


2022

Rise of Police Unions on the Back of the Black Liberation Movement

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Recommended Citation

Hardaway, Ayesha Bell, "Rise of Police Unions on the Back of the Black Liberation Movement" (2022).
Connecticut Law Review. 552.

https://opencommons.uconn.edu/law_review/552

CONNECTICUT LAW REVIEW

VOLUME 55

DECEMBER 2022

NUMBER 1

Article

Rise of Police Unions on the Back of the Black Liberation Movement

AYESHA BELL HARDAWAY

Police unions have garnered the attention of the media and some scholars in recent years. That attention has often focused on exploring the seemingly inexplicable and routine power police unions have to shield problem officers from accountability. This Article shows that police union power did not surreptitiously arrive on the doorsteps of American cities. Instead, collective bargaining rights for law enforcement began to gain firm footing during the 1960s as white Americans remained committed to preserving their place in the nation's racial hierarchy as it related to housing, jobs, education, and entertainment. Existing legal scholarship has successfully highlighted the depth and breadth of modern-day union contracts and the undemocratic manner by which problematic provisions within those contracts have been negotiated. This Article adds to that research by explaining how the social and political interests of both the electors and the elected merged with the demands of officers sworn to protect their specific interests. Law enforcement served as the first line of attack against efforts to free Black communities from police abuses during the 1960s. Police organizations amassed political power during their fight against Black liberation. That power netted them collective bargaining rights and secured mayoral seats for "law and order" candidates during the 1960s. It also demonstrated America's deep commitment to unchecked police violence. In short, police unions have effectively accomplished their aim of impeding external inquiries into officers' actions and methods. Decades of concerns about police brutality have followed. Any sincere effort to make police accountable must understand the origins of police union power—and then use that understanding to explore how to excise problematic collective bargaining provisions. The Article proposes the federal government impose conditional-spending restrictions on state and local police departments that fail to make demonstrable strides toward officer accountability by removing collective bargaining protections that foster misconduct.

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AYESHA BELL HARDAWAY*

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

“Now, what I have said . . . is true of every Northern city with a large Negro population. And the police are simply the hired enemies of this population. They are present to keep the Negro in his place and to protect white business interests, and they have no other function.”¹

INTRODUCTION

Extrajudicial killings by American law enforcement prompted unprecedented public demonstrations and outrage across the globe during the summer of 2020.² The highly publicized murder³ of George Floyd and

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¹ James Baldwin, *A Report from Occupied Territory*, NATION (July 11, 1966), <https://www.thenation.com/article/culture/report-occupied-territory>.

² Kristina Roth & Alli McCracken Jarrar, *Justice for George Floyd: A Year of Global Activism for Black Lives and Against Police Violence*, AMNESTY INT’L (May 24, 2021), <https://www.amnesty.org/en/latest/campaigns/2021/05/justice-for-george-floyd-a-year-of-global-activism-for-black-lives-and-against-police-violence> (“The United States recorded its largest protests in the history of the country’s existence. People from Indonesia to New Zealand, from Switzerland to Argentina and beyond all took action in different ways, both online and offline, to demand justice for George Floyd, and show solidarity with the rights of Black people to survive interactions with law enforcement and the Black Lives Matter struggle in the United States.”).

³ Sentencing Order and Memorandum Opinion at 1, *State v. Chauvin*, No. 27-CR-20-12646 (D. Minn. June 25, 2021) (“This matter is before the Court for sentencing after the jury returned guilty verdicts on April 20, 2021 on Count I, unintentional second-degree murder while committing a felony, Count II, third-degree murder, perpetrating an eminently dangerous act evincing a depraved mind, and Count III, second-degree manslaughter, culpable negligence creating an unreasonable risk.”).

killing⁴ of Breonna Taylor caught the attention of even those who saw, reportedly for the first time, the brutal disregard law enforcement can have for Black life.⁵ Lifelong organizers, elected officials, community sages, scholars, and journalists, along with the previously willfully or otherwise unaware, all seemed to be in conversations about how to prevent “another George Floyd.”⁶ Others more pointedly discussed how to prevent individuals repeatedly accused of using excessive force, like Floyd’s murderer, Derek Chauvin, from remaining employed as officers.⁷

⁴ Officers were never charged or convicted of state offenses related to Breonna Taylor’s March 13, 2020, homicide. This was true despite reported outrage from grand jurors who considered the actions of officers involved in the botched raid of Taylor’s apartment that resulted in her death. Grand jurors reported being presented with evidence related to the raid over the course of two and a half days only to find out at the end that six possible homicide charges under Kentucky law were not among the charges they were being asked to consider. Also, Taylor was not among the list of identified potential victims—only individuals in a neighboring apartment were so identified. See Elizabeth Joseph, *Breonna Taylor Grand Jurors Say There Was an “Uproar” When They Realized Officers Wouldn’t Be Charged with Her Death*, CNN (Oct. 30, 2020, 5:18 PM), <https://www.cnn.com/2020/10/29/us/breonna-taylor-grand-jurors/index.html>; see also *Coroner’s Investigative Report No. 20-614-1032*, JEFFERSON CNTY. (KY.) CORONER’S OFF. (Mar. 13, 2020), <https://louisville-police.org/DocumentCenter/View/1816/PIU-20-019-Medical-Reports> (identifying Taylor’s cause of death as “[m]ultiple (5) [g]unshot [w]ounds of the body”). Nearly twenty-nine months after her killing, the U.S. Department of Justice filed criminal charges against four Louisville Metro Police Department officers involved in obtaining and executing the search warrant that resulted in Taylor’s death. See David Nakamura et al., *Four Officers Involved in Breonna Taylor’s Killing Face Federal Charges*, WASH. POST (Aug. 4, 2022, 6:18 PM), <https://www.washingtonpost.com/national-security/2022/08/04/breonna-taylor-federal-charges-fbi-garland/>.

⁵ Luke Martin, *A Year Later, How George Floyd’s Killing Opened These Kansas City Residents’ Eyes*, NPR (May 20, 2021, 4:22 PM), <https://www.npr.org/2021/05/20/998709176/a-year-later-how-the-george-floyds-killing-opened-these-kansas-city-residents-ey> (“The police killing of George Floyd last May didn’t just prompt protests around the world—it opened the eyes of many who had never before embraced racial justice. . . . ‘I’m sure there’s some police brutality out there. And honestly, I do believe that Blacks are treated differently than whites.’”)

A 2016 Monmouth University poll found that “34 percent of Americans said police were more likely to use excessive force if a suspect is [B]lack,” and a March 2020 poll said this percentage increased to fifty-seven percent. Anna North, *White Americans Are Finally Talking About Racism. Will It Translate into Action?*, VOX (June 11, 2020, 2:00 PM), <https://www.vox.com/2020/6/11/21286642/george-floyd-protests-white-people-police-racism>.

⁶ Matt Vasilogambros, *Training Police to Step In and Prevent Another George Floyd*, PEW CHARITABLE TRS. (June 5, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/05/training-police-to-step-in-and-prevent-another-george-floyd>; Daniel Buck, *To Prevent Another George Floyd Tragedy, We Must Fix Police Unions*, FEDERALIST (June 3, 2020), <https://thefederalist.com/2020/06/03/prevent-george-floyd-tragedy-fix-police-unions>; Michael Riccardi, *Rep. Introduces Bill to Outlaw Use of Chokeholds*, PA. L. WKLY., Apr. 27, 2021, at 9 (quoting Pennsylvania state representative Stephen Kinsey as saying, “My bill provides an opportunity to ensure that police are held accountable for their actions so that we don’t have another George Floyd, Eric Garner, Ricky Bellevue or other unarmed Black and brown lives claimed by these malicious chokeholds”) Aryanna Prasad, *Seahawks Speak Out About Death of George Floyd*, FANNATION (May 31, 2020, 4:26 PM), <https://www.si.com/nfl/seahawks/news/seahawks-speak-out-about-the-death-of-george-floyd> (noting NFL player D.J. Fluker “encouraged minorities to apply to become police officers to ‘rewrite the training book’ [and] telling followers to ‘get yourself in there and help prevent another George Floyd from happening’”).

⁷ Dakin Andone et al., *The Minneapolis Police Officer Who Knelt on George Floyd’s Neck Had 18 Previous Complaints Against Him, Police Department Says*, CNN (May 29, 2020, 5:39 PM),

As some looked for solutions to the longstanding problem of excessive police violence, attention turned to the role of police unions. In what ways do police unions⁸ make it difficult to hold officers accountable for serious instances of misconduct? And in what ways do police unions promote the undocumented, but often well-recognized, culture of a department? Or do they merely serve as a reflection of the majority of their members? Derek Chauvin appeared eerily familiar and coldly comfortable with having his knee on Floyd's neck for at least nine minutes and twenty-nine seconds.⁹ The aggressive show of force, often referred to as the "warrior" approach to policing,¹⁰ was undeniable. Journalists soon reported that the Police Officers Federation of Minneapolis sponsored annual training on "killology" at no cost to the city.¹¹ The union did so in 2019 (a year before the killing of

<https://www.cnn.com/2020/05/28/us/minneapolis-officer-complaints-george-floyd/index.html>; Kim Barker & Serge F. Kovaleski, *Officer Who Pressed His Knee on George Floyd's Neck Drew Scrutiny Long Before*, N.Y. TIMES, <https://www.nytimes.com/2020/07/18/us/derek-chauvin-george-floyd.html> (Mar. 29, 2021); Jamiles Lartey & Abbie VanSickle, *"Don't Kill Me": Others Tell of Abuse by Officer Who Kneled on George Floyd*, N.Y. TIMES, <https://www.nytimes.com/2021/02/02/us/derek-chauvin-george-floyd-past-cases.html> (Apr. 22, 2021).

⁸ Throughout this Article, I use the phrases "police unions," "police associations," and "police organizations" interchangeably. While a main focus of this Article involves the presence or absence of official collective bargaining rights, I alternate use of these three phrases to refer to those sworn individuals who participate in organized lobbying and/or engage in litigation on behalf of police officers, regardless of precisely when they secured collective bargaining rights during the 1960s. The following definition of police unions is sufficient for the purposes of this Article: "an employee organization which deals with police agency management in a systematic way with respect to questions of wages, hours, and conditions of work." Hervey A. Juris, *The Implications of Police Unionism*, 6 L. & SOC'Y REV. 231, 234 (1971).

⁹ Steve Karnowski & Tammy Webber, *Lung Expert Testifies George Floyd Died Because His Breathing Was Restricted*, PBS NEWSHOUR (Feb. 7, 2022, 5:02 PM), <https://www.pbs.org/newshour/nation/lung-expert-testifies-george-floyd-died-because-his-breathing-was-restricted> ("Floyd died because his upper airway was compressed by Officer Derek Chauvin's knee, while his position on the hard asphalt with his hands cuffed behind his back—as two other officers helped hold him down—did not allow his lungs to expand, Dr. David Systrom [testified]. That restricted the flow of oxygen and raised carbon dioxide levels in his body. . . . 'Oxygen delivered to the heart and brain is critical to survival,' Systrom said, later calling Floyd's death 'an eminently reversible respiration failure event.'"); *CNN Tonight* (CNN television broadcast Mar. 30, 2021) (transcript available at <http://www.cnn.com/TRANSCRIPTS/2103/30/cnnt.01.html>) (interviewing firefighter Genevieve Hansen, who said, "Officer Chauvin seemed comfortable with the majority of his weight balanced on top of Mr. Floyd's neck"); Jonathan Allen, *"It Wasn't Right": Teen Who Filmed George Floyd's Death Confronts Ex-Policeman at Trial*, REUTERS (Mar. 30, 2021, 6:13 PM), <https://www.reuters.com/article/us-usa-race-georgefloyd-video-idCAKBN2BM391> (quoting Darnella Frazier as saying, "He had this cold look, heartless . . . He didn't care what we were saying, it didn't change anything he was doing."); Suzette Hackney, Opinion, *May Derek Chauvin's Lack of Remorse as He Heads to Prison Be His Final Insult to George Floyd*, USA TODAY (June 25, 2021, 7:42 PM), <https://www.usatoday.com/story/opinion/2021/06/25/derek-chauvin-carolyn-pawlenty-no-apology-george-floyd-family/7778178002/> ("Chauvin smirked as he listened to Floyd's pleas and those from onlookers. But he never let up."); Government's Trial Brief at 3, *United States v. Thao*, No. 0:21-cr-00108 (D. Minn. Jan. 6, 2022) ("Chauvin did not remove his knees from Mr. Floyd's body for the next 9 minutes and 29 seconds . . .").

¹⁰ Bryan Schatz, *Killer Instincts*, MOTHER JONES, Mar.–Apr. 2017, at 28, 29.

¹¹ Inae Oh, *Minneapolis Banned Warrior-Style Police Training. Its Police Union Kept Offering It Anyway*, MOTHER JONES (May 28, 2020), <https://www.motherjones.com/crime-justice/2020/05/>

George Floyd) after the mayor in Minneapolis decided to ban warrior-style training, which he said did not comport with proper use of force and de-escalation requirements.¹² The union denounced the mayor's decision as unlawful.¹³ After promising to fight the city, the union made the training available to Minneapolis officers still interested in receiving it.¹⁴

The power wielded by the union in Minneapolis is not unique, nor is it new. But the role of police unions in policing and police violence is understudied. Policing expert Samuel Walker called attention to the dearth of research on police unions in 2008.¹⁵ Since that time, scholars have explored¹⁶

bob-kroll-minneapolis-warrior-police-training/; Libor Jany, *Minneapolis Police Union Offers Free "Warrior" Training, in Defiance of Mayor's Ban*, STAR TRIB. (Apr. 24, 2019, 9:28 PM), <https://www.startribune.com/minneapolis-police-union-offers-free-warrior-training-in-defiance-of-mayor-s-ban/509025622/> ("[T]he union that represents the city's roughly 900 rank-and-file police officers announced that it is partnering with a national police organization to offer free 'warrior-style' training for any officer who wants it."); Melissa Segura, *There's One Big Reason Why Police Brutality is So Common in the U.S. and That's the Police Unions*, BUZZFEED NEWS (June 1, 2020, 7:05 PM), <https://www.buzzfeednews.com/article/melissasegura/police-unions-history-minneapolis-reform-george-floyd>.

¹² Jany, *supra* note 11.

¹³ *Id.*

¹⁴ Danny Spewak, *Minneapolis Police Officers Now Banned from "Warrior-Style" Training*, KARE 11 (Apr. 19, 2019, 3:40 AM), <https://www.kare11.com/article/news/mpd-officers-now-banned-from-warrior-style-training/89-240421f4-7d10-4034-853b-cfc410c0c5>; Segura, *supra* note 11.

¹⁵ Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRAC. & RSCH. 95, 95 (2008).

¹⁶ I, along with several scholars, have specifically focused on police unions and the various ways they serve as roadblocks to reform efforts. See, e.g., Ayesha Bell Hardaway, *Time Is Not on Our Side: Why Specious Claims of Collective Bargaining Rights Should Not Be Allowed to Delay Police Reform Efforts*, 15 STAN. J. C.R. & C.L. 137, 137–38 (2019) (detailing how police union efforts to intervene in Department of Justice–initiated police consent decrees have served to impede reform progress); Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 712 (2017) (exploring how labor law can impact organizational change in police unions); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 799 (2012) (identifying collective bargaining agreements as deterrents to the prevention of unconstitutional police practices); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1192 (2017) [hereinafter Rushin, *Police Union Contracts*] (analyzing 178 police union contracts to illustrate how they impede accountability efforts); Seth W. Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179, 2211 (2014) (arguing collective bargaining agreement provisions related to disciplinary grievances impede the discipline of officers); Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 72 (2012) (discussing how unions use political leverage to elect mayors who are more inclined to appoint police chiefs who are not committed to leading organizations that insist on accountability); Stephen Rushin & Allison Garnett, *State Labor Law and Federal Police Reform*, 51 GA. L. REV. 1209 (2017); Dhammika Dharmapala et al., *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*, 38 J.L. ECON. & ORG. 1, 1–2 (2022) (finding the introduction of collective bargaining rights for sheriffs' deputies in Florida in 2003 significantly increased the incidence of violent misconduct); see also Kate Levine, *Police Suspects*, 116 COLUM. L. REV. 1197, 1246 (2016) (proposing that Law Enforcement Officers' Bill of Rights ("LEOBOR") provisions serve as the framework for expanding non-sworn community member rights during criminal investigations and interrogations).

how union contracts impede officer accountability.¹⁷ It is well known that conflict between law enforcement and Black communities across the country boiled over throughout the 1960s.¹⁸ What has been less explored is how backlash to Black liberation during the 1960s granted police unions the power to dictate the policy and culture of municipal policing. Understanding the origins of police unions is essential to understand the persistence of police violence. To be successful, efforts to eradicate the culture of police brutality must confront the ways in which collective bargaining provisions stymie accountability. Indeed, avoiding accountability has been a core purpose of many police unions.

Some current conversations about the problem of American policing include discussions of the role and impact of police unions.¹⁹ Recently, it seems that inquiries on how to hold police accountable resurface with each high-profile officer-involved killing or instance of police misconduct.²⁰ And for good reason. Examples abound of instances of prior misconduct and abuse by officers involved in recent killings of community members.

Deputy Michael Jason Meade, known to improperly use his religious faith to justify using force, shot and killed Casey Goodson, Jr.²¹ Officer Jason Van Dyke, the subject of twenty citizen complaints, shot and killed

¹⁷ The word accountability is used often in policing scholarship and throughout this Article. See SAMUEL WALKER, *POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT* 7 (2001) [hereinafter WALKER, *POLICE ACCOUNTABILITY*] (providing a definitional framework for two distinct functions of police accountability in a democratic society where police are theoretically accountable to the people and to the law: police should (1) be responsive to the people and to elected officials, and (2) conform with due process and equal protection requirements of the law.)

¹⁸ *Id.* at 25 (stating that there was a “police-community relations crisis” in the 1960s).

¹⁹ *Id.*

²⁰ See, e.g., Miriam Wasser, *Phoenix Cop Who Killed Michelle Cusseaux Violated Department Policy, PPD Board Rules*, PHX. NEW TIMES (Sept. 18, 2015, 5:10 PM), <https://www.phoenixnewtimes.com/news/phoenix-cop-who-killed-michelle-cusseaux-violated-department-policy-ppd-board-rules-7670775> (noting that the fatal shooting of Michelle Cusseaux by Phoenix police “remained a local rallying cry for police reform, racial justice, and an overhaul in police training” because it came days after Michael Brown was killed in Ferguson, Missouri); Joe Castle & Chandler Boese, *What to Know About Adam Coy, Ex-Columbus Officer Charged with Murder in Andre Hill’s Death*, COLUMBUS DISPATCH (Feb. 4, 2021, 2:49 PM), <https://www.dispatch.com/story/news/local/2021/02/04/andre-hill-shooting-columbus-officer-coys-history-discipline-firing/4386008001> (noting that the city council unanimously approved Andre’s Law, “an ordinance that could lead to criminal charges for officers who fail to turn on body cameras or render first aid to a citizen injured by police,” in the wake of Hill’s shooting).

Police also killed Lajuana Phillips, Crystal Danielle Ragland, Latasha Nicole Walton, and April Webster, but media coverage of Black women killed by police is often lacking. Alex Samuels et al., *Why Black Women Are Often Missing from Conversations About Police Violence*, FIVETHIRTYEIGHT (May 6, 2021), <https://fivethirtyeight.com/features/why-black-women-are-often-missing-from-conversations-about-police-violence/>.

²¹ Danae King, *Deputy Who Killed Casey Goodson Has Used Faith to Justify Use of Force Before*, COLUMBUS DISPATCH (Dec. 29, 2020, 6:24 AM), <https://www.dispatch.com/story/news/2020/12/29/who-jason-meade-deputy-who-killed-casey-goodson-columbus-ohio/4008670001>.

Laquan McDonald.²² Officer Daniel Pantaleo, whose disciplinary record “indicate[d] a chronic history of complaints . . . among the worst on the force,” killed Eric Garner by using a prohibited chokehold.²³ Officer Timothy Loehmann, who was recommended for termination from a previous position after a supervisor noted his unfitness, shot and killed Tamir Rice.²⁴ Officer Adam Coy, with ninety civilian complaints filed against him, shot and killed Andre Hill.²⁵ Patrolman Scott Aldridge had violated use of force policies and lied about his conduct years before he was involved in the death of Tanisha Anderson, whom family said police slammed to the ground during a mental-health episode.²⁶ The Medical Examiner’s report ruled her death a homicide.²⁷

These incidents have led some to question how problem officers have been allowed to remain on the job. Scholars,²⁸ organizations,²⁹ and journalists³⁰ have examined how police unions impede officer

²² Johanna Wald, *Chicago Cop Jason Van Dyke’s Record Was a Warning Sign*, MARSHALL PROJECT (Oct. 28, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/10/28/warning-signs-were-clear-before-laquan-mcdonald-s-murder>.

²³ Carimah Townes & Jack Jenkins, *EXCLUSIVE DOCUMENTS: The Disturbing Secret History of the NYPD Officer Who Killed Eric Garner*, THINKPROGRESS (Mar. 21, 2017, 2:09 PM), <https://archive.thinkprogress.org/daniel-pantaleo-records-75833e6168f3/>; Sonia Moghe, *Disciplinary Record of Ex-Officer Who Held Eric Garner in Chokehold Is Finally Released*, CNN (June 23, 2020, 11:01 PM), <https://www.cnn.com/2020/06/23/us/eric-garner-officer-misconduct-complaints/index.html>. See generally *Daniel Pantaleo*, MARSHALL PROJECT, <https://www.themarshallproject.org/records/4290-daniel-pantaleo> (last visited Oct. 16, 2022).

²⁴ Joshua Barajas, *Cleveland Police Officer Who Shot Tamir Rice Was Unfit for Duty Years Ago, Records Show*, PBS NEWSHOUR (Dec. 3, 2014, 7:15 PM), <https://www.pbs.org/newshour/nation/cleveland-police-office-shot-tamir-rice-unfit-duty-years-ago-police-reports-show> (reporting Independence (Ohio) Police Department deputy chief Jim Polak “did not believe Loehmann was mature enough to work at IPD, due to a ‘dangerous loss of composure during live range training and his inability to manage this personal stress.’”); Matthew Haag, *Cleveland Officer Who Killed Tamir Rice Is Hired by an Ohio Police Department*, N.Y. TIMES (Oct. 8, 2018), <https://www.nytimes.com/2018/10/08/us/timothy-loehmann-tamir-rice-shooting.html> (reporting the police department in Bellaire, Ohio, hired Loehmann after he killed Rice).

²⁵ Castle & Boese, *supra* note 20.

²⁶ Brandon Blackwell, *Cleveland Cop Involved in Tanisha Anderson Death Lied About Past Use-of-Force Case*, CLEVELAND.COM (Jan. 16, 2015, 3:33 PM), https://www.cleveland.com/metro/2015/01/cleveland_cop_involved_in_tani.html.

²⁷ Cory Shaffer, *Tanisha Anderson Was Restrained in Prone Position; Death Ruled Homicide*, CLEVELAND.COM (Jan. 2, 2015, 4:23 PM), https://www.cleveland.com/metro/2015/01/tanisha_anderson_was_restraine.html.

²⁸ See Paul F. Clark, *Why Police Unions Are Not Part of the American Labor Movement*, CONVERSATION (Aug. 25, 2020, 3:18 PM), <https://theconversation.com/why-police-unions-are-not-part-of-the-american-labor-movement-142538>; see also sources cited *supra* note 16.

²⁹ See, e.g., GRACE SINNOTT ET AL., ACLU OF CONN., *BARGAINED AWAY 3* (2020), https://www.acluct.org/sites/default/files/field_documents/bargained_away_2020.pdf; *Fair Police Contracts*, CAMPAIGN ZERO, <https://campaignzero.org/contracts.html> (last visited Aug. 14, 2022).

³⁰ See, e.g., Noam Scheiber et al., *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES, <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html> (Apr. 2, 2021); Michael H. Keller & Kim Barker, *Police Unions Won Power Using His Playbook. Now*

accountability. Some politicians and police reform experts point to the unchecked power of police unions.³¹ Scholars have gone one step further by identifying collective bargaining contracts as the source of that unchecked power.³² No one has yet explored the alignment of anti-Black sociopolitical interests that prompted governments to grant police officers the right to collectively bargain in the first place.

Contractual provisions for officers in jurisdictions with law enforcement collective bargaining rights have been singled out as contributing to a national police culture that overlooks dastardly policing and protects the employment security of officers at the expense of policed communities.³³ Elected and appointed officials unaware or unwilling to assert managerial authority risk agreeing to contractual provisions that impede reform efforts.³⁴ The pro-law-and-order,³⁵ anti-Black enforcement interests³⁶ present in America before, during, and after the rise of police unions compose a strong political force.

This Article details the explosion of public safety collective bargaining rights during the 1960s. In doing so, it also discusses how those rights were

He's Negotiating the Backlash, N.Y. TIMES (Mar. 10, 2021), <https://www.nytimes.com/2021/03/10/us/police-unions.html>; Daniel DiSalvo, *The Trouble with Police Unions*, NAT'L AFFS. (Fall 2020), <https://www.nationalaffairs.com/publications/detail/the-trouble-with-police-unions>; Dylan Matthews, *How Police Unions Became So Powerful—and How They Can Be Tamed*, VOX (June 24, 2020, 9:00 AM), <https://www.vox.com/policy-and-politics/21290981/police-union-contracts-minneapolis-reform>.

³¹ Although police union leaders frequently criticize elected officials, Mayor Jacob Frey of Minneapolis was one of the rare politicians to direct criticism at the police unions:

The elephant in the room with regard to police reform is the police union. The elephant in the room with regard to making the changes necessary to combat the institutionalized racism—and have a full-on culture shift—is the police union, the contract associated with that union, and then the arbitration that ultimately is necessary.

The Daily, *The Mayor of Minneapolis*, N.Y. TIMES, at 6:46 (June 3, 2020), <https://www.nytimes.com/2020/06/03/podcasts/the-daily/jacob-frey-george-floyd-protests-minneapolis.html>; see also Scheiber et al., *supra* note 30 (quoting Minneapolis councilman Stephen Fletcher as saying, “[i]t operates a little bit like a protection racket”).

³² Clark, *supra* note 28.

³³ Rushin, *Police Union Contracts*, *supra* note 16, at 1204–07.

³⁴ *Id.*

³⁵ The phrase “law and order” promotes the misconception that legality and social order go hand in hand. However, as Jerome Skolnick discusses, there are societies where social order and control are prioritized without any legal protections for individuals. JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL 6–9 (1966) (“In short, ‘law’ and ‘order’ are frequently found to be in opposition, because law implies rational restraint upon the rules and procedures utilized to achieve order. Order under law, therefore, subordinates the ideal of conformity to the ideal of legality.”).

³⁶ Anti-Black enforcement strategies, often presented as an allegiance to law and order, can exist when authorities either (1) disproportionately punish conduct or behavior of Black people in relation to that of people of other races, or (2) pass statutes aimed at criminalizing attire and personal conduct typically found in Black culture (i.e., sagging pants offenses, nuisance laws). See JAMES FOREMAN, JR., LOCKING UP OUR OWN 151–84 (2017). The insidious nature of racism rooted in white supremacy can affect Black people or other people of color. Non-whites are not immune from adopting, advocating, and even demanding pro-police law-and-order enforcement to the sole detriment of Black people. See *id.*

granted simultaneous to a strong backlash against Black liberation. The Article goes on to posit that the success of police unions during this time was not coincidental, but instead a product, in some distinct measure, of law enforcement's exploitation and denigration of the Black Freedom Movement.

This project seeks to counter beliefs that police unions are unchecked, self-empowering entities. Instead, they are largely the product of America's anti-Black sociopolitical climate. This Article details a portion of the origins of police unions during the 1960s. It connects the rise of police unions and individual leaders to the continued brutal treatment of Black community members during that time. To be sure, this lone Article does not aim to cover all of the political realities that gave rise to widespread police unionization from 1965 to the present. Instead, it describes some of the ways that police union interests and activities served to quell progress of the 1960s Black liberation movement.³⁷ Doing so preserved white local interests and power. In short, police associations secured collective bargaining rights, in no small part, because of the converging interests of police and elected officials who sought to destroy Black liberation efforts.

This is the first in a series of articles that explores the political rise of police unions and its accompanying contractual legal landscape over the last five decades. It proceeds in three parts. Part I provides a historical overview of the Black liberation movement from the late 1950s through the early 1960s. It also briefly discusses the history of police unionization efforts from the early 1900s until 1960. Part II details how police associations in selected cities successfully used local courts and public support for "law-and-order" policing to harness power and limit municipal authority to address police brutality in predominately Black communities. Part III explores how police unions successfully personified their professional roles in law enforcement as a *de facto* protected class—foreshadowing the current Blue Lives Matter organization—and galvanized political support largely from the white electorate in selected cities. This section details the notorious political rise of police officers to elected office amid public support for racially targeted police practices, even as survey results published by the American Academy of Art and Sciences concluded that "white Americans . . . do not want a racist government and that they will not follow racist leaders."³⁸ The Article concludes with a solution that

³⁷ The term Black liberation used throughout this Article is aligned with Hasan Jeffries's articulation of Black freedom as the struggle of Black people to secure both civil rights and human rights stretching back to the moment the first enslaved Africans were brought to what became the colony of Virginia in 1619 and extending beyond the Black Power movement of the 1960s and 1970s. See Hasan Kwame Jeffries, *Freedom Rights: Reconsidering the Movement's Goals and Objectives*, in UNDERSTANDING AND TEACHING THE CIVIL RIGHTS MOVEMENT 74–75 (Hasan Kwame Jeffries ed., 2019) (describing civil rights as the liberty achieved through the passage of laws and human rights as the entitlement to basic rights by virtue of birth).

³⁸ Paul B. Sheatsley, *White Attitudes Toward the Negro*, 95 DAEDALUS 217, 237 (1966), <https://files.eric.ed.gov/fulltext/ED013274.pdf>.

revisits and expands upon a prior proposal to utilize federal conditional-spending requirements with local law enforcement agencies found to have racially motivated pattern-or-practice violations sufficiently connected to collective bargaining provisions in that jurisdiction.

I. BLACK LIBERATION AND POLICE UNIONIZATION

U.S. Supreme Court decisions from 1954 to 1960 signaled strong judicial support for racial equality in America. The Court handed down decisions that marked an end to legally segregated public education,³⁹ public transportation in states and cities,⁴⁰ and interstate transportation.⁴¹ Many communities in the South, however, continued to operate under *de facto* segregation.⁴² Nonviolent demonstrators used direct actions to serve as litmus tests for white response.⁴³ It was undeniably vicious. Black and white people (men, women, and children) participating in sit-ins, Freedom Rides, and marches were arrested, beat, attacked by dogs, firebombed, shot, and hanged.⁴⁴ Some of these attacks were broadcast on the evening news.⁴⁵

A. *Black Liberation—Beyond Civil Rights*

It is not possible to include a comprehensive historical account of the American Black liberation movement in a single law review article.⁴⁶ However, some background on the goals of the movement and how law enforcement served as an institutional enforcer of violence to thwart those goals is essential.

Black liberation in the United States has been described as the collective parts of the “civil rights militancy, nationalism, and anti-colonialism” in the

³⁹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

⁴⁰ *Gayle v. Browder*, 352 U.S. 903 (1956).

⁴¹ *Boynton v. Virginia*, 364 U.S. 454 (1960).

⁴² Erica Frankenberg & Kendra Taylor, *De Facto Segregation: Tracing a Legal Basis for Contemporary Inequality*, 47 J.L. & EDUC. 189, 192–95 (2018).

⁴³ See *infra* text accompanying notes 50–54.

⁴⁴ See RHONDA Y. WILLIAMS, *CONCRETE DEMANDS: THE SEARCH FOR BLACK POWER IN THE 20TH CENTURY 70*, 89 (2015) (on the “untold number of people who had suffered tremendously in the struggle for freedom” by August 1963) [hereinafter RHONDA Y. WILLIAMS].

⁴⁵ #*Selma50: What the Media and Hollywood Got Wrong About “Bloody Sunday,”* NBC NEWS (Mar. 8, 2015, 5:36 PM), <https://www.nbcnews.com/news/nbcblk/media-studies-selma-n319436> (“On Sunday March 7, ABC’s news division made the consequential decision to break in to the network’s prime time programming to show the Pettus Bridge horror. . . . Approximately 48 million people tuned in.”)

⁴⁶ A number of activists and organizers have provided first-hand accounts of the philosophy, aims, and strategy behind their Black liberation efforts. Likewise, a number of historians have documented the details of the quest for Black freedom in America. In addition to the works cited here, see also ANGELA DAVIS, *ANGELA DAVIS: AN AUTOBIOGRAPHY* (1974); ELAINE BROWN, *A TASTE OF POWER: A BLACK WOMAN’S STORY* (1992); JEFFREY HAAS, *THE ASSASSINATION OF FRED HAMPTON: HOW THE FBI AND THE CHICAGO POLICE MURDERED A BLACK PANTHER* (2011); AMY JACQUES GARVEY, *BLACK POWER IN AMERICA* (1968).

early 1960s.⁴⁷ In *Concrete Demands*, historian Rhonda Y. Williams succinctly described Black power as the outgrowth of “white illiberality and oppression.”⁴⁸ She explains that it is that reality from which Black people developed a political framework that “placed less faith in white goodwill and paid more attention to the structures of power.”⁴⁹ By the mid-to-late 1960s, policing was certainly one of the power structures in America that captured the attention of Black liberation leaders. But the struggle for liberation did not start there.

Individual students, activists, and organizers, both nationally and internationally, coalesced around the central topic of Black liberation during the early 1960s.⁵⁰ Though the groundwork for the liberation struggle was laid prior to the sixties,⁵¹ the beginning of the decade featured increased white violence against peaceful, nonviolent demonstrators. This included widely disseminated news coverage of the February 1960 attack on North Carolina A&T State University students’ sit-in at the Woolworth’s counter in Greensboro.⁵² The Student Nonviolent Coordinating Committee (SNCC) was formed two months after the attack on those students.⁵³ By the end of 1960, SNCC engaged a national network and organized sit-ins across the country in more than two hundred cities.⁵⁴

White violence met these nonviolent, aspiring liberators early and often. It is relatively well known that the Freedom Riders were subjected to unrelenting violence in the South from a staggering number of white people, including police officers, during the interracial demonstration to test the strength of the U.S. Supreme Court’s decision in *Boynton v. Virginia*.⁵⁵ Less discussed is the extent of the violence suffered by Black people at the hands of white people, both sworn and civilians, outside of the South. Elected officials expended little energy to stop police and white vigilantes from using violence to subvert Black liberation demonstrations.⁵⁶ The federal government refused to enforce the hard-fought protections purportedly

⁴⁷ RHONDA Y. WILLIAMS, *supra* note 44, at 70.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 4.

⁵⁰ *Id.* at 70.

⁵¹ *Id.* at 71 (discussing sit-ins and Freedom Rides organized by the Congress of Racial Equality (CORE) during the 1940s and 1950s).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 72.

⁵⁵ 364 U.S. 454, 457, 459 (1960) (holding that racial segregation in public transportation violated federal law). The Freedom Riders’ experience is related in RHONDA Y. WILLIAMS, *supra* note 44, at 75–76.

⁵⁶ See David M. Swiderski, *Approaches to Black Power: African American Grassroots Political Struggle in Cleveland, Ohio, 1960–1966*, at 204 (Sept. 2013) (Ph.D. dissertation, University of Massachusetts), https://scholarworks.umass.edu/open_access_dissertations/844; PETER B. LEVY, *THE GREAT UPRISING: RACE RIOTS IN URBAN AMERICA DURING THE 1960S*, at 259 (2018).

conferred to Black people.⁵⁷ Federal deference to states' rights and local rules was used to support the federal government's failure to intervene.⁵⁸

Black liberation leaders worked to collectively raise awareness of the ongoing racial subjugation experienced by Black people. Those organizing to establish a life free from oppression and subjugation articulated the objectives and guiding principles of their work early on. They developed plans such as the "Declaration of Rights," "Wants and Beliefs," and "Ten Principles," as well as an earlier iteration of a "Ten-Point Program,"⁵⁹ a precursor to the more widely known Black Panthers' "Ten Point Program."⁶⁰ It provided concrete steps local government should take to meet the employment, health, and educational needs of Black people in Monroe, North Carolina.⁶¹

The Black Panther Party for Self-Defense was formed in Oakland, California, in 1966.⁶² They organized nationally and formed chapters in cities throughout the country.⁶³ The Party's "Ten Point Program" was central to the organization's work—it retained threads from earlier plans related to economic, educational, and health relief.⁶⁴ But as the obstinacy to liberation evolved nationally, so did the threads in the Panther's plan.⁶⁵ The

⁵⁷ See generally BURKE MARSHALL, *FEDERALISM AND CIVIL RIGHTS* (1964) (offering federalism as the explanation for the Department of Justice's refusal to provide protection to civil rights demonstrators).

⁵⁸ *Id.*

⁵⁹ RHONDA Y. WILLIAMS, *supra* note 44, at 78. Robert Williams presented this early "Ten-Point Program," also known as the "Monroe Program," in 1961. ROBERT F. WILLIAMS, *NEGROES WITH GUNS* 39 (Wayne State Univ. Press 1998) (1962) [hereinafter ROBERT F. WILLIAMS]

⁶⁰ *The Black Panther Party Ten-Point Program (1966)*, BLACKPAST, <https://www.blackpast.org/african-american-history/primary-documents-african-american-history/black-panther-party-ten-point-program-1966/> (last visited Oct. 16, 2022).

⁶¹ See sources cited *supra* note 59.

⁶² *The Black Panther Party*, NAT'L ARCHIVES, <https://www.archives.gov/research/african-americans/black-power/black-panthers> (last visited Oct. 16, 2022).

⁶³ RHONDA Y. WILLIAMS, *supra* note 44, at 142.

⁶⁴ *Id.* at 78, 142.

⁶⁵ The program included the following points:

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

The Black Panther Party, *supra* note 62.

organization crystallized around concepts of Black unification and self-determination, aimed at freeing Black people from the harms of American subjugation.⁶⁶ The continued reign of white terroristic violence by both sworn and non-sworn individuals was identified as a direct threat to Black freedom.⁶⁷ The Black Panther Party drew the concerted ire of local law enforcement and the FBI.⁶⁸ Local and federal officials targeted the organization and well-known leaders such as Stokely Carmichael,⁶⁹ Huey P. Newton,⁷⁰ Fred Hampton,⁷¹ Angela Davis,⁷² and others. Those seeking to upend racist laws and practices were met at times with “violent white power in the form of armed white cops that enforce[d] those laws with guns and nightsticks.”⁷³ It is in this context that activists and organizers replaced their prior philosophy of nonviolence with one of self-defense.⁷⁴

Self-defense did not exclusively mean bearing arms. Black organizers in the Watts neighborhood of Los Angeles instituted the Community Action Patrol in 1965 to protect its community members from brazen police violence and harassment.⁷⁵ The organization used CB radios,

⁶⁶ *Id.*; Michael X. Delli Carpini, *Black Panther Party: 1966–1982*, in *THE ENCYCLOPEDIA OF THIRD PARTIES IN AMERICA* 190, 191 (Immanuel Ness & James Ciment eds., 2000).

⁶⁷ See *The Black Panther Party Ten-Point Program (1966)*, *supra* note 60 (“We believe we can end police brutality in our Black community by organizing Black self-defense groups that are dedicated to defending our Black community from racist police oppression and brutality.”).

⁶⁸ Documents released by the FBI pursuant to the Freedom of Information Act and Privacy Act regarding the Bureau’s counterintelligence activities are publicly available on the FBI website. *Black Extremist*, FBI RECORDS: THE VAULT, <https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists> (last visited Oct. 17, 2022). The documents, though heavily redacted, reveal that the FBI coordinated with local law enforcement agencies to prevent: (1) Black liberation organizations from building coalitions; (2) the rise of the Black “messiah” who would “unify” and “electrify” the movement; (3) violence from the organizations; (4) the organizations and its leaders from gaining respect of the larger Black community, the white community, and other Black liberation leaders; and (5) the organizations from gaining youth support. *Id.* pt. 1, at 69–70. To achieve its goals, the FBI launched an aggressive attack on people and organizations it deemed to be Black Extremist. The attack used repeated arrests by local police, various forms of anonymous and pretext harassment, infiltration by spies, forgery, false representations, advertisements through the media, and more. See, e.g., *id.* pt. 1, at 6–8, 60, 68, 87, 99–100, 107, 125, 131.

⁶⁹ The FBI worked with local police in cities such as Boston and New York to target Stokely Carmichael to disrupt, misdirect, neutralize, and frustrate his leadership efforts. *Id.* pt. 1, at 40, 52, 62.

⁷⁰ *Id.* pt. 23, at 79, 200 (describing how the agency continued to surveil Newton despite his incarcerated status).

⁷¹ *Id.* pt. 23, at 74 (revealing the coordinated effort between the FBI and local authorities regarding the legal purchase of firearms by Black Panther Party members and how it could be used to make the members “vulnerable to arrest”).

⁷² *Id.* pt. 23, at 140 (describing the plan to submit a forged letter to a local newspaper that purportedly made a connection between Davis and some undisclosed persons accused of assaulting a sheriff’s deputy in San Diego).

⁷³ Stokely Carmichael, *Toward Black Liberation*, 7 *MASS. REV.* 639, 644 (1966) (discussing the racial segregation and subjugation that oppressed Black people in American cities across the country and left them without any control over their communities or the police who patrol them). Carmichael argues the lack of power renders Black people unable to change these oppressive conditions. *Id.*

⁷⁴ RHONDA Y. WILLIAMS, *supra* note 44, at 76.

⁷⁵ JEROME H. SKOLNICK, *THE POLITICS OF PROTEST* 152 (1969).

notepads, and other technology to monitor police conduct in that neighborhood.⁷⁶ Some community members displayed “To Protect and Observe” banners on their cars.⁷⁷

Community patrols in Watts were a precursor to the formation of the Black Panther Party and its armed patrols of Oakland in 1966.⁷⁸ It did not take long for the California legislature, in May 1967, to criminalize the open carrying of firearms in that state.⁷⁹ This was a direct response to the Panther’s armed patrols.⁸⁰ As discussed in greater detail below, police union and appointed officials’ actions during the 1960s sent a strong message that self-determination and self-defense—core American values—were not to be exercised by Black people in America without forcible resistance from authorities.⁸¹ Policing scholars and other researchers have generally described the “increased public hostility”⁸² in relations between police and the Black community during the 1960s as a “crisis.”⁸³

Important scholarship during that time and since has either explored in great depth the progression of “police militancy” as the vehicle to unionize political power⁸⁴ or recounted the violent clashes between “black

⁷⁶ The United States of Anxiety, *To Protect and Observe: A History*, WNYC STUDIOS, at 3:40 (July 26, 2021), <https://www.wnycstudios.org/podcasts/anxiety/episodes/protect-and-observe-history> (an interview of Ron Wilkins, who had been a 19-year-old volunteer with the Community Alert Patrol during the mid-1960s, describing the “twenty-five to thirty” members’ efforts to protect the Black community from police violence and recounting how an LAPD officer brutally shot Leonard Deadwyler during a traffic stop in May 1966 as Deadwyler drove his pregnant wife to the hospital as she was in active labor); see also “We Have to Get the Police Off Our Backs”: *The Story Behind T.A.L.O. and the Community Alert Patrol in Watts*, MOVEMENT, Sept. 1966, at 5, <https://www.jstor.org/stable/pdf/community.28040887.pdf> (interview with community organizer Chester Wright on how the killing of Deadwyler and treatment of his wife by police led to the creation of the Temporary Alliance of Local Organizations (TALO) and their Community Alert Patrols in Watts).

⁷⁷ The United States of Anxiety, *supra* note 76, at 6:15.

⁷⁸ SKOLNICK, *supra* note 75, at 152; Michael X. Delli Carpini, *supra* note 66, at 192 (“The Black Panthers formed ‘police patrols,’ first in Oakland and then, as the organization grew, in cities around the country.”).

⁷⁹ Arica L. Coleman, *When the NRA Supported Gun Control*, TIME, <https://time.com/4431356/nra-gun-control-history/> (July 31, 2016).

⁸⁰ SKOLNICK, *supra* note 75, at 152; Cynthia Deitle Leonardatos, *California’s Attempts to Disarm the Black Panthers*, 36 SAN DIEGO L. REV. 947, 948 (1999) (“While many journal articles have been written on the topic of race and guns, none have examined the history and motivations behind the California Legislature’s decision to enact a gun control statute in 1967 for the purpose of disarming the members of the Black Panther Party.”).

⁸¹ See *infra* Part III.

⁸² HERVEY A. JURIS & PETER FEUILLE, POLICE UNIONISM: POWER AND IMPACT IN PUBLIC-SECTOR BARGAINING 19 (1973).

⁸³ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 25.

⁸⁴ Donald G. Alexander, *Police Service Reforms Are Overdue*, in THE POLICE REBELLION: A QUEST FOR BLUE POWER 40, 40–41 (William J. Bopp ed., 1971); JURIS & FEUILLE, *supra* note 82, at 3.

militants”⁸⁵ and law-and-order police tactics.⁸⁶ Officials commended officers for their conduct during “race riots” in Rochester, New York; St. Augustine, Florida; Albany, Georgia; York, Pennsylvania; New York City; and Philadelphia.⁸⁷ They praised officers despite widespread reports of officer abuse and misconduct.⁸⁸ In many instances, officer abuse and excessive force were the precipitating factors that led to uprisings across the country.⁸⁹ Others reported that officers failed to provide service to Black community members harmed by white gang members or vigilantes.⁹⁰ And still yet, there were reports of police acting in concert with white gangs to commit acts of racial violence and intimidation.⁹¹ The following subsection explores the abrupt increase in police collective bargaining rights after years of rejection.

B. *Police Association Progress Toward Unionization*

Others have provided detailed historical accounts of police associations as social clubs seeking to join the labor movement as official unions.⁹² Though much of that background is not germane to this particular Article, a brief history here is necessary to illustrate the significance of the rapid acceleration of collective bargaining rights and to contextualize its timing. Before the considerable and concerted backlash to Black liberation, prior efforts by police associations to secure collective bargaining rights netted no results.

Police associations were formed largely in the American northeast during the late nineteenth and early twentieth centuries. Historical accounts of the early beginnings of police organizations recount their role of

⁸⁵ It is curious that the behavior of Black liberation activists was described as militant. History shows that violence is more prevalent by groups looking to maintain America’s status quo of inequality in the name of law and order. Black liberation activists and other proponents of racial progress are routinely labeled as “militant.” As defined, however, that label more aptly fits those who act violently under the guise of law and order to maintain racial hierarchy of white domination and Black subjugation. Oxford English Dictionary defines “militant” as, “Aggressively active in pursuing a political or social cause, and often favouring extreme, violent, or confrontational methods.” *Militant*, OXFORD ENGLISH DICTIONARY, <https://www.oed.com/view/Entry/118418> (March 2022).

⁸⁶ SKOLNICK, *supra* note 75, at 126–27; LEVY, *supra* note 56.

⁸⁷ See, e.g., *Mansfield Praises Police in Race Riots*, N.Y. TIMES, Aug. 1, 1964, at 11, <https://timesmachine.nytimes.com/timesmachine/1964/08/01/118533911.pdf>; Thomas A. Johnson, *U.S. Studies Riot in Philadelphia; Liberties Union Welcomes Move, Charging Brutality*, N.Y. TIMES, Nov. 19, 1967, at 71, <https://timesmachine.nytimes.com/timesmachine/1967/11/19/98608917.pdf>. The mayor of York, Pennsylvania, disregarded complaints about the use of police dogs to attack and intimidate Black people, including children. Instead, he erected a police dog monument, praised the dogs for making the city safer, and pledged to get more if necessary. LEVY, *supra* note 56, at 261.

⁸⁸ LEVY, *supra* note 56, at 251, 278.

⁸⁹ NAT’L ADVISORY COMM’N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 3–4 (1968) [hereinafter KERNER COMMISSION]

⁹⁰ LEVY, *supra* note 56, at 240–41, 251, 270, 272.

⁹¹ *Id.*

⁹² See, e.g., Matthews, *supra* note 30.

providing general support and social gatherings for officers. But some of the earliest organizations also made significant strides in advocating for better work conditions. The Patrolmen's Benevolent Association (PBA) in New York City started in 1892.⁹³ It was reportedly known as a professional police organization by 1898.⁹⁴ One of its earliest lobbying successes netted eight-hour workdays for officers.⁹⁵ The state of New York was also home to early police associations in two other cities. Buffalo officers formed the Erie Club in 1894, just two years after the PBA.⁹⁶ In addition, officers in Rochester formed the Locust Club, a reference to their nightsticks' type of wood, in 1907.⁹⁷ The three organizations in New York were followed by the Milwaukee Policemen's Protective Association in 1908, an unnamed association in the District of Columbia in 1908, and Pittsburgh's Fraternal Order of Police Lodge #1 in 1915.⁹⁸ The organization behind the Boston police strike of 1919 rounds out the early twentieth century and is often characterized as historically significant for drastically hindering momentum for police unionism.⁹⁹

The Rochester Police Department's Locust Club and the Boston police strike addressed concerns about low compensation and lengthy shifts of officers within those departments.¹⁰⁰ Historical documents about those associations also contain information regarding the organizational structure, important dates, and even details regarding name origin.¹⁰¹ Another source discusses the contentious battles between the New York Police Department, the PBA, the Sergeant's Benevolent Association, and city officials from the 1940s to the 1960s regarding representation authority, rights to the grievance process, and the political calculations of all involved.¹⁰² Non-sworn public sector workers were gaining union rights around the same time. But it is widely recognized that police associations gained lightning-speed success in securing collective bargaining rights

⁹³ MARK JONES & PETER JOHNSTONE, *HISTORY OF CRIMINAL JUSTICE* 329 (2011).

⁹⁴ JURIS & FEUILLE, *supra* note 82, at 15; LEONARD RUCHELMAN, *POLICE POLITICS: A COMPARATIVE STUDY OF THREE CITIES* 15 (1974) (discussing the historical development of the NYPD PBA and identifying the date it began as a professional organization).

⁹⁵ JONES & JOHNSTONE, *supra* note 93, at 329.

⁹⁶ JURIS & FEUILLE, *supra* note 82, at 15.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 17. The strike also made Calvin Coolidge a national figure. As governor of Massachusetts, he took a hard line against the police strikers. It propelled him to the Republican national ticket in 1920 and to the presidency after President Harding died in 1923. *Id.* at 16; Richard L. Lyons, *The Boston Police Strike of 1919*, 20 *NEW ENG. Q.* 147, 165 (1947) (quoting Coolidge as writing, "There is no right to strike against the public safety by anybody, anywhere, anytime.")

¹⁰⁰ Charles Clottin, *The Evolution of the Rochester Police Department Locust Club 3* (unpublished manuscript), https://locustclub.org/sites/default/files/locustclub_history.pdf (last visited Oct. 18, 2022); Lyons, *supra* note 99, at 148.

¹⁰¹ *See generally* sources cited *supra* note 99.

¹⁰² MARGARET ANNE LEVI, *CONFLICT AND COLLUSION: POLICE COLLECTIVE BARGAINING*, *TECH. REP. 07-74*, at 42-44 (1974), <https://www.ojp.gov/pdffiles1/Digitization/17457NCJRS.pdf>.

during the 1960s. Juris and Feuille apportion some of that success to the tight labor market of the 1950s, the collective bargaining success of teachers in New York City, and the national conversation spurred by President Kennedy's 1962 executive order giving federal employees bargaining power.¹⁰³

In the 1960s, police organizations were able to accomplish in one decade what they had failed to in the previous fifty-plus years: the right to collectively bargain over wages and other employment benefits. Juris and Feuille's seminal work, *Police Unionism: Power and Impact in Public-Sector Bargaining*, provides a timely and extensive account of the evolution of police unions.¹⁰⁴ Their research involved a field study of what the authors identify as "twenty-two urban areas."¹⁰⁵ Framed in some ways as a response to Skolnick's highly regarded and influential *Politics of Protest*, the work is specifically positioned as an attempt to address the authors' concerns that police unions were being painted in a negative light by "misinformation and fear of the unknown."¹⁰⁶ It sought to provide insight into police unions that were identified as strong economic and political institutions but had gone "largely unobserved and virtually unstudied."¹⁰⁷

Police associations failed to make any substantial headway in the quest to secure collective bargaining rights from 1919 until the 1960s.¹⁰⁸ Though police associations were widespread by 1960, the vast majority of those entities were not recognized as official bargaining units.¹⁰⁹ Public employee efforts to unionize and strike, particularly among the ranks of police and fire, were viewed as anti-American challenges to the sovereign authority of

¹⁰³ JURIS & FEUILLE, *supra* note 82, at 12, 15; Exec. Order No. 10,988, 3 C.F.R. 521 (1959–1963); *see also* LEVI, *supra* note 102, at 42–44 (detailing how the PBA hired large law firms to utilize the court system to pursue access to the grievance processes detailed in the Little Wagner Act (not collective bargaining rights)); *see infra* note 127, after efforts to use political, public, and labor affiliation power with the Teamsters failed).

¹⁰⁴ JURIS & FEUILLE, *supra* note 82, at 12, 15.

¹⁰⁵ *Id.* at 4.

¹⁰⁶ *Id.* at 1; *see generally* SKOLNICK, *supra* note 75.

¹⁰⁷ JURIS & FEUILLE, *supra* note 82, at 3. There were studies of the police as an institution, and some of those studies did not put law enforcement in an entirely positive light. *E.g.*, ALBERT J. REISS, JR., *THE POLICE AND THE PUBLIC* (1971). That study grew out of a project that Reiss did for a presidential commission. PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967) (commonly known as the Katzenbach Commission). His findings relating to bad police behavior generated controversy because he was unwilling to release his supporting data or identify the officers who behaved badly. *See* David Burnham, *5,360 Meetings Between 579 Policemen and 11,255 Citizens*, N.Y. TIMES (Nov. 28, 1971), <https://www.nytimes.com/1971/11/28/archives/the-police-and-the-public-by-albert-j-reiss-jr-228-pp-new-haven.html>.

¹⁰⁸ *See* Hardaway, *supra* note 16, at 169–71; Roger Fradin, *Collective Bargaining in the Police and Firefighter Services*, in *UNIONIZING THE ARMED FORCES* 103, 103 (Ezra S. Krendel & Bernard L. Samoff eds., 1977) (regarding the lack of progress in police unionization between 1919 and the 1960s).

¹⁰⁹ *See* Fradin, *supra* note 108, at 112.

elected officials.¹¹⁰ These efforts were also perceived as counter to the duty assumed by public servants.¹¹¹ During this time, police associations unsuccessfully sought to establish connections with national labor organizations to advance their goal of securing collective bargaining rights.¹¹² Even the national Fraternal Order of Police took an anti-union stance; its leader preferred instead to promote professionalism akin to academics, lawyers, and doctors.¹¹³ More than forty years passed in the United States without codified union rights for police associations.¹¹⁴

Despite the lull, police unionization efforts netted significant gains during the 1960s. On a national level, the Fraternal Order of Police had eighty thousand members and was connected to 733 local lodges by 1969.¹¹⁵ Though FOP membership did not confer local collective bargaining rights, significant progress in that realm was also made during the sixties. Law enforcement associations were not without any means of advocating for their members despite not having the statutory right to negotiate with public employers. As discussed above, association leaders lobbied public officials to secure pension and health insurance benefits.¹¹⁶ But no law enforcement agency had statutory collective bargaining rights before the 1960s.¹¹⁷ By the beginning of the next decade, fourteen states enacted such statutes.¹¹⁸ It is important to recognize that collective bargaining rights for public sector employees also gained ground during the 1960s.¹¹⁹ But the momentum for that was in motion decades earlier.¹²⁰ The sharp about-face regarding police unionization abruptly dispensed with previously long-held concerns regarding the public service duty of sworn personnel.¹²¹ The table below identifies the states that enacted mandatory collective bargaining statutes during the 1960s. It does not include those local or state jurisdictions that allowed officers to join police associations but did not require the employer to negotiate contract terms with them.

¹¹⁰ See JOSEPH E. SLATER, *PUBLIC WORKERS: GOVERNMENT EMPLOYEE UNIONS, THE LAW, AND THE STATE, 1900–1962*, at 29 (2004); RICHARD C. KEARNEY & PATRICE M. MARESCHAL, *LABOR RELATIONS IN THE PUBLIC SECTOR* 239–40 (CRC Press, 5th ed. 2014).

¹¹¹ SLATER, *supra* note 110, at 27 (quoting *The Boston Police Strike*, N.Y. TIMES, Sept. 10, 1919, at 10, <https://timesmachine.nytimes.com/timesmachine/1919/09/10/118157632.pdf> (“A policeman has no more right to belong to a union than a soldier or a sailor.”)).

¹¹² *Id.* at 35–36.

¹¹³ William J. Bopp, *The Police Rebellion*, in *THE POLICE REBELLION: A QUEST FOR BLUE POWER*, *supra* note 84, at 5, 16.

¹¹⁴ JOHN BURPO, *THE POLICE LABOR MOVEMENT: PROBLEMS AND PERSPECTIVES* 6 (1971).

¹¹⁵ JURIS & FEUILLE, *supra* note 82, at 28.

¹¹⁶ BURPO, *supra* note 114, at 81.

¹¹⁷ JURIS & FEUILLE, *supra* note 82, at 12.

¹¹⁸ See *infra* tbl.1.

¹¹⁹ See SLATER, *supra* note 110, at 71–72.

¹²⁰ *Id.* at 16.

¹²¹ See *supra* note 111 and accompanying text.

TABLE 1: STATES WITH COLLECTIVE BARGAINING RIGHTS
INCLUDING POLICE FROM 1960–1969¹²²

STATE	YEAR	AUTHORITY
California	1969	CAL. GOV'T CODE § 3500
Connecticut ¹²³	1965	CONN. GEN. STAT. § 7-467
Delaware ¹²⁴	1965	DEL. CODE ANN. tit. 19, § 1301
Massachusetts ¹²⁵	1965	MASS. GEN. LAWS ch. 149, §§ 178G–N
Michigan	1965	MICH. COMP. LAWS § 423.215
Minnesota ¹²⁶	1965	MINN. STAT. § 179.50
New Jersey	1968	N.J. STAT. ANN. § 34:13A-5.3
New York ¹²⁷	1967	N.Y. CIV. SERV. LAW § 204(2)
Oregon ¹²⁸	1963	OR. REV. STAT. § 243.710
Pennsylvania	1968	43 PA. CONS. STAT. § 217.1
Rhode Island	1963	28 R.I. GEN. LAWS § 28-9.2-2
Vermont	1969	VT. STAT. ANN. tit. 3, § 901
Washington	1969	WASH. REV. CODE § 41.56.040
Wisconsin	1961	WIS. STAT. § 111.70

¹²² See generally BURPO, *supra* note 114, at 39–60 (examining all state laws related to employee collective bargaining rights as of 1971).

¹²³ The current authority is CONN. GEN. STAT. § 5-271.

¹²⁴ The current authority is DEL. CODE ANN. tit. 19, § 1601–1623.

¹²⁵ *Evolution of Public Employee Collective Bargaining*, MASS.GOV, <https://www.mass.gov/info-details/evolution-of-public-employee-collective-bargaining> (last visited Nov. 13, 2022). The current authority is MASS. GEN. LAWS ch. 150E, §§ 1–15.

¹²⁶ The current authority is MINN. STAT. § 179A.06.

¹²⁷ There are some who contend that police officers in New York City gained the right to collectively bargain with municipal government in 1958 under what is commonly referred to as “The Little Wagner Act.” See Anthony C. Russo, *Management's View of the New York City Experience*, 30 PROC. ACAD. POL. SCI. 81, 82 (1970). Mayor Robert F. Wagner (the son of Sen. Robert Wagner, namesake of the federal Wagner Act) signed Executive Order 49, also known as “The Little Wagner Act,” on March 31, 1958. *Id.* But that appears to be inaccurate based on statements made by Mayor Wagner and those familiar with his administration regarding the intent of the legislation and the political calculus made regarding excluding law enforcement from the Little Wagner Act, specifically as it related to police officers. See LEVI, *supra* note 102, at 25–27. The PBA became what Levi referred to as a de facto union on March 29, 1963, when Mayor Wagner signed an “Executive Order on the Conduct of Labor Relations Between the City of New York and Members of the Police Force of the Police Department.” *Id.* at 54–55. It gave NYPD officers collective bargaining rights. *Id.*

¹²⁸ OR. STATE LEGISLATURE, BACKGROUND BRIEF ON COLLECTIVE BARGAINING 2 (2012), <https://www.oregonlegislature.gov/lpro/Publications/CollectiveBargaining.pdf>. The current authority is OR. REV. STAT. § 243.650.

Fourteen states passed legislation requiring government employers to negotiate employment terms with law enforcement during the 1960s.¹²⁹ Twelve of the fourteen statutes were passed during the latter half of the decade, from 1965 to 1969.¹³⁰ In 1965 alone, five states granted police officers collective bargaining rights.¹³¹ Police associations developed both a national and local network that included tens of thousands of officers. At least 65,250 officers were members of organizations in states with collective bargaining statutes for police that negotiated or lobbied contract terms with their employer by 1970.¹³² There were at least another 6,400 officers associated with police organizations who continued to lobby for contract terms despite not having collective bargaining rights.¹³³ Significantly, law enforcement salaries increased by thirty-eight percent in just a five-year period—from 1964 to 1969—as collective bargaining rights expanded across the country.¹³⁴

A study of collective bargaining agreements by the United States Department of Labor provides no indication that early union contracts did anything to address problems of racism and brutality within police departments.¹³⁵ The report detailed provisions of 292 collective bargaining agreements from 1972 to 1973 that were specific to police and sheriff departments.¹³⁶ Of the 292, approximately forty-four percent of the contracts contained disciplinary provisions.¹³⁷ Around fifty-four percent of them contained provisions regarding review boards.¹³⁸ Of those few agreements providing for review boards, most defined membership as comprising only police departments, with one provision explicitly excluding the public.¹³⁹ Others provided for participation from the mayor or city manager,¹⁴⁰ But community participation or membership was not mentioned in any of the contracts surveyed.¹⁴¹ One contract contained a

¹²⁹ See *supra* tbl.1.

¹³⁰ See *supra* tbl.1.

¹³¹ See *supra* tbl.1.

¹³² JURIS & FEUILLE, *supra* note 82, at 34–36 tbl.2-1 (showing the number of officers associated with police unions in the jurisdictions surveyed, which also includes officers in Dayton and Cincinnati, Ohio who reportedly engaged management from a bargaining status but did not have collective bargaining rights conferred via state law).

¹³³ *Id.* at 34 tbl.2-1.

¹³⁴ BURPO, *supra* note 114, at 11. Pay for officers in New York City began to increase in the mid-1950s. After experiencing increases of 16.8% from 1953 to 1957 and of 14.3% from 1957 to 1961, New York City officers received a 32.3% increase in the salary compensation from 1961 to 1965. See LEVI, *supra* note 102, at 56.

¹³⁵ See generally BUREAU OF LAB. STAT., U.S. DEP'T OF LAB., BULL. NO. 1885, COLLECTIVE BARGAINING AGREEMENTS FOR POLICE AND FIREFIGHTERS (1976).

¹³⁶ *Id.* at 2, 4.

¹³⁷ *Id.* at 89.

¹³⁸ *Id.*

¹³⁹ *Id.* at 86.

¹⁴⁰ *Id.*

¹⁴¹ See *id.*

provision concerning public complaints and hearing processes.¹⁴² The disciplinary provisions reportedly covered misconduct related to dishonesty, drunkenness, recklessness, and endangering others.¹⁴³ Two contracts were noted for highlighting the need for officers to maintain public trust, with one contract specifically stating that officers must “be above reproach . . . on and off duty.”¹⁴⁴

By the mid-to-late 1960s, the official collective bargaining rights of police organizations increased rapidly and in unprecedented ways. The significant impact of the sociopolitical climate of the 1960s on police organizations’ efforts to secure collective bargaining rights is aptly recognized. Yet, Juris and Feuille present a sanitized rationale for increased law enforcement militancy that they describe as “a logical outcome of increased police dissatisfaction.”¹⁴⁵ They identified four factors as the source of officer dissatisfaction: “increased public hostility, law-and-order demands on the police, low pay, and poor personnel practices.”¹⁴⁶ They also listed three factors that led to the police’s willingness to use “confrontation tactics”: “the demonstration effect of other public-employee successes, the influx of young policemen, and group cohesion.”¹⁴⁷ None of these factors consider that the history of racial violence and subjugation enforced by and within law enforcement served as a key factor in increased police militancy. The reference to law-and-order demands being placed upon the police suggests that the animating culture within departments was distinct from a law-and-order philosophy. There is frankly no support for that premise.¹⁴⁸ Police unions and their members loudly supported aggressive tactics against Black liberation activists and other protesters.¹⁴⁹ But the support extended

¹⁴² *Id.* at 85.

¹⁴³ *Id.* at 84.

¹⁴⁴ *Id.* at 84–85.

¹⁴⁵ JURIS & FEUILLE, *supra* note 82, at 26.

¹⁴⁶ *Id.* at 19.

¹⁴⁷ *Id.*

¹⁴⁸ This was true even prior to the 1960s, despite well-documented concerns of internal police corruption connected to organized crime groups, illegal gambling, and other criminal activity. *See, e.g.*, NAT’L COMM. ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931) (presenting the results of a presidential commission, known as the Wickersham Report, detailing the early 1900s police corruption in major cities involving bribery, coercion, and false evidence); KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA 49 (2010) (referring to the Lexow Commission of 1894 as the “first blue-ribbon investigation of police corruption and violence in American history”); *id.* at 194 (describing the political strategy of Mayor Rudolph Blankenberg in Philadelphia to “attack[] police corruption so that crooked politicians would no longer be able to pay for police protection”); *id.* at 223–24 (citing a March 1918 interview of Philadelphia’s Public Safety Director where he acknowledged Philadelphia police officers were criminals—including murderers and robbers—and, therefore, unable to combat crime in that city).

¹⁴⁹ JURIS & FEUILLE, *supra* note 82, at 18–19 (describing how those who targeted and denounced the Black Panther Party, Students for a Democratic Society, and others garnered the “loudest ovations” at police association gatherings).

beyond the union halls and police headquarters. The successful political careers of Charles Stenvig in Minneapolis and Frank Rizzo in Philadelphia (among others) are strong indications of a more symbiotic relationship between police union interests and the larger community.¹⁵⁰ This relationship was, at least in some ways, a consequence of aligned common interests focused on suppressing racial equality.

The previous section detailed the timing of that progress. Part II details how police unions in Philadelphia, Rochester, and New York City employed legal maneuvers and anti-Black rhetoric to gain popular and political support as they sought to suppress Black liberation demands for an end to police brutality. It describes the early police union pushback in those cities against Black liberation efforts, civilian oversight, and other efforts to prevent police brutality and increase law enforcement legitimacy.

II. GAINING POLITICAL POWER

For more than fifty years, police unions were considered to be “dangerous and destructive.”¹⁵¹ That changed drastically in demonstrable ways in the course of a few years. Police associations in fourteen northern and western states transitioned from social clubs to recognized organizations with significant interface with management.¹⁵² That interface involved either lobbying or negotiating with government officials on issues related to wages, hours, and other work conditions.¹⁵³ Elected and appointed officials in many states, as detailed above, were newly required to confer with union representatives regarding the needs, interests, and demands of officers. It quickly became apparent that the new power dynamic was not one of equal standing. The following section identifies key instances when police unions in New York City; Rochester, New York; and Philadelphia attacked modest attempts by local governments to increase police accountability to the Black communities. As detailed below, police unions successfully defeated external oversight during the 1960s while simultaneously gaining popular and political support that helped secure collective bargaining rights.

¹⁵⁰ See *infra* text accompanying notes 384–98.

¹⁵¹ SLATER, *supra* note 110, at 14.

¹⁵² See *supra* Section I.B, tbl.1.

¹⁵³ Judicial opinions have long interpreted this to not mean all topics related to employment. The concept of managerial prerogative originated in private sector labor law disputes. It remains relevant in public-sector labor law with many statutes specifically excluding managerial decision-making from collective bargaining between public employees and employers. Policy determinations around use of force and discipline have been designated as solely within the managerial prerogative of local governments. See, e.g., *Cassese v. Lindsay*, 272 N.Y.S.2d 324, 331–32 (Sup. Ct. 1966); *Berkeley Police Ass’n v. City of Berkeley*, 143 Cal. Rptr. 255, 260 (Dist. Ct. App. 1977).

A. *Early Wins Against Oversight*

Law enforcement officials have generally rejected efforts to grant community members investigative authority into allegations of police misconduct.¹⁵⁴ The panoply of objections to non-sworn community members investigating police officers range from assertions that police brutality is not a systemic issue requiring external oversight, to denigrating oversight supporters as communists or outside agitators, to assertions that only police officers are competent to evaluate the conduct of other officers.¹⁵⁵ At least eight police unions in American cities launched efforts to defeat community oversight processes during the 1960s.¹⁵⁶ Such processes, though now recognized as essential components of police accountability, were roundly rejected by police unions as radically dangerous for officers at the time.¹⁵⁷ The following subsections detail three aggressive judicial and public campaigns against community oversight by police unions in racially diverse cities during the 1960s.

1. *Philadelphia's Fraternal Order of Police*

Philadelphia became home to an influx of Black migrants during the first half of the twentieth century. Black Americans moved to Philadelphia, as they did to Chicago, Detroit, and New York, in search of better employment opportunities and refuge from the terrors of the south.¹⁵⁸ The city reached its highest population numbers in 1950, when it was reportedly the third-largest city in the United States.¹⁵⁹ By 1960, Philadelphia was, by far, home to more Black residents than anywhere else in the state.¹⁶⁰ The arrival of Black Americans in northern cities during the first half of the century brought with it racial tension that was not entirely unlike the Jim Crow south they had fled.¹⁶¹

¹⁵⁴ WALKER, POLICE ACCOUNTABILITY, *supra* note 17; JURIS & FEUILLE, *supra* note 82; BURPO, *supra* note 114.

¹⁵⁵ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 28.

¹⁵⁶ JURIS & FEUILLE, *supra* note 82, at 155–56 (identifying New York, Philadelphia, Rochester, Boston, Buffalo, Pittsburgh, Detroit, and Seattle as cities where police unions sought to defeat civilian review entities, as well as a 1970 challenge in Baltimore).

¹⁵⁷ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 6.

¹⁵⁸ “Between 1916 and 1919, approximately one-half million [B]lack southerners moved to northern cities, and twice as many followed during the 1920’s.” James R. Grossman, *The White Man’s Union: The Great Migration and the Resonance of Race and Class in Chicago, 1916–1922*, in *THE GREAT MIGRATION IN HISTORICAL PERSPECTIVE* 83, 85 (Joe William Trotter, Jr., ed., 1991).

¹⁵⁹ *Philadelphia, Pennsylvania Population History 1840–2021*, BIGGESTUSCITIES.COM, <https://www.biggestuscities.com/city/philadelphia-pennsylvania> (last visited Aug. 14, 2022).

¹⁶⁰ George A. Schnell, *The Changing Distribution of Pennsylvania’s Black Population—1960 to 1970*, 47 *PROC. PA. ACAD. SCI.* 35, 35 (1973) (finding sixty-two percent of Black residents in Pennsylvania in 1960 lived in Philadelphia).

¹⁶¹ Stephen A. Berrey, *Obstacles to Freedom Life in Jim Crow America*, in *UNDERSTANDING AND TEACHING THE CIVIL RIGHTS MOVEMENT*, *supra* note 37, at 59, 67.

The struggle for Black equality was firmly established in Philadelphia. In the early 1940s, organizers there worked to bring attention to racial segregation that left Black people to live in dilapidated and subpar housing stock.¹⁶² Black Philadelphians were forced to send their children to segregated public schools. In 1946, white Philadelphians prevented efforts to desegregate the schools by physically blocking the doors and marking the school property as Ku Klux Klan territory.¹⁶³ Black movement leaders organized “selective patronage” boycotts in 1960 to convince employers who discriminated against Black applicants to provide equal employment opportunities.¹⁶⁴ This strategy was designed to promptly impact employers who discriminated against Black workers through targeted economic boycotts. Unlike the city’s Commission on Human Relations, from which the NAACP had requested intervention on this issue more than three years earlier,¹⁶⁵ the targeted boycotts needed only six months to successfully negotiate settlements with at least five major employers.¹⁶⁶ Black leaders made similar demands on the city government regarding the absence of Black workers involved in construction projects.¹⁶⁷

The virtually all-white police department was widely described by Black community members as “brutal.”¹⁶⁸ This description is supported by research conducted during the early 1950s that found “police believe that certain groups of persons [Black and Puerto Rican] will respond only to fear and rough treatment.”¹⁶⁹ Reports surfaced of non-white Philadelphians on the receiving end of such racist police practices. Officers reportedly used brutal and discriminatory practices leading to improper arrests.¹⁷⁰ Community leaders, though aware of numerous civilian complaints against officers, were unaware of any officer ever being disciplined as a result of those

¹⁶² James Wolfinger, “*We Are in the Front Lines in the Battle for Democracy*”: *Carolyn Moore and Black Activism in World War II Philadelphia*, 72 PA. HIST. 1, 3, 6, 16 (2005).

¹⁶³ *Id.* at 3.

¹⁶⁴ MATTHEW J. COUNTRYMAN, UP SOUTH: CIVIL RIGHTS AND BLACK POWER IN PHILADELPHIA 101–03 (2006) (discussing the activities of the organization 400 Ministers to leverage Black economic power as done in other northern cities during the 1930s and 1940s).

¹⁶⁵ *Id.* at 102.

¹⁶⁶ *Id.* at 104–06 (detailing how and when 400 Ministers successfully negotiated plans to resolve discriminatory employment practices at General Baking, Tastykake, and bottlers for Pepsi-Cola, 7 Up, and Coca-Cola).

¹⁶⁷ *Id.* at 132–35 (describing the ebb and flow of progress in securing employment opportunities for Black skilled workers on public construction projects).

¹⁶⁸ Wolfinger, *supra* note 162, at 3.

¹⁶⁹ William A. Westley, *Violence and the Police*, 59 AM. J. SOCIO. 34, 40 (1953); THOMAS F. PETTIGREW, A PROFILE OF THE NEGRO AMERICAN 152–53 (1964).

¹⁷⁰ 2 JOSEPH D. LOHMAN & GORDON E. MISNER, POLICE AND THE COMMUNITY: THE DYNAMICS OF THEIR RELATIONSHIP IN A CHANGING SOCIETY 213 (1966) (detailing what precipitated the formation of the Philadelphia Police Review Board in 1958).

complaints.¹⁷¹ It was in the face of that stark reality that civil rights leaders advocated for civilian oversight of the Philadelphia Police Department.¹⁷²

The Philadelphia Police Review Board was created by executive order on October 1, 1958.¹⁷³ Mayor J. Richardson Dilworth had been unable to gain support among city council members for external police oversight.¹⁷⁴ The Police Review Board was authorized to evaluate external complaints of police brutality, false arrest, and discrimination.¹⁷⁵ The board faced challenges from the start. The first challenges were internal: Mayor Dilworth appointed five community members to the board but failed to give them operating guidelines, a budget, office space, or staff support.¹⁷⁶ Many community members were reportedly unaware of its existence, much less its role during the board's early years.¹⁷⁷ Of those who were aware, white

¹⁷¹ *Id.* (detailing what precipitated the formation of the Philadelphia Police Review Board in 1958). WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 23 (recounting the assertion by the Greater Philadelphia Branch of the ACLU that in the sixteen years prior to the Police Advisory Board creation, no officer was disciplined in proceedings involving a civilian complaint).

¹⁷² James R. Hudson, *The Civilian Review Board Issue as Illuminated by the Philadelphia Experience*, 6 CRIMINOLOGICA 16, 18 (1968) [hereinafter Hudson, *Civilian Review Board*] (discussing testimony offered by the ACLU and NAACP before Philadelphia City Council's Committee on Law and Government); Richard J. Terrill, *Police Accountability in Philadelphia: Retrospects and Prospects*, 7 AM. J. POLICE 79, 81–82 (1988) (identifying the ACLU as the organization advocating for the creation of the Police Review Board in Philadelphia, and identifying that “[o]nly the ACLU, NAACP and a segment of the [B]lack community . . . favored [the board’s] creation”); 2 LOHMAN & MISNER, *supra* note 170, at 214 (discussing how the ACLU became convinced that other approaches to addressing civilian complaints against officers for misconduct were unsuccessful).

It is important to note that NAACP support for Philadelphia’s civilian oversight mechanism diminished greatly over the years. The organization reportedly joined the ACLU during the 1950s in getting elected city officials to consider the implementation of a civilian review board. That support dissipated as changes to the board’s authority and its outcomes revealed the limited impact it had on the ongoing problem of police brutality experienced in Black communities. *See* 2 LOHMAN & MISNER, *supra* note 170, at 250 tbl.19 (detailing complainants’ race and gender demographics for all complaints received by the Police Advisory Board). Instead, the process was viewed as a failed attempt to placate the Black community that continued to bear unjust and harsh treatment at the hands of police. This position earned the NAACP and others decrying the ineffectiveness of the board as “militant civil rights organizations” in search of “radical reforms” that the board was not responsible to deliver. *Id.*

¹⁷³ Hudson, *Civilian Review Board*, *supra* note 172, at 18; Terrill, *supra* note 172, at 82; RUCHELMAN, *supra* note 94, at 44.

¹⁷⁴ Terrill, *supra* note 172, at 82. Corruption was also widely known to be a problem within the Philadelphia Police Department. Details of police acting in their official capacity at the request of local political leaders and openly taking bribes led new city leaders to attempt to reform government practices. *See* James Hudson, *Police Review Boards and Police Accountability*, 36 L. & CONTEMP. PROBS. 515, 525 (1971). Richardson Dilworth served as district attorney before becoming mayor and had received complaints from community members that at least one officer in the department, Frank Rizzo, had ties to the mob in South Philadelphia. *See* S.A. PAOLANTONIO, FRANK RIZZO: THE LAST BIG MAN IN BIG CITY AMERICA 55 (1993).

¹⁷⁵ Terrill, *supra* note 172, at 82.

¹⁷⁶ *Id.* at 83; Hudson, *Civilian Review Board*, *supra* note 172, at 18.

¹⁷⁷ Terrill, *supra* note 172, at 82.

Philadelphians largely subscribed to law-and-order rhetoric and did not want to see their police department “handcuff[ed].”¹⁷⁸

Philadelphia’s Fraternal Order of Police (FOP) filed three court challenges against the creation of the Police Review Board. The challenges sought to enjoin board functions based on the argument that it violated the city charter.¹⁷⁹ The first case, filed in 1959, ended with an out-of-court settlement that resulted in clearer articulation of the board’s processes and a name change.¹⁸⁰ The newly operationalized Police Advisory Board received community member complaints about their interactions with Philadelphia police. The board received 499 complaints from 1960 through 1965.¹⁸¹ Sixty-three percent of the complaints from 1960 to 1966 were filed by those whom data collectors categorized as non-white.¹⁸² People identified as non-white filed more than twice the number of brutality complaints than white complainants.¹⁸³ The highest number of complaints, 114, was filed with the board in 1964,¹⁸⁴ the same year as a major uprising in Philadelphia.¹⁸⁵ A newspaper story included comments from J. Edgar Hoover, director of the FBI, which decried the board’s existence with claims that it “emboldened” people to defy police orders and that the police were paralyzed.¹⁸⁶

The next two legal challenges by the FOP were filed during the next two years. The FOP lawsuit filed in September 1965 accused the Police Advisory Board of violating the city charter, improperly conducting judicial reviews instead of serving as an advisory board, and preventing officers from

¹⁷⁸ *Id.*

¹⁷⁹ Hudson, *Civilian Review Board*, *supra* note 172, at 18–19.

¹⁸⁰ *Id.* at 19.

¹⁸¹ *Id.* at 23 tbl.4 (detailing the number of complaints received by the Police Advisory Board during its years of operation with the categories of case types, raw number of complaints, and percentage of case type in comparison to the overall number of cases).

¹⁸² 2 LOHMAN & MISNER, *supra* note 170, at 250 tbl.19 (detailing complainants’ race and gender demographics for all complaints received by the Police Advisory Board).

¹⁸³ Hudson, *Civilian Review Board*, *supra* note 172, at 24 tbl.5 (This table identifies the racial categories of complainants as “white,” “non-white,” and “unknown.” White complainants filed sixty-two complaints that police were brutal during interaction with the public, while “non-white” complainants filed 129 of the same type of complaints).

¹⁸⁴ *Id.* at 23.

¹⁸⁵ North Philadelphia experienced nearly three days of public unrest—including looting of white-owned businesses, rock- and bottle-throwing at police officers, and breaking out windows of police cars—that began during the late hours of August 28, 1964. COUNTRYMAN, *supra* note 164, at 155–59. This was one of eight uprisings during 1964. KERNER COMMISSION, *supra* note 89, at 19–20. The unrest in Philadelphia began following officers’ attempt to arrest a couple arguing in a car found broken down in the street. False information regarding the incident spread and led members of the economically impoverished neighborhood to believe that officers had attacked and killed a pregnant Black woman. Police responded to the looting and rock- and bottle-throwing with guns, firehoses, rooftop snipers, and dogs. COUNTRYMAN, *supra* note 164, at 155–59. North Philadelphia was an exclusively Black neighborhood where its residents experienced “grinding poverty.” *Id.* at 158. They earned 30 percent less than the average city worker but endured inflated costs for unsafe housing. *Id.*

¹⁸⁶ *FBI Disputed Here on Review Board*, PHILA. INQUIRER, Sept. 29, 1964, at 26.

performing their duties.¹⁸⁷ It resulted in a temporary restraining order that suspended the board's activity for five months.¹⁸⁸

The union then filed a third lawsuit against the city seeking to abolish external community oversight in Philadelphia. Judge Leo Weinrott agreed with the union in his March 1967 opinion.¹⁸⁹ The court found that the board improperly served as a judicial tribunal, served to harass officers, and produced anxiety that "must inevitably lessen the effectiveness of police performance."¹⁹⁰ Weinrott's comments to the press following his fifty-two-page opinion demonstrated his inflated view of the role and authority of police. He analogized Philadelphia's municipal police department with military forces, reasoning that "nobody would ever think, would they, of having civilians discipline members of the armed forces? This is really an army. There is no question about that."¹⁹¹ Weinrott's comments also revealed that he found a television survey on the matter to be particularly persuasive, noting that the "television station, whichever one it is that runs those viewer surveys, had one last night about the board. And 80 percent of the people voted in favor of abolishment."¹⁹²

Judge Weinrott was not the only one persuaded by the pro-police sentiment driven by the FOP attack against community-based oversight. The election of James H. J. Tate as Mayor Dilworth's successor brought with it a change in the city government's view of the Police Advisory Board. As discussed in greater detail below, Tate recognized the political expediency of being aligned with Police Commissioner Frank Rizzo. Mayor Tate waited nineteen months to pursue an appeal of Judge Weinrott's decision.¹⁹³ In the interim, Pennsylvania police personnel gained the right to collectively bargain under state law on June 24, 1968.¹⁹⁴ This series of events illustrates Samuel Walker's point that "[t]he demand for external oversight *galvanized* rank-and-file officers and *spurred* the creation of local police unions."¹⁹⁵

Though the FOP had the political support of local election officials, courts in Rochester and New York City had approved the legality of external community oversight during the time that passed since the Philadelphia FOP filed its last two challenges.¹⁹⁶ In June 1969, the Pennsylvania Supreme Court upheld the creation of the board by executive order.¹⁹⁷ It also found

¹⁸⁷ See RUCHELMAN, *supra* note 94, at 45; COUNTRYMAN *supra* note 164, at 283.

¹⁸⁸ RUCHELMAN, *supra* note 94, at 45.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Joe McGinniss, *The Sad Death of a Police Board*, PHILA. INQUIRER, Mar. 31, 1967, at 31.

¹⁹² *Id.*

¹⁹³ RUCHELMAN, *supra* note 94, at 45.

¹⁹⁴ Policemen and Firemen Collective Bargaining Act, 1968 Pa. Laws 237 (codified at 43 PA. CONS. STAT. § 217.1-.10 (1968)).

¹⁹⁵ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 27 (emphasis added).

¹⁹⁶ *Id.*

¹⁹⁷ *Harrington v. Tate*, 254 A.2d 622, 624 (Pa. 1969).

that its recommendations to the police commissioner were advisory in nature and, therefore, not an illegal judicial proceeding.¹⁹⁸ Citing judicial opinions regarding external oversight in Rochester and New York City, the court placed significant weight on the fact that the board made recommendations that the police commissioner was free to accept or disregard.¹⁹⁹ But the PAB's ultimate judicial victory was of little consequence to the new city administration. Mayor Tate, closely aligning himself with Police Commissioner Rizzo, unequivocally announced, "Commissioner Rizzo does not want . . . [the PAB], and if Commissioner Rizzo does not want it, I do not want it."²⁰⁰

2. Rochester and the Locust Club

Like Philadelphia, the Black population in Rochester, New York, increased significantly between 1950 and 1960.²⁰¹ Racial discrimination against Black residents was prevalent in all segments of society—employment, education, and housing.²⁰² A local newspaper investigative report exposed the prevalence of housing discrimination. The report compared the experiences of a Black journalist and his white colleague as they responded to apartment advertisements.²⁰³ Every rental agent denied having an available unit immediately upon seeing the Black journalist posing as a potential renter. His white colleague was befuddled at their starkly different experiences. After all, he'd been welcomed in to view every advertised unit.²⁰⁴ The newspaper's investigative report called attention to housing discrimination long experienced by Black people in Rochester.²⁰⁵ Regardless of income, Black people were restricted to two areas of the city. And the quality of the housing stock was dreadful.²⁰⁶ The push for suitable housing caused Black leaders to abandon the traditional incremental approach to racial progress previously employed by Black NAACP leadership.²⁰⁷ Black activists, often referred to as the Young Turks, were recognized as being distinctly different from the "old Negro docility"

¹⁹⁸ *Id.* at 179.

¹⁹⁹ *Id.*

²⁰⁰ Eric C. Schneider, et al., *Dirty Work: Police and Community Relations and the Limits of Liberalism in Postwar Philadelphia*, 14 J. URB. HIST. 961, 972 (2017).

²⁰¹ LAURA WARREN HILL, *STRIKE THE HAMMER: THE BLACK FREEDOM STRUGGLE IN ROCHESTER, NEW YORK, 1940–1970*, at 13 (2021) (noting that nearly 16,000 Black people migrated to Rochester during this time, increasing the percentage of Black population from 2.3% to 7.4%).

²⁰² *Id.* at 11–12. Robert F. Williams (*see supra* note 59) arrived in Rochester from North Carolina looking for employment at Eastman Kodak only to find out, after an exhaustive search that expanded weeks, that the only work available for a Black man who served in the war was in agricultural fields picking fruits and vegetables. He returned to North Carolina. *Id.*

²⁰³ *Id.* at 19.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 17–18.

²⁰⁷ *Id.* at 37.

to which the community and its police force had been accustomed.²⁰⁸ Rochester residents experiencing racial discrimination regardless of their economic status coalesced and organized together because they were “Black folks first.”²⁰⁹

The white power structure in Rochester was adamant about maintaining its racially segregated housing and education spaces.²¹⁰ And those white residents unable to flee to the suburbs complained about the influx of Black people to law enforcement.²¹¹ Police responded with acts of intimidation, harassment, and brutal force against Black residents across age, religion, and socioeconomic status.²¹² Intimidation tactics included the use of police dog units to exclusively patrol recreation areas frequented by Black teenagers.²¹³ In August 1962, police broke the back of a well-respected Black gas station attendant in uniform after questioning what he was doing with a key to the business and referring to him with a racial epithet.²¹⁴ Rochester police entered Nation of Islam headquarters from a supposed anonymous tip about “a man with a gun” in January 1963.²¹⁵ The warrantless entry resulted in the immediate arrest of two men and the later indictment of another seventeen men associated with the Nation of Islam.²¹⁶ A short time later, police repeatedly beat an intoxicated man enjoying block party festivities as he moved a car from one side of the street to the other.²¹⁷ The concerns about police abuses raised by Black community leaders since

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 33 (quoting Mildred Johnson, a community leader speaking at a local convening of six to eight hundred Black community members in February 1963). This gathering, known as the Baden Street rally, included an interreligious group of non-Muslim and Muslim community members gathered to speak out against “several recent cases of police brutality.” *Id.* Malcolm X, a leader of the Nation of Islam (NOI) at the time, was present because of police violence endured by NOI members in the city. He would make frequent visits to the city to denounce police violence. *Id.* at 33, 35. His last visit was just five days before his assassination. *Id.* at 44–45.

²¹⁰ This became increasingly apparent to Black community members because of the nominal and limited integration progress made through the efforts of white NAACP members who would serve as straw buyers of homes in white neighborhoods for Black homeowners. Black residents in need of better public housing were dismayed by the city council’s refusal to explore using federal funds to build new public housing throughout the city instead of simply adjacent to existing, dilapidated public housing. The council reasoned that doing so would prevent white resistance. *Id.* at 25–26.

²¹¹ *Id.* at 36; see also Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 717 (2020) (detailing how police are responsible for defining and maintaining racial segregation in urban areas).

²¹² HILL, *supra* note 201, at 37.

²¹³ *Id.* at 38.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 38–39.

1961²¹⁸ culminated in February 1963 with demands for external oversight of the Rochester police.²¹⁹

Insulating law enforcement from external oversight quickly became a priority for Rochester's Locust Club police union. In 1963, it began what evolved into a three-pronged, multiyear attack against community oversight.²²⁰ The first prong, launched in early March 1963, involved lobbying local elected officials.²²¹ The union presented a letter to City Council detailing its opposition to a citizens' police advisory committee. The letter enumerated several reasons the union opposed community oversight, including the inability of "laymen" to understand the "problems of policemen," the negative impact on officer morale, and that such a committee would undermine public confidence in Rochester police.²²²

The second prong, activated also in March 1963, involved garnering public support. The union was buoyed by support from individuals and associations outside of its members as a part of its lobbying effort.²²³ A circulated petition reportedly netted 40,000 signatures against the creation of an oversight board.²²⁴ The signatures represented those "oppos[ed to] the creation of a Police Advisory Board."²²⁵ It is unclear if all of the signatories were Rochester residents.²²⁶ The Locust Club boasted the support of those outside of the city. News reports during that time told of the union's ability to garner support from the 50,000-member Police Conference of New York and a "nation-wide federation of law enforcement officers" in its efforts to block the board.²²⁷

²¹⁸ A coalition of organizations united against police terror included the Young Turks, NAACP, Human Relations Commission, and Rochester Area Council of Churches.

²¹⁹ A full-page newspaper advertisement called for a police review board. The ad was placed by a group of local clergies in Rochester in the days after the Baden Street rally (*see supra* note 209). *Id.* at 49.

²²⁰ T. Forsyth, *A Brief History of the Police Advisory Board from 1963–1970*, ROCHESTER INDYMEDIA (June 6, 2015, 8:03 AM), <http://rochester.indymedia.org/node/146932>.

²²¹ *Id.*

²²² Letter from Daniel J. Murphy, President, The Locust Club, to Rochester City Council (Mar. 11, 1963), <http://rochester.indymedia.org/sites/default/files/PABresponses.PDF>, at 9–10.

²²³ Letter from Raymond J. Martin, Recording Secretary, Rochester Firemen's Benevolent Association, to Rochester City Council (Mar. 6, 1963), <http://rochester.indymedia.org/sites/default/files/PABresponses.PDF>, at 8; Letter from E. James Geater, Chairman, Conservative Party of Monroe County, to Rochester City Council (Mar. 26, 1963), <http://rochester.indymedia.org/sites/default/files/Conservative%20party%20foil.PDF>.

²²⁴ Vince Spezzano, *Police Petitions Against Board Get 40,000 Names*, ROCHESTER TIMES-UNION, Mar. 12, 1963.

²²⁵ *Id.*

²²⁶ Letters in support of the Police Advisory Board were also sent to the mayor and city council, available at <http://rochester.indymedia.org/sites/default/files/PABresponses.PDF>, at 1–5.

²²⁷ Forsyth, *supra* note 220 (quoting *Lawmen Pledge Funds to Fight Advisory Board*, DEMOCRAT & CHRON., May 18, 1965, at B1).

The political lobbying and public opposition to external police oversight did not deter local elected officials.²²⁸ Rochester City Council, in reaction to Black liberation demands, proceeded with plans to establish the Police Advisory Board (PAB). It passed legislation to do so on March 26, 1963.²²⁹ The Board formalized its internal structures, investigated, and made recommendations regarding allegations of excessive force to the chief of police.²³⁰ The newly enacted city charter also authorized the board to report any disagreement between their findings and the chief to Rochester's commissioner of public safety and city manager.²³¹

Support for the police union's anti-accountability stance was not limited to law enforcement. Community members in Rochester supported the Locust Club's efforts and formed the Citizens for Abolition of the Police Advisory Board in March 1965.²³² The initial group had about twenty members. It was led by local steel labor leaders and a noted Conservative Party political candidate and included a reverend, physician, and a college professor on its executive board.²³³ The Coalition openly espoused J. Edgar Hoover's position "that police advisory boards are detrimental to law and order."²³⁴

The Locust Club escalated its opposition to the board with its final prong of the attack via litigation.²³⁵ The union's Complaint, filed on April 14, 1965, sought injunctive relief and declaratory judgment against the City of Rochester for creating a community-based external oversight board.²³⁶ The work of the PAB came to an abrupt halt the next day. On April 15, a trial court judge granted a temporary restraining order that enjoined the board from conducting any investigation, holding hearings, or performing any other official acts.²³⁷ In December, the trial court included three points in its declaratory judgment. First, it presumed that only the police commissioner

²²⁸ The view exists that the decision by Rochester City Council to provide for community oversight of the police was not simply because they fully agreed with the Black liberation leaders. Instead, Hill's account in *Strike the Hammer* discusses how the city council's resolve to create the Police Advisory Board was a calculated decision aimed at appeasing the more moderate civil rights leaders on the Human Relations Committee of Monroe County and driving a wedge between the more insistent activists, like Malcolm X. HILL, *supra* note 201, at 49.

²²⁹ Judicial Statement at 7, *Locust Club of Rochester v. City of Rochester*, No. 799, 1968 WL 112483 (U.S. Dec. 5, 1968). The timing of the legislation is important and speaks to both the responsiveness of Rochester City Council and the strong opposition from the union and conservatives. Malcolm X and five hundred demonstrators protested the Rochester Police Department's treatment of Nation of Islam members, *see supra* note 209, one month prior to the legislation that enacted the Police Advisory Board. RHONDA Y. WILLIAMS, *supra* note 44, at 89.

²³⁰ Forsyth, *supra* note 220.

²³¹ *Locust Club of Rochester v. City of Rochester*, 265 N.Y.S.2d 744, 746 (Sup. Ct. 1965).

²³² Forsyth, *supra* note 220.

²³³ *Group Will Fight Advisory Board*, DEMOCRAT & CHRON., March 27, 1965, at B1.

²³⁴ *Id.*

²³⁵ *See* Judicial Statement, *supra* note 229, at 3-4 (summarizing the history of litigation upon appeal to the U.S. Supreme Court in 1968).

²³⁶ *Id.*; *Locust Club*, 265 N.Y.S.2d at 745.

²³⁷ Forsyth, *supra* note 220.

had the requisite experience to evaluate the appropriate amount of force necessary under exigent circumstances.²³⁸ Second, it found that the rights of subject officers were violated by allowing the board involvement to “become intertwined” with the Department of Public Safety.²³⁹ Finally, it found that any public criticism of police officers by the board would constitute an improper public reprimand.²⁴⁰

More than two years passed before an appellate court unanimously reversed the trial court’s decision.²⁴¹ The opinion articulated an appreciation for the legislative intent of the ordinance that sought “to strike a balance between the rights of the police officer and the rights of the citizen.”²⁴² Citing *New York Times v. Sullivan*,²⁴³ the court was also not persuaded that the principles of democracy permitted police officers to be shielded from public criticism.²⁴⁴ Judicial vindication was of no practical consequence. A new mayor was elected the year after the appellate court’s decision, and the local press praised “the new Republican city administration” for “commendably abolish[ing]” the Police Advisory Board.²⁴⁵

3. *NYPD Police Benevolent Association*

Police officers in New York City were subject to internal investigations beginning in 1953.²⁴⁶ The entity known as the New York City Civilian Complaint Review Board (CCRB) included three sworn officers. Those officers reviewed allegations of misconduct against their colleagues.²⁴⁷ John Lindsay was elected mayor in 1965.²⁴⁸ His election came the year after the three deputy commissioners exonerated Thomas Gilligan, an off-duty

²³⁸ *Locust Club*, 265 N.Y.S.2d at 748.

²³⁹ *Id.* at 749.

²⁴⁰ *Id.*

²⁴¹ *Locust Club of Rochester v. City of Rochester*, 286 N.Y.S.2d 99, 104 (App. Div. 1968).

²⁴² *Id.*

²⁴³ 376 U.S. 254, 299 (1964) (Goldberg, J., concurring) (“In a democratic society, one who assumes to act for the citizens . . . must expect that his official acts will be commented upon and criticized.”).

²⁴⁴ *Locust Club*, 286 N.Y.S.2d at 104.

²⁴⁵ *Police Advisory Board Abolished*, TIMES-UNION, May 15, 1970.

²⁴⁶ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 29. Mayor Vincent Impellitteri established the NYPD’s Civilian Complaint Review Board after a Congressional investigation revealed that the U.S. Department of Justice under the Truman administration allegedly agreed to delay its investigation of civil rights complaints against the NYPD. Specifically, the investigation showed the DOJ was aware of allegations of police brutality and the NYPD’s failure to hold officers accountable for sustained findings of misconduct. Despite this knowledge, the DOJ secretly agreed to not pursue its own investigation provided NYPD create its own internal review board. *Id.* at 29. Congressional hearings into the details of the secret agreement revealed that the NYPD’s Patrolmen’s Benevolent Association pushed for the deal in order to avoid additional attention being directed at its officers, some of whom were already under investigation in state proceedings. See Ronald Kahn, *Urban Reform and Police Accountability in New York City: 1950–74*, in URBAN PROBLEMS AND PUBLIC POLICY, 107, 111 (Robert L. Lineberry & Louis H. Masotti eds., 1975).

²⁴⁷ Bopp, *supra* note 113, at 10.

²⁴⁸ RUCHELMAN, *supra* note 94, at 39.

lieutenant who shot and killed fifteen-year-old James Powell.²⁴⁹ In response to the decision, the Congress on Racial Equality and other groups advocating for an end to discrimination against Black people voiced demands for civilian oversight of NYPD officers.²⁵⁰

The new mayor appointed Howard Leary, a former Philadelphia police commissioner and champion of civilian review boards, as the NYPD's new commissioner.²⁵¹ Together, they kept one of the mayor's campaign promises and, through the commissioner's General Order No. 14, expanded the NYPD's internal investigation board of three sworn officers to include four civilians.²⁵² Mayor Lindsay also unequivocally announced that it was his responsibility, as a democratically elected leader, to ensure that the "Police Department [was not] a law unto itself."²⁵³ The board had limited power to only recommend whether the police department should proceed with its own hearings and adjudication processes.²⁵⁴

Despite the limited purview of the board, the police union was vexed by the erosion of its unchecked and insulated autonomy.²⁵⁵ The addition of community members to the board was wholly unacceptable to union leadership.²⁵⁶ Lobbying efforts with state legislatures failed and the New York Police Patrolmen's Benevolent Association (PBA) launched an aggressive and expensive (\$500,000) campaign to return the board to its original composition of sworn officers investigating allegations of police misconduct.²⁵⁷ This new iteration defied the PBA's goal of using the police-only board to remove "the heat" from its officers already embroiled in an investigation into gambling corruption.²⁵⁸ The campaign took the form of a voter referendum promoted through a fear-inducing public campaign²⁵⁹ and a series of judicial challenges.²⁶⁰

²⁴⁹ Martin Arnold, *Police Board Absolves Gilligan in Slaying of Negro Teen-Ager*, N.Y. TIMES (Nov. 7, 1964), <https://www.nytimes.com/1964/11/07/archives/police-board-absolves-gilligan-in-slayin-g-of-negro-teenager-no.html>.

²⁵⁰ *Id.*

²⁵¹ RUCHELMAN, *supra* note 94, at 40.

²⁵² *Cassese v. Lindsay*, 272 N.Y.S.2d 324, 329 (Sup. Ct. 1966) (stating that the police commissioner enacted General Order No. 14 on May 2, 1966); RUCHELMAN, *supra* note 94, at 39.

²⁵³ RUCHELMAN, *supra* note 94, at 40.

²⁵⁴ JURIS & FEUILLE, *supra* note 82, at 91.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 49; *see also* Ed Cray, *The Politics of Blue Power*, in *THE POLICE REBELLION: A QUEST FOR BLUE POWER*, *supra* note 84, at 53, 56 ("PBA poured great sums of money into the campaign against the board.").

²⁵⁸ Kahn, *supra* note 246, at 111.

²⁵⁹ RUCHELMAN, *supra* note 94, at 85 (describing advertisements used by the PBA to scare community members about the rise in violent crime that would occur and the safety of young girls if the CCRB was allowed to exist).

²⁶⁰ William J. Bopp, *The New York City Referendum on Civilian Review*, in *THE POLICE REBELLION: A QUEST FOR BLUE POWER*, *supra* note 84, at 119, 124–29.

PBA president John Cassese was the lead plaintiff in a class-action lawsuit against Mayor Lindsay and Commissioner Leary.²⁶¹ The suit sought declaratory judgment and to permanently enjoin the City from implementing Commissioner Leary's iteration of the CCRB through his General Order No. 14.²⁶² Cassese and his co-plaintiffs pled that the order was "illegal and invalid."²⁶³ As the parties awaited a decision from the court, Cassese began to drum up public support for a referendum, if needed.²⁶⁴ He diminished the concerns of "various minority groups" and declared the board had "no need for civilians."²⁶⁵

Twenty days later, the court sided with the city.²⁶⁶ The opinion found that the police commissioner had sole authority to enact General Order No. 14 and that he was solely responsible for the disciplinary decisions.²⁶⁷ Although the court acknowledged the purpose of increasing community faith in policing, its opinion legitimized police union assertions that only sworn personnel should have the authority to make policy and procedure decisions.²⁶⁸ The court went on to distinguish the civilian review process in New York City from the one in Rochester previously halted by judicial action.²⁶⁹ The distinguishing factor was that the board in Rochester was created by an act of city council rather than the commissioner of public safety.²⁷⁰ An appellate court refused to consider a subsequent appeal by the PBA.²⁷¹

The PBA was not deterred. Cassese declared that he was "sick and tired of giving in to minority groups."²⁷² He also accused the mayor of going out

²⁶¹ Cassese v. Lindsay, 272 N.Y.S.2d 324, 324 (Sup. Ct. 1966).

²⁶² *Id.* at 326.

²⁶³ *Id.* at 330. The Complaint specifically alleged that General Order No. 14 "(a) . . . invade[d] the powers of the Police Commissioner of the City of New York to control the conduct and discipline of the members of the Police Department; (b) . . . constitute[d] an illegal and invalid delegation of power to civilians; (c) . . . constitute[d] an illegal and invalid assertion by the defendant Mayor of power belonging to the defendant Police Commissioner; (d) . . . constitute[d] an illegal and invalid attempt by the defendants to assert powers belonging to the legislature alone and not to administrative or executive officers of government; the . . . subject[ed] members of the Police Department to the investigation, examination and hearing of charges against them in a manner other than that prescribed by law; (f) . . . deprive[d] members of the Police Department of due process of law; [and] (g) . . . violate[d] [s]ections . . . of the New York City Charter, . . . Administrative Code of the City of New York, . . . Civil Service Law of the State of New York, . . . Constitution of the State of New York, and the . . . United States Constitution, as well as other applicable provisions of law." *Id.*

²⁶⁴ Eric Pace, *P.B.A. Asks Public to Oppose Board*, N.Y. TIMES, June 3, 1966, at 26, <https://timesmachine.nytimes.com/timesmachine/1966/06/03/82445688.pdf>.

²⁶⁵ *Id.*

²⁶⁶ Cassese, 272 N.Y.S.2d at 336.

²⁶⁷ *Id.* at 334–35.

²⁶⁸ *Id.*

²⁶⁹ See *supra* notes 229–34 and accompanying text.

²⁷⁰ Cassese, 272 N.Y.S.2d at 335.

²⁷¹ *P.B.A. Bid to Block New Review Board Rejected by Court*, N.Y. TIMES, June 28, 1966, at 90, <https://timesmachine.nytimes.com/timesmachine/1966/06/28/82825394.pdf>.

²⁷² Bernard Weinraub, *Racism Laid to P.B.A. Head in Review Board Stand*, N.Y. TIMES, July 13, 1966, at 32, <https://timesmachine.nytimes.com/timesmachine/1966/07/13/93853337.pdf>.

of his way to name the selected community members, which included two Black people and one Puerto Rican.²⁷³ The union shifted its attention from the courts and pursued a charter amendment. The amendment called for the abolishment of Mayor Lindsay's iteration of the CCRB and to require all members of the review board to be appointed or administrative employees of the NYPD.²⁷⁴ As a demonstration of public support, the PBA filed more than 50,000 signatures seeking a ballot measure on the issue within two weeks of the court's decision.²⁷⁵ One journalist wrote that the referendum was "considered by many a focus for the white backlash in the city."²⁷⁶ The union and its community backers placed an ad with the image of a young white girl leaving a dark subway tunnel alone. The print accompanying the illustration read, "The Civilian Review Board must be stopped! Her life . . . your life . . . may depend on it . . . [A police officer] must not hesitate."²⁷⁷ Civil liberties organizations decried the union's aggressive advertisement and accused it of stoking the fears of lower-income white residents against Black and Puerto Rican residents.²⁷⁸

For its part, the city defended the mayor's managerial and executive authority to create the board in both judicial courthouses and the court of public opinion. The mayor utilized a press conference as one avenue of reaching the public.²⁷⁹ Members of the local bar association joined him in a public address to impress upon voters the extreme scope of the referendum. In order to do so, city officials attempted to expand the issue beyond the issue of racially motivated police brutality. Mayor Lindsay argued that the city and the people of New York should understand the need to investigate potential corruption within the department that created a culture where officers do such things as buy promotions.²⁸⁰ A vote in favor of the referendum, Lindsay said, would insulate NYPD officers from investigation by any individual, body, or department under the direction of the mayor. In short, the person elected by the people to represent them would not have any authority to manage the city's police force.²⁸¹ The voting public, however, demonstrated strong support for keeping potential police misconduct

²⁷³ *Id.*

²⁷⁴ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 30.

²⁷⁵ RUCHELMAN, *supra* note 94, at 41.

²⁷⁶ Thomas R. Brooks, *25,000 Police Against the Review Board[;] "No!" Says the P.B.A.*, N.Y. TIMES MAGAZINE, Oct. 16, 1966, at 36, 36, <https://timesmachine.nytimes.com/timesmachine/1966/10/16/82921771.pdf>.

²⁷⁷ *Id.* at 126, 128.

²⁷⁸ *Id.* at 37.

²⁷⁹ Ben Houtman, *Police Corruption and the Civilian Review Board*, WNYC: ANNOTATIONS: THE NEH PRESERVATION PROJECT (Mar. 3, 2016),

²⁸⁰ *Id.*

²⁸¹ *Id.*

insulated from external reviews. New York City voters approved the referendum by a two-to-one margin.²⁸²

B. *Flexing Political Muscle*

Police unions recognized that political favor was most likely to be found outside of the courtroom. The judicial battle against civilian review boards brought mixed results. Where local trial courts were willing to temporarily enjoin external oversight, appellate courts denied unions the permanent judicial relief they sought.²⁸³ But judicial relief was simply one portion of the battle. Ultimate victory rested in the ability of police unions to exact political power in at least three ways. Unions employed a strategy during the 1960s that involved pressuring elected and appointed officials to meet union demands, garnering the support of the public through large demonstrations and political campaigns, and ultimately using their political power to secure the election of mayors aligned with the agenda of police unions. This subsection highlights key union successes employing those three tactics to circumvent accountability.

1. *Pressure on Local Elected and Appointed Officials*

Proponents of police accountability have identified a number of ways in which police policies and practices impede efforts to create police departments that are accountable to all segments of a community. Failure to properly display officers' names on uniforms is one such practice.²⁸⁴ The Boston Police Patrolmen's Association (PBA), despite having been regarded as the primary exhibit against police unionization after the Boston police strike of 1919,²⁸⁵ successfully used political power plays to impede accountability when those impacted by police misconduct demanded more.²⁸⁶ Upon gaining collective bargain bargaining rights in 1966, the PBA

²⁸² *Id.*

²⁸³ See, e.g., *Locust Club*, 286 N.Y.S.2d at 104 (finding that Rochester City Council attempted to "strike a balance between the rights of the police officer and the rights of the citizen," reversing the lower court, and holding that legislation enacting a review board was valid and constitutional); *Cassese v. Lindsay*, 272 N.Y.S.2d 324, 335 (Sup. Ct. 1966) (finding that the decision of the New York City police commissioner to establish an oversight board including community members was not a violation of law); *P.B.A. Bid to Block New Review Board Rejected by Court*, *supra* note 271 (refusing to enjoin the New York City board pending appeal); *Harrington v. Tate*, 254 A.2d 622, 625 (Pa. 1969) (reversing the lower court and finding that the advisory function of the Philadelphia Police Advisory Board, like those in Rochester and New York City, was valid, legal, and constitutional).

²⁸⁴ See JURIS & FEUILLE, *supra* note 82, at 139–40 (describing disputes over police wearing identifying insignia in Seattle, Detroit, and Boston).

²⁸⁵ *Id.* at 17; see also SAMUEL WALKER, A CRITICAL HISTORY OF POLICE REFORM 112–18 (1977) (discussing the build-up for police unionism starting in 1917 including support from the American Federation of Labor (AFL) in June 1919 and ending after the Boston strike in September 1919).

²⁸⁶ RORY JUDD ALBERT, A TIME FOR REFORM: A CASE STUDY OF INTERACTION BETWEEN THE COMMISSIONER OF THE BOSTON POLICE DEPARTMENT AND THE BOSTON POLICE PATROLMEN'S

immediately began to challenge various attempts by the mayor to address the concerns of the Black community and other civil liberty proponents.²⁸⁷

In 1969, student demonstrators at Harvard University reported that Boston officers removed their name tags to hide their identity while violently attacking the demonstrators.²⁸⁸ The mayor and police sought to resolve officer assertions that the badge pins posed a danger to their safety by arranging for name tags to be sewn on the uniforms.²⁸⁹ The union, still dissatisfied, picketed the police headquarters and successfully prevented the union tailor from crossing the picket line to sew on name tags.²⁹⁰ It then employed two lines of attack: the first involved filing a grievance and the second was legislation. Boston City Council adopted a measure that allowed for officers to have numbers issued on their uniforms instead of names.²⁹¹ The arbitrator's eventual finding on behalf of the police commissioner was of no consequence.²⁹² Elected officials on the city council delivered a victory to the union.

The PBA in New York City used political influence to circumvent another initiative to enhance accountability. Police Commissioner Leary believed that a more diverse police department could be instrumental in improving its relationship with marginalized communities.²⁹³ His strategy was responsive to concerns from civil rights leaders at the time that the white racial homogeneity of police departments was a key factor in the disproportionate brutality and racism endured by diverse community members.²⁹⁴ There was no question that the NYPD was racially homogenous in the 1960s. A federal study in 1963 revealed that only 5% of NYPD officers were Black; far less than the approximate 33%, 25%, and 20% of Black officers in Baltimore, Chicago, and Philadelphia, respectively.²⁹⁵ The NYPD PBA expressed strong opposition to efforts designed to expand recruitment to Black and Puerto Rican youth. The initial opposition implied

ASSOCIATION, TECH. REP. NO. 11-75, at 43-44 (1975), <https://www.ojp.gov/pdffiles1/Digitization/25606NCJRS.pdf>

²⁸⁷ *Id.* at 43-44. Mayor Kevin White attempted to make good on campaign promises to Black voters by adopting the Model Cities Program, but the powerful union inserted itself between the mayor and city council by having the council send the mayor's proposal directly to the union for its input. The council then passed the substantially revised plan propounded by the PBA. *Id.* at 43.

²⁸⁸ *Id.* at 44.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*; JURIS & FEUILLE, *supra* note 82, at 139-40 (discussing the Boston police union's successful thwarting the use of name tags on police uniforms).

²⁹² JURIS & FEUILLE, *supra* note 82, at 192.

²⁹³ RUCHELMAN, *supra* note 94, at 70.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

a level of unfairness to white youth.²⁹⁶ It morphed into concerns that efforts to remove minor criminal convictions as a bar to consideration for employment as a police officer would negatively impact efforts to professionalize law enforcement.²⁹⁷ The threat of “vigorous[] oppos[ition]” from the PBA prompted the Civil Service Commission to quietly table its support for the mayor and commissioner’s planned program.²⁹⁸

The Boston Police Patrolmen’s Association (BPPA) in Boston also used its political power to destroy a mayoral initiative designed to diversify the police force.²⁹⁹ Mayor Kevin White wanted to expand the existing cadet program by hiring one hundred cadets to direct traffic in 1968.³⁰⁰ The expansion would have allowed him to make good on a campaign promise to increase the number of Black officers in Boston.³⁰¹ Racial animus, couched in arguments of competency, and a desire to hold on to the coveted traffic-directing role were cited as the two reasons for BPPA opposition to expanding the cadet program.³⁰² The union successfully lobbied the city council to reject an ordinance presented by White that would have expanded the program.³⁰³ Union power also led the state legislature to rebuff White’s attempt to garner support with that body for his initiative.³⁰⁴

2. *Racism Within Police Unions*

Union leaders and their members were known to position themselves as strident opponents of civil rights and the Black Freedom movement. It would be misguided to attribute that opposition to benign concerns about who possessed the requisite technical skill to criticize the police and provide input on policing practices. A six-week study of officers in Boston, Chicago, and D.C. in 1966 revealed that seventy-two percent of officers voluntarily shared racist viewpoints that conveyed an “intense and bitter hatred towards” Blacks.³⁰⁵ A white journalist wrote about candid conversations he had with NYPD officers in 1968 in which they shared details of their murderous fantasies about Black people.³⁰⁶ And in testimony to the Kerner

²⁹⁶ *Battler for Police Rights*, John Joseph Cassese, N.Y. TIMES, May 9, 1966, at 28, <https://timesmachine.nytimes.com/timesmachine/1966/05/09/82432843.pdf> (“These [civilian review board advocates] will never be satisfied unless there are nine Negroes and Puerto Ricans on the board and every policeman who goes in front of it is found guilty.”).

²⁹⁷ RUCHELMAN, *supra* note 94, at 71.

²⁹⁸ *Id.*

²⁹⁹ ALBERT, *supra* note 286, at 41–42.

³⁰⁰ *Id.*

³⁰¹ *Id.* at 41. White was popular with Boston’s Black voters. He garnered eighty percent of the Black vote in the 1967 election. Martha Wagner Weinberg, *Boston’s Kevin White: A Mayor Who Survives*, 96 POL. SCI. Q. 87, 92 (1981).

³⁰² ALBERT, *supra* note 286, at 41–42, 45.

³⁰³ *Id.* at 42.

³⁰⁴ *Id.*

³⁰⁵ SKOLNICK, *supra* note 75, at 244.

³⁰⁶ *Id.* at 275.

Commission, sociologist Albert Reiss shared the results of his study on police prejudice. He found that more than fifty percent of all officers working in high crime areas displayed “extreme prejudice against” Black people in that they labeled them as animals.³⁰⁷

Such intense hatred cannot be cabined off so as to not affect judgments on the street and inside the workplace. The racial animus in policing practices that contributed greatly to discord between Black community members and law enforcement was not just limited to the street. Officers, emboldened and unchecked, violently displayed their racism at a Brooklyn courthouse in 1968.³⁰⁸ There, members of the Law Enforcement Group and the White Tigers—groups of NYPD officers also connected with the PBA—attacked a group of Black Panthers appearing on charges at a Brooklyn courthouse.³⁰⁹ About 150 off-duty officers violently attacked a “small number” of Black Panther members and supporters from the Students for a Democratic Society present for preliminary hearings for three Black Panthers accused of previously assaulting police.³¹⁰ The group of white police officers who launched the attack carried guns on their hips and were readily recognized as law enforcement.³¹¹ Some were personally recognized by news reporters, others were overheard discussing arrests they had made, and an unidentified police officer acknowledged the presence of his colleagues.³¹² In addition to nightstick blows and kicks that left the Black Panthers and their supporters bloody, the gang of white officers reportedly shouted “White Power” and “White Tigers eat Black Panthers.”³¹³

The group cohesion identified by police scholars as a leading factor in the popularity of police associations generally fails to acknowledge how that cohesion could be based on notions of racial superiority and not simply professional employment. Racial and ethnic intolerance pervaded inside station houses.³¹⁴ Some Black officers understood the depth of racism within their own police departments during the 1960s. Affinity groups for Black

³⁰⁷ KERNER COMMISSION, *supra* note 89, at 160.

³⁰⁸ David Burnham, *Off Duty Police Here Join in Beating Black Panthers*, N.Y. TIMES, Sept. 5, 1968, at 1, <https://timesmachine.nytimes.com/timesmachine/1968/09/05/77311558.pdf>.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ Jarrod Shanahan, “White Tigers Eat Black Panthers:” *New York City’s Law Enforcement Group*, GOTHAM CTR. FOR N. Y. CITY HIST. (Mar. 21, 2019), <https://www.gothamcenter.org/blog/white-tigers-eat-black-panthers-new-york-citys-law-enforcement-group>; see also RUCHELMAN, *supra* note 94, at 72–74 (discussing NYPD’s LEG and its connections to the John Birch Society); SKOLNICK, *supra* note 75, at 277 (discussing LEG’s involvement in the attack on Black Panthers at the Brooklyn courthouse).

³¹⁴ See John Darnton, *Color Line a Key Police Problem*, N.Y. TIMES, Sept. 28, 1969, at 1, <https://timesmachine.nytimes.com/timesmachine/1969/09/28/89379875.pdf> (describing the racial division and animosity between police officers). Black officers were incensed by the brutality they witnessed white officers inflict on Black people. White officers were outraged by the influx of young Black officers who spoke out against racism. *Id.*

officers organized in order to protect themselves and Black community members from racist police practices.³¹⁵ By 1969, Black police officer associations were formed in at least eight big cities including New York, Philadelphia, and Boston.³¹⁶ The organizations expressed concern about “white policemen beating [B]lack prisoners, use of police dogs in civil disturbances, . . . and alleged prejudicial recruiting practices by police departments.”³¹⁷ The New York City Guardians, made up of some 1,360 members, did not approve of the PBA’s full-scale attack against civilian oversight and sought to prevent them from using their dues in the seven-figure campaign.³¹⁸ John Cassese, head of the PBA, accused the Guardians of putting their skin color before their oath of office.³¹⁹ His comment confers the extent to which white policemen in the 1960s equated policing with anti-Blackness.

3. *Larger Public Gives Unions Strong Support*

White community members expressly rejected efforts to secure political, economic, and social liberation efforts for Black people throughout the 1960s.³²⁰ For every white person who supported sit-ins, voter drives, Freedom Rides, and even the March on Washington, two white people opposed these efforts.³²¹ The police unions were reflective of the militant mindset found in northern ethnic neighborhoods.³²² Public animosity against racial progress demands in New York and Philadelphia was closely aligned with union efforts to ignore and discredit the same. In 1964, large crowds of white people attacked sixteen members of the Congress of Racial Equality (CORE) as they protested outside a New York police precinct in the wake of fifteen-year-old James Powell’s killing by an off-duty police officer.³²³ Subsequent large public support for the NYPD PBA’s strong opposition to

³¹⁵ BURPO, *supra* note 114, at 11–12.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ JURIS & FEUILLE, *supra* note 82, at 168; Thomas A. Johnson, *Negro Policemen Split with P.B.A. over Review*, N.Y. TIMES, Oct. 4, 1966, at 39, <https://timesmachine.nytimes.com/timesmachine/1966/10/04/82519335.pdf>.

³¹⁹ Homer Bigart, *5,000 Policemen Picket City Hall*, N.Y. TIMES, June 30, 1965, at 1, <https://timesmachine.nytimes.com/timesmachine/1965/06/30/106995644.pdf> (“It’s unfortunate [the Guardians] put color before their oath of office.”).

³²⁰ SKOLNICK, *supra* note 75, at 187 (detailing polling data). One may ask how federal legislation codifying civil rights protections for Black people was possible in light of the lack of public support from white people. See Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518, 524–25 (1980) (discussing how decision makers in the United States championed civil rights progress as a means of improving the nation’s image nationally and internationally).

³²¹ SKOLNICK, *supra* note 75, at 186.

³²² *Id.* at 225.

³²³ *Teen-Agers Throw Eggs at CORE Unit Picketing the Police*, N.Y. TIMES (July 22, 1964), <https://www.nytimes.com/1964/07/22/archives/teenagers-throw-eggs-at-core-unit-picketing-the-police.html>.

community oversight just months after the attack on CORE makes it difficult to dismiss the violence as animosity from a minority of white militants.

Public allegiance to law and order in the North was a natural component of support for police union demands.³²⁴ White community members and the president of the Fraternal Order of Police (FOP) in Philadelphia voiced strong support for the heavy-handed, anti-Black police practices against Black liberation efforts in that city.³²⁵

Philadelphia police, under the direction of Frank Rizzo, used violent police tactics in response to Black demonstrators engaged in constitutionally protected protests on at least two occasions during protests against discrimination in education. The first involved police clubbing and arresting those protesting an all-white boarding school in the heart of Black North Philadelphia in 1965.³²⁶ The sight of Rizzo's bloody hand after the police clubbing prompted praise from John Harrington, president of the FOP.³²⁷ He declared that Rizzo was "an outstanding example of one of our best policemen," and encouraged the mayor to reward Rizzo with a commendation.³²⁸ The second occurred in 1967 when a large group of high school students led a demonstration outside of the local school board in an effort to gain more Black teachers, the addition of an African American history course, and the ability to host culturally-relevant celebrations.³²⁹ Rizzo escalated the demonstration and ordered his officers to "Get their black asses!"³³⁰ instead of allowing the school board president, former Mayor Dilworth, to negotiate a resolution with student leaders. The school superintendent described the beatings as a "police riot" and a diverse

³²⁴ BURPO, *supra* note 114, at 14.

³²⁵ Timothy J. Lombardo, *Civil Rights and the Rise of Frank Rizzo in 1960s Philadelphia*, PA. LEGACIES, Fall 2018, at 14, 16–17 (portraying an image of a postcard from a community member praising Frank Rizzo's response the "Black power"; and detailing how the president of Philadelphia's Fraternal Order of Police union, John Harrington, requested a mayoral commendation for Rizzo based on his view of the Police Commissioner being "an outstanding example of one of our best policemen"; and stating, "Rizzo's confrontations with militant civil rights leaders made him a hero to the Philadelphians who demanded 'law and order.'"). PAOLANTONIO, *supra* note 174, at 94 (quoting John Harrington, FOP president and lead plaintiff in the litigation against the Philadelphia's Police Advisory Board, as saying, "If Rizzo is fired, we policeman (sic) would just turn our heads, collect our pay, and let the people police themselves").

³²⁶ See COUNTRYMAN, *supra* note 164, at 170–71, 178–79 (describing the daily picket lines outside of Girard College from May 1 to December 18, 1965, in response to the city's obfuscation of its role as a public entity administering the estate of the founder, a segregationist, by later turning over the board to a private group of alumni in an effort to frustrate the spirit of *Brown v. Board of Education*); see also, Lombardo, *supra* note 325, at 16–17 (on the Girard College demonstrations and police union support of Rizzo's physically violent police practices).

³²⁷ Lombardo, *supra* note 325, at 17.

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*; see also COUNTRYMAN, *supra* note 164, at 226 (describing television news coverage with witnesses recounting hearing Rizzo use those words when giving the order).

coalition of groups decried Rizzo's violent treatment of the students.³³¹ The FOP joined other groups in defending the attack by police. People from Philadelphia's white working-class communities voiced strong support for Rizzo's aggressive and violent policing, denigrated Dilworth as a "fool," and thanked God for Rizzo in letters to the school board.³³² The strong public support is identified as one of the main factors in Rizzo being permanently named as police commissioner the following month.³³³

Public support, and some might say incitement, of police violence against Black liberation proponents was not limited to New York and Philadelphia.³³⁴ The two cities are highlighted here as a part of the overall focus on these cities within this Article.

III. LACK OF ACCOUNTABILITY

Law enforcement was generally not held accountable for the harmful brutality it waged against Black people.³³⁵ As discussed in Part I, changing that was a key objective of the Black liberation movement during the 1950s and 1960s. Efforts by Black leaders and community members to hold police accountable for excessive force through criminal prosecution were generally unsuccessful.³³⁶ And proponents of external community oversight boards suffered significant defeats to police unions during the first half of the 1960s. Those realities during the mid-1960s signaled that aggressive police practices would go unchecked at polling locations and with local jurists in northern cities. Police unions used that popularity and political power to fortify their strength in the form of collective bargaining rights. In just four years, from 1965 to 1969, police unions gained collective bargaining rights in twelve states.³³⁷ These states were all located in the northern and western parts of the country that experienced rapid growth in their population of Black residents during the five years prior.³³⁸ This section details some

³³¹ Lombardo, *supra* note 325, at 17; *see also* RUCHELMAN, *supra* note 94, at 36 (describing those who disapproved of Police Commissioner Rizzo's attack on the students and detailing how the mayor and others tasked with evaluating claims of police brutality against the Black students failed to investigate).

³³² Lombardo, *supra* note 325, at 16–17; Timothy J. Lombardo, *Civil Rights and the Rise of Frank Rizzo in 1960s Philadelphia*, HIST. SOC'Y OF PA. (Jan. 25, 2019, 2:01 PM), <https://hsp.org/blogs/fondly-pennsylvania/civil-rights-and-rise-frank-rizzo-1960s-philadelphia> (displaying letters to the school board).

³³³ Lombardo, *supra* note 325, at 19.

³³⁴ *E.g.*, ELIZABETH HINTON, *AMERICA ON FIRE 70–71* (discussing the more than 17,000 letters and telegrams received by the LAPD for guerilla warfare tactics used in the Watts neighborhood).

³³⁵ *See, e.g.*, SILVAN NIEDERMEIER, *THE COLOR OF THE THIRD DEGREE: RACISM, POLICE TORTURE, AND CIVIL RIGHTS IN THE AMERICAN SOUTH, 1930–1955* (Paul Allen Cohen trans., 2019).

³³⁶ *E.g.*, HILL, *supra* note 201, at 39 (discussing the U.S. Department of Justice refusal to prosecute Rochester officers for the beating of a uniformed gas station attendant); Wolfinger, *supra* note 162, at 6 (noting that in Philadelphia the NAACP advocated for police to be subject to the same criminal prosecutions as non-police affiliated community members).

³³⁷ *See supra* notes 115–34 and accompanying text.

³³⁸ *See supra* notes 158–61 and accompanying text.

instances of how unions used this surge of political power as a direct response to the Black Power movement.

A. *Blue Power vs. Black Power*

Today it is not uncommon to see and hear the declaration “Blue Lives Matter.”³³⁹ The phrase entered America’s public and political discourse as a pro-police response to the Black Lives Matter movement.³⁴⁰ The framing of police officers as the oppositional juxtaposition to that of a racial group—specifically Black people—through an ill-fitting misnomer is a current-day echo of the 1960s “Blue Power”³⁴¹ response to the pronouncement of “Black Power.”

Historical accounts and statements from police association leadership during the sixties indicate that officers saw themselves as a class of people rather than individuals fulfilling a role through voluntary employment.³⁴² This is somewhat akin to what social scientists surmised in the 1960s about the group cohesion of police officers.³⁴³ Yet for distinct purposes. David Sklansky recounts that researchers deemed the tendency of police officers to

³³⁹ Embedded in the assertion to the existence and value of a “Blue” life is the notion that being a police officer is a right and an identity that deserves protected class status. This raises questions of the current-day relevance of Justice Holmes’s statement that an individual “has no constitutional right to be a policeman.” *McAuliffe v. City of New Bedford*, 29 N.E. 517, 517 (Mass. 1892). Nevertheless, beginning in 2016, at least six states passed so-called “Blue Lives Matter” laws identifying law enforcement officers as a protected class of victims because of their profession. See LA. STAT. ANN. § 14:107.2(A) (2016); ARIZ. REV. STAT. ANN. § 13-1204 (2017); KY. REV. STAT. § 532.031 (West 2017); MISS. CODE ANN. § 99-19-301 (2017); OKLA. STAT. tit. 21, § 701.9 (2017); TEX. CODE CRIM. PROC. ANN. art. 42.014 (West 2017); See also India Thusi, Essay, *Blue Lives and the Permanence of Racism*, 105 CORNELL L. REV. ONLINE, 14, 26 (discussing how “Blue Lives Matter” language can only be understood as a response to Black Lives Matter . . . [that seeks to] undermine attempts to empower Black bodies by limiting an unconditional recognition of Black humanity,” and how the pronouncement that “Blue” lives matter seeks to negate the statement that Black lives matter). See generally Frank Rudy Cooper, *Cop Fragility and Blue Lives Matter*, 2020 U. ILL. L. REV. 621 (2020) (contextualizing “Blue Lives Matter” as a fragile response to recent critiques of law enforcement).

³⁴⁰ See *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/herstory/> (last visited Oct. 19, 2022) (detailing the origins and purpose of Black Lives Matter). The phrase was popularized by Patrisse Cullors, Alicia Garza, and Opal Tometi, who started the hashtag and organized to spur a political movement in 2013 after George Zimmerman followed, attacked, shot, and killed seventeen-year-old Trayvon Martin in his family’s housing development in Sanford, Florida. *Id.*; Reis Thebault, *Trayvon Martin’s Death Set Off a Movement That Shaped a Decade’s Defining Moments*, WASH. POST (Feb. 25, 2022, 6:17 PM), <https://www.washingtonpost.com/nation/2022/02/25/trayvon-martins-death-set-off-movement-that-shaped-decades-defining-moments/>.

³⁴¹ Bopp, *supra* note 113, at 5–6 (describing militant officers during the 1960s as “following the lead of other power movements” in the quest for higher wages, an end to external oversight by community members, and the use of name badges; also describing Blue Power tactics as strikes, work stoppages, slowdowns, and “overt and covert political involvement”); See also “Blue Power,” N.Y. TIMES, Oct. 24, 1968, at 46, <https://timesmachine.nytimes.com/timesmachine/1968/10/24/76938022.pdf> (describing NYPD officers as chanting “Blue Power” outside of New York City Hall and demanding a premium pay above other public employee collective bargaining groups in the city).

³⁴² See Alexander, *supra* note 84, at 41.

³⁴³ See JURIS & FEUILLE, *supra* note 82, at 22–26.

cleave and protect one another as creating the need for external oversight and accountability.³⁴⁴ Officers, determined to mimic what they considered to be a successful civil rights strategy, declared that the staggered eight-hour shifts subjected them to “oppressive” work conditions.³⁴⁵ Blurring the lines between identity demographics and job duties allowed police associations to garner public support through an “us versus them” narrative where Black people (and those supporting them) were deemed the enemy.³⁴⁶

Police union organizers quickly co-opted the organizing strategies of Black liberation leaders during the 1960s.³⁴⁷ This was true despite the unabashed racial animus historically connected with the profession. Law enforcement had long operated under anti-Black sentiment and with open racial animus. Interviews published in the 1950s and 1960s reveal that officers openly conveyed hostility against Black people.³⁴⁸ These viewpoints are reflected in assorted commission and researcher reports dating back to 1935.³⁴⁹ Racism aside, police unions openly adopted the language of the Black liberation movement and sought to analogize their conduct with that of the movement. Police union demonstrations took the form of strikes, work slowdowns, department-wide sick-outs (commonly referred to as the “blue

³⁴⁴ David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1735 (2005).

³⁴⁵ BURPO, *supra* note 114, at 83; *see also* SKOLNICK, *supra* note 75, at 278 (describing how union organizing included a component of police viewing themselves as “an independent, militant minority”); Bopp, *supra* note 113, at 6 (quoting the president of the Boston Police Patrolmen’s Association as saying, “We were sick of being thrown to the dogs. Our militancy started when everyone else’s became accepted”).

³⁴⁶ The use of victimhood status in framing the “us vs. them” response to Black liberation demands also proved fruitful to police interests. Minneapolis police officer-turned-mayor Charles Stenvig was able to capitalize on the “emerging discourse of victimhood among Minneapolis’s white, working-class population that rejected what they perceived as the differential treatment minority groups received.” Jeffrey T. Manuel & Andrew Urban, “*You Can’t Legislate the Heart*”: *Minneapolis Mayor Charles Stenvig and the Politics of Law and Order*, AM. STUDIES, Fall/Winter 2008, 195, 208 (2008). The authors also detailed how “Stenvig’s appeal to white victimhood suggests that Minneapolis residents had embraced alternative identities that were in direct opposition to liberal policies that presented African Americans as the true victims of social problems.” *Id.* at 209.

³⁴⁷ Bopp, *supra* note 113, at 5, 17 (describing how police “are following the lead of other power movements” and “[p]olice activism is inextricably bound up with the black nationalist and student radical movements”).

³⁴⁸ SKOLNICK, *supra* note 75, at 242–43.

³⁴⁹ *See* MAYOR LAGUARDIA’S COMMISSION ON THE HARLEM RIOT OF MARCH 19, 1935, THE COMPLETE REPORT OF MAYOR LAGUARDIA’S COMMISSION ON THE HARLEM RIOT OF MARCH 19, 1935 (Arno Press 1969) (1936); Westley, *supra* note 169, at 40 (detailing the research interviews of officers revealing racial and class prejudice among officers who “believe that certain groups of persons [Negroes and slum dwellers] will only respond to fear and rough treatment”); Burton Levy, *Cops in the Ghetto: A Problem of the Police System*, AM. BEHAV. SCIENTIST, March 1968, 31, 31 (1968) (summarizing his research position that the police system itself is the problem that money and training will not remedy because the system “recruits a significant number of bigots, reinforces the bigotry through the department’s value system and socialization with older officers, and takes the worst of the officers and puts them on duty in the ghetto, where the opportunity to act of the prejudice is always available”).

flu”), and public intimidation of elected officials.³⁵⁰ John Cassese, president of the Patrolmen’s Benevolent Association in New York, was known for ordering his officers to openly defy directives from the police commissioner and mayor.³⁵¹ To be clear, there was a period of time *before* the mid-to-late 1960s when the majority of officers had legitimate grievances about the low pay and extended work shifts.³⁵²

As discussed earlier, those conditions changed rapidly through lobbying and the passage of collective bargaining statutes.³⁵³ Police unions were buoyed by those successes and added public campaigns and lawsuits to further their agenda that extended far beyond compensation and benefits.³⁵⁴ Unlike the *expansive* purpose of sit-ins, Freedom Rides, and protests outside of schools and government buildings, police union efforts were aimed at *restricting* the freedom and rights of Black people. While the first half of the decade brought police union attacks against elected officials’ efforts to protect the civil rights of Black community members,³⁵⁵ the second half brought police officials directly attacking Black liberation leaders.³⁵⁶

Critics of police practices were targeted by union leaders and police heads. Those demanding Black freedom from police abuses were labeled threats to the American way of life.³⁵⁷ Stokely Carmichael’s articulation of “Black Power” in 1966 created a common enemy for already-established police associations.³⁵⁸ The enemy (or threat) was not just Carmichael the individual, though he was certainly identified as such by the media and law

³⁵⁰ *E.g.*, Bopp, *supra* note 113, at 6; Alexander, *supra* note 84, at 40 (both discussing tactics used by police unions to secure demands); SKOLNICK, *supra* note 75, at 284–85 (discussing how the right-wing faction within NYPD’s union sat in the courtrooms of disfavored judges to intimidate them); BURPO, *supra* note 114, at 81 (detailing how the Fraternal Order of Police placed an advertisement in The Plain Dealer openly questioning Mayor Stokes’s directives); SKOLNICK, *supra* note 75, at 244 (describing how union officials posted Mayor Stokes’s photo in district stations throughout the city accompanied by the message “Wanted for Murder”).

³⁵¹ SKOLNICK, *supra* note 75, at 276–77.

³⁵² *See supra* note 146 and accompanying text.

³⁵³ *See supra* Section I.B.

³⁵⁴ *See supra* Section II.B.

³⁵⁵ *See supra* Section II.A.

³⁵⁶ *See supra* notes 67–73 and accompanying text.

³⁵⁷ WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 28 (describing how those seeking community oversight of police were a threat to “law and order”). Local police departments and federal law enforcement agencies doggedly pursued Black liberation leaders during the 1960s and beyond. J. Edgar Hoover launched, in collaboration with local police, the FBI counterintelligence operation “COINTELPRO.” *See supra* note 67. Hoover was quoted on July 16, 1969, as stating, “[T]he Black Panther Party, without question, represents the greatest threat to the internal security of the country.” *J. Edgar Hoover: Black Panther Greatest Threat to U.S. Security* UPI (July 16, 1969), <https://www.upi.com/Archives/1969/07/16/J-Edgar-Hoover-Black-Panther-Greatest-Threat-to-US-Security/1571551977068/>; *see also* David Burnham, *F.B.I.’s Informants and “Bugs” Collect Data on Black Panthers*, N.Y. TIMES, Dec. 14, 1969, at 1, <https://timesmachine.nytimes.com/timesmachine/1969/12/14/91293185.pdf> (describing how federal intelligence official reports collected information on the Black Panthers during the summer of 1966).

³⁵⁸ RHONDA Y. WILLIAMS, *supra* note 44, at 73.

enforcement officials, but most importantly the organizations connected to those articulations of Black liberation and equality.³⁵⁹ The Student Nonviolent Coordinating Committee (SNCC), led by Carmichael in the mid-1960s, served as a primary target.³⁶⁰

Frank Rizzo marshalled the full force of the Philadelphia Police Department against the SNCC in 1966. In doing so, he also capitalized on the anti-Black liberation sentiment to garner popular support.³⁶¹ Rizzo openly committed to eradicating the Black Power movement shortly after Carmichael's June 1966 speech.³⁶²

While serving as acting police commissioner during the vacation of the permanent commissioner during August of that year, and with the support of Mayor Tate, Rizzo executed raids on four different North Philadelphia residences one early morning.³⁶³ He claimed the local SNCC organizers had enough dynamite in their possession to blow up Independence Hall.³⁶⁴ At least eighty officers were called in to conduct the raids.³⁶⁵ The strong display of police power netted two sticks of dynamite at a location later determined to not be connected to SNCC or its members.³⁶⁶ The charges were dropped against all but one of the nine individuals arrested.³⁶⁷ There is no indication of any inquiry into Rizzo's basis for the raids.³⁶⁸

³⁵⁹ Journalists fed into the enemy combatant narrative. See Press Conference, Attorney General Ramsey Clark (Jan. 20, 1968) (transcript available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/01-20-1968.pdf>) (describing how several questions were posed regarding the violence and troublemaking of Black people who were named or referenced, including Stokely Carmichael, H. Rap Brown, and Martin Luther King, Jr. (depending upon context)).

³⁶⁰ Philadelphia was not alone in its targeting of SNCC during 1966. See *Carmichael v. Allen*, 267 F. Supp. 985, 987–90 (N.D. Ga. 1967) (reciting events during the Atlanta protest in September 1966 following the shooting of Harold Louis Prather as he ran away from officers seeking to arrest him on a theft warrant); see also Wilson A. Grady-Willis, *Black Power in the South: Urban Protest and Neighborhood Activism in Atlanta, Georgia, 1966–1969*, PRÉSENCE AFRICAINE NOUVELLE SÉRIE, No. 161/162, 2000, at 328, 331 (summarizing interviews of witnesses to the Prather shooting who recounted that Prather was unarmed and running toward the home of his mother, who stood on the porch pleading with officers not to shoot).

³⁶¹ PAOLANTONIO, *supra* note 174, at 84–85.

³⁶² *Id.* at 91–94 (quoting Rizzo, following the “police riot” described *supra* notes 329–31, as saying, “The only thing these black power leaders understand . . . is force.”).

³⁶³ *Id.* at 84–85

³⁶⁴ Lombardo, *supra* note 325, at 17.

³⁶⁵ PAOLANTONIO, *supra* note 174, at 85.

³⁶⁶ *Id.*

³⁶⁷ *Id.*; Terence Cannon, *Attempt to Smash SNCC in Philly Backfires: 1,000 Cops with Machine Guns “Find” 2½ Sticks of Dynamite in Philadelphia, Try to Pin It on SNCC, MOVEMENT*, Sept. 1966, at 1, 1, available at <https://www.jstor.org/stable/pdf/community.28040887.pdf>; Lombardo, *supra* note 325, at 17. Stokely Carmichael's subsequent visit to Philadelphia was tracked and surveilled by the FBI. *Stokely Carmichael*, FBI RECORDS: THE VAULT, pt. 5, at 7–9 <https://vault.fbi.gov/Stokely%20Carmichael> (last visited Oct. 21, 2022). <https://vault.fbi.gov/Stokely%20Carmichael/Stokely%20Carmichael%20Part%205%20of%205>.

³⁶⁸ Raids on the headquarters and residences of other Black liberation organizations became common during the late 1960s. The headquarters of the St. Louis Liberators was damaged under a barrage

B. *The Politics of Law and Order*

America's system of government relies on the election of local officials such as mayors, prosecutors, and judges. It is the responsibility of those local elected officials to ensure their law enforcement department complies with the law and is held accountable for any criminal violations and administrative misconduct.³⁶⁹ Prior to police unionization, law enforcement officials had long used politics to further their interest of self-policing and preferential governance. These leaders negotiated the ability to exercise unilateral decision-making in exchange for accepting appointed positions.³⁷⁰ During the early part of the twentieth century, proponents of professionalism deemed it essential to remove political influence from law enforcement in order to improve the ranks.³⁷¹ The push to be free of political corruption has resulted in law enforcement that goes relatively unchecked. Law enforcement officials rejected any and all civilian input or direction.³⁷² This rejection occurred in ways that were quiet and unknown, such as sworn officials co-opting elected and appointed civilians.³⁷³ And it has taken the form of aggressive public campaigns against elected officials interested in more democratic police oversight.³⁷⁴ In some cities, as discussed below, police union rejection of certain initiatives and political candidates during the 1960s contained an unmistakable racial animus.

Police unions now exercise political power to influence law enforcement policies in ways previously deemed disadvantageous to corruption-free government. As the political influence and power of police unions grew, union officials and department heads used that power to mold city leadership. In some instances, as described above, police unions and associations flexed their political strength to destroy the policies created to balance the needs of marginalized, Black community members and those of law enforcement.³⁷⁵ In others, as described in this section, union leaders and police head executives used their political popularity to become elected and

of police gunfire in September 1968. KENNETH S. JOLLY, *BLACK LIBERATION IN THE MIDWEST: THE STRUGGLE IN ST. LOUIS, MISSOURI, 1964–1970*, at 164. More widely covered was the assassination of Fred Hampton by Chicago Police in December 1969. See Nathaniel Sheppard Jr., *Plaintiffs in Panther Suit “Knew We Were Right,”* N.Y. TIMES (Nov. 14, 1982), <https://www.nytimes.com/1982/11/14/us/plaintiffs-in-panther-suit-knew-we-were-right.html>.

³⁶⁹ William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 1982 (2008).

³⁷⁰ Cray, *supra* note 257, at 54.

³⁷¹ *Id.*

³⁷² See *supra* Section II.A.

³⁷³ An example of this can be seen in the tenures of New York City Police Department's civilian police commissioners prior to the 1960s. Ed Cray identified Francis Adams, Stephen Kennedy, Michael Murphy, and Vincent Broderick as four civilian commissioners in that city who were co-opted by sworn personnel in that department and served as “figureheads for police administrators.” Cray, *supra* note 257, at 55.

³⁷⁴ See *supra* Subsection II.B.1.

³⁷⁵ *Id.*

high-ranking police officials. Police power reached a high point in 1968, with the year being billed as “The Year of the Cop.”³⁷⁶

In Cleveland, Carl Stokes was elected the first Black mayor of a major U.S. city in November 1967.³⁷⁷ Stokes drew strong ire from the local police associations with his response to an exchange of gunfire in July 1968 between white police officers and Fred Evans, a Black Army veteran.³⁷⁸ The shots led to the deaths of three officers, three community members, and began what became known as the Glenville uprising.³⁷⁹ Stokes de-escalated the conflict by removing white officers from the streets during the conflict and called on Black liberation leaders to restore peace.³⁸⁰ Peace was restored in the community, but racism within the police department was unleashed. Officers were heard making racist remarks about the mayor on patrol radios.³⁸¹ They also defied his orders to patrol the east side of Cleveland in integrated two-man cars.³⁸² The onslaught of police attacks was followed by an erosion of Stokes’s white voter support. Officers not in uniform openly displayed weapons while challenging Black voters at the polls during Stokes’s 1969 re-election.³⁸³

Police union power and popularity proved important to Minneapolis elections in 1969. Charles Stenvig was a forty-one-year-old detective in the Minneapolis Police Department who was also serving as the local police federation’s president when he decided to run as an independent for mayor.³⁸⁴ He won sixty-two percent of the vote in the 1969 race after vowing to “take the handcuffs off the police” and “to crack down on racial militants” and others.³⁸⁵ His mayoral record indicates that squashing efforts to address police abuse was all he did.³⁸⁶ Stenvig pledged to subvert City Council efforts to create a civilian review board.³⁸⁷ In response to a critic’s position that government should provide programs to address social ills, Stenvig

³⁷⁶ Cray, *supra* note 257, at 53.

³⁷⁷ RHONDA Y. WILLIAMS, *supra* note 44, at 136.

³⁷⁸ *Id.* at 174–75.

³⁷⁹ *Id.* at 175.

³⁸⁰ *Id.* at 176.

³⁸¹ SKOLNICK, *supra* note 75, at 244.

³⁸² *Id.* at 276.

³⁸³ Dan Folster, *What Happened in Cleveland?*, HARVARD CRIMSON (Nov. 23, 1971) <https://www.thecrimson.com/article/1971/11/23/what-happened-in-cleveland-pbthe-author/> (“During the 1969 election non-uniformed uninformed policemen with guns dangling openly at their sides served as challengers at the polls in black wards in an obvious attempt to intimidate black voters.”). Though he was re-elected in 1969, Stokes did not seek a third term and relocated for some time outside of Cleveland. See LEONARD N. MOORE, CARL B. STOKES AND THE RISE OF BLACK POLITICAL POWER 187, 193–95 (2002) (describing how Stokes also lost the white vote and saw his political power disappear).

³⁸⁴ Manuel & Urban, *supra* note 346, at 195.

³⁸⁵ *Id.*

³⁸⁶ *Id.* at 205 (discussing observations by other local elected officials and a reporter that Mayor Stenvig developed no initiatives or leadership during his first two years in office).

³⁸⁷ *Id.* at 204.

provided an ironic retort that “you can’t legislate the heart.”³⁸⁸ Of course, many American laws are based on moral expectations and standards.³⁸⁹ Stenvig, in fact, did attempt to govern the hearts and minds of people as he sought to have certain material banned from the library.³⁹⁰

Frank Rizzo’s violent disregard for Black Philadelphians made him very popular with white community members.³⁹¹ Rizzo rose through the ranks of the Philadelphia Police Department despite his suspected connections to the Italian mob and strife with other ethnicities.³⁹² Mayor Tate first appointed Rizzo to serve as deputy commissioner and tasked him with preventing more white flight as a part of Tate’s re-election strategy.³⁹³ Tate rewarded Rizzo’s brute-force response to those protesting educational discrimination and demanding Black liberation by naming him police commissioner in May 1967.³⁹⁴ The mayor and his new commissioner agreed that Rizzo would have free rein over the city’s policing decisions without any input or interference from the mayor.³⁹⁵ During his re-election campaign, Tate used images of Rizzo “rounding up a group of young [B]lacks” on the street, in riot-like gear breaking through a group of Black protestors picketing a white business and leading a pack of officers “breaking into the headquarters of the Revolutionary Action Movement.”³⁹⁶ Rizzo was credited with handing Tate

³⁸⁸ *Id.* at 203.

³⁸⁹ For example, jurisdictions in which various laws and benefits treat married couples differently than unmarried couples place a value on the institution of marriage. *See Obergefell v. Hodges*, 576 U.S. 644, 669–70 (2015) (noting that states “have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities”); *see also* Ekow N. Yankah, *Good Guys and Bad Guys: Punishing Character, Equality and the Irrelevance of Moral Character to Criminal Punishment*, 25 CARDOZO L. REV. 1019, 1020–21 (2004) (arguing that the tendency in criminal law to punish individuals because they are considered bad people is unjust).

³⁹⁰ Manuel & Urban, *supra* note 346, at 204 (“During his first administration, Stenvig put public pressure on the Minneapolis public library to remove the publications *Rolling Stone*, *Black Panther*, and *New Left Notes*, since they advocated drug use, disrespect for authority figures, and violence against the police.”).

³⁹¹ *Id.* at 196, 214–15 (describing how Frank Rizzo was able to make the move from police commissioner to mayor even though he was known for using extreme violence and demoralizing tactics against Black community members and attributing his political success, and that of others like him, during the late 1960s and early 1970s to the continued politicization of crime in local elections).

Rizzo used his badge to violate the rights of the patrons and owners of gay coffeehouses in 1959. These raids became another opportunity for the white community (e.g., religious leaders, wealthy Center City residents, and the local press) to express strong support. This was true despite the fact that he raided the establishments simply because they were frequented by homosexuals. There were no allegations of gambling, prostitution, drinking, or any lewd behavior. When the owner of one of the coffeehouses sued Rizzo in federal court, the city attorney and a lawyer hired by the FOP defended him. PAOLANTONIO, *supra* note 174, at 66–67.

³⁹² *Id.* at 55.

³⁹³ *Id.* at 74; COUNTRYMAN, *supra* note 164, at 164 (“Mayor Tate had appointed Rizzo, a twenty-year veteran of the police force, deputy commissioner shortly before the 1963 election in an effort to counter his Republican opponent’s law-and-order campaign.”).

³⁹⁴ COUNTRYMAN, *supra* note 164, at 231.

³⁹⁵ Lombardo, *supra* note 325, at 17.

³⁹⁶ RUCHELMAN, *supra* note 94, at 91.

a narrow victory over his opponent.³⁹⁷ His anti-Black policing led him to the position of “Top Cop.” It would next deliver him the mayor’s seat.³⁹⁸

IV. SOLUTIONS

The problem of racially disproportionate police violence is longstanding. Decades of scholarship and research have been devoted to understanding the root causes of the problem and devising solutions. As detailed in this Article, police efforts to shield local law enforcement from public oversight carried with them explicit and implicit racism. Racial animus was harbored by officers in American cities to researchers and journalists during the sixties.³⁹⁹ Though it is rare today for such animus to be openly expressed, research supports the racially disparate impact of police violence on Black people. There exists a critical need for a solution designed to remove police union contract impediments to police accountability. This section explores two possible solutions. The first briefly examines the uphill battle presented by a litigation strategy based on an equal protection framework. The second proposes, instead, a renewed focus on how the federal government can buttress current reform efforts with conditional-spending requirements.

A. *Equal Protection and Disparate Impact*

The intractable presence of racism in American policing defies the protections of the Fourteenth Amendment. Substantial research strongly indicates that Black people are disproportionately affected by police violence and misconduct.⁴⁰⁰ It is documented that officers with histories of excessive force and other serious misconduct complaints have remained employed as officers. Their employment status as peace officers provides them with the authority to use deadly force. As discussed earlier, high-profile killings of Black people have been at the hands of officers with troubling employment histories.⁴⁰¹ Collective bargaining provisions in police union contracts are credited, at least partially, with preventing the

³⁹⁷ *Id.* at 92.

³⁹⁸ PAOLANTONIO, *supra* note 174, at 102–04, 119–20 (quoting Rizzo, during his first campaign for mayor, as saying the Black Panthers “should be strung up”).

³⁹⁹ *See, e.g., supra* notes 202–19 and accompanying text.

⁴⁰⁰ *See supra* sources cited note 36; Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities In Police Stops Across The United States*, 4 NATURE HUM. BEHAV. 736, 736 (2020) (finding “that black drivers were less likely to be stopped after sunset, when a ‘veil of darkness’ masks one’s race, suggesting bias in stop decisions,” and “that the bar for searching black and Hispanic drivers was lower than that for searching white drivers”); *see also* Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543, 1573 (2019) (illustrating how Supreme Court decisions involving the Fourth Amendment have hidden the destructive manner in which racial harm is integral to police practices).

⁴⁰¹ *See supra* notes 19–26 and accompanying text.

discipline or termination of such officers.⁴⁰² A valid question exists as to whether the discriminatory impact of certain police union contract provisions can be challenged as violative of Equal Protection rights guaranteed by the Fourteenth Amendment.

A successful challenge to collective bargaining provisions and other systems that undermine police accountability may likely require one to establish that those systems reflect intentional discrimination. Without doing so, equal protection claims that successfully show certain union contract provisions have a racially disparate impact because officers cannot be held accountable may nevertheless fail if evidence does not exist to show that the provisions were created with discriminatory intent.

The Court in *Washington v. Davis*⁴⁰³ and *Personnel Administrator of Massachusetts v. Feeney*⁴⁰⁴ makes it clear that only intentional discrimination violates the Equal Protection Clause. Central to the dispute in *Davis* was a written test that purportedly evaluated prospective D.C. officers' "verbal ability, vocabulary, reading and comprehension."⁴⁰⁵ Plaintiffs, who were Black, filed suit alleging the entrance exam was discriminatory and violated their Fifth Amendment due process rights.⁴⁰⁶ Four times as many Black applicants failed the test than their white counterparts.⁴⁰⁷ Nevertheless, the Court found that the test was sufficiently related to job performance.⁴⁰⁸ A majority of the Court ruled the Court of Appeals erred by not requiring plaintiff-applicants to show discriminatory intent.⁴⁰⁹

Personnel Administrator v. Feeney also involved an employment exam. Feeney filed a § 1983 claim and alleged that a Massachusetts civil service promotion statute violated the Equal Protection Clause in that it gave preference to veterans; thereby discriminating against women job applicants.⁴¹⁰ Veterans received statutory preference even when they scored below nonveteran employees on promotions exams.⁴¹¹ Feeney received the second- and third-highest scores on two separate tests, only to be ranked below male veterans with lower test scores for both positions.⁴¹² The Court's majority rejected Feeney's claims because there was no dispute that the statute was not intended to serve as a pretext for gender discrimination.⁴¹³

⁴⁰² See *supra* notes 27–36 and accompanying text.

⁴⁰³ 426 U.S. 229, 239–40 (1976).

⁴⁰⁴ 442 U.S. 256, 260, 271–73 (1979).

⁴⁰⁵ 426 U.S. at 235 (quoting the findings of the lower court, *Davis v. Washington*, 348 F. Supp. 15, 16 (D.D.C. 1972)).

⁴⁰⁶ *Id.* at 232–33.

⁴⁰⁷ *Id.* at 237.

⁴⁰⁸ *Id.* at 249–52.

⁴⁰⁹ *Id.* at 247–48.

⁴¹⁰ 442 U.S. 256, 257 (1979).

⁴¹¹ *Id.* at 262.

⁴¹² *Id.* at 264.

⁴¹³ *Id.* at 276.

They did so despite two key details. First, state lawmakers passed the law giving preference to veterans at a time when only two percent of veterans in Massachusetts were women.⁴¹⁴ Second, the legislative history revealed that state lawmakers were aware of the negative impact the veteran-preference system would have on women and decided to dull the impact for certain “traditionally female occupations.”⁴¹⁵

It should not be ignored that both *Griggs v. Duke Power Co.*⁴¹⁶ and *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*,⁴¹⁷ make clear that a disparate impact claim can violate a specific statute. But the Supreme Court has consistently held that only an overwhelming disparate impact like those present in *Yick Wo v. Hopkins*⁴¹⁸ or *Gomillion v. Lightfoot*⁴¹⁹ can support an inference of intentional discrimination in an equal protection case. In the context of policing, there is a strong argument to be made that equal protection violation claims are unlikely to succeed unless only one white person is impacted by police union contract provisions in a jurisdiction found to have impeded officer accountability. The discriminatory-intent requirement presents a high hurdle. Moreover, the use of plaintiff suits as a vehicle to remedy police abuse has had little to no impact.⁴²⁰ The imbalance of power and resources that exists between unions and already-marginalized plaintiffs regarding contract provisions renders this possible solution unlikely to provide significant, sustained reforms.

Exploring a solution not exclusively dependent upon litigation can be pivotal. The following section explores how the federal government can employ conditional-spending requirements to further its stated commitment to increased police accountability.

B. Federal Conditional Spending

The federal government, through an extensive network of funding, provides significant U.S. Treasury dollars to local police departments.⁴²¹ It is extremely difficult to ascertain the exact number of federal dollars that

⁴¹⁴ *Id.* at 284.

⁴¹⁵ *Id.*

⁴¹⁶ 401 U.S. 424, 428–32 (1971).

⁴¹⁷ 135 S. Ct. 2507, 2525 (2015).

⁴¹⁸ 118 U.S. 356, 373–74 (1886).

⁴¹⁹ 364 U.S. 339, 346–47 (1960).

⁴²⁰ Avidan Y. Cover, *Reconstructing the Right Against Excessive Force*, 68 FLA. L. REV., 1773, 1777 (detailing the ways in which the judiciary has limited avenues of recovery for plaintiffs alleging use of excessive force violations under Section 1983 claims); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 763–64 (2012) (describing how the courts are ill-suited to “assess[] the incentives affecting police officers” and to engage in “complex empirical analysis . . . to constrain police beyond identifying and enforcing constitutional rights”).

⁴²¹ Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 872 (2015).

flow either directly to local law enforcement agencies or indirectly from their state governments.⁴²² Recognizing that it exceeds the scope of this Article to attempt such a full accounting of the national network of police department funding, the following highlights are offered to provide some level of context.

The federal government's commitment to provide financial support to law enforcement has been as constant over the last sixty years as police brutality. In 1965, the federal government appropriated \$10 million to state and local law enforcement agencies under the Law Enforcement Assistance Act.⁴²³ Three years later, the federal government passed the Omnibus Crime Control and Safe Streets Act of 1968 and allocated at least \$400 million over two years to local law enforcement departments.⁴²⁴

President Biden's proposed 2023 fiscal year budget calls for the federal government to spend enormous dollars on state and local policing.⁴²⁵ Included are \$472 billion in American Rescue Plan funds designated for state and local policing to hire officers "for accountable community policing."⁴²⁶ This is on top of the regular funding not connected to the one-time American Rescue Plan funds. Though Congress has not passed the current proposed budget, actual dollars previously allocated through a web of federal funding avenues provide a better context of actual dollars spent. For fiscal year 2022, the Byrne Justice Assistance Grant program awarded approximately \$235 million in federal funding to state, local, and tribal police agencies.⁴²⁷ During the same time period, the Community Oriented Policing Services (commonly known as COPS) granted an excess of \$512 million to the same.⁴²⁸ COPS reports providing more than \$14 billion to local, state, and tribal police agencies over its twenty-eight-year existence.⁴²⁹ One of COPS's key objectives is to "build trust between law enforcement and the communities served."⁴³⁰ And in 2018, the Byrne Justice Assistance

⁴²² The same is true for determining the exact number of law enforcement agencies and sworn officers.

⁴²³ Law Enforcement Assistance Act of 1965, Pub. L. 89-197, 79 Stat. 828.

⁴²⁴ Pub. L. 90-351, 82 Stat. 197; Lyndon B. Johnson, Statement by the President upon Signing the Omnibus Crime Control and Safe Streets Act of 1968 (June 19, 1968) (available at <https://www.presidency.ucsb.edu/documents/statement-the-president-upon-signing-the-omnibus-crime-control-and-safe-streets-act-1968>).

⁴²⁵ Press Release, White House, FACT SHEET: President Biden's Budget Invests in Reducing Gun Crime to Make Our Communities Safer (Mar. 28, 2022), <https://www.whitehouse.gov/omb/briefing-room/2022/03/28/fact-sheet-president-bidens-budget-invests-in-reducing-gun-crime-to-make-our-communities-safer/>.

⁴²⁶ *Id.* ("\$350 billion in state and local funding, and \$122 billion in K-12 funding").

⁴²⁷ Department of Justice Grant Appropriations FY 19–FY 23, Justice Assistance Table, Nat'l Crim. Just. Ass'n (on file with author) [hereinafter DOJ Grant Appropriations].

⁴²⁸ *Id.*

⁴²⁹ Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Justice Department Announces \$139 Million for Law Enforcement Hiring to Advance Community Policing, (Nov. 18, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-139-million-law-enforcement-hiring-advance-community-policing>.

⁴³⁰ *Id.*

Grant program reportedly awarded \$340 million dollars in federal funding to state and local police agencies.⁴³¹

Kami Chavis's article, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, provides an insightful and novel solution that should be revisited here.⁴³² She details the statutory authority and purpose of COPS funding and argues that federal funding strategies have been "inadequate to address . . . police abuse nationwide."⁴³³ Chavis proposes an amendment to the COPS statute that would add a conditional-spending clause to federal funding so as "to promote police accountability."⁴³⁴ Her proposal utilizes the four-part test in *South Dakota v. Dole*⁴³⁵ as a framework for establishing a five percent limit on the conditional spending.⁴³⁶ The Court's decision in *NFIB v. Sebelius*⁴³⁷ and other circuit court decisions involving American Rescue Plan funding conditions have been made since the 2011 publication of *Cooperative Federalism*. These additional lines of cases make it worth revisiting and exploring the viability of conditional spending to address collective bargaining provisions that impede police accountability.

The landmark decision in *NFIB v. Sebelius* may prompt some to view conditional-spending requirements with some skepticism.⁴³⁸ There, in addition to upholding the Affordable Care Act's individual mandate, the Court found the Medicaid expansion provision of the Act was an impermissible penalty under the Spending Clause.⁴³⁹ At issue was the federal government's decision to condition the entirety of its Medicaid reimbursements on whether states would provide coverage to all of its eligible residents.⁴⁴⁰ The Court found the one-hundred percent conditional-spending funding to be impermissibly punitive.⁴⁴¹ The Court declined to prescribe the tipping point for when a conditional-spending requirement becomes an impermissible tax.⁴⁴² But Chief Justice Roberts chided the federal government with a reminder that the "power to tax is not the power to destroy."⁴⁴³

⁴³¹ DOJ Grant Appropriations, *supra* note 427.

⁴³² See Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351 (2011).

⁴³³ *Id.* at 382–83.

⁴³⁴ *Id.* at 383.

⁴³⁵ 483 U.S. 203, 207–08 (1987).

⁴³⁶ Simmons, *supra* note 432, at 394.

⁴³⁷ Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).

⁴³⁸ *Id.* at 625 (Ginsburg, J., concurring in part and dissenting in part) ("The Chief Justice therefore—for the first time ever—finds an exercise of Congress' spending power to be unconstitutionally coercive.") (emphasis in original).

⁴³⁹ *Id.* at 585 (opinion of Roberts, C.J.).

⁴⁴⁰ *Id.* at 576.

⁴⁴¹ *Id.* at 573.

⁴⁴² *Id.*

⁴⁴³ *Id.* (citations omitted).

The Court's opinion and Justice Ginsburg's partial concurrence went on to detail why the four-part test from *South Dakota v. Dole* remains good case law.⁴⁴⁴ That test requires that: (1) the spending is for general welfare; (2) the spending condition is unambiguous; (3) the condition is relevant to the purpose of the federal expenditure; and (4) the spending condition does not violate any other Constitutional provision.⁴⁴⁵ *NFIB* provides some indication of the outer limits as to when a condition may be deemed coercion, but considering the one-hundred percent condition in that case, the percentage itself is not particularly helpful. Samuel Bagenstos's analysis of *NFIB* posits that the tipping point between permissive conditional spending and impermissible coercion can be understood through evaluating the anti-leveraging principle gleaned from Chief Justice Roberts's opinion.⁴⁴⁶ He proffers that principle as a test to determine whether conditional spending is improperly coercive. Bagenstos's principle defines coercion as the federal government tying largely significant amounts of existing funding to new participation in a "separate and independent program."⁴⁴⁷

In the police union contract context, my proposal to place conditional-spending requirements on local police agencies with pattern or practices of discriminatory policing should survive under *South Dakota v. Dole* and *NFIB v. Sebelius*.

Placing conditional-funding requirements on federal dollars to state and local police agencies could help address collective bargaining provisions that frustrate reform efforts. First, local governments committed to developing trust and legitimacy in their police services must make sustained allegations of racism a presumptively terminable offense. This should also include sustained evidence of racially disparate improper use of force. The FBI acknowledged in 2006 that white supremacist groups have infiltrated American law enforcement agencies.⁴⁴⁸ There is no evidence that those agencies have developed strategies to address the problem. But those who consciously subscribe to beliefs that Black people and other people of color are racially inferior are not the sole source of the problem. Officers who demonstrate a pattern of opting to disproportionately use force against Black people and other people of color should also be deemed unsuitable to work in law enforcement. In order for the classification of racism and racially disparate misconduct as presumptively terminable offenses to be effective, departments will have to ensure that allegations of misconduct are

⁴⁴⁴ *Id.* at 580–81; *id.* at 631–33 (Ginsburg, J., concurring in part and dissenting in part).

⁴⁴⁵ *South Dakota v. Dole*, 483 U.S. 203, 207–08 (1987).

⁴⁴⁶ Samuel R. Bagenstos, *The Anti-Leveraging Principle and the Spending Clause After NFIB*, 101 GEO. L.J. 861, 870–71 (2013).

⁴⁴⁷ *Id.* at 898.

⁴⁴⁸ FBI COUNTERTERRORISM DIV., FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUST., WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT 2–4 (2006). https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf.

investigated by skilled investigators in a timely and thorough manner. It will also require that departments use sound data-collection practices to track, review, and investigate the appropriateness of officer use of force.

The revisions should include the removal of provisions from local collective bargaining agreements that impede accountability. They should also include the addition of racial animus and patterns of racially based improper policing as presumptively terminable offenses. The identification of these offenses could be made in either the collective bargaining agreement, disciplinary matrixes, or both.

CONCLUSION

Black people in America continue to be stopped and killed by police at disproportionate rates.⁴⁴⁹ Collective bargaining contracts have been identified as an impediment to ensuring that problematic officers are disciplined in a manner that prevents them from repeatedly inflicting harm or simply being terminated. As shown in prior research, those contracts contain disciplinary provisions that insulate officers from effective investigations on allegations of serious misconduct.⁴⁵⁰ Current-day contracts also contain provisions regarding personnel file record-keeping and limitations on how long prior misconduct can be considered in current disciplinary decisions.⁴⁵¹ Those current provisions and others impede the ability to remove unsuitable employees from the sole profession in a democratic society that is authorized to take the life or liberty of another without due process. This reality allows the absence of trust and legitimacy within communities impacted by police violence and misconduct to continue.

Policing that is simultaneously accountable to the people and the rule of law is a hallmark of democracy.⁴⁵² Communities throughout the United States continue to demand that their elected and appointed officials hold police accountable.⁴⁵³ As enforcers of the law, it is expected that they adhere to the rule of law.⁴⁵⁴ Yet, American police—with the authority to singlehandedly decide when to use deadly force and no consistent accountability measures

⁴⁴⁹ See *supra* sources cited note 400.

⁴⁵⁰ See Rushin, *Police Union Contracts*, *supra* note 16; Fisk & Richardson, *supra* note 16.

⁴⁵¹ Rushin, *Police Union Contracts*, *supra* note 16, at 1228.

⁴⁵² WALKER, POLICE ACCOUNTABILITY, *supra* note 17, at 7.

⁴⁵³ Carol A. Archbold, *Police Accountability in the USA: Gaining Traction or Spinning Wheels?*, 15 POLICING 1665, 1667 (2021) (“Many state political leaders are also responding to the renewed call for police reform by passing legislation meant to increase police accountability. According to the Vera Institute of Justice, 34 states and the District of Columbia passed 79 bills, executive orders, and resolutions making changes to laws associated with police accountability in 2015 and 2016. This is a notable increase as there were approximately 20 changes made to laws associated with police accountability from 2012 to 2014.”) (citation omitted).

⁴⁵⁴ SKOLNICK, *supra* note 75, at 5–6 (discussing the expectation of some that police “adhere strictly to the rules governing the legal system . . . [and] ultimately be accountable”); Richard J. Terrill, *Police Accountability in Philadelphia: Retrospects and Prospects*, 7 AM. J. POLICE, no. 2, 1988, at 79, 79.

for such force—have effectively been excluded from the control mechanism purportedly inherent in the rule of law. Recent civil unrest and uprisings in American cities have left many with questions regarding the intractable nature of disproportionate police brutality in Black communities.⁴⁵⁵

But collective bargaining agreements alone are not the problem. Instead, police union contracts have become a seemingly impenetrable memorialization of racialized violence embedded in American policing. Police brutality is a longstanding issue in America, especially in Black communities.⁴⁵⁶ The Black liberation movement sought freedom from government-sanctioned violence. That movement started before the introduction of police union collective bargaining agreements. Nevertheless, early contracts did nothing to address the problem. Indeed, modern bargaining agreements serve to insulate sworn personnel from accountability. The political power and public support that police unions garnered for officers during the 1960s is the genesis of modern-day provisions.

There are still attempts to frame the American backlash following civil rights progress as the rise of conservatism in response to Black “militants.”⁴⁵⁷ Journalists and historians have long framed Black liberation leaders and organizations as “militant.”⁴⁵⁸ This characterization was used not just for organizations that promoted principles of self-defense in response to white violence. It was also used to describe the struggle of Black liberation leaders using nonviolent demonstrations and written publications to inform their communities and others about the unequal, unjust, and uniformly

⁴⁵⁵ Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PNAS 16793, 16794 (2019) (finding that “Black men are about 2.5 times more likely to be killed by police over the life course than are white men [and] Black women are about 1.4 times more likely to be killed by police than are white women”); see Julie Tate et al., *Fatal Force*, WASH. POST (Oct. 7, 2022), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (“Although half of the people shot and killed by police are [w]hite, Black Americans are shot at a disproportionate rate. They account for less than 13 percent of the U.S. population but are killed by police at more than twice the rate of [w]hite Americans. Hispanic Americans are also killed by police at a disproportionate rate.”); Elle Lett et al., *Racial Inequality in Fatal US Police Shootings, 2015–2020*, 75 J. EPIDEMIOLOGY & CMTY. HEALTH 394 (2020) (documenting a study revealing that the rate of fatal police shootings of Black, Indigenous, and People of Color remained constant in the United States from 2015 to 2020); but see Heather Mac Donald, Opinion, *There Is No Epidemic of Fatal Police Shootings Against Unarmed Black Americans*, USA TODAY, <https://www.usatoday.com/story/opinion/2020/07/03/police-black-killings-homicide-rates-race-injustice-column/3235072001/> (July 6, 2020, 10:29 AM) (opining that the majority of Black people killed by police are armed or dangerous and, therefore, more police resources are necessary). See generally Nirej Sekhon, *Blue on Black: An Empirical Assessment of Police Shootings*, 54 AM. CRIM. L. REV. 189 (2017) (using an analysis of 270 officer-involved shootings in Chicago and documentation from the Independent Police Review Authority to assert that additional factors beyond a comparison of a racial group’s overall population percentage to its people’s rate of being shot by police may be helpful in determining the extent of racial disproportionality in police shootings).

⁴⁵⁶ See, e.g., notes 173–77, 286, 327 and accompanying text.

⁴⁵⁷ Zack Beauchamp, *Kyle Rittenhouse and the Scary Future of the American Right*, VOX (Nov. 22, 2021, 3:20 PM), <https://www.vox.com/policy-and-politics/22792136/kyle-rittenhouse-verdict-militia-violence-self-defense>.

⁴⁵⁸ Lombardo, *supra* note 325, at 14.

violent response they were experiencing in the employment, educational, and law enforcement sectors.⁴⁵⁹ “Militant” is used to describe those who sought to enjoy the freedom of their equal rights as articulated by the Supreme Court and Congress. Recent scholarship makes the dangerous error of equating local NAACP leader Cecil B. Moore’s nonviolent, direct-action demonstrations with that of gun-toting, billy club-wielding Frank Rizzo’s Philadelphia Police Department.⁴⁶⁰

American racial subjugation remains, even if in seemingly new and evolved ways.⁴⁶¹ This Article provides some accounts of a time when the federal high court and several local and federal officials had begun to institute laws and practices aimed at addressing racial oppression. The white electorate responded in ways that showed they were not in support of those advancements. Instead, white community members publicly sided with the police who were protecting their interests. This evolved into more than the traditional election of political candidates in favor of preserving America’s racial hierarchy. It expanded to vocal support of a personified police force as its own distinct cause.⁴⁶² This is demonstrated not only by the election of police leaders to the highest seat in municipal government, but also by the passage of several state collective bargaining statutes that coincided with police violence and uprisings in American cities during the 1960s.⁴⁶³

⁴⁵⁹ *Id.* at 16 (describing Cecil B. Moore’s marches and impassioned speeches against segregation as “militant”); Jenice L. View, *Brief Outline of the History of SNCC*, C.R. TEACHING, <https://www.civilrightsteaching.org/voting-rights/brief-history-sncc> (last visited Oct. 21, 2022) (describing the Student Nonviolent Coordinating Committee as becoming “more militant”); David Chappell, *The Radicalism of Martin Luther King Jr.’s Nonviolent Resistance*, WASH. POST (Jan 15, 2018, 6:00 AM), <https://www.washingtonpost.com/news/made-by-history/wp/2018/01/15/the-radicalism-of-martin-luther-kings-nonviolent-resistance/> (mentioning King’s “militant dedication to equality in housing and the criminal justice system”).

⁴⁶⁰ Lombardo, *supra* note 325, at 16 (“Moore’s aggressive campaign and Rizzo’s equally aggressive policing made for a volatile situation.”).

⁴⁶¹ Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 363 (1992).

⁴⁶² *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-701(D)(15), 1204 (2022) (declaring that “[e]vidence that the defendant committed the crime out of malice toward a victim because of the victim’s [employment as a peace officer] is an aggravating factor”); Blue Lives Matter In Oklahoma Act of 2017, H.B. 1306, 56th Leg., Reg. Sess. (Okla. 2017) (amending Okla. Stat. tit. 21, § 701.9 (2022), enhancing penalties for first-degree murder); OKLA. STAT. tit. 21 § 701.7(E) (including “intentionally caus[ing] the death of a law enforcement officer” in the definition of first-degree murder); *see also* the following unenacted legislation: Blue Lives Matter Act of 2016, H.R. 4760, 114th Cong. (2016) (“A Bill to make an attack on a police officer a [federal] hate crime, and for other purposes.”); Mississippi Blue Lives Matter Act, H.B. 640, 2017 Leg., 132d Sess. (Miss. 2017) (attempting to “include law enforcement officers, firefighters and emergency medical personnel in the class of victims where offenses are subject to hate crime penalties; and for related purposes”); Blue Lives Matter Act Of 2017, H.B. 25, 2017 Gen. Assemb., 437th Sess. (Md. 2017) (“For the purpose of including law enforcement officers within the scope of certain prohibitions against committing certain crimes against certain persons . . . and generally relating to hate crimes against law enforcement officers.”); A Concurrent Resolution Urging the United States Congress to Enact the “Blue Lives Matter Act of 2016”, Assemb. Con. Res. 188, 217th Leg., 1st Sess. (N.J. 2016).

⁴⁶³ Li Cohen, *Former NYPD Police Captain Eric Adams Elected as Second Black Mayor in New York City History*, CBS NEWS (Nov. 3, 2021, 7:55 PM), <https://www.cbsnews.com/news/eric-adams-elected-new-york-city-mayor-nypd/>. The table in Section I.B, *supra*, contains the collective bargaining statutes.

Racism remains the root cause of disparate outcomes in America.⁴⁶⁴ Indeed, local governments across the country have declared it a public health crisis.⁴⁶⁵ American police unions promoted racist policing and targeted Black liberation efforts. The impact of police union contracts cannot be fully understood without recognizing that police departments across the country were rewarded with collective bargaining rights during the historical moment when racist policing was widely known and supported. It was supported by voters who rejected efforts to hold officers accountable for harassment and abuse of Black community members. It was also supported by elected and appointed officials who negotiated contracts with police unions and failed to include provisions that protected the interests of marginalized and disproportionately impacted communities.

The Kerner Commission understood that police were more than a mere trigger to the spate of Black uprisings during the 1960s.⁴⁶⁶ That insightful and comprehensive report continues to be relevant today. It understood that, for Black Americans, “police . . . symbolize white power, white racism, and white repression. And the fact is that many police do reflect and express these white attitudes.”⁴⁶⁷ What the report could not have known at the time it was written is how collective bargaining rights would serve, over time, as a protective shield to foster racist police practices and outcomes. Only ten states had codified police collective bargaining rights by the time the report was published. However, we now have a more complete understanding of the role contract provisions have played in promoting racially disparate police outcomes. This increased understanding should prompt the federal government to demonstrate that it is willing to hold local agencies accountable—just as it seemingly demands those same agencies hold police officers accountable.

⁴⁶⁴ See Derrick A. Bell, Jr., *Racism in American Courts: Cause for Black Disruption or Despair?*, 61 CALIF. L. REV. 165, 165 (1973); Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229, 1234 (2020); Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH. & LEE L. REV. 1485, 1485 (2004); Andrea Freeman, *Racism in the Credit Card Industry*, 95 N.C. L. REV. 1071, 1071 (2017); Ruqaiijah Yearby, *Structural Racism and Health Disparities, Reconfiguring the Social Determinants of Health to Include the Root Cause*, 48 J.L. MED. & ETHICS 518 (2020); Ruqaiijah Yearby & Seema Mohapatra, *Law, Structural Racism, and the COVID-19 Pandemic*, 7 J.L. & BIOSCIENCES, Jan.–June 2020, at 4 (arguing that structural racism in employment and housing led to negative COVID-19 health outcomes for people of color); Jill E. Evans, *Challenging the Racism in Environmental Racism: Redefining the Concept of Intent*, 40 ARIZ. L. REV. 1219, 1219–20 (1998).

⁴⁶⁵ Christine Vestal, PEW: STATELINE, *Racism Is a Public Health Crisis, Say Cities and Counties, Say Cities and Counties* (June 15, 2020) <https://www.pewtrusts.org/en/research-and-analysis/blogs/state/2020/06/15/racism-is-a-public-health-crisis-say-cities-and-counties>; Lilliann Paine et al., *Declaring Racism a Public Health Crisis in the United States: Cure, Poison, or Both?*, FRONTIERS IN PUB. HEALTH, June 2021, <https://www.frontiersin.org/articles/10.3389/fpubh.2021.676784/full>.

⁴⁶⁶ KERNER COMMISSION, *supra* note 89, at 3.

⁴⁶⁷ *Id.* at 93.