prosecutors have also mounted concerted public relations campaigns to slander victims of police violence as a means to justify their own decisions to forgo prosecuting

185. Kyung Lah, *Laquan McDonald Shooting: Why Did It Take 13 Months to Release Video?*, CNN (Dec. 2, 2015), <https://www.cnn.com/2015/12/01/us/chicago-police-shooting-explainer/index.html>.

186. *Id.*

187. *Id.*

188. Boughton, *supra* note 179; Bailey, *supra* note 184.

189. See, e.g., Curtis Black, *How Chicago Tried to Cover Up a Police Execution*, CHI. REP. (Nov. 24, 2015), <https://www.chicagoreporter.com/how-chicago-tried-to-cover-up-a-police-execution/> (reporting that a journalist “tracked down a witness to the [Laquan McDonald] shooting, who said he and other witnesses had been ‘shooed away’ from the scene with no statements or contact information taken”).

190. *Id.*

191. *Id.*

192. Sanja Kutnjak Ivković, Maki Haberfeld & Robert Peacock, *Decoding the Code of Silence*, 29 CRIM. JUST. POL'Y REV. 172, 172 (2018); Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213, 264; Jerome Skolnick, *Corruption and the Blue Code of Silence*, 3 POLICE PRAC. & RES. 7, 7 (2002); John Kleinig, *The Blue Wall of Silence: An Ethical Analysis*, 15 INT'L J. APPLIED PHIL. 1, 1 (2001); Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 63–64 (2000); Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 234–37 (1998).

193. NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT 148–55 (2016).

officers.¹⁹⁴ These practices diminish the likelihood of accountability for abusive police behavior, which parallels the *penal harm philosophy* in the realm of corrections.¹⁹⁵ Namely, this phenomenon involves police officers—like corrections officers—improperly inflicting harm¹⁹⁶ to punish those who disobey, fail to show respect, violate officers' expectations about behavior, or, even worse, simply are members of a demographic group against which the officers harbor animus.¹⁹⁷ Such punishment can include unjustified stop-and-frisk searches, automobile searches, issuance of traffic tickets and other citations, use of force, and arrests.¹⁹⁸ When done to punish or inflict harm, these actions by police officers are contrary to law.¹⁹⁹ Officers are not authorized to mete out discretionary punishments.²⁰⁰ Rather, in the criminal justice system, judges impose punishment and the government's corrections system carries it out only after an individual is convicted after a criminal proceeding that respects due process and constitutional rights.²⁰¹

There is abundant evidence that African-Americans disproportionately experience the harm inflicted through the improper and abusive exercise of

194. Sam Levin, *Killed by Police, Then Vilified: How America's Prosecutors Blame Victims*, GUARDIAN (Mar. 21, 2019), https://www.theguardian.com/us-news/2019/mar/20/us-police-killings-district-attorney-prosecutor-reports?utm_term=RWRpdG9yaWFsX1VTTW9ybmluZ0JyaWVmaW5nLTE5MDMyMQ%3D%3D&utm_source=esp&utm_medium=Email&utm_campaign=USMorningBriefing&CMP=usbriefing_email.

195. See TODD. R. CLEAR, HARM IN AMERICAN PENOLOGY 32 (1994) ("The pedagogical technique they use is to harm, intentionally. . . . The offender gets the unintended lesson: harm and violence are acceptable if you have the power to get away with it.").

196. See Rachel Feinstein, *A Qualitative Analysis of Police Interactions and Disproportionate Minority Contact*, 13 J. ETHNICITY CRIM. JUST. 159, 171–73 (2015) (noting instances of officers using unjustified force against minority children).

197. See, e.g., U.S. DEP'T OF JUSTICE, THE FERGUSON REPORT 47 (The New Press 2015) ("Many officers are quick to escalate encounters with subjects they perceive to be disobeying their orders or resisting arrest. . . . Some incidents of excessive force result from stops or arrests that have no basis in law. Others are punitive and retaliatory.").

198. See *id.* at 28–30, 36–37, 42–47 (providing numerous examples of police using unjustified force or taking discriminatory actions).

199. For example, police officers' legitimate actions are based on authority derived from judicial interpretations of constitutional provisions and statutes, as well as departmental policies. COLE, SMITH & DEJONG, *supra* note 58, at 188, 231. Thus, warrantless searches without reasonable suspicion, arrests without probable cause, traffic stops without proper justification, and applications of force beyond those permitted by policy and judicial interpretations of law are all improper and violate citizens' legal protections. See *id.* at 326–33, 344–83 (describing requirements governing the legal exercise of police authority to conduct searches, make arrests, and use force).

200. See *id.* at 218–19 (defining the functions and goals of police to include order maintenance, investigation, and apprehension of criminal law violators, and various service activities—they do not include decisions about the formal imposition of punishment by the criminal justice system).

201. *Id.* In addition to the imposition of punishment being outside the scope of authorized police functions and goals, the U.S. Supreme Court defines the constitutional term "punishments" in the Eighth Amendment as limited to post-conviction treatment of individuals by the criminal justice system. *Ingraham v. Wright*, 430 U.S. 651, 664 (1977).

police power as an unavoidable part of their everyday lives in American society.²⁰² The Blue Lives Matter founders' mission of defensively disparaging those who experience this victimization, urge reform, and advocate police accountability only serves to enhance suspicion of police and discourage people who might otherwise provide information to officers about existing dangers and unsolved crimes.²⁰³ Research shows that racial profiling and other encounters with police perceived as unfair by community members affect people's willingness to cooperate with and provide information to the police.²⁰⁴ By contrast, making blues lives matter would be best advanced by genuinely listening to community members, self-critically recognizing problems, and thereby joining in the effort to improve police training, supervision, and accountability.²⁰⁵ Unfortunately, the rhetoric of the Blue

202. See generally EMMA PIERSON ET AL., STANFORD COMPUTATIONAL POLICY LAB, A LARGE-SCALE ANALYSIS OF RACIAL DISPARITIES IN POLICE STOPS ACROSS THE UNITED STATES (2019), <https://Sharad.com/papers/100M-stops.pdf> (finding that minority drivers were much more likely than white drivers to have their cars searched during traffic stops); accord Sharad Goel & Cheryl Phillips, *Police Data Suggests Black and Hispanic Drivers Are Searched More Often Than Whites*, SLATE (June 19, 2017), <https://slate.com/technology/2017/06/statistical-analysis-of-data-from-20-states-suggests-evidence-of-racially-biased-policing.html>; see also U.S. DEP'T OF JUSTICE, *supra* note 197 (providing numerous examples of police taking discriminatory actions); CHARLES R. EPP, STEVEN MAYNARD MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 1 (2014) (narrating the experience of an African-American man who felt violated when he was pulled over without cause); Feinstein, *supra* note 196, at 171–73 (describing instances of unjustified force used by police in confrontations with minority children); Smith, *What I Learned About Stop-and-Frisk*, *supra* note 146 (describing the Author's son's experience with pervasive discrimination at the hands of law enforcement); Andrew Gelman, Jeffrey Fagan & Alex Kiss, *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 J. AM. STAT. ASS'N 813, 813–23 (2007) (finding that New York City Police implementing the "Stop-and-Frisk" tactic disproportionately stopped people from racial minority groups).

203. Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 262–65 (2008); see also Kristina Murphy, Lyn Hinds & Jenny Fleming, *Encouraging Public Cooperation and Support for Police*, 18 POLICING & SOC'Y 136, 152 (2008) (providing evidence concerning the role of police legitimacy in positively affecting public cooperation in Australia).

204. Tyler & Fagan, *supra* note 203, at 262–65.

205. The first three recommendations in the final report of President Obama's Task Force on 21st Century Policing made exactly these points:

1.1 Recommendation: Law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriffs' departments should adopt procedural justice as the guiding principle for internal and external policies and practices to guide their interactions with the citizens they serve.

.....

1.2 Recommendation: Law enforcement agencies should acknowledge the role of policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust.

.....

Lives Matter organization's founders seems to reflect a close-minded and counterproductive viewpoint of even constructive criticism of police.²⁰⁶

CONCLUSION

What should be done by those who truly care about the well-being of police officers and genuinely want to “make blue lives matter”? Unfortunately, those who originally trumpeted this slogan in the aftermath of civil disorder in Ferguson, Missouri, appear to be blind to useful approaches for advancing their purported goal, due to a myopic preoccupation with vilifying Black Lives Matter as an organization, slogan, and social movement.²⁰⁷ There is strong evidence that the Blue Lives Matter slogan is motivated by defensiveness, occupational umbrage, and an unwillingness to undertake critical examination of both police practices and the social problems that affect officers' well-being.²⁰⁸ The specific policy initiative

1.3 Recommendation: Law enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy.

PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 164, at 11–12.

206. The rhetoric of the Blue Lives Matter organization is most pointedly antagonistic in contesting the characterization of the killing of Michael Brown in Ferguson, Missouri, that mobilized Black Lives Matter supporters. The Blue Lives Matter website characterizes Officer Darren Wilson as “heroic” for shooting the unarmed teenager at least six times. BLUE LIVES MATTER, *supra* note 1; see Ryan Devereaux, *A Complete Guide to the Shooting of Michael Brown by Darren Wilson* (Nov. 20, 2014), <https://theintercept.com/2014/11/20/everything-know-shooting-michael-brown-darren-wilson/> (chronicling the amount of times Darren Wilson shot Michael Brown). At best, Wilson is a tragic figure who was socialized into an organizational culture of a city government and police department that, as described in great detail by the U.S. Department's investigative report, U.S. DEP'T OF JUSTICE, *supra* note 197, dedicated itself to engaging in racial discrimination and harassment in order to generate revenue for the city through abusive practices directed at poor, black people. Jake Halpern, *The Cop*, NEW YORKER (Aug. 3, 2015), <https://www.newyorker.com/magazine/2015/08/10/the-cop>. At worst, Wilson is an official who went free after committing a possibly criminal homicide, because the local justice system protected him through a bizarrely biased grand jury procedure in which the prosecutor permitted Wilson to be the first witness, incorrectly instructed the grand jurors about applicable law, and knowingly permitted other witnesses to provide false testimony. See COLE, SMITH & DEJONG, *supra* note 58, at 440–41. The procedures used to help him avoid prosecution appeared to be so flawed and biased that calls to reopen the case continued for years afterward. See, e.g., Justin Hansford, *Reopen the Michael Brown Investigation*, WASH. POST (Aug. 10, 2018), https://www.washingtonpost.com/opinions/reopen-the-michael-brown-investigation/2018/08/10/37c28e80-9bee-11e8-843b-36e177f3081c_story.html?utm_term=.9ed03db3273a (arguing that the case against Darren Wilson should be reopened); accord Charles Jaco, *It's Time for a New Darren Wilson Grand Jury*, ST. LOUIS AM. (Nov. 16, 2018), http://www.stlamerican.com/news/columnists/charles_jaco/it-s-time-for-a-new-darren-wilson-grand-jury/article_79a7deca-e9bb-11e8-9b91-4b0a76895793.html. It is easy for people to perceive that Wilson's action was consistent with the U.S. Department of Justice's investigative findings about his department in which officers took unjustified and plainly non-heroic “punitive and retaliatory” use-of-force actions against those who disobeyed their orders. U.S. DEP'T OF JUSTICE, *supra* note 197, at 47.

207. BLUE LIVES MATTER, *supra* note 1.

208. See, e.g., *supra* note 27; see also *supra* text accompanying notes 120–22, 161–62.

undertaken by several states under the Blue Lives Matter slogan—increasing the severity of sentences for those who attack police officers—represents merely symbolic action directed at crimes that were already severely punished.²⁰⁹ By contrast, a genuine commitment to protecting and supporting police officers requires recognizing the actual factors that increase or diminish risks for officers and taking a broader view of the social policies and police practices that would actually increase officers’ safety and well-being.²¹⁰ Viewed through this broader lens, policy actions to protect and support police officers should look to officers’ resources,²¹¹ public policies that address problems such as gun control and treatment for mental illness,²¹² and empathic practices that increase positive police-community relations and police reform.²¹³

Unfortunately, our prospects for progress on genuinely “making blue lives matter” are hindered in the current political era by certain politicians’ efforts to divide the nation through racial animus²¹⁴ and the politics of fear²¹⁵ and by a longstanding law enforcement culture that contributes to the defensive rejection of criticism.²¹⁶ Moreover, the Trump Administration’s decision to end federal scrutiny of and pressure on police departments whose policies and practices facilitate abusive police conduct diminishes the impetus for evaluating and reforming policing.²¹⁷ Hopefully, enlightened police leaders will recognize the benefits of departmental self-analysis and

209. See *supra* Part I.B.

210. See, e.g., Koehn, *supra* note 78 (“But if we really want to protect our police officers, why hasn’t the Blue Lives Matter movement taken a firm position on greater gun control and mental health initiatives?”).

211. See *supra* Part II.A (discussing the physical safety and mental health challenges that police officers face).

212. See *supra* notes 92–130 and accompanying text.

213. See *supra* notes 142–70, 202–06 and accompanying text.

214. See, e.g., German Lopez, *Donald Trump’s Long History of Racism, from the 1970s to 2019*, VOX, <https://www.vox.com/2016/7/25/12270880/donald-trump-racist-racism-history> (last updated July 15, 2019) (“On the campaign trail, Trump repeatedly made explicitly racist and otherwise bigoted remarks, from calling Mexican immigrants criminals and rapists to proposing a ban on all Muslims entering the US to suggesting a judge should recuse himself from a case solely because of the judge’s Mexican heritage.”).

215. See, e.g., Sasha Abramsky, *Trump’s GOP Is Running Harder Than Ever on the Politics of Fear*, L.A. TIMES (Sept. 23, 2018), <https://www.latimes.com/opinion/op-ed/la-oe-abramsky-trump-politics-of-fear-midterms-20180923-story.html> (“[I]n the 2018 election season, Republicans have no other game but fear to play. They pander to, and seek to stimulate, white distrust of black people and brown people . . .”).

216. See *supra* notes 171–94 and accompanying text.

217. Devlin Barrett, *Justice Department Ends Program Scrutinizing Local Police Forces*, WASH. POST (Sept. 15, 2017), https://www.washingtonpost.com/world/national-security/justice-department-ends-program-scrutinizing-local-police-forces/2017/09/15/ee88d02e-9a3d-11e7-82e4-f1076f6d6152_story.html?utm_term=.3e6b9dea4ca0.

community dialogue, as well as the impact of broader social problems on police effectiveness and safety.²¹⁸ Citizen pressure²¹⁹ and news media attention will undoubtedly continue to focus on issues of police accountability and reform.²²⁰ But attaining real change will require internal law enforcement leadership to turn away from the misguided attacks on Black Lives Matter and push forward with the broader, self-critical perspective needed to truly “make blue lives matter.”²²¹

218. See, e.g., Tom Jackman, *New Orleans Police Pioneer New Way to Stop Misconduct, Remove “Blue Wall of Silence”*, WASH. POST (Jan. 24, 2019), https://www.washingtonpost.com/crime-law/2019/01/24/new-orleans-police-pioneer-new-way-stop-misconduct-remove-blue-wall-silence/?utm_term=.0806ce234ec4 (reporting on a reform-minded police chief bringing community dialogue and police-ethics reform to Baltimore after making improvements in New Orleans); accord David McFadden, *Baltimore’s New Police Chief Eager to Transform Department*, ASSOCIATED PRESS (Jan. 9, 2019), <https://www.apnews.com/d2d42d410e14430e975dd9318f555713>.

219. See, e.g., Tim Elfrink, *Sacramento Police Arrest Reporter, 84 Protesters at March Against Stephon Clark Shooting*, WASH. POST (Mar. 5, 2019), https://www.washingtonpost.com/nation/2019/03/05/sacramento-police-arrest-reporter-protesters-march-against-stephon-clark-shooting/?utm_term=.972fcbfa8806 (observing an instance of vigorous public pressure on police after the shooting of an unarmed black man in 2018).

220. *Id.*

221. See *supra* note 218.